

LEGAL WORK
OF THE
WAR DEPARTMENT

1 JULY 1940 - 31 MARCH 1945

ARMY SERVICE FORCES
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON 25, D. C.

LEGAL WORK OF THE WAR DEPARTMENT

1 JULY 1940 - 31 MARCH 1945

A HISTORY OF

THE JUDGE ADVOCATE GENERAL'S DEPARTMENT

ARMY SERVICE FORCES
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON 25, D. C.

ASSISTANTS JUDGE ADVOCATE GENERAL

DEPUTY JUDGE ADVOCATE GENERAL

Brig Gen T. H. Green 6 October 1944 to 3 September 1945

ASSISTANTS TO THE JUDGE ADVOCATE GENERAL

Brig Gen E. C. McNeil 1 January 1940 to 2 February 1942
Col H. A. Auer 1 January 1940 to 31 May 1942

ASSISTANTS JUDGE ADVOCATE GENERAL IN

CHARGE OF MILITARY JUSTICE

Brig Gen E.C. McNeil 7 February 1942 to 20 April 1943
Col H.D. Hoover 20 April 1943 to 28 June 1943
Brig Gen T.H. Green* 28 June 1943 to 1 October 1943
Brig Gen J.E. Morrisette 1 October 1943 to 26 July 1944
Col W. A. Rounds 26 July 1944 to 30 October 1945
Col T. A. Lyon 30 October 1945 to 13 March 1946

ASSISTANTS JUDGE ADVOCATE GENERAL IN

CHARGE OF CIVIL LAW MATTERS

Brig Gen F. W. Llewellyn 20 August 1942 to 1 October 1943
Brig Gen T. H. Green 1 October 1943 to 5 October 1944
Brig Gen T. H. Green (As D/JAG) 6 October 1944 to 16 June 1945
Col H. H. Hoover 16 June 1945 to 13 March 1946

ASSISTANTS JUDGE ADVOCATE GENERAL IN

CHARGE OF MIL. PERSONNEL AND TRAINING

Col R. M. Springer 1 October 1943 to 10 February 1945

ASSISTANT JUDGE ADVOCATE GENERAL IN

CHARGE OF SPECIAL ASSIGNMENTS

Brig Gen T. H. Green * 14 April 1943 to 1 October 1943

ASSISTANT JUDGE ADVOCATE GENERAL -

EXECUTIVE AND WAR PLANS

Brig Gen J. M. Weir 1 October 1943 to 6 October 1943

ASSISTANT JUDGE ADVOCATE GENERAL IN

CHARGE OF WAR CRIMES

Brig Gen John M. Weir 7 October 1944 to 12 March 1945

*Dual capacity

C O N T E N T S

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THE LEGAL WORK OF THE WAR DEPARTMENT

I INTRODUCTION

CHAPTER I

THE DUTIES AND RESPONSIBILITIES OF THE JUDGE ADVOCATE GENERAL AND THE JUDGE ADVOCATE GENERAL'S DEPARTMENT

The Judge Advocate General of the United States Army is the chief legal adviser of the Secretary of War, the War Department, the Chief of Staff and of the military establishment as a whole. These general duties are inherent in his office without specific statutory authority, although such authority does exist in section 1199 of the Revised Statutes (10 U.S.C. 62; M.L. 1939, sec. 63) which provides that "The Judge Advocate General shall receive, revise, and cause to be recorded the proceedings of all courts-martial, courts of inquiry, and military commissions, and perform such other duties as have been performed heretofore by the Judge Advocate of the Army." The present duty of receiving, revising and having recorded the proceedings of general courts-martial is covered by Article of War 50 $\frac{1}{2}$ (Sec. 1, Ch. II, act of 4 June 1920, 241 Stat. 797; Sec. 1, act of Aug 20, 1937 (50 Stat. 724); 10 U.S.C. 1522; M.L. 1939, sec. 408) and The Judge Advocate General does not at this time have the duty of receiving, revising, or having recorded the proceedings of special and summary courts-martial.

The matters with which The Judge Advocate General is concerned, other than the supervision of the system of military justice throughout the Army, and duties with reference to war crimes, both of which duties will be considered in separate studies, include the furnishing of advice concerning the legal phases of the business, property, and financial operations which are under the jurisdiction of the Secretary of War, and the legal questions growing out of the administration, control, discipline, status, civil relations, and activities of the personnel of the military establishment. More specifically these duties include the furnishing of legal advice and service to agencies of the War Department on matters relating to claims by and against the Government; contracts; bonds of Government officials, contractors and subcontractors; the patent activities of the War Department; land purchases, sales, leases, and grants; the organization of the War Department and the Army; the rights and obligations of military and civilian personnel of the War Department; legal assistance to personnel of the Army in connection with their personal affairs; and the laws of war, international law, military government, martial law, prisoners of war, and the internment of enemy aliens. In all of these matters The Judge Advocate General is primarily concerned with the legal aspects, as distinguished from the discretionary or policy phases, although he is often called upon to make recommendations as well as to render opinions

based solely upon law and precedent. The Judge Advocate General is the custodian of all papers relating to the titles of lands under the control of the War Department, except the Washington Aqueduct and the public buildings and grounds in the District of Columbia (par. 2b, Army Regulations 25-5, 7 May 1942).

The nature of the duties of The Judge Advocate General dictates the organization of the Judge Advocate General's Department as a whole. The duties of The Judge Advocate General are such that he must be in Washington and maintain an office there. But certain duties pertaining to the administration of military justice makes it necessary that officers of the Department be assigned to the staffs of the commanders of the larger commands and of the officers exercising general court-martial jurisdiction. These members of the Department are known generally as staff judge advocates and the official designation of the senior officer of the Department on the staff of a commander corresponds to the designation of the command concerned, for example, division or corps judge advocate. They are the legal advisers of their commanding officers and to the command to which they are assigned they perform duties corresponding in general nature and scope to those discharged by The Judge Advocate General with relation to the whole military establishment. With regard to military disciplinary action their duties include, among others, the duties devolved upon staff judge advocates by Articles of War 36, 46 and 70, as amended. In time of war or domestic disturbances their functions may include duties in connection with military commissions, provost courts or other military tribunals, and the furnishing of advice concerning legal questions relating to claims and relations of the civil population which may arise in occupied enemy territory or be incident to hostilities or domestic disturbances (par. 3b, Army Regulations 25-5). These staff judge advocates are in every sense of the word staff officers and are used by their commanders on such additional duties as the latter may consider appropriate. Examples of additional duties performed by staff judge advocates are participation in training tests of units prior to entry into battle, as liaison officers between headquarters during combat, as acting members of the general staff with troops, and as acting inspectors general. The staff judge advocate must be a soldier as well as a lawyer and when serving with a combat unit he must be a soldier first and a lawyer next.

In addition to duty in the Judge Advocate General's Office and as staff judge advocates, members of the Department are from time to time assigned as additional members of the War Department General Staff, in the Office of the Secretary, Undersecretary and Assistant Secretary of War, at the United States Military Academy, and to other important offices and agencies.

The personnel of the Judge Advocate General's Department consists of officers of the Regular Army, Reserve officers, National Guard officers, and officers commissioned only in the Army of the United States. These officers are all qualified lawyers, and many of them have behind

them years of experience as line officers, which gives them an intimate acquaintance with the operating as well as the legal phases of the military establishment. Others were prominent and highly successful members of the civilian bar, teachers of law, members of the judiciary, and officials of other departments of the Government, and they have enriched the Department with their ability, knowledge, and years of experience. Warrant officers, classified as clerical, Judge Advocate General's Department, serve in the offices of the staff judge advocates. Some of these warrant officers are lawyers and others are experienced in the administration of the Army and their services are of great value to the Department. The Department has no enlisted men permanently assigned, although many enlisted men are on duty in the offices of the staff judge advocates. These enlisted men are attached to the headquarters company of the headquarters concerned and are generally carried as members of the infantry. A number of these men, too, are lawyers, while others are stenographers, typists and clerks. They are, with few exceptions, men of high-caliber without whom the offices in the field could not properly function. Finally there are the civilian employees of the Department, some few of whom are lawyers who have been serving the Department for many years. These civilians furnish the clerical assistance so vital to the proper operation of a large office.

The Judge Advocate General's Office in Washington, D. C. is the nerve center of all the legal activities of the War Department. At the time of writing it is housed in the Munitions Building on Constitution Avenue, occupying space on the second, third, and fourth floors. It is a modern law office with a decentralized organization which places responsibility on each officer in order that business can be expeditiously and efficiently transacted. The office is not a procurer of business; it handles only such business as comes to it from other agencies of the War Department. The offices of the staff judge advocates are also law offices, though on a much smaller scale. They all, the Judge Advocate General's Office and the offices in the field, strive to fulfill the mission of the Department in full accord with the spirit of the Army.

CHAPTER II

THE SITUATION ON 1 JULY 1940

During the fiscal year ending 30 June 1940, the activities of the Judge Advocate General's Department were carried on by the Regular Army judge advocates. Major General Allen W. Gullion was The Judge Advocate General, having been appointed on 1 December 1937. In addition to General Gullion there were 102 judge advocates in the following grades:

Colonels-----	14
Lieutenant Colonels-----	10
Majors-----	41
Captains-----	30
First Lieutenants-----	7

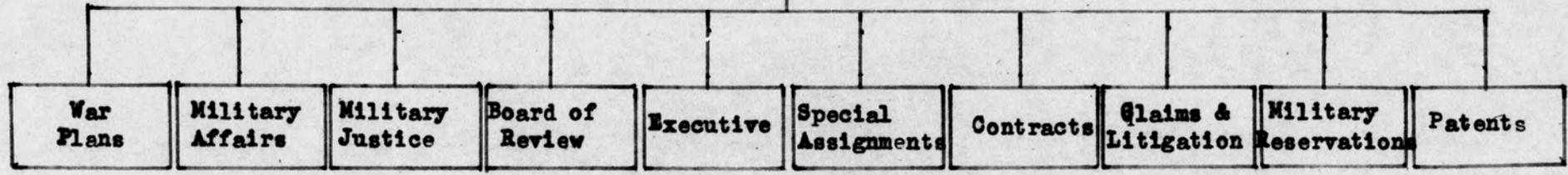
Fifteen of these officers were not commissioned in the Department, but were detailed from other branches of the Army. Eleven of these detailed officers were pursuing full-time courses at civilian law schools preparing themselves for service as judge advocates, and one was with the Department of Justice for the purpose of familiarizing himself with the procedure of handling litigation. Two of the officers commissioned in the Department were students at the Army War College. The remaining 89 officers carried the burden of the legal work of the War Department. Between 35 and 40, the number fluctuating from time to time due to changes in station under the normal Army policy of rotation of assignments, including The Judge Advocate General, were on duty in The Judge Advocate General's Office, two were in the Office of the Assistant Secretary of War, one was in the Office of the Deputy Chief of Staff, and one was in the Office of the Chief of the National Guard Bureau. The remainder were stationed elsewhere than in Washington, at the headquarters of each of the nine Corps areas, the overseas departments, tactical divisions, the United States Military Academy, and certain important Army posts. In June 1940, four of the detailed officers completed their studies and were assigned to duty as judge advocates.

The organization of The Judge Advocate General's Office on 1 July 1940, is shown in accompanying chart No. 1. The duties performed by the sections are briefly set out below.

Military Justice Section. Examination of those records of trials by general court-martial not within the purview of the Board of Review; preparation of opinions on points of law and procedure arising in the administration of military justice; preparation of clemency memoranda; assistance in the presentation of the Government's view in habeas corpus proceedings involving persons subject to military law; initiation of action looking to securing uniformity of appropriate sentences.

THE
JUDGE ADVOCATE
GENERAL

Assistants



1 July 1940

Chart No. 1.

Board of Review. Exercised independent statutory duties under the provisions of Article of War 50½; review of court-martial records other than those coming within the purview of Article of War 50½, when specially referred to the Board; examination of records of courts of inquiry.

Executive Section. General administrative control of the office under The Judge Advocate General; personnel; financial estimates; supplies and equipment; library, publications, records, indexing and digesting.

Special Assignments. Officers assigned to this section performed duties in accordance with special instructions of The Judge Advocate General.

War Plans Section. Matters pertaining to the laws of war, international law, military government, martial law, prisoners of war, internment of aliens, billeting of troops and related subjects.

Military Affairs Section. Matters pertaining to the organization of the Army and to military personnel in general, such as procurement of personnel, appointments, pay and allowances, enlistments, promotions, discharges, retirements, status and discipline; analogous matters pertaining to revision of the United States Code; availability of funds for military personnel; general interpretation of laws and regulations not specifically pertaining to other sections.

Patents Section. Technical supervision over collection and preparation of evidence by patent sections in various branches of the Army for use of the Department of Justice in defense of patent infringement suits filed against the United States; advice to those sections upon questions involving patent matters with other governmental departments; central repository for recording and permanently filing patent assignments and licenses, preparation, filing, and prosecution of applications for patents, interferences, and appeals; patent validity and infringement searches; opinions on patent questions.

Contracts Section. Questions pertaining to procurement, advertising, opening and awarding of bids; form and legal sufficiency of original and supplemental contracts and change orders, performance and breaches of contracts, liquidated damages, delays, extension of time, renewals, acceptance of donations and sales of personal property, emergency purchases and debarment of bidders, bonds, taxes, except on real estate.

Claims and Litigation Section. Questions relating to claims by and against the Government; litigation in which the United States had an interest, except patent matters; overtime employment; liaison with the Department of Justice.

Military Reservations. Matters relating to military reservations and other real property; rivers, harbors and canals, bridges over navigable waters and obstructions therein; acceptance of donations of real property; taxation on real property; application of state laws on military reservations; sales of real property; flood control.

This organization had been developed over the years and proved to be a sound foundation upon which to base the enormous expansion of the office soon to come. During the fiscal year ending on 30 June 1940, this office, excluding military justice activities, handled the following volume of business:

Opinions, formal reports, and memoranda-----3842

Litigation disposed:

Court of Claims

Judgments in favor of the United States-----8 (\$203,618.22)
Judgments against the United States-----19 (\$407,051.73)
(\$10,205,484.86 saved on these 19 cases)
Reports furnished on new petitions-----22 (\$170,112.05)

United States District Courts

Reports furnished on new petitions-----11 (\$123,866.73)
Petitions for mandamus, injunctions,
and foreclosure-----4
Bonds approved-----15,911
Collaboration with the Department of Justice
in defense of patent suits pending in
the Court of Claims-----32
(In 15 of these cases approximately
\$36,000,000 were claimed)
Patent cases disposed of during the year-----15
Dismissed-----15 (\$66,350,000.00)
Prosecution of patent applications in the
United States Patent Office-----74.

In addition to the thirty-five to forty judge advocates on duty in the office at that time there were 8 civilian lawyers and 53 other civilian employees who served as librarians, secretaries, stenographers and clerks.

The offices of the staff judge advocates were all small, some offices consisting of a single judge advocate and enlisted clerks. These judge advocates in the field, some 45 in number, both in the United States and in overseas departments, were divided among 27 offices. Within the United States they were stationed at the headquarters of the nine Corps areas; seven tactical divisions, the 1st Cavalry Division, and the 1st,

2nd, 3rd, 4th, 5th and 6th Infantry Divisions; and at Wright Field, Ohio, Fort Sam Houston, Texas, Fort Benning, Georgia, and the United States Military Academy. Overseas they were stationed at the headquarters of the Hawaiian Department, the Philippine Department, the Panama Canal Department, the Puerto Rican Department, the Hawaiian Division, the Philippine Division, and the Hawaiian Separate Coast Artillery Brigade.

The lawyer's books and research facilities are his tools. In a large law office such as the Judge Advocate General's Office, adequate research facilities, conveniently arranged and kept up to date is an indispensable requisite for the accomplishment of sound legal work in an expeditious manner. On 1 July 1940 a military law library containing specialized collections existed in the office. In addition, since on many questions of military law the only precedents are opinions of former Judge Advocate Generals, a record section was provided in which these former opinions were filed. To assist in research the opinions were indexed by a Digest Section.

In the field the staff judge advocates were provided with small, carefully selected field law libraries and with copies of the publications of the Department, in addition to Army Regulations, field manuals and other pertinent publications of the War Department. Some of these offices, particularly those at the headquarters of the Corps Areas, had been established for a number of years and had accumulated fairly complete libraries. These offices, too, kept their files of opinions rendered locally and were furnished from time to time copies of the more important opinions of The Judge Advocate General. They were authorized to present problems to The Judge Advocate General if their own research facilities were insufficient to enable them to solve the problems themselves.

The publications of The Judge Advocate General on 1 July 1940, consisted of the Military Laws of the United States, 1939, a compilation of the United States Statutes affecting the Military Establishment; the Digest of Opinions of The Judge Advocate General of the Army, 1912-1920, with supplements to the year 1938; Military Law and Precedents, 2nd Edition (1895), by Colonel William Winthrop, Assistant Judge Advocate General, the standard treatise on the subject; the Manual for Courts-Martial, U. S. Army, 1928; and United States Military Reservations, National Cemeteries, and Military Parks, 1916 edition.

II DEVELOPMENTS SINCE 1 JULY 1940

CHAPTER III

THE EFFECT OF THE EMERGENCY AND THE WAR

1. Increase in Duties and Responsibilities

The fiscal year of 1941 saw the beginning of the greatest expansion in the history of the Judge Advocate General's Department. The existence of a limited national emergency had been declared by the President by Proclamation No. 2352, 8 September 1939, and increases in the commissioned and enlisted strength of the Regular Army and National Guard, within the limits of peacetime authorization, were authorized by Executive Order No. 8245, 8 September 1940. The full impact of the changing situation was felt by the Department when the National Guard of the United States was called in to active service beginning with Executive Order No. 8530, 31 August 1940, and with the passage of the Selective Training and Service Act of 1940, approved 16 September 1940. The Nation went on a war footing in a period of what was, at least legally, peace. New legislation in great quantity affecting the military service followed. Procurement became a matter of billions rather than millions. Every phase of army life and activity outgrew its peacetime mold and as it did the legal problems presented to the Department for solution became more numerous and varied. Many of the problems had been encountered and solved in other periods of national emergency and war and their solutions did not prove difficult. But with the old came innumerable new problems, which had never before been presented. In spite of the declaration of an unlimited emergency by Presidential Proclamation No. 2487, 27 May 1941, the fact remained that in a legal sense the country was not at war and numerous statutes carried provisions which applied during time of peace and were suspended during a state of war. After the declaration of war following the Japanese attack at Pearl Harbor on 7 December 1941, numerous statutes affecting the War Department during a state of war were automatically put into operation while other provisions were at the same time automatically suspended. A compilation of those statutes affecting the War Department which were suspended during a state of war and those which were not in operation by a state of war, was published in War Department Bulletin No. 38, 29 December 1941.

At the beginning of the period beginning on 1 July 1940, The Judge Advocate General was a staff officer of the War Department under the supervision of the Chief of Staff. On 31 July 1941, Major General Gullion was appointed The Provost Marshal General in addition to his duties as The Judge Advocate General and continued to occupy these two positions until 1 December 1941, when Colonel Myron C. Cramer, J.A.G.D.

was appointed The Judge Advocate General. The Judge Advocate General remained under the supervision of the Chief of Staff until the Army of the United States was reorganized by Executive Order No. 9082, 28 February 1942, into a War Department General Staff, a Ground Force, an Air Force, and a Service of Supply, the latter being redesignated the Army Service Forces by War Department General Order No. 14, 12 March 1943. The details of the reorganization were set out in War Department Circular No. 59, 2 March 1942, and The Judge Advocate General was placed under the command of the Commanding General, Services of Supply, except with respect to courts-martial and certain legal matters on which he was to report directly to the Secretary of War. The Commanding Generals, Army Air Forces and Army Ground Forces, were authorized to request legal opinions directly from The Judge Advocate General. Within the structural organization of the Services of Supply The Judge Advocate General was placed under the supervision of the Chief of Administrative Services, later the Director of Administration. In October and November, 1943, changes were made in the over-all staff structure of the Army Service Forces and The Judge Advocate General became one of the functional staff directors directly under the Commanding General, Army Service Forces.

The nature of the work performed by the Department, with minor exceptions, remained substantially the same as in years past, but it increased greatly in volume and variety. A detailed description of this work will be found in later chapters in which the activities of the major legal divisions of the Judge Advocate General's Office are discussed. Generally speaking, the work fell into three main categories; judicial, or the supervision and operation of the system of military justice throughout the Army; advisory, or the rendition of opinions and other legal services to the Secretary of War and the military establishment; and administrative, or the personnel administration of the Judge Advocate General's Department and the supervision of the work of judge advocates throughout the Army. The increase in the number of cases coming into the office formally through the message center during the period of almost 5 years after 1 July 1940, as set out in the table below shows the effect of the emergency and the war on the Department:

1 July to 31 December 1940	1,515 cases
1 January to 31 December 1941	5,765 cases
1 January to 31 December 1942	13,421 cases
1 January to 31 December 1943	19,640 cases
1 January to 31 December 1944	15,500 cases
1 January to 31 March 1945	5,000 cases
Claims cases	96,000 cases

This increase in the number of formal opinions, reports and memoranda does not reflect in its entirety the increase in the advisory work of the office. Statistics cannot show the great volume of work involved in conferences and negotiations, particularly in the fields of state taxation and litigation. Yet without such conferences and negotiations

the War Department would have become involved in controversies in which large amounts of both time and money would have been involved and the legal work would have been much heavier. Another phase of the work which does not appear in the statistics is that of rendering informal opinions, generally over the telephone. From a negligible factor in 1940, this phase of the work of the office rose sharply in volume to a rate of 200 or more informal opinions each working day. It was not unusual for the informal opinions to involve as much legal research and skill as the more formal matters.

In the field of publications, too, the responsibility of The Judge Advocate General increased. In general, since officers of the Army charged with military administration were the only persons interested in American Military law, there were few private publications on the subject. It became, therefore, the logical function of The Judge Advocate General, as chief law officer of the War Department, to see to the preparation of such publications on military law as were needed by the service and particularly by the officers of his department. The publications in existence in 1940 were expanded and kept up to date and new matters, both of a general and a special nature, were published as the need arose. This again is not reflected in the statistics shown but it was a matter of vital importance.

Research facilities were also a matter of concern during the period of expansion. The law library in the Judge Advocate General's Office, adequate though it had been for the quiet years before 1940, required overhauling and modernization to keep pace with the increased tempo of the work ahead. The opinions of former Judge Advocate Generals were filed in the General Records Section, but as the work increased the indexing and filing system could not sustain the load. Remedies for these research deficiencies had to be found and methods were finally adopted which fitted the need.

This, in brief, shows the burden placed on The Judge Advocate General and his officers by the emergency and the war, the added duties and responsibilities. How they were met is detailed in later chapters.

2. Reorganization of the Judge Advocate General's Office

The organization of the Judge Advocate General's Office on 1 July 1940 has been discussed in Chapter 2. This organization was found to be basically sound and capable of rapid expansion to absorb the increasing work load. At the beginning of the period of expansion the sections were small and the volume and variety of the work did not require any further subdivisions. As the volume of the work increased, however, and as certain phases of the work grew in importance, it was found necessary, not only to subdivide the sections, but to create new sections to handle specialized fields. The sections were redesignated

as divisions and the subdivisions became known as branches. In those cases where the branches themselves were further decentralized the smaller subdivisions became known as sections.

In order to relieve The Judge Advocate General of many of the details which he had handled personally the office was reorganized late in November 1941. Two senior officers were designated as Assistants to The Judge Advocate General, one of whom supervised the Military Justice Division, the Military Affairs Division, the War Plans Division, and the Board of Review. The other Assistant supervised the remaining divisions. Later these officers became Assistant Judge Advocate Generals and the Executive officer was also designated as an Assistant Judge Advocate General. On 6 October 1944, a radical change was made. The position of Deputy Judge Advocate General was created. This position absorbed most of the functions of the Executive Officer and assumed direct supervision over certain activities, for example the Industrial Law Branch, which was a vital factor in the seizure and operation of industrial plants. Brigadier General Thomas H. Green, formerly Executive, Office of the Military Governor of Hawaii, who after his return to the United States served as Assistant Judge Advocate General in charge of military justice matters and later in charge of civil matters, was designated as the Deputy Judge Advocate General. The position of three Assistant Judge Advocate Generals were retained, one to supervise military justice matters, one to supervise the War Crimes Division, which was created on the same date, and one to supervise civil matters, although General Green continued to perform the latter duties in addition to his duties as Deputy Judge Advocate General. Chart No. 2, at the end of this chapter sets out the office as reorganized.

3. New Divisions and Branches

Control Branch

A Control Branch was activated on 3 April 1942, operating directly under the Executive Officer. The functions of the Branch were to obtain information regarding the efficiency of the operations of the Office of The Judge Advocate General and the progress of the work of the office; to recommend changes in existing policies, organization, personnel, procedures and methods; and to study the organization of the office, its research facilities, administrative procedures, procurement of supplies and the reports of work done.

In addition to performing the functions set out in the activating memorandum the Branch made work simplification studies and surveys regarding the work-load of the various divisions of the office; conducted personnel utilization studies; handled the assignment of office space; and acted as forms control and standardization liaison officer between the Office of The Judge Advocate General and Army Service Forces.

During the time the Judge Advocate General's Office was under the Chief of Administrative Services, the Control Branch prepared a weekly resume of important items disposed of during each week. This resume was in the form of a memorandum from The Judge Advocate General to the Chief of Administrative Services and it proved so helpful that other services of the Administrative Services were directed to prepare similar resumes. When the Office of the Administrative Services was inactivated, the Control Branch continued to compile the weekly resume for the information and use of The Judge Advocate General. At first the resume was typewritten, later it was reproduced on a "Ditto" machine, but later it was mimeographed and copies were supplied to many of the judge advocates in the field, both in this country and overseas.

In performing its over-all functions, the Branch began the accumulation and preservation of statistics regarding the operations of the office. These statistics proved to be a valuable aid in studying the efficiency of office operations and constitute an important element in the history of the office as a whole.

Upon the reorganization of the Office of The Judge Advocate General in 1944, the Control Branch was placed under the direct supervision of the Deputy Judge Advocate General.

Legal Assistance Branch

On 22 March 1943 a Legal Assistance Branch was organized to supervise the legal aid system throughout the Army. This branch was originally placed under the Executive Division, but as its work grew it became evident that this was not a true function of the Executive and the branch was separated and placed directly under one of the Assistant Judge Advocate Generals. The story of this branch is set out in detail in Chapter 15.

War Crimes Office

In a letter dated 25 September 1944, Subject: "Punishment of War Criminals", the Secretary of War directed The Judge Advocate General to establish an agency in his office and under his direction which would at once collect from every available source all evidence of cruelties, atrocities and acts of oppression against members of our armed forces and other Americans, including the people of any dependency of the United States such as the Philippines, examine and sift such evidence, arrange for the apprehension and prompt trial of persons against whom a prima facie case was made out, and for the execution of sentences which might be imposed. On the same day The Judge Advocate General set up a war crimes office in the War Plans Division of his office. On 6 October 1944 he established the "War Crimes Division" of The Judge Advocate General's Office and on 22 March 1945 the agency was designated "War Crimes Office." Brigadier

General John M. Weir, Assistant Judge Advocate General, was placed in charge of this new office. The history of the activities of the War Crimes Office is the subject matter of a separate historical monograph and will not be treated further at this time.

Office of Technical Information

On 16 October 1944 an office of Technical Information was activated to handle public relations for The Judge Advocate General. This office performed the duties usual with a public relations division such as maintaining contact with the press, preparation of releases and maintenance of a press file. The Chief of this office was obtained from Headquarters, Army Service Forces, where he had been doing the same type of work for the Industrial Personnel Division.

Planning Branch

A Planning Branch, operating under the Deputy Judge Advocate General, was activated on 3 February 1945, because of the changes in the over-all picture expected after the final defeat of our enemies. The functions of this branch were three-fold, first, to coordinate all matters referred to The Judge Advocate General by the Special Planning Division, War Department General Staff and the Planning Division, Army Service Forces; secondly, to develop or supervise the development of all plans for such readjustment, redevelopment and demobilization operations as fell within the sphere of the normal staff functions of The Judge Advocate General; and, finally, to prepare or assign for preparation, opinions on all formal or informal requests relating to readjustment, redeployment and demobilization, and to act as a coordinating agency for such opinions within the scope of other branches or divisions of The Judge Advocate General's Office.

Administrative Division

As previously mentioned many of the functions of the Executive officer were absorbed by the Deputy Judge Advocate General when the latter office was created. The Executive Division remained active until 8 March 1945 when the administrative functions of the office were re-organized. At that time an Administrative Division was activated to supervise the Civilian Personnel Branch, the Libraries Branch, the Research and Index Branch, and the Mail and Records Branch. The Court-Martial Records Branch was placed under the Military Justice Division. The Executive Division then was reduced to a single officer who became the Executive.

The office, as organized on 31 March 1945, is shown in accompanying Chart No. 2, dated 15 March 1945. Charts setting out intermediate changes in the organization of the office are shown in Appendix 1.

Claims - Litigation - Tax

The Claims and Litigation Section was divided into two separate sections on 29 December 1941, the Claims Section and the Litigation Section, each specializing in the type of work denoted by their titles. The Litigation Division later became the Tax and Litigation Division, but tax matters became so important that on 29 July 1942, it was again separated into two divisions, the Tax Division and the Litigation Division.

4. Branch Offices of The Judge Advocate General

The Articles of War provide for an appellate review in the Office of The Judge Advocate General, of records of trial by general court-martial. Article of War 50½ authorizes the President, when he deems such action necessary, to direct The Judge Advocate General to establish Branch Offices in distant commands to perform these appellate review functions.

Under this authority branch offices of The Judge Advocate General were established in the major theaters of operations. The first such office was established on 14 April 1942 with the United States Army Forces in the British Isles, under Brigadier General Lawrence H. Hedrick, as Assistant Judge Advocate General. This office was later redesignated as the Branch Office of The Judge Advocate General in the European Theater of Operations, and on 22 June 1943 General Hedrick was succeeded by Brigadier General Edwin C. McNeil. On 11 July 1942 a Branch Office was established in the Southwest Pacific Area to serve that area and the South Pacific Area. Brigadier General Ernest H. Burt was designated as the Assistant Judge Advocate General in charge. On 27 October 1942 a Branch Office was established in the China, Burma and India Theater of Operations. Colonel Robert W. Brown, J.A.G.D., was designated as Assistant Judge Advocate General in charge. He was succeeded by Colonel Herman J. Seman, J.A.G.D., who served as Acting Assistant Judge Advocate General until the appointment of Colonel William J. Bacon, J.A.G.D. On 8 March 1943, a Branch Office was established in the North African (later the Mediterranean) Theater of Operations. Brigadier General Adam Richmond was designated as Assistant Judge Advocate General in charge, and was succeeded by Colonel Hubert D. Hoover, J.A.G.D. on 20 July 1943. On 15 September 1944, a Branch Office was established in the Pacific Ocean Areas, with Brigadier General James E. Morrissette as Assistant Judge Advocate General in charge.

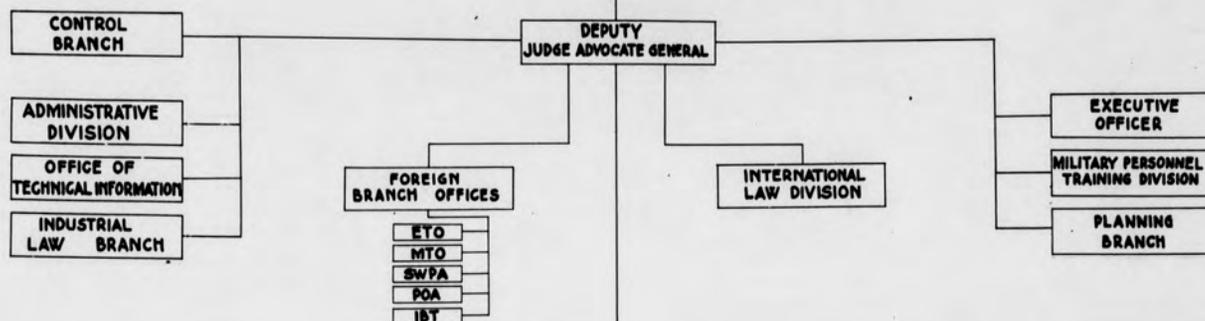
The complete story of the Branch Offices is told in the historical monograph on "Military Justice".

**THE
JUDGE ADVOCATE
GENERAL**

APPROVED:

Myra C. Brown
MAJOR GENERAL
THE JUDGE ADVOCATE GENERAL
13 MARCH 1945

DEPUTY
JUDGE ADVOCATE GENERAL



ASSISTANT
JUDGE ADVOCATE GENERAL
IN CHARGE OF
MILITARY JUSTICE

ASSISTANT
JUDGE ADVOCATE GENERAL
IN CHARGE OF
CIVIL MATTERS

ASSISTANT
JUDGE ADVOCATE GENERAL
IN CHARGE OF
WAR CRIMES OFFICE

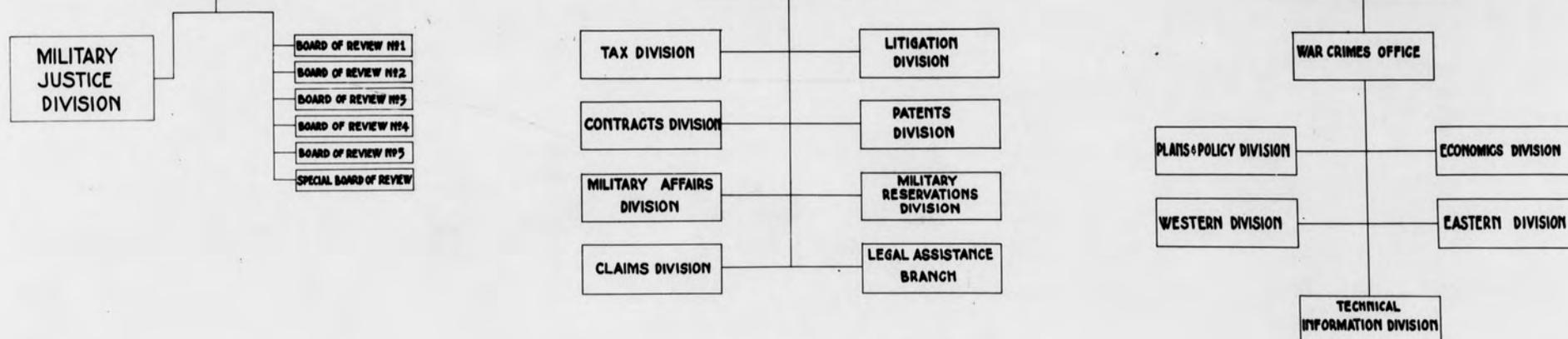


Chart No. 2.

18

SPC1

CHAPTER IV

ADMINISTRATIVE MATTERS

Upon the reorganization of the Office of The Judge Advocate General in the early part of 1945, the Administrative Division was activated by Office Orders Number 42, 8 March 1945. Prior to the activation of this division the administrative activities of the office had been under the Executive Division. These functions, with the exception of the Court-Martial Records Branch, which was transferred to the Military Justice Division, were placed under the Administrative Division, which in turn was placed under the jurisdiction of the Deputy Judge Advocate General.

The administrative branches placed under the jurisdiction of the Chief, Administrative Division, were the Civilian Personnel Branch, the Libraries Branch, the Research Branch, and the Mail and Records Branch.

1. Civilian Personnel Branch *Reduce*

On 1 July 1940, the Chief Clerk's Office was a part of the Executive Division and the Chief Clerk acted in the capacity of administrative assistant to the Executive Officer and The Judge Advocate General, charged with supervision and planning in regard to all civilian employees of the Judge Advocate General's Office, including promotion, recruitment, placement, retirement, pay rolls and leave records. In addition, he was charged with the maintenance of fiscal records, the preparation of budget estimates, and was responsible for the supplies and equipment of the office. On that date the Chief Clerk's Office was composed of three employees.

The program of expansion beginning in 1940 affected this branch, as it did all other activities of the office, and from that date the civilian strength of the office increased gradually until in the fall of 1942 a ceiling of 192 was imposed. This was gradually increased to a strength of 240 on 31 March 1945.

In September 1942, the Civilian Personnel Division, Office of the Secretary of War, was decentralized and civilian employees of the Judge Advocate General's Office were placed under the Civilian Personnel Division, Office, Chief of Finance, for the purposes of classification, appointment, personnel status, changes, and preparation of the daily personnel journal. The staff of the Chief Clerk's Office had increased to ten employees by 1943.

In June 1943, the civilian personnel functions performed by the Office, Chief of Finance, for this office, together with the additional functions of pay rolls, official leave records and 201 files of civilian employees, were transferred to the Civilian Personnel Division,

Branch No. 3, Office of The Adjutant General. At about the same date, the retirement records of all civilian employees of the Army Service Forces were transferred to the Civilian Retirement Records Branch, Adjutant General's Office. In January 1944, the supply storeroom was taken over by the Supply Section, Adjutant General's Office, and centralized to service the various organizational elements of the Army Service Forces as a result of a consolidation of supply activities in the Military District of Washington. As a result of the transfer of the functions enumerated, the staff of the Chief Clerk's Office was reduced to four, its strength of 31 March 1945.

The problem of placing, training and reassigning employees to meet backlogs and dead-line matters was especially difficult because of the shortage of manpower and an insufficient number of stenographers, clerks and typists allowed under the ceiling. From the summer of 1942, this situation continued to be a problem. To utilize stenographers and typists more efficiently, a training section was established in 1942 by the Control Officer under the direction of the Chief Clerk's Office. This section consisted of a pool of about 12 new stenographers and typists who were trained in forms, copies required, legal terminology etc., for a period and then assigned to a division. The surplus work of the divisions were referred to the pool. The training section was successful and efficient but the office was forced to abandon it because new replacements were unobtainable.

2. Libraries Branch

The rapid expansion of the Army and the consequent increased demands on the Judge Advocate General's Department necessitated a thorough reorganization, a large expansion, and a complete modernization of the military law library system. On 1 July 1940, a military law library of some 30,000 volumes existed in the Judge Advocate General's Office and each staff judge advocate in the field had a library sufficient to meet his peacetime needs. But as the number and variety of the cases coming into the office increased and the number of persons using the library grew larger, it became evident that the library must be expanded. Too, the number of offices of staff judge advocates increased with the activation of new units of the Air, Ground, and Service forces which exercised general court-martial jurisdiction. Each of these officers needed a library, small though it might be, to perform the duties required of him.

Initially, the program of expansion was, of necessity, limited largely to the library facilities of the Office of The Judge Advocate General in Washington. The first step in this program was the selection of a trained, professional librarian. The librarian of the Law School, Cornell University, was commissioned as a captain and detailed as librarian for the Department. By the end of 1942, a reasonably complete, well-rounded, and highly serviceable law library of 40,000-odd volumes had been organized in Washington and an efficient

*Reduce = what results
add = what results
of library program*

system of operation and administration established. The library procured and maintained law books and professional periodicals and other publications to meet current and anticipated requirements; maintained complete accession records of all library volumes pursuant to AR 35-6800, and had accountability for such volumes; maintained a card catalogue of library volumes to provide immediate access thereto; and made arrangements for binding and repairing library volumes.

By the beginning of 1943, it was apparent that a program similar to that carried out in the Judge Advocate General's Office should be adopted in connection with the law libraries in the field, none of which were organized and equipped to meet the new and increased requirements. Accordingly, numerous visits by personnel of the branch were made to Service Command Headquarters, Air Force Headquarters, Ports of Embarkation and other major commands to survey the library requirements of such installations with a view to reorganizing, expanding and modernizing their library facilities. Such surveys, based on personal discussions with the judge advocates on duty at those installations as to the scope and character of their work and their anticipated requirements, made possible a large measure of standardization in the field libraries. Similar problems were faced in connection with judge advocates' libraries overseas. With respect to these field service activities, the Libraries Branch supervised organization, assembly and upkeep of field law libraries both in this country and abroad; continuously surveyed, by personal visits whenever possible, the needs and requirements for law books and other professional publications by judge advocates and legal assistance officers in the field; recommended, selected and arranged for initial supply and replacement of professional books and materials to meet particular requirements of judge advocates and legal assistance officers in the field; and kept such libraries up to date by recommending elimination of obsolete materials and addition of up-to-date materials.

The centralized control of the field library system which developed after July 1943, placed added responsibilities on the Libraries Branch regarding supply and publication matters. In discharging such responsibilities, the Libraries Branch found it necessary to estimate the Army's future requirements for law books and other professional legal materials; to recommend stock levels to be maintained to meet anticipated requirements; to maintain close follow-up on domestic and overseas requisitions for law books and other professional materials, maintaining direct contacts with originating agencies for this purpose; in response to numerous informal requests, to supply such law books and materials as were available outside of regular supply channels; to select and edit materials for compilation and publication as instructional texts or reference volumes for use in the Judge Advocate General's School and by judge advocates; to compile, edit, reproduce and distribute to judge advocates and legal assistance officers in the field weekly summaries of current developments in the field of law and military justice; to arrange for reproduction and Army-wide distribution of Judge Advocate General Department publications and translations of foreign-language legal materials; and to receive, distribute and store certain

essential War Department publications relating to Judge Advocate General Department activities.

Centralization of field library activities under the Libraries Branch also required the Branch to assume responsibility for making budget estimates for annual requirements for field library funds, which amounted to about \$100,000 annually.

After 1940, the Legislative Section of the Library expanded materially. Due to the large number of bills in Congress relating to the military establishment, created by the war emergency, the volume of material in this field greatly increased. This expansion necessitated a considerable amount of binding, both of new and old volumes. A large number of old volumes of the Congressional Record were obtained and the collection of the proceedings of Congress was expanded to cover the period from 1835 to 1945. Files on pending bills, of interest to the War Department, and on similar bills which were enacted into law from the 65th Congress (World War I period) through succeeding Congresses were maintained. In addition to copies of the bills, committee reports, hearings, and debates were made available for study.

3. Research Branch

*Reduce +
add + revision of
change*

The Research Branch, on 31 March 1945, consisted of 3 units: Digest Section, Military Laws Section, Publications Section. During the previous 5 years, the work done in these units came under a number of different jurisdictions with changes in administrative organization.

In July 1940, the Digest Section consisted of a Chief, Assistant Chief, 2 digesters and 2 clerks. Its work consisted of making and filing digests of selected opinions of The Judge Advocate General and the Comptroller General, preparation and publication of the Military Laws of the United States, and the Digest of Opinions of The Judge Advocate General of the Army, 1912-1940, and answering research inquiries.

The Military Laws of the United States, 8th edition, 1939, came off the press in July 1940. Supplement I, covering the legislation of the 76th Congress (1939-1940), was delivered in September 1941 and Supplement II, cumulating the 76th and 77th Congresses, appeared in July 1943.

The preparation of the Digest of Opinions of The Judge Advocate General, 1912-1940, was already under way by July 1940. The material which had appeared in the 1912-30 Digest, and Supplement VIII thereto, had been distributed to the appropriate divisions of the office in December 1939, and comments were received during the spring of 1940. The final manuscript went to the printer in May 1941 and the book appeared in April 1942.

Following the outbreak of the war, the extensive expansion of the whole office produced a tremendous increase in the opinions written and in the general materials of the office. Furthermore, after 1941, Congress passed much legislation which affected all phases of the Military Establishment.

The existing organization and personnel of the Digest Section were not adequate to meet the research needs of the office. The addition of two new digesters, in March and July 1942, was indispensable for the mere routine of daily business, and a comprehensive survey was made of the whole situation.

In April 1942, a thorough study was made of the research facilities of the office, and they were found to be inadequate. There was a serious need for more personnel with the proper qualifications. Over a period of many years, the bulk of the materials had increased tremendously (80,000 card-digests in "tub" files), but indexes and outlines were inadequate, incomplete, and not too readily accessible. On the basis of this study, there was obtained the temporary services of an index and research expert from the Library of Congress, and under his supervision there was established in July 1942 the Research Branch to coordinate and improve all the research facilities and records of the office. (In October 1942, an officer of the Judge Advocate General's Department was assigned to the Branch.)

Since the research facilities were permanent units of the office, it had been the policy to use civilian personnel as much as possible, although at times it was necessary to assign officers to this phase of the office work. After 1942, it was impossible to fill all the needs with civilian personnel, and during 1942-1944, the number of military personnel in the Branch was increased from 1 to 3.

Digest Section

In the Digest Section, the most serious need was competent and adequate personnel. Prior to 1942, most of the digesting of office opinions had been done by persons who had no legal training and no conception of legal research. After 1942, this work was done only by competent persons with a law school degree and some legal experience.

Between October 1942 and July 1943, a new comprehensive outline and index was prepared. This classification covered all the research materials and was set up in a visible cabinet file for ready reference to furnish an additional method for finding research materials. The outline of the digest "tub" files, consisting of about 10,000 headings, was put on visible panels and made readily accessible, and the general alphabetical index, 40,000 cards, was completely overhauled and revised.

Place in appendix

New facilities added in the Digest Section included:

A card file showing whether an office opinion was digested, and, if it was, the allocation under which it was filed.

A citator of earlier Judge Advocate General opinions, Comptroller General decisions, etc., cited in Judge Advocate General opinions. By 31 March 1945, this had been completed for the 1942 opinions, was being kept current for 1945 opinions, and the balance of 1943 and 1944 opinions were also being caught up.

Tables were made currently of the opinions received from the Branch Office Boards of Review, covering the Articles of War, Manual for Courts-Martial paragraphs, and a citator of prior court-martial cases. This provided the only means for doing any substantial research in these overseas materials.

Prior to September 1943 the digests of opinions which were prepared for publication in the Judge Advocate General's Bulletin were a complete duplication of the work on the same opinions in the Digest Section. When both phases of the work were combined under a single direction in September 1943, the duplication was eliminated. Since a more careful entry had to be prepared for publication purposes, that one was also used in the Digest Section files.

As a result of the competent personnel and by increasing the efficiency of the operations, the increased amount of work coming into this section was handled by a small number of personnel. The Digest Section, on 31 March 1945, consisted of a chief, an assistant, 2 digesters, 1 special digester, and 1 clerk. All except the chief of the section were civilian employees. *omit*

List of Research Facilities

Place in appendix

In 1942, at the time of the study mentioned earlier, there were several research devices in the Digest Section, but they were not generally known and were not sufficiently accessible. There were digest tub files and some indexes and Comptroller General cards, as well as Statute and Code tables, but their use was extremely limited. After 1943, these facilities were extended and opened up, increased and publicized. By 1945, the Research Branch offered the following research facilities:

1. Digest "tub" files--about 100,000 card-digests of Judge Advocate General and Board of Review opinions, Comptroller General decisions, Attorney General opinions, etc., from about 1921 to date.
2. Outline list of headings of digest "tub" files--about 10,000 headings on visible panel arrangement.

3. General alphabetical card index--about 40,00-50,000 cards.
4. McClenon Outline--about 4,000 headings, in visible file cabinet.
5. Index to McClenon Outline--on visible panels.
6. Card indexes to research materials, arranged by reference from:
 - (a) Statutes at Large (and Revised Statutes)
 - (b) United States Code
 - (c) Army Regulations
 - (d) War Department Circulars
7. Card index for all Comptroller General materials, showing manuscript number, published reference, where filed in "tubs," etc.
8. Citator of Judge Advocate General opinions, Comptroller General decisions, etc., cited in Judge Advocate General opinions (complete through 1942 and current for 1945).
9. Citator of statutes quoted or cited in Army Regulations.
10. Tables and Index for Board of Review compilation.
11. Tables by Articles of War, Manual for Courts-Martial, and citator for opinions of Boards of Review in overseas Branch Offices.
12. Bound volumes of manuscript Judge Advocate General opinions for 1942 (63 vols.), 1943 (48 vols.), 1944 (about 45 vols.).
13. Bound volumes of unpublished manuscript decisions of Comptroller General (over 75 vols.) covering entire period of issuance (1921 to 1945), together with decisions of preceding agency the Comptroller of the Treasury (5 vols.).
14. Bound volumes of mimeographed opinions of The Judge Advocate General 1928-1942 (13 vols.).
15. Military Laws current files, showing compilation of materials to appear in next supplement of Military Laws, together with various Tables and Indexes to this material.
16. Card file showing all Judge Advocate General opinions and court-martial cases published between 1912 and 1940.
17. Card files showing all Judge Advocate General opinions and other materials published in The Judge Advocate General Bulletin since its inception (1942) and in 1941 Supplement to Digest 1912-1940.

18. Current Tables and index for 1945 issues of The Judge Advocate General Bulletin.

19. Cumulative file of all issues of The Judge Advocate General Bulletin (1942-1945) and 1941 Supplement to the Digest, bringing together in one place all the items published under the same section.

20. Tables and Index for Current Legal Bulletin, subsequent to last published index.

Military Laws Section

Supplement III of the Military Laws of the United States, 8th edition, 1939, was completed early in 1945 and was to go to press in April of that year. One of the main criticisms of previous volumes of this work had been directed at the inadequacy of the index. This was improved for the forthcoming volume, and further revision and improvement was to be made in subsequent volumes.

An additional service rendered by the Military Laws Section, after October 1943, was the list of "Changes in Military Laws" published each month as Part III of the Judge Advocate General's Bulletin. By this means, all the pertinent legislation of the 78th Congress (1943-1944) was brought to the attention of the field on a monthly basis and keyed to the section numbering of the Military Laws. Previously, it had been customary to wait until after the Congress was over and the full materials had been published in a Supplement to the Military Laws.

The Military Laws Section, on 31 March 1945, consisted of an Editor and one assistant.

Publications Section

The publications of the Judge Advocate General's Department, other than the Military Laws, discussed above, were of three sorts, the 2 regular periodicals, viz., the Judge Advocate General's Bulletin and the Current Legal Bulletin; the continuing series of Boards of Review Holdings, Opinions and Reviews; and special projects. (On 31 March 1945, the Publications Section was composed of one officer and two civilian clerks.)

Bulletin of The Judge Advocate General of the Army

In May 1942, a new publication policy was adopted: annual supplements to the 1912-40 Digest of Opinions of The Judge Advocate General and the mimeographing of selected opinions would be discontinued, both to be replaced by a monthly bulletin which would publish currently not only the important and significant Judge Advocate General opinions but also decisions of the Comptroller General, opinions of the Attorney General, and other pertinent matter. To put the Bulletin on a current

basis, the first issue covered January to June 1942, and it appeared each month thereafter. Tables and Indexes were issued at the end of each year. Later the coverage was extended to include the opinions of the overseas Boards of Review, the War Department Board of Contract Appeals, and Part III was added to show on a monthly basis the current changes made to the Military Laws as a result of acts of Congress.

At first about 18,000 copies were printed, but as increasing demands necessitated reprinting nearly all back issues, the printing was increased to 30,000 and 40,000 and at times as high as 53,000 for distribution throughout the War Department and the Army. At the beginning of 1945 the printing was about 45,000 copies.

At the beginning and for many succeeding issues, it took 8 to 10 weeks for the Bulletin to be printed and delivered. The project was then put on a monthly periodical printing schedule, and the time was reduced to about $3\frac{1}{2}$ weeks.

In connection with the preparation of materials for publication, there was a basic problem of establishing the flow of copies of opinions to the editor of the Bulletin, together with a recommendation from the division chief or board of review chairman as to the publication of each item. Procedures also had to be established for approval by the Assistant Judge Advocate General of the entries prepared for publication. These matters were worked out and operated satisfactorily.

The contents of the Bulletin varied from time to time, but the chapter on military justice was the largest. An analysis of all the the issues indicates that the bulk of the materials consisted of opinions and holdings of the Boards of Review (local and overseas), opinions of Military Justice Division, Military Affairs Division, Contracts Division and Claims Division, and decisions of the Comptroller General. The balance came from the other divisions of the office, and from federal and state court decisions, Opinions of the Attorney General, and an occasional Executive Order.

The volumes published to 31 March 1945, were as follows:

Vol. I, Jan - Dec 1942, with Tables and Index (472 pages)

Vol. II, Jan - Dec 1943, with Tables and Index (626 pages)

Vol. III, Jan - Dec 1944, with Tables and Index (661 pages)

Vol. IV, Jan, Feb, Mar 1945 (123 pages)

Current Legal Bulletin *appended*

In November 1942, there was established in the Office of the Under Secretary of War a weekly mimeographed bulletin for the purpose

of keeping certain War Department offices, particularly the procurement agencies, informed currently of new legal materials and directives. For a while, the research Branch cooperated by supplying some of the items from the coverage being made for the Judge Advocate General's Bulletin. In June 1943, this publication was made a responsibility of The Judge Advocate General. At that time, the distribution was about 200. As the publication became more widely known, requests increased its distribution to about 450, covering the more important procurement agencies over the country. A considerable amount of correspondence resulted from this publication, and the Section was able to comply with practically all requests for copies of materials cited or other information.

The volumes published to 31 March 1945, were as follows:

Vol. I, Nos. 1 - 8, Nov - Dec 1942 (16 pages)

Vol. II, Nos. 1 - 52, Jan - Dec 1943, and Index (125 pages)

Vol. III, Nos. 1 - 53, Jan - Dec 1944, and Index (125 pages)

Vol. IV, Nos. 1 - 13, Jan - Mar 1945

Boards of Review Holdings, Opinions and Reviews *Appendix*

The Boards of Review compilation brought together and made conveniently available for the first time, all the holdings, opinions and reviews of the Boards of Review since July 1929. Short holdings were not included because they contained no discussion. In the first volumes, the Indorsement of The Judge Advocate General was not included unless it contained something of additional interest not already in the Board's opinion, but the subsequent volumes carry all the indorsements together with a concluding footnote which indicates the final action with reference to the General Court-Martial Order which promulgated it.

Each volume contained approximately 400 pages, and from February 1944 to March 1945, 36 volumes were published, together with a volume of tables and index covering volumes 1 - 26. A temporary index covering volumes 27 - 36 was completed and mimeographed. A great deal of importance was placed on the preparation of the index for this first substantial compilation of military justice materials, and a well qualified officer spent 6 months preparing the first index (Vols. 1 - 26); the work of keeping up the tables and index was then placed on a current basis.

Special Projects *Appendix*

The special publication projects covered a wide range of materials, and the work varied from a simple transmission and arrangement

for reproduction to a complete job of preparing the materials, editing and proofreading. The following list indicates the scope of these special publications:

1. TM 27-250 Cases on Military Government, 20 May 1943, 90 pages.
2. TM 27-251 Treaties Governing Land Warfare, 7 January 1944, 196 pages; C 1, 17 April 1944, 1 page; and C 2, 15 January 1945, 17 pages.
3. TM 27-255 Military Justice Procedure, February 1945, 290 pages.
4. Manual for Courts-Martial U. S. Army, 1928, 1943 Reprint.
5. Emergency Plant Operation Manual (Registered Document), 1944.
6. Revised Administrative Code of the Philippine Islands, 1934, March 1945, 1493 pages.
7. Supplemental Materials, 1934-1941, Revised Administrative Code of Philippine Islands. April 1945, 1000 pages.
8. Legal Assistance Index. March 1945.
9. Trainin, Criminal Responsibility of the Hitlerites (English translation of Russian original). March 1945, 140 pages.
10. Military Law Materials for Latin-American Judge Advocates Conference. March 1945, 450 pages.
11. National Defense Act and Pay Readjustment Act (annotated and revised to 1 January 1945). Prepared for the Senate Committee on Military Affairs.
12. Judge Advocates Conference, Ann Arbor, March 1944.
 - a. Program and List of Conferees.
 - b. Final Report (205 pages).
13. Supplement III to Military Laws of 1939 (1000 pages) going to press about 25 April 1945.

4. Mail and Records Branch *omit*

The most important change that occurred in the handling of incoming mail in the Judge Advocate General's Office was the installation of a new numbering system in 1942. Prior to that time, incoming matter had been assigned a number under the Decimal File System. The new system, as finally adopted, numbered the cases consecutively in

order of receipt, each number being preceded by the year, for example 1942/1, 1942/2, and so on. Cases involving claims were differentiated from other cases by use of the letter "D" inserted before the serial number, for example 1943/D-1, 1943/D-2, and so on. The new system was found more effective than the old, which was too cumbersome in view of the great increase in the number of cases coming into the office as indicated in chapter 3. On 31 March 1945 there were 14 clerks and 6 messengers on duty in this section.

CHAPTER V

MILITARY PERSONNEL AND TRAINING

The Military Personnel Division, Judge Advocate General's Office, was established in November 1940, becoming on 12 January 1941, the Military Personnel and Training Division. Prior to November 1940 personnel administration, both military and civilian, was carried on as a function of the Executive Division. The increase in size of the Army of the United States and the resulting increase in the number of judge advocates called to active duty required the establishment of a separate division devoted exclusively to the administration of military personnel. The initial strength of the Division was one officer and two civilians.

Only 87 officers of the Judge Advocate General's Department were on active duty 1 July 1940, exclusive of student officers. All were members of the Regular Army except two Reserve officers on extended active duty. The administration of this small body of officers was handled by a member of the Executive Division as a part of his regularly assigned duties. Relatively few transfers of personnel were required and those that were made were worked out well in advance of the effective date of the change in accordance with an established program.

By 1 July 1941 there were on duty in the Army of the United States a total of 369 judge advocates, divided by component as follows: 90 Regular Army, 211 Officer Reserve Corps, 68 National Guard. The increasing size of the department required a proportionate increase in the strength of the Military Personnel Division. On 1 July 1941 there were two officers and five civilians assigned to the Division.

The Officer Reserve Corps provided almost the only source of additional personnel during the mobilization period of 1940 and 1941. There were some 500 members of the Judge Advocate General's Reserve on the rolls. The qualifications, both professional and physical, of all Reserve officers were closely scrutinized during the latter part of 1940 and 1941 and questionnaires were sent to each Reserve officer under the assignment jurisdiction of the War Department to determine the date the officer could be called to active duty with the least personal inconvenience or hardship (Appendix 2-1).

By 7 December 1941, 407 judge advocates were on duty in the Army of the United States, divided by component as follows: 92 Regular Army, 252 Officer Reserve Corps, 63 National Guard, and the Military Personnel Division had increased in strength to three officers and six civilians. Many Reserve officers were in Corps Area assignment groups and were called to active duty by the Corps Areas without reference to the Judge Advocate General's Office. This decentralization relieved the

Military Personnel Division of considerable work, but as a result the qualifications of these officers were not well known to The Judge Advocate General.

With the outbreak of war there remained almost 250 members of the Judge Advocate General's Reserve on the inactive list, and a substantial number of them were physically qualified for limited service only. Some sought further deferment because of business and personal reasons and a large number were overage in grade. While any appreciable number of Reserve officers remained on the inactive list, War Department authority could not be obtained to commission directly from civil life any of the large number of high-grade lawyers and judges who volunteered their services to the War Department immediately after Pearl Harbor. It was not until 20 February 1942 that a procurement objective for the direct appointment of civilians in the Army of the United States was obtained.

From 7 December 1941 until 1 July 1942 it was necessary to speed the procurement of officers in order to meet the demands of the various War Department agencies for staff judge advocates and military lawyers. On 1 July 1942, 577 judge advocates were on duty in the Army of the United States, divided by component as follows: 91 Regular Army, 392 Officer Reserve Corps, 62 National Guard, 32 Army of the United States, and the Military Personnel Division had increased in size to eight officers and eighteen civilians. During this period a highly successful selection system was devised and put into effect for the purpose of selecting from the many able lawyers who applied for commissions in the Army of the United States those who could best serve. A Selection Board consisting of three officers, initially one Regular and two Reserve officers, later one Regular, one Reserve, and one Army of the United States officer, was appointed by The Judge Advocate General for the purpose of recommending civilians believed to be best qualified for appointment as officers in the Army of the United States.

Applications for commission received from civilians were first reviewed by a Classification Officer who was a member of the Military Personnel Division. The Classification Officer was selected for his judgment, common sense, and ability critically to analyze an applicant's qualifications as a lawyer. The Classification Officer determined whether the qualifications of the applicant warranted submission of the file to the Selection Board. If so, a confidential investigation of the applicant was carried out by sending letters to prominent lawyers and judges in the applicant's community requesting information concerning the applicant's legal ability, integrity, personality, and patriotism (Appendix 2-2). The replies to these letters were carefully analyzed by the Classification Officer and his staff and if the result of the investigation was favorable the applicant's file was submitted to the Board.

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The members of the Board carried on their functions as additional duties and only in unusual cases requiring discussion of basic policy would they meet together. Ordinarily each member of the Board received the file, indicated his approval or disapproval on a prepared form, and passed the file to the next member. A unanimous vote of the members of the Board was required for a favorable recommendation. If the Board recommended favorably, the file was presented to The Judge Advocate General by the Classification Officer. If approved by The Judge Advocate General, necessary action was then taken by the Military Personnel Division to prepare the papers required in forwarding the application to the War Department for appointment and orders to active duty.

This method of selection, with slight modifications, was followed in the selection of all officers granted direct appointments in the Army of the United States, all candidates for the Officer Candidate School, and all officers who applied for detail in the Judge Advocate General's Department under the provisions of paragraph 5d, AR 605-145, 6 May 1943. During the summer of 1942 authority was obtained to recommend enlisted men who had been lawyers in civil life for direct commission in the Army of the United States (Appendix 2-3). The direct appointment of enlisted men served the two-fold purpose of opening up as a source of personnel a large number of young, physically fit, able lawyers who had learned the soldier's viewpoint from personal experience, and at the same time giving an opportunity for a commission to those members of the legal profession who had been inducted prior to the time direct appointments were offered civilians or who had not been eligible for appointment direct from civil life. Enlisted men were appointed either as second or first lieutenants depending upon age and experience. Such appointments were made until the activation of the Judge Advocate General Officer Candidate School in March 1943. During this period 87 first lieutenants and 55 second lieutenants received direct appointments from the ranks and were assigned to duty with the Judge Advocate General's Department.

In the fall of 1942 the War Department initiated a policy of restricting the direct appointment of civilians, first by raising the required minimum age of the applicant to 35 years and later to 38 and at the same time requiring a detailed justification for each appointment. Later the policy was extended to limit the direct appointment of civilians to those cases only where it could be shown the applicant possessed a particular skill not otherwise obtainable in the Army. Certain skills were listed in scarce categories and the direct appointment of applicants having these skills was permitted. Admiralty lawyers were so classified.

The demand for judge advocates remained undiminished at all times. Requisitions always exceeded the available personnel. In the spring of 1943 the War Department policy on commissioning civilians

became so restrictive that other means of procuring officers became imperative. After long and careful consideration it was decided to activate an Officer Candidate School under the provisions of AR 625-5. Arguments against such a school centered around the fact that members of the Judge Advocate General's Department are normally assigned to staff positions usually requiring considerably higher rank than could be granted a graduate of an officer candidate school and also the fact that if the procurement of officers was limited to an officer candidate school it would not be possible to obtain older and more experienced lawyers. The apparent advantages of an officer candidate school prevailed, and the first Judge Advocate General Officer Candidate School was activated 24 March 1943 with the first class scheduled for 7 June 1943 (Appendix 2-4 and 2-5).

In the preliminary conferences with the Assistant Chiefs of Staff, G-1 and G-3, War Department General Staff, and the Director of Training, Headquarters Army Service Forces, concerning the school, request was made for an exception to the normal policy of commissioning all officer candidate school graduates as second lieutenants. It was felt that graduates of the Judge Advocate General Officer Candidate School should be commissioned as captains in accordance with existing laws and regulations setting that grade as the lowest grade in the Regular and Reserve components of the Judge Advocate General's Department. A compromise was finally reached whereby authority was granted The Judge Advocate General to recommend the immediate promotion to the grade of first lieutenant of not to exceed 50% of each graduating class, such recommendation to be based upon the graduate's record in the Officer Candidate School, his professional ability, and his experience. *what promotion*

With the activation of the Judge Advocate General Officer Candidate School, the procurement of officers by direct appointment from civil life or from the ranks ceased. The officer candidate school procurement program was, however, supplemented by detailing in the Judge Advocate General's Department officers of other arms and services who were lawyers in civil life and possessed excellent records as officers. This method of obtaining officers was emphasized in 1945 with the publication of War Department Circular No. 57, 1945 (Appendix 2-6).

A 13-week course was prescribed when the Judge Advocate General Officer Candidate School was activated and The Judge Advocate General was authorized a quota of 150 candidates to be enrolled during each 13-week period. In the fall of 1943 the course was lengthened by the War Department to 17 weeks but the quota of candidates remained at 150. These quotas were granted automatically until the summer of 1944 when The Judge Advocate General was advised that the quota for the last 17-week period of that year would be cut to 50 candidates. A careful estimate of anticipated requirements during the first 17-week period of 1945 was made and as a result a staff study was submitted to the Commanding General, Army Service Forces, and the Assistant Chief of Staff, G-1, *staff study*

Citation

War Department General Staff, requesting the quota be restored to 150 candidates. This request was first denied, but after conference with the Assistant Chief of Staff, G-1, the request was granted. Thereafter it became necessary for The Judge Advocate General to justify every officer candidate school quota. An additional burden of work was thus thrown on the Military Personnel and Training Division as it was necessary to prepare detailed staff studies based on future requirements in order to justify each class at the Officer Candidate School. The various staff divisions in the War Department responsible for setting the quotas for officer candidate schools placed undue emphasis on the troop basis in determining the number of candidates to be enrolled in the Judge Advocate General Officer Candidate School. As most judge advocates were requisitioned for and assigned to allotted positions in overhead installations, the troop basis did not form an accurate basis upon which to determine requirements for judge advocate personnel.

On 31 March 1945, 2296 judge advocates were on duty in the Army of the United States, divided by component as follows: 113 Regular Army, 568 Officer Reserve Corps, 90 National Guard, 1525 Army of the United States. These officers had been procured as follows: 442 Judge Advocate General's Reserve officers called to active duty, 284 officers appointed in the Army of the United States direct from civil life (captains and majors), 142 officers appointed in the Army of the United States direct from the enlisted ranks (second lieutenants and first lieutenants), 571 officers obtained by detail from other branches of the service, 744 officers graduated from the Judge Advocate General Officer Candidate School. Between 1 July 1940 and 31 March 1945, 34 vacancies in the grade of captain in the Judge Advocate General's Department, Regular Army, were filled, pursuant to AR 605-35, as follows: 8 by transfer of officers from other branches of the Regular Army on completion of details served in the department and 26 by appointment of Reserve judge advocates. The last appointments were made 13 July 1943 when 17 Reserve officers were appointed. The War Department suspended all further appointments in the Regular Army on 22 January 1944 (Circular No. 29, War Department, 1944). The strength of the Military Personnel and Training Division on 31 March 1945 was twelve officers and eleven civilians.

Throughout the period of the war and during all the time that officers were being procured for the department, there was a heavy correspondence with members of Congress, important state officials, and applicants for commission. Letters to members of Congress and other highly-placed state and governmental officials were normally signed by The Judge Advocate General. Other letters were signed by the Chief of the Military Personnel and Training Division by direction of The Judge Advocate General.

Place in appendix - (to p 35)
The growth of the Judge Advocate General's Office in Washington, D. C., kept pace with the increase in size of the department and the Army of the United States. In January 1942, a system of controls on personnel

was instituted which resulted on 22 January 1942, in an authorization of military personnel to the Judge Advocate General's Office of 125 officers, divided by grade as follows: 13 colonels, 13 lieutenant colonels, 41 majors, 58 captains. On 22 June 1942, the authorization was increased to 145 officers: 18 colonels, 18 lieutenant colonels, 44 majors, 65 captains. On 5 August 1942, 15 Army Specialist Corps officers were authorized to be included in the total allotment of 145. On 28 October 1942 the allotment of personnel was reduced by 12 officers to provide the initial staff and faculty of The Judge Advocate General's School which had just been established as a Class IV installation of The Judge Advocate General under the provisions of AR 170-10. On 12 November 1942 the 12 positions previously withdrawn for the staff and faculty of the School were restored to the Judge Advocate General's Office. The Specialist Corps allotment was rescinded the same date in line with the cancellation of the Army Specialist Corps program. On 27 February 1943 the allotment of officers was increased to a total of 190, divided by grade as follows: 19 colonels, 23 lieutenant colonels, 64 majors, 84 captains. This increase was based in part upon the assignment to The Judge Advocate General of certain additional responsibilities relating to the disposition of claims against the Government which had previously been handled by the Chief of Finance.

On 15 June 1943 a new method of authorizing, reporting, and controlling personnel was announced by the Commanding General, Army Service Forces, to be effective 30 June 1943. Subsequent to that date, military and civilian personnel were authorized on a monthly basis to the Judge Advocate General's Office and to field installations under The Judge Advocate General on what was called a monthly "Personnel Control Form" (Control Approval Symbol AP-1). On 30 June 1943 the Judge Advocate General's Office was authorized a total of 194 officers. Grades were authorized on a percentage basis computed on the total authorization or the number of officers actually on duty, whichever was smaller. No grades were lost by this method as the percentages granted resulted in the same number of grades as had previously been authorized.

On 31 December 1943 the authorization of military personnel for the Judge Advocate General's Office was increased by four officers and on 29 February 1944 a further increase to a total of 208 officers was authorized. These increases were based on the need for creating two new statutory boards of review.

No further substantial changes in the authorized officer strength of the Judge Advocate General's Office occurred until 30 September 1944 when six additional positions were authorized to offset the officers required to be absent from the office on temporary duty in connection with the War Department seizure of industrial plants because of the existence of labor disturbances. On 30 November 1944 the office strength was increased by the addition of 33 positions. Four positions were authorized to provide additional trial attorneys

for the Contract Appeals Branch of the Contracts Division. These officers represented the War Department before the War Department Board of Contract Appeals. Twenty-nine positions were authorized to staff the War Crimes Office which had just been established as a division of the Judge Advocate General's Office pursuant to a directive of the Secretary of War. As of 31 March 1945 the Judge Advocate General's Office was authorized a total of 247 officers, divided by grades as follows: 26 generals or colonels, 39 lieutenant colonels, 86 majors, 96 captains.

Military personnel was also authorized The Judge Advocate General for the purpose of staffing The Judge Advocate General's Branch Offices established in distant commands by direction of the President under Article of War 50 $\frac{1}{2}$. The first authorization of military personnel for such purpose was 11 May 1942 when sixteen officers' positions were authorized to staff the Branch Office established in the European Theater of Operations. On 2 August 1942 this authorization was increased by ten positions for the purpose of staffing the Branch Office established in the Southwest Pacific Area. A further increase of ten positions was authorized 2 November 1942 to provide personnel for the Branch Office established in the China, Burma and India Theater. The Branch Office in the North African Theater of Operations was established 2 March 1943 and an additional allotment of sixteen officers' positions was authorized in order to staff it. The total of 52 officer's positions thus authorized was consolidated on 19 October 1943 by the Commanding General, Army Service Forces, into one authorization with authority granted The Judge Advocate General to distribute personnel to the various Branch Offices within the total authorization as he desired. On 13 September 1944 a Branch Office was established in Hawaii to serve the Pacific Ocean Areas. Twenty-two additional position vacancies for officers were authorized to staff this office. Thus a total of 74 position vacancies were authorized The Judge Advocate General for Branch Offices in distant commands as of 31 March 1945. The various increases in the authorized strength of the Judge Advocate General's Office and Branch Offices of The Judge Advocate General required preparation by the Military Personnel and Training Division of detailed staff studies which set forth and justified the need for the additional personnel. *end of appended*

The assignment and reassignment of officers of the Judge Advocate General's Department were handled by the Military Personnel and Training Division of the Judge Advocate General's Office. Reserve officers when first called to active duty and officers appointed direct from civil life were, prior to the activation of The Judge Advocate General's School, ordered to a large office, such as the Judge Advocate General's Office or a Service Command headquarters, for the purpose of receiving on-the-job training. When considered qualified to handle a job on their own, they were assigned, on War Department orders requested by The Judge Advocate General, to fill existing requisitions. After The Judge Advocate General's School was started in Washington, D. C., officers were ordered to the Judge Advocate General's Office and then assigned on office orders

to the first available class at the School. In September 1942 when the School was moved to the University of Michigan, Ann Arbor, Michigan, officers were ordered directly to the School to arrive on a date coinciding with the opening date of a course.

The establishment of officer replacement pools was of immense assistance in the initial assignment of officers. The first pool was authorized 26 December 1941 in Washington, D. C., for 35 officers. On 15 June 1942 the pool authorization was increased from 35 to 50, of which 20 were authorized for pools of not to exceed 5 each at Headquarters of the Fifth, Seventh, Eighth, and Ninth Service Commands. In the beginning assignments to these subpools at Service Command Headquarters could only be made with the concurrence of the Commanding General of the Service Command concerned. This concurrence, however, was always given and presented no difficulty. On 7 August 1942 the authorized strength of the pool was increased to 150 officers in order to make possible larger classes at The Judge Advocate General's School. The principal pool was in the Judge Advocate General's Office, Washington, D. C., and was limited to a total of 25 officers. Not more than 5 officers were permitted at pools established at each of the nine Service Commands. The remaining officers in the pool were to be assigned to The Judge Advocate General's School which was on that date formally established at Ann Arbor, Michigan. An additional 20 officers were authorized for the pool on 26 September 1942. This increase was granted to permit the assignment of judge advocates to tactical units of Army Ground Forces as understudies to regularly assigned Staff Judge Advocates. Most of these 20 positions were filled with officers assigned to Infantry Divisions. On 4 September 1943 the Judge Advocate General's pool in Washington, D. C., as well as all other pools in Washington, was abolished and the establishment of new pools in Washington was prohibited. On 19 February 1945 Judge Advocate General's Replacement Pools were officially announced in War Department Circular No. 55, 1945, at the Headquarters of each Service Command, at The Judge Advocate General's School, with the Second and Fourth Armies, and at the New Orleans and the San Francisco Ports of Embarkation.

With replacement pools established in all Service Commands by 7 August 1942 it became the practice to order newly commissioned officers to the most convenient pool pending the starting date of a class at The Judge Advocate General's School, Ann Arbor, Michigan. At an appropriate time prior to the opening of a class War Department orders would be requested assigning the officers to the School.

The Judge Advocate General's Replacement Pools were at all times a great convenience and assistance in personnel planning and administration and at no time did their management become a serious problem. The pools were never overstocked and as there was always a rapid turnover of personnel, the morale of officers assigned to a pool did not suffer. No difficulty was experienced in following directives of the Commanding

General, Army Service Forces, concerning the management and utilization of officer replacement pools.

It became an established policy early in the war for a representative of the Military Personnel and Training Division, usually the Chief and one of his principal assistants, personally to interview each new officer in the Judge Advocate General's Department. When The Judge Advocate General's School was located in Washington, this was done at odd times during the officer's sojourn in the Judge Advocate General's Office. After the School was moved to Ann Arbor, officers from the Military Personnel and Training Division traveled to Ann Arbor a short time before each class graduated for the purpose of privately interviewing each officer and after the establishment of the Officer Candidate School, each candidate. Each officer and candidate was permitted to fill out an informal preference sheet (Appendix 2-7). The student was encouraged to state his preferences as to the place in which he would rather serve and the type of duty he felt he could best perform. Also he was encouraged to state whether he wished domestic or foreign service. Students were encouraged to disclose unusual or special circumstances and conditions which might affect the place or type of duty to which they would be assigned. An effort was made in each case, consistent with the needs of the service, to assign officers in accordance with expressed preferences. It was found that preferences could be followed in a great majority of cases with the result that the morale of the department was maintained at a high level.

Subsequent to the interviews with the student officers and officer candidates, existing requisitions were reviewed and compared with the qualifications of the members of the graduating classes. War Department orders were then requested assigning the student officers to fill existing requisitions and a letter of instruction was transmitted to the Commandant of the School indicating the initial assignments of the officer candidates. Under existing regulations (paragraph 12, AR 625-5) candidates were given ten days delay en route as in the interest of the public service not chargeable as leave. Officers were ordinarily granted ten days leave on completion of the course of instruction.

During the early days of the war, that is during 1942 and 1943, reassignments within the Zone of Interior were very common, especially with units of the Army Ground Forces. For example, an Assistant Division Judge Advocate would be moved up to replace the Division Judge Advocate who had been reassigned to a newly activated corps or army. There were also many reassignments made to and from the Army Air Forces in order to place the most experienced men in key jobs and make available trained and experienced officers for overseas duty. Less experienced officers, on graduating from the School, were shifted into junior positions and remained there until such time as they had acquired sufficient experience or had otherwise demonstrated their capacity to handle more responsible positions.

With the deployment of troops overseas the number of reassignments within the Zone of Interior became less numerous. By the end of 1944 only two training armies and one training corps were left in the Zone of Interior. The emphasis then shifted to the assignment of officers direct to the theaters of operation as fillers and loss and rotational replacements. Officers on graduating from the School who were earmarked for overseas duty were normally first assigned to a pool in the geographical location for which they had expressed preferences and after a short period of advanced applicatory training were assigned against overseas requisitions.

In assigning and reassigning officers, the question of how to handle requests for named personnel presented itself. The announced War Department policy prohibited the request of personnel by name. However, a number of such requests were made and depending upon the circumstances in each case were approved or disapproved on the merits of the assignment without specific regard to the fact the officer had been requested by name. That is to say, if the position for which the officer was requested was a position to which a judge advocate would be assigned and if the officer requested was available and believed qualified for the assignment, the assignment would normally be made. Requests for named officers were discouraged at all times. Using agencies were advised that any officer furnished to fill a requisition whose performance of duty was not completely satisfactory would be replaced immediately. With this assurance, few agencies insisted on asking for individual officers by name.

Officers were constantly drawn from the various divisions of the Judge Advocate General's Office for overseas service and were replaced with junior officers from the School. In this way it was possible to have, at all times, a sufficient number of position vacancies in the higher grades to promote officers who demonstrated their capacity to discharge more responsible duties. It was always considered that every officer of the Judge Advocate General's Department was occupying at least a captain's position. Consequently, second and first lieutenants under the promotion jurisdiction of The Judge Advocate General (the Judge Advocate General's Office and Branch Offices) were promoted to the rank of captain on completion of the minimum required time in grade unless the officer's immediate superior objected to such promotion. In those cases, which were very rare, the officer concerned was reassigned either within the office or to a new station for further observation. The Promotion Board established in the Judge Advocate General's Office pursuant to War Department regulations considered all recommendations for promotion to the field grades and thereafter the Military Personnel and Training Division submitted the Board's recommendations to The Judge Advocate General for action.

Company grade judge advocates serving with the various technical services and in the Service Commands did not, as a rule, receive promotions

as rapidly as did officers serving in the Judge Advocate General's Office. At times this created morale problems in individual cases. Frequently these were solved by selecting the officer for an overseas assignment and promoting him before he left the continental limits of the United States. Officers serving overseas oftentimes received promotions to the field grades more rapidly than would those serving in the Zone of Interior. However, this created no real morale problems as requisitions for personnel from the various theaters of operation were so constant that any officer so desiring could obtain overseas service by requesting it.

In order further to control the qualifications of officer personnel performing legal duties in the Army, paragraph 5d, AR 605-1145, reading as follows--

"d. Detail in Judge Advocate General's Department.--
Qualified officers of all arms and services may be detailed in the Judge Advocate General's Department. Such details will be accomplished, upon the recommendation of The Judge Advocate General, by War Department orders."

was written into the regulations on the recommendation of The Judge Advocate General. The regulations, with the above provision, was first published 6 May 1943. Subsequent to that date officers of other branches of the service who wished to become members of the Judge Advocate General's Department could do so only by being detailed pursuant to War Department orders. Prior to 6 May 1943, the power to detail or assign officers to duty with the Judge Advocate General's Department had been delegated to the commanding generals of the various commands, including the Service Commands. Officers from all branches of the service and from all theaters of operation as well as from the Zone of Interior applied for detail under the authority of the quoted regulations and their qualifications were reviewed and considered by the Selection Board of the Judge Advocate General's Office. As noted above, the procurement of officers for the Judge Advocate General's Department was substantially supplemented in this manner.

The separations of judge advocates from the service during the period covered by this history were small in number. The emphasis was at all times on the acquisition of additional personnel. Such separations as did occur are tabulated below:

	MG	BG	COL	LtCOL	MAJ	CAPT	1stLT	2dLT	TOTAL
Physical disability	0	0	3	6	13	7	4	0	33
Statutory age	1	1	18	6	1	0	0	0	27
Undue hardship	0	0	0	4	5	1	1	0	11
Surplus	0	0	1	10	7	1	1	0	20
To accept public position	0	0	0	1	2	0	0	0	3
Nat'l, health, and safety	0	0	0	1	0	0	0	0	1
Resigned and/or dishonorably discharged	0	0	0	0	3	1	0	0	4
Deceased	0	0	1	3	3	0	1	1	9
TOTAL	1	1	23	31	34	10	7	1	108

Physical disability and statutory age accounted for the majority of separations. Most of the separations because of statutory age occurred as a result of the War Department policy announced in Circular No. 167, War Department, 22 July 1943. Applications for release from active duty were subjected to careful scrutiny and were approved only under the most unusual circumstances. It was at all times felt that the cessation of hostilities would throw an even greater workload on the Judge Advocate General's Department. Therefore, even when the defeat of Germany seemed certain and many officers started to think of their long-neglected law practices, no officers were released because of their own personal convenience or desires.

As might be expected, neither the reclassification nor discipline of officers raised a serious problem. Isolated cases where officers did not meet the standard of the corps were handled in accordance with existing regulations and policies.

Decorations proved rather scarce for members of the department serving in the Zone of Interior. This was due, no doubt, to the somewhat unspectacular nature of a judge advocate's work. The Judge Advocate General maintained a policy of seeking for the members of the department each award and decoration justified by the performance of a mission. From the following tabulation it will be noted that most awards were made for duty performed outside the continental limits of the United States.

For duty performed in the Judge Advocate General's Office,
Washington, D. C.:

Distinguished Service Medal.....	0
Legion of Merit.....	4

For duty performed in the Zone of Interior outside the
Judge Advocate General's Office:

Distinguished Service Medal.....	2
Legion of Merit.....	8

For duty performed outside the continental limits of the
United States:

Distinguished Service Medal.....	1
Legion of Merit.....	14
Bronze Star Medal.....	18

With the various reorganizations of the Judge Advocate General's Office, the Military Personnel and Training Division occupied, during the period covered by this history, three separate and distinct positions in the structure of the office. At the beginning of the war the office was organized with two Assistants Judge Advocate General reporting directly to The Judge Advocate General. The Military Personnel Division, as it was then called, was placed under one of the Assistants Judge Advocate General.

It remained in that echelon until the fall of 1943 when the Judge Advocate General's Office was reorganized to include four Assistants Judge Advocate General. The officer who had been serving as Chief of the Division during the preceding period was designated Assistant Judge Advocate General in charge of military personnel and training and all field installations. In addition he retained the title of Chief, Military Personnel and Training Division. During this period, which continued until October 1944, the Military Personnel and Training Division in effect reported directly to The Judge Advocate General. In October 1944 the Judge Advocate General's Office was again reorganized with a Deputy Judge Advocate General and three Assistants Judge Advocate General. The Military Personnel and Training Division was placed under the Deputy Judge Advocate General and reported to The Judge Advocate General through the Deputy.

The Military Personnel and Training Division kept complete and up-to-date 201 files on each judge advocate on active duty. Any additional workload imposed by this practice is believed to have been justified many times because of the ready and complete information thus made immediately available concerning officers of the department. The information contained in the office 201 files normally proved to be more complete and up-to-date than that contained in the official War Department files. However, it was frequently necessary to resort to the official War Department 201 files in order to obtain essential information. The office 201 files proved of inestimable assistance in assigning and reassigning officers in accordance with their qualifications. In addition to 201 files, visible records were kept on all organizations to which judge advocates were assigned, both in the Zone of Interior and overseas. At any time it could be determined with substantial accuracy the station to which each officer of the department was assigned and conversely what judge advocates were on duty at any particular headquarters.

During the period covered by this history certain substantial changes in tables of organization of Ground Force units were made which increased the number of judge advocates on duty in various headquarters and thereby materially assisted the efficient administration of military justice. The Judge Advocate General maintained a policy of supporting all requests for increase in personnel of the Judge Advocate General's Section of so-called T/O units. On 15 July 1943, T/O & E 7-1 was changed to increase the Judge Advocate General's Section of Headquarters, Infantry Division, to one lieutenant colonel and one captain. Previously only a lieutenant colonel had been authorized. On 27 December 1943, T/O & E 100-1 was changed to increase the Judge Advocate General's Section of Headquarters, Corps, to one colonel and one lieutenant colonel. Previously only a colonel had been authorized. On 4 November 1944, T/O & E 70-1 was published providing a Judge Advocate General's Section of Headquarters, Mountain Division, consisting of one lieutenant colonel and one captain. On 16 December 1944, T/O & E 71-1T was published providing a Judge Advocate General's Section for Headquarters, Airborne Division, of one

Please see appendix

lieutenant colonel and one first lieutenant. Previously only a lieutenant colonel had been authorized. On 20 January 1945, T/O & E 200-1 was changed to increase the Judge Advocate General's Section, Headquarters, Army, by one major and two captains when the additional personnel was requested by a commander of a theater of operations. Previously an Army Headquarters was authorized only one colonel, one lieutenant colonel, and one major.

At various times The Judge Advocate General recommended that tables of organization of tactical units exercising general court-martial jurisdiction should be increased to provide a skilled court reporter in the grade of warrant officer or master sergeant. Such recommendations did not receive War Department approval notwithstanding the fact that judge advocates in the field repeatedly advised the Judge Advocate General's Office that shortage of qualified court reporters was one of the most difficult obstacles to overcome in the administration of military justice under field conditions.

From time to time various agencies of the War Department discussed with the Military Personnel and Training Division of the Judge Advocate General's Office on an informal basis anticipated requirements for legally-trained officers far in excess of the number of officers which would be normally procured by means of the officer procurement methods then in effect. Most of these proposals never got beyond the informal discussion stage as the authorization for additional personnel was not approved. Two such proposals, however, did materialize. During the spring and summer of 1944 a large number of legally-trained officers were required to staff the Claims Service in the European Theater of Operations. The Military Personnel and Training Division worked with the Claims Division of the office in procuring and selecting branch immaterial officers to fill this assignment. Officers selected were assigned to a special training course at Lebanon, Tennessee, conducted by officers of the Claims Division, and were then assigned to the European Theater of Operations. (For a detailed discussion of this activity, reference is made to "History of Military Training, Judge Advocate General's Department".) During the same period the Director, Readjustment Division, Army Service Forces, acting for the Under Secretary of War, called upon The Judge Advocate General to assist in selecting and training a substantial number of officers with legal background and experience for duty in handling an anticipated increase of contract terminations. The Military Personnel and Training Division, by screening several thousand files, obtained a substantial number of officers for assignment to the first Contract Termination Courses at The Judge Advocate General's School. These officers were from various arms and services and on graduating from the School were reassigned by the organizations having assignment jurisdiction over them to contract termination duties.

CHAPTER VI

INDUSTRIAL PLANT SEIZURES

An Industrial Law Branch was activated on 12 August 1944 as the focal point for legal work incident to War Department operation of plants and industrial facilities pursuant to Executive order of the President. The Judge Advocate General had, from the outbreak of the war, discharged major responsibilities in the planning of legal procedures for War Department emergency operation of such facilities seized by the Government as the result of labor disturbances. In the case of each seizure personnel of the Office of The Judge Advocate General had been assigned as legal advisers to the War Department representative responsible for the conduct of the operation. The volume of legal work incident to these operations, including necessary planning and training of legal personnel to meet the problems of labor law and the difficulties inherent in assuming control of a private business, resulted in the activation of the Industrial Law Branch. The Branch, although it had only two officers permanently assigned to it, provided a basis for expansion when necessary and a continuing organization familiar with all aspects of the work, and capable of maintaining liaison with other agencies of the War Department and other Departments of the Government in a field where immediate action was a requirement.

Immediately prior to the outbreak of the war, the War Department was called upon by the President to take possession of and to operate two important industrial facilities where war production had been interrupted by labor disturbances. These plant seizures were North American Aviation, Inc., at Inglewood, California, in June 1941, and Air Associates, Inc., at Bendix, New Jersey in October 1941. War Department operation of these two facilities was terminated on 2 July and 29 December 1941 respectively. For almost two years after the outbreak of war, only one labor disturbance resulted in War Department possession, and operation of private facilities, namely, S. A. Woods Machine Company at South Boston, Massachusetts, in August of 1942. On 22 October 1942 these plants were turned over to another management following condemnation proceedings under the Second War Powers Act (above). In September 1942 The Judge Advocate General directed that the judge advocates who had been assigned to the operation of S. A. Woods Machine Company's plant prepare a manual or outline of procedure for plant seizures, with illustrative forms, based on experience in that case. Following the coal crises and the passage of the War Labor Disputes Act (57 Stat. 163) in June 1943, the manual was completely revised in the Judge Advocate General's Office, to incorporate the changes required by that act (Emergency Operation of Industrial Facilities (ASF-EOIF-44) Revised 23 September 1944, Office of The Judge Advocate General (Confidential)). In addition, based on the experience of the Department of Interior in the operation of the coal mines, new pro-

cedures were developed for the operation of seized plants in the case of labor disturbances where full cooperation of the management could be obtained and financing with company funds was practicable.

Commencing in November 1943, plant seizures greatly increased in number and importance. Because of the extremely vital nature of these seizures to the prosecution of the war, the legal activities pertaining to them were placed under the direct supervision of Brigadier General Thomas H. Green, Assistant Judge Advocate General. On 24 November 1943 the War Department under Presidential order took possession of thirteen leather manufacturing plants in and around Salem, Massachusetts. Army operation continued until 13 December 1943. Immediately following the conclusion of this mission, The Judge Advocate General was requested to assign a legal staff to the War Department Representative designated to take possession of the plants and facilities of the Western Electric Company at Point Breeze, Maryland. These plants and facilities were operated by the War Department from 19 December 1943 to 23 March 1944. That operation had hardly begun when it became necessary for the War Department to take possession of the nation's railroads to insure continuance of transportation service which was jeopardized by a serious strike threat. The procedures that had previously been developed by The Judge Advocate General in connection with plant seizures were utilized in part in conducting the operation of the railroads. The magnitude of the undertaking necessitated establishment of a special legal office in the Office of the Chief of Transportation with the Chief, Legal Branch, Office of the Director of Materiel, as legal adviser. A liaison officer from the Contracts Law Branch of the Contracts Division was attached to that office, and judge advocate personnel experienced in or briefed in plant seizures were assigned to regional headquarters throughout the country. War Department operation of the railroads terminated on 19 January 1944 and judge advocate personnel completed their assignments, obtaining the necessary releases and indemnity agreements from the carriers. In February 1944, it became necessary for the War Department to seize ten textile mills, the properties of seven companies, in Fall River, Massachusetts. These properties were operated from 7 February 1944 until the relinquishment of War Department possession on 28 February 1944. Meanwhile, a serious strike at the Department of Water and Power of the City of Los Angeles necessitated War Department operation and control on 23 February 1944 in order to restore essential power service to a large number of plants in a wide area serviced by these power facilities. The service was quickly restored and the properties released on 29 February 1944. On 8 April 1944 a staff of judge advocates was dispatched to advise in connection with the seizure of the Kentucky and Indiana plants of Ken-Rad Tube and Lamp Corporation. These properties were operated until their release on 25 May 1944. In the meantime on 21 May 1944 possession was taken by the War Department of the plants of Hummer Manufacturing Division of Montgomery Ward and Company at Springfield, Illinois. As of 31 March 1945 Army operation of Hummer Manufacturing Division of Montgomery Ward still continued.

On 3 August 1944, to end a labor disturbance which had completely interrupted operation of vital transportation facilities in the City of Philadelphia, the War Department took possession of and operated the facilities of the Philadelphia Transportation Corporation. Two weeks later, on 17 August 1944, these properties were returned to private management following restoration of transportation service. Ten days later, on 27 August 1944, possession was taken of the plants of International Nickel Company of Canada, Ltd., at Huntington, West Virginia. Operation of these plants under War Department control was continued until 14 October 1944. Meanwhile during the month of September 1944 labor disturbances resulted in War Department possession of the following four plants: On 5 September 1944 possession was taken of the plants of the Cleveland Graphite Bronze Company, Cleveland, Ohio, with War Department operation continuing until 8 November 1944. On 6 September 1944 possession was taken of the plants of the Hughes Tool Company, Houston, Texas, and operation by the War Department continued as of 31 March 1945. Possession and operation of the plant of Twentieth Century Brass Co., Minneapolis, Minnesota, began on 9 September 1944 and was not terminated until 17 February 1945. Possession was taken of the plant of the Farrell-Cheek Steel Company, Sandusky, Ohio, on 25 September 1944 and continued as of 31 March 1945. In early November of 1944 a serious labor disturbance affecting sixty-four plants in the area of Toledo, Cleveland and Detroit, in which plants the Mechanics Educational Society of America (MESA) held collective bargaining rights for certain of the workers, threatened serious interference with war production. This resulted in the seizure and operation by the Army of eight of the plants located in Toledo, Ohio, on 4 November 1944. The disturbance was quickly ended, making it possible to return these plants to private management on 6 November 1944. On 8 December 1944, the War Department took possession of the plants and facilities of the Cudahy Packing Company of Cudahy, Wisconsin. As of 31 March 1945 these plants were still being operated under War Department control. By direction of the President, on 28 December 1944, the War Department was authorized and directed to take possession of and to operate certain properties of Montgomery Ward and Co., Inc., located in Chicago, Illinois, Detroit, Michigan; Portland, Oregon; Denver, Colorado; St. Paul, Minnesota; Jamaica, New York, and San Rafael, California. The seizure of these properties to terminate labor disturbances involved operation of the facilities under the terms and conditions of certain orders of the National War Labor Board. To test the validity of the President's action, the Government through the Attorney General of the United States, simultaneously with the seizure, filed legal proceedings for a declaratory judgment in the Federal Court in Chicago. A decision adverse to the position of the Government was rendered by the United States District Court. Continued operation by the War Department was authorized, however, under a stay order granted by the District Court pending disposition of the Government's appeal. As of 31 March 1945 the appeal was pending before the Circuit Court of Appeals with the War Department still in possession of and operating the properties. In January 1945

a serious work stoppage at the facilities of the Cleveland Electric Illuminating Co. of Cleveland, Ohio, threatened to cripple war production in the Cleveland area. Army possession and control of these important power facilities from 13 to 15 January 1945 effected complete restoration of power service and restoration of war production in Cleveland. On 26 January 1945, possession was taken of the facilities of the Bingham and Garfield Railway Company at Bingham, Utah. As of 31 March 1945, War Department operation of those facilities continued. The plants and facilities of American Enka Corporation at Asheville, North Carolina were seized by the War Department on 18 February 1945, with Army operation continuing as of 31 March 1945.

During the entire period referred to above there were numerous alerts and critical situations affecting war production, calling for planning and preparation in connection with contemplated plant seizures. It was possible, however, to limit the actual seizures to the twenty-two instances above enumerated. It is to be noted that the seizures actually conducted included aircraft plants, ordnance plants, leather manufacturing plants, plants manufacturing communications equipment, textile mills, power plants, railroads, transportation facilities, foundries, a meat packing plant and a rayon plant.

All legal work incident to plant seizures was performed under the close supervision of the Deputy Judge Advocate General after the activation of that office. The consistent policy was to combine necessary planning with legal work incident to conducting actual operations, in order that the War Department might be kept abreast of the latest developments, judicial, legislative and administrative, which related to the subject of plant seizures or to the labor problems incident thereto. In all instances of plant seizures by the War Department, with the exception of those cases in which operations still continue, it was possible to obtain complete releases of claims from the owners of the plants; and in a great majority of the operations, it was possible to conduct the operation with company funds in pursuance of a policy designed to utilize the existing management of the company to the maximum degree possible consistent with the terms of the Executive order directing the plant seizure.

The history of plant seizures during World War II is a record of substantial accomplishment in keeping such seizures at a relatively low number despite a wide variety of complex labor situations constituting a threat to war production.

*1. Add paragraph explaining the nature of duties of Division and its origin as far as known -
2. Expand.*

III ACTIVITIES OF THE MAJOR LEGAL DIVISIONS

CHAPTER VII

MILITARY AFFAIRS

On 1 July 1940 the Military Affairs Section was composed of 8 officers. From that date to the outbreak of the war, the section, in addition to the usual matters handled in peacetime, as indicated in Chapter 2, prepared opinions upon and assisted in the solution of many new and complex questions arising out of the enormous expansion of the Army which occurred during that period. Among the matters dealt with were the induction of the National Guard and the Organized Reserves into active Federal service (54 Stat. 858), enactment of the Soldiers' and Sailors' Civil Relief Act (54 Stat. 1179), enactment of the Selective Training and Service Act of 1940 (54 Stat. 885), and innumerable problems relating to the status, rights, and duties of the personnel brought into the service during that period. As the work of the section increased additional personnel were added and it soon became evident that a single officer could not adequately supervise its activities. The section was therefore divided into three sub-sections, designated as the Officers Sub-section, the Enlisted Sub-section, and the Miscellaneous Sub-section, and each was placed under a chief. The chief of the section continued to supervise the section as a whole. The nature of the cases handled by the section did not lend themselves to the precise classification indicated by the designations of the sub-sections. For example, a personnel matter generally concerned both officers and enlisted men. Thus cases were assigned to the sub-sections, not on a basis of classification, but on a basis of availability of personnel and upon the past experience of particular officers. The designations of the sub-sections continued to be used, however, for convenience and administrative purposes.

During the period immediately following the declaration of war, the section assisted in the revision of existing, and the drafting of new, Army regulations and other directives made necessary as a result of a state of war, and continued to provide technical assistance in the legislative program of the War Department. Among the more important matters dealt with during this period were the reorganization of the War Department and the Army, directed by Executive Order No. 9082, 28 February 1942; the creation of new groups of military and quasi-military personnel, such as flight officers, the Women's Army Auxiliary Corps and the Army Specialist Corps; and statutory changes in the pay, allowances and benefits of various classes of military and civilian personnel under the War Department.

Many cases involved the drafting of legislation affecting the War Department and the Army, or commenting upon the legal aspects of legislation

proposed by the Congress or by agencies within the War Department or upon laws currently enacted. Such legislation included the Servicemen's Dependents Allowance Act of 1942 (56 Stat. 381); the Missing Persons Act (56 Stat. 144); provisions for increasing the retired pay or retirement pay of certain officers of the Regular Army, the Officers' Reserve Corps and the National Guard of the United States; the Soldier's Vote Act (58 Stat. 136); the Mustering-Out Payment Act of 1944 (58 Stat. 8); the act establishing the Women's Army Corps (57 Stat. 371); the Servicemen's Readjustment Act of 1944 (58 Stat. 284); and the law authorizing temporary appointments as officers in the Army of the United States of members of the Army Nurse Corps (58 Stat. 324). Other important matters considered were the following: The imposition of controls over excessive spending by American troops overseas; the disposition of captured enemy equipment; the drafting of proposed Army regulations, as directed by section 301 of the Servicemen's Readjustment Act of 1944 (above), providing an administrative means of review of the factual basis for certain discharges and dismissals other than those accomplished pursuant to sentences of courts-martial; proposed revisions of Army regulations relating to reclassification and resignation of commissioned officers, the discharge or relief from active duty of enlisted men, and the imposition of limitations on soldiers' deposits; political activity by military personnel, and the applicability of the Hatch Act to per diem employees of the War Department; demobilization planning; and censorship of outgoing and incoming domestic mail of military personnel.

In addition to the preparation of formal opinions, officers of this division handled a large number of informal matters and participated in a steadily increasing number of conferences with other officers, and with representatives of agencies outside the War Department. The matters discussed in these opinions and at the conferences covered a wide range of subjects of vital importance to the War Department and the Army.

When The Judge Advocate General's Office was reorganized in March 1942, the Military Affairs section was designated a division and the three existing subsections were activated as branches and designated the Officers' Branch, Enlisted Men's Branch, and Miscellaneous Branch. Subsequently, in November 1943, a Planning Branch was activated for the purpose of preparing certain opinions on matters with which the demobilization program was concerned and coordinating within the office all such matters, which it continued to do until a separate Planning Branch, directly under the Deputy Judge Advocate General, was activated on 3 February 1945.

On 31 March 1945, the strength was 24 officers and 6 civilians.

The total number of formal matters completed by the division during this period is as follows:

1 July 1940 to 31 Dec 1940	624
1941	1612
1942	2191
1943	1848
1944	1768
1 Jan 1945 to 31 Mar 1945	380
	<u>8423</u>

The national emergency and the war resulted in the main in an expansion of the activities of the Division, rather than in a change in the nature of its work. While many of the problems were new, and their variety increased, basically the manner of their solution remained the same, and the methods used at the beginning of the period of expansion were found satisfactory. As in the past, if laws and regulations did not provide the answer, sound, practical rules affecting the customs and traditions of the service were used as a guide.

CHAPTER VIII

CONTRACTS COORDINATOR AND THE CONTRACTS DIVISION

The Contracts Division, which on 31 March 1945 was composed of four branches - the Contracts Law Branch, Contract Appeals Branch, Bonds Branch, and Liaison and Special Matters Branch - was known as the Contracts Section prior to 23 March 1942. Its chief on 1 July 1940 was Colonel Myron C. Cramer, J.A.G.D., later appointed The Judge Advocate General. The office of Contracts Coordinator was first held by Colonel Cramer who was relieved of his duties as Chief, Contracts Section, on 3 December 1940 and appointed to that office. On 11 August 1941, however, Colonel Cramer resumed his duties as Chief, Contracts Section, in addition to those as Contracts Coordination Officer, and thereafter succeeding chiefs of the Contracts Section and Division have also served as Contracts Coordinator. It was under that office that the Industrial Law Branch, discussed in Chapter 6, was established on 12 August 1944 separate from the Contracts Division. The detailed organization of the Division is shown on the chart at the end of this chapter.

The scope of the activities of the Contracts Division was as broad as the procurement activities of the Military Establishment and its activities reflected the operations of the procurement and industrial agencies of the Military Establishment. At the same time, the Division rendered legal opinions upon questions relating to post exchanges, the Army Exchange Service, and other activities operating with non-appropriated funds. Proposed legislation, regulations and forms were submitted to the Division for its comment or concurrence, and under the direction of the Contracts Coordinator the personnel of the Division attended various meetings of representatives of legal offices of the War Department and of other agencies and departments of the Government and served on committees composed of such representatives. The Contracts Coordination Officer, or Contracts Coordinator as that office came to be known, was established to supervise and coordinate all legal work connected with contracts performed in the Contracts, Patents, Claims, and Litigation Sections of the Judge Advocate General's Office, and to coordinate the contracts work of that office with related work of the offices of the Under Secretary of War, The Quartermaster General, the Chief of Engineers, the Chief of Ordnance, the Chief of the Air Corps, the Chief Signal Officer, the Chief of the Chemical Warfare Service, and The Surgeon General. In connection with these functions, the Coordination Officer also supervised and completed the drafting of the standard procurement and construction contract forms which were used during the prewar period of industrial mobilization and procurement and which, with modifications, continued to be used during the war.

1. The Contracts Law Branch

The Contracts Law Branch of the Contracts Division was not so designated until after 22 August 1942. Until 23 March 1942, it was known as the Contracts Sub-Section of the Contracts Section; thereafter, until 22 August 1942, it was known as the Contracts Section of the Contracts Division; and for sometime thereafter it was known as the Contracts Branch of the Division. However, for convenience, it is referred to as the Contracts Law Branch in describing its activities. The basic functions of the Branch continued virtually unchanged. It was charged with the preparation of opinions on questions of law as to the nature and extent of authority to contract; the availability of appropriations to contract; advertising; opening and awarding of bids; the negotiation, form, legal sufficiency, and effect of original and supplemental contracts and change orders; advance payments; rights and obligations arising upon modification, extension of time, renewal, performance, delay, breach, renegotiation, repricing and termination of contracts; debarment of bidders; the assessment of liquidated damages; emergency purchases; acceptance of donations; the requisition, sale, lease, exchange, and other disposition of personal property; the construction and operation of contract provisions of unemployment, workmen's compensation, liability, and other forms of insurance (ASF Manual M 301, sec. 208.00 c(14)(a)).

During the fiscal year 1941, the Contracts Law Branch continued to render legal opinions construing provisions of the Walsh-Healey Act (49 Stat. 2036), the Davis-Bacon Act (46 Stat. 1494), the Fair Labor Standards Act (52 Stat. 1060), the Eight-Hour Laws (27 Stat. 340 and 37 Stat. 137), and the so-called Kick-Back Act (48 Stat. 948). It continued to give advice on the application of the act of 16 June 1938 (52 Stat. 707) authorizing educational orders and the act of 2 July 1926 (44 Stat. 784) relating to the procurement of aircraft. A major function of the Branch was the examination of contracts submitted to it for opinion as to form and legal sufficiency prior to approval by The Assistant Secretary of War. Another function of the Branch was the review of decisions of contracting officers from which contractors had appealed to the Secretary of War. Some questions of taxation were referred to the Branch prior to the establishment of a separate Tax Division on 29 July 1942, and from 3 December 1942 to 15 September 1943 the Chief of the Contracts Division also acted as Chief of the Tax Division.

During the fiscal year 1941, however, the increased armament program, aided by congressional enactments liberalizing War Department contracting, resulted in a rapid expansion in the type and character of contracts entered into by the Military Establishment in connection therewith. The tax problem became more acute. The increasing volume of business handled by post exchanges made the States more interested in collecting taxes from them and made it more important that their position as Government instrumentalities should be recognized. The Branch not only wrote opinions on this subject advising that governmental immunity should be asserted but also took an active part in the litigation which successfully ended the controversy when the United States Supreme Court in Standard Oil

Co. v. Johnson (316 U.S. 481) stated that:

"From all of this, we conclude that post exchanges as now operated are arms of the Government deemed by it essential for the performance of governmental functions. They are integral parts of the War Department, share in fulfilling the duties entrusted to it, and partake of whatever immunities it may have under the Constitution and federal statutes. * * * "

The fall of France and the "Low Countries" in the spring and early summer of 1940 accentuated the need for speedy rearmament, and Congress, by the act of 2 July 1940 (54 Stat. 712), drastically changed the law of War Department contracting. It authorized the Secretary of War to begin the construction of plants and other facilities necessary to expedite the defense of the Nation. The cost-plus-a-percentage-of-cost form of contracting was prohibited but cost-plus-a-fixed-fee contracts were authorized. Advertising was not required, and 30 per cent advance payments were permitted. The Contracts Law Branch was called upon to advise concerning the status of the cost-plus-a-fixed-fee contractor. New tax problems were presented, for the Government was paying taxes assessed against the contractor, yet he was not an agent of the Government. New problems of state interference with the performance of governmental functions were presented when states attempted to regulate the activities of Government contractors. Questions of what expenses were reimbursable under a cost-plus-a-fixed-fee contract arose and came to represent a large portion of the volume of cases handled by the Branch. It was called upon to construe and advise concerning the application of these new liberalizing statutory provisions so as to accomplish the purpose intended in the rapidly expanding procurement program. It was required to consider not only their effect on previously existing authority but also the extent of permissible delegation of the powers granted. The authority granted to make advance payments presented questions concerning the security required for them. Another liberalizing statute was the act of 9 October 1940 (54 Stat. 1029) which amended sections 2477 and 3737 of the Revised Statutes in order to make commercial credits available to war contractors. It authorized a Government contractor to assign to a "financing institution" amounts due under a contract, and that provision raised the question, what was a "financing institution". The Branch in several opinions took a liberal view which was subsequently supported by the Attorney General (40 Op. Atty. Gen.No. 67).

During the early part of the period of expansion much time was also devoted to the preparation, examination, and revision of contract forms related to the construction and procurement activities of the Military Establishment and designed to expedite the program authorized by the new legislation and to meet the unlimited national emergency declared on 27 May 1941. But not all the statutes enacted as the result of the European war were liberalizing. The so-called Chief of Staff statute, approved 28 June 1940 (54 Stat. 681), prohibited the disposition of military property without a certificate of the Chief of Staff that such

material was not essential to the defense of the United States, and problems presented thereby, such as the adequacy of blanket certificates, received the attention of the Contracts Law Branch as early as 6 July 1940 (JAG 400.32) and as recently as 7 February 1945 (SPJGC 1945/1233).

As a protection for the continental United States, off-shore bases were acquired from Great Britain, and their development involved the application of foreign laws to the defense program and the application of domestic laws, particularly those for the protection of labor, to the performance of Government contracts on foreign soil. In connection with the use of American labor in the construction of these necessary off-shore installations, adequate compensation insurance was advisable, and the Division, in cooperation with other interested departments of the Military Establishment, prepared and sponsored a law extending the benefits of the Longshoremen's and Harbor Workers' Compensation Act to employees engaged thereat (act of 16 Aug. 1941, 55 Stat. 622).

Just prior to 1 July 1941 the War Department announced an insurance rating plan designated as the War Department Comprehensive Insurance Rating Plan for the purpose of determining the amount of premiums to be paid for workmen's compensation insurance, general public liability and automobile (personal and property damage) insurance, required by the War Department of its cost-plus-a-fixed-fee contractors engaged in defense projects and the operation of defense plants. The plan contemplated the purchase of such insurance by such contractors on substantially a cost basis. The Contracts Division cooperated with the Insurance Section of the Office of the Under Secretary of War in the preparation of insurance policies and other forms for use under the plan and in procuring the approval of the use of the plan by insurance commissions of many states. The use of the Plan was generally approved by the state insurance commissions except as to workmen's compensation insurance in those states which have a monopolistic state fund. The plan, with slight modifications, was adopted by other defense agencies.

After war was declared on 8 December 1941 the tempo of the defense program increased. The First War Powers Act, 1941 (55 Stat. 838) was enacted which, among other things, authorized the President to redistribute functions among the Executive agencies and provided that the President might authorize any department or agency of the Government exercising functions in connection with the prosecution of the war to enter into contracts or amendments thereof without regard to the provisions of law relating to the making, performance or amendment of contracts, whenever he deemed such action would facilitate the prosecution of the war. The President, by Executive Order 9001, dated 27 December 1941, granted this authority to the War Department and authorized its delegation and redelegation to any officers or civilian officials of the War Department. The interpretation of the scope of the act and the delineation of the broader procurement authority resulting therefrom and from the suspension of statutes by the outbreak of war became the most important function of the Contracts Law Branch of the Division. Speedy procurement was dependent

upon liberal contracting procedures. The Branch prepared numerous opinions consistently giving the First War Powers Act, 1941, a very broad construction, upon the basis that it was not a statute motivated by social, economic, or political ideologies, but a statute to prosecute a relentless all-out war of self-preservation (SPJGC 160, 3 July 1942). This liberal construction was questioned by the Comptroller General but was supported by the Attorney General (40 Op. Atty. Gen. No. 53, 29 Aug. 1942), and with this broad construction, Title II of the First War Powers Act, 1941, became the basis for substantially all important War Department procurement. The Branch also construed the act to authorize sales of Government property where such sales were incident to procurement (SPJGC 1942/4367, 22 Sept. 1942).

The Second War Powers Act (56 Stat. 177) provided additional authority for the acquisition and disposition of property, protection of war industries and resources, and inspection and audit of war contracts; and it provided priority powers, requisitioning powers, and other powers essential to the prosecution of the war. This act also called for interpretation and application by this Branch of the Division to the War Department's construction and procurement activities. Questions involving the requisitioning of personal property and the placing of mandatory orders also required much of the attention of the Branch. Close questions were frequently presented involving the delegability of authority, the replies to which resulted in the amendment of regulations in order to facilitate imperative action in procurement by requisition (SPJGC 1943/10967, 16 Aug. 1943; see 8 F.R. 13381, 2 Oct. 1943).

As the program to obtain supplies and materials in the most expeditious manner possible became organized and was put in operation, there came to the fore the problem of eliminating excessive profits, emphasized by the decision in United States v. Bethlehem Steel Corp. (315 U.S. 289).

The Renegotiation Act of 28 April 1942 (56 Stat. 226), as several times amended (56 Stat. 982; 57 Stat. 347; 57 Stat. 564; 50 U.S.C.A. App. 1191) presented legal problems concerning the extent of its applicability and the establishment of administrative procedures, and opinions prepared by the Contracts Law Branch were corroborated by subsequent pronouncements of Congress (SPJGC 1942/4869, 18 Oct. 1942; id. 1942/5133, 4 Nov. 1942).

Movement of our contractors and our troops into foreign lands raised new problems. Legal guidance was requested and given on the establishment of foreign air routes and fields; the extent of the prohibitions of the Trading With the Enemy Act (40 Stat. 411; 55 Stat. 839; 50 U.S.C. App. 616) were defined and explained so that military commanders abroad were not impeded thereby (SPJGC 1942/4241 (secret), 15 Sept. 1942), and the liberalization of procurement procedures to be employed by American commanders in foreign theaters, unaided by the requisitioning powers of Government, was legally supported (SPJGC 1942/4636, 7 Oct. 1942). This latter point resulted ultimately in War Department Circular No. 21, 1943, which was based upon opinions of this Branch approved by the opinion of the Attorney General (40 Op. Atty. Gen. 56), and later amended by War Department Circular No. 330, 1944.

The establishment of the War Department Board of Contract Appeals by memorandum of the Secretary of War, 8 August 1942, as an administrative forum to hear disputes between contractors and contracting officers gave rise to problems concerning its legality (SPJGC 1943/1179, 29 Jan. 1943), which was sustained, and the extent of its jurisdiction, which was delineated (SPJGC 1943/2811, 13 Feb. 1943; SPJGC 1943/3266, 27 April 1943; SPJGC 1943/7266, 5 June 1943). Opinions of the Contracts Law Branch served as guides for the action of the Board, particularly on questions of damages and reimbursement.

Although the same general types of problems theretofore encountered were presented during the fiscal year 1944, the emphasis in legal activity shifted to a considerable extent from problems arising in connection with making contracts to those arising in connection with their termination. The Division rendered opinions to the Director of Materiel and worked in collaboration with the Legal Branch of his office in the preparation and amendment of Procurement Regulation No. 15, which provided for the termination of contracts for the convenience of the Government. Among the legal opinions rendered in connection with termination, one of the most basic was that expressing the view that authority existed to amend contracts even after notice of termination had been given, so that the broad authority granted by the First War Powers Act continued to be available for the less obvious portion of the procurement program (SPJGC 1943/10937, 15 Oct. 1943; SPJGC 1943/10938, 24 Aug. 1943). In connection with termination, the Division made a survey and report of cases involving fraud in the disposition of Government property following World War I in order to advise and caution officers charged with disposition of property (SPJGC 1944/1432, 13 Jan. 1944; SPJGC 1944/3181, 24 April 1944).

In connection with a proposal for new legislation granting to the War Department authority to dispose of property, the Division advised as to the authority already existing (SPJGC 1943/11779-A, 30 Nov. 1943). It reassured contracting officers by advising that officers and employees of the Government are not guilty of a violation of a criminal statute when in the performance of their official duties and without personal gain, they assist and advise contractors in the submission of their claims against the Government arising out of termination (SPJGC 1944/3194, 10 May 1944).

The decision of the United States Supreme Court in March 1943, in Penn Dairies Inc. v. Milk Control Commission of Pennsylvania (318 U.S. 261) required a revision of the basic concepts of governmental immunity from the restrictions imposed by state law. The decision of that court in Standard Oil Co. v. Johnson (above) in June 1942, confirming the War Department's view that post exchanges are governmental agencies, gave rise to new problems such as meeting the contention raised by the Civil Service Commission that post exchange employees are, in view of that decision, Government employees subject to its regulations (SPJGC 1944/1748, 13 Mar. 1944).

The increased activity of the Army in many foreign countries gave rise to the need for determinative opinions on various fundamental and urgent

questions. The authority of commanders in foreign theaters of operations to procure services as well as materials pursuant to War Department Circular No. 21 of 1943 is one example (SPJGC 1943/13218, 22 Sept. 1943; SPJGC 1944/6415, 12 June 1944). Jurisdictional questions arose concerning the leased bases. Various problems were encountered which led to the expression of opinion that American labor laws and employee's benefit provisions were not applicable in foreign countries, having customs and standards different from ours, and the opinion of the Division in this matter led to the unnumbered War Department Circular of 4 September 1943 (SPJGC 1943/11085, 13 Aug. 1943).

During the fiscal year 1945, as the war approached its final phase, there were enacted two statutes reflecting the change in emphasis from procurement to reconversion and basically affecting the law relating to the termination of Government contracts and the disposition of surplus property.

The Contract Settlement Act of 1944 (Public Law 395, 78th Cong.), approved 1 July 1944, granting wide powers to contracting agencies, including the War Department, presented many new problems of construction. One of major importance was whether the authority granted was broad enough to permit the War Department to allow a contractor an item which the General Accounting Office had previously suspended, and the Contracts Law Branch prepared an opinion, later concurred in by the Attorney General (Vol. 40 Op. Atty. Gen. No. 84), expressing the view that the War Department had such authority under the act where the allowance was part of a termination settlement (SPJGC 1944/10456, 23 Sept. 1944). The Branch was also called upon to make an exhaustive study of the legal effect of the Government's direct payment to a subcontractor under section 7 of the act in the event of a subsequent bankruptcy of the prime contractor, and as a result of such study it prepared an opinion advising generally concerning questions of preference and Government priority involved in such a situation (SPJGC 1944/12685, 13 Jan. 1945). The broad scope of section 17 of the act, which authorized the War Department to pay fair compensation for materials, services, or facilities received without a formal contract, was the subject of continuous study by the Branch.

Another question arising under the Contract Settlement Act of 1944 was the construction of section 8(g), relating to the settlement of claims arising from "interim financing". Consideration of all the questions presented in this connection required that there also be considered the companion statute, the Surplus Property Act of 1944 (Public Law 457, 78th Cong., approved 3 Oct. 1944) and its broad grant of the authority to dispose of such property (SPJGC 1944/10640, 25 Nov. 1944). It was necessary to determine the effect of the new statute upon prior restrictive ones such as the Chief of Staff Statute (above) (SPJGC 1944/12775, 18 Nov. 1944), and to consider the extent of the provisions of section 27 of the act which prohibited certain former Government employees and commissioned officers from representing, for two years after such employment, private persons in connection with any matter involving the disposition of surplus property (see MS Op. Atty. Gen. to Sec. of Treas. 13 Nov. 1944).

The Branch also considered special problems such as the validity of authorizing the Air Transport Command to carry civilians and freight for hire, and the problems resulting from such authorization by Executive Order 9492, 24 October 1944, and War Department Circular No. 451, 1944, and problems involving prisoners of war (SPJGC 1944/11192, 30 Oct. 1944). It took an active part in the work of a committee organized to study the application of the Royalty Adjustment Act (56 Stat. 1013; 35 U.S.C. 89-96), the Repricing Act (Title VIII of the Revenue Act of 1943, as amended, 58 Stat. 92; 50 U.S.C. App. 1192), and the Renegotiation Act (above) to certain patent royalty agreements entered into with alien patent owners, and it collaborated in the preparation of an opinion based upon such study (SPJGP 1945/2032, 28 Feb. 1945).

The Branch was called upon to make studies looking toward the post-war period when the emergency procurement authority would no longer be available. It also continued to prepare opinions upon basic questions relating to Government contracting, such as the extent of permissible control to be exercised over a contracting officer in making a decision which the contract provided should be his decision (SPJGC 1945/2115, 19 Feb. 1945), and the authority to enter into obligations such as indemnity agreements where the liability assumed might exceed available appropriations (SPJGC 1944/10016, 2 Sept. 1944).

Transportation by air of military and other personnel and supplies to friendly and allied countries necessitated the installation of many additional air fields and other facilities in foreign countries. The Contracts Division prepared, reviewed and revised contracts and rendered advice with respect to these activities.

Legal offices operating within the technical services and within certain staff divisions of the Army Service Forces were established and they screened and disposed of many problems of the kind formerly handled by the Contracts Law Branch before the outbreak of hostilities, including the actual preparation and review of contracts. Many procurement problems were coordinated and disposed of by the Legal Branch, Office of Director of Materiel. Inquiries on such subjects addressed to this office were ordinarily routed through that office. However, practically all of the cases formally submitted after this screening process were cases of considerable difficulty or those especially requiring the sanction of The Judge Advocate General; and the final resolution of basic, unusual, or doubtful legal questions concerning the acquisition of materials and services continued to be a function of the Contracts Law Branch. The approved legal precedents of the War Department which governed all its procurement were the opinions of The Judge Advocate General which emanated from the Contracts Law Branch, and in many instances, problems were disposed of by reference to or application of such precedents. The growth of other legal offices and of legal precedents furnished by this Branch necessarily diminished the number of problems which would otherwise have been presented for formal opinions. However, enactment of the entirely new legislation, mentioned above, granting authority to expedite reconversion presented many

basic legal problems for the solution of which no precedents existed. These problems were the subject not only of formal opinions but also of legal studies for the clarification of questions not yet formally submitted to the Judge Advocate General's Office, and in keeping with the memorandum of the Secretary of War of 13 March 1942, file G.1/16470, "spot" advice or assistance which often required extensive research was increasingly sought by and given daily to operating legal offices and technical offices.

In addition to the matters handled in the Office of The Judge Advocate General in Washington, special missions away from the office essential to the solution of unusual contract matters were undertaken from time to time by officers of the Division and the Contracts Coordinator, at such widely separated places as South America, the Caribbean Area, Mexico, Canada, and the States of California and Washington.

2. The Contracts Coordinator

The Contracts Coordinator was charged with the supervision of the Contracts Division and coordination of the legal work connected with Government contracts done by the Contracts, Patents, Tax, and Litigation Divisions, and by legal agencies of the War Department outside the Office of The Judge Advocate General (ASF Manual M 301, 15 Aug. 1944, sec. 208.00 c(7)). The Contracts Coordinator or a member of the Contracts Law Branch acting as his representative, regularly attended the meetings held by the Chief, Legal Branch, Office of Director of Materiel, with representatives of legal offices of the technical services to discuss proposed revisions of Procurement Regulations which are often also submitted to the Coordinator for comment or concurrence. He or his representative also attended meetings of the Contract Committee of the Procurement Division, Treasury Department, to discuss revisions of contract forms. Recently the Coordinator was requested to serve on a committee to make an analysis to determine which of the laws which have effected the industrial mobilization program followed during the present war should be retained in that present form, which should be amended and how, which should be repealed or permitted to expire, and what new items of legislation should be recommended for enactment in the event of a future mobilization.

By memorandum dated 1 December 1944 the Director, Special Planning Division, Office, Chief of Staff, requested The Judge Advocate General to furnish an outline of the development of a program for planning purposes designed to furnish general counsel and legal services in connection with procurement and related matters to the Army Service Forces and the Army Air Forces - (a) for the period following V-E Day until the defeat of Japan; (b) for the post-war period after the defeat of Japan in the event of the creation of a single department of the armed forces; (c) for the post-war period after the defeat of Japan in the event a single department of the armed forces is not provided for. The preparation of this outline by the Contracts Coordinator for The Judge Advocate General required conferences with the chiefs of the principal legal offices of the War Department, including those of the Air Technical Service Command at Wright Field, Ohio, as well as with the General Counsel of the Navy Department.

3. The Bonds Branch

The Bonds Branch, Contracts Division (known on 1 July 1940 as the Bonds Subsection of the Contracts Section), was then governed by paragraph 3 of AR 5-220, 6 October 1936, which provided:

"EXAMINATION OF BONDS.--All fidelity and surety bonds (bid bonds excepted) required by the several bureaus of the War Department will be forwarded to The Judge Advocate General for examination as to whether they are in proper form and duly executed; in the case of corporate sureties, to ascertain whether those who purported to execute them on behalf of such surety companies had authority to do so; in the case of individual sureties, to ascertain whether the affidavit of justification and the certificate of sufficiency of the sureties are in accordance with regulations; and in case of payment bonds required by the act of August 24, 1935 (49 Stat. 793), to ascertain whether the penal sum thereof is in the requisite amount * * *."

This regulation was amended on 7 August 1940 to require that The Judge Advocate General examine all such bonds as to legal sufficiency, in addition to their form and execution. Prior to this amendment, the Bonds Subsection had examined bonds for legal sufficiency, but had not been required to do so. It had merely been required to check the authority of the surety company representative to execute the bond through powers of attorney filed in this office on behalf of the various agents and officers of the surety companies authorized by the Treasury Department to write bonds covering Government risks, and to examine the bonds to ascertain that they had been properly executed by both the principal and the surety. Thenceforth, it was required that each bond be examined to determine that it was legally sufficient for its intended purpose.

The Miller Act (49 Stat. 793) required that on contracts exceeding \$2,000 in amount for the "construction, alteration, or repair of any public building or public work of the United States", the contractor furnish a performance bond for the protection of the United States and a payment bond for the protection of all persons supplying labor and materials. The words "public work" as used in this act had been construed to cover not only construction contracts, but also supply contracts where, when partial payments had been made, title passed to the Government. The act of 8 October 1940 (54 Stat. 965) authorized the waiver of performance and payment bonds required by the Miller Act under cost-plus-a-fixed-fee contracts only. However, the act of 29 April 1941 (55 Stat. 147) provided that such bonds could be waived in the discretion of the Secretary of War on supply contracts for the Army regardless of the terms of such contracts as to payment or title, although bonds could be required on contracts which would have been previously subject to the provisions of the Miller Act. On 6 May 1941, the Secretary of War determined that payment bonds should not be required on supply contracts unless specifically authorized by the Under Secretary

of War, and that performance bonds should not be required solely by virtue of the provisions of the Miller Act, but that the pertinent Army regulations and instructions of the Secretary of War relating to performance bonds on supply contracts in general should govern contracts for "public work of the United States". Pursuant to authority delegated under the First War Powers Act, 1941 (above), and Executive Order No. 9001, dated 27 December 1941, the Under Secretary of War delegated to the chiefs of the supply services the authority to waive any mandatory performance and payment bonds required by the Miller Act on construction contracts as to which such a waiver had not previously been authorized, and authority was granted to delegate this power to such officers or employees of the War Department as they deemed proper.

On 1 July 1942, paragraphs 401 to 417 of the War Department Procurement Regulations superseded AR 5-140 and AR 5-220 and all prior directives and instructions relating to bonds. Paragraph 403 thereof incorporated verbatim paragraph 3, AR 5-220. The requirement of performance and payment bonds was made discretionary with the chief of the supply service concerned and was to be the exception rather than the rule (PR 410.1 and 412.1). It was also provided that payment bonds would be mandatory on construction contracts where a performance bond was required. By memorandum, dated 28 August 1942, Headquarters, Services of Supply, this policy was modified to the extent that payment bonds generally were to be required on construction contracts. On 28 May 1943 this general rule was incorporated in Procurement Regulation 406.3. This policy as to the requirement of performance and payment bonds continued, except that in April 1944, the Chief of Engineers determined that performance as well as payment bonds would ordinarily be required on construction contracts exceeding \$2,000. A rise and fall in volume of contract bonds processed by this office resulted from the policies outlined above pertaining to the requirement of such bonds, the waiver of bonds on supply contracts being somewhat offset by the great increase in military construction during the fiscal years 1941-43 and the decrease in such construction after July 1943.

The act of 2 July 1940 (above) authorized the making of advances, not exceeding thirty per cent of the contract amount, to War Department contractors "with such adequate security as the Secretary of War shall prescribe." Generally the security prescribed was an advance payment bond or a guarantee, both of which were submitted to the Bonds Subsection for approval as to legal sufficiency before the advances were made. Inasmuch as the making of advance payments constituted a new field of law, this office faced many original problems in connection with advance payment bonds. The Bonds Branch was instrumental in developing the advance payment bond forms which now appear in PR 496.6.

In connection with the development of extensive additional facilities for War Department contractors, particularly in connection with the Ordnance Department, it was deemed advisable to require performance bonds with penal sums unlimited in amount, because of the astronomical amounts of some of the contracts. Inasmuch as no ordinary corporate surety on the

Treasury Department list could qualify for an unlimited risk, the Under Secretary of War, acting for the Secretary of War, made administrative determinations that the corporate parents of the contractors (generally created for the specific purpose of building and operating the plant) had sufficient financial resources to act as surety or guarantor on the contract, and then the bond or guarantee was submitted to this office for determination as to legal sufficiency. In order to determine that the parent corporation had the corporate power to execute the bond or guarantee in question, this office required the submission of a number of corporate documents, such as the articles of incorporation and bylaws of the parent and subsidiary, resolutions authorizing the creation or acquisition of the subsidiary and the execution of the bond or guarantee, together with an opinion of counsel as to the validity thereof. In each case it was also necessary for this office to examine the law of the state of incorporation of the parent.

Prior to December 1942, there was no requirement of law or regulation that consents of surety be submitted to this office for approval, although consents to supplemental agreements affecting large increases in contracts were occasionally submitted by the Under Secretary of War for determination as to legal sufficiency. However, this Branch (as it was designated in August 1942) had observed from its examination of various contract files of the supply services that consents of surety were not obtained in many cases to material modifications of contracts, and that often the consent obtained was not legally sufficient. Accordingly, the Branch, in conjunction with the Insurance Branch, Fiscal Division, Headquarters, Services of Supply, sponsored amendments to the Procurement Regulations requiring that all consents of surety be submitted to The Judge Advocate General for examination as to form, execution and legal sufficiency (PR 314.4, 3 Dec. 1942), and establishing a standard form of consent (PR 314.5). The consents of surety approved by the Branch increased from 531 for the fiscal year 1941-42 to 5,086 for the fiscal year 1942-43, and 7,651 for the fiscal year 1943-44. A substantial percentage of such consents of surety obtained were consents to contract modifications executed in prior years but not previously processed by the headquarters of the supply services.

It was determined that some procedure should be devised to expedite the obtaining of consents of surety because of the expected increase in their volume, as well as to make corrections in the bonds submitted to this office. Accordingly, through the cooperative efforts of this Branch, the Office of the Under Secretary of War, and the Insurance Branch, Fiscal Division, Headquarters, Services of Supply, the "Expediter Plan" was established in January 1943 (AGO Memo S5-15-43, 25 Jan. 1943). Pursuant to this plan, powers of attorney, executed by most of the surety companies on the Treasury Department list, authorized two individuals in Washington, D. C., to correct and complete bonds and also to execute, correct and complete consents of surety to contract modifications. This plan eliminated the time and work of the Branch which would otherwise have been required for writing letters to various surety companies in order to effect necessary corrections in the bonds and consents of surety and to obtain execution of consents of surety.

After considerable research, this Branch on 29 November 1942, recommended that the instructions accompanying the standard Government performance and payment bond forms be amended to provide for the manner of execution of such bonds by limited partnerships. Upon concurrence by the Director, Fiscal Division, Headquarters, Services of Supply, this change was adopted for use by the War Department pending printing of changes in the bond instructions (AGO Memo, 17 Dec. 42 (SPX 168 (12-14-42) SPBFC-MP-RM)). This change was incorporated in paragraph 411, Procurement Regulations. Pursuant to a series of conferences between this Branch and the Insurance Branch, Fiscal Division, Headquarters, Army Service Forces, Procurement Regulation No. 4, relating to bonds, was completely revised and rewritten, effective 28 May 1943. Features of this revision included:

- a. A statement and definitions of the types of bonds (including bonds not previously listed) ordinarily used in connection with War Department contracts.
- b. The inclusion of a schedule of premium rates.
- c. The inclusion of a schedule of the required penal sum of payment bonds executed in connection with lump sum contracts.
- d. A re-statement (complementing the provisions of PR 314 to 314.5, inclusive, Mar. 26, 1943), of the regulations governing consents of surety.
- e. The inclusion of forms of bonds commonly used in connection with War Department contracts.

The number of official bonds approved increased proportionately to the expansion of the Army and the number of civilians employed by the War Department. Although this was not reflected in the fiscal year 1941-42 when there was a slight decrease from the preceding year in the number of official bonds approved (possibly because such bonds are renewed every four years, this figure rose from 5,730 in 1941-42 to 12,537 in 1942-43, and to 14,117 in 1943-44. There was no change in the basic requirement of Army Regulations that accountable officers of the Quartermaster Corps and Finance Department, including officers detailed therein from other arms or services, and warrant officers (other than flight officers) be bonded, although this had been extended to apply to Finance and Quartermaster officers of the National Guard on extended active duty, as well as to AUS officers assigned to duty with the Finance Department or Quartermaster Corps. However, a number of civilian positions had been newly subjected to bonding requirements by Army Regulations, for example, civilian correspondence clerks in the Office of Dependency Benefits who handled refunds of dependents' benefits, and civilian employees of the War Department who censored mail at certain overseas installations.

Among the new official bond forms approved by this Branch were:

a. Bond for civilian certifying officers who certify to disbursing officers documents pertaining to civilian pay accounts. (WD FD No. 66)

b. Bond for civilian property agents, accountable for Government property furnished to or acquired by War Department contractors for use under their contracts. (WD FD No. 20h)

c. Bond for civilian salvage or accountable agents to carry out the duties usually performed by salvage officers at procurement or manufacturing establishments.

d. Bond of assistants to the Effects Quartermaster covering funds or property of missing or deceased military personnel.

e. Combination form bond for enlisted personnel and civilian employees other than certifying officers. Also interim bond for same. (WD FD Nos. 72 and 73)

f. Combination form bond for commissioned officers and warrant officers. Also interim bond for same. (WD FD Nos. 361 and 362)

When the National Guard units were called into Federal service, there were submitted to this office bonds given by State Guard Property Agents to insure the return of Federal arms and equipment loaned to the various State Guards. At the request of the National Guard Bureau this office approved a rider (NGB Form No. 040) to the bond form increasing the penal sum of the bond from \$5,000 to \$10,000, as the result of increases in the amount of equipment loaned to the State Guard units.

Another new bond form approved by this Branch was that used by the Chief of Engineers to guarantee the return of Government plans and specifications loaned to contractors.

Also, because of the establishment of a large number of Army installations in this country, this office experienced a great increase in the number of performance bonds processed covering salvage contracts (for the sale of unserviceable property and certain waste material).

Another type of bond which was processed by this office in a much greater volume during the defense and war periods, was the ordnance and ordnance stores bond furnished as security for Government arms and equipment issued to schools with approved military training courses and to civilian rifle clubs. It is estimated that the number of such bonds processed during the fiscal year 1945 will exceed that of any previous year.

Another new type of bond recently approved by this office was a fidelity bond covering the custodian and other personnel administering

the Central Prisoner of War Fund in the Office of The Provost Marshal General. This was executed on a standard commercial blanket position form adapted by indorsement to the situation under consideration.

4. The Contract Appeals Branch

The Contract Appeals Branch of the Contracts Division was established 10 November 1942 to represent the Government at the hearing of appeals before the War Department Board of Contract Appeals, established in the Office of the Under Secretary of War pursuant to memorandum of the Secretary of War dated 8 August 1942. The policy of the War Department in the last war and in this war was to settle within the Department, and without recourse to court whenever possible, disputes arising between the Government and its contractors. To that end, and for that purpose, the Secretary of War established the War Department Board of Contract Appeals to act as his representative in the hearing and determination of appeals by War Department contractors from decisions of contracting officers made pursuant to contract provisions rendering the decisions final except for such appeal. Upon the creation of the Board, The Judge Advocate General, at the request of the Under Secretary of War, assigned one officer to the Board as trial attorney. Thereafter, additional officers were assigned to act as assistant trial attorneys. Upon the establishment of the Branch these officers were assigned to it and the trial attorney became Chief of the Branch.

The proceedings before the Board were controlled by the Rules and Regulations which were set forth in Procurement Regulation 318-E as promulgated by the Board and approved by the Under Secretary of War. Although the proceedings of the Board were less formal, the duties of the officers of the Branch were similar to those of attorneys preparing and presenting cases for the consideration of a court. The record, forwarded by the contracting officer whose decision was appealed from, formed the basis for the appeal. However, witnesses for the appellant and for the Government could testify at the hearing, and depositions could be submitted or the parties could stipulate as to their testimony. Memoranda of law could be requested by the Board or could be submitted by the appellant or the Government without such request. The development of the functions of the Branch directly reflected the increase in the personnel and the enlargement of the jurisdiction of the Board.

As originally constituted, the Board had three members. This number was increased to 7 in May 1943, and to 9 on 16 September 1944. By directives of the Under Secretary of War, the jurisdiction of the Board was increased. By directive dated 16 May 1944, jurisdiction was conferred upon the Board to hear requests for relief by contract amendment pursuant to authority granted by the First War Powers Act, 1941 (55 Stat. 838), and Executive Order No. 9001, dated 27 December 1941. By directive dated 30 May 1944, jurisdiction was conferred to hear appeals to the Secretary of War from the imposition of penalties incurred under the provisions of the Eight-Hour Law of 1912 (37 Stat. 137). By directive dated 4 July 1944,

jurisdiction was conferred to hear appeals from administrative decisions of contracting officers which were not made final by the terms of the contract. By directive dated 14 September 1944, jurisdiction was conferred to hear appeals under section 17 of the Contract Settlement Act of 1944 (Public Law 395, 78th Cong.) referred to the Board by the Director, Purchases Division, Headquarters, Army Service Forces. The Branch was also given authority to apply the provisions of section 17 in the case of appeals taken under the "Disputes" article of the contract (PR 308-H 7).

5. The Liaison and Special Matters Branch

The Liaison and Special Matters Branch of the Contracts Division was activated 20 March 1945 to formalize an existing situation wherein officers assigned to the Contracts Law Branch, and particularly one officer so assigned, had been continuously engaged in the performance of special matters not directly related to the usual functions of the Contracts Law Branch, though in the field of contract law. Such matters included the preparation of a contract in which other agencies of the War Department, as well as the Navy Department and the Department of Justice, were interested, and which resulted in the settlement of a large claim against the Government arising out of the condemnation of an airport; participation in a Grand Jury investigation of the activities of an Ordnance manufacturer, which investigation necessitated the presentation of evidence of a number of high-ranking Army officers and War Department officials and the consideration of action to be taken by the War Department, administratively or otherwise, with respect to War Department contracts of the manufacturer; and participation with the Department of Justice and the Navy Department in the preparation for trial of a suit instituted by a contractor against the Secretary of the Navy to test the constitutionality of the Renegotiation Act (above).

CONTRACTS DIVISION AND
OFFICE OF CONTRACTS COORDINATOR

PERSONNEL

<u>Commissioned</u>	<u>7/1/40</u>	<u>7/1/41</u>	<u>7/1/42</u>	<u>7/1/43</u>	<u>7/1/44</u>	<u>3/31/45</u>
Contracts Law Branch	3	15	11	13	13	13
Bonds Branch	1	6	4	2	2	2
Contract Appeals Branch (1)				9	13	15
Industrial Law Branch (2)						2
Liaison & Special Matters Branch (3)						1
Total	4	21	15	24	28	33

Civilian

Contracts Law Branch	5	8	7	7	5	6
Bonds Branch	2	11	9	7	7	5
Contract Appeals Branch				3	4	5
Industrial Law Branch						1
Liaison & Special Matters Branch						0
Total	7	19	16	17	16	17

	<u>CASES PROCESSED</u>				
	<u>7/ 1/40</u> to <u>6/30/41</u>	<u>7/ 1/41</u> to <u>6/30/42</u>	<u>7/ 1/42</u> to <u>6/30/43</u>	<u>7/ 1/43</u> to <u>6/30/44</u>	<u>7/ 1/44</u> to <u>3/31/45</u>
<u>Contracts Law Branch (4)</u>					
Carded Cases	954	612	390	296	173
Uncarded Cases		216	1,132	1,216	1,061
<u>Bonds Branch (5)</u>					
Bonds	32,630	37,174	35,773	26,409	16,084
Consents of Surety		531	5,086	7,651	1,958
Correspondence and oral opinions	4,629	5,175	11,843	17,356	6,493
<u>Contract Appeals Branch (1)</u>					
Appeals disposed of			107	475	401
<u>Industrial Law Branch (2)</u>					
Plant seizures	1	1	1	7	12
<u>Liaison & Special Matters Branch (3)</u>					

- (1) The War Department Board of Contract Appeals was created pursuant to memorandum of Secretary of War, dated 8 August 1942. The Judge Advocate General's Office, Contracts Division, began the handling of these cases during November, 1942. The figures set forth relate to personnel of the Branch and cases handled by the Board of Contract Appeals after that date.
- (2) Activated as a Branch under Office, Contracts Coordinator, 12 August 1944.
- (3) Activated 20 March 1945.
- (4) The Division began to keep record of uncarded cases 11 April 1942.
- (5) Consents of surety were not required to be submitted to Bonds Branch prior to 12 December 1942.

WAR DEPARTMENT
ARMY SERVICE FORCES
OFFICE OF THE JUDGE ADVOCATE GENERAL
CONTRACTS DIVISION AND OFFICE OF CONTRACTS COORDINATOR
FUNCTIONAL CHART

COLONEL J. ALTON HOSCH	
CHIEF, CONTRACTS DIVISION	CONTRACTS COORDINATOR

MAJ. CHARLES L. FLEMING
EXECUTIVE OFFICER

CONTRACTS LAW BRANCH
LT. COL. JOHN M. FASOLI
CHIEF

Prepares opinions on questions of law as to the nature and extent of authority to contract; the availability of appropriations to contract; advertising; opening and awarding of bids; the negotiation, form, legal sufficiency, and effect of original and supplemental contracts and change orders; advance payments; rights and obligations arising upon modification, extension of time, renewal, performance, delay, breach, renegotiation, repricing and termination of contracts; debarment of bidders; the assessment of liquidated damages; emergency purchases; acceptance of donations; the requisition, sale, lease, exchange, and other disposition of personal property; the construction and operation of contract provisions for unemployment, workmen's compensation, liability, and other forms of insurance.

The Contracts Coordinator supervises the Contracts Division and coordinates the legal work connected with Government contracts done by the Contracts, Patents, Tax, and Litigation Divisions and by legal agencies of the War Department outside the Office of The Judge Advocate General.

CONTRACT APPEALS BRANCH
LT. COL. FELIX ATWOOD
CHIEF

Represents the Government in the hearing of appeals by Government contractors to the War Department Board of Contract Appeals. The Chief of the Branch is the Trial Attorney for the Board assigned pursuant to the memorandum of the Secretary of War, dated 8 August 1942, creating it. The members of the Branch are his assistants. The Branch prepares appeals for hearing, examining both facts and applicable law and securing additional testimony where necessary by depositions or by arranging for attendance of witnesses at hearings conducted in manner similar to civil trials.

INDUSTRIAL LAW BRANCH
LT. COL. PAUL M. HEBERT
CHIEF

Supervises and directs legal work incident to the emergency operation of industrial facilities, including the development of plans and procedures therefor, and work on specially assigned problems of labor law and industrial relations in connection therewith; maintains liaison with Labor Branch, Industrial Personnel Division, Army Service Forces, on matters of labor law and policies relating to War Department operation of industrial facilities under Executive orders; supervises the training and field activities of judge advocate officers assigned to the performance of legal work in connection with such missions; coordinates contract legal work incident thereto; and performs such special legal services on related matters or on other special industrial problems as may be requested by Industrial Personnel Division, Army Service Forces, or higher authority.

BONDS BRANCH
MAJ. COPELAND MORTON, JR.,
CHIEF

Examines all surety bonds required by the War Department (except bid bonds, other than annual bid bonds, blanket fidelity bonds, forgery bonds, and bonds required by Army Regulations to be filed elsewhere than at the War Department), and consents of surety to modification of contracts; and maintains for the War Department, files of powers of attorney indicating authority of representatives of authorized surety companies.

APPROVED 6 NOV. 1944
J. Alton Hosch
COLONEL, J.A.G.D.
CHIEF, CONTRACTS DIVISION
CONTRACTS COORDINATOR

CHAPTER IX

LITIGATION

1. Bases of The Judge Advocate General's Functions Pertaining to Litigation.

The functions of The Judge Advocate General with respect to War Department litigation and related matters were not authoritatively defined on 1 July 1940. Some coordination of such matters was possible at that time as a result of the requirement in AR 210-75, 16 May 1928, that the commencement of suits affecting the War Department be reported to The Adjutant General, who customarily referred the reports to The Judge Advocate General for appropriate action. Such suits were not numerous prior to the present emergency period. However, the rapid and vast expansion of the procurement program in 1940 and 1941 as a result of the emergency greatly increased the volume and scope of the litigation which affected the interests of the War Department and made it necessary for the Department to devise new procedures for the protection of its interests.

On 16 December 1941 the Undersecretary of War issued Procurement and Contract General Directive No. 84. This directive, as somewhat broadened and clarified by Procurement and Contract General Directive No. 27, 7 March 1942, (Appendix 3-1) required that immediate action be taken to notify The Judge Advocate General of the service of process in all cases against cost-plus-a-fixed-fee contractors with the War Department and in all other cases in which the War Department had an interest, and it vested in him the responsibility of maintaining liaison with the Department of Justice and other Government agencies in connection with such cases.

In the early stages of the war, scrap metal shortages caused an increase in the number of petitions filed by railway companies before the Interstate Commerce Commission and before State regulatory agencies for permission to abandon railroad lines. The War Department desired to prevent any abandonments which might jeopardize the maintenance of an adequate railway system for the transportation of men and material needed in the war effort. A procedure for the protection of the War Department's interests in these proceedings was first established on 7 May 1942. Since that date, The Judge Advocate General has been responsible for obtaining and coordinating the views of the interested agencies of the War Department with respect to proceedings involving proposed abandonments of railroad lines. The current procedural instructions relating to this subject were stated in War Department Memorandum No. 850-44, 19 August 1944 (Appendix 3-2).

The promulgation of AR 410-5 on 7 July 1942, gave to The Judge Advocate General complete authority to supervise for the War Department all pending and prospective litigated cases and quasi-judicial proceedings affecting the interests of the Department, and provided a procedure whereby all such cases and proceedings instituted against the personnel or agents of the Department were to be reported promptly to The Judge Advocate General. A new version of AR 410-5 was issued on 17 August 1944. It constituted the basic source of The Judge Advocate General's authority over War Department litigation.

2. Assignment of Litigation Work Within the Office.

On 1 July 1940, the Claims and Litigation Section of The Judge Advocate General's Office exercised The Judge Advocate General's functions with respect to litigation (except patent litigation). On 29 December 1941, the Claims and Litigation Section was divided into two separate sections, the Claims Section and the Litigation Section. By an office memorandum dated 17 March 1942, the Litigation Section was redesignated as the Litigation Division. The mission of the Litigation Division was stated as follows: "Handles supervision of litigation in which the War Department is interested; maintains liaison with the Department of Justice in connection therewith and questions pertaining to Federal and State taxation." However, as indicated by a contemporaneous statement of the functions of the Patents Division, the Litigation Division was not expected to handle or supervise patent litigation. The name of the Litigation Division was changed to Tax and Litigation Division on 15 June 1942. Subsequently, on 29 July 1942, the Tax and Litigation Division was divided into two separate divisions, the Tax Division and the Litigation Division.

The status of the Litigation Division was not changed after 29 July 1942. The mission of the division, as stated in the office memorandum creating the division in its present form, was to perform the functions of The Judge Advocate General in the field of litigation, "With the exception of matters involving Federal, state and local taxation and such other matters as may be expressly assigned by The Judge Advocate General to other divisions or officers * * *". Subsequent to 29 July 1942 various types of litigation were assigned to other divisions of The Judge Advocate General's Office for handling. These included habeas corpus cases involving persons held by the Army; proceedings before the War Department Board of Contract Appeals; cases involving the exclusion of persons from military areas; cases growing out of the seizure and operation of war plants by the War Department pursuant to directives of the President; cases based upon the discharge of employees from war plants on account of alleged subversive activities; and proceedings before the Government Appeal Board under the Contract Settlement Act of 1944 (Public Law 395, 78th Congress) which involved the termination of War Department contracts.

3. Work of the Litigation Division.

a. Proceedings involving common carriers. A major function of the Litigation Division was to represent the Secretary of War as counsel in formal proceedings before the Interstate Commerce Commission and other regulatory agencies of the Federal and State governments which exercise jurisdiction over common carriers. In this work, which was first undertaken in 1942, the division was concerned largely with advancing and protecting the War Department's interests in the field of transportation. Through the efforts of the Litigation Division, in cooperation with the Office of the Chief of Transportation, substantial savings in transportation costs were effected, improper practices upon the part of carriers were curbed, and essential transportation services were maintained. The members of the division working in this field were engaged in assembling and organizing facts for presentation to the various regulatory agencies, in the preparation of pleadings, motions, protests, petitions, and briefs, and in the trial of proceedings.

The subject matter of these proceedings were varied. Proceedings involving the proposed abandonment of railroad lines were numerous in 1942 and 1943, but later declined in volume. The division successfully opposed on behalf of the War Department a substantial number of rate increases proposed by rail carriers and by motor carriers. The division was likewise successful in obtaining the suspension or elimination of proposed or existing practices of common carriers which were objectionable to the War Department as increasing substantially the expense to the War Department of transporting troops and materiel or as interfering with the prompt movement of troops and materiel.

In proceedings before the Federal Communications Commission, the division, in cooperation with counsel representing other Government agencies, successfully resisted an effort that was made to discontinue the special Government rate on wire messages, and the division succeeded in having such rate made applicable to messages of the Army Exchange Service and the Army Motion Picture Service.

In a proceeding before the United States Maritime Commission, the division represented the War Department in obtaining the elimination of proposed increases in port charges at all Pacific Coast ports.

Since this type of work was undertaken in 1942, the division handled as counsel for the War Department a total of 703 formal proceedings before Federal and State regulatory agencies having jurisdiction over common carriers. It is impossible to state in dollars the aggregate amount involved in these proceedings or the amount of the savings effected. A conservative estimate, however, would place the savings at a figure of well over a hundred million dollars.

b. Responsibility concerning court cases. The responsibility of The Judge Advocate General in connection with court cases which affect the interests of the War Department differed from his responsibility in connection with formal administrative proceedings of the sort mentioned in subdivision a above. Generally speaking, the Attorney General and his representatives in the Department of Justice, including the United States Attorneys throughout the country, were vested with authority to represent the Government as counsel in all court cases which involved the interests of the United States and its agencies, including the War Department. Hence, when a litigated case which was of interest to the War Department arose, this Department was ordinarily represented in court by an attorney of the Department of Justice. It was the responsibility of The Judge Advocate General in such a situation to assemble and furnish to the Department of Justice factual data bearing upon the case, to determine and inform the Department of Justice concerning the War Department's position relative to the various legal points involved in the litigation, and to provide such assistance (including the preparation of drafts of pleadings and briefs, and participation in the conduct of court proceedings) as might be needed by the Department of Justice. These functions were performed by the Litigation Division in connection with litigated cases of the types mentioned in the succeeding subdivisions of this report.

c. Cases against War Department cost-plus-a-fixed-fee contractors. As it was anticipated that the War Department might ultimately bear the financial burden of adverse judgments obtained by third persons against the Department's cost-plus-a-fixed-fee contractors in litigated cases arising in connection with the performance of the contracts, the defense of such cases was undertaken by the Government for the contractors, and the Litigation Division performed with respect to such cases the same functions which it performed with respect to other litigated cases that involved the interests of the War Department. Cases of this sort did not concern the War Department or The Judge Advocate General prior to the beginning of present emergency period, and the vast procurement program which developed largely on the basis of cost-plus-a-fixed-fee contracts. During the emergency period, to 31 March 1945, a total of 1,881 cases against cost-plus-a-fixed-fee contractors were handled for the War Department by the Litigation Division.

A substantial percentage of the cases against cost-plus-a-fixed-fee contractors involved the claims of their employees for additional compensation under the provisions of the Fair Labor Standards Act (52 Stat. 1060). A case under this Act frequently involved many individual plaintiffs, and the claim of each plaintiff necessarily was handled as though it constituted a separate case. Because of the public interest that was involved in suits against Government cost-plus-a-fixed fee contractors by their workmen under the Fair Labor Standards Act, and because of the common concern of several Government agencies in the problems which arose in connection with such suits, an inter-departmental agreement as to the manner in which they should be investigated and disposed of was prepared and signed in the fall of 1943

by representatives of the War, Navy, Justice, and Labor Departments and the War Shipping Administration (Paragraph 1120.3, Section III, Procurement Regulation 11 (Appendix 3-3)). Under the agreement, the Litigation Division determined, and informed the other interested agencies concerning, the views of the War Department as to whether specific cases against War Department contractors were meritorious or should be resisted, as to whether proposed compromise settlements of cases against such contractors should be consummated, and as to legal problems which were common to the several Government agencies as a result of litigation under the statute.

With respect to claims under the Fair Labor Standards Act that were submitted to War Department contractors by their employees prior to litigation, the Litigation Division furnished advice as to whether the claims were meritorious and should be paid or whether they should be denied.

As of the beginning of 1945, the claims in the pending Fair Labor Standards Act cases totalled approximately \$6,700,000. The claims of 772 plaintiffs for approximately \$1,150,000 had been disposed of previously for approximately \$150,000.

d. Bankruptcy cases. In any instance where a debtor of the War Department became involved in financial difficulties which resulted in proceedings under the Bankruptcy Act, the Litigation Division coordinated the action to be taken by agencies of the War Department in order to protect the Department's interests. The division also furnished to the Department of Justice, as in other cases which necessitate formal court action, any assistance needed by that Department in representing the Government before the court. Proposed compromise settlements and plans of reorganization were reviewed by the division, and the views of the War Department concerning such matters were determined and asserted. The bankruptcy matters handled by the Litigation Division involved War Department claims aggregating millions of dollars. This work was a product of the War Department's procurement activities during the emergency period.

Some of the bankruptcy claims arose out of the nonpayment of loans guaranteed by the War Department under Executive Order No. 9112, 26 March 1942. The Litigation Division was concerned with many other guaranteed loans which did not become involved in bankruptcy proceedings. When a loan guaranteed by the War Department was in a distressed condition for any reason, the matter was referred to the Litigation Division by the Office of the Fiscal Director in order that such legal action as would protect the War Department's interests might be taken. Such protective action might involve the revision of the loan agreement, the foreclosure of pledged collateral, suits against indorsers or surety companies, the formation of corporations to take title to the borrower's property in trust for payment of the loan, or actions

for negligence. Guaranteed loans aggregating more than \$14,500,000 were in a distressed condition on 1 March 1945.

A total of 225 cases of the sort mentioned arose during the war period, prior to 1 April 1945.

e. Contract renegotiation cases. When War Department contractors or their subcontractors failed to pay sums that were due under renegotiation agreements or under unilateral determinations made by the Secretary of War pursuant to the so-called Renegotiation Law, the matters were referred to the Litigation Division by the Director, Renegotiation Division, Army Service Forces, for such legal action as might be appropriate. The division undertook to obtain payment by correspondence and negotiations with the contractors and subcontractors. By 31 March 1945, a total of approximately one-half million dollars had been collected through the efforts of the division. When the efforts of the division to collect without suit were unsuccessful, the cases were referred by the division to the Department of Justice for the institution of legal proceedings.

Under the provisions of the Renegotiation Law, the amount of the excess profits determined by the Secretary of War in the course of renegotiation to be due may be redetermined by The Tax Court of the United States upon petition of the contractor or subcontractor. When such petitions were filed, the Litigation Division cooperated in the usual manner with the Department of Justice in the preparation of the proceedings for trial.

A total of 223 renegotiation cases were handled by the division from the enactment of the law in April 1942, until 31 March 1945.

f. Miscellaneous cases. The Litigation Division handled for the War Department, in the manner indicated in subdivision b above, admiralty cases which involved vessels owned or operated by the War Department, cases involving alleged frauds against the War Department by the Department's contractors or their subcontractors, suits in the Court of Claims which related to activities of the War Department, suits instituted on behalf of the War Department's cost-plus-a-fixed-fee contractors against third persons with reference to causes of action arising in connection with the performance of the contracts, actions against civilian officials and employees of the War Department and against military personnel which arose out of the performance of their official duties, and other court cases which affected the interests of the War Department. A total of 2,515 cases in these various categories have been handled by the division during the period.

g. Duties related to litigation. The Litigation Division, in addition to handling court cases and quasi-judicial proceedings of the types mentioned in the preceding subdivisions, performed for The

Judge Advocate General the functions assigned to him by sections III, IV, V, and VI of AR 410-5, 17 August 1944. It was necessary in the discharge of these duties to determine whether subpoenas or orders issued by courts or other civil tribunals in order to compel the production of War Department records should be complied with or resisted; to determine whether requests from Government agencies, State officials, and private persons for copies of War Department records to be used in connection with litigated cases should be granted or denied; to determine whether it was proper to make available civilian employees of the War Department and military personnel as witnesses in proceedings before civil courts and other civil tribunals; to determine whether private counsel should be employed in connection with cases which affect the interests of the War Department; and to determine whether members of the Army should be permitted to appear as private counsel in proceedings before civil courts and other civil tribunals. It has been estimated that work of this sort has increased more than ten-fold since the beginning of the war period.

h. Field litigation officers. The efforts of the officers assigned to the Litigation Division of The Judge Advocate General's Office were supplemented by the work that was done by litigation officers who were designated by The Judge Advocate General but who served in the several service commands. The designation of litigation officers in the field for this purpose was provided for in section VI of War Department Circular No. 263, 5 August 1942, because of the tremendous increase in War Department litigation as a result of the Department's expanded wartime activities. The provisions of the circular were subsequently superseded by section XVII of A.S.F. Circular No. 313, 19 September 1944. As court cases which affected the interests of the War Department arose throughout the country, The Judge Advocate General usually assigned to field litigation officers in the various service commands the responsibility of rendering assistance to the United States Attorneys who formally represented the Government in such litigation. These assignments to field litigation officers were made on a geographical basis. The assistance rendered by litigation officers included the making of factual investigations, the preparation of pleadings, the preparation of legal memoranda and briefs, the making of arrangements for the attendance of military personnel as witnesses for the Government, and upon the request of the respective United States Attorneys, the trial of cases on behalf of the Government. In addition to assisting United States Attorneys in connection with court cases, field litigation officers occasionally received from The Judge Advocate General assignments to represent the Secretary of War or cost-plus-a-fixed-fee contractors of the War Department as counsel in quasi-judicial proceedings before State administrative tribunals. Also, under a procedure outlined in a memorandum dated 4 September 1943 from the War Department to the Board of Governors of the Federal Reserve System, (Appendix 3-4) field litigation officers acted as counsel for the liaison officers maintained by the War Department at Federal Reserve Banks in connection with the guarantee of loans by the War Department under

Executive Order No. 9112. The Litigation Division exercised for The Judge Advocate General supervision over the litigation officers of the service commands in the performance of their duties.

i. Statistical summary. During the period from the beginning of the present emergency until 31 March 1945, a total of 5,547 cases and proceedings of the types mentioned in subdivisions a to f, inclusive, were handled. The spread of the work is indicated by the following figures:

Cases and proceedings handled
prior to 1 July 1943..... 2,627

Cases and proceedings handled
during fiscal year 1944..... 1,564

Cases and proceedings handled
during 9 mos. of fiscal year 1945..... 1,356.

CHAPTER X

PATENTS

1. Organization and Functions of the Patents Division - General

On 1 July 1940 the Patents Division, Office of The Judge Advocate General, was known as the Central Patent Section. The personnel on duty with the section consisted of two commissioned officers of the Regular Army and nine civilian employees, (Appendix 4-1), increasing by 31 March 1945 to eleven commissioned officers and eighteen civilian employees (Appendix 4-2). The Patent Section was redesignated the Patents Division on 23 March 1942. On 26 January 1943 the Division was subdivided into an Administrative Branch, a Classified Inventions Branch, a Claims Branch, a Prosecution Branch, and an International Branch, later redesignated as the Foreign Liaison Branch. On 23 December 1943 a Negotiations Branch was organized.

The Administrative Branch, the Claims Branch and the Prosecution Branch performed the normal peacetime functions of the Division. The Classified Inventions Branch was established by reason of the enactment into law, on 1 July 1940, of Public Law No. 700, 76th Congress, 3rd Session (54 Stat. 710), amending the act of October 6, 1917 (40 Stat. 394; 35 U.S.C. 42), popularly known as the "Secrecy Act". The Branch was assigned functions designed to assist the Commissioner of Patents in carrying out the provisions of that Act, to maintain the records of the Army Section, Army and Navy Patent Advisory Board, (the activities of which are discussed in a separate report), and to process tenders made to the Secretary of War in accordance with the terms of the Act. The International Branch was established to act as the office of liaison between the various United Nations supply agencies in this country and the various technical services and other departments and agencies of the United States Government, in connection with requests for the placing in secrecy of applications for patent in this country corresponding to applications filed in the foreign country concerned covering devices of military character. Such applications were considered on the basis of (1) the merits of the invention disclosed, or (2) the prior disclosure, for use in the war effort, of the invention by a representative of the United Nation concerned to a technical service or other department or agency of this Government. It further acted in an advisory capacity to the Assistant Chief of Staff, G-2, with respect to the release of technical information sought to be exchanged between American and British commercial companies which were parties to existing private agreements covering such exchange and the appropriate conditions under which such exchanges should be permitted. The Negotiations Branch was established as a result of the enactment into law, on 31 October 1942, of Public Law No. 768, 77th Congress, 2nd Session (56 Stat. 1013; 35 U.S.C. 89-96), commonly known as the "Royalty Adjustment Act of 1942", and performed

functions connected with the administration of that statute. It also performed functions in connection with securing patent licenses requisitioned by the British under the Patent Interchange Agreement (Executive Agreement Series 268), and acted as advisor and consultant to the War Department member on the Joint Committee provided for by Article XIII of that Agreement. On 1 March 1945 the Foreign Liaison Branch was inactivated as the functions performed by that Branch had decreased to such an extent that they could readily be absorbed by the executive personnel of the Division. Appended is a copy of the functional chart of the Patents Division as of 31 March 1945. (Appendix 4-3).

On 1 July 1940 the Central Patent Section performed certain functions as prescribed by Army Regulations 25-10, War Department, dated 26 March 1928. These functions were as follows:

a. To control and coordinate the patent activities of the Army (under the supervision and direction of The Judge Advocate General and the then Assistant Secretary of War, later the Under Secretary of War);

b. To act as office of liaison in patent matters with other governmental departments and agencies;

c. To exercise technical supervision over the work in the patent sections in the various branches of the Army in connection with the gathering and preparation of evidence for use by the Department of Justice in litigated cases involving the War Department.

d. To advise and direct the patent sections in the various branches of the Army upon questions involving the patent policies of the War Department; and

e. To receive, record in the Patent Office and permanently file thereafter all assignments and licenses under patents and applications for patents procured on behalf of the War Department.

In addition to these functions, and in accordance with the provisions of Army Regulations 850-50, War Department, dated 31 December 1934, the Central Patent Section prepared, filed and prosecuted applications for patents covering inventions made by officers, warrant officers, enlisted men and civilian employees of the War Department and of the Army under the act of March 3, 1883, as amended (45 Stat. 467; 35 U.S.C. 45). It also prepared and filed applications for the registration of trade marks and copyrights, rendered miscellaneous opinions on patent, trade mark and copyright questions, and handled miscellaneous general correspondence with respect to patents, trade marks and copyrights.

By Section III, Circular No. 78, War Department, dated 26 July 1940, paragraph 1 $\frac{1}{2}$ was added to Army Regulations 25-10, War Department, dated 26 March 1928, to provide that no member of the military establishment

on the active list or on active duty, or a civilian employee of the Army or of the War Department, whose official duties were concerned with patent activities would act as agent or attorney in connection with the inventions or patent rights of others, except when such action was a part of the official duties of the person so acting. This amendment was based upon the results of an investigation made by the Inspector General of the Army into the activities of certain individuals employed in the various patent sections of the War Department, particularly at Wright Field, Dayton, Ohio, who had acted as attorneys and agents for Government inventors in connection with the disposal of their commercial rights, a practice which had brought considerable criticism against the War Department from industry. The purpose of the amendment was to prevent any person, military or civilian, who was employed in any of the patent sections of the War Department, from acting as the attorney or agent for a government inventor, or any other inventor, in disposing of his commercial rights under a patent or an application for patent. The amendment effectively broke up the previous pernicious activities in the respect noted.

Army Regulations 25-10 was republished by the War Department under date of 26 March 1942, at which time the following changes were made:

- (1) the designation "Central Patent Section" was dropped and the designation "Patents Division" substituted;
- (2) paragraph 5, which provided that the Central Patent Section would maintain a branch in the vicinity of the United States Patent Office which would be the sole point of contact with the Patent Office, was dropped as no longer applicable; and
- (3) Section III, Circular No. 78, War Department, dated 26 July 1940, was picked up as paragraph 5 in the new regulation.

The other provisions of the regulation remained substantially unchanged.

Army Regulations 25-10 was again republished by the War Department under date of May 11, 1944. The only change which the new regulation made in the former regulation was a rewriting of paragraph 4, covering the recording of assignments and licenses in the United States Patent Office, and was occasioned by the issuance on February 18, 1944, of Executive Order No. 9424 (9 F.R. 1959). Executive Order No. 9424 set up in the United States Patent Office a Register of Government Interests in Patents and Applications for Patents and provided that all assignments, licenses and other instruments evidencing interests of the Government in or under patents or applications for patents would be recorded in said Register. Under the rules and regulations prescribed by the Commissioner

of Patents (9 F.R. 4159), pursuant to the authority vested in him by paragraph 4 of Executive Order No. 9424, supra, separate registers were established as follows:

- a. A register open to examination by the general public;
- b. A register available for examination and inspection by duly authorized representatives of the Government only; and
- c. A secret register, access to which could only be had upon written authority from the head of the Department or agency which submitted the instrument and requested secrecy.

2. Changes Made in Procedures for
Processing Inventive Data

AR 850-50 (Inventions and Patents)

On 1 July 1940 the War Department was receiving inventive data consisting of suggestions, ideas or plans for new materiel, or the improvement of existing materiel, from two separate and independent sources, as follows:

- a. Inventive data submitted by officers, warrant officers, enlisted men and civilian employees of the War Department, or of the Army, for the purpose of securing patents covering same, and
- b. Inventive data submitted by individuals outside the government service with a view to its adoption and use.

The procedure for handling the first type of inventive data was covered by Army Regulations 850-50, War Department, dated 31 December 1934. These regulations provided for the consideration of the data submitted by the technical service of the War Department to which it pertained with a view to determining its military value and utility and its patentable novelty and the patenting thereof, if the factors in question were found present, under the provisions of the act of March 3, 1883, as amended (45 Stat. 467; 35 U.S.C. 45) by such technical service if it maintained its own patent section, or if not, by the Central Patents Section, Office of The Judge Advocate General. The procedure for handling the second type of inventive data was covered by paragraph 17, Army Regulations 850-25, War Department, dated 15 July 1931, as amended by paragraph 17g, Changes No. 2, dated 28 December 1933. These regulations provided that all such inventive data would be referred directly to The Adjutant General who would first secure the drawings, description, models, etc., necessary for an intelligent consideration of the device and then forward them to the interested technical service for an opinion as to probable military value, coordinating the same with the chiefs of other interested technical services, if any. Where agreement was found that the device

possessed no military value, present or potential, the inventor was informed by The Adjutant General to that effect. Where the device was found to have possible military value, the matter was referred by The Adjutant General to the interested technical service for the purpose of making arrangements directly with the inventor for the use of the device by the Government and for proper patent protection, when such protection had not already been arranged.

The above described procedures continued in effect until 18 September 1936, when the War Department issued Circular No. 61, Section III of which transferred the procedure for handling the second type of inventive data, referred to above, from Army Regulations 850-25, as amended, supra, to Army Regulations 850-50. When Army Regulations 850-50, dated 17 July 1942, were issued by the War Department, the procedure in question was incorporated as paragraphs 3, 4 and 5 thereof. In this manner both procedures, while still remaining separate and distinct in their application, were, for the first time, incorporated in the same Army Regulation, instead of in two, as had previously been the case.

Meanwhile, and before Army Regulations 850-50, dated 17 July 1942, were issued by the War Department, paragraph 7a of Army Regulations 850-50, 31 December 1934, was amended by Section V, Circular No. 73, War Department, dated 17 April 1941, to provide that applications for patents covering inventions made by officers, warrant officers, enlisted men and civilian employees of the War Department or of the Army, which pertained to the activities of a particular technical service which maintained a patent section, would be prepared, filed and prosecuted by that technical service, while inventions submitted by the same classes of personnel, pertaining to the activities of a particular technical service not maintaining a patent section, would be sent to the chief of such technical service, who would, if further action was deemed desirable, transmit the invention to The Judge Advocate General, together with his remarks as to the military value and utility thereof, for the preparation, filing and prosecution of the necessary application for patent. This change was incorporated in Army Regulations 850-50, dated 17 July 1942, as paragraph 10a.

Following the establishment of the National Inventors Council by the Secretary of Commerce early in August of 1940, the War Department issued an ad interim letter of instructions (AG 070 (8-17-40) M-OCS-M) dated 23 August 1940, Subject: War Department Procedure for Handling Suggested Inventions, in which it was provided that all suggestions for inventions or devices then on hand, or later received in any office under the jurisdiction of the War Department, would be sent to The Adjutant General for acknowledging, recording, and routing to the National Inventors Council. This ad interim letter of instructions was followed by the issuance of Circular No. 101, War Department, dated 12 September 1940, Section I of which was substantially identical with the context of the

ad interim letter of instructions, with the exception of the first paragraph, which provided (1) that the provisions of Army Regulations 850-50, dated 31 December 1934, as changed by Section III, Circular No. 61, War Department, dated 18 September 1936, were suspended when in conflict with the instructions contained therein, and (2) that inventions submitted for patenting by officers, warrant officers, enlisted men and civilian employees of the War Department, or the Army, were without the scope of the instructions.

Section I, Circular No. 101, War Department, 1940, was amended by Section II, Circular No. 59, War Department, dated 7 April 1941, whereby it was provided that if and when a suggested invention reached the stage where a patent application was to be prepared, instead of being returned to The Adjutant General for reference to the Army and Navy Patent Board, the case would be retained for patenting by the chief of the technical service whose staff had made such determination, if such technical service maintained a patent section, and if such technical service did not maintain a patent section, the case would be transmitted to The Judge Advocate General for patenting. In this manner, when it was determined that an invention which had been submitted to the War Department by either (a) an officer, warrant officer, enlisted man or civilian employee of the War Department or Army, or (b) an outside individual, should be covered by an application for patent, a uniform method of procedure to accomplish that end was established.

However, when Army Regulations 850-50, dated 17 July 1942, were published by the War Department, the changes in procedure instituted by Section I, Circular No. 101, War Department, 1940, as amended by Section II, Circular No. 59, War Department, 1941, were not incorporated therein, thus indicating their temporary nature and the intention of the War Department to return to its prior methods of procedure with respect to that class of inventions once the emergency was over and the National Inventors Council was disbanded. This intention was confirmed by the issuance on 28 July 1942 of Circular No. 248, War Department, Section I of which rescinded Section I, Circular No. 101, War Department, 1940, as amended by Section II, Circular No. 59, War Department, 1941, supra, and republished their context in substantially identical form. Section V of Circular No. 383, War Department, dated 22 September 1944, in turn, rescinded Section I, Circular No. 248, War Department, 1942, and republished its context in identical form.

Only one change was later made in Army Regulations 850-50, War Department, dated 17 July 1942. Subparagraph 10b(2) of Army Regulations 850-50, dated 17 July 1942, supra, required all correspondence relating to an unpatented invention which was transmitted by the inventor to be inclosed in an inner cover which was sealed and marked "Confidential". Subparagraph 10b(3) of the same Army Regulations required all correspondence between agencies or components of the War Department, or of the Army, with reference to unpatented inventions to be classified and

handled without exception as "Confidential". In many instances there was found to be no need from a security point of view for the inventor to transmit correspondence in an inner envelope marked "Confidential", and in many instances there was found to be no need from a security point of view to classify and handle correspondence relating to unpatented inventions as "Confidential". On the contrary, it was found that the requirements of subparagraphs 10b(2) and (3) imposed an unnecessary burden on administrative agencies handling this type of correspondence and gave rise to numerous complaints from the field, with the result that in a number of offices the requirements in question were more honored in their breach than in their observance. It was furthermore found that many unpatented inventions and correspondence relating thereto should from a security point of view be classified as "Secret" or "Restricted", as well as "Confidential", depending on the character of the subject matter disclosed. Accordingly, under date of 9 January 1945, the War Department published Changes No. 1 to Army Regulations 850-50, dated 17 July 1942, rewriting subparagraph 10b(2) thereof to provide that all correspondence with reference to unpatented inventions would, if the subject matter required classification, be classified and handled in accordance with the appropriate provisions of Army Regulations 380-5, and rescinding subparagraph 10b(3) thereof.

3. Patent Prosecution - Interferences - Copyrights and Trademarks

The duties and functions assigned to the Prosecution Branch were as follows:

To conduct patentability searches and render reports thereon covering inventive disclosures received from officers, enlisted men and civilian employees of War Department and Army and other Government departments and agencies; to prepare, file and prosecute in the United States Patent Office applications for patents based thereon; to perform similar functions with respect to applications for copyright registration before Register of Copyrights; in collaboration with Department of Justice, to prosecute interferences and appeals before Patent Office tribunals and Federal Courts in patent and copyright matters including preparation of necessary pleadings and briefs; to conduct surveys in various patented arts and sciences as an aid to development projects; to render legal opinions on miscellaneous patent, design, trademark and copyright questions; and to prepare requisite correspondence pertaining to matters pending before United States Patent Office and Register of Copyrights.

had The inventions with reference to which patentability searches have been made, and upon which applications for patent were based, were received from two principal sources. The first source included officers, enlisted men and civilian employees of the War Department or of the Army,

the subject matter of whose invention pertained to the activities of a technical service which did not maintain a patent section, or whose invention was of interest to more than one technical service. The great bulk of the work performed by the Prosecution Branch from this source was received from the Office of the Chief of Engineers and the Office of The Surgeon General. The second source comprised various contractors of the Office of Scientific Research and Development who had developed inventions of interest to the War Department and who had themselves elected not to file applications for patents based thereon. The great bulk of inventions handled by the Prosecution Branch from this second source was likewise received from the Office of the Chief of Engineers and the Office of The Surgeon General. In addition to handling the foregoing patentability investigations and the preparation of the necessary applications for patents, the Prosecution Branch also handled inventions developed and submitted under War Department Civilian Personnel Regulations No. 103 - Cash Awards for Employee Suggestions. (See Subdivision 13).

On 1 July 1940, 56 applications for patent were pending in the United States Patent Office. During the period 1 July 1940 to 31 March 1945, inclusive, 236 additional applications for patent were filed, of which during the period of time in question, 14 became abandoned and 141 issued in the form of letters patent. On 31 March 1945, 137 applications for patent were pending in the United States Patent Office and 52 invention disclosures were on hand awaiting the preparation of an application. Included in the total of 141 patents which were issued during the period in question were a number of design patents, the more important of which were 27 design patents covering arm band insignia developed by the Office of Civilian Defense, and the design patent covering the Army and Navy "E" Award pin designed by Lt. General William S. Knudsen, AUS. The 27 design patents covering the arm band insignia were assigned to the Government as represented by the United States Director of Civilian Defense of the Office of Civilian Defense, and the design patent covering the Army and Navy "E" Award pin was assigned to the Government, as represented by the Secretary of War.

Prior to 13 October 1942, no provision had been made for filing applications for patents covering inventions of persons who, because of conditions arising from the existing state of war, were unable to execute such applications. However, on the above date, Order No. 3662 was issued by the Commissioner of Patents which provided for the filing of applications for patent by an agent on behalf of the inventor. The order further provided that when cases filed under these provisions were otherwise in condition for allowance, action therein would be suspended pending the enactment of legislation validating applications so filed by the agent of the inventor and the filing of a petition, specification and oath, duly executed by the inventor, or his executor or administrator, along with a formal ratification of the power of the agent and of his acts. The foregoing arrangement was successful in overcoming disabilities imposed upon inventors by virtue of wartime conditions, and permitted the timely

filing of applications for patent covering completed inventions upon which the statutory period of one year was running.

Since many moot questions existed as to the legal effect which would be given applications filed by an agent, it appeared more feasible, in cases where time was not a factor, particularly in view of the act of December 14, 1942 (56 Stat. 1050; 10 U.S.C. 1586), which authorized certain officers in the military establishment to administer oaths, to forward application papers directly to war zones for execution by the inventor before one of these officers, rather than to resort to the use of an agent. While some delay in filing the application resulted from this procedure, the United States Patent Office relaxed its requirement that no more than approximately five weeks elapse between the date of execution of the application and its filing date. The procedure was also attended by the danger of the loss of papers in transmittal, although losses of this type had not been encountered to date of writing.

Another problem which confronted the Prosecution Branch arose as a result of a large increase in the number of inventions received for patenting and the resultant increase in the number of applications for patent awaiting preparation. It became necessary to give priority to those cases in which the inventions were in use, or in which early use was contemplated, in order that the rights of the Government and the inventors would not be lost. If, upon investigation it was determined that an invention was being used, or that its use at an early date was contemplated, such a case was assigned a high priority. On the other hand, inventions found not to be in use were assigned a lower priority and work was deferred until the more urgent work, above referred to, had been handled.

Interferences

Pursuant to the procedure outlined in letter (FMS:JFM 27-0) dated 14 December 1940, from the Attorney General to the War Department, whenever an interference was declared by the U. S. Patent Office involving one or more applications for patent to which the United States was a party of interest, either as licensee or assignee, the practice was followed of preparing an associate power of attorney appointing a representative of the Department of Justice as associate attorney, with those of record, for the purpose of prosecuting the interference before the Examiner of Interferences. The associate power of attorney was made of record in the Patent Office, a copy together with a copy of the declaration of interference, the record of prosecution, and such evidence as could be found at the time, in support of the contest, was transmitted to the Department of Justice for appropriate action with the understanding expressed in the letter of transmittal that when called upon to do so representatives of the War Department would cooperate with the Department of Justice in obtaining the necessary information for the preparation of the preliminary statement, and in procuring such evidence as might be necessary to establish the date of conception and reduction to practice of the invention in controversy.

When the question of priority of invention had been determined, either by contest or settlement, and after the application in interference had been remanded to the Primary Examiner for further prosecution, the associate power was revoked, and the prosecution of the application was continued by the attorneys having charge of the application before the Patent Office. This procedure was followed in all cases with the exception of those in which the adverse parties were in the United States Army or were serving the Government in the capacity of War Department employees. In such cases it was the practice, whenever possible, to settle the interference by arbitration. For this purpose the adverse parties to the interferences were requested to sign an arbitration agreement wherein they mutually agreed to submit the issue of priority of invention to an arbitration board composed of representatives of the Office of The Judge Advocate General, the Office of the Air Judge Advocate and the Department of Justice. By this agreement the adverse parties further agreed to conform to whatever mode of procedure and requirements of proof the board might adopt, to execute an abandonment of contest in accordance with the finding of the board and to consider its decision as final and binding on all parties concerned.

The arbitration board after making a detailed examination of the records of the War Department containing the evidence of conception, reduction to practice, records of invention and preliminary statement of the parties relating to the invention of each of them, and after due deliberation, rendered a decision in which an award of priority of invention was made to one of the parties to the interference. This decision was signed by the members of the board and transmitted to the parties to the interference. The losing party, in conformity with the arbitration agreement, then filed an abandonment of contest which dissolved the interference in accordance with the provisions of Rule 107, Rules of Practice of the United States Patent Office. This procedure proved to be very satisfactory and effected a considerable saving of time and expense to all parties concerned.

Copyrights

In regard to the copyright matters handled by the Prosecution Branch during the period 1 July 1940 to 31 March 1945, inclusive, 165 applications for copyright registration were filed in the Office of the Register of Copyrights. In due course certificates of copyright registration were received for all of the applications filed. In addition to the preparation and prosecution of the copyright registrations, the Prosecution Branch was also confronted during the period with many questions arising under various sections of the Copyright Act of March 4, 1909 (35 Stat. 1075; 17 USC 1). Perhaps the most outstanding problem submitted for consideration was that resulting from a desire on the part of certain technical services of the army to protect the literary and artistic property which they had prepared, with statutory copyrights. This problem was ultimately solved by printing and publishing the works

in question with notice of copyright in the name of a trustee selected for the purpose, who took out the copyright for the benefit of the United States Government, with the understanding that after registration of the claim to copyright, all right, title and interest in and to such copyright held by the trustee would be assigned to the United States Government. By this arrangement statutory protection was made available for Government-owned literary and artistic property. Among the more important copyright registrations included in the above total were the following: 39 registrations of the Army Weekly entitled "Yank" and 44 for the periodical "Midpacifican".

Trade-mark

Within the period of 1 July 1940 to 31 March 1945, the Prosecution Branch prepared and filed but a single application for trade-mark registration. This application, however, is deemed worthy of note since it marked an innovation in War Department policy with respect to trade-marks, and constituted the first application for trade-mark registration in which the United States War Department appeared as a trade-mark proprietor. The request for registration of the trade-mark under discussion, Pro-Kit, was received from the Office of The Surgeon General and registered in Class 44, Dental, Medical and Surgical Appliances, as a collective mark to be used in connection with a kit containing a chemical prophylactic, instruction sheet, wash cloth saturated with soap and cleansing tissue. Since the proprietor in this case was the United States War Department, the pleadings, including the petition, statement and declaration, were more or less original and consequently required considerable development by the Prosecution Branch. The application for trade-mark registration was allowed 17 November 1944, and registered 12 December 1944.

4. Relationship With National Inventors Council

Inventive ideas and suggestions sent in to the War Department from non-governmental sources so steadily grew in volume following the declaration of the limited emergency in September 1939, that it imposed an almost insuperable burden on the limited number of administrative personnel detailed to the work of merely acknowledging, recording and routing the same. Furthermore, much valuable time was spent by highly trained engineering personnel in the various technical services in evaluating ideas and suggestions of the "crackpot" variety which offered little if any promise of value to the national defense. As a result of this situation (which likewise existed in other defense agencies of the Government) the Secretary of Commerce, with the concurrence of the President, early in August of 1940, created the National Inventors Council, to function in close collaboration with the military and naval branches of the Government in bringing to their attention all such discoveries and mechanisms submitted by civilian inventors as appeared to have military utility and value.

The membership of the National Inventors Council comprised nationally prominent scientists, industrialists, engineers and representatives of the War and Navy Departments who headed committees within the council relating to the respective fields of endeavor, such as ordnance, aeronautics, electronics, chemistry, etc., with which each had been previously identified.

In order to take full advantage of the facilities provided by the National Inventors Council, Circular No. 101, War Department, dated 12 September 1940, was issued, suspending the provisions of AR 850-50, War Department, dated 31 December 1934, insofar as the handling of suggestions received from non-governmental sources was concerned, and providing that all such suggestions would be forwarded without further action to The Adjutant General for transmission to the National Inventors Council. After preliminary review by the National Inventors Council, those suggestions which did not warrant further study were disposed of by the Council, and those which appeared to be meritorious were referred back to the War Department for consideration as to adoption and use by appropriate technical personnel. In this manner the War Department was relieved of the heavy burden of examining and evaluating a vast number of proposals submitted by the general public, many of which proved to be of the "crackpot" variety, and was able to concentrate on needed developments and upon those suggestions which, after review by the Council, were considered by those expert in the fields to which they related to be of sufficient merit to warrant serious consideration or further development by the technical agencies of the War Department. Circular No. 101, further provided that if and when a suggested invention reached the stage where a patent application was to be prepared, the case would be returned to The Adjutant General for reference to the Army and Navy Patent Board. This provision was later amended by Section II, Circular No. 59, War Department, dated 7 April 1941, to provide that when a suggested invention reached the stage where a patent application was to be prepared, the case would be retained for patenting by the technical service concerned with the subject matter thereof, if it maintained a patent section, otherwise, it would be transmitted to The Judge Advocate General for patenting. This change was necessary due to the fact that the Army and Navy Patent Advisory Board, the agency apparently referred to in Circular No. 101, had no cognizance over the filing of applications for patent by the War or Navy Departments. The procedure thus initiated for the handling of suggestions received from non-governmental sources has continued in effect under the provisions of Section I, Circular No. 248, War Department, dated 28 July 1942, and Section V, Circular No. 383, War Department, dated 22 September 1944.

Immediately following the formation of the National Inventors Council, the Chief, Patents Section, was called upon by the Council, and the War Department Liaison Officer with the Council, for advice and information with respect to problems arising in connection with the operations of the Council, in working out procedures to be adopted by the

Council in handling suggestions received by it, and the placing of projects in the hands of inventors for solution. It was not until 18 April 1942, however, that the Chief, Patents Division, was appointed Liaison Officer between the National Inventors Council and The Office of The Judge Advocate General.

In suspending the provisions of AR 850-50 by the above-referred to War Department circulars, insofar as suggestions received from non-governmental sources were concerned, it was intended that the Patents Division, and the patent sections in the various technical services, would continue to receive and process inventions submitted for patenting by military personnel and civilian employees of the War Department. However, it was soon discovered that many invention proposals were being sent directly by such personnel to the National Inventors Council, and that in addition, many such suggestions received by The Adjutant General were being processed to the National Inventors Council by that office, in the same manner as those received from the general public. Consultation between the Patents Division and the National Inventors Council resulted in an informal understanding that disclosures of inventions submitted for patenting by military personnel under the provisions of AR 850-50, if received by the National Inventors Council, would be forwarded to the Patents Division for consideration by the War Department, and that other suggestions received from military personnel, if they appeared to be of any value whatever, would likewise be submitted to the Patents Division for like consideration. This arrangement functioned satisfactorily both to the War Department and the National Inventors Council. Seventy-two cases were received from the National Inventors Council and processed by the Patents Division up to 31 March 1945.

5. Relationship with Office of Scientific Research and Development

By Executive Order No. 8807 dated 28 June 1941 (6 F.R. 3207), there was established the Office of Scientific Research and Development, with the duty, among others, to coordinate, aid and supplement experimental and other scientific and medical research activities relating to national defense activities carried out by the War and Navy Departments and to initiate and support such research as might be requested by the War and Navy Departments. Pursuant to the Executive Order, the OSRD placed with various research organizations and universities a large number of research projects suggested by the War and Navy Departments, and included in its contracts covering such research, patent clauses defining the relative rights of the contractors and the Government in any inventions which resulted from the performance of such contracts. The two principal clauses utilized by OSRD were known as the long form patent clause (Appendix 4-4), and the short form patent clause (Appendix 4-5).

In view of the large number of research contracts placed by OSRD, it immediately became evident that some provision would have to

be made for the filing of patent applications in order to protect the interests of the Government in useful inventions developed under such research contracts upon which application for patent would not be filed by the contractors, and to which the Government was entitled to receive title under the provisions of the patent clauses employed. Accordingly, a plan was devised under which the OSRD would transmit to the War and Navy Departments disclosures of inventions either arising from projects sponsored by, or particularly related to, the activities of each of them. This plan was implemented, insofar as the War Department was concerned, by a letter from Dr. Vannevar Bush, Director, OSRD, to the Secretary of War dated 29 September 1941 (Appendix 4-6), and reply of the Secretary of War thereto dated 22 October 1941 (Appendix 4-7), which designated Lieutenant Colonel Francis H. Vanderwerker, JAGD, Chief, Patents Section, Office of The Judge Advocate General as the person in the War Department who would be responsible for the receipt and proper handling of disclosures of interest to the War Department, and for coordination with the Navy Department to determine primary interest in those cases in which there was doubt. This procedure was recommended by The Judge Advocate General because it was felt that there should be a single agency responsible for coordination of patent activities jointly of interest to the OSRD and the War Department, rather than to have separate contact by OSRD with the various patent sections in the technical services.

Pursuant to the plan thus initiated, the Patents Division established the procedure of transmitting invention disclosures, as received, to the patent section in the technical service which had sponsored the project from which the particular invention resulted, or which would be most concerned with the subject matter thereof, for evaluation and determination of whether or not an application for patent should be filed, and for the preparation of the application and requisite assignment of the invention to the Government, in those cases in which it was decided that an application for patent should be filed. In the case of inventions relating to those services not maintaining patent sections, they were submitted to the Chiefs thereof for examination and recommendation, and when recommendation was made that an application for patent should be filed, the application and requisite assignment was prepared and filed by the Patents Division. Upon completion of the applications for patent thus prepared in the War Department, the necessary papers were transmitted by or through the Patents Division to the Advisor on Patent Matters of the OSRD in order to secure the review and execution thereof by the inventors in each case, and the return of the papers to the Patents Division. Those cases prepared in the Patents Division were then filed in the Patent Office, and those prepared in the other patent sections were transmitted to them for filing.

As soon as the Patents Division began receiving from the patent sections in the technical services completed applications and assignments to be transmitted to OSRD to secure review and execution by the inventors, it became apparent that various forms of assignment were

being submitted, some of which were not entirely in accordance with the provisions of the contracts under which the inventions arose. Accordingly, the Patents Division collaborated with representatives of OSRD in working out a form of assignment which could be utilized in the great majority of cases and which was acceptable to all concerned. This form was submitted to all of the patent sections for use and was generally used. This experience was only one of many which from time to time proved the wisdom of having a single point of contact for coordination of patent matters between the War Department and OSRD.

In order to reduce the administrative burden both on OSRD and the Patents Division the procedure followed in securing review and execution of applications by the inventors was later simplified by having the Patents Division send the papers direct to the business representative of the contractor, and to have the contractor send the executed papers directly back to the office which prepared and would file the application. This eliminated double handling of the application by the Patents Division and by OSRD, while still providing for review thereof by the Patents Division.

After submission of an invention disclosure and determination by the interested agency whether an application would be prepared, both the OSRD and the Navy Department were notified, so that either the Navy or the contractor could then consider the desirability of filing applications in those cases in which the War Department decided that it did not wish to do so.

In addition to disclosures of inventions submitted for consideration to determine the interest of the War Department in filing application for patent, the Patents Division also received from OSRD a large number of disclosures in the form of copies of applications for patent which had been filed by the various contractors under OSRD contracts, and under which the Government, by the terms of the contracts involved, was vested with a royalty-free license to practice the inventions concerned. These copies of applications were transmitted to the respective technical services concerned with the subject matter thereof for the information of technical personnel and in order that those interested might be apprised of the licensed inventions thus available for use without payment of royalty.

Upon receipt of these copies of applications filed by OSRD contractors, and notification that the Government was licensed thereunder, a card containing information pertinent thereto was made and placed in the license records of the Patents Division and, if the application concerned was one which had been placed in secrecy by the Commissioner of Patents under the act of October 6, 1917, as amended, a notation of the Government interest was placed in the secrecy order file of the case maintained in the Classified Inventions Branch.

One of the developments sponsored by the OSRD at the request of the War Department resulted in a group of inventions, part of which were made by the employees of American contractors, and part by Canadians under the sponsorship of the National Research Council of Canada, the Canadian counterpart of OSRD. The proper disposition of patent rights in these inventions required that applications for patent be filed on all of them in both the United States and Canada, if the interests of both Governments were to be protected.

The problem thus arose as to how this program could be carried out because it had always been the policy of the War Department to apply only for United States patent protection on its inventions, and furthermore, there was no authorization to expend War Department funds for foreign patents. This difficulty was overcome by reaching an agreement with OSRD that the War Department would prepare and file applications for United States patent covering the inventions of the American inventors, and that OSRD would undertake to file and prosecute the corresponding Canadian applications. An informal agreement was then reached between OSRD and the Canadian National Research Council under which it was provided that after all patent applications were on file in each country, the Canadian and United States Governments would each cross license the other under the inventions and applications for patent in each country, respectively owned by the other, which result from the joint development.

The Patents Division up until 31 March 1945 had received from OSRD 1670 invention disclosures which were submitted for determination whether an application for patent would be filed by the War Department. Of these 549 were found to be of such little value or interest that the filing of application for patent was not justified or desirable; 283 were made the subject of applications for patent already filed or to be filed; and 838 remained for final determination. 819 disclosures were received in the form of applications for patent filed by contractors and under which the Government is vested with a license.

6. Relationship with Office of Strategic Services

Early in March 1944 the Patents Division was approached by the General Counsel, Office of Strategic Services, and apprised of the fact that, in connection with the development of various equipment used by the OSS, a number of patent problems had arisen, and that his office had no one available who had sufficient knowledge of patent law to take care of them. The request was made that the Patents Division undertake to assist the Office of Strategic Services in the solution of its patent problems.

It was felt that the assistance requested could not be rendered without authorization and it was accordingly suggested that the Director of the Office of Strategic Services present the problem to the Secretary

of War by letter and that the Patents Division would make a favorable recommendation on any request thus made for assistance.

As a result of this conference Brig. Gen. William J. Donovan, Director of the Office of Strategic Services, wrote the Secretary of War on 18 March 1944 (Appendix 4-8), outlining the patent problems of that agency and suggesting that a commissioned officer was needed by the Office of Strategic Services to collect and coordinate patent data for submission to the War or Navy Departments and to handle patent problems arising within the Office of Strategic Services. The Secretary of War on 31 March 1944 (Appendix 4-9), replied to General Donovan informing him that the Patents Division of The Judge Advocate General's Office would effect the necessary arrangements to assist him in these matters.

Pursuant to this exchange of correspondence, the Patents Division assigned an officer informally to the Office of Strategic Services to survey the situation and determine the approximate amount of patent work which was in prospect in that agency. As a result of the informal survey thus made it was decided to assign one officer with patent experience to the Office of Strategic Services on a permanent basis and this was done.

By informal agreement with the General Counsel, Office of Strategic Services, the officer assigned to his office handled all patent questions arising within that agency insofar as possible and had access to the Chief, Patents Division, and to other personnel in the Patents Division for advice and consultation when needed. It was also agreed that the Patents Division would render further assistance by conducting patent searches upon the request of the Office of Strategic Services, would prepare the drawings and would act as attorney in any patent applications prepared by the patent representative in the Office of Strategic Services. This latter course was adopted because it was felt that the Office of Strategic Services would probably be dissolved shortly after the end of the war and the necessity of transferring powers of attorney in cases still pending at that time would thus be avoided.

7. U. S. Court of Claims Cases

The Patents Division continued to perform the same functions which it had performed in the years of peace preceding the war with respect to patent infringement suits in which the War Department was the alleged infringing user. These suits were filed in the United States Court of Claims under the provisions of the act of June 25, 1910, as amended by the act of July 1, 1918 (40 Stat. 705; 35 U.S.C. 68), which provides that whenever an invention described in and covered by a patent of the United States is used or manufactured by or for the United States without license of the owner thereof or the lawful right to use or manufacture the same, such owner's remedy will be by suit against the United States in the Court of Claims for his reasonable and entire compensation for such use and manufacture.

For many years a controversy had existed among the patent bar whether the act of June 25, 1910, as amended, supra, applied not only to articles, devices or materials supplied by a government prime subcontractor, but as well to subcontractors or other persons, firms, or corporations who supplied articles, devices or materials, not to the Government directly, but to a Government prime contractor or subcontractor. At the time the bill S. 2794 was drafted, which was later enacted as Public Law 768, 77th Congress, 2nd Session (56 Stat. 1013; 35 U.S.C. 89-96), providing for the adjustment of royalties for the use of inventions for the benefit of the United States (see Section 11), it was decided by representatives of the War Department, the Navy Department, the Department of Commerce and the Department of Justice who drafted the bill, to ask the Congress definitely to settle this question, as the bill afforded a perfect vehicle to accomplish the desired result. Accordingly, when Public Law 768, supra, was enacted into law on October 31, 1942, Section 6 thereof provided:

"* * * and for the purpose of the act of 25 June 1910, as amended (40 Stat. 705; 35 U.S.C. 68), the use or manufacture of an invention described in and covered by a patent of the United States by a contractor, a subcontractor, or any person, firm or corporation for the Government and with the authorization or consent of the Government, shall be construed as use or manufacture for the United States".

On 1 July 1940, there were 17 suits pending against the United States in the Court of Claims in which the War Department was either solely, or among other departments and agencies of the Government, alleged to be the infringing service (Appendix 4-10). During the period 1 July 1940 to 31 March 1945, ten new suits were filed (Appendix 4-11). In each of such suits, the Patents Division exercised technical supervision and control over the collection and evaluation by the patent sections in the various technical services of pertinent information and data, and the preparation of necessary technical reports with respect thereto, requested by the Attorney General under the provisions of Section 188, Revised Statutes (5 U.S.C. 91), for use by the Department of Justice in the defense of the suits in question. (Para. 3a AR 25-10).

During the same period of time the Patents Division performed similar functions in connection with the collection and evaluation of information and data, and preparation of technical reports, for transmittal to the Court of Claims in response to approved Calls of the Court made upon the War Department under the provisions of Section 164 of the Judicial Code (28 U.S.C. 272) (Appendix 4-12).

During the period ten suits were dismissed (Appendix 4-13), and judgment was entered in five suits (Appendix 4-14).

The Patents Division also made numerous infringement and validity searches, and rendered reports thereon, with respect to the patents involved in the suits above referred to.

8. Assignments and Licenses - Government Register of Patents

Under the provisions of R. S. 4898 (35 U.S.C. 47), the recording in the United States Patent Office of assignments was mandatory to protect the rights of the Government against any subsequent purchaser or mortgagee for a valuable consideration without notice. This recording was known as "statutory recording". It was the practice of the War Department, however, acting through the Central Patent Section, to record under such statute not only all assignments but, for the information of other governmental departments and agencies, all licenses as well, under the provisions of paragraph 4, Army Regulations 25-10.

a. Types of Licenses and Assignments

Assignments. Assignments of patents and patent applications received by the government were of four types, (1) outright assignments, (2) assignments in trust, (3) assignments with reversionary interest to the assignor, and (4) outright assignments with reservation of a license to the assignor.

Licenses resulting from prosecution of patent applications. These were primarily licenses resulting from the filing of applications for patent under the provisions of the act of March 3, 1883, as amended, (45 Stat. 467; 35 U.S.C. 45). In addition, the War Department made it standard practice to exact at least a nonexclusive license from any applicant for whom an application was prepared by the patent sections of the War Department, whether or not the application was filed under the act of March 3, 1883, supra. A third group of licenses were obtained as a result of the settlement of interferences, usually being in the nature of cross licenses, from the inventor under the Government prosecuted application, to the owner of the outside application, and from such owner to the Government.

Gratuitous Grants. In normal times a number of persons, motivated by patriotism, granted to the Government rights under their patents and inventions, ranging from outright assignments to nonexclusive licenses for the life of the patent, or for shorter terms, or on specific conditions. With the beginning of the national emergency preceding the Second World War, the number of such gratuitous grants greatly increased, but were generally limited to a term for the duration of the emergency, which, of course, included the period of the war. These licenses and other grants obtained for the duration of the national emergency, or the duration of the war, were generally referred to as "National Defense" licenses. In practice, the term "National Defense" licenses has been employed to include all licenses or grants received which were limited to the period of the national emergency or the war, including those which were gratuitous as well as those which were acquired by purchase or by obligating the Government to pay a stipulated royalty or other consideration. Up to 31 March 1945, 452 of such instruments have been received for recording by the Patents Division in the United States Patent Office.

A majority of the 126 licenses covering six (6) of the most important fields in communications, which were obtained from the various manufacturers comprising the radio industry, as a result of a general agreement reached at a meeting held at the Hotel Roosevelt, New York City, New York, on 20 January 1942, were the most outstanding example of this class of license. These radio industry licenses were in generally uniform language and form, and were for the term of "hostilities with any country with which the United States is now at war and for six months thereafter." The grant, except in a few cases, was in consideration of \$1.00, and the refraining, on the part of the Government, from inserting in its procurement contracts the usual "save harmless" clause under which the contractor indemnified the Government against any loss resulting from patent infringement. The licenses were bilateral in form, being signed by officials of the War and Navy Departments in accepting same. However, the licenses from certain manufacturers, while containing the grant, provided for annual payments as follows: Radio Corporation of America, \$4,000,000.00, Sperry Gyroscope Company-Leland Stanford University \$40,000.00, Hazeltine Corporation, around \$500,000.00 and Farnsworth Television & Radio Corporation \$200,000.00.

Procured Rights. These included assignments, contracts for licenses, and cross license agreements directly negotiated by the War Department as the quid pro quo.

Rights Acquired under Procurement Contracts. These were rights acquired under supply contracts, research and development contracts, and contract termination agreements.

It was the practice of the War Department to include clauses in supply contracts to the effect that the contractor would grant to the Government a license under any inventions made as a result of the performance of the supply contract. The need for scientific development of munitions and war materiel resulted in the letting by the various technical services of a great many research and development contracts. It was obvious that such contracts should contain clauses securing to the Government rights under any inventions resulting from the performance thereof. The status of the Government's position with respect to the rights to which it was entitled under such contracts was the subject of much discussion and constitutes a separate story. The policy of the War Department in this respect, however, was finally formulated and set forth in a draft of a proposed P.R. 1116 with 13 subparagraphs about to be published for the first time in regulation form.

Rights Acquired under Contracts of the Office of Scientific Research and Development. A great portion of the research and development contracts entered into in the quest for new inventions of munitions and war materiel was placed with various organizations equipped to do such research, principally educational institutions, by the Office of Scientific Research and Development, functioning in a supporting role to the engineering and supply program of the Army and Navy. That office,

pursuant to the patent clauses used in its contracts, obtained a large number of nonexclusive, royalty-free licenses covering inventions resulting from the performance of such contracts, and upon which the respective contractors have filed application for patent. Although the specific licenses thus obtained by the Office of Scientific Research and Development were not transmitted to the Patents Division for recording in the Patent Office, it was the practice of the Office of Scientific Research and Development to inform the War Department, through the Patents Division, of the existence thereof, and to supply a copy of the licensed application in each case of interest to the War Department, for its information. A notation of the existence of such licenses was kept in the Patents Division.

Royalty Adjustment Agreements. For the complete story of the Royalty Adjustment Act of 1942 (56 Stat. 1013; 35 U.S.C. 89-96), (see Section 10).

A Royalty Adjustment Agreement, as its name implies, is primarily an agreement by the licensor or patent owner, to reduce the existing royalty to a rate or an amount which would be considered by the Government as fair and reasonable in view of wartime production. The Royalty Adjustment Act, being effective only for the duration of the war, a dominant feature of most royalty adjustment agreements is the limitation of its life to such period.

Other Types. Other types of patent rights acquired by the War Department during the period of time under discussion were tenders under the "Secrecy Act" (40 Stat. 394; 55 Stat. 657; 35 U.S.C. 42); licenses obtained under the Patent Interchange Agreement with the United Kingdom (Executive Agreement Series 268); licenses under foreign patents; releases of infringement; and rights by operation of law, such as shop rights.

b. Central Register of Government Patent Rights

Because of the fact that the patent rights enjoyed by the Government were acquired in the great majority of cases by the separate departments and agencies acting without coordination or knowledge of each other, the War Department had long recognized the need for a central register of rights under patents held by the Government, which would enable any department or agency of the Government engaged in procurement, or concerned with the defense of patent infringement litigation, to ascertain what patent rights the Government held which would be of assistance to it in reducing the cost of such procurement by the exclusion of royalty charges therefrom, or in the defense of such litigation. The first tangible expression of this need was set out in a memorandum of remarks made by the Chief, Patents Division before the President's National Patent Planning Commission (see Section 14), at its meeting on 14 January 1943.

In contemplation of the eventual establishment of a Governmental register of the type advocated, he followed up his remarks by addressing

memoranda on 16 April 1943 to the chiefs of the technical services, and to the Commanding General, Army Air Forces, subject "Recording of Patent Licenses and Assignments", inviting attention to paragraph 4a of Army Regulations 25-10, 26 May 1942, and requesting each addressee fully to comply with its provisions, agreeing, however, to withhold from recording in the Patent Office instruments obtained under pending patent applications, if such withholding was requested on the ground that such action was necessary to prevent disclosure of the date of filing of the application.

Within the War Department itself, the spirit of the recommendations to the National Patent Planning Commission was reflected in a memorandum from the Under Secretary of War to the Commanding General, Army Service Forces, dated 15 October 1943, subject "Procurement of Patent Rights", and the furnishing of an information copy thereof to the Commanding General, Army Air Forces, in which the Under Secretary expressed as one objective of the general subject:

- "d. To strengthen and expand the War Department's central register of patent licenses held and patent applications filed."

and requested that consideration be given to

- "e. Strengthening and expanding a central register in the War Department where copies or digests of all patent licenses procured, and copies of all patent applications filed, by any of the technical services or the Army Air Forces will be available for ready consultation."

In execution of the directive of the Under Secretary of War, the Patent Counsel, Office of the Director of Materiel, Headquarters, Army Service Forces, addressed a memorandum to the chiefs of the legal branches of all the technical services under date of 24 December 1943, subject "Procurement of Patent Rights", recommending, in connection with the objective stated in subparagraph d of the Under Secretary's letter, as follows:

"Recommendation 6. That each service be required to file with the Chief, Patents Division, Office of The Judge Advocate General, the original of each straight license contract procured for the Government and a copy of the text of the patent license clauses of all other contracts of that Service.

"Recommendation 7. That each service be required to file with the Chief, Patents Division, Office of The Judge Advocate General, a copy of each patent application being prosecuted by that service."

The National Patent Planning Commission, in the meantime, had made its first report, which was transmitted to Congress by the President under date of 18 June 1943. (House Document No. 239, 78th Congress, First Session.) The Commission recommended in this report legislation compelling the recording in the United States Patent Office of:

- "(1) all existing agreements to which one of the parties is a citizen of a country foreign to the United States;
- "(2) all existing agreements regardless of citizenship, of the parties which include any restrictions as to price, quantity of production, geographical areas or fields of use;
- "(3) all future agreements regardless of restrictions or citizenship of the parties."

While no legislation resulted from the recommendations of the Commission, the President on 18 February 1944, issued Executive Order No. 9424, (effective 19 February 1944) Establishing in the United States Patent Office a Register of Government Interests in Patents and Applications for Patents. (9 F.R. 1959)

After promulgation of Executive Order No. 9424, the Commissioner of Patents immediately took steps to implement it, and in coordination with the War Department and other governmental departments and agencies, drafted a set of proposed rules and regulations which were published by the Commissioner as Order No. 302 under date of 17 April 1944.

By way of assisting the United States Patent Office and as its part in effectuating Executive Order No. 9424, the Judge Advocate General's Office on 3 May 1944 addressed a memorandum to the chief of each of the seven technical services, to the Air Judge Advocate and to the Patents and Royalties Office of the Army Air Forces Materiel Command, Wright Field, Dayton, Ohio, inviting attention to the official rules and regulations issued by the Commissioner of Patents on 17 April 1944, discussing generally the application of these rules and regulations to the recording of Government interests held by the War Department, and the procedure in forwarding same to the Patents Division of the Judge Advocate General's Office under the provisions of Army Regulations 25-10. The War Department under date of 11 May 1944, amended paragraph 4 of AR 25-10, 26 May 1942, to conform to the procedure prescribed in Executive Order No. 9424, supra.

The provisions of AR 25-10, current series, were supplemented by instructions on 22 August 1944 to include royalty adjustment agreements with those instruments to be recorded under Executive Order No. 9424, such instructions being in the form of a memorandum from the Judge Advocate General's Office to the chief of each technical service and to the Chief, Patents and Royalties Office, Army Air Forces Materiel Command,

Wright Field, Dayton, Ohio. These instructions were closely followed by an amendment to PR 1113.12 under date of 31 August 1944, to the same effect, which has remained in effect without change.

c. Patent Office Records and Procedure under Executive Order No. 9424

In general provision was made, in addition to the provisions for general statutory recording, for three separate registers as follows:

- (1) A register open to examination by the general public;
- (2) A register available for examination and inspection by duly authorized representatives of the Government only; and
- (3) A secret register access to which may only be had upon written authority from the head of the department or agency which submitted the instrument and requested secrecy.

9. Exchanges of Technical Information with Foreign Governments and Foreign Nationals.

Exchange of Secret Technical Information with the United Kingdom

The foundation for the exchange of secret technical information between this Government and the Government of the United Kingdom was laid by an Aide-memoire from Lord Lothian, the then British Ambassador in Washington, to the President, dated 8 July 1940. (Appendix 4-15) In the Aide-memoire, Lord Lothian suggested an immediate and general interchange of secret technical information between the two governments, particularly in the ultra short wave radio field, and suggested that a small U. K. Mission, consisting of two or three service officers and civilian scientists, be dispatched to this country to enter into discussions with Army and Navy experts, bringing with them the full details of new technical developments, especially in the radio field, which had been successfully used or experimented with since the British declaration of war against Germany in September 1939. The proposal of the U. K. Government in the respect noted was accepted in principle by this Government with the understanding that procurement by the British of related articles or devices from sources of supply in this country would be subject to approval by the War and Navy Departments, such approval being dependent upon non-interference with this Government's own procurement program. (Appendix 4-16). Brigadier General Sherman Miles, then Assistant Chief of Staff, G-2, was designated as the representative of the War Department to coordinate the details for the interchange of the information covered in the Aide-memoire.

Subsequently, instructions were issued by the War Department which generally contemplated a full and free disclosure to the U. K.

Government of all U. S. Government owned secret technical information, with certain listed exceptions, but provided that where the private patent rights of American citizens were involved representatives of the War Department would furnish the British only information of such general nature as not to jeopardize such patent rights. Should the U. K. Government then desire to have such devices manufactured in this country, other than by the patentees or the original manufacturers thereof, or to incorporate special features of such devices in other instruments or systems, it was required to make suitable arrangements to that end with the patentee or the original manufacturer, failing which the U. K. Government must guarantee to the patent owner or original manufacturer the right to establish a claim against the U. K. Government covering reasonable and entire compensation for such reproduction or use.

Shortly thereafter a British Mission, known as the British Technical Mission, headed by Sir Henry Tizard, arrived in this country and established offices in Washington. It began operations immediately.

In order to work out the details and methods of handling the exchange of secret technical information in cases involving private patent rights of citizens of the respective countries, or their assignees, or of manufacturers concerned with the manufacture of patented devices, a joint committee was appointed composed of one representative from the Army, one from the Navy and two from the British, to be known as the Commercial Committee, to confer together and advise the War and Navy Departments and the British Technical Mission of the results of their deliberations. By letter from General Miles to The Judge Advocate General, dated 10 September 1940, Colonel (then Major) Francis H. Vanderwerker, JAGD, Chief, Patents Division, Office of The Judge Advocate General, was designated as the Army representative on the Commercial Committee. (Appendix 4-17) Commander Wilbur G. Jones, U.S.N., was designated as the Navy Department representative, and Mr. John Foster, First Secretary of the British Embassy in Washington, and Mr. Thomas W. Childs, of the British Purchasing Commission in Washington, were designated as the two British members.

The functions of the Patents Division during the period which immediately followed the organization of the Commercial Committee consisted largely in acting as an advisory agency to the technical services of the War Department charged with the duty of receiving and transmitting the technical information being exchanged between the two Governments, and acting as office of liaison between the chiefs of such technical services and the office of the Assistant Chief of Staff, G-2, on the one hand, and the officials of the U. K. Government in this country, on the other, ironing out difficulties which arose and furnishing legal advice and opinions when necessary.

The British Technical Mission headed by Sir Henry Tizard was shortly succeeded by the British Central Scientific Office, also located in Washington. Early in the Spring of 1941 the British Central Scientific

Office initiated conversations with the War and Navy Departments looking towards the entry into a reciprocal and mutually advantageous agreement with relation to questions and plans arising from an interchange of commercial information and the settlement of private patent rights in relation thereto. The particular proposal advanced contemplated an arrangement whereby there would be an exchange of scientific information of a commercial nature relating to the war effort without the necessity for direct negotiation between the U. K. Government and the private commercial firms in the United States owning or controlling the rights and interests desired by the U. K. Government, as was being done under the procedure then in effect. In this view, the formation of a joint commission was suggested having the power to pass upon all claims and commercial rights presented, and for the formulation of an agreement effecting a settlement of the numerous questions involved. After a discussion of the issues presented it was the opinion of representatives of the War Department, as well as those of the Navy Department, that those Departments, as such, should not attempt to enter into any agreement with the U. K. Government along the lines proposed. The opinion held was that any such arrangement should be conducted through the State Department, on a diplomatic level, and that in addition to the War and Navy Departments, all other defense agencies of this Government, including particularly the Lend-Lease Administration, established pursuant to the Act of March 11, 1941 (55 Stat. 31; 22 U.S.C. 411), popularly referred to as the Lend-Lease Act, should be included. It was further the consensus that the current policies of the War and Navy Departments, with relation to the interchange of defense information with the U. K. Government, should continue in present form and effect subject to change only by reason of such further directives as might be issued by the President with relation thereto under the provisions of the Lend-Lease Act.

The Patent Interchange Agreement

On 22 December 1942 the first meeting, with respect to this Government entering into an agreement with the U. K. Government along the lines proposed by the British Central Scientific Office, was held, and for many months thereafter numerous other meetings were held with respect to this matter. These meetings were conducted under the auspices of the State Department, and at first were attended only by representatives of the U. S. Government, including representatives from the State, War and Navy Departments, the Lend-Lease Administration and the Department of Commerce, representing the U. S. Commissioner of Patents. Later on, after the ideas of the American representatives had more or less crystalized, representatives from the various British agencies in this country were invited to participate in the discussions.

Finally, as a result of many conferences, complete agreement was reached between the representatives of the two governments with respect to the provisions to be included in the agreement, and under date of 24 August 1942, Executive Agreement Series 268, between the United States and Great Britain, covering the interchange of patent rights, information, inventions, designs or processes, was signed in Washington. (Appendix 4-18)

The Chief of the Patents Division, and a number of officers on duty with the Patents Division, from time to time served as subcommittee chairmen, and as members of subcommittees, appointed by the Chairman of the American side of the Joint Committee established by Art. XIII of the Agreement, in the consideration of many problems and issues which have arisen with respect to operations under the Agreement. At the time of his appointment, the Chief of the Patents Division was designated as the technical advisor and consultant to the War Department representative on the Joint Committee. Personnel of the Patents Division also participated in drafting the Procurement Regulations governing operations within the War Department to carry out the terms of the Agreement (See P.R. 1109 to 1111.2).

Exchange of Technical Information with
Foreign Nationals other than under Execu-
tive Agreement Series 268 - War Depart-
ment Memoranda No. W380-44.

Having, as above set forth, under date of 24 August 1942, entered into Executive Agreement Series 268 with the Government of the United Kingdom, covering the interchange of patent rights, information, inventions, designs or processes, which Agreement was the only one of its type entered into by this Government with any foreign nation, the War Department next turned its attention to establishing rules and regulations governing the interchange of technical information with other foreign nations and nationals thereof, and with the U. K. Government and its nationals other than as covered by Executive Agreement Series 268. Personnel of the Patents Division participated with representatives of the various technical services of the War Department, and other interested agencies of the War Department, in drafting the necessary regulations which were published as Memorandum No. W380-44, War Department, dated 25 February 1944, (Appendix 4-19) as amended by Memorandum No. 380-44, War Department, dated 24 July 1944. (Appendix 4-20).

10. Operations under Royalty Adjustment Act 1942

Promulgation of the Act

In the early stages of the emergency which preceded the current war, it became increasingly apparent, in connection with procurement functions of the War Department, that the Government was being subjected to the payment, directly and indirectly, of tremendous patent royalties on material being purchased from government suppliers, such royalties finding their way into a charge upon the procurement as an element of cost by reason of patent license contracts under which government suppliers were licensees. These royalty-bearing contracts were largely made prior to the war and had become unreasonable or excessive primarily because of the gigantic volume of government purchases wholly unanticipated at the time of the original negotiation of the instruments. The procurement agencies found themselves at a peculiar disadvantage in that they were

obliged to allow to the supplier, as an item of cost, the full royalty charge despite the fact that no opportunity had ever been presented for governmental negotiation of the rate or amount of royalty it was in fact thus paying.

In the situation existing, where the Government was purchasing from a supplier operating under a patent license dominating the article of procurement, the Government found itself unable to effect adjustment of the royalty other than by straight negotiation based upon an appeal to the patriotic motives of the licensor and, peculiarly, found itself at a greater disadvantage in dealing with a supplier operating under license than in dealing with a supplier infringing the same patent. In the latter case, under the circumstances prevailing on 1 July 1940, the Government was protected against any exorbitant charge by virtue of the act of June 25, 1910, as amended (40 Stat. 705; 35 U.S.C. 68). This latter Act, in short, provided that a government supplier could produce with impunity a patented article, or follow a patented method, upon governmental order and that any patent owner, feeling himself aggrieved thereby, while debarred from procuring injunctive relief either against the supplier or the Government, was given the right to sue the Government in the Court of Claims for the recovery of reasonable and entire compensation. In operation, the majority of such infringements under this Act, were readily settled by agreement and license. This statute, based upon the principles of eminent domain, had been found satisfactory to protect infringing activities of the Government and its suppliers, and had been found constitutional. (*Crozier v. Krupp*, 224 U.S. 290; *Richmond Screw Anchor Co. v. U. S.*, 275 U.S. 331).

Thus, while protected, in the case of infringement, against "profiteering" by patent owners in time of war, the Government in dealing with a patent licensee was, at this stage of the war, subjected to royalty rates for licensed use of inventions by its suppliers at whatever terms might then be, or theretofore had been, negotiated between the supplier and the patent owner. It was not sufficient to say that the Government could effect its procurement wholly from suppliers designated to infringe, for, as will readily be recognized, a supplier holding a patent license was frequently the best equipped to achieve production in volume and with speed, both of which factors were found imperative in girding the nation for defense and war.

In fairness to American industry and the accurate presentation of the state of American patriotism, it should be pointed out that there were many manufacturers and patent owners who were willing voluntarily to reduce their royalties, realizing that it was only fair that they should do so in view of the unexpected and un contemplated wartime production, and also being sincerely desirous of doing their bit for the war effort. As a result there was considerable voluntary adjustment of royalties, either by way of reduction of the license rate or by complete waiver of royalties on procurement for the Government, before the enactment of the

act of October 31, 1942 (56 Stat. 1013; 35 U.S.C. 89-96), hereinafter referred to as the Royalty Adjustment Act 1942.

The solution of the problem by voluntary efforts, however, was far from complete, was ineffectual in adamant or recalcitrant cases, and was not entirely democratic or consistent with the American tradition, as represented by the Selective Service Act. The situation thus presented was resolved by the passage on 31 October 1942 of the Royalty Adjustment Act 1942, supra.

The story of the passage of that Act begins with a letter from Colonel Franklin P. Shaw, JAGD, Judge Advocate, Materiel Division, Army Air Corps, Wright Field, Dayton, Ohio, dated 27 March 1942, to The Judge Advocate General, forwarding a memorandum from Colonel Shaw to the Chief, Contract Section, Materiel Division, Wright Field, Dayton, Ohio, of the same date, on the subject "Patent Royalties" (Appendix 4-21), and attaching to said memorandum a draft of a proposed bill (Appendix 4-22) to amend the act of June 25, 1910, as amended, supra, for the purpose of correcting the inequitable situation relating to royalties charged against Government procurement. In view of Colonel Shaw's interest in this subject and his activities in initiating action looking toward the enactment of the Royalty Adjustment Act 1942, Colonel Shaw has frequently been called "The Father of the Royalty Adjustment Act", and the bill, when introduced in Congress, was frequently referred to as "The Shaw Bill".

Briefly described, the Act empowered the head of any department or agency of the Government, finding a royalty to be unreasonable or excessive, insofar as paid upon procurement by his department, to give notice of that fact to the licensor and all licensees involved in the procurement, and to afford to all of said parties an opportunity to be heard as to the reasonableness, or want of excessiveness, of the royalty involved. After such hearing the Act provides that an order should be made, by the head of the department or agency involved, fixing the fair and reasonable royalty, if any, to be paid by the licensee, or licensees, to the licensor upon such procurement, and provided that any licensor aggrieved by such an order might, at his election, bring an action in the U. S. Court of Claims for any additional amount of royalty to which he may believe himself entitled, whereby to effect fair and just compensation for the use of his patent property. The Act was so drawn that its operation applied not only to royalties prospectively accruing against government production, but also to all royalties which might be unpaid by the licensee to the licensor at the time of the receipt, by the licensee, of the statutory notice under the Act. This encompassed in some instances royalties accrued, but unpaid, both before and after the passage of the Act and thus was retroactively operative in effect.

The Act, being emergency in nature, and directed expressly to royalties found to be unreasonable or excessive, "in the light of war-time production", was limited in time to the duration of the war and six months

thereafter, insofar as those sections dealing with the power to give a notice and make an order under the Act are concerned. Insofar as legislative intent may be indicated in the measure itself, it was stated to apply "to all royalties charged or chargeable directly or indirectly to the Government of the United States". (Section 7; 35 U.S.C. 95).

It should be noted that the Act was not entirely concerned with royalty adjustment. Section 6 of the Act was partly devoted to the definition of terms contained in the Act itself, and also contained a clarification of the act of June 25, 1910, as amended, with reference to its applicability to subcontractors, and to this extent may be regarded as an amendment of the latter Act. Section 6 was permanent legislation and will remain in effect after the expiration of Sections 1 and 2 of the Act.

Section 3 of the Act contained a new provision in the patent law which was likewise not directly concerned with royalty adjustment, to wit: it provided that the head of any department or agency might enter into an agreement, before suit against the United States has been instituted, in full settlement and compromise of any claim against the United States accruing to a patent owner or licensor under the provisions of the Act, or any other law, by reason of the manufacture, use, sale or other disposition of an invention, whether patented or unpatented, and for the payment of compensation to such owner or licensor for future practice of the invention. This Section was regarded as authorizing the settlement of claims which would ordinarily be asserted under the act of June 25, 1910, as amended; the Patent Marking Statute (35 U.S.C. 49); the act of October 6, 1917, as amended (35 U.S.C. 42), known as the "Secrecy Order Act"; and Section 10 (i) of the Air Corps Act of July 2, 1926 (10 U.S.C. 310), relating to aircraft designs; as well as under the Royalty Adjustment Act 1942 itself. This section of the Act was also permanent legislation. It is therefore seen that this was a highly important statutory provision enabling the administrative departments of the Government to settle claims and purchase licenses, providing of course, applicable appropriations were available, and litigation of the claim was not actually commenced.

Administration of the Act

Following its enactment the Act was formally implemented by a memorandum from the Secretary of War dated 20 November 1942, to the Commanding Generals, Services of Supply (later Army Service Forces) and Army Air Forces and to the Chiefs of each of the Supply Services, delegating powers, duties and authorities under the Act to those officers and to the Assistant Chief of Staff, Army Air Forces Materiel Command, the Director, Purchases Division, Services of Supply, and to the Deputy Chiefs of each of the Supply Services. The duties of the Secretary of War under the Act were assigned by the same memorandum to the Under Secretary of War, and a set of Rules and Regulations, annexed to the memorandum were published as Procurement Regulations 1112 to 1112.16, inclusive, under date of 28 November 1942.

Administrative supervision and control of operations under the Act, on the staff level, were vested in the Director, Purchases Division, Services of Supply (later absorbed in the Office of Director of Materiel, Headquarters, Army Service Forces) and exercised through the Patent Counsel in the Legal Branch of his office.

The Patent Counsel of the Legal Branch at all times conducted his operations and activities in full and complete coordination with the Chief, Patents Division, Office of The Judge Advocate General, and the officers of the Negotiations Branch of the Patents Division, and he consulted that office on legal problems, referring to it problems of legal interpretation of the Act for its opinion. It may thus be seen that the administration of the Act at the staff level under the office of the Under Secretary of War was performed by the Director, Purchases Division, Office of the Director of Materiel, through his assistants, with The Judge Advocate General, through his assistants, acting as legal advisor.

In practice, the Patent Counsel, Office of the Director of Materiel, referred to the Chief, Patents Division, Office of The Judge Advocate General, all cases wherein the approval of the Director was required, for his advice and comment. The Patent Counsel, Office of the Director of Materiel, also usually transmitted to the Chief, Patents Division, copies of all other actions taken by the technical services, such as voluntary agreements, and the Chief, Patents Division, through his assistant in charge of the Negotiations Branch, subjected these actions to a systematic review similar to that made by the Office of the Director of Office of Materiel. In the event any errors were found, or any comments were considered appropriate, such errors and comments were reported to the Patent Counsel, Office of the Director of Materiel, for appropriate action.

The Chief, Patents Division, and his assistant in charge of the Negotiations Branch, also assisted the patent sections and patent representatives of the technical services, and the Army Air Forces, in carrying out operations under the Act, as well as cooperated in questions of common interest with representatives of the Navy Department and other governmental establishments having the duty of administering the Act. In addition, the Chief, Patents Division, coordinated many questions of operational procedure as well as interpretation of the Act with representatives of the Attorney General, and cooperated with that office in the preparation and presentation of the position of the United States in litigation, as more particularly hereinafter described.

In connection with the question of the propriety of review of findings of fact by the Office, Director of Purchases Division, with the Chief, Patents Division, functioning in an advisory capacity, considerable controversy arose at times by virtue of the making of such review. The technical services resented such review, claiming that it was rightfully a matter within their complete jurisdiction. On the other hand, such

review was consistent with the practice of the review by the courts of evidence for the purpose of weighing same to discover whether the findings are in accord with the manifest weight of the evidence, or for the purpose of determining whether there is sufficient evidence to support the findings. The controversy is one which will probably always exist so long as reviews are made and is not limited to reviews of actions under the Royalty Adjustment Act.

The operational administration of the Act, in contrast to the staff administration, was delegated in the main to the chiefs of the supply services (later called technical services), that is, to the Commanding General, Army Air Forces and the Chiefs of the seven technical services of the Services of Supply, to wit: Ordnance, Signal Corps, Quartermaster Corps, Transportation Corps, Surgeon General, Engineers and Chemical Warfare Service. The work of the seven technical services was undertaken by the patent sections, insofar as the same existed, or by patent representatives of the Chiefs. In the Army Air Forces, the administrative operation of the Act was assigned to the Royalty Adjustment Board functioning organizationally as a part of the Patent and Royalty Section, Judge Advocate's Office, Materiel Command, Wright Field, Dayton, Ohio, and to a limited extent some of the early work of the Army Air Forces under the Act was handled by the Assistant Air Judge Advocate, and by the Patent Section of the Air Judge Advocate's Office.

A problem of administration which did not occur until the early part of 1945 was the matter of War Department channels for transmitting evidentiary data to the Department of Justice in connection with the defense of suits brought under the Act. The first such suit brought was that of Coffing and Bookwalter v. The United States, in the District Court for the Eastern District of Illinois, Nos. 458-D and 459-D, filed 12 January 1945, for relief against the operation of Royalty Adjustment Order No. W-18. The Department of Justice called for information upon which to defend the suit, pursuant to the provisions of R.S. 188 (50 U.S.C. 91), addressing its request to the War Department, attention, the Adjutant General's Office. That office referred the matter to the Purchases Division, Office of the Director of Materiel, for collection, assembly and transmittal to the Department of Justice of such data as the Department of Justice had requested, and which was in addition to that contained in the official file of the Adjutant General's Office. When the reply to the Department of Justice from the Office of Director of Materiel was made, it was routed through The Judge Advocate General, at which time he called attention to the provisions of paragraph 3, AR 25-10, War Department, dated 11 May 1944 to the effect that it was the duty of his office to prepare and submit to the Department of Justice evidence in litigated patent cases. Such procedure was acquiesced in by all concerned and the Patents Division thereafter took over the liaison activity with the Department of Justice in the case.

Results Under the Act

It can roughly be estimated that up to and including 31 March 1945, an aggregate of more than eight thousand cases involving the charge

of patent royalties upon Government procurement have been considered by the War Department, the great bulk of which have been handled by the Army Air Forces, through the Patents and Royalties Branch of the Office of The Judge Advocate, Wright Field, Dayton, Ohio. It is also estimated that more than six thousand cases were finally disposed of, in one way or another, up to 31 March 1945. In but 25 cases was it necessary to issue an order under the Act. In the same period the Navy Department issued 17 orders. It should be noted that in all instances the Navy orders were made in the same cases as those which involved orders by the War Department, there being a separate interest of the two departments in the same transaction, thus necessitating separate orders in such cases.

The following statistics are given with respect to the information indicated by the files of the Patents Division, Office of The Judge Advocate General, covering the period from 1 July 1940 to 31 March 1945:

Number of Settlements under the Act	122	
Number of Notices under the Act	56	
Number of Orders under the Act	24	(25 numbered orders were issued, but 2 are in the same case)

A list of the orders issued is attached (Appendix 4-23). The 24 orders were issued by the technical services as follows: Army Air Forces 16, Ordnance 3, Transportation Corps 2, Engineers 2, and Signal Corps 1. The difference of 32 between the number of Notices and the number of the Orders is accounted for as follows:

Cases settled by Agreement	12
Cases closed without action	2
Cases pending	18

It would have been desirable to report the amount of savings that had been effected by the War Department by operations under the Act, but unfortunately such data was not available at the time of writing.

The nearest approach that can be made to indicating the amount of savings accomplished by operations under the Act is the estimate of \$128,000,000 on combined procurement by the War and Navy Departments as a result of orders and agreements made pursuant to the Act. This estimate was contained in a joint letter from Mr. Robert P. Patterson, Under Secretary of War and Mr. H. Struve Hensel, Assistant Secretary of the Navy, under date of 11 April 1945, to Mr. Francis M. Shea, Assistant Attorney General (Appendix 4-24), in connection with the defense of the issue of the constitutionality of the Act before the Supreme Court in the case of Alma Motor Company v. Timken-Detroit Axle Co.

Up to 31 March 1945, no suits had been filed under Section 2 of the Act in the Court of Claims, but three actions had been commenced in

District Courts, or Circuit Courts of Appeals, of the United States, seeking to test the constitutionality of the measure.

The first such action, in point of time, was the case of Coffman v. Federal Laboratories, Inc., et al. (United States, Intervenor) (55 F. Supp. 501) brought in the U. S. District Court for the District of New Jersey. This was an action in equity wherein the plaintiff sought to enjoin the defendants from complying with Royalty Adjustment Orders No. W-9, of the War Department, and No. N-7, of the Navy Department, which had substantially reduced the royalties accrued from defendants to plaintiff and had directed the refund of substantial royalties accrued but unpaid at the time of notice and prior to an order. Previously, the same plaintiff had brought an action at law against the same defendants, which was still pending, seeking an accounting for royalties due under the licenses to which the Royalty Adjustment Orders were thereafter directed. The Court found in the decision above noted that the plaintiff had a plain, adequate and speedy remedy at law, and therefore dismissed the complaint for want of equity. This decision, being made by a 3-judge constitutional court, the constitutionality of the Act having been expressly raised by the plaintiff, was appealed to the Supreme Court of the United States and affirmed by that Court in Coffman v. Breeze Corp., et al. (United States, Intervenor) (323 U.S. 316).

The second case was Alma Motor Company v. Timken-Detroit Axle Company (United States Intervenor), wherein the issue of constitutionality of the Act was raised before the Third Circuit Court of Appeals (144 F. (2d) 714) in the course of the prosecution of an appeal by the plaintiff-appellant from a decision of the District Court (47 Fed. Supp. 582). In that case, the appellant (licensor) was seeking to recover royalties upon an article admittedly supplied to the Government. The defendant (licensee) interposed, as its defense, the order of the War Department under the Act (Order No. W-3), reducing the royalty of the license involved to zero, and contended that the issue before the Court was rendered moot by reason of the supervening nature of the War Department's Order. The appellant responded by asserting the unconstitutionality of the Act and, therefore, the invalidity of the order made pursuant thereto. The United States intervened under the Act of August 24, 1927 (50 Stat. 751; 28 U.S.C. 401), and supported the constitutionality of the Act upon the separate theories that it was: (1) in the nature of an exercise of the power of eminent domain under the broad powers of the sovereign, and (2) that the Act was further an exercise of the war powers and particularly was designed as a profit controlling measure in time of war in conformity with the historic Congressional intent expressed in the Vinson-Trammell Act (48 Stat. 505; 34 U.S.C. 496) and acts of similar import enacted thereafter.

The Third Circuit Court of Appeals, in a unanimous opinion, reported at 144 F. (2d) 714, held the Act constitutional in all respects, and held valid its application not only to royalties prospectively accruing subsequent to notice and order, but also to royalties accruing during the

period of notice, as well as theretofore, and even prior to passage of the Act. A writ of certiorari was granted by the Supreme Court on 5 February 1945, and is, as of 31 March 1945, pending before that Court in the October term of 1944. Argument on the Writ was set for 5 April 1945.

The Department of Justice in its brief before the court had stressed the eminent domain theory of the Act which, while perhaps satisfactory for sustaining the constitutionality of the Act, the War Department believed might jeopardize the value of the Act, because if the Act was construed as an eminent domain statute, then the taking of whatever was taken under the Act must be compensated for in full. The value of a five dollar bill is \$5.00. If a part or all of the \$5.00 is taken, the proper measure of compensation is an equivalent amount. By the same token, under the eminent domain theory of the Act, the proper compensation would be the value of the rights which had been taken away, or in other words the exact amount by which the royalties had been reduced.

The War Department, through the medium of the personnel of the Patents Division, took an active part in the conduct of this litigation with a view of presenting the most favorable theory of the law in order to sustain its constitutionality, and for this purpose a brief, developing the theory of the exercise of war powers, was prepared, in conjunction with representatives from other War Department agencies, and submitted to the Department of Justice. The Department of Justice used the brief substantially verbatim, as a supplemental brief, and the Court in its decision sustained the constitutionality of the Act, basing its conclusions approximately half and half on the theories of eminent domain and war powers, respectively.

A third test of the Act arose in a suit at law in the Western District of Pennsylvania, entitled Coffman v. Federal Laboratories, et al., (United States, Intervenor), (unreported decision) involving the same parties as the New Jersey case of similar title discussed above, wherein the plaintiff brought an action at law to recover royalties under its contract with defendant. The defendant set up as a defense the Royalty Adjustment Orders of the War and Navy Departments (Nos. W-9 and N-7), and the plaintiff by replication asserted the Act to be unconstitutional and the Orders entered thereon to be invalid. This case was at the time of writing in the trial stage, the Court having granted a summary judgment against the defendant for that much of the royalties due by him to the plaintiff as were allowed on Government production under the above-noted Royalty Adjustment Orders.

Problems under the Act

During the course of the administration of the Act, various problems arose as to its meaning, scope, application and the powers authorized by it. Many of these problems were worked out as practical expedients by common consent and the solutions were finally formulated and incorporated in Procurement Regulations.

a. Formal Opinions

Other problems were more formally presented and considered. One of the first such problems was the question of whether or not royalties could be adjusted which were considered to be unreasonable or excessive, under an agreement whereby the patent owner had assigned the patent to a company, but retained a running royalty on a fixed percentage basis of the total selling price of all machine tools sold by the assignee during the period of the agreement. It was held that notwithstanding that the Act was in terms of a licensor-licensee relationship, it might properly be invoked in the view that the legal effect of the agreement under consideration was no more than that of the conventional license when considered with reference to the congressional intent in the enactment of the Act. To hold otherwise would defeat the purpose of the Act and permit a royalty recipient to avoid the Act by the mere act of denominating his conveyance an assignment, (SPJGP 1944/3769, 21 April 1944; Bull JAG April 1944, page 166). Had the Act provided for invocation of the powers generally against the "royalty recipient", instead of merely against the "licensor", the problem thus resolved by construction would have been obviated.

The Royalty Adjustment Act had been invoked without question against the Alien Property Custodian in the case of Hispano-Suiza, Licensor, Fairchild Engine and Airplane Corporation, Licensee, wherein the Alien Property Custodian had vested the patent rights and the interest of the licensor under the provisions of the Trading With The Enemy Act. (Order No. W-4, 27 Oct 43). The Act was also invoked against the Alien Property Custodian in three other cases going to order. However, when it was proposed to invoke the Act in a case in which royalties were being paid to the Defense Plant Corporation, pursuant to an arrangement made with the patent owner, the question was raised whether or not the Act could properly be invoked against a Government agency. The Judge Advocate General, in an opinion (SPJGP 1944/3543) dated 3 May 1944 (Bull., JAG May 1944, page 203), held that the Act could be so invoked.

Another question which arose was in connection with the authority of the Secretary of War to redelegate his powers under the Act. The Judge Advocate General in an opinion (SPJGP (072)) dated 4 December 1944 to the Director of Materiel interpreted Section 5 of the Act to authorize the Secretary to redelegate his powers and authorities, provided such redelegation was limited, as prescribed by the Congressional Committee amendment, above, to "qualified" responsible officers, boards, agents or persons.

b. Other Problems

Among other problems which were not formally treated by opinions of The Judge Advocate General, but to which consideration was given were, the requirement for joint action by the various departments; what constituted royalties within the meaning of the Act; the measure of fair and just royalties under order; voluntary agreements; when to issue notice; zero royalty order; withdrawal of notice; and, interest resulting from issuance of notice.

c. Relationship with the Alien Property Custodian.

One peculiar aspect of the application of the Royalty Adjustment Act was the relationship brought about by the vesting of patents by the Alien Property Custodian under the Trading With the Enemy Act. The Alien Property Custodian was charged with the duty of vesting all patents and property rights, including the interest accruing under license contracts owned by enemy aliens. In the execution of this charge the Alien Property Custodian found it necessary in a second class of cases to vest patents or interests in patent license agreements owned by foreign nationals who were not necessarily enemy aliens, but who were nationals of subjugated countries, or whose activities may have been suspect for acting as a cloak for enemy aliens or enemy governments. In some instances, the Alien Property Custodian issued only Supervisory Orders under this latter class of cases, in which case he did not acquire title, but only the supervision and control of the patents or contract interest involved, much in the manner of a guardianship. It was equally necessary, however, to recognize the Alien Property Custodian as a party in interest under Supervisory Orders as well as under Vesting Orders. In those cases where the licensor's right under patent licenses was vested, the Alien Property Custodian, after vesting, became the legal owner and would continue to receive the patent royalty. The monies collected by the Alien Property Custodian were to be turned into the Treasury for the benefit of the United States Government.

The situation therefore existed where the War and Navy Departments were making procurement of a patented article which was the subject of a patent license in which the Alien Property Custodian had vested the licensors' interest, and were paying from funds appropriated from the Treasury, a royalty fee as a part of the cost of such procurement, which royalty fee was, in turn, being received by the Alien Property Custodian for return to the Treasury. This was obviously a case of taking money from one pocket and putting it in the other so far as the Government was concerned, and therefore a situation where a useless load of overhead was being imposed with consequent depletion of the fund by the cost of administration necessarily imposed thereon in effecting such circuitous transfer of the monies involved. Likewise it would seem ridiculous for the War or Navy Departments to invoke the Royalty Adjustment Act, thereby again employing administrative overhead to reduce the royalties to the proper rate of zero in such cases. It was therefore concluded that the only direct way of handling this situation was to have the Alien Property Custodian grant to the Government, in those cases where he held the patent, and there was no exclusive license outstanding, a royalty-free license for the duration of his vesting order, and in those cases where there was an exclusive license outstanding, a release and waiver to the licensee for the benefit of the Government, of the right to receive royalties under such license on Government procurement.

The Alien Property Custodian, however, was loathe to enter into such an agreement, contending (1) that he did not have such power under

the Trading With The Enemy Act and (2) that he held these patents and vested property under a pseudo-trust to return to the original owner after the war, or subject to State Department or Congressional direction, and (3) that the Government received the benefit of the vested property, in view of the fact that the proceeds were turned into the Treasury. The War Department countered that the latter objection was inconsistent with the second objection because if the Government should ever decide to return the vested property to the original patent owner, the royalties which would have been paid would then be a full charge against the Government, whereas if they had been excused or reduced, the Government would immediately have the benefit of such reduction and the status of the claim of the enemy alien would be less secure, and in any event he would have been put in the same status as any American patent owner whose royalties had been reduced to zero during the war. The Alien Property Custodian was adamant on his stand until he requested and received an opinion from the Attorney General under date of 28 November 1944, holding that it was his duty to use the vesting patents and property rights for the interest of the United States Government, and that he could best do this by granting the licenses and the release and waivers requested by the procurement agencies of the Government. Thereafter negotiations were undertaken with the Alien Property Custodian to work out such licenses and waivers, but as of 31 March 1945, no such agreements had been signed by the Alien Property Custodian. Neither had any Royalty Adjustment Orders been issued against the Alien Property Custodian, since the issuance of the opinion of the Attorney General referred to above.

The Alien Property Custodian consented to the negotiation, by those administering the Royalty Adjustment Act, with the licensor and licensee in those cases where he had issued only Supervisory Orders, as distinguished from Vesting Orders, and also in cases where he had vested the property. In the latter case the Alien Property Custodian approved the agreement effected by the War Department with the licensor and licensee. See Det Norske Aktieselskab for Elektrokemisk Industri, Inc., Licensor - Agreement 1 March 1945.

Pending the settlement of the questions involved, a number of notices under the Act were issued by the Royalty Adjustment officials of the War Department in which the Alien Property Custodian, as licensor, was made a party. The Alien Property Custodian never controverted the authority or validity of such notice. The negotiations with the Alien Property Custodian looking toward a royalty-free license and a release and waiver of the right of the Alien Property Custodian to receive royalties paid under exclusive licenses were carried on by the Patents Division of The Judge Advocate General's office in the early stages and up to 17 July 1944. This was on the theory that The Judge Advocate General's office was the proper office of the Army for contact with other governmental agencies. The personnel of The Judge Advocate General's office were keenly interested in securing these rights for the Government. Thereafter, when it was determined that these negotiations were administrative or operational in character, and that the Alien Property Custodian

occupied more or less the same relation to the War Department as any private licensor, such negotiations were carried on by the Office of the Director, Purchases Division.

Evaluation of the Act

Coming now to a summary of the Act and to the operations conducted thereunder with reference to its quality, efficacy, and the function it has fulfilled during the war, it is observed that the original draftsmanship of the Act failed to anticipate many of the problems that subsequently arose. It will be obvious from the discussion of the problems under the Act, given above, that most of those problems that were primarily legal in nature could have been avoided had the original drafters of the Act had more detailed experience in the field attempted to be covered. Clearly, the scope of the Act in the particulars of making it definitely applicable to running royalties paid under instruments in the form of assignments, to royalties paid ministerially or otherwise to other Government agencies, and to royalties paid under direct licenses from the licensor to the Government, should have been enlarged. Also, the authority of the head of the department or agency to redelegate his authority and powers should have been clarified. The apparent limitation contained in Section 4 of the Act, on the right of the Government to take advantage of the reduced royalty rate by way of refund only where the royalties have already been paid to the licensee, should have been removed, and the Government unequivocally given the right to take advantage of such reduction by running refund with respect to all royalties, whether subsequently accruing or already paid to the licensee. Likewise, the following uncertainties should have^{been} clarified, (a) when did the period of "wartime production" begin; (b) did the Act permit the recoupment of royalties, considered excessive under the conditions of wartime production and already paid to the licensor, out of royalties subsequently accruing; (c) did the right exist to withdraw a notice, once issued, without an order; and (d) was a licensor entitled to interest on monies withheld, in the event he successfully prosecuted a suit against the Government in the Court of Claims under Section 2 of the Act.

The need for making the Act permanent was considered during its prelegislative history, but due to the uncertainties involved and the recognized haste with which the Act was promulgated, it was considered wise to make the royalty adjustment features of the Act only temporary legislation for the duration of the war and six months.

In any discussion of savings made under the Act, the letter of Under Secretary of War Patterson and Assistant Secretary of the Navy Hensel (Appendix 4-24), showing a savings to the War and Navy Departments of \$128,000,000, should not be lost sight of.

In retrospect, it is apparent that from an administrative point of view the supervision of operations under the Act would have been facilitated had other additional records been kept and certain additional

reports been required, as follows: (1) had each delegate conducting operations under the Act been required to make an estimate of the savings in a particular case, such savings being broken down into headings under Refunds, Price Reduction, and Estimates of Infringement Liability Released; (2) had each technical service conducting operations under the Act been required to keep accurate records of the identity of the cases involved under the operation of the Act, and accurate records of the number of cases handled with respect to the total number of cases, number of voluntary agreements, number of notices, number of orders, and number of closing reports; and (3) had a system been inaugurated whereby the delegates or technical services would have been required to make periodic reports of the number of cases handled to the Central Administrative Agency, much in the manner that the Service Commands and Air Technical Service Commands make report of the number of claims handled under the Domestic Claims Act. (57 Stat. 372; 31 U.S.C. 223).

One deficiency of a policy nature, that is outstanding, is the manner in which the administration of the Act at the staff level was conducted. It is fairly obvious that there existed considerable duplication between the activities of the Patent Counsel, Office of the Director of Materiel and the Patents Division, Judge Advocate General's Office. A more ideal handling of this administration would have been effected had all functions exercised by the two offices been combined in one office.

In conclusion, it is submitted that the test of an institution or a law is the measure of respect, loyalty, and devotion which it commands from the persons most familiar with it. The Royalty Adjustment Act has the respect, loyalty and devotion of the persons administering it. This is mute but adequate testimony of its stature as a statute, and of its effectiveness as an aid to the war effort with which its administrators regard it. While operations under the Act may not have been ideal at all times, the accomplishments and degree of smoothness of operation achieved, particularly with reference to coordination of activities and harmonious functioning, are proudly exhibited by its sponsors to all who are interested. The letter (Appendix 4-24) from the Under Secretary of War Patterson and Assistant Secretary of the Navy Hensel tells its own story of a savings accomplished of \$128,000,000.00.

11. Classified Inventions Branch

Upon the passage on 1 July 1940 of Public No. 700, 76th Congress, 3d Session, amending the act of October 6, 1917 (40 Stat. 394; 35 U.S.C. 42), providing for the placing of applications for patent in secrecy by the Commissioner of Patents and for the tender of inventions to the Government of the United States for its use, it was apparent that a considerable volume of work would be entailed in the War Department's share in the administration thereof. The Army Section of the Army and Navy Patent Advisory Board was established and charged with keeping

accurate records of all applications for patent referred to it. The provisions of the above-cited Act, with respect to tender, stated that an applicant whose patent was withheld, as therein provided, and who faithfully obeyed the order of the Commissioner of Patents, and tendered his invention to the Government of the United States for its use, would, if and when he ultimately received a patent, have the right to sue for compensation in the Court of Claims, such right to compensation to begin from the date of the use of the invention by the Government. Provision was further made in the Act for agreements to be made in full settlement and compromise for damage accruing to the applicant by reason of the order of secrecy and for use of the invention by the Government. In view of these provisions of the Act, and the experience gained during World War I with similar provisions in the act of October 6, 1917, it was apparent that suit could lie in the Court of Claims in the case of every application placed in secrecy by the Commissioner of Patents under which tender was completed. Therefore, the keeping of adequate records in the War Department, from which to defend such suits, was a mandatory obligation. The Classified Inventions Branch of the Patents Division, Office of The Judge Advocate General, was charged with this responsibility.

The immediate consideration running to the Government upon the tender of an invention was the opportunity to study its details and to benefit by this technical knowledge in the prosecution of the war. To accomplish these benefits the inventions thus made available had to be brought to the attention of the interested technical agencies of the War Department, as well as other Government departments. Since tender to the Government of the United States for its use, as recited in the Act, did not specify what agency would be used as the representative of the Government, it was apparent that coordination would be needed between all departments which would receive tenders in accordance with this provision.

The Office of Scientific Research and Development, under its development contracts, provided for the receipt of copies of any applications for patent filed by the contractor for the information of that Office, and for the information of such technical services as it chose to select for further distribution thereof. The dissemination of the information received in the War Department through this channel also became a responsibility of the Classified Inventions Branch of the Patents Division.

Contractors to the War Department, having inventions arising under classified contracts, as well as other inventions covered by applications for patent in the United States Patent Office which they considered of potential importance in the war program, corresponded with the War Department seeking information as to the status of these applications, and furnished information considered as bearing on the need for having the Commissioner of Patents withhold the granting of these applications for patent. This correspondence was routed to the Patents Division and handled by the Classified Inventions Branch because of its relation to the other work thereof.

Army and Navy Patent Advisory Board

The detailed history of the origin, operations and records of the Army and Navy Patent Advisory Board is presented in a separate monograph. However, it seems well to state that the records of the Army Section of this Board were expanded to include records of all applications for patent placed in secrecy by the Commissioner of Patents, as well as all applications considered but not held secret. Thus, the records maintained included applications recommended for secrecy by advisors such as the Judge Advocate General of the Navy, the Petroleum Administrator for War, the Office of Scientific Research and Development, and the War Production Board. By reason of these records, any inquiry received in the Patents Division concerning an application in the Patent Office and its status under the Act, could be more expeditiously acted upon. These records were particularly useful in connection with establishing the prerequisites of tender, when tender was proffered with regard to a particular application for patent. They further gave evidence of the persons and agencies interested in the subject matter. The records of the Army Section of the Army and Navy Patent Advisory Board were maintained by Patents Division personnel and an officer of the Division, in addition to his other duties, served as Secretary of the Board.

Inventions Tendered to the War Department

The provisions of the act of October 6, 1917, as amended on 1 July 1940 (54 Stat. 710; 35 U.S.C. 42), with respect to tender of inventions, were similar to the provisions of the original Act of 1917, and provided for a right to compensation from the date of use of a tendered invention in the event precedent conditions had been met. The importance to the Government of having such tender accomplished rested in the access given thereby to the technical information of the application for the consideration of its possible benefit to the war program. Applications for patent in the United States Patent Office have always been considered as private property and no information with regard thereto is given out by that office. From the first, technical experts of the services who necessarily had access to applications for patent were placed under oath not to divulge or disclose any secret information acquired by reason of having assisted the Commissioner of Patents in determining whether such information should be withheld from publication. Therefore, without tender being accomplished, it was possible that an invention of importance would rest in the Patent Office unexploited by the inventor and unavailable to interested agencies. It was apparently expected that the provisions of the Act with respect to tender would promptly stimulate the majority of inventors to render their inventions available.

The first secrecy order issued by the Commissioner of Patents made no mention of tender. After consultation with representatives of the War and Navy Departments, the form of secrecy order used by the Patent Office was modified to include a statement of recommendation that

tender of the invention be made by communicating directly with a specified department. The Department specified was selected by the Patent Office to agree with the agency represented by the expert recommending that the application be placed in secrecy. This distinction was soon found to be arbitrary, and to depend upon the priority in which experts viewed the case, rather than in their true degree of interest therein. Therefore, to avoid being overly specific and to eliminate a clerical step, the secrecy order soon was changed to specify "War or Navy Department", as the recommended recipient of tender. By the end of September 1941, when 600 secrecy orders had been issued, a printed form with the wording "the Secretary of War or the Secretary of the Navy" was adopted. It was hoped that these gratuitous recommendations of the Commissioner of Patents would stimulate the recipients of secrecy orders into tendering their inventions.

While it was realized that a large percentage of applications held secret were so held because the disclosure thereof was previously known to the using services, and probably already under development or production contract, it was also evident that any invention not so known, and not tendered, might constitute a loss of a potential advantage to this country. Unless studied for exploitation, the benefits of restricting its publication might well prove negative. Even where subject-matter viewed by the experts was recommended for restriction because of its similarity to projects under way, advantage might well come to these projects by comparison of the different approaches thereto taken by different inventors. Thus, it was hoped that a complete coverage of secret inventions would be represented by the tenders made to all Government representatives.

To protect the interests of the Government, as well as to insure that the War Department would not be criticized for taking advantage of the mistakes made by inventors in proffering tender of inventions, it was the position of The Judge Advocate General that tender must be made by the record owner of the invention, that such tender must be made without condition or reservation other than those contained in the Act, and that the Government must have complete access to the Patent Office records of the application, including the progress of prosecution therein, so as to enable it to become apprized of the liability that might be incurred in the event use was made of the invention. In 1940 the Patent Office authorities were reluctant to promise that photostatic copies of all tendered applications could be furnished for official use, when ordered on the basis of a Power to Inspect and Make Copies of the Patent Office files. This led to the practice by the War Department of requiring that a certified copy of the file wrapper and contents be furnished in connection with tenders received at that time. By oral arrangement with the Chief Clerk of the Patent Office, it was agreed that the file history would be supplemented at any time where such a certified copy had been provided. Where tender was received falling short of meeting these standards, the correspondent was informed that tender was considered insufficient and the discrepancies enumerated.

During the initial period and until 8 June 1942, all correspondence with regard to tenders made to the Secretary of War was prepared for

signature in the office of the Under Secretary of War. As the volume of this correspondence increased, that office agreed that future disposition thereof would be made by forwarding such items to the Office of The Judge Advocate General on disposition slip marked "For necessary action and direct reply".

By 1 January 1942, 918 applications for patent had been placed in secrecy by the Commissioner of Patents. With respect to these, 111 inventions had been tendered to the War Department, of which 21 were considered insufficient. Contact with the Navy Department indicated that the Office of The Judge Advocate General of the Navy was receiving a greater number of tenders and was not requiring a certified copy of the file wrapper and contents. In view of the meagre number of tenders being received, and of the practice followed by the Navy in a similar situation, the Patent Office was again approached to determine if copies of their files would be furnished for official use when ordered upon the basis of a Power to Inspect and Make Copies. It was feared by the Patent Office that a shortage of photostat paper would develop if all tendered inventions were so handled, but it was agreed that every effort would be made to fill such orders if the War Department would encourage the larger corporations, particularly, to include copies of the specifications, claims and drawings with their tenders. At the invitation of the Chief of the Patents Division, and after consulting War and Navy Department representatives, the secrecy order form used by the Patent Office was amended with regard to the recommendation for tender. The form introduced on 16 January 1942 suggested that the inventor preserve his rights and make the details of his invention available by promptly tendering his invention to the Secretary of War or Secretary of Navy, such tender to be accompanied by a Power to Inspect and Make Copies, and a copy of the application, including drawings. (Appendix 4-25) This form was adopted after about 1000 inventions had been placed in secrecy.

Following this pattern, the Patents Division, in acknowledging receipt of tenders, considered them sufficient where made by proper authority, without condition, and accompanied by a Power to Inspect and Make Copies. Where correspondence was conducted, it was stated that such tender should preferably be accompanied by a copy of the application as filed. Numerous letters were written in cases where a request for a certified copy of the file wrapper and contents had not been answered, to acquaint inventors with the new practice.

By 1 January 1943, tenders had been received in the War Department with regard to 556 inventions, of which 77 were considered informal, but the orders of secrecy outstanding totaled 3529. Even after comparing records with the Navy Department and others receiving tenders, it was realized that a desirable percentage of tenders was not being made. Reluctance to tender was expressed by many persons who felt that a free license of some kind was so established in favor of the Government. Repeated explanations that the provisions of the Act were considered as granting

specific rights to those who tendered were only sufficiently publicized to reach the corporations and persons having discerning legal counsel. The principal danger of missing a worthwhile invention through lack of tender was considered to be with small companies and individuals not acquainted with the Act and not in contact with war production in the field of their inventions.

Consideration had been given for some time to the desirability of requesting, or soliciting, inventors to tender their inventions. Reluctance to adapt such a policy sooner was based upon the fear that such action would constitute assistance to a future claimant in establishing a right against the United States Government. In February of 1943, the Patents Division reviewed this matter with the Assistant Judge Advocate General and was assured that the right to compensation was granted by the Act and to call attention thereto was not improper. A letter in a form adapted for general application to both private and corporate inventions was drafted and multi-lithographed and, to simplify the action requested of the inventor, a form of Combined Tender and Power to Inspect and Make Copies was added as an inclosure thereto. (Appendix 4-26)

Starting on 17 March 1943, these letters requesting tender were dispatched to the record owners of secret inventions. As a basis of operation it was decided to send such letters only where six months had elapsed from the date of the order of secrecy and no explanation of the failure to tender could be found in the files of this office. Further limitation was made to those cases in which the title of the invention, or the record of its examination for recommending secrecy, indicated a possible interest to a technical service of the War Department. It was also considered advisable to avoid conflict with other Government departments, such as the Navy Department, by not requesting tender where secrecy had been recommended by The Judge Advocate General of the Navy, or the records otherwise indicated that the matter was under Government contract. In connection with the responses developed from these requests, it was found that many applications covered by contract with the Office of Scientific Research and Development were not tendered, such omission of tender being at the specific request of that agency. It was further developed that many tenders had been made to the Navy Department as to which the War Department was not fully apprized. A current system of reporting such tenders between the Navy and War Departments was worked out.

In the year ending 31 March 1944, 1873 tenders were received by the War Department. The effect of soliciting tender was directly reflected by 550 tenders returned, out of 769 letters dispatched, requesting such action. It was felt that a much larger proportion of the increase was attributable to the effect of these letters in furnishing an accepted form for use in making tender and in informing recipients with respect to the provisions of the law. Correspondence received in this regard indicated that a large number of inventors considered that the War and Navy Departments already had complete access to their applications in the Patent Office, irrespective of tender.

In the year ending 31 March 1945, 1130 additional inventions were tendered to the Government, as represented by the War Department. Of these, 308 followed from 493 requests for tender dispatched from this office. At this time 10,815 applications had been placed in secrecy by the Commissioner of Patents, and the War Department had on record a total of 3725 tenders. In reporting 3725 tenders as made to the War Department, some disclosures made available for detailed consideration are included in this total which were not technically considered to be in proper form as tenders to the Government of the United States for its use under the provisions of the Act. For example, the General Electric Company furnished copies of applications placed in secrecy, together with Powers to Inspect and Make Copies, with regard to 426 inventions. These submissions were accompanied by letters stating that tender was made of the invention for "military, naval and national defense purposes". In response to the statement of the War Department that such a limitation was considered contrary to the terms of the Act in question, the General Electric Company took issue, and requested that the disclosure so offered be used to make the details of the inventions available for inspection by the various national defense agencies, and that the difference of opinion be not resolved at that time.

As another example, the E. I. du Pont de Nemours & Company, when requested to tender inventions, agreed that in preference to tendering under the provisions of the Act, a Power to Inspect and Make Copies would be furnished with regard to such applications, and in each case the willingness of the company to negotiate a mutually satisfactory license was expressed. 85 disclosures were received under this arrangement.

As a still further example, the General Motors Corporation, and a few others, elected to furnish a Power to Inspect and Make Copies, together with a request that the invention be considered as thus presented, rather than to make a formal tender of invention. About 65 disclosures received under these conditions were included in the above reported total of 3725.

Navy Tenders made Available

In January and February of 1942, arrangements were completed with the Office of the Judge Advocate General of the Navy (later Office of Patents and Inventions), under which all tenders of inventions made to the Navy Department would be compared with the serial numbers of the applications represented by tenders of inventions made to the War Department. On 13 February 1942, a list of 151 serial numbers was submitted by the Navy Department as the secret inventions that had been tendered to the Government for its use through that office. Arrangements were made to exchange listings of tenders received in the War Department and those available for loan in the Navy Department on a monthly basis. By 31 March 1943, 195 disclosures were received from the Navy under this arrangement and in the next two years ending 31 March 1945, 1113 disclosures were thus made available in the War Department, making a total of 1308.

The Office of Scientific Research and Development, through its contacts with manufacturers and research agencies, was selected as a representative of the Government in making tender of inventions in a few instances. By arrangements with that Office, 46 files of tenders received by it were borrowed and photostated in a manner similar to that practiced with the Navy Department.

Distribution of Disclosures

Since the benefit to the Government of a tendered invention was the opportunity thus afforded for technical services to consider the details of the disclosure for possible use in improving weapons of war and the technique of their production, the first consideration, after formal acknowledgment of a tender, was to get the disclosure before the using services. For purposes of determining the services that might be interested in a particular subject, the secrecy records showing who has recommended secrecy, as well as the disclosure itself, were consulted. Photostatic copies of the specifications and drawings were then prepared in such number as were considered necessary to cover the technical agencies having a primary interest in the subject-matter. It was found that from one to four copies of the usual tender were needed, with the average around two copies.

In transmitting the first disclosures to the services, the pertinent facts concerning the status of the application as to secrecy and tender were recited, along with a quotation of the pertinent portion of the Act in question. Request was made that the Patents Division be notified in the event use was made of the invention. To assist and stimulate the reporting of information to a place of central record, a Report of Use form was soon devised, specifically requesting statements as to use and information bearing on the scope of the invention, such as prior art or other defense material negating novelty, public use, prior publication, etc. Also, a more detailed letter of transmittal was adopted, detailing the status of the application, the possible benefits and liabilities incurred by using the invention, and requesting the execution and return of the Report of Use. This type of letter was first used in January 1942, and was the usual form applicable to inventions tendered to the War Department.

For transmitting copies to the technical agencies of the War Department of inventions tendered to the Navy Department, a form similar to that used in connection with the War Department tenders was used. This form also inclosed a Report of Use.

The Report of Use form was revised, and on 1 May 1944, a type including a separate heading entitled LEGAL AND PATENT INFORMATION was substituted. A copy of this form is inclosed. (Appendix 4-27)

Where tendered inventions were owned by a national of the United Kingdom, the agreement entered into between the Government of the United

States and the Government of the United Kingdom on 24 August 1942 (effective 1 January 1942), covering the Interchange of Patent Rights, Information, Inventions, Designs, or Processes (Executive Agreement Series 268), applied. All tenders distributed prior to the appreciation by this office of the effect of this Agreement, to which its terms were considered applicable, were followed by a letter calling attention to its provisions. All copies of such tendered inventions subsequently distributed were accompanied by a letter directing attention to the Agreement and the pertinent provisions of War Department Procurement Regulations 1109 to 1111.2, inclusive. Where copies of British-owned inventions were sent to other agencies, such as the Office of Scientific Research and Development, the status of the application was detailed and attention invited to the Agreement between the Governments.

Where copies of secret applications were made available to the War Department for the information of the interested services, but formal tender was not elected, special forms of transmittal were used detailing the status of the invention and inclosing the standard form of Report of Use.

The Office of The Judge Advocate General of the Navy was periodically informed of the tenders received by the War Department, and it was agreed that copies would be furnished if requested. With the exception of calls for a few specific serial numbers, when special problems arose, no general interest in the bulk of Army tenders was displayed by the Navy until early in 1944. At that time, the Bureau of Ships, the Bureau of Aeronautics and the Bureau of Ordnance received from The Judge Advocate General of the Navy the lists of Army tenders, both as accumulated and as currently received. It was agreed that all requests for tendered inventions made by the Navy Department should be processed through the office of The Judge Advocate General of the Navy. Numerous requests for tendered inventions from the different Bureaus were initiated and indorsed over to The Judge Advocate General of the Army with request that the copies of tendered inventions be forwarded directly to the requesting Bureau. To date of writing, under this practice 710 copies of patent applications available in the War Department were furnished to the Bureau of Ships, 170 copies to the Bureau of Aeronautics, and 150 copies to the Bureau of Ordnance.

Late in 1941, the Office of Scientific Research and Development, informally requested that copies of all inventions tendered to the War Department be forwarded to that Office. Such copies were furnished and transmitted by letter reciting the status of the application and requesting that any known information bearing on the scope of the invention or its use be brought to the attention of this office.

The Office of the Petroleum Administrator for War (formerly, Office of Petroleum Coordinator), after informal inquiry, requested by letter dated 13 February 1942, that copies of tendered inventions relating to the development, production, purification, and utilization of aviation gasoline, butadiene, or toluene be furnished that Office.

The War Production Board at first requested that copies of all tendered inventions be forwarded to it in all cases where that Office had recommended the placing of the secrecy order. By letter dated 22 May 1942, it was requested that this practice be suspended to save file space and photostating, and that, instead, a list of available tenders be furnished from which specific requests would be made if desired. Copies of about 40 tendered inventions were furnished to the War Production Board by letter of transmittal.

Office of Scientific Research and
Development Disclosures

A few disclosures of inventions placed in secrecy by the Commissioner of Patents, and tendered to the Office of Scientific Research and Development, were forwarded to the War Department, as previously mentioned. A much greater volume of applications for patent were made available to the War Department by that Office by reason of their contracts. The contractors to the Office of Scientific Research and Development were required to supply copies of the applications covering inventions arising therefrom to that Office. Certain of these copies were forwarded for the information of the War Department, together with a letter of transmittal reciting the present or potential license rights of the Government therein. Where such copies related to an application covered by an order of secrecy in the Patent Office, access to the disclosures was of the same interest to the using services, as has been explained in connection with tendered inventions, and supplemented such disclosures in the records of this office. Furthermore, in the event tender and distribution had been made, or tender was subsequently received, co-ordination of the records and the relay of appropriate information was essential. For this reason, the Office of Scientific Research and Development disclosures covered by secrecy orders were processed in the Classified Inventions Branch. By so doing, the failure to tender many applications was explained upon the record so as to avoid duplication in consideration of inventions by the services, as well as the unnecessary solicitation of tenders. Where such submission by the Office of Scientific Research and Development supplemented information previously on hand, memoranda were written to bring the information up to date. Where such submission was a new disclosure in the War Department, the routine cases were forwarded to the War Department services having cognizance of the subject-matter by means of memoranda.

RECAPITULATION OF TENDERS

Period	: Secrecy Orders : issued by Commis- : sioner of Patents	: Tenders of Inven- : tion to War De- : partment	: Tenders to Others : Made Available in : War Department
1 July 1940 to 31 Dec 1941	918	90	5
1942	2611	389	166
1943	3508	1619	347
1944	3165	1403	740
1 Jan 1945 to 31 Mar 1945	613	224	95
TOTALS	10815	3725	1353

12. Settlement of Claims

On 1 July 1940 the procedure for processing claims relating to the alleged infringement of patents by the War Department, in those cases where suit had not been filed, was prescribed in Army Regulations 850-50, War Department, dated 31 December 1934. Paragraph 8 of these regulations provided that any communication received in any establishment of the Army, in which claim was made that the use of any process or device constituted an infringement of a patent and forbidding further use of such process or device, or demanding the payment of damages or royalties on account thereof, or offering to sell a license in compromise of the claim, would be transmitted without other action directly to The Judge Advocate General, and the letter of transmittal would state all facts pertinent to the incident. Upon receipt of a claim The Judge Advocate General ascertained from the Department of Justice whether or not the claim had been investigated or settled by any other department or agency of the Government. If not, an investigation was made, and if it was determined that the patent in question was valid and infringed, the submitting agency was notified in order that negotiations could be instituted with the claimant to acquire the necessary operating rights under the patent. If determination was made that the patent was either invalid or not infringed, the claimant was so notified and that fact reported to the submitting agency and to the Claims Division, Department of Justice.

Patent claims arise out of the procurement of materiel. It was realized as early as 1 July 1940 that in the initial procurement phases of the rearmament program the necessary emphasis on speed, coupled with the rapid expansion of procurement agencies, might engender innumerable prospective patent claims. Accordingly, the Patents Division directed every effort towards the elimination or prevention of such claims by encouraging and assisting the various procurement agencies in acquiring licenses for nominal or zero royalties, and in insuring the inclusion in all research and development contracts of appropriate articles and clauses designed to protect the interests of the Government by assuring to it appropriate rights of assignment or license under the new developments made in their performance. Steps were also taken to insure that an adequate system was instituted to follow-up and obtain the necessary instruments of assignments and licenses for the purpose of recording them in the United States Patent Office. (See Section 8) In appropriate cases indemnity clauses were inserted under which the contractor concerned undertook to hold and save the Government harmless for or on account of claims of patent infringement. In those instances where such a clause was used and the financial responsibility of the contractor was unknown, or doubtful, provision was made for the posting by the contractor of a special patent infringement bond to insure the performance of the obligation assumed.

On 1 July 1940 two (2) claims of alleged patent infringement were under consideration by the Division. Subsequently patent infringement claims were received as follows -

1940 - 5 (1 July - 31 Dec.)
1941 - 24
1942 - 18
1943 - 25
1944 - 22 (To 12 Dec 1944)

All but eleven (11) of the above claims were disposed of as of 12 December 1944, by determination of either non-infringement or invalidity. No recommendations were made in any case for settlement or compromise, or the acquisition of rights to avoid litigation. Personnel engaged in this work required the full time services of one officer and part time of others.

On 12 December 1944, the eleven (11) claims still pending reverted to the appropriate technical service for processing under the new procedure established by War Department Procurement Regulations 1115.1 to 1115.22, inclusive (11 January 1945) and Army Regulations 850-50, War Department, dated 17 July 1942, was amended by Changes No. 1, dated 9 January 1945, to provide that any communication relating to a patent claim received would be transmitted directly to the chief of the technical service which has ordered the manufacture, use, or disposition of the subject matter of the claim. Under the new procedure thus established the technical services initially investigate questions of infringement and validity of patents and the Patents Division provides a review and coordination.

Between 12 December 1944 and 31 March 1945, the Patents Division, under the new procedure, coordinated 29 claims with other Government departments and agencies and received one (1) case for review.

Another type of claim received in the Patents Division was based upon Section VII of the act of March 11, 1941 (55 Stat. 33; 22 U.S.C. 416) popularly referred to as the Lend-Lease Act. Section VII of that Act provided:

"The Secretary of War, the Secretary of the Navy, and the head of the department or agency shall in all contracts or agreements for the disposition of any defense article or defense information fully protect the rights of all citizens of the United States who have patent rights in and to any such article or information which is hereby authorized to be disposed of and the payments collected for royalties on such patents shall be paid to the owners and holders of such patents."

In view of the obligation placed upon the Secretary of War by the above-quoted section, and in view of the fact that lacking an expression of Presidential or Congressional intent of the manner in which indebtedness of lend-lease countries to this Government for defense aid would be liquidated, if at all, there was included in all agreements entered into between this Government and the Governments of those foreign nations receiving lend-lease aid an article reading as follows:

"If, as a result of the transfer to the Government of _____ of any defense article or defense information, it becomes necessary for that Government to take any action or make any payment in order to protect any of the rights of a citizen of the United States of America who has patent rights in and to any such defense article or information, the Government of the United Kingdom will take such action or make such payment when requested to do so by the President of the United States of America."

This action was taken upon advice of the Attorney General that the inclusion of such language in agreements with lend-lease countries would operate to discharge the Secretary of War of the obligations imposed upon him by Section VII of the Lend-Lease Act.

Consequently, in reply to the inquiries received by the Patents Division from patent owners with respect to what action would be taken by the War Department to protect their rights under Section VII, they were informed of the inclusion of the above-noted language in all agreements made with lend-lease countries, and the views of the War Department were expressed that such action was considered adequate to protect their interests until such time as a determination was made by the President or by the Congress concerning the policy which would be adopted by this

Government with respect to the settlement of Lend-Lease obligations by those foreign governments which were the recipients of benefits under the Lend-Lease Act.

A further type of patent claim, as to which settlement must eventually be made, but in which settlement is necessarily postponed until the termination of the war, are those claims arising under the act of October 6, 1917, as amended (54 Stat. 710; 55 Stat. 657; 56 Stat. 370; 35 U.S.C. 42), whereby the Commissioner of Patents, in his discretion, is authorized to place in secrecy, and withhold the grant of a patent thereon, any application covering an invention the disclosure of which would be detrimental to the public safety or defense. The act provided that any applicant whose patent had been withheld, as provided by the Act, and who thereafter faithfully obeyed the order of the Commissioner of Patents and tendered his invention to the Government of the United States for its use, would, if and when he ultimately received a patent, have the right to sue for compensation in the Court of Claims for the use of his invention by the Government, such right to compensation to begin from the date the use of the invention by the Government first began. The Act further provided that the Secretary of War (and the heads of other defense agencies of the Government) was authorized to enter into an agreement with an applicant whose application had been placed in secrecy, in full settlement and compromise of the damage accruing to him by reason of the order of secrecy and for the use of the invention by the Government.

Although, as above pointed out, claims of the nature here in question are for the most part necessarily postponed until the termination of the present war, it was at all times fully realized that many such claims are going to be filed when the patents based upon applications now in secrecy are permitted to issue. With this view in mind, elaborate precautions were taken to insure that in every case where tender of an invention was made to the War Department, facts as to the use or non-use thereof by a technical service would be obtained and made of record. In this connection, and for further details of the exact procedures adopted to accomplish this end, see Section 11.

13. Cash Awards for Employee Suggestions -
Civilian Personnel Regulations No. 103

By the First Deficiency Appropriation Act 1943 (57 Stat. 32), the War Department, for the first time, was authorized to make cash awards to its civilian employees as a reward for beneficial suggestions made by such employees which result in improvement or economy in manufacturing processes or administration. Similar provisions were included in the Military Appropriation Acts for the fiscal years 1944 and 1945.

Under the provisions of the Act authorizing the Secretary of War to prescribe regulations for the granting of awards, the Civilian Suggestion Program was instituted in the War Department by the issuance

of Civilian Personnel Regulations No. 103, dated 2 June 1943, which provided that suggestions made by civilian employees of the War Department and in field installations should be considered by local committees which were empowered to grant cash awards up to \$250.00 as a reward to any employee making a valuable suggestion for improvement of administration, or proposing a new device or improved technique found to effect a saving in cost, or resulting in improved efficiency of operation of the establishment in which he is employed, or in the War Department as a whole. In the case of suggestions of broad application, or those considered worthy of greater reward than within the authority of the local committee to grant, the regulations provide for submission of the suggestion to the War Department Board on Civilian Awards for consideration, with a view to general adoption and the granting of a larger reward to the employee.

Prior to enactment of the enabling legislation, the Patents Division was called upon by the Employee Relations Branch, Office of the Secretary of War, for advice and assistance in the drafting of necessary legislation and regulations to carry into effect the Civilian Suggestion Program then in contemplation. It was realized that although many suggestions would relate solely to administrative details and operation, many would probably relate to apparatus or processes which would be proper subject-matter for patent or copyright protection, and that it would be desirable to make certain that the Government would obtain the right to use any suggestion submitted for an award without subjecting itself to a further claim, and also to make provision for the protection of the employee and the Government under the patent or copyright laws, where applicable. The right of the Government to the free use of ideas and suggestions submitted under the program was insured by including in the regulations a provision, paragraph 1-9, which required that in submitting a suggestion for consideration for an award, the employee must sign a statement that the same will not be made the basis of a further claim against the United States, and that application for patent thereon has not been made. This latter portion of the provision, apparently intended as further insurance against a later claim of infringement, was not recommended by the Patents Division, for the reason that it was deemed sufficient to secure a release of the character mentioned, irrespective of whether or not application for patent had been made.

In order to provide for consideration of ideas or suggestions with a view to applying for copyright or patent protection in appropriate cases, paragraph 1-9 of the regulations further provided that if Government interest was found in the suggestion which appeared to be susceptible of such protection, a copy of the papers pertaining to the suggestion would be forwarded to The Judge Advocate General to determine possible Government interest in obtaining patent or copyright protection. Upon receipt of such papers pursuant to these regulations, the Patents Division, in the case of inventions found to relate to subject matter within the cognizance of a technical service which itself maintained a patent section,

transmitted the same to such technical service for appropriate action under the provisions of Army Regulations 850-50, 17 July 1942, as amended, in the same manner as other inventions received from civilian and military personnel of the War Department. Inventions found to pertain to other activities, or to a service not maintaining a patent section, were handled by the Patents Division in accordance with established procedure. A total of 52 cases received pursuant to paragraph 1-9, Civilian Personnel Regulations No. 103 were processed by the Patents Division in the manner indicated.

14. Relationship with the National Patent Planning Commission

By Executive Order No. 8977, dated 12 December 1941 (6 F.R. 6442), the President created the National Patent Planning Commission consisting of Charles F. Kettering, Chairman, and Chester C. Davis, Francis P. Gaines, Edward F. McGrady, Owen D. Young, members. Audrey A. Potter was appointed Executive Director and Conway P. Coe, Executive Secretary. The Executive Order directed the Commission, in conjunction with the Department of Commerce,:

- a. To conduct a comprehensive survey and study of the American patent system and to consider whether it provided the maximum service in stimulating the inventive genius of our people in evolving inventions and in furthering their prompt utilization for the public good;
- b. To determine whether the system should perform a more accurate function in inventive developments;
- c. To ascertain whether there were obstructions in our patent laws and, if such are found, to indicate how they could be eliminated;
- d. To decide to what extent the Government should go in stimulating inventive effort in normal times; and
- e. To learn what methods and plans might be developed to promote inventions and discoveries that would increase commerce, provide employment and fully utilize expanded defense facilities during normal times.

In his Executive Order, the President authorized the Commission "to call upon other officers and agencies of the Government for such aid and information as may be deemed necessary for its work".

Under date of 22 September 1942, Dr. Kettering, the Chairman of the Commission, addressed a letter to the Secretary of War requesting that he designate a representative for the War Department with whom the members of the Commission could confer, and through whom they could call for information, suggestions and other assistance requisite to the success of their investigations. By letter from the Secretary of War to Dr. Kettering dated 2 October 1942, Colonel Francis H. Vanderwerker, JAGD, Chief, Patents

Division, Office of The Judge Advocate General, was designated as the representative of the War Department for the purposes stated.

Numerous conferences were held with the National Patent Planning Commission, at its formal meetings, and with individual members thereof from time to time, and all the information and other data requested by the Commission was extracted from the War Department's records or compiled and furnished to it for its information and use. A number of the recommendations made by the War Department to the Commission were adopted and incorporated in its two reports to the President, principal among which was its recommendation for the establishment of a central register of Government patent rights.

The first report of the Commission was transmitted by the President to the Congress under date of 18 June 1943, and was printed as House Document No. 239, 78th Congress, 1st Session. The second report of the Commission was transmitted by the President to the Congress under date of 9 January 1945, and was printed as House Document No. 22, 79th Congress, 1st Session.

CHAPTER XI

TAX PROBLEMS

On 1 July 1940, there was no Tax Division in the Judge Advocate General's Office. At that time the principal tax questions handled in the office arose in connection with attempts to tax transactions and property on Federal areas, post exchanges, Civilian Conservation Corps camp exchanges, officers' messes and clubs and military personnel. The Army's activities were largely confined to military reservations over which the United States exercised exclusive jurisdiction, and there were few State tax problems, except those arising out of sales of gasoline by post exchanges and similar agencies (see section 10 of Hayden-Cartwright Act, as amended -- act of 16 June 1936, as amended, 49 Stat. 1521, 54 Stat. 1060, 4 U.S.C. 12), the application of State unemployment compensation (social security) taxes to post exchanges, clubs, messes, etc. (see sections 613 and 614, act of 10 Aug. 1939, 53 Stat. 1391, 26 U.S.C. 1606, 1607), and the application of State income taxes to the pay of military personnel who were not resident within exclusively Federal areas (see Public Salary Tax Act of 1939, 53 Stat. 574). Federal tax problems were minor in nature.

With the initiation and expansion of the defense and war program, the adoption of the cost-plus-a-fixed-fee form of contract in July 1940, the passage of the Buck Act (act of 9 October 1940, 54 Stat. 1060, 4 U.S.C. 13-18) permitting the States to levy sales, use and income taxes within Federal areas, and the activities of the Federal Government (notably the Treasury Department and the Department of Justice) and of a number of States in seeking to restrict the application of the principles of reciprocal intergovernmental immunity, new problems developed concerning the application of State and local sales, use, gasoline, and gross receipts taxes to purchases by the War Department and by its cost-plus-a-fixed-fee (hereafter referred to as "cost-plus") contractors. These problems were placed under the jurisdiction of the Claims and Litigation Section, though State real property tax problems were under the jurisdiction of the Military Reservations Section, and the other tax questions, Federal and State, mentioned in the preceding paragraph were handled by the Contracts Section. The tax matters handled by those two sections were relatively few in number and were more or less incidental to their other work.

The decisions in Panhandle Oil Company v. Knox (277 U.S. 218) and Graves v. Texas Company (298 U.S. 393) held that State sales taxes could not be imposed upon purchases by the United States, whether the taxes be considered technically as imposed upon the vendor or upon the United States (the vendee). So far as those decisions related to vendor-type taxes they had been weakened somewhat by the decision in James v. Dravo Contracting Company (302 U.S. 134), but they had not been overruled.

The War Department took the position that cost-plus contractors were agencies of the United States and entitled to the same immunity from State taxes as the United States itself, and that, therefore, State and local sales, use and gasoline taxes were not applicable to purchases made by such contractors and gross receipts taxes were not applicable to the receipts of such contractors other than their fixed fees. Late in 1940 these tax matters were handled by one officer in the Claims and Litigation Section in conjunction with the Legal Branch, Office of the Quartermaster General, which then had supervision over Army construction. Negotiations and correspondence with the various States resulted in a majority of them agreeing with the War Department's position. Some, however, refused to agree. Litigation ensued in Florida (Standard Oil Co. v. Lee, 199 So. 325) which was decided in favor of the State in December 1940. The Government took no part in that case. Another case (Craig v. J. A. Jones Construction Co.) arose in Mississippi, which was not decided until after the Supreme Court of the United States had passed upon the status of cost-plus contractors, and that case ultimately turned on a question of State law. In the Spring of 1941 the question of State taxation of the defense program became so acute that it was taken up with the President in at least two cabinet meetings (appendices 5-1, 5-2, 5-3). After consideration of the views of the War Department, the Treasury Department and the Department of Justice, it was determined that test cases should be instituted to determine the status of cost-plus contractors. The Department of Justice took the position that neither the United States nor its cost-plus contractors were immune from vendor-type taxes, but that cost-plus contractors, as agents of the Government shared its immunity from vendee-type taxes (this is the legal incidence theory of immunity, as distinguished from the burden theory), and arrangements were made with the Alabama authorities to litigate the applicability of the Alabama sales and use taxes, both being vendee-type taxes, to purchases by cost-plus contractors. Thus began the cases of Alabama v. King & Boozer (314 U.S. 1) and Curry v. Dunn Construction Co., et al. (314 U.S. 14), which were decided by the Supreme Court of the United States on 10 November 1941, holding that cost-plus contractors (under the particular contracts involved) were not agents of the United States and had no constitutional immunity from taxation. Another case in which the Government participated at the same time and which reached the same result was Standard Oil Co. v. Fontenot ((La.) 4 So. (2d) 634). During the period while this litigation was being conducted, the Claims and Litigation Section continued its negotiations with the various States, practically all of which agreed either to exempt cost-plus contractors or to hold matters in abeyance pending a decision by the Supreme Court, and such negotiations, plus cooperation with the Department of Justice in the conduct of the litigation constituted the principal tax work of the Claims and Litigation Section.

On 1 July 1941, only two officers in the Claims and Litigation Section devoted any time to tax matters. With the adverse decisions in the King & Boozer and Curry cases, and the involvement of the United States in the war, with the consequent vast expansion of procurement, the tax problems became more important and acute. It became necessary to decide what was to be done about all the State taxes which had accrued against cost-plus contractors prior to 10 November 1941 and about those which might accrue after that date. The Judge Advocate General on 18 November 1941 was directed by the Office of the Under Secretary of War to prepare instructions for the guidance of contracting officers in connection with State taxes (appendix 5-4).

On 29 December 1941, the Claims and Litigation Section was divided into two sections, the Claims Section and the Litigation Section. The Litigation Section took over the litigation, liaison and tax functions of the Claims and Litigation Section and the State tax functions of the Contracts and Military Reservations Sections. It consisted of four officers, of whom only two, including the chief of section, devoted their time to tax matters. Six additional officers were transferred to the new section to devote their time to tax matters. Because of the scope of the State tax problem confronting the War Department and its highly technical nature, The Judge Advocate General requested and was granted an allocation of nine commissions in the Army of the United States to be filled by commissioning civilian lawyers who were experienced in the field of taxation. Using this allocation and drawing from reserve officers, officers were obtained to handle tax matters who had had previous experience either in the Tax Division of the Department of Justice, the Bureau of Internal Revenue, State tax commissions, offices of State attorneys general, or in private practice. These officers replaced other officers previously assigned to tax work, all of whom were reassigned except the chief of the Litigation Section. It was also found helpful to assign to the Office of the Chief of Engineers and to the Office of the Chief of Ordnance officers with specialized tax experience to cooperate with the Litigation Section. On 23 March 1942 the Litigation Section was redesignated the Litigation Division (Office Memo., 17 March 1942); on 15 June 1942 the Litigation Division was redesignated the Tax and Litigation Division (Office Memo. No. 39, 15 June 1942). By 30 June 1942, tax matters were being handled by seven officers, including the chief of the division. On 29 July 1942, the Tax and Litigation Division was reorganized into two divisions, the Tax Division and the Litigation Division (Office Memo. No. 53, 29 July 1942; Office Memo. No. 59, 25 Sept 1942), and at that time the Federal tax functions were transferred from the Contracts Division to the Tax Division and the functions of the Tax Division remained unchanged after that time.

The following data indicate the growth of the Tax Division:

Number of officers handling tax matters

31 December 1940	1	(In Claims & Litigation Section)
1 July 1941	2	(In Claims & Litigation Section)
31 December 1941	2	(In Litigation Section)
30 June 1942	7	(In Tax & Litigation Division; also one officer had been assigned to Office of Chief of Engineers to handle tax problems)
31 December 1942	7	(In Tax Division, including chief of division, who was also chief of Contracts Division and Contracts Co-ordinator)
1 July 1943	6	(In Tax Division, including chief of division, who was also chief of Contracts Division and Contracts Co- ordinator; also one officer had been assigned to Office of Chief of Ordnance to handle tax problems)
31 December 1943	8	(In Tax Division)
1 July 1944	9	(In Tax Division)
31 December 1944	8	(In Tax Division)
31 March 1945	8	(In Tax Division)

NOTE: Because of the great volume of tax problems arising on the West Coast and the impossibility of handling them expeditiously from Washington and because of the need for central control of tax policies, one officer from the Tax Division has been temporarily assigned to San Francisco since the Fall of 1943.

Number of cases handled

<u>Period</u>	<u>Formal cases</u>	<u>Informal cases</u>
1 July 1940 - 30 June 1941	Principally nego- tiations with states and liaison with De- partment of Justice	Not counted
1 July 1941 - 31 Dec 1941	18	Not counted
1 Jan 1942 - 30 June 1942	154	Not counted
1 July 1942 - 30 June 1943	447	1853
1 July 1943 - 30 June 1944	761	4294
1 July 1944 - 31 Mar 1945	983	2624

1. Procurement -- State & Local Taxes

After 10 November 1941 (the date of the King & Boozer and Curry decisions) two courses of action were open to the War Department with respect to state taxes burdening the war program. One was to seek immunizing legislation, the other was to negotiate with the States for the most favorable treatment possible under their respective statutes and regulations. The War Department sought to do both.

On 18 November 1941, a bill (H.R. 6049, 77th Cong., 1st Sess.) was introduced to exempt war contractors (and thus indirectly the United States) from the impact of state and local sales and use taxes. The bill was the subject of much interest and study in the War Department, and, subsequently, on 17 February 1942, a substitute bill (H.R. 6617, 77th Cong., 2d Sess.) was introduced dealing with the subject in more detail. On 26 February 1942, representatives of the War Department (the Under Secretary, officers from the Legal Branch of his office and from this office) and of the Navy Department attended a preliminary ex parte hearing before the Committee on Ways and Means in support of the bill. Public hearings were held on 4 March 1942. The Chief of Engineers and officers from this office testified in favor of the bill, and a statement was submitted on behalf of the Under Secretary. The Navy Department also supported the bill. The Treasury Department and representatives of a number of states opposed it. On 7 March 1942, the Chairman of the Committee on Ways and Means, introduced H.R. 6750 as a substitute for H.R. 6617, and it was reported favorably by that committee on 10 March 1942. On 10 April 1942, the Director, Bureau of the Budget, addressed a letter (appendix 5-5) to the Chairman of the Committee on Rules opposing the enactment of the proposed legislation. On 20 April 1942, H.R. 6955 was introduced as a substitute for H.R. 6750, and it was favorably reported by the Committee on Ways and Means on 22 April 1942. This new bill differed from H.R. 6750 principally in that it extended to war contractors no exemption from motor fuel or public utility taxes, and made it clear that no exemption from ad valorem property taxes was intended. Due to the vigorous opposition of various State taxing authorities and the above-mentioned action of the Bureau of the Budget, the Committee on Rules never granted a rule which would permit consideration of the proposed legislation on the floor of the House of Representatives. In October 1943 the War Department was requested to express its views concerning the reintroduction of legislation similar to that discussed above. The Tax Division cooperated in the preparation of a letter for the signature of the Under Secretary stating that the War Department did not favor the introduction of such legislation in view of (a) the general nature of the arrangements which had been made with State taxing authorities, (b) the completion of a major part of the cost-plus construction program and (c) the expected opposition to legislation of this character.

The Tax Section of the Litigation Division was active in connection with above legislation. At the same time negotiations were being carried on with the various States, looking toward statutory or administrative exemption of cost-plus contractors from sales, use and gross receipts taxes. When it became evident that Congress was not going to enact immunizing

legislation this activity was intensified. Approximately twenty-three states and the cities of New York and New Orleans imposed such taxes. As a result of negotiations to 31 March 1945, twelve States agreed to waive sales and use taxes accruing prior to 10 November 1941; ten States and two cities agreed that their sales and use taxes would not apply to purchases by cost-plus construction contractors; and sixteen states and two cities agreed that their sales and use taxes would not apply to purchases by cost-plus manufacturing contractors. It was expected that Alabama would fall in line shortly. The States of Indiana, Washington and West Virginia, the latter two of which also impose sales taxes, could not be persuaded to exempt from their gross receipts taxes reimbursements made to cost-plus contractors, but Indiana did concede an exemption as to the reimbursements for cost of materials. Generally speaking, the States made no concessions to lump-sum contractors, though Kansas as a matter of administrative policy did exempt them from sales and use taxes until 18 August 1942, Colorado exempted them from sales, use and service taxes with respect to contracts awarded prior to 1 February 1942, and Indiana continued its policy of exempting their gross income from tax on the ground that gross income from sales to the United States was exempt. The states which waived taxes accruing against cost-plus contractors prior to 10 November 1941 were persuaded to do so on the basis that the King & Boozer and Curry cases should not be applied retroactively. The States and cities which agreed that their sales and use taxes did not apply to purchases by cost-plus contractors were persuaded to do so on the ground that, under the terms of cost-plus contracts, purchases by such contractors were purchases for resale to the United States (purchases for resale generally not being subject to sales and use taxes under State and local laws, and resales to the United States were also exempt, either constitutionally or by terms of the taxing statutes). Though prior to 10 November 1941 a number of States exempted sales of gasoline to cost-plus contractors from their gasoline taxes, on the ground that such contractors were agents of the United States, only two made any concessions after that date. That situation was met generally by having the United States purchase gasoline tax-free and furnish it to such contractors.

The results of negotiations with various States and cities were made available to procurement officers in the form of directives (see par. 831, Procurement Regulations), prepared pursuant to directions from the Office of the Under Secretary of War. Prior to the reorganization of the Army in March 1942, they were issued from the Office of the Under Secretary. Later they were issued from Headquarters, Services of Supply, and are now issued as Army Service Forces Circulars, though they also are applicable to Army Air Forces procurement. These directives were generally worked out in detail in cooperation with the interested tax commission or revenue department and were approved by the State or local authorities prior to issuance. Any other procedure would only have provoked disagreements and litigation. In some instances the directives were adopted and published as regulations by the interested State authorities. In some instances, such as the City of New York, which issued extensive regulations, and Oklahoma, which adopted a statute authorizing waiver of sales and use taxes, no directives were issued. A summary showing in tabular form the results of the negotiations with the various states is set out in appendix 5-6.

After 10 November 1941 the various States, all of which impose gasoline taxes, generally made no concessions to cost-plus contractors with respect to gasoline taxes, although Missouri and Minnesota did grant some exemption to cost-plus contractors. In view of the tremendous quantities of gasoline consumed and to be consumed by cost-plus contractors in the construction and procurement programs, and in view of the fact that gasoline taxes were very high in relation to the cost of the product, this presented a serious problem. This problem was met in most instances by Government procurement of gasoline free of state taxes, such gasoline then being furnished to cost-plus contractors. Two states, Texas and Ohio, sought to break this system of tax-free procurement. Ohio took the position that under the Hayden-Cartwright Act (see par. 1, *supra*) the Government was required to remit to the State the tax on gasoline furnished to cost-plus contractors. The War Department disagreed and refused to pay. Ohio was then in the position of making a demand which it could not enforce by suit or otherwise. It then made a similar demand upon Defense Plant Corporation, which could be sued, and the case, in which the War Department cooperated with Defense Plant Corporation, was decided by the Ohio Board of Tax Appeals in favor of Defense Plant Corporation (Defense Plant Corp. v. Evatt, Ohio B.T.A., #8258, 13 Feb. 1945; no appeal was filed). Texas took a different approach and in 1942 filed suit against a cost-plus contractor for a use tax on the gasoline furnished by the Government. The office persuaded the Texas authorities to dismiss the suit. A similar demand was again being made by the Texas authorities at the time of writing, and if they persist the matter will be litigated.

In addition to gasoline consumed in the construction and procurement programs, staggering quantities were purchased by the War Department for use in its vehicles and planes. At the time of the King & Boozer and Curry decisions the only State seeking to impose its gasoline tax upon direct purchases by the United States was North Dakota. All the other States provided either statutory or administrative exemptions. After those decisions it became evident that the States could constitutionally impose their taxes with respect to gasoline sold to the United States, provided the legal incidence of the tax was upon the dealer or distributor rather than upon the United States. Consequently, where a State statute imposed the tax upon the dealer or distributor it was necessary only to repeal the exemption granted to the United States, or, in the absence of such an exemption, to reverse an administrative ruling; and where the statute imposed the tax upon the consumer it was necessary only to rewrite the law so as to impose the tax technically upon the dealer or distributor. It was anticipated that this would happen, but fortunately all but a very few legislatures were not due to convene again until 1943. In 1942, however, Utah reversed its position administratively and sought to tax gasoline sold to the United States. To stem the anticipated wave of such activity by discouraging it, it was directed that gasoline should not be purchased from Utah distributors or dealers unless it was impracticable to purchase elsewhere. Such action deprives the dealers in a particular State of business and yields little revenue to the State. (It is possible in this manner to avoid gasoline taxes because all State gasoline tax laws exempt from tax gasoline exported from the State and because no State can constitutionally impose a tax upon the United States with respect to gasoline

owned by the United States and brought into the State for governmental use. It may not always be practicable to follow this procedure because of emergency needs for gasoline, shortage of transportation facilities, or high transportation costs, particularly where refineries are located within the State involved.) Tennessee repealed its exemption, but most of the gasoline used by the Army was procured outside the State. Wyoming reversed its position but was persuaded that such action would be unprofitable, so an exemption was granted to the United States on bulk purchases. Maryland reversed its position but then made administrative concessions by regulation (see SPJGT 1944/3729) resulting in the exemption of practically all gasoline sold to the United States except filling station deliveries. The Maryland legislature later granted an exemption. Florida reversed its position, but the nature of its tax, i.e., whether a vendor or vendee tax, was so doubtful as to require litigation, which the State won (United States v. Lee, 13 So. (2d) 919), but before the case was decided the Governor had been persuaded to recommend and the legislature had passed legislation exempting bulk sales to the United States. Mississippi and Louisiana started to repeal their exemptions, but Louisiana was persuaded to exempt all bulk sales to the United States plus all gasoline for aviation purposes and for use in Government vessels, while Mississippi was persuaded to exempt all gasoline for use of the armed forces. The trend, apparently, was stemmed, at least temporarily, since at the time of writing practically all of the State legislatures had met for the year 1945 and none sought to change their gasoline tax laws so as to reach sales to the United States.

Other State and local taxes which had to be considered in connection with the procurement program were unemployment compensation (social security) taxes as applied to war contractors and property taxes. Unemployment compensation taxes were of concern to the War Department as they constituted reimbursable items of cost under cost-plus contracts. In the Spring of 1943 a movement was started in a number of State legislatures to increase unemployment compensation taxes on war contractors. All such proposals followed the same general pattern, i.e., one of increasing the rate of tax payable by those employers whose payrolls had increased more than a certain percentage over their payrolls for some selected prior period. Such proposed taxes were considered as discriminatory taxes in disguise, aimed at war contractors with the hope that the United States would bear the additional cost. Pursuant to instructions from the Office of the Under Secretary of War representatives of the Tax Division examined such proposed legislation and appeared before appropriate legislative committees in Missouri, Ohio, Illinois, and Alabama, to state the War Department's opposition. (See SPJGT 1943/6179 and 6179a.) In addition to the usual features mentioned above, the Ohio bill sought to provide for the segregation of an employer's cost-plus operations from his other operations, thus making the discrimination patent. This part of the Ohio bill was defeated, but the other features passed. The bills were also passed by the Missouri, Illinois, Alabama, and a number of other legislatures, including Wisconsin, where the only action taken was to request the Governor not to approve the bill. A similar bill was defeated in committee in the Texas legislature, and the one proposed in Indiana never received consideration.

Thereafter, the War Department changed its policy, and The Judge Advocate General was instructed not to oppose such bills unless they were patently discriminatory (see SPJGT 1943/10339; SPJGT 1943/9435; SPJGT 1943/6179a). During the 1945 sessions of the State legislatures a number of States adopted similar laws, one, Tennessee, being clearly discriminatory. The Tennessee law may never go into effect, however, since it depends upon certification by the Federal Social Security Board, to which the views of the War Department have been communicated.

The principal property tax problems which arose involved attempts to tax Government-owned realty, Government-owned improvements on privately owned land, and the interest, if any, of contractors in Government-owned plants (possessory interest assessments), the liability of Defense Plant Corporation for real property taxes, and the liability of contractors for personal property (intangible) taxes on advance payment accounts and on amounts due to them from the Government on open account. New York, Ohio, Massachusetts, and Illinois, sought to tax Government-owned real property, but were successfully resisted, by litigation where necessary. Pennsylvania made the most serious threat, attempting to impose real property taxes upon a private contractor with respect to Government-owned machinery and equipment in the contractor's plant. The Government intervened in the case at the insistence of the War Department, and a favorable decision was obtained in the Supreme Court of the United States (United States v. Allegheny County, 322 U.S. 174). An adverse decision would have been disastrous from a financial and administrative point of view. The Government's brief in the Supreme Court indicated that an adverse decision would directly affect two billion dollars worth of property similarly situated and owned by the War and Navy Departments and the Maritime Commission alone and might affect an additional five and one half billion dollars worth of property held by those agencies. It must be remembered that real property taxes are usually administered by counties, with varying rates and procedures and that questions of valuation would be present in each case. This decision caused the other States and local subdivisions to desist in large measure in their attempts to tax Government-owned realty or improvements. An interesting case was still pending at the time of writing in the Federal courts in West Virginia to determine whether a real property tax can be levied against land the title to which on tax day was held by a private contractor under contract to convey the land to the United States, and also to determine whether the improvements (Morgantown Ordnance Works) on the land on that day can be taxed even though title thereto was in the Government under the terms of the contract under which they were erected.

California was insistent after 1943 that contractors operating Government-owned plants had a taxable possessory interest in such plants. The Tax Division was successful in preventing the assertion of such taxes against War Department contractors, but it appeared that litigation might be necessary, since Contra Costa County decided to assess such taxes.

The Defense Plant Corporation built plants and then leased them to war contractors, usually cost-plus, and under the terms of the leases the contractors were usually obligated to pay any real property taxes, and the

War Department was called upon to reimburse the contractors for such taxes paid. Under section 10 of the act of 22 January 1932, as amended (47 Stat. 9, 55 Stat. 248, 15 U.S.C. 610) Congress consented to the taxation of the real property of the Reconstruction Finance Corporation and its subsidiaries; it had not consented to the taxation of the personal property of those corporations. Some State constitutions and statutes expressly exempted from taxation property of the United States and its instrumentalities (many legislatures during their 1945 sessions amended their statutes to take advantage of the consent to taxation), but the Defense Plant Corporation adopted a policy of paying taxes on its real property without regard to such exemptions. In following this policy it sought to obtain low valuations and to exclude from taxation machinery and equipment installed in its plant on the basis that they were personal property. This policy was of concern to the War Department since it, through its cost-plus contractors, was bearing the burden of these taxes, and The Judge Advocate General took the position that real property taxes were not payable where there was a State constitutional or statutory exemption of property of the United States. The matter was submitted to the Under Secretary of War who decided not to challenge the Defense Plant Corporation policy. It developed, however, that the Comptroller General began to question reimbursements made to cost-plus contractors covering payment of such taxes. Also several States, California and Pennsylvania, in particular, were not content to tax merely the plants; they sought to include the machinery and equipment as part of the real estate. As a result of these developments, Defense Plant Corporation began litigating both questions, i.e., the immunity question and the personal property question.

In connection with the war program it became necessary to advance billions of dollars to war contractors. Such advance payments were usually put in restricted bank accounts and the Government retained extensive control over them. Several States, California and Michigan, in particular, sought to tax such bank accounts to contractors. By negotiation the Tax Division convinced Michigan that it should not apply its intangibles tax, on the basis that even if the accounts did constitute property of the contractor, the contractor had an offsetting debt to the Government. California was persuaded not to levy its solvent credits tax with respect to such accounts on the basis that, because of their restricted nature and the control retained by the Government, they did not constitute solvent credits. Those same States sought to tax contractors with respect to amounts owed to them by the United States under their contracts. Until the decision by the Supreme Court of the United States in Smith v. Davis (65 S. Ct. 157), holding that there was no constitutional objection to the imposition of a property tax upon an open account indebtedness from the United States to a lump-sum contractor, the Tax Division was successful in preventing the imposition of such taxes. Now, however, the taxability of advance payment accounts is being litigated in California, and the taxability of open account indebtedness will probably have to be conceded. Whether such taxes are reimbursable under cost-plus contracts is another question.

The following points with respect to State taxes affecting the war program were of importance: (1) conferences with State tax officials led to a much more expeditious and satisfactory disposition of problems than any amount of correspondence; (2) securing invitations to and attending periodic

conferences held by various associations of tax administrators, tax assessors, municipal law officers, etc., was worthwhile because of contacts made, discussions of mutual problems, and information obtained as to attitudes of State and local tax officials toward Federal activities and as to possible contemplated action; (3) it was not necessary to decide first whether a particular State tax was reimbursable to cost-plus contractors before taking action to reduce the tax involved to a minimum -- if there was a possibility that a tax might be reimbursable, it was better to take all possible action to remove or reduce the tax when it was first asserted than to have to litigate the matter collaterally when the contractor asserted a claim against the United States for reimbursement.

In some respects the emphasis with respect to State tax problems by 1945 began to swing from the application of such taxes to procurement to their application to the disposition of surplus property and of termination inventory. A number of States imposed vendee-type sales taxes and use taxes, for which purchasers of surplus property and termination inventory may be liable. Since it was administratively impossible to collect such taxes from purchasers, the States sought to coerce or cajole the Government into cooperating with them in the collection of such taxes at the time when the sales were made. This problem was the subject of discussions among representatives of the War, Navy and Treasury Departments, the Bureau of the Budget, Surplus Property Board, Reconstruction Finance Corporation and its subsidiaries, War Food Administration, Maritime Commission and other agencies. Practical considerations entered here, though representatives of the various agencies were of the opinion that the United States could not be legally compelled to collect such taxes. These considerations were principally: (1) the States by and large had been cooperative in respect of the application of their sales and use taxes to cost-plus contractors; and (2) the States were cooperating in the withholding of Federal income taxes from the pay of their employees. No decision had yet been reached at the time of writing.

In addition to the problems discussed above, the Tax Division was concerned with the construction of the tax provisions of cost-plus contracts as to reimbursement for certain State taxes. Taxes which clearly fell upon procurement caused little difficulty, but franchise taxes and similar taxes which constituted items of overhead cost presented difficult problems, which were taken under consideration. The difficulties were enhanced by the variety of such taxes and by the failure of the contracts, which were by no means uniform in their provisions, to cover the matter clearly.

2. Procurement -- Federal Excise Taxes

Federal excise taxes imposed on the manufacture or sale of articles or services (manufacturers' excise taxes, retailers' excise taxes, and taxes on communications and the transportation of property and persons) necessarily affected determination of appropriate contract prices. Since exemptions from such taxes, under Treasury regulations and decisions of the Comptroller General, depended upon whether the contract price included or excluded the amount of such taxes as were applicable, War Department policies were re-

quired concerning the extent to which purchases were to be made tax free. The Legal Branch, Purchases Division (later Legal Branch, Office, Director of Materiel) was principally interested in the formulation of such policies and the dissemination of information with respect thereto. The solution of problems of technique and interpretation of the internal revenue laws and Treasury regulations and the furnishing of assistance in the drafting of appropriate tax clauses for contracts and in the preparation of Procurement Regulations were functions of the Tax Division. Since the activities of the Division and of the above-mentioned Legal Branch were very closely coordinated so far as Federal excise taxes are concerned, no further attempt will be made herein to distinguish between the activities of the two offices.

Shortly after the adoption of the cost-plus type of contract in July 1940, the Bureau of Internal Revenue agreed to treat purchases by such contractors substantially as if they were direct purchases by the United States. Until the repeal of the Federal excise taxes exemptions, which will be treated later, the Bureau maintained that position and, consequently, it was possible for procurement to be made under cost-plus contracts without paying Federal excise taxes.

The application of Federal excise taxes to lump-sum contractors was considerably more complicated than the application of such taxes to cost-plus contractors. On 27 January 1942 Treasury Decision 5114 was promulgated by the Treasury Department. That decision sought to clarify and settle previous doubts concerning the exemptions available to lump-sum contractors and represented a liberalization of the governmental exemption so far as its availability to lump-sum contractors and subcontractors was concerned. In general, it permitted the channeling of the governmental tax exemption through all tiers of purchases involved in the production of the ultimate article sold to the Government. At first, full advantage was taken of that decision for the purpose of excluding Federal excise taxes from prices paid by the Government, thus conserving War Department appropriations. Experience, however, showed that taking full advantage of Treasury Decision 5114 tended to increase the administrative work of the Government and of the contractors, generally with no net saving to the Government, since taxes included in prices paid by the War Department would ultimately find their way into the Treasury as revenue receipts. Consequently, on 4 January 1943, a joint statement of policy was issued by the Under Secretary of War and the Under Secretary of the Navy (see paragraph 897, Procurement Regulations). That policy, effective 1 March 1943, provided that direct purchases by the Government could continue to be made on a basis either including or excluding Federal excise taxes. It recognized that, in general, such purchases would be made on a tax-exclusive basis. Cost-plus prime contractors and subcontractors were likewise permitted to purchase articles on a basis including or excluding such taxes. As a matter of general policy, however, lump-sum contractors and subcontractors were not permitted to use the governmental exemption to purchase supplies and materials on a tax-exclusive basis. The new policy recognized that exceptions might be necessary and authorized such

exceptions. In general, the authorized exceptions fell within the following categories: (a) The technical services were authorized to permit lump-sum contractors to take advantage of available exemptions in purchasing radio receiving sets and other articles which might be deemed to be radio receiving sets, such as electronic equipment. This exception was deemed necessary due to doubt in many cases whether or not particular instruments sold to the Government were radio receiving sets, which doubt made tax-inclusive pricing an expensive guessing game. Numerous complications and possible windfalls to contractors were avoided by allowing this exception. (b) The technical services in some cases permitted lump-sum contractors to use the governmental exemption in purchasing tires and tubes. The tax on these items would be required to be paid in absence of use of that exemption since there was no exemption from this particular tax on the basis of purchase for further manufacture. Some contractors, such as truck manufacturers, purchasing tires and tubes, insisted on treating the full purchase price thereof, as increased by the tax, as a cost on which their profit was to be computed. Extending the governmental exemption to such purchases reduced contractors' costs for tires and tubes, with a resulting reduction in the gross amount of profit received by them, thus resulting in a net saving to the Government over and above the tax involved.

Upon the adoption of this new policy, it was necessary to revise the tax article for use in lump-sum contracts entered into on and after 1 March 1943. The revised article provided that, unless otherwise indicated, there were excluded from the contract price only Federal taxes directly applicable to the completed supplies or work covered by the contract (including component parts of which the contractor was the manufacturer, producer or importer) and as to which exemption from tax was available. Under this revised tax article a lump-sum contractor could not issue tax exemption certificates to his suppliers based upon the governmental exemption, unless an express exception to the provision of the tax article was made in the contract, which exception had to be authorized either by the chief of the technical service involved or by Headquarters, Army Service Forces.

The Revenue Act of 1943 required a major change, effective 1 June 1944, in the policies concerning the application of Federal excise taxes to War Department purchases. On the theory that administrative convenience and savings in manpower would result, that act, in general, removed the exemption from Federal excise taxes previously available to the Government. While that act was pending before Congress, the War Department made strenuous efforts to retain some exemptions. Since, however, the recommendation for such legislation had been sent to the Committee on Ways and Means of the House of Representatives over the signature of the President, the War Department could do no more than seek amendments in instances where removal of exemptions would not accomplish the intended purpose or would create burdensome administrative difficulties. The Treasury Department sponsored this radical change in tax policy without consulting either the War or Navy Departments, both of which were vitally concerned. In particular, successful

efforts were made to retain the exemption from tax on radio receiving sets, which exemption was deemed desirable because of the difficulty in determining whether or not certain articles were radio receiving sets. Efforts to retain exemption from the taxes on pistols, revolvers, firearms, shells and cartridges were also successful. Also, had the removal of the exemptions applied to existing contracts, a tremendous problem either of repricing or of processing vouchers for additional payments would have been encountered. That problem was avoided by continuing the exemptions in effect prior to the Revenue Act of 1943 as to all contracts entered into prior to 1 June 1944, as well as to all agreements and change orders supplemental thereto and bearing the same Government contract number. This furnished an arbitrary but administratively feasible test. In addition, the War Department was successful in securing the inclusion in the act of a provision (sec. 307(c)) permitting the Secretary of the Treasury to authorize exemptions from manufacturers', retailers', communications and transportation taxes with respect to articles or services purchased for the use of the United States if he should determine that imposition of the tax would cause substantial burden or expense which could be avoided by granting tax exemption. Subsequently, and at the insistence of the War and Navy Departments, the Secretary of the Treasury authorized the following exemptions under that section: (a) transportation under Government bills of lading or transportation requests was exempted from the transportation taxes (this was done on the theory that these exemptions were self-executing and the administrative procedures required to pay these taxes would be substantially greater than those involved under the exemption); (b) communications services furnished to and paid for by the United States were exempted (same theory as the transportation taxes); (c) exemption was also authorized from the tax on tires and tubes in case such items were sold to any person for use as component parts in the manufacture of an article to be sold to the Government. The reasons for this exemption were identical with those leading to an exception to the joint Army-Navy policy of 1943 in the case of the tax on tires and inner tubes (see above). All of the concessions obtained were to terminate after the war, unless the law was again changed.

✓ War Department policies previously in force were continued with respect to the claiming of such exemptions as remained available under the Revenue Act of 1943 on the basis of purchase for the use of the United States. Adoption of further policies, however, was required with regard to the claiming of miscellaneous exemptions available to private as well as governmental purchasers. In general, the theory behind the Revenue Act of 1943 was adopted by the War Department, namely, that complicated-and-time-and-personnel-consuming procedures should not be followed solely to avoid the transfer of funds from the pocket of one department, such as the War Department, to that of another department, such as the Treasury Department. The War Department, therefore, adopted the policy that miscellaneous exemptions, such as the exemption based on export, should not be claimed (see paragraphs 802.13, 802.14, 810.1, 811, 812.1 and 815 of Procurement Regulations). At the insistence of the Army Air Forces, however, claiming

of the exemption under section 3451, Internal Revenue Code, was permitted as to a small group of items which could be used only on or in connection with aircraft. (Sec. 3451, which was not affected by the Revenue Act of 1943, exempted from certain of the excise taxes items purchased for use as equipment or supplies on military aircraft.)

The standard form tax article for use in lump-sum contracts entered into on and after 1 June 1944 was revised in the light of the Revenue Act of 1943. Inasmuch as, in the main, purchases would be subject to Federal excise taxes, the revised clause provided that, except as otherwise specified, all applicable Federal taxes were included in the purchase price. By reason of the numerous changes required by the Revenue Act of 1943, Procurement Regulation No. 8 was completely rewritten.

Another problem which presented itself was the appropriate treatment of Federal excise taxes in connection with the conversion of cost-plus contracts to lump-sum contracts. In order that exemptions from Federal excise taxes taken by cost-plus contractors might not be jeopardized through the conversion to a lump-sum basis, it was necessary that the prices fixed in the converted contract take into account the fact that certain items on hand at the time of conversion had been procured exclusive of Federal taxes. Efforts were made to see that converted contracts were so worded as to take care of this problem.

The application of Federal excise taxes to the acquisition by the Government of termination inventory and to sales of Government property and of termination inventory was the subject of discussions participated in by representatives of the War Department, the Navy Department, Surplus Property Board, Reconstruction Finance Corporation, the Treasury Department and others. A ruling was obtained from the Bureau of Internal Revenue on this subject, largely through the efforts of the Tax Division, which should eliminate many complex problems.

In addition to the above general problems, the Tax Division rendered advice to the various technical services and to the Army Air Forces in countless instances involving specific questions as to the application and interpretation of the internal revenue laws. The Division also attempted to act as a focal point in the War Department for contact with the Bureau of Internal Revenue, and with the cooperation of that Bureau was largely successful in so doing. This was advantageous both to the Bureau of Internal Revenue and to the War Department, since it eliminated duplication and prevented different parts of the War Department from presenting conflicting views to the Bureau.

3. Miscellaneous

Status of Post Exchanges

It had been the position of the War Department for many years that post exchanges are Federal instrumentalities. That position, however,

was challenged from time to time by various state tax authorities and sometimes by the Treasury Department. On 1 June 1942 that question was finally settled by the decision of the Supreme Court of the United States in the case of Standard Oil Company v. Johnson (316 U.S. 481), in which it was held that post exchanges are integral parts of the War Department and entitled to all its immunities.

Federal Retailers' Excise Taxes

In 1941 the Congress imposed retailers' excise taxes upon the sale at retail of certain items of jewelry, toilet articles and furs (luggage was later included). A number of these articles are sold by post exchanges and commissaries. The Treasury Department took the position that exchanges and commissaries should pay this tax on their sales of such articles, but the War Department did not agree and, after unsuccessful negotiation with the Treasury Department, submitted the question to the Attorney General for an opinion. After a long period of negotiation in the course of which the Treasury Department sought unsuccessfully to obtain legislation on the subject, the request for an opinion of the Attorney General was withdrawn upon the agreement of the Bureau of Internal Revenue that such taxes would not be collected from exchanges and commissaries. The theory of the War Department was that exchanges and commissaries are instrumentalities of the United States and that Federal taxes do not apply to such instrumentalities unless specifically made applicable thereto. (See section IV, Circular 98, W.D., 1943, and sec. X, Circular 383, W.D., 1944.) This matter was initiated by the Contracts Division and concluded by the Tax Division.

In 1944 the Army Exchange Service adopted a program for permitting soldiers overseas to place orders with overseas exchanges for Christmas gifts to be delivered to persons in the United States. The question arose whether the retailers' excise taxes would apply to such transactions and a ruling was secured from the Bureau of Internal Revenue holding that such taxes would not be imposed upon such transactions.

Social Security Taxes

Under the Federal social security tax laws in effect prior to 1 January 1940, instrumentalities of the United States were exempt from social security taxes. Consequently, post exchanges, officers' clubs and messes and similar organizations were held not liable for such taxes. Effective 1 January 1940, however, the social security tax laws were changed so as to exempt from social security taxes only those instrumentalities which were wholly owned by the United States, and the Bureau of Internal Revenue held that post exchanges, messes and clubs and similar organizations were subject to such taxes. The War Department accepted the Bureau's ruling with respect to officers' clubs and messes but disagreed with respect to post exchanges. This controversy persisted until September 1942 when the Bureau of Internal Revenue finally ruled that post exchanges were not subject to social security taxes, relying upon the decision in the case of Standard Oil Company v. Johnson (316 U.S. 481).

In view of the vast expansion of the Army during and after 1940 and the consequent increase in the number of commissioned and noncommissioned officers' clubs and messes and the financial and administrative burdens imposed upon such organizations by the social security tax laws, it was decided to request the Bureau of Internal Revenue to reconsider its ruling holding such organizations subject to such taxes. The Secretary of War corresponded with the Commissioner of Internal Revenue and with the Secretary of the Treasury concerning this matter, but the Bureau refused to change its position. This office, therefore, was prepared to submit the matter to the Attorney General (the same procedure which was followed with respect to the application of retailers' excise taxes to post exchanges) at the time when AR 210-50, 1 June 1944, was promulgated. In that regulation such organizations were for the first time officially characterized as organizations organized in the individual and personal capacities of the members, and the effect of that language in the regulation was to make it impossible to obtain any concessions from the Bureau of Internal Revenue or any assistance from the Department of Justice. The Tax Division then prepared a staff study (SPJGT 1944/4007) on the subject recommending to the War Department that it determine, as a matter of policy, whether officers' and noncommissioned officers' messes and clubs should be so organized and operated as clearly to be wholly owned Federal instrumentalities, and, as such, exempt from all Federal and state taxes, including social security taxes. The War Department determined that such organizations should be so organized as to be wholly owned Federal instrumentalities and directed the preparation of regulations to accomplish that purpose. Changes in AR 210-50 were recommended, all of which were incorporated in the revision of AR 210-50, 20 January 1945, except the recommendation that upon dissolution all assets of clubs and messes should be paid into the Army Central Welfare Fund. That recommendation was not incorporated in the regulations because of opposition from the Army Air Forces, but pending a settlement of differences with the Army Air Forces it was directed that upon dissolution the funds of clubs and messes should be turned over to the War Department for disposition by the Secretary of War (see sec. V, Circular 30, W.D., 1945). As a result of the position taken by the Army Air Forces, the War Department began consideration of whether clubs and messes should be so organized as to be wholly owned instrumentalities of the United States, and until a decision was reached there could be no disposition of the social security tax problem involved. The opposition of the Army Air Forces centered around the fact that if messes and clubs were to be wholly owned Federal instrumentalities they could not donate or distribute their assets on dissolution to the Air Force Officers' Association, a private organization sponsored by the Commanding General, Army Air Forces.

Cigarette Taxes

The Federal tax on cigarettes (\$.07 per package) applies generally to cigarettes sold for use in the United States or in the Territories of Hawaii and Alaska. That tax does not apply to cigarettes exported to foreign countries or shipped to possessions of the United States, such as the Panama Canal Zone, the Philippine Islands, and Puerto Rico. Thus, personnel

servicing in Hawaii and in Alaska were being discriminated against as compared with the personnel serving in foreign countries or in possessions of the United States. Personnel serving in Alaska and Hawaii also had addresses (Army post office numbers) which did not indicate that they were serving in those places. Shipments of tax-free cigarettes addressed to personnel stationed in Alaska and Hawaii were consequently returned to the tobacco company because cigarettes could not be shipped tax free to those areas. As a result of this, there was a very serious possibility that an intelligence leak would develop disclosing the location of Army post office numbers and of military organizations. For these reasons an amendment to the Internal Revenue Code was recommended providing for tax exemption of cigarettes shipped to Alaska and Hawaii for the use of the armed forces during the war, and that amendment was enacted into law (see sec. 2135(a), Internal Revenue Code, as amended by Pub. Law 14, 78th Cong., 1st Sess.).

Another cigarette tax problem which arose involved State cigarette taxes at a number of War Department installations, particularly installations where Government-owned and operated manufacturing plants were located and there were large numbers of civilian personnel who were entitled to buy cigarettes from post restaurants and post exchanges. Because such organizations were instrumentalities of the United States they could sell cigarettes free of state cigarette taxes and a number of abuses developed indicating that some personnel were purchasing cigarettes tax free on military reservations and then reselling them outside the reservation causing serious revenue and enforcement problems for State tax authorities. As a result of this situation and in order to forestall any attempts by the States to apply their cigarette taxes generally to purchases of cigarettes by the United States or by post exchanges and post restaurants, The Judge Advocate General recommended the publication of a War Department circular (sec. III, Cir. 159, W.D., 1944) which would prohibit the sale of tax-free cigarettes to practically all civilian personnel except those residing on the reservation where they were employed. The reaction of the States to this cooperative action was very satisfactory.

Personal Tax Problems

The principal personal tax problems of military personnel which received consideration in this office were those relating to Federal income taxes. Because of the complexity of the provisions relating to military personnel and the many changes made in the personal income tax laws after 1940, it was necessary to prepare a number of War Department circulars containing information for the guidance of military personnel with respect to Federal income taxes. (Unnumbered W.D. Circular, 16 Feb 1943, Federal Income Tax Information; unnumbered W.D. Circular, 13 Aug 1943, Current Payment and Deferrals of Federal Income Tax; Sec. III, Cir. 301, W.D., 1943; Sec. III, Cir. 38, W.D., 1944; Cir. 63, W.D., 1944; Cir. 112, W.D., 1944; Sec. I, Cir. 385, W.D., 1944; Cir. 475, W.D., 1944.) The Tax Division also prepared information on income taxes for inclusion in the War Department pamphlets, "Personal Affairs of Military Personnel and Aid for Their Dependents", and furnished personal assistance to many individuals. That function was later taken over by the Legal Assistance Branch, to which the Tax Division furnished technical advice.

Because of the practical impossibility for soldiers overseas to file Federal income tax returns and pay such taxes, provision was made by statute and by Treasury regulations (Treasury Decision 5279) for the deferment of the due dates for filing income tax returns and paying income taxes in the case of personnel serving outside the continental United States. As a general rule the deferment extended such due dates to the fifteenth day of the fourth month after the month in which such personnel return to the United States. When it became evident that the end of the war in Europe was approaching and that military personnel would be redeployed to the Pacific, with a number of such personnel being redeployed through the United States, during the course of which they might be on furlough or leave or engaged in retraining, The Judge Advocate General called to the attention of the General Staff the fact that such personnel as were still in this country upon the fifteenth day of such fourth month would be obliged to file income tax returns and pay income taxes with respect to all periods during which they had been overseas. It was thought that this would have an adverse effect on the morale of returning personnel, particularly those who would subsequently be transferred to the Pacific (this was emphasized by the fact that under existing law all income taxes unpaid at the time of death are abated). Pursuant to directions from the General Staff the Tax Division took up with the Treasury Department the matter of extending the deferment period to the fifteenth day of the sixth month after the month in which military personnel return to the United States. No formal regulations had as yet been issued by the Treasury Department on this subject at the time of writing but it was expected that they would be issued in the very near future.

Another Federal income tax problem which the Tax Division foresaw was one affecting the income tax liability of those who were in a status of missing, missing in action or prisoners of war, and whose pay continued to accrue while in such status. If such income were not held to be constructively received from time to time as it accrued, such personnel would receive very unfavorable tax treatment under existing laws. In order to prevent this, the matter was submitted to the Bureau of Internal Revenue with a full explanation of the problems and a request that a ruling be issued holding that the pay of such personnel is constructively received from time to time as it accrues. The Bureau recently issued such a ruling (see SPJGT 1944/12898; sec. V, Cir. 123, W.D., 1945).

In connection with State income taxes and personal property taxes, the principal problem was the possibility that military personnel might be subjected to multiple taxation by the various states and political subdivisions thereof in which they might serve from time to time. This matter was not at first covered by the Soldiers' and Sailors' Civil Relief Act of 1940. An amendment to that act was drafted which would have prevented multiple taxation with respect to income and personal property taxes and was furnished to the Military Affairs Division, which was handling the 1942 amendments to that act. The section as drafted, except for a printing error

which omitted one important proviso, was introduced (sec. 17, H.R. 7029, 77th Cong., 2d Sess.) and hearings were held. That section, however, was redrafted by the Office of the Legislative Counsel for the House of Representatives which advised the Committee on Military Affairs that, as redrafted, it covered personal property taxes as well as income taxes. The Tax Division advised to the contrary, but the section as redrafted ultimately became section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as added by the act of 6 October 1942 (56 Stat. 777). The various states accepted section 514 with respect to income and intangible personal property taxes, but refused to concede that it covered tangible personal property taxes. In order to remedy this situation and to cover a troublesome problem which arose as to automobile license taxes, the Tax Division was requested to draft appropriate legislation (SPJGT 1944/4613). An amendment to section 514 was drafted and enacted (Pub. Law 415, 78th Cong., 2d Sess.) and a circular was published on the subject (sec. VII, Cir. 397, W.D., 1944). The States and their political subdivisions, generally, accepted the new amendments. Colorado, however, took the position that it was an unconstitutional invasion of State sovereignty insofar as it related to taxes on tangible personal property. As a practical matter, however, according to informal advice reaching the office, Colorado will not seek to enforce collection.

Government Insurance

The Supreme Court had held that the value of a war risk insurance policy was includible in the gross estate of a veteran for Federal estate tax purposes (United States Trust Co. v. Helvering, 307 U.S. 57), and the Bureau of Internal Revenue held that the same rule applied to National Service Life Insurance (SPJGT 1943/8009), notwithstanding the exemption of the proceeds of all such insurance "from taxation" (act of 12 Aug 1935, as amended, 49 Stat. 609, 54 Stat. 1195). The decision and ruling also threw doubt upon the efficacy of the exemption statute with respect to state inheritance and estate taxes. The Bureau also took the position that any increment over the face amount of such policies payable to a beneficiary because of an option exercised by a beneficiary would be subject to income tax. At the request of the Assistant Chief of Staff, G-1, The Judge Advocate General, through the Tax Division, cooperated with the Navy Department and the Veterans' Administration in drafting a bill to eliminate these tax problems (SPJGT 1944/8242). The bill as drafted has been introduced in the Senate (S. 988, 79th Cong.).

CHAPTER XII

CLAIMS

1. Introduction

a. Early operations

On 1 July 1940 the present Claims Division functioned as a branch of the Claims and Litigation Section of the Office of The Judge Advocate General. The section had a complement of 6 officers and processed an average of 62 cases a month for the six month period ending 31 December 1940. The Claims Branch acted solely in an advisory capacity rendering legal opinions on such matters involving claims in favor of or against the United States as were referred to The Judge Advocate General by the Under Secretary of War or transmitted by the Chief of Finance.

No great change was made in the functions of The Judge Advocate General with respect to claims until December 1942, although several reorganizations within the Division did take place. By JAG Office Order No. 214, dated 29 December 1941, the Claims and Litigation Section was divided, and to the present Claims Division was assigned the duty of rendering legal opinions with respect to claims. The newly designated Claims Section (the name was changed from Claims Section to Claims Division on 23 March 1942) started with a complement of 8 officers, including a Chief of Section, and 4 civilian employees.

From 1 July 1940, through 30 June 1941, the Claims and Litigation Section received a total of 1022 cases, of which it processed 1017. During the next six month period, that is, to the date a separate Claims Division was created, it received 803 cases and processed 813. From 30 December 1941 through 30 June 1942, the Claims Division alone received 816 matters and disposed of 771, or nearly as many as had been processed during the prior six months by the combined Claims and Litigation Section. From that date on, the number of cases received continued to increase until in December 1942, for the one month alone, some 1824 matters were received. The personnel assigned to the Division, however, did not increase proportionately for as of December 1942 there were assigned to the Division only 12 officers and 7 civilian employees. Shortly thereafter the number of military personnel was doubled, civilian personnel increased to 50, and the number of cases received and processed monthly ran up well into the thousands (Appendix 6-1).

b. Position of the Under Secretary of War

It will be noted that throughout this chapter reference is made to the Under Secretary of War, whereas an examination of all statutes referred to discloses that the Secretary of War is authorized to settle claims. This is pursuant to War Department orders and statutory authority

whereby the Under Secretary of War is charged by the Secretary of War with certain responsibilities, including "claims, foreign or domestic, by or against the War Department, including those resulting from the operation of aircraft" (War Department orders "E", dated 28 November 1933 and War Department Orders "C", dated 21 April 1941, extracts of which are shown in Appendix 6-2).

2. Prior to Act of July 3, 1943

a. Claims procedure in 1940

In 1940 there existed, as a result of piecemeal legislation, a number of unrelated claims statutes, the limitations, procedure and scope of which varied greatly. The granting of relief, the extent of the relief given, and the procedure depended not so much upon the merits of the claim as upon whether the facts of a particular case brought it within the terms of one or more of those statutes. There were ten or more statutes which authorized the administrative settlement of claims arising from military activities. Of those ten statutes three authorized payment of claims from appropriated funds on approval of the Under Secretary of War. One relating to Army maneuvers and special field exercises authorized payment from appropriated funds when approved by an Army or Corps Area commander or his designee. Three authorized certification of the claim, upon approval of the Under Secretary of War, to Congress. Two authorized the transmittal of the claim, after approval by the Under Secretary of War, to the Comptroller General for further action. Another authorized the assessment of damages against military personnel responsible for the damage or wrong to a civilian claimant when board proceedings incident to the claim had been approved by the commanding officer of the personnel involved (Article of War 105).

Pertinent Army Regulations required that seven of the classes of claims authorized for administrative settlement be processed through the Office of the Chief of Finance. Three of the classes were processed without reference to the Chief of Finance, namely, special field exercises, river and harbor claims, and claims for damage caused by aircraft. The attached claims chart (Appendix 6-3) illustrates in part the complicated administrative procedure involved in the settlement of claims under the then existing statutes.

There was no requirement that any claim be passed upon by The Judge Advocate General or that a determination of legal liability be made by any law officer of the War Department. In general, claims were investigated in the field by Boards of Officers (normally consisting of three officers) and were forwarded to the Chief of Finance who made the determination whether a claim should be approved, disapproved, or returned to the field for further investigation. Upon final determination by the Chief of Finance the claim was forwarded to the Under Secretary of War with a statement of facts and a recommendation as to the action to be taken. Such cases as appeared to the Under Secretary of War to raise complicated questions of law or fact, or which appeared of doubtful merit, were referred by him to The Judge Advocate General. The Claims Branch of the Claims and Litigation

Section thereupon made an independent determination of the legal merits of the claim and prepared an opinion recommending appropriate action. The entire file was then returned to the Under Secretary of War who took final action and referred approved claims to the Chief of Finance for transmittal to the appropriate fiscal agency for settlement.

The vast majority of claims were processed under the act of December 28, 1922 (42 Stat. 1066; 31 U.S.C. 215; M.L., 1939, Sec. 713; AR 35-7070), the so-called "negligence claims provision" which authorized payments not in excess of \$1000 for damage to or loss of private property caused by the negligence of any officer or employee of the Government acting within the scope of his employment and which was available to all departments of the Government. Claims approved under this act could not be paid by the War Department but had to be forwarded to the Bureau of the Budget for certification to Congress. Such certifications were made only periodically and often long delays resulted in payment of a claim after it had been approved by the War Department. Claims processed under the act of August 24, 1912 (37 Stat. 586; 5 U.S.C.A. 208; M.L., 1939, Sec. 709; AR 35-7050), the so-called "military operations claims provision", which authorized payment in excess of \$500 up to \$1000 for damage to or loss of private property due to gunfire and target practice and for damages to vessels, wharves and other private property found to be due to maneuvers or other military operations, also had to be certified to Congress.

Claims arising from operation of aircraft, however (current annual Army appropriation act; AR 35-7060), upon approval by the Under Secretary of War and the Chief of Air Corps could be referred to a disbursing officer for payment. Claims under AR 35-7040, based on a current annual Army appropriation act which provided for the payment of claims not involving negligence and not exceeding \$500 each for damage to or loss of private property incident to the training, practice, operation or maintenance of the Army, upon approval by the Under Secretary of War, on the other hand were transmitted to the General Accounting Office for final settlement. To a substantial degree, as a practical matter, the General Accounting Office also passed finally on all claims arising under the act of March 21, 1921 (41 Stat. 436; 31 U.S.C. 218; M.L., 1939, Sec. 715; AR 35-7100), which authorized the payment of claims of military personnel, without limit, for private property, reasonable, useful and necessary, lost, damaged, destroyed, captured or abandoned in the military service. A summary of claims statutes available to the Army in 1940 is found in paragraph 25, AR 25-25, 3 July 1943.

Obviously the passage of a single, comprehensive, consolidated claims act was urgently needed. Furthermore, it was highly essential that responsibility for claims activities be vested in a single office. The large expansion of the Army which began in 1940 and the resulting establishment of posts, camps, stations and organizations in almost every community of the country, together with the enormous increase in transportation, greatly increased the number of motor accidents and damage to private property. Consequently the number of claims arising against the War Department and the Army multiplied rapidly and existing methods of investigation and

determination of claims were found sorely lacking. There was no uniform policy of investigation and processing of claims throughout the various organizations in the field. Boards of Officers which purported to function in the investigation of claims generally were unwieldy and rarely had trained personnel. Inefficient investigations added to the difficulties of processing claims and the making of a legal determination of liability. Many months lapsed between the date of the accident and the time a claim was acted upon finally. Investigations frequently were made some time after the accident, when witnesses had moved, physical changes had been made in the terrain, and memories had failed, and as a result a true picture was seldom obtained.

b. Survey of Claims Problems

In July 1942, recognizing the fact that the administrative settlement of claims was fundamentally a judicial problem, the Claims Division initiated a survey of the entire claims situation. The Judge Advocate General, although charged with the rendition of legal advice and services throughout the War Department and the military establishment, and obligated to furnish legal advice and services to all agencies of the War Department on matters including those relating to claims by and against the Government (Sec. 303.08b (2), (3), (5), SOS Organization Manual, 1942), had no power of supervision or coordination of agencies processing claims in the field nor had he authority to adjudicate any claims. Justification for such a survey, if any were needed, was to be found in numerous directives issued by the Chief of Staff, the Commanding General, Services of Supply, and the Under Secretary of War (1st Ind. Chief of Administrative Services, SOS, To: Control Division, SOS, dated 3 October 1942; SPAAI, 319.1 (9-26-42); memorandum to The Judge Advocate General from Under Secretary of War dated 27 October 1942, Subject: Coordination of legal work; Memorandum from Control Division, SOS, dated 16 October 1942, Subject: Overlapping and duplication of functions), seeking to eliminate duplication and overlapping of functions of the various agencies of the War Department. Obviously the then existing procedure whereby a claim might be processed through both the Office of the Chief of Finance and the Office of The Judge Advocate General involved much needless duplication. Furthermore, one accident often gave rise to several independent investigations involving line of duty, property liability under AR 35-6640 (surveys), and claims of owners of private property damaged.

Numerous conferences were held with the various agencies and staff sections of the War Department involved. The results of the survey disclosed the following:

(1) Due to circumstances, investigations of accidents were sometimes delayed for periods ranging from a few days to several months, and in some cases no investigation was made until a claim had been filed or a complaint lodged with the War Department or with the commanding officer of the unit involved. Such delay not only added to the normal difficulties of investigation, but in many instances the investigation finally undertaken was so hampered by the moving of the military units involved as to prevent satisfactory results.

(2) The transfer of the unit involved frequently placed the burden of investigation upon the Commanding Officers of other units, necessitating the use of military personnel of the unrelated organization on duties properly within the province of the responsible unit.

(3) Investigating officers as well as boards of officers were usually chosen from line officers whose duties in the training of military personnel were far more important than the investigation of accidents, and who had little, if any, training or experience in the work of investigating such accidents. The results of this condition were frequently two-fold:

(a) The report of the investigating officer was incomplete and the subsequent report of the board of officers based upon such original report was inaccurate.

(b) Four officers (one investigating officer and three officers sitting as a board), whose services were more valuable in their own field, were taken from essential duties for varying periods of time to engage in duties less important and for which they were not specially fitted.

(4) The failure to make prompt investigation and report of accidents or incidents resulted in hardships to private citizens and frequently worked to the detriment of the Government in that, by reason of the failure to obtain statements of material witnesses while available, it was necessary to rely chiefly upon the testimony of the owner of the damaged property which, regardless of the honesty of the individual, was frequently tinged with the color of self-interest, and hence the interests of the Government often were not fully protected.

(5) The duplication arising from two agencies of the War Department handling claims resulted in an unnecessary loss of time, efficiency and personnel.

As a result of this survey the following recommendations were made by The Judge Advocate General for a reorganization of claims procedure:

(1) Insofar as practicable the administrative functions in connection with the investigation of accidents and incidents, and the processing and disposition of resulting claims in favor of or against the Government, to be transferred from the Army Ground Forces and the Army Air Forces to agencies of the Services of Supply (now Army Service Forces);

(2) The Commanding Officer of each regiment or corresponding unit and higher echelon of the Ground and Air Forces, and of each Service Command, post, camp and station of the Services of Supply, to be required to appoint a Claims Officer, such officer to be one experienced in the conduct of investigations, preferably with legal training; the officer so appointed also to constitute the board of officers or surveying officer required by Army Regulations for the investigation of any accident involving personal injury or property damage;

(3) That staff judge advocates in the field be given the greatest practicable supervision over the investigation of accidents and claims and reports thereof and that each report be sufficient to provide adequate basis for all official action properly required under the circumstances, including recommendation of approval or disapproval of any resulting claims against the Government or in favor of the Government, the determination of line-of-duty questions, accomplishment of surveys, and initiation of disciplinary measures, where appropriate;

(4) The transmittal of the original and one copy of report of investigation to the headquarters of the service command within which an accident occurred for ready reference there in the event a claim was filed pertaining thereto;

(5) The transmittal of every claim received by a field unit or agency, based on an accident already fully investigated, to the headquarters of the service command in which the accident occurred; if the claim was one in which settlement in the field was authorized, appropriate action to be taken thereon, and all other claims, with the remarks and recommendations of the service command staff judge advocate, to be forwarded by the service command directly to the Office of The Judge Advocate General;

(6) The transfer to The Judge Advocate General of the overall responsibility for the disposition of claims and the functions and activities with respect to claims then being exercised by the Chief of Finance; and

(7) The decentralization, as far as practicable, of the processing of claims.

c. Transfer of Functions from Finance Department

The recommendations of The Judge Advocate General were adopted by the War Department and the Claims Division prepared the necessary directives and circulars to put them into effect. The initial step was the issuance of Circular No. 92, dated 2 December 1942, Hq. SOS (Appendix 6-4) which transferred from the Chief of Finance all activities pertaining to the processing of claims for damage to private property arising as a result of activities of the Army, and of the National Guard incident to special field exercises, and of claims for damage incident to operations of the Civilian Conservation Corps under the jurisdiction of the War Department, and the processing of claims in foreign countries, and admiralty claims.

Further centralizing responsibility in one office, War Department Memorandum No. W410-1-42 (Appendix 6-5) was issued on 15 December 1942 with respect to communications relating to the scope and application of the laws and regulations governing the settlement of claims in foreign countries. In order to maintain an established policy as to procedure governing such settlements, uniformity in the interpretation and application of the laws and regulations pertaining thereto, and to insure properly coordinated advice and action, The Judge Advocate General was designated as the centralized agency to study, report and make recommendations on all matters relating to such claims.

Pending revision of AR 35-7020, the recommended procedure above set forth was announced to the field by War Department Circular No. 409, dated 16 December 1942. This circular, therefore, was the first official recognition by the War Department of the jurisdiction of The Judge Advocate General over claims. It prescribed that all reports of investigation would be processed through the proper channel of command and would, in general, be supervised by the responsible commanding officer in the chain of command who, with the assistance of his staff judge advocate, was made responsible for the appropriate and expeditious handling of such matters. It further provided that a report of the investigation, and all claims which might be filed as a result of such accidents, be forwarded direct to The Judge Advocate General, who was charged with the duty of legal review and recommendation to the Under Secretary of War for approval or disapproval of the claim. The only exception to this procedure was with respect to claims arising out of special field exercises (AR 35-7030) which by statute were authorized to be approved for payment in the field. Provision was made for such claims to be approved for payment by the Commanding General of the Service Command after review and recommendation by his staff judge advocate.

Certain claims functions and activities performed by the Chief of Finance still had not been transferred to The Judge Advocate General by the above memorandums and circulars. Such activities included the following: (1) All action, prior to approval or disapproval by the Under Secretary of War, with respect to claims under AR 35-7100; (2) Notification of claimants of action by the Under Secretary of War allowing or disallowing claims; (3) Transmission to the General Accounting Office of claims approved by the Under Secretary of War and requiring action by the General Accounting Office, under AR 35-7040 (4) Transmission to the Bureau of Budget of claims approved by the Under Secretary of War and requiring action by that Bureau, under AR 35-7050 and AR 35-7070, and preparation in such cases, and under AR 35-7100, of Form 1034 for transmission to the Finance Officer; (5) Transmission to the Commanding General, Army Air Forces, of claims approved by the Under Secretary of War and requiring action by the Commanding General, Army Air Forces, under AR 35-7060; and (6) reference to Commanding Generals of the service commands of appealed claims under AR 35-7030 after allowance or disallowance by the Under Secretary of War. Although the original plan had not envisaged such a complete divestment of all claims functions from the Chief of Finance, there was issued Circular No. 9, dated 10 February 1943, Hq. SOS, transferring all functions and activities, not previously transferred, pertaining to claims, from the Chief of Finance to The Judge Advocate General (Appendix 6-6; see also Circular No. 13, 3 March 1943, Hq. SOS, Appendix 6-7).

The final step was the relief of the Chief of Finance of the responsibility for preparing reports to Congress on private bills for the relief of claimants. This was accomplished by War Department Memorandum No. W 25-1-43, dated 7 February 1943 (Appendix 6-8). As of 1 March 1943, therefore, all claims functions previously exercised by the Office of the Chief of Finance had been transferred to The Judge Advocate General. It now remained to weld a workable unit and to devise some feasible plan of operation which would enable the War Department to meet the tremendous claims burden resulting from its greatly magnified operations in the then existing emergency.

d. Personnel and Organization of Division

As previously stated, as of 30 December 1941, the newly designated Claims Division had a complement of eight officers, including a Chief of Division, and four civilian employees. On 29 September 1942, by JAGO Office Memorandum No. 67, the division was reorganized into two branches, namely, Administrative Branch, and Admiralty and Special Claims Branch. By 2 December 1942 the Division had expanded to include 12 officers, including the Chief of the Division, and seven civilian employees.

In anticipation of the increase of activity upon transfer of functions from the Chief of Finance, as of 1 January 1943 there were assigned to the Division 12 additional officers, making a total of 24 officers. In addition, 26 civilians had been transferred from the Finance Department pursuant to the directive of 2 December and thus there was a total of 33 civilian employees. Reflecting the increase in both duties and personnel, by JAGO Office Memorandum No. 3, dated 6 January 1943 the Claims Division was expanded to include five branches, namely, Examination Branch, Legal Review Branch, Special Assignments Branch, Admiralty and Foreign Claims Branch, and Record and Distribution Branch. Subsequently 17 other civilians were transferred when the balance of the claims activities of Finance was transferred, and on 23 February 1943, by JAGO Office Memorandum No. 8, the Division was reorganized into eight branches, as follows: Examination Branch, Legal Review Branch, Special Assignments Branch, Admiralty Branch, Foreign Claims Branch, Administrative Branch, Personnel Claims Branch, and Field Training and Supervision Branch.

e. Revision of Regulations

With the transfer of functions and activities pertaining to claims from the Chief of Finance to The Judge Advocate General, it became necessary to issue new and revised regulations pertaining to claims. Accordingly the Claims Division drafted a completely new set of regulations dealing with the processing and settlement of claims under The Judge Advocate General's symbol number. Upon approval by the Secretary of War there were issued as of 15 March 1943, Army Regulations 25-20, 25-30, 25-40, 25-50, 25-60, 25-70, 25-80, and 25-100. AR 25-90, pertaining to claims arising in foreign countries was issued as of 22 April 1943, the date of the enactment of the amendment to the foreign claims act (57 Stat. 66) and AR 25-220 was issued as of 13 May 1943.

At the same time the Division was engaged in a revision of certain forms, namely reports of investigation, Form 30, Form 30b and Form 30-C, as well as in the preparation of a Claims Manual to be issued to the field to assist claims officers and to aid in the complete decentralization of claims procedure.

f. Decentralization of Claims Procedure

(1) Claims Course at The Judge Advocate General's School

One of the fundamental principles which The Judge Advocate General advocated was that there be as thorough and complete as possible decentralization

of the administrative settlement of claims. It was with this in mind that the present domestic claims act was drafted with provision being made for delegation of authority to Commanding Generals of service commands (and designated officers on their staffs) to process and settle, by approval or disapproval, claims arising within their respective jurisdictions. In order that Service Command Commanders and their staffs might be fully prepared to undertake the additional duties and responsibilities soon to be devolved upon them, a thirty-day course of instruction, beginning 1 April 1943, was scheduled at The Judge Advocate General's School at Ann Arbor, Michigan, under the jurisdiction of the Claims Division, instruction being undertaken by personnel of that Division. Forty-one officers attended this course, including at least two officers from each service command. These officers were trained, preparatory to the decentralization of duties to the service commands, in the new regulations and their application, in the duties of Claims Officers and the proper methods of investigation, in the duties of staff judge advocates in reviewing reports and claims, and in the method and form of writing legal opinions on claims presented.

It is interesting to note that of the personnel who attended this course, as of 31 March 1945, one was Executive Officer to the Theater Director Claims Commissions, ETO, 12 others were serving in various other capacities in the Claims Service, ETO, one was a one-man Foreign Claims Commission in Central Africa, another was President of a three-man Foreign Claims Commission in the South Pacific, two were with the Claims Service in the Philippines, three were in the Mediterranean Theater Claims Service, another was Claims Judge Advocate, Central Pacific Base Command, and four were in the Claims Division, Judge Advocate General's Office, one being Executive Officer of the Division.

(2) Initial Decentralization

Although the present claims act was then pending in Congress, taking cognizance of the fact that Congressional action might not be too imminent, steps were taken to effect such decentralization as might be accomplished under existing laws and regulations. Thus War Department Circular 107, dated 23 April 1943, drafted by the Claims Division, provided for the preparation by Commanding Generals of service commands of legal opinions and recommendations to the Under Secretary of War for approval or disapproval of tort claims against and in favor of the Government arising from service-connected accidents or incidents within their respective jurisdictions. Such opinions were forwarded to the Claims Division, Office of The Judge Advocate General, where they were reviewed and, if satisfactory, were approved and indorsed to the Under Secretary of War for final action.

Circular 107, 1943, took cognizance of the situation as it then existed and charged The Judge Advocate General with the responsibility of training, staff supervision, and inspection of all activities throughout the War Department and the Army involving service-connected tort claims against and in favor of the Government. The training of claims officers, other than those of the Army Ground Forces and the Army Air Forces, was made the responsibility of the

Commanding General of each service command, under the general supervision of the Commanding General, Army Service Forces, acting through The Judge Advocate General. The training of claims officers within the Army Ground Forces and Army Air Forces was made the responsibility of the respective Commanding Generals.

To accomplish such training on a cooperative basis, numerous conferences were held with representatives of the respective forces and on or about 1 July 1943 a team of instructors embarked on a tour of the country holding two or three day courses of instruction at centrally-located points within the various service commands. This team was composed of 3 judge advocates from the Claims Division, 1 adjutant general, 2 Air Forces officers and a local finance officer at each place of meeting.

3. Legislation

a. Act of July 3, 1943

Culminating a year of intensive activity which saw the issuance of a completely new set of regulations pertaining to claims and during which the Claims Division processed 26,912 matters as compared with 1584 the prior fiscal year, was the passage of the new claims act which consolidated and repealed the old acts and made possible the settlement and payment of all claims for damage to or loss or destruction of property coming within the provisions thereof to be effected, after appropriate investigation and recommendation, by the Secretary of War, with power to delegate such authority in appropriate classes of cases and under applicable Army regulations. Known as Public Law 112, 78th Congress, this act was to become the basis of all administrative settlement of claims against the War Department arising in the United States, its territories and possessions.

The act of July 3, 1943, referred to as the Military Claims Provision, set up two broad classes of claims payable under its authority, first, those "caused by military personnel or civilian employees of the War Department or of the Army while acting within the scope of their employment", and second, those "otherwise incident to noncombat activities of the War Department or of the Army, including claims for damage to or loss or destruction, by criminal acts, of registered or insured mail while in the possession of the military authorities, claims for damage to or loss or destruction of personal property bailed to the Government and claims for damage to real property incident to the use and occupancy thereof, whether under a lease, express or implied, or otherwise." Under the first category the act of personnel involved must have been a negligent or intentional act proximately causing the damage to the claimant's property or injury to his person. Claims paid under this authority, therefore, have the same basis of liability as applied generally in the law of torts, and a legal determination of negligence on the part of military personnel is normally necessary.

The act authorized the payment of claims not in excess of \$500 (in time of war \$1000) and allowed payment for personal injury as well as property damage. However, claims for personal injury were limited to

reasonable medical and hospital expenses actually incurred and death claims were limited to reasonable burial expenses so incurred. Claims in excess of the monetary jurisdiction of the War Department might be certified to Congress by inclusion in a deficiency appropriation bill.

b. Amendment of Personnel Claims Act

Under the Personnel Claims Act (act of 4 March 1921; 41 Stat. 1436; 31 U.S.C. 218-222; M.L., 1939, Sec. 715), claims could be allowed in favor of military personnel for personal property lost, damaged, destroyed, captured, or abandoned under specified circumstances related to military service. The circumstances enumerated in the act were divided into four classifications which may be broadly described as follows: (1) Shipping of the property in an unseaworthy vessel; (2) saving of human life or Government property, or being engaged in authorized duties; (3) transportation of the property pursuant to official orders directing a change of station; (4) enemy action or military necessity or other circumstances arising in the field during campaign. With the increase in our Army there was a corresponding increase in civilian personnel, many of whom were taking overseas assignments. Protection of their property similar to that afforded to property of military personnel appeared both desirable and necessary. Accordingly, the act of 3 July 1943 also included an amendment to the Personnel Claims Act extending it to include claims of civilian personnel and civilian employees of the War Department or of the Army. Further recognizing the unsatisfactory situation whereby the Secretary of War alone could approve such claims, there was included a provision, similar to that in the main part of the act, authorizing delegation by the Secretary of War of authority to process such claims.

c. Foreign Claims Act

At the same time the Claims Division was concerning itself with the task of revising and decentralizing claims procedure in the United States, it was faced with the problem of effecting amendment of the Foreign Claims Act (act of January 2, 1942; 55 Stat. 880; 31 U.S.C. 224d), so that it, too, would be adequate to accomplish its professed purpose. The problem of tort claims resulting from noncombat activities of our troops in foreign countries had arisen in 1941 even prior to our entry into the war. Although the United States was still technically a neutral, we had sent forces abroad into British Territory, and into Iceland, a strictly neutral country. Under sponsorship by the Navy Department, Congress had under consideration at the time war was declared an act providing for the payment of such claims in foreign countries. As indicated above, this act was passed on January 2, 1942 and, in view of its fundamental purpose, namely, the prompt settlement of claims within the country in which they arose, the act itself provided for decentralization through the medium of foreign claims commissions functioning in the countries in which the claims arose.

As soon, in December 1942, as the administrative settlement of foreign claims was made a responsibility of the Claims Division, a study was made of this act to determine whether it was sufficient for its purposes. Commanding Generals of the various theaters of operations were contacted and

a study of the entire problems was made. As a result of this study there was proposed to Congress, by the War Department, with the concurrence of the Navy, an amendment to the act of January 2, 1942, prepared by the Claims Division. The amendment was drafted along lines and principles basically the same as the domestic statute, without the limitation that military personnel must be acting within the scope of their employment.

The Act authorized the payment of claims not in excess of \$5000 for damage to or loss or destruction of property, or personal injury or death, of inhabitants of foreign countries caused by Army, Navy, or Marine Corps personnel, both military and civilian, or otherwise incident to non-combat activities of such forces, arising in such foreign countries. It imposed no restriction as to payment of damages arising out of personal injuries other than the monetary limit of \$5000. It specifically prohibited, however, the payment of any claim which resulted from action by the enemy or which resulted directly or indirectly from any act by armed forces engaged in combat and it further prohibited the payment of any claim of any national of a country at war with the United States except as there was a determination that the claimant was friendly to the United States. It authorized the appointment of claims commissions consisting of one or more officers, which commissions could consider, ascertain, adjust, determine and make payments under the act.

The passage of the act, of course, necessitated a complete change in the pertinent regulations. Pending issuance of such change, on 14 May 1943, a comprehensive letter of instructions was sent to the Commanding Generals of all theaters setting forth substantially what were to be the major provisions of the new regulations. Shortly thereafter, AR 25-90, dated 22 April 1943, was issued.

4. Activities of the Claims Division as of 3 July 1943

As of 3 July 1943, therefore, immediately prior to the approval of the act of that date, the major functions of the Claims Division were the training, staff supervision and inspection of all activities throughout the War Department and the Army involving service-connected claims, other than such as arose in the procurement of services or supplies, against and in favor of the Government, and the recommendation to the Under Secretary of War of the approval or disapproval of claims under the then existing claims acts.

The Division was divided into eight branches, whose functions were as follows:

a. The Administrative Branch served as the office of record of the Division; made preliminary examinations and assigned all matters for processing by appropriate branches of the Division; maintained follow-up on all pending matters in suspense cases; prepared correspondence with claimants and other governmental agencies; maintained essential indexes, digests and fiscal records for the Division; and performed all other assigned service functions for the Division.

b. The Examination Branch considered and prepared opinions on special classes of claims against the United States, including Philippine claims, mail claims and other special classes of claims requiring investigation of a specialized character; maintained liaison with War Damage Corporation; conducted all special investigations; and performed all special assignments.

c. The Legal Review Branch considered and prepared opinions on claims including appeals to the Under Secretary of War, not within the scope of other branches, arising under the various claims statutes; prepared appropriate action on claims in favor of the United States, including survey matters; and maintained liaison with other interested governmental agencies in all matters within the scope of the Branch's activities.

d. The Legislative Branch prepared reports to Congress relating to private bills for relief of claimants; and conducted Congressional correspondence.

e. The Personnel Claims Branch examined claims against the United States by military personnel for property damaged, lost, destroyed, captured, or abandoned in the service and prepared opinions and recommendations as to action thereon.

f. The Admiralty Branch reviewed reports of maritime accidents and prepared opinions on claims involving vessels owned, operated or controlled by War Department agencies; initiated action to assure coordination in maritime cases with War Shipping Administration and other interested governmental agencies; and prepared necessary correspondence and legal opinions, and furnished informal legal advice to interested agencies, in admiralty and maritime matters generally.

g. The Foreign Claims Branch prepared legal opinions, and furnished information relating to laws and regulations, affecting the settlement of claims in favor of and against the United States resulting from service-connected accidents and incidents in foreign countries; examined processed claims forwarded by foreign claims commissions and compiled and analyzed records and statistics of the activities of such commissions; prepared memoranda for the Under Secretary of War as to foreign claims in excess of statutory limits; conducted correspondence with theater, base and other commanders, and with foreign claims commissions, relative to the processing of foreign claims; cooperated with United States Employees' Compensation Commission in the designation of foreign claims commissions to process workmen's compensation claims in foreign countries; trained officer personnel for membership on foreign claims commissions; and advised the Under Secretary of War as to membership of such commissions.

h. The Field Training and Supervision Branch developed, revised and made available to the field material for instruction in relation to claims; formulated policies, plans and procedures for, and supervised and coordinated, the training of officers assigned to the Division for training

as claims officers in the field, and other military personnel engaged in claims activities; and conducted inspections of claims activities within the service commands.

5. Fiscal Year 1944

a. Decentralization under act of July 3, 1943

The immediate and most pressing problem facing the Claims Division with the start of the 1944 Fiscal year was to effectuate the decentralization authorized by the act of July 3, 1943. Service commands continued to prepare opinions and to forward them to the Office of The Judge Advocate General where the Claims Division reviewed them and indorsed them on to the Under Secretary of War. By this means a certain amount of additional training was given to staff judge advocates in the field but it was recognized that such a system should not go on indefinitely, especially in view of the new legislation. Immediate steps were taken to arrive at some effective method of delegation and an explanation of the entire problem to the field. Numerous conferences were held with the interested agencies in the War Department and it was finally decided that specific delegations should be made to Commanding Officers of all service commands and air service commands (or officers on their staffs designated by them for that purpose) to the full extent of the \$1000 authorized by the statute. Further delegations were to be made to such posts as might be designated by the Under Secretary of War upon the recommendation, through The Judge Advocate General, of the Commanding Generals of such service commands, the monetary limit of such delegations to be separately determined. In foreign countries authority was to be delegated to Foreign Claims Commissions. Furthermore, the Executive Officer, and the Administrative Officer, Office of the Under Secretary of War, was to be given a specific delegation by regulation. In the meantime plans went ahead for the holding of a conference of Claims Judge Advocates and certain other key personnel of the various service commands at Kansas City, Missouri, on 6 November 1943.

The Kansas City Conference proceeded on schedule, and a new AR 25-25 was issued replacing and superseding AR 25-30, 25-40, 25-50, 25-60, and 25-70, 15 March 1943, including War Department Circular 107, 1943, and AG Memo No. W25-3-43, 5 June 1943. All prior delegations theretofore in force designating officers to approve or disapprove claims within the provisions of the foregoing regulations were cancelled and the Army and the War Department were ready to proceed with the processing of claims on a decentralized basis under the general supervision of the Claims Division and with, it was hoped, the efficiency and speed of a well organized casualty insurance company. The entire decentralization program became effective during the latter part of November 1943, and during the succeeding months claims totaling many thousands of dollars were fully processed and paid (Appendix 6-9).

b. Delegations to Posts

In December 1943 recommendations were made by the Commanding Generals of the service commands and air service commands for delegations

to Commanding Officers of 202 posts, camps and stations. In the month of December there were received throughout the country some 5,186 claims. 5,842 were processed, yet there remained pending at the end of the month some 12,526 claims, indicating to some extent the magnitude of the task then confronting the Claims Division and the delegated posts.

The Claims Division, itself, was processing many matters in addition to claims under AR 25-25 and for the months of November and December received some 10,993 matters of which it processed 9,755. It had pending as of 31 December 1943 some 5,898 matters, many of which were files on occurrences which had happened several years previously (Appendix 6-1).

In January 1944 delegations were made to an additional 101 posts, and from then until June a few additional delegations were made, there being a total of 340 delegated posts as of 30 June 1944. A completely new and revised set of claims regulations was issued, - AR 25-20, 25-25, 25-80, 25-90, 25-100 and 25-220 - all dated as of 3 July 1943 to correspond with the effective date of the new act.

c. Admiralty Claims

The Claims Division also completed for publication an exhaustive revision of AR 55-500, pertaining to Admiralty claims; this being issued as a Transportation Corps regulation, covering the investigation of marine casualties and the settlement of claims arising therefrom. In this connection the Division exercised general administrative supervision over admiralty and maritime matters.

In the early part of November 1942, it had become apparent that maritime casualties involving Army vessels were not being reported promptly to the War Department and that the conduct of investigations thereof was, in the great majority of cases, neither prompt nor complete, and that the regulations pertaining thereto were inadequate. Since The Judge Advocate General was charged with general administrative supervision of the legal elements involved in claims for or against the Government arising from maritime casualties, action was initiated with the Transportation Corps and other interested agencies, including War Shipping Administration, for the purpose of correcting the conditions above mentioned. Circular No. 61, War Department, 1943, was drafted by the Division and published as a supplement to the then AR 55-500. It provided that a copy of all reports of board proceedings be sent directly to The Judge Advocate General and that the Chief of Transportation should be responsible for securing any additional evidence or making of such further investigation, as might be required by The Judge Advocate General. At that time such reports were reviewed by the Division and transmitted, in appropriate cases, to the Department of Justice to serve as a basis for defense, or for actions in favor of the Government. Likewise, pertinent information was transmitted to War Shipping Administration concerning vessels owned or controlled by it and operated by or under the control of the Army. Maritime claims against the Government were administratively processed under the applicable statutes and regulations referred to above. With the passage of the act of July 3, 1943,

which applied to Admiralty claims as well, it became essential to revise AR 55-500 and thus the Division undertook and completed this task as a part of the general revision of all claims regulations arising out of this new law. As the situation developed it became increasingly evident that the Transportation Corps did not have sufficient adequately trained lawyers properly to perform necessary investigations at the various ports. Accordingly, The Judge Advocate General undertook to, and did, furnish a number of specially trained personnel. Five judge advocates, all competent admiralty lawyers, were assigned, first on "loan" and later permanently, to the Transportation Corps and were located at or near strategic ports throughout the United States.

d. Delegations to Claims Division

(1) Claims under AR 25-25

By January 1944 the majority of the delegations to the field had been accomplished. A great many pending claims, however, remained in the Claims Division and it was necessary to forward these to the Under Secretary of War for action, the Division being authorized only to make recommendations. Accordingly, by delegation dated 14 April 1944 (Appendix 6-10) the Under Secretary of War delegated to the Chief of Claims Division the authority to act finally on all claims arising under the provisions of the act of July 3, 1943, and AR 25-25 in an amount not in excess of \$1000. In addition to this, of course, the Division, as to all appeals from decisions rendered in the field, made appropriate recommendations to the Under Secretary of War.

(2) Claims under AR 25-100

The Under Secretary of War also delegated to the Chief of Claims Division authority to act finally upon all claims arising under AR 25-100, without limit as to amounts (Appendix 6-10). All such claims were at that time processed in the Claims Division and there was no delegation either to the field in the United States or to foreign theaters.

(3) Claims of Subversives

Late in 1943 there had arisen a rather unusual problem involving claims presented by employees of independent contractors engaged in war production for wages lost as a result of their suspension by their employer at the request of the War Department. Such employees were engaged in working on war contracts and were suspected by the War Department of subversive activities. Subsequently, however, upon a hearing their suspension was sometimes removed and claim was made for actual monetary loss sustained resulting from removal from employment. To the Claims Division was assigned the task of determining the validity of such claims, and the amount rightfully due, and the authority to certify such claims for payment was delegated to the Chief of Claims Division (Appendix 6-10).

e. Supervision

Essential to the success of any decentralized plan of operation is continuous supervision and instruction of agencies in the field. The first major step in this direction had been the not too successful tour of officers undertaken in July 1943. Then followed the Kansas City Conference. Continuous contact was subsequently maintained with the service commands and subordinate units by sending from the Division trained personnel for the purpose of inspecting, assisting and instructing claims sections in the administrative processing of claims, and in disseminating necessary and available information on all matters relating thereto. This task subsequently was assigned to the Field Service and Training Branch, which branch also was made responsible for distribution to the field of copies of important decisions of the Division, matters of general claims policy, suggested forms, and any other information which might assist the delegated posts in the processing of claims.

f. Change in Filing System

The many claims files which had been forwarded from the Office of Chief of Finance had been filed alphabetically in that office. With the transfer of functions the Claims Division simply adopted this system of filing rather than attempting a change at a time when it was not fully familiar with the entire problem. As the number of claims forwarded increased rapidly it became obvious that an alphabetical system of filing was not readily expandable. Accordingly, it was decided to revise the filing system and file all files in numerical order, an alphabetical card index being maintained for ready reference. The entire Claims Division, both military and civilian personnel, cooperated and assisted in physically making this change, involving as it did, some thirty thousand files.

g. Summary as of 1 July 1944

As of 1 July 1944, therefore, it will be seen that the Claims Division was acting not only in an administrative and supervisory capacity with respect to a decentralized operation of claims procedure but it was also functioning as an operating agency processing claims and appeals. In effect, it was operating as the central office of a large casualty insurance company with many branch offices located throughout the United States - in fact, as will be discussed shortly, throughout the world. The average processing time of domestic claims had been cut from 118 to 62 days and, generally speaking, the plan of decentralization which had been sponsored and put into operation was functioning most successfully and efficiently.

During the Fiscal Year 1944 no substantial change took place with respect to the activities of the Division and the various branches from those as shown in Section 4, supra. Some 58,131 matters were processed by the Claims Division as compared with 29,327 for the preceding fiscal year. Despite this intense activity there remained on 1 July 1944 a backlog of 3834 pending items, 58,537 matters having been received.

6. Foreign Claims

a. Collision Agreements in United Kingdom

The original edition of AR 25-90, issued shortly after the passage of the amendment of April 22, 1943, was intended simply as a stopgap until the Division could more fully study and examine the entire foreign claims problem. Some contact had been had with foreign theaters of operation; more was contemplated and it was felt advisable to obtain as many divergent views and opinions as possible prior to issuance of a definitive regulation.

An initial problem which confronted the Division was the status of claims processing in the European Theater of Operations. On 4 November 1942 the War Department, on recommendation of the Chief of Finance, had approved a request of the Commanding General, ETO, for the use of a special group of officers under the control of theater headquarters to receive and make investigations of claims instead of leaving the responsibility for the investigation to unit commanders (A.G. Radio No. 2791, 4 November 1942). In establishing this organization the Claims Service closely paralleled, in fact adopted, the British Claims organization and its practices.

There was some indication that in adopting the British procedure the Claims Service of that theater had overstepped the bounds of the foreign claims act. The British Claims Service had worked out a series of agreements with private insurance companies and with large private concerns which were self-insurers whereby, in cases of motor vehicle collisions, each party agreed (a) to forbear to present claims against the other, or (b) to divide the total damage by one-half, the party having the smaller damage to pay the difference to the other, and (c) to third-party halving agreements whereby each party concerned in a collision of motor vehicles agreed to pay one-half of the damage to an innocent third party injured as a result of the collision. These agreements were informally extended to include claims against and in favor of the United States. The fundamental basis of all of these agreements was that it was immaterial who was at fault as between the drivers of the motor vehicles involved and to that extent, at least, they appeared to be invalid under the Foreign Claims Act.

Accordingly, in July of 1943, Colonel Henry C. Clark, then Chief of the Division, was directed to proceed to the European Theater on temporary duty for the purpose of studying and investigating the situation and making such recommendations as he deemed advisable. The tentative conclusions which had been reached by the Division were confirmed by Colonel Clark's investigation and, based upon his report and recommendations, the Under Secretary of War directed the cancellation of these so-called collision agreements. The then senior officer of the Foreign Claims Commission in the United Kingdom, who was also the Chief of the Theater Claims Service, was replaced and entirely new theater claims directives issued.

Although the collision agreements were cancelled forthwith it soon became apparent that some arrangement would have to be made to satisfy claims

which had been processed under the agreements to the point of payment. The insurance companies with whom the agreements had been made had been given to expect payment on certain claims and the Commanding General was placed in an embarrassing situation. Accordingly, the Budget Office of the War Department made available some \$40,000 from Contingent Funds to be used to settle these claims.

b. Utilization of Reciprocal Aid

In the meantime, in accord with the stated policy of the War Department to obtain such supplies and services as were available in foreign countries by means of reciprocal aid, efforts were being made to persuade foreign governments to settle and assume payment of tort claims. In this connection Paragraph 25 had been inserted in the revised AR 25-90, 3 July 1943, referring to this policy and authorizing theater claims services to furnish to designated officers of such foreign countries as might assume claims against the United States any information or evidence in their possession or control material to such claims in order to aid in the settlement thereof.

The British had already undertaken to pay for the United States certain maneuver claims resulting from special field exercises conducted by United States Army Forces in the British Isles. Furthermore, in view of the fact that our greatest concentration of troops was in the United Kingdom, it was deemed advisable to press for a consummation of an extension of this agreement with the British. The British Government was quite adamant on the subject and considerable difficulties were encountered in arriving at an acceptable solution. It was the opinion of the Division that sound administrative procedure required the processing of such claims by United States military personnel in a manner similar to that required as to claims processed under the Foreign Claims Act with the single exception that upon allowance of a particular claim by a foreign claims commission a voucher therefor or request for payment should be transmitted to such British disbursing officer as might be designated to make payments (SPJGD/11739-C, Memorandum for the Commanding General, ASF, 7 October 1943; 12 November 1943). It was felt that since such payments were to be charged to the United States, even though through the medium of a credit to Lend-Lease, United States authorities should evaluate in terms of money all such claims. The British, however, countered with a suggestion that it would not be feasible for the British Government to make such payments except as each claim was investigated and processed by British personnel and in accordance with British regulations and procedure. Diplomatic considerations were involved and this latter procedure was finally consented to by the State Department which negotiated the final agreement and consummated the same by a diplomatic exchange of letters. The collision agreements, referred to above, negotiated by the British Treasury Solicitor were also retroactively reinstated insofar as claims processed by the British for the United States were concerned.

In establishing an administrative procedure under which the terms of this agreement could be effectuated, the United States assigned military

personnel attached to the Claims Service as liaison officers at strategic points throughout the United Kingdom working in conjunction with the British Claims Service. It was the duty of these liaison officers to "screen" all cases decided by British personnel and thus to maintain an effective check on payments authorized by them and to be charged against Lend-Lease.

Similar Reciprocal Aid Agreements were later consummated by Army representatives on a military level with Australia, India, Fiji, the Netherlands, France and Belgium (see French Agreement, Appendix 6-11, as example).

c. Knock-for-Knock Agreements

Prior to the consummation of reciprocal aid agreements there had been presented the problem of claims arising on behalf of the respective governments from collisions between their vehicles. The problem initially had arisen in Admiralty between the United States and Great Britain and after a number of conferences a mutual forbearance or knock-for-knock agreement was consummated. In effect the agreement provided that neither government would make any claim against the other for any damage caused in an accident between ships belonging to the respective governments. Inasmuch as such an agreement involved the relinquishment by the United States of certain rights or claims in its favor, the concurrence of the Department of Justice was obtained. Subsequently a similar agreement was consummated with respect to motor vehicle accidents occurring in the United Kingdom, this being part of the reciprocal aid agreement.

Substantially similar arrangements, some formal, others informal, were negotiated in nearly every country in which we had troops. That between the United States and Canada was consummated through diplomatic channels (Appendix 6-12); in New Zealand, on the other hand, it was simply by mutual agreement among military personnel.

d. Delegation of Authority to Appoint Commissions

During all this time the process of revising AR 25-90 had gone forward unabated and, early in 1944, AR 25-90, 3 July 1943, was issued to the field. Perhaps the most fundamental and far-reaching change was a provision establishing a Claims Investigating Service within each theater of operations (Par. 20), removing the burden of investigation, as well as processing claims from combat units, and placing directly upon the theater commander the responsibility for the prompt investigation of claims.

Under date of 5 March 1944, in a Memorandum for the Assistant Chief of Staff, G-4 (Subject: "Claims Arising in Foreign Theaters", file WDOSA 150 (5 Mar 44)), the Deputy Chief of Staff directed that an ad hoc committee be established to investigate and make recommendations upon procedures and organizations for handling claims arising in foreign theaters. After thorough consideration it was the conclusion of this committee that in order for the theater commander properly to discharge the responsibility

with respect to claims which had been placed upon him by Paragraph 20, AR 25-90, he should also have the direct authority to appoint and remove members of foreign claims commissions, rather than to have them appointed by the Under Secretary of War, which was the procedure at that time. Accordingly, under date of 13 May 1944 an Adjutant General letter, prepared by the Claims Division (Subject: Settlement of Claims Arising in foreign countries under provisions of act of 2 January 1942, as amended, and AR 25-90 (AG 153 (24 Apr 44) OB-P-D-MB-M)), was dispatched to all theaters forwarding a delegation by the Under Secretary of War to each theater commander to appoint members of foreign claims commissions (Appendix 6-13).

e. Establishment of Claims Service, ETO

In late 1943 the Chief of Claims, ETOUSA, had been in Washington and had presented to the Claims Division a number of problems which were confronting him due to the then impending invasion of the continent. Not the least of these was a need for more than 200 specially trained officers. A more immediate problem, however, was the question of the processing of claims arising out of the use and occupancy of real estate which, although payable under AR 25-90, also might be considered under AR 100-64. A War Department Memorandum (No. W100-19-43, 8 July 1943, Subject: Oversea Real Estate Policy), issued at the request of the Chief of Engineers had raised some doubt in the theater as to the responsibility for the processing of such claims. After discussion this matter was cleared with the Chief of Engineers and other interested parties and by direction of the Chief of Staff a memorandum with respect to the problem was prepared by the Division and dispatched to the Commanding General, ETO, definitely placing the entire responsibility upon him and authorizing him to delegate it within his own staff as he saw fit (SPJGD/27717-C, 23 Feb 1944, Appendix 6-14).

At this same time the establishment of a Claims Service was discussed but no final action was taken. In June of 1944, however, at the request of the Theater Commander, Colonel Ralph G. Boyd, then Chief of the Division, left for temporary duty in the theater to assist in the establishing of such a claims service and to help formulate rules and regulations for its efficient operation on the continent. Working in conjunction with the Chief of Claims, a complete and comprehensive claims manual was prepared and a claims service put into operation (See Claims Manual, European Theater of Operations, for description).

f. Claims School at Lebanon, Tennessee

In connection with the expansion of the Claims Service in ETO, and upon formal requisition from the theater for some 272 officers, the Division undertook to locate officer personnel with legal training, and, if possible, claims background, for such an assignment. It also surveyed the field for a possible location for a school where such personnel could be given a short but intensive course in the processing of claims. Cumberland University, at Lebanon, Tennessee, offered an ideal solution to the problem. Located in the center of the Tennessee maneuver area it offered not only adequate classroom facilities but excellent opportunity for practical training as well.

The first class of some 25 officers entered in the latter part of May 1944, and before the school was to close its doors in October 1944 over 230 officers were given an intensive three weeks course in foreign claims. Nearly all of the officers attending were assigned to the European Theater but as the situation there became clarified the requisition was decreased and, accordingly, a few officers were available for assignment elsewhere. One of these became Chief of Claims in the Middle East and another was in charge of claims in the operations on Okinawa; still another became a claims officer in Brazil, and several were assigned to our forces in the Philippines.

7. Fiscal Year Beginning 1 July 1944 - to 31 March 1945

Although by 1 July 1944 tremendous strides had been taken toward eliminating the backlog of matters on hand in the Claims Division, there still remained nearly 4000 carded matters on that date. By concerted effort and extensive overtime on the part of the military and civilian personnel this backlog was reduced to 847 cases by 31 December 1944. Matters generally continued along more or less on an even keel and no drastic changes took place in the Division. However, certain matters are worthy of mention.

a. Escapee Claims

On 11 September 1944 the Secretary of War made an allotment of funds from "Contingencies of the Army 1942-45" to The Judge Advocate General for the settlement of properly-established claims of military and civilian personnel of the War Department or of the Army for personal funds expended, or private property exchanged by them, in effecting their escape from enemy territory (Appendix 6-15). On 21 November 1944 this was amended to include additional territory within its scope. The task of passing upon such claims was assigned to the Personnel Claims Branch and this has since become an important activity of that branch.

b. Repatriated Personnel

Personnel of the Division met returning ships and planes transporting repatriated personnel from both the Philippines and the European Theater of Operations. Assistance was given in the preparation of claims under AR 25-100 for personal property lost, damaged, destroyed, or abandoned in the service or captured by the enemy.

c. Claims in favor of the United States

Steps were also taken more effectively to pursue the rights of the Government under AR 25-220, culminating in the issuance on 20 October 1944 of War Department Circular No. 412, prepared by the Division. This circular emphasized that there should be intensified activity by claims personnel to collect for the Government a greater percentage of the claims asserted. That the effort was successful is readily apparent from an examination of the figures (see Appendix 6-16). For the months of November and December, 1943, only \$8,960.29 was collected under AR 25-220, whereas for the month of March 1945

alone, some \$83,051.95 was collected. Since the effective date of decentralization in November of 1943 there has been collected approximately \$520,000 of which \$215,000 has been collected directly by the Division. Recognizing the extreme importance of this activity of the Division, by JAGO Office Order No. 2, dated 2 January 1945, the Examination Branch was redesignated "Government Claims Branch" and its principal assignment became the processing and collection of claims in favor of the Government.

d. New Delegation under AR 25-25

The original delegation to the Chief of the Claims Division had been limited to claims not in excess of \$1000. A number of claims arose which were in excess of \$1000, but which it appeared should be disapproved or approved in amount less than \$1000. Also many claims in excess of \$1000 were properly for report to Congress. It was necessary, therefore, to forward these claims to the Under Secretary of War. In an effort further to curtail the work devolved upon the Under Secretary of War, and to divide the work within the Claims Division, on 8 November 1944, a new delegation was issued without monetary limit, and extending to each Assistant Chief of Claims Division as well as to the Chief of the Division authority to pass upon such claims (Appendix 6-17).

e. Claims in occupied enemy territory

The problem as to the extent of the responsibility of the United States for damage to or loss or destruction of property, and for personal injury or death, caused by the United States Armed Forces in enemy territory had been considered by the Division from time to time over the period of a year or more. Although Paragraph 48, FM 27-5 (U.S. Army and Navy Manual of Military Government and Civil Affairs) purported to assign to military government the responsibility for the establishment of a claims service in enemy territory, the Civil Affairs Division, War Department Special Staff, had indicated to the Claims Division that it would be desirable that the Claims Services established pursuant to AR 25-90 assume this burden. The responsibility upon the part of the United States under international law to pay enemy nationals for loss or damage due to tortious acts of military personnel in occupied enemy territory had not been clearly defined but that there was liability in particular circumstances was clear. Furthermore, under international law such payments, if made, could not be charged to the enemy government as part of the costs of occupation in the absence of an appropriate provision in the armistice agreement (SPJGD/27717-C). Accordingly, in December 1944, the Claims Division prepared a memorandum for signature of The Judge Advocate General to the War Department General Staff recommending the inclusion, in any arrangement with enemy nations, of a provision with respect to claims.

In January of 1944 three officers (one on temporary duty) were sent out by this Division, at the request of the Commanding General, United States Army Forces in the Pacific Ocean Area, for the purpose of assisting in claims planning in connection with the then impending invasion of Okinawa. Some conflict arose with military government officers in view of the fact that no change

had been issued with respect to Par 48, FM 27-5, to reflect the changed view of Civil Affairs Division, War Department Special Staff. Accordingly, at the request of this Division, an amendment was issued to FM 27-5 by War Department Circular 64, 1945, deleting in its entirety Par 48. As of April 1945, therefore, the processing of noncombat-tort claims in occupied Germany, Italy, and Okinawa had been made the responsibility of the claims services in the respective commands.

f. Claims Arising in the Philippines

In the autumn of 1944, as planning was proceeding for reoccupation of the Philippines, a question arose as to whether the foreign claims act was applicable to the Philippines. Concluding that it was not, the Claims Division gave detailed consideration as to the problem of claims in the Philippines. It was concluded that claims of inhabitants of the Philippines for property damage, or for personal injury or death, resulting from activities of Army and Navy forces in those islands could more effectively be settled under the Foreign Claims Act if made applicable thereto. Accordingly, the Division prepared for submission to Congress an amendment to the foreign claims act making it applicable to the Philippine Islands and providing that, notwithstanding the one year statute of limitations, any such claims arising out of accidents or incidents occurring in time of war may on good cause shown be presented within one year after peace was established.

In February 1945 the Chief of Claims, United States Army Forces in the Far East, on whom was placed the responsibility of the processing of claims in the Philippines, was in Washington on temporary duty. The entire problem of claims in the Philippines was thoroughly discussed and the Chief of the Claims Division cooperated with him in the preparation of a claims manual to be used by his service. There was also presented the problem of claims arising from requisitioned, expropriated or commandeered property in the Philippines, it being estimated that as many as 30,000 of such claims may be pending. The Claims Division undertook, with the assistance of the Contracts Division, to prepare a complete analysis of this problem. As of 31 March 1945 this matter was still in a tentative stage.

g. Proposed Amendment of AR 25-100

Throughout the period the Claims Division had been processing claims of military personnel under AR 25-100 it had been quite evident that an amendment to this Act was essential. The statutes in existence did not grant equal justice in that the claim of one member of the Army might be approved while a similar claim by another member who lost property in the same incident was necessarily disapproved because barred by some technical limitation in the law. For some time a new statute drafted by the Division, seeking to provide a single, clear, definite workable statute, had been in the process. This bill was introduced in Congress on 8 February 1945 (H.R. 2068) and was pending as of 31 March 1945.

8. Summary by Branches as of 31 March 1945

a. Administrative Branch

All matters assigned to the Claims Division by The Judge Advocate General's Office Mail Section were initially examined by the Administrative Branch and assigned by it to the appropriate branches for necessary action. This Branch served as the office of record for the Division maintaining all essential indexes, digests, and fiscal records for the Division. Cases were filed in numerical order and an alphabetical card index was maintained for ready reference. A suspense file was maintained of all pending matters, enabling the Division to follow up requests for additional information and other matters which may have been sent to the field for action.

Files pertaining to claims which had been fully processed in foreign theaters by foreign claims commissions were not processed through The Judge Advocate General's Office Mail Section, but were sent directly to the Administrative Branch which maintained an alphabetical card index thereof. The actual files, however, were filed in the Foreign Claims Branch.

It was also the function of the Administrative Branch to prepare vouchers for the payment of approved claims, to prepare monthly administrative reports and to prepare correspondence on routine matters.

b. Legal Review Branch

The Legal Review Branch considered and prepared opinions recommending the approval or disapproval of all domestic tort claims against the Government which were forwarded to the War Department for action. Claims presented were those arising out of the operations of the War Department and the Army in the United States, its territories and possessions, and included claims in excess of \$1000 being originally considered, as well as all appeals from decisions of the service commands and those posts, camps and stations which had delegated authority to process claims under \$1000. Opinions with respect to claims within the delegation to the Chief of Claims Division under AR 25-25 were signed by the Chief of Branch and upon approval by the Chief of the Division were final, subject to right of appeal to the Under Secretary of War. Opinions written pertaining to appeals were prepared for the signature of the Chief of the Division and were forwarded to the Under Secretary of War for final action.

The Legal Review Branch also prepared opinions on many miscellaneous problems which were received by the Division from various agencies of the War Department and the service commands, as well as preparing opinions on miscellaneous claims which for one reason or another did not appear to come within any statute available to the War Department for the administrative settlement of claims. The Branch frequently coordinated with the Legislative Branch so that if a private relief bill subsequently should be presented the file would be complete and the task of the Legislative Branch thereby lightened.

c. Legislative Branch

The Legislative Branch was charged with the responsibility of handling all legislative matters, and all Congressional correspondence, relating to the settlement of claims against the United States arising out of the operations of the War Department or of the Army. It made the necessary findings of fact and determinations of law and prepared reports to Congress on private relief bills initiated by various members of Congress for their constituents. It also prepared opinions involving the administrative relief of finance officers for losses of public funds and property and concerning legislative relief for their benefit in cases which could not be disposed of by administrative action. Furthermore, it prepared reports and recommendations on legislative enactments generally, including veto messages for the signature of the President.

d. Personnel Claims Branch

The Personnel Claims Branch examined claims against the United States by military personnel and civilian employees of the War Department or of the Army for property damaged, lost, destroyed, captured or abandoned in the service and prepared opinions and recommendations as to action thereon, which action was taken by the Chief of the Division pursuant to delegation from the Under Secretary of War. It also prepared opinions and recommended approval or disapproval of claims presented by military personnel for expenses incurred in escaping from enemy territory, these claims, too, being approved by the Chief of the Division.

It functioned in a supervisory and administrative capacity as to foreign claims commissions which were authorized to process claims of military and civilian personnel under AR 25-100. It reviewed the claims which were processed and took such corrective action as might be necessary, advising the commission accordingly.

e. Foreign Claims Branch

The Foreign Claims Branch prepared legal opinions, and furnished information relating to laws, policies and regulations, affecting the disposition of claims in favor of and against the United States resulting from service-connected accidents and incidents in foreign countries. It coordinated the activities of foreign claims commissions and supervised the procedure and policies followed by them. It prepared correspondence with Chiefs of the Theater Claims Services with respect to the activities of the commissions and cooperated with the Services in the procurement and training of officer personnel. It also coordinated with the United States Employees' Compensation Commission in the designation of foreign claims commissions to process initially compensation claims of civilian employees of the Army in foreign countries. It examined, for legal sufficiency and compliance with regulations, processed claims allowed and disallowed by commissions and took such corrective action as might be necessary, advising the commissions of their errors. It prepared opinions for the Under Secretary of War with respect to claims in excess of

\$5000, either recommending disapproval or certification to Congress of claims in excess of that amount. It also compiled and analyzed records and statistics of the activities of all foreign claims commissions (Appendix 6-18).

f. Admiralty Branch

The Admiralty Branch reviewed reports of maritime accidents and prepared opinions on claims involving vessels owned, operated or controlled by War Department agencies; initiated action to assure coordination in maritime cases with War Shipping Administration and other interested governmental agencies; and prepared necessary correspondence and legal opinions, and furnished informal legal advice, to interested agencies in admiralty and maritime matters generally.

g. Government Claims Branch

The Government Claims Branch took the necessary action to assert the rights of the Government upon all claims in its favor arising under AR 25-220 which had not been settled in the field by payment in full of the amount demanded. It exercised general supervision over the service commands, and suggested policies and procedures to be followed by them, in the settlement of such claims. It also maintained a close liaison with leading railroads, insurance associations, and other civilian agencies.

If payment in full was received the remittances were forwarded to the Office of the Fiscal Director for appropriate disposition in the accounts of the United States. Compromise settlements were forwarded to the Attorney General with appropriate recommendation by the Branch. Complete records were maintained of all amounts collected either by field commands or by Judge Advocate General's Office.

Another function of this Branch was the disposition of all claims for the loss or destruction of registered or insured mail while in the possession of military authorities. In this connection it maintained close liaison with the Army Postal Service and representatives of the Post Office Department.

h. Field Service Branch

The Field Service Branch developed, revised and made available to the field material for instruction in relation to claims, checking copies of all opinions written by the Division and determining which ones should be made available to the delegated posts, camps and stations. It also prepared the necessary material with respect to leading claims cases for insertion in the Judge Advocate General's Bulletin. It formulated policies, plans and procedures for, and supervised and coordinated, the training of officers assigned to the Division for training for claims assignments in the field, and other military personnel engaged in claims activities and conducted inspections of claims activities within the various service and subordinate commands.

CHAPTER XIII

MILITARY RESERVATIONS

On 1 July 1940 the Military Reservations Section consisted in effect of three parts. One part was engaged in the preparation of advisory legal opinions on questions pertaining to the acquisition, title, use, possession and disposition of land of the United States under the control of the Secretary of War; grants of various kinds, such as deeds, easements, leases, licenses and permits, and matters relating to jurisdiction, taxation, use of appropriations, navigable waters, bridges, harbor improvements, and flood control. Another part was engaged in the preparation of a revision of the 1916 edition of the War Department publication entitled "United States Military Reservations, National Cemeteries, and Military Parks." This revision was being published in pamphlet form, each pamphlet embracing the reservations in one state or territory. As of 1 July 1940, twenty-one pamphlets had appeared in print. The third part maintained custody of all title records pertaining to military reservations and other lands under the control of the Secretary of War, copies of instruments evidencing grants by the Secretary of War, such as deeds, easements, leases, licenses and permits. It so classified, indexed and filed these records that information therefrom required in connection with the writing of opinions, or required by other branches of the War Department or other agencies of the Government could be expeditiously furnished. The personnel of the division on 1 July 1940 consisted of five officers, one civilian attorney and four civilian clerks. At that time there were approximately 2,500,000 acres of land under control of the Secretary of War and the expansion had not yet begun.

The effect of the national defense program was first felt in the section in December 1940, and by December 1941 the volume of formal cases handled had risen to a monthly average of sixty-five. This increase in volume with its resultant increase in personnel made it necessary to reorganize the section. On 29 January 1942 the section was divided into four subsections, namely, the Titles Subsection, Miscellaneous Subsection, Revision Subsection, and the Records Subsection. The Titles Subsection was charged with handling matters relating to the acquisition, title, possession, and disposition of real property under the control of the Secretary of War, including questions relating to condemnation, purchase, title, encumbrances, litigation, boundaries, possession, deeds, transfers, easements and leases. The Miscellaneous Subsection was charged with handling matters relating to state and Federal jurisdiction over military reservations and other lands under the control of the Secretary of War; matters relating to the administration of such property, including custody, control, buildings, roads, materials, licenses, and permits; also matters relating to flood control and the regulation, improvement and use of navigable waters of the United States. The Revision Subsection was engaged in work on the pamphlets heretofore described, and the Records Subsection worked with the problem of classifying and filing papers pertaining to the

lands. This arrangement enabled the chief of the section to assign the cases to the chiefs of the subsections, who in turn assigned the cases to the officers or civilian attorneys. The chief of the subsection was charged with the duty of reviewing the rough drafts of opinions and making changes or corrections prior to submitting same to the chief of the section. The principal object of this change was to relieve the chief of the section from the burden of routine reviewing and checking, thereby leaving him more time to devote to administrative matters and to the more involved and complicated questions.

In 1942 the sections in The Judge Advocate General's Office were redesignated as divisions and the subsections as branches. This organization remained unchanged, except that, due to the increase in the number of important and complicated cases and to the frequent changes in military personnel, the position of technical assistant to the chief of the division was created in 1943, to be filled by a civilian attorney of long experience in the division. The reasons for creating this position were twofold, viz: To provide the chief of the division with expert technical advice and to provide a continuity of principles and procedure within the division.

Formal cases handled by the division during the past five years were as follows:

<u>Year</u>	<u>No. of Cases</u>	<u>Monthly Average</u>
1940	533	44.4
1941	772	64.3
1942	1216	101.3
1943	1440	120.0
1944	1490	124.1

The national defense program instituted in 1940 and the declarations of war in 1941 resulted in the acquisition of large areas of land for training camps, flying fields, ordnance plants and other military purposes. It also required the leasing by the United States of numerous properties and many acres of land for military purposes. This program gave rise to many novel and important legal problems, a few of which are set out hereafter:

a. An opinion was expressed on 3 December 1940 to the effect that an area of the Gulf of Mexico extending approximately ten nautical miles beyond the coast of Texas could be restricted for the use of the Air Corps in the interest of national defense under rules of international law. The authority relied on was section 44 of the Federal Criminal Code.

b. In connection with the construction of the many military installations throughout the country the question frequently arose as to the applicability of the laws of the various states with respect to safety regulations, building regulations and the right of state inspectors to make

inspections. This office expressed the view in numerous opinions that where the application of such laws and regulations, or the exercise of such rights, would result in an interference with the carrying out of a constitutional function of the United States or conflict with Army Regulations the state law and regulations need not be complied with.

c. On 22 March 1943 the War Department General Staff, Supply Division, G-4, referred to this office a file of correspondence relating to a proposed donation to the United States of land in Algeria for cemetery or memorial purposes with a request for "remark and recommendation" sufficiently broad to be useful in establishing War Department policy with respect to acquisition of sites for such purposes in foreign countries. The Assistant Chief of Staff, G-4, was advised on 14 April 1943 that

"There is no law of the United States, nor rule of international law, which prohibits the ownership by the United States of title to land in foreign countries. Accordingly, in the absence of any prohibitory local law, it would be possible for the United States to acquire land in foreign countries (JAG 601.1, Oct. 10, 1919; Dig. Op. JAG 1912-40, sec. 988(1); Hall on International Law (7th Ed.), p. 171). The Secretary of War, however, could not acquire such land by donation or otherwise without congressional authority (R. S. 3736; 39 Op. Atty. Gen. 373). While the question is not free from doubt, it is the opinion of this office that section 201 of the Second War Powers Act of March 27, 1942 (56 Stat. 176), contains ample authority for the acquisition of land in foreign countries for necessary military purposes. * * *"

The matter of future policy was then discussed and in connection therewith the legislation adopted subsequent to the First World War was referred to, as well as copies of agreements with foreign governments entered into pursuant thereto. The suggestion was made that the procedure followed after the First World War be again followed and that specific authority from Congress for carrying out such policy be obtained.

d. The Legislative and Liaison Division, War Department General Staff, referred to this office an enrolled copy of a resolution adopted by the Senate of the State of Wisconsin, setting forth that complaint has been made, among other things, that a life insurance company has been soliciting insurance on an Army training camp in Wisconsin and from men from Wisconsin in camps in other states; that such solicitation has been made "under alleged consent and permission of the officers in command" at these camps; and that the company in question is not licensed to do business in the State of Wisconsin, is irresponsible and financially unsound, and "pursues insurance practices that would not be tolerated under the laws of the state of Wisconsin or of other states." The resolution requested the Secretary of War to investigate the complaints and practices referred to with a view to prescribing such regulations as might be necessary to

prohibit all such practices. The opinion of this office was requested on the question whether the War Department may, with respect to military reservations under the exclusive jurisdiction of the United States, legally prescribe regulations prohibiting the solicitation of life insurance thereon unless the company involved has obtained a license to do business in the states wherein such reservations are located. The opinion was expressed that the War Department could prescribe such regulations.

The division was called on frequently to interpret sections of the Surplus Property Act of 1944; to determine questions of annexation of land within city limits; questions involving water rights in lands occupied by the United States; questions involving the ownership of articles washed up on the shore of a military reservation; state interference with delivering intoxicating liquor on military reservations; the right of a state to enforce its "Jim Crow" laws on busses which have a starting point on a military reservation over which the United States has jurisdiction and a destination outside the reservation; questions involving the service of process on military reservations; the right to inspect places of accidents on military reservations by civilian counsel; the disposition of dead bodies; borrow rights; title to buildings constructed on military reservations; and many questions concerning the right of the United States to perform its constitutional functions to operate its instrumentalities without state or private interference.

The following are the categories into which many of the cases considered by the division may be placed:

Easements over lands under control of the Secretary of War.

Approval as to form and legal sufficiency of instruments designed to grant easements for rights of way for pipe lines, power lines, telephone and telegraph lines, and roads. A large number of cases were considered involving the relocation of pipe lines, power, telephone and telegraph lines and roads across military reservations where they were originally so located as to interfere with the military use of the land, and where such land was acquired subject to existing rights of way.

Leases. Approval as to form and legal sufficiency of drafts of instruments designed to lease lands under control of the Secretary of War for various purposes. Numerous lease cases involved the use of Government-owned industrial plants by concerns holding contracts to supply war materials.

Deeds. Approval as to form and legal sufficiency of drafts of deeds covering the disposition of lands under the control of the Secretary of War. Many deed cases designed to cure errors which occurred in the transfer of land titles to the United States were considered.

Reports on legislation. Preparation of reports on legislation affecting lands under control of the Secretary of War. Typical of such

work were reports on a series of bills providing for reimbursement for loss of taxes on certain real property acquired for military purposes. The division also revised and approved drafts of legislation prepared for submission to many state legislatures and designed to cede jurisdiction to the United States over lands acquired in the various states for military purposes. In several instances reports were prepared on bills introduced in Congress which, if enacted, would affect Federal jurisdiction over military reservations.

Navigable waters of the United States. Cases involving construction, repair and alteration of bridges over navigable waters and involving possible obstructions to navigation. These cases consisted in part of the preparation of notices to the owners to alter bridges so as not to interfere with navigation; of determining whether certain bridges were toll-free to military personnel and of determining the proportionate share of cost to be borne by the United States in the alteration of railroad bridges under the act of 21 June 1940 (54 Stat. 497).

Licenses and Permits. Approval as to form and legal sufficiency of drafts of instruments designed to allow municipal corporations, counties, states, other departments of the Government, corporations, partnerships, and individuals to make certain uses of lands and buildings under control of the Secretary of War, such as the erection of temporary buildings for use as chapels and Red Cross administration buildings; operation of bus and transportation lines; grazing of livestock; extension of roads; ferry landings, construction of dams, reservoirs and irrigation ditches; railroad tracks; telephone, telegraph and electric transmission lines; and gas, water, sewer and oil lines.

Jurisdiction of the United States over lands acquired for military purposes. Because of the diversity of Government uses for which lands are acquired by the United States and the lack of uniformity in the manner and scope of Federal jurisdiction granted by the states, situations constantly arose wherein it was difficult to ascertain whether personal and property rights within such areas were to be determined by Federal or local law. The consideration of the many laws of the various states ceding political and legislative jurisdiction to the United States over lands acquired by it for military purposes presented many difficult and perplexing problems.

Under section 355, Revised Statutes of the United States, as amended by the act of Congress approved 1 February 1940 (54 Stat. 19) and by the act approved 9 October 1940 (54 Stat. 1083), it is provided in effect that unless and until the United States has filed with the Governor of the various states a notice of acceptance of the jurisdiction ceded by the laws of the such states or indicates the acceptance in such other manner as may be prescribed by the laws of the state where the land is situated, it shall be conclusively presumed that no such jurisdiction has been accepted. Prior to 1 February 1940 no written acceptance of such jurisdiction was necessary unless required by state law. The matter of complying with the

requirements of said section 355, as amended, with respect to the acceptance of jurisdiction over the large areas of land acquired in the various states for military purposes proved to be a major problem. It was originally deemed advisable to comply with that section as amended by filing with the Governor of the thirty states in which the laws do not require the Governor to execute deeds of cession or the filing of descriptions or maps with the state, notices of acceptance which specifically referred to each tract of land affected by such acceptance. The difficulties encountered by the Chief of Engineers, who was charged with the duty of initiating such notices, in attempting to identify each of the thousands of tracts over which it was desired to accept jurisdiction, soon led to the decision to comply with the requirements of section 355, as amended, by filing periodically with the Governors of the thirty states notices accepting jurisdiction over all lands acquired prior to the date of the notices, over which jurisdiction had not been previously obtained, without attempting to identify each tract affected. This effected a substantial saving in labor and time in the preparation of such notices and placed thousands of acres of land under the exclusive jurisdiction of the United States within a few months after acquisition.

Included in this category were cases involving the approval as to form and legal sufficiency of deeds of cession, maps, descriptions and other documents, required by the laws of eighteen of the states, before a transfer of jurisdiction from the state to the Federal Government over lands acquired for military purposes could be effected. Also included were cases in which the division was called upon for opinion as to whether the United States had obtained jurisdiction over specific reservations, and, if so, the type of such jurisdiction and the dates upon which the transfer of jurisdiction took place.

Revision of the 1916 edition of the War Department publication entitled "United States Military Reservations, National Cemeteries and Military Parks." Subsequent to 1 July 1940 pamphlets pertaining to the twenty-seven remaining states and one of the territories were completed, printed and distributed. The work of assembling data for inclusion in the pamphlets pertaining to the remaining territories was completed but war conditions prevented final approval and printing thereof.

As originally envisioned, it was considered that changes in the status of the various reservations as well as information pertaining to newly acquired reservations would be included in new pamphlets to be issued from time to time as circumstances warranted. Two new pamphlets designated changes No. 1 to the original pamphlets pertaining to California and Alabama were issued. Due to the tremendous areas of land which had been acquired for military purposes, much of which would in all probability be disposed of after the war, it was determined that the publication of changes to and revisions of pamphlets entitled "Military Reservations" be suspended until the termination of hostilities (section 4, War Department Circular No. 93, 1944). In the meantime,

work was done to assemble as much data as possible pertaining to newly acquired reservations which will in all probability become permanent, as well as data pertaining to additions to existing permanent reservations.

Records Branch. On 1 July 1940 there were approximately 512 reservations with a total acreage of approximately 2,500,000. As a result of the expansion of the military establishment during the national emergency the number of military reservations increased to over 1,800 with a total acreage of approximately 32,300,000. Much of this increase resulted from the purchase and condemnation of privately owned lands. However, the greater portion was already owned by the United States and was either reserved from the public domain for military purposes or transferred temporarily to the control of the Secretary of War from other departments of the Federal Government. Similar statistics relating to the river and harbor lands are not available. This increase resulted in the receipt of the title and miscellaneous papers in the division for classifying, indexing and filing as follows:

	<u>Military Reservations</u> <u>Title Papers</u>	<u>Miscellaneous</u>	<u>River and Harbor</u> <u>Title Papers</u>
1942 (last 4 mos)	6,955	1,069	1,308
1943	30,694	4,563	5,083
1944	12,250	3,560	3,331
1945 (first 3 mos)	<u>2,300</u>	<u>1,760</u>	<u>1,048</u>
	52,199	10,952	10,770

These papers arrived in such volume and in such disorder that with the limited amount of help available it was possible properly to classify and index only a small percentage of them. All that could be done was to assemble the papers according to the reservations to which they pertain and place them in the filing cabinets.

Qualifications required of personnel. All officers and attorneys assigned to the division should have previous legal experience in the field of real property law, and the Records Branch should have at least one clerk who has had previous experience in working with abstracts, deeds and other instruments affecting real estate.

It might be stated, in conclusion; that, while many new and important legal problems have developed as a result of legislation adopted since the national emergency was proclaimed, such as the act of 2 July 1940 (54 Stat. 712); the First War Powers Act, 1941 - act of 18 December 1941 (55 Stat. 838); the Second War Powers Act, 1942 - act of 27 March 1942 (56 Stat. 176); and the Surplus Property Act of 1944 - act of 3 October 1944 (Pub. Law 457, 78th Cong.), the principal effect of the emergency has been greatly to increase in volume the type of work previously done in the division.

CHAPTER XIV

INTERNATIONAL LAW

By eighth indorsement dated 26 September 1939, The Judge Advocate General informed The Adjutant General that, in compliance with a directive of the Secretary of War (AG 381 (8-4-39) (Misc.) C, 7th Ind., dated 14 Aug 1943), there had been constituted in The Judge Advocate General's Office a section designated as the "War Plans Section". This section subsequently became the "International Law Division". The mentioned directive was addressed to The Judge Advocate General by the Secretary of War, and read in part:

"2. It is desired that you provide in your office an agency which shall be charged with the preparation of appropriate annexes, pertaining to military government and the control of civilians in the theater of operations, that may be required under color plans; and that proper notation thereof be made in the next revision of your Protective Mobilization Plan."

By Orders No. 86 of the Judge Advocate General's Office, dated 16 September 1940, the designation "War Plans Section" was changed to "War Plans and Intelligence Section," and it was provided that:

"In addition to the duties prescribed for the War Plans Section, the War Plans and Intelligence Section will collate and pass on to the Military Intelligence Division of General Staff requests for information desired by members of the Judge Advocate General's Department. In accordance with instructions contained in letter dated September 6, 1940, from the Adjutant General (AG 321.19 M.I.D. (8-16-40) M-B-M), subject: 'Intelligence Sections in the Offices of Chiefs of Arms and Services,' the Chief of the War Plans and Intelligence Section will superintend any reproduction of information received from the Military Intelligence Division."

The letter from The Adjutant General above referred to provided that "An Intelligence Section in the Offices of the Chiefs of Arms and Services will be established and maintained for the following purposes." It then recited that "the Military Intelligence Division, War Department General Staff, receives and disseminates military information of a comprehensive nature; and outlined a procedure for the safe and efficient distribution of such information as may be needed or useful in the various agencies of the Arms or Services."

By an office memorandum of the Office of The Judge Advocate General, dated 29 December 1941, it was provided that:

"The War Plans and Intelligence Section is redesignated the War Plans Section, and as such will handle cases involving war plans, international law, military government, martial law, matters involving prisoners of war, internment of enemy aliens, billeting of troops, related subjects, and such other classes of cases as may be assigned to it from time to time."

Early in 1942 the name War Plans Section was changed to War Plans Division.

Late in 1944 some of the work of the Division was taken over by a new division then established and known as the War Crimes Division. By Orders No. 210, dated 21 October 1944, of the Office of The Judge Advocate General, certain of the officers theretofore on duty in the War Plans Division were assigned to the War Crimes Division.

A few months later, by similar orders (No. 54), dated 22 March 1945, the name War Plans Division was changed to International Law Division.

The work of the division in fact did not relate to the billeting of troops as above indicated. In addition to the topics mentioned, it covered participation in habeas corpus proceedings in federal courts arising from the exclusion program on the east and west coasts, and those brought by persons sentenced by courts-martial on the ground that military jurisdiction under Article of War 2d did not exist as to them. In general all questions involving the existence of military jurisdiction under Article of War 2d were handled by this division.

1. Statistics as to Division Personnel and Volume of Work

There is set forth below a table showing the cases disposed of by the division for six month periods since the division was established late in 1939. Under the heading "Informal Cases" in the table are included telephoned opinions, informal personal conferences, opinions rendered to other divisions of the Judge Advocate General's Office, etc. Records of informal cases were not kept systematically until July 1942.

Volume of Work

Date	Formal Cases	Informal Cases
1 Oct 39 - 31 Dec 39	3	
1 Jan 40 - 30 Jun 40	2	
1 Jul 40 - 31 Dec 40	18	

Date	Formal Cases	Informal Cases
1 Jan 41 - 30 Jun 41	30	
1 Jul 41 - 31 Dec 41	49	
1 Jan 42 - 30 Jun 42	117	
1 Jul 42 - 31 Dec 42	126	166
1 Jan 43 - 30 Jun 43	157	307
1 Jul 43 - 31 Dec 43	220	442
1 Jan 44 - 30 Jun 44	214	771
1 Jul 44 - 31 Dec 44	254	886
1 Jan 45 - 31 Mar 45	213	310

Figures as to the personnel strength of the division at six months intervals are set forth below. They are not an accurate indication of the actual strength of officer personnel. Very frequently officers were on duty in the division for a few weeks or months for special purposes or for training prior to an overseas assignment. The figures below as to officer personnel refer only to those formally assigned to the division.

Division Strength

Date	Officers	Clerical (full time)	Total
1 Jan 40	1	0	1
1 Jul 40	1	0	1
1 Jan 41	1	1	2
1 Jul 41	1	1	2
1 Jan 42	2	1	3
1 Jul 42	3	1	4
1 Jan 43	3	2	5
1 Jul 43	4	2	6
1 Jan 44	5	2	7
1 Jul 44	6	3	9
1 Jan 45	6	3	9
31 Mar 45	8	4	12

2. International Law Library

In October 1942, when the Judge Advocate General's Office moved to the Munitions Building, that part of the library of the office relating to international law, occupying about 120 feet of shelf space, was placed in rooms of this division. Gradually more volumes were added so that the shelf space in the division totaled about 350 feet. These books were not separately catalogued in a division library catalog. They were at first arranged in the shelves as nearly as possible alphabetically by authors; but later were arranged under the following headings: Periodicals, Cases,

Conferences, Digests of International Law, Diplomacy, Extradition, Foreign Law, General Treatises, Maritime Law, Miscellaneous, Neutrality, Treaties, and War and Belligerent Occupation. On separate shelves, not under these headings, were placed the State Department Bulletins, Foreign Relations of the United States, and the Rebellion Records. Certain material necessary for the division's work was missing and had to be supplied as best it could. Photostatic copies of the minutes of the proceedings of various conferences at which international conventions relating to war were adopted had to be secured. Among these were those relating to the 1874 Brussels Conference, and the 1906 and 1929 Geneva Conventions. Also photostatic copies of early Prisoner of War treaties were obtained. Needed but not available were statutes and regulations relating to the military law of many of the various countries engaged in war, and the handbooks of those countries, similar to FM 27-10, setting forth their respective interpretations of the laws of war. Text books on the laws of war by American, British, Japanese and French writers were well represented, but similar works by authors of other nationalities, particularly German, were missing.

3. Qualifications for Division Personnel

As the character of the division's work changed from time to time, different qualifications for its personnel were needed. At the outset the work was concerned with matters of military government, martial law, and the laws and customs of war. Personnel with a broad military background and sufficient familiarity with international law to deal with questions of military government and the rules of land warfare were needed. Later, when this country entered the war, many varied problems of international law were presented, some requiring thorough research in the extensive writings on international law, others requiring a familiarity with civil law, or the law of certain foreign countries. For such work officers familiar with foreign languages, with the bibliography of international law, and with foreign law, were required. A few officers with such qualifications were secured for the division. A good part of the work, however, was adequately handled by officers of general legal background who had been through the Judge Advocate General's School and had had a few months experience in the division. A reading knowledge of French was particularly useful, as that is the language of the official texts of various international conventions relating to the conduct of war, and of many important books on the laws of war. A large part of the work was done for the General Staff and was of first importance. Much of the work required conferences with agencies of the Department of State, the Navy Department, the Department of Justice, the Joint Chiefs of Staff, the General Staff, and representatives of foreign governments.

4. Work of the Division

The main features of the division's work in yearly periods is briefly reviewed below to indicate in a general way the most important

matters handled. Since 1943 a great number of minor matters of varied nature were handled of which only a few are indicated.

5. Work in 1939 and 1940

From the establishment of the division in October 1939 and through 1940 the bulk of the division's work was the writing of the first edition of the Basic Field Manual on Military Government, FM 27-5, published 30 July 1940, and the editing of a new edition of the Basic Field Manual on the Rules of Land Warfare, FM 27-10, published 1 October 1940. The division read reports and unofficial accounts of previous military government by the United States, including that of Mexico in the Mexican War, of Cuba, Puerto Rico, and the Philippine Islands during and after the war with Spain, Vera Cruz in 1914, and the Rhineland at the close of the first World War. It obtained and studied information as to the methods and organization of the military government in countries then occupied by Germany. A considerable part of its work in 1940 was the preparation of military government annexes to various "color plans" being made by the General Staff. For three years the division performed liaison work for the War Department with the American Bar Association, and certain state and other bar associations, in connection with their national defense and legal assistance programs. The division chief attended the annual meeting of the American Bar Association in this and the two following years in connection with this work, and another member of the division attended an annual meeting of the National Lawyers Guild for the same purpose. The division handled a few cases relating to the disposition of deserters from the warring powers found in this country, and to the military control of alien fifth columnists. It commented on proposed legislation relating to disposition of funds that might be acquired by the United States in exercising military government, and relating to the subjection of war plants in this country to martial law. It handled a small number of other similar cases. In general the work in 1940 related to the international law aspects of the War Department's plans for defense.

6. Work in 1941

The division in 1941 assisted in the drafting of documents and in the outlining of plans as to martial law in Hawaii, the Panama Canal Zone, in Alaska, and elsewhere. Two other subjects also became prominent: the drafting and interpretation of the Base Lease Agreement covering the bases acquired in British possessions, and plans for the treatment of aliens in this country in the event of war. Also questions were handled relating to the internment of members of warring forces found in this country. The division prepared comments on proposed legislation pertaining to the defense of civil population against air raids, and to prevent the establishment of airports in Alaska without War Department approval. It made further studies of the military government then being exercised by the warring powers.

The division chief, by way of effecting liaison with the bar of other countries, attended the first annual conference in Havana of the Inter-American Bar Association.

7. Work in 1942

By 1942 the country had become a belligerent, and accordingly the work of the division came to relate less to planning and more to actual military operations. Both the volume of work and the officer personnel tripled over that of the preceding year. The principal matters handled related to the operation of the leased bases acquired from Great Britain, negotiations with Great Britain, Canada, and other countries concerning criminal jurisdiction over our troops on duty in those countries, the treatment and internment of enemy aliens or persons of Japanese ancestry in the United States, military jurisdiction over merchant seamen on American vessels, militarization of plant guards for factories producing war materials and questions relating to espionage. In consultation with the Department of Justice and the Eastern and Western Defense Commands the division assisted in the exclusion programs on the eastern and western coasts. Negotiations with Great Britain concerning jurisdiction over United States forces in the United Kingdom were satisfactorily concluded by an exchange of diplomatic notes, an act of Parliament and an order in council conceding exclusive criminal jurisdiction to our courts-martial.

The chief of the division, in the company of the representatives of the Departments of State, Justice, and the Navy, made a trip to Ottawa and conferred with the Attorney General of Canada, the Undersecretary and the Legal Advisor of the Department of External Affairs, the Judge Advocate General, other Canadian officials, and the personnel of the U. S. Legation, with respect to jurisdiction over the personnel of United States forces in Canada. After the return of the chief of division, a study of the same subject was written in the division which, along with another memorandum by the Department of State, was printed by the Department of Justice of Canada and presented to the Supreme Court of that country. Finally, the Canadian Government issued an order in council recognizing the exclusive jurisdiction of courts-martial of the United States over our forces in Canada.

The division rendered frequent opinions on martial law in Hawaii throughout its existence, and was often in consultation with the military governor and his executive when they were in Washington.

Several questions involving military jurisdiction over persons serving with or accompanying the army under Article of War 2d were handled. They related to civilian air pilots, newspaper correspondents, technical observers, and the like. Other miscellaneous matters concerned military cooperation agreements with certain foreign countries, the laws of war with respect to military hospitals, and the types of labor that may be performed by prisoners of war.

8. Work in 1943

In 1943 the variety and volume of the work increased considerably, reflecting the increased participation of the country in the war. At this time increase was noted in the close and frequent relation between the division and the Provost Marshal General's Office in working out problems relating to the treatment of prisoners of war. Through 1943 and 1944 these problems constituted the largest single general subject with which the division was concerned. At all times the division insisted on a strict adherence to the terms and spirit of the 1929 Geneva Prisoner of War Convention. Questions arose principally in connection with defining the types of work in which prisoners might legally be employed and the procedure and methods by which they might be punished.

The division in 1943 prepared three War Department publications: TM 27-250, Cases on Military Government, issued 20 May 1943; TM 27-251, Treaties Governing Land Warfare, issued 7 January 1944; and War Department Pamphlet No. 27-5, Military Jurisdiction over Merchant Seamen, issued 16 February 1945. The preparation of the latter publication involved numerous conferences with different departments of the government and extended over two years.

Many cases arose in 1942, 1943, and 1944 involving court-martial trials of merchant seamen, some of which were followed by habeas corpus proceedings in the United States District Courts on the ground that military jurisdiction did not exist as to the petitioner. The division chief argued these cases before the United States district courts, and to date (31 March 1945) every such case has been decided in favor of the government. McCune v. Kilpatrick, 53 Fed. Supp. 80; In re Berue, 54 Fed. Supp. 252. He also appeared in similar proceedings involving civilian employees with the same result. In re Di Bartolo, 50 Fed. Supp. 929; In re Perlstein, 57 Fed. Supp. 123. The division answered several requests for opinions in 1943 as to whether civilians overseas or in the United States in various capacities doing war work were subject to military law under Article of War 2d. It also conferred with officers of the Navy engaged in drafting an amendment to the Articles for the Government of the Navy similar to Article of War 2d. In coordination with the Department of Justice, it worked out the policy adopted by the War Department respecting the trial of civilians by courts-martial sitting within the continental United States. The division chief conferred with officers of various departments of the United States Government in the drafting of the bill which became the Act of June 30, 1944, entitled "An Act to implement the jurisdiction of service courts of friendly foreign forces within the United States, and for other purposes."

The division handled a number of cases involving the laws of war, e. g. legitimacy of weapons, internment of United States military personnel in neutral countries, the personnel that may legitimately be carried on hospital ships, etc. Several matters relating to the

taxation by foreign governments of U. S. military personnel and property abroad were considered. Questions relating to martial law in Hawaii, to the leased bases, and to the Japanese exclusion program on the west coast continued to arise. One member of the division participated in several court cases connected with the exclusion program in this and the following years. The settlement of estates of American soldiers dying in foreign countries raised a few questions. A large number of miscellaneous matters arose, some concerning disposition of deserters from the Canadian army found in this country, deserters from our army found in foreign countries, marriage of American soldiers abroad, the rights of aliens in our army requesting non-combat service or discharge, the treatment of prisoners of war of Polish and other nationalities captured as members of German units, the status of the Free French forces, and a great variety of other subjects. In this year there was established the Legal Assistance Division of the office which took over the work formerly handled by this division with various bar associations in connection with their legal assistance programs.

9. Work in 1944

The work of the division in 1944, as well as its personnel, increased substantially over the preceding year. The greatest increase in work appeared in the informal matters; they were principally handled by the division chief and were frequently in the form of oral opinions rendered by telephone or at informal conferences. The largest subject handled continued to be the treatment of prisoners of war, but considerable time was spent in study of the punishment of war criminals. Late in the year a separate War Crimes Division was established in the Office of the Judge Advocate General, but the War Plans Division continued its function of outlining and drafting procedures and preparing opinions on the basic legal issues concerning war criminals. It also handled a number of cases in which it was asked to recommend the reply to be made to foreign governments where it was alleged that their or our soldiers had violated the laws of war.

The increase in cases relating to prisoners of war was particularly marked. All general court-martial records of prisoner of war trials were sent to the division by the boards of review or the Military Justice Division for examination and comment as to conformity with the Geneva Prisoner of War Convention. Many questions arose as to the discipline of prisoners and their amenability to wages and hours, social security, compensation and other labor laws, the establishment and operation of Italian Service Units, release, repatriation and escape of prisoners. There were also numerous questions concerning pay, allowances, and other financial matters respecting such prisoners.

Questions were handled involving hospital ships, a proposed international agreement concerning captured merchant vessels, the

drafting of War Department regulations (W.D. Memo 650-45, 19 February 1945) concerning jurisdiction over friendly foreign forces in the United States, leases of military bases in foreign countries, return of deserters from our own and allied countries, and taxation by foreign countries of our military forces stationed abroad. The problem of establishing suitable criminal jurisdiction over the American personnel working at certain oil refineries in the Middle East operated for the benefit of the Allied forces and the handling of certain individual criminal cases involving civilians abroad whose amenability to military law was doubtful occupied a substantial portion of the division's time. In connection with the international liaison work of the division, the chief of the division went to Mexico City in the summer to deliver an address before the Inter-American Bar Association at its third annual meeting, and stopped en route at several prisoner of war camps.

10. Work in the First Three Months of 1945

The division's work early in 1945 was of much the same character as the work late in 1944. Cases on war crimes, some concerning contract-labor for prisoners of war, and cases looking to the collapse of Germany were handled. A check list was prepared by the division to be used in the examination of records of general court-martial trials of prisoners of war, to make sure that conformity with the Geneva Convention had been had.

11. Observations on the Work of the Division

The two agencies of the War Department most frequently referring cases to the division were the Office of the Provost Marshal General and the War Department General Staff, especially the Assistant Chiefs of Staff, G-1, and G-2, and the Operations Division. There was however a considerable volume of cases emanating from various other agencies of the Army Service Forces. Such cases were referred principally from The Adjutant General, the Chief of Transportation, the Industrial Personnel Division, the Military Personnel Division, the Deputy Chief of Staff for Service Commands, ASF, and the Surgeon General. Many cases were referred from the Secretary of War, the Assistant Secretary of War, the Commanding General, Army Air Forces, from Commanding Generals of various theaters of operations, and from certain of the American military attachés abroad.

Very frequently the chief or some member of the division was appointed a member of a committee of the Joint Chiefs of Staff or of the Combined Chiefs of Staff to handle particular problems referred to such committees.

The bulk of the unclassified opinions rendered by the division on the rules of land warfare were noted or summarized in the Judge Advocate

General's School Text No. 7 and its supplement dated 12 March 1945.

The chief and certain members of the division from time to time performed important work, largely in their individual capacities, in making known the relation of international law to the conduct to war through addresses delivered before various groups, including the Judicial Conference of the Fourth Circuit, the American Bar Association, the American Society of International Law, the Federal Bar Association, the Inter-American Bar Association, the Lawyers' Guild, the Judge Advocate General's School, the Army's Counter-Intelligence School, the Army's Foreign Claims School, a symposium at Boston University, and the meeting of Latin American Judge Advocates held in 1945.

By writing also, members of the division performed a similar service. Several had published volumes or articles prior to their association with the division. The following were published by the chief and members of the division since their association with it:

Colonel Archibald King:

- "Legal Education in the Army," 22 Boston University L.R. 266.
- "The Army Court-Martial System," 1941 Wisconsin L.R. 311.
- "The Legality of Martial Law in Hawaii," 30 California Law Review 599.
- "Jurisdiction over Friendly Foreign Armed Forces," 36 American Journal of International Law 539.
- "A Comparison between Military Justice and Justice in Federal and State Courts in Criminal Cases," 2 Lawyers' Guild Review 7.

Colonel Charles Fairman and Colonel Archibald King:

- "Taxation of Friendly Foreign Armed Forces," 38 American Journal of International Law 257.

Colonel Charles Fairman:

- "The Law of Martial Rule" (2nd ed.) Callaghan & Co.

Colonel Frederick B. Wiener:

- "Military Justice for the Field Soldier", book published by the Infantry Journal, 1943.
- Several articles in the Infantry Journal.

Lt. Colonel Willard B. Cowles:

"Trial of War Criminals by Military Tribunals," 30
American Bar Association Journal 330.
"Recent Practical Aspects of the Laws of War," 18
Tulane L.R. 121.

Several members published reviews of books on subjects relating to international law.

The division also served as a source for personnel qualified for work on the United Nations War Crimes Commission. Three members of the division were detailed in 1944 to serve overseas in connection with the work of that commission.

CHAPTER XV

LEGAL ASSISTANCE

1. Introduction

(1 July 1940 to 18 August 1941)

The providing of legal advice and assistance to military personnel and their dependents in regard to their personal affairs was, through the years prior to 1 July 1940, traditionally a part of the unofficial duties of the members of the Judge Advocate General's Department. During the years of peace neither the quantity nor complexity of the personal legal affairs of military personnel of the regular establishment presented a problem that judge advocates could not handle as an incidental matter. It was performed on a local basis without official direction or plan.

The expansion of the Army subsequent to 1 July 1940 brought many persons into the service from civilian life, some of whom had very little advance notice or opportunity to arrange their personal affairs, with consequent difficulties and hardship. To provide a measure of protection for such persons, the Soldiers' and Sailors' Civil Relief Act of 1940 was approved on 17 October 1940 (54 Stat. 1178; 50 U.S.C., App. 501). Although this act provided legal remedies and relief, it did not, in general, work automatically, and legal advice and assistance was necessary to obtain many of its benefits. In addition, newly inducted personnel had many other legal problems, such as the need for a will, a power of attorney, or other legal document, concerning which they required professional legal counsel.

The problem of providing such legal advice and assistance grew as the Army expanded during the fall of 1940 and the spring and summer of 1941. It was handled locally, as it had been in the past, by the members of the Judge Advocate General's Department, and by the voluntary efforts of other lawyers in the service. Considerable assistance in this work was given by local bar organizations which had formed committees of civilian lawyers for this purpose. The American Bar Association provided far-sighted leadership in this regard by the establishment of a Committee on National Defense in September, 1940 (65 A.B.A. Rep (1940) pp. 77, 100), which was later renamed the Committee on War Work (67 A.B.A. Rep (1942) pp. 343, 372, 377).

The need for legal service was not acute, however, during this period, as personnel were being inducted for only a year, and the adjustment of their legal affairs was generally of a temporary nature to take care of their needs until their contemplated return to civil life at the end of their year of service and training.

2. Planning Period
(18 August 1941 to 16 March 1943)

On 18 August 1941, the Service Extension Act was approved (55 Stat. 626; 50 U.S.C. App. 303). This act extended the period of service provided by the Selective Training and Service Act, by one year and a half, to a total of two and a half years. This created a new situation in regard to the adjustment of personal legal problems, not only of those thereafter inducted, but also of those already in service, whose affairs already had been temporarily adjusted on the premise of a year's service. From then on, the demands for professional legal counsel grew very rapidly.

The Office of The Judge Advocate General began, at that time, a study of the problem of how such counsel could and should be provided. This study, which was accelerated by the outbreak of war on 7 December 1941 and the consequent rapid increase in the size of the Army, was made by personnel of the Officers Branch of the Military Affairs Division.

The outbreak of war and the subsequent disruption of normal life and processes, created a vast new volume of legal problems for servicemen and their dependents. Many of these problems were novel in legal jurisprudence and required the development of new laws, practices, and procedures to obtain adequate and just settlement. This development can be summed up by the statement that "total" war produced many totally new legal problems, remedies, and procedures, in regard to matters of a personal nature. This served to emphasize the need for making adequate legal advice and assistance available in this field.

In the study of this matter it was found that three basic factors were involved in the problem, the providing of counsel within the Army, the providing of civilian counsel where necessary, and the providing of a method of contact between the serviceman, the lawyer in the service, and the civilian lawyer, so that the latter two could help the first.

The first factor, the providing of counsel in the Army, arose out of the fact that the Judge Advocate General's Department had not grown, and was not growing, in size in proportion to the growth of the Army as a whole, and that the members of the department were finding it more and more difficult to spare time from their greatly increased duties as legal advisors to their commanding officers, to assist the rapidly growing numbers of military personnel needing help with personal problems. The solution of this phase of the problem was the use of the thousands of lawyers who had been and were entering the service in other branches.

The second factor, the providing of civilian counsel where necessary, was involved for two reasons. First, War Department directives prohibited

the appearance of military personnel before civil courts, boards or commissions, as counsel for private litigants (Cir. No. 358, WD, 1942). Second, the proper handling of a legal matter often requires representation, in court or otherwise, at places far removed from the Army camp, as for example, in the hometown of the serviceman involved. It was thus apparent that the Army would be unable to provide the needed legal service wholly within itself, as in the case of medical service. The solution of this part of the problem was the use of volunteer civilian lawyers working through the many bar organizations of the nation.

The third factor, the providing of a method of contact between the serviceman, the lawyer in service, and the civilian lawyer, was involved because it was manifest that unless these three elements were brought together by a uniform and comprehensive method of operation and communication, the purpose could not be effectively accomplished. It was apparent that this called for an overall system which would correlate legal assistance activities, not only throughout the Military Establishment, but also with the civilian bar on a nation-wide basis.

As a result of the above-mentioned study, and after consideration of many plans, ideas, and suggestions received from various sources, including those which had actually been put into operation on a local basis in several places, an outline of a plan to handle the whole problem was prepared and presented to the Office of the Under Secretary of War on 20 August 1942 (SPJGA 013.2, 20 Aug. 1942; 1942/3781). The Under Secretary approved this proposal and by letter dated 25 August 1942 (SPJGA 013.2, 31 Aug. 1942), directed The Judge Advocate General to pursue actively the organization of the legal service proposed in the outline plan, stating his belief that it "would meet a definite need and would contribute to the maintenance of the morale of the men in the Army".

The mentioned outline plan contemplated the securing of the support of the American Bar Association, as the representative of the legal profession, in jointly sponsoring this endeavor and in marshalling the members of the civilian bar to implement that part of the plan designed to make civilian counsel available where necessary. Accordingly, the outline plan was presented to the American Bar Association for its consideration and to determine its views (SPJGA 013.2, 31 Aug. 1942). By letter dated 19 October 1942, the Chairman of the Committee on War Work of the American Bar Association (see 3rd par. sec. 1, supra) confirmed previous verbal assurances of the willingness and desire of that organization to collaborate and render every possible service in this project (SPJGA 013.2, 31 Aug. 42).

On 24 October 1942, the President of the American Bar Association, in a conference held at his request with a representative of The Judge Advocate General's Office, expressed the view that this matter was of vital importance

to the morale of military personnel and their dependents, and urged that the plan be established without unnecessary delay. He also offered the full assistance and collaboration of the American Bar Association for such purpose (SPJGA 013.2, 26 Dec. 1942, 1942/6137).

There then followed a period during which were held numerous conferences with representatives of the American Bar Association, other bar organizations, and interested War Department agencies, working out the details necessary to complete the outline plan. Investigations were also made of experiments which had been conducted at several Army posts in providing such legal service on a local basis. A representative of the office visited during this period a so-called "legal aid clinic" at Lowry Field, Colorado, which had then been in actual operation for some time on a substantial basis, to observe and study the experiences of this operation in relation to the practical aspects of the proposed plan (SPJGA 013.2, 26 Dec. 1942, 1942/6137).

Reports from other posts concerning similar operations were also studied and considered. These operations provided an invaluable experimental test of the local problems that would be encountered and should be given consideration in any proposed plan of general application. Information, ideas, and suggestions obtained from investigation of these experiments were used in completing the outline plan.

During this planning period the American Bar Association held the first of a series of special Regional War Meetings. This meeting was held in New York City on 7 December 1942, and was attended by the principal officials of the American Bar Association and some 600 lawyers representing the bar associations in ten nearby states. The theme of the meeting was "War and the Lawyer", and more particularly "The War Effort--What the Lawyer Can Do." Its purpose was to coordinate the war work of the bar and to consider how it could contribute more effectively to the war effort. In anticipation of the institution of the projected legal assistance plan then being formulated, representatives of the office were invited to participate in the meeting to discuss the proposal and the problems involved therein, and to confer with those in attendance regarding details then undetermined which were of mutual interest (A.B.A. Journal Vol. 29 (Jan. 1943) p. 40; Dicta Vol. 20 (Feb. 1943) p. 27).

The meeting was stimulated by the reading by the President of the American Bar Association of a letter to him, dated 4 December 1942 (SPJGA 1942/6137) from the Under Secretary of War, in which the latter expressed hope that the plan, which was being developed in cooperation with the Association, would be in operation very shortly and stated in reference thereto:

"Anything which can be done to keep a soldier from worrying about his personal and family problems

is a definite contribution to morale. I believe that this effort will contribute materially to the war effort."

This meeting served materially to prepare the civilian bar for the performance of its part in the plan as later adopted.

Other bar organizations and individual lawyers were also active during the planning period, making suggestions, offering to be of assistance, and organizing to do their part in the project (SPJGA 300.9, 31 Oct. 1942; 1942/5316; 013.2, 23 Nov. 1942; 1942/6173; 1943/354). Notable among these was the National Association of Legal Aid Organizations representing the many legal aid societies of the country (SPJGA 1943/356). Recommendations and suggestions received from these sources were given consideration in studying and formulating the details of the plan.

As a consequence of the conferences, investigations and study, the office prepared and submitted to the War Department on 26 December 1942, a tentative draft of a complete plan (SPJGA 013.2, 1942/6137), which was thereafter used as a basis for discussions and conferences between representatives of the General Staff, Office of The Judge Advocate General and the American Bar Association (SPJGA 1943/2743, *infra*). All details of the plan were ultimately agreed to and the final draft of the plan was prepared by this office and submitted to the War Department (SPJGA 1943/2743, 1 March 1943).

The plan was approved by the War Department on 10 March 1943 (WDGAP/013 (2-4-43); copy filed with SPJGA 1943/2743), and published as Circular No. 74, War Department, 16 March 1943 (Appendix 7-1), thus instituting, for the first time in the history of the Army, an official, uniform, and comprehensive system for making legal advice and assistance available to military personnel and their dependents in regard to their personal legal affairs.

The mentioned circular begins with the statement that the "War Department and the American Bar Association have agreed to sponsor jointly the following plan to make adequate legal advice and assistance available throughout the Military Establishment to military personnel in the conduct of their personal affairs." The plan therein set forth provided, in brief, for the establishment of legal assistance offices throughout the Army, where military personnel and their dependents could obtain legal advice and assistance from lawyers in the service, designated as "legal assistance officers" and assigned to duty as such by their respective commanding officers. In cases where the legal service needed involved court appearances or otherwise required the services of a civilian lawyer, the circular provided a method for the reference of such cases by legal assistance officers to civilian lawyers, through Committees on War Work

appointed by the bar associations in the several states, or through the established legal aid organizations in the larger cities. A directory of these bar organizations was incorporated in the circular. The circular assigned the general organization, supervision and direction of the plan to The Judge Advocate General. After the promulgation of the circular, the legal assistance activities engaged in by his office were pursuant to and under its authority.

In evolving the plan and working out its details there was no past experience to draw on and it was almost wholly a pioneering effort. Many unique and difficult problems and phases were considered and provided for in the circular such as the confidential and privileged nature of the service (par. 10a), military justice involvement (par. 10b), persons to be served (par. 11), court appearances (par. 12), provision for direct correspondence (par. 13), supervision through staff rather than command channels (par. 15), correlation at all levels with the civilian bar (par. 15), general directions as to organization and operation (pars. 2 to 10), and the avoidance of professional ethical difficulties and the preservation of established attorney and client relationships (par. 3 and the circular in general).

The office had the finest of cooperation and collaboration from the civilian bar representatives in considering and solving these problems. The soundness of the solutions and of the planning which preceded the circular are attested by the fact that the plan, as therein set forth, proved by successful operation and actual experience after its adoption to be complete, effective, and adequate in the accomplishment of its purposes.

Although no substantial change in the basic elements of the plan were found necessary, several paragraphs of Circular No. 74, supra, were amended by Circular No. 73, War Department, 1944 (Appendix 7-2). These changes were, however, almost entirely concerned with adjusting the plan to organizational developments which had occurred in the Army Air Forces after its adoption. These amendments, which were proposed by the Air Judge Advocate, transferred regional supervision of legal assistance activities at Air Forces installations to the Air Judge Advocate and the staff judge advocates of the then newly established air service commands, from the service command judge advocates who had theretofore exercised such supervision (SPJGU 1943/19436). The general supervision and direction of the plan throughout the Army, and of legal assistance activities at all Ground, Air, and Service Forces installations, by The Judge Advocate General, was not changed or affected by the amendments, nor were any other major elements of the plan altered.

Hereinafter the term "Circular No. 74" is used to refer to Circular No. 74, War Department, 1943, as amended by Circular No. 73, War Department,

1944, unless the context shows that only the original circular was in existence at the time under discussion.

3. Branch Operations and Activities
(16 March 1943 to 31 March 1945)

Upon the promulgation of the plan on 16 March 1943 (Cir. No. 74, supra), the activities of this office in regard to this matter shifted from the planning stage to the operating stage. The first action taken was the activation of the Legal Assistance Branch by Office Memorandum No. 13, 22 March 1943, to discharge the functions and duties assigned by the circular to The Judge Advocate General. The branch began functioning on 22 March 1943, with an allotment of personnel consisting of a Chief of Branch, one other officer, and one civilian clerk-stenographer.

Almost the first task of the Chief of the Branch was to accompany an Assistant Judge Advocate General to a meeting of the House of Delegates of the American Bar Association in Chicago on 29 March 1943 (68 A.B.A. Rep. (1943) pp 385-388), to present and explain the details of the plan for the consideration and support of that body. The first public announcement of the institution of the plan was made to the press at that time by the representatives of this office and the American Bar Association, acting together. Thus the operation of the plan began with the close collaboration and joint action of the Army and the Bar.

This unity of endeavor continued and was the most essential and basic element in the successful operation of the plan. From the beginning, the representatives of this branch and of the American Bar Association, particularly the President and the Chairman of the Committee on War Work, collaborated on every important matter.

The legal assistance representatives of the Office of the Judge Advocate General of the Navy also collaborated from and after the adoption of a legal assistance plan by the Navy on 26 June 1943 (R-1164, ND Bull., 1 July 1943; Appendix 7-3).

The Navy plan was based on, and was substantially the same as, the Army plan set forth in Circular No. 74, supra. This fact made it possible to operate, in collaboration with the civilian bar, a single coordinated system of legal assistance for servicemen and their dependents, irrespective of branch of service. This was of mutual advantage to both the Army and the Navy in that, above other things, it avoided the confusion and complications with the civilian bar that would have arisen had the two services adopted conflicting or materially different plans. The spirit of cooperation was fostered continually by those involved and all matters of mutual concern or interest were coordinated by close and informal collaboration between the representatives of the Army, Navy and Bar.

This resulted in unity of action and operation.

To establish and maintain direct contact with the many legal assistance offices and to provide legal assistance officers with such information and recommendations as might be helpful to them in the performance of their duties, a series of Legal Assistance Memorandums were prepared from time to time by the branch and dispatched directly to the offices.

In Legal Assistance Memorandum No. 1, 22 April 1943, a statement of general policies and procedure under Circular No. 74, supra, was made. Among other things, it was stated therein that it would be the policy of this office, in the exercise of its supervisory functions under the plan, to avoid any unnecessary interference with the individual legal assistance offices in the solution of problems of a local character or in the conduct of cases handled by such offices, and to give legal assistance officers as much help and encouragement as possible in the performance of their duties. These policies were consistently adhered to and served as the fundamental basis of all supervisory activities of the Legal Assistance Branch.

In conformity with these policies, and in the belief that the function of The Judge Advocate General would be most effectively performed by leading, guiding and informing legal assistance officers, rather than by attempting to direct them in their conduct of what was essentially a civil attorney and client relationship as distinguished from a military operation, the memorandums were prepared from this viewpoint. Accordingly, the memorandums suggested and recommended but did not direct or order. This gave each legal assistance officer the necessary freedom of action to do his work without hindrance of, or the need to seek approval from, higher authority. At the same time the knowledge that he was acting largely on his own responsibility as a lawyer caused him to serve his clients to the best of his ability. The field operations of the plan were thus decentralized to the maximum.

Certain publications accompanied each of the mentioned Legal Assistance Memorandums, as inclosures thereto (see lists, Appendix 7-4). The selection, procurement and distribution of these publications was an important part of the work of the branch. A constant search was made to find and obtain reference materials on a great variety of subjects, which would be helpful to legal assistance officers. Some of the publications so distributed were of an official nature, while others were commercial or unofficial, about which further comment will later appear.

As the notification of the establishment of each legal assistance office was received, a full set of Legal Assistance Memorandums, with accompanying reference materials, issued up to that time, was sent to that office and it was placed on the mailing list to be sent subsequent issues. The memorandums and materials so distributed comprised, in effect,

a basic legal assistance library or field kit, which was continually supplemented by the addition of new reference materials or information concerning new legal developments. The memorandums also served to keep legal assistance officers currently advised of the policies of this office and of recommended procedures in the operation of the plan, particularly in the reference of cases to the civilian bar. This resulted in uniformity of operation and systematized the handling of cases, thus avoiding confusion and unnecessary work on the part of the civilian bar.

This project created a huge network which linked each Army and Navy post or installation with each other and with civilian lawyers in each county in the United States. In a particular county a civilian lawyer participating in the plan might, for example, have referred to him on the same day, a case from a legal assistance officer in England, another case from China, another from a different State, and still another from a different county in the same State. It was manifest that the reference of such cases, from widely scattered places and under varying conditions, should be made in as uniform and expeditious a manner as possible, with all essential information furnished, in order that the most effective and efficient service could be provided. The mentioned memorandums, and comparable "Legal Assistance Letters" issued by the Navy, served to aid in the accomplishment of this objective, by recommending procedures and methods jointly considered and determined in collaboration with representatives of the Army, Navy and the Bar.

At the outset it was clear that the legal assistance officers in the field would need reference materials of various kinds. An analysis of their needs indicated that certain of the materials needed were not in existence or were not available in a form that it would be practicable or feasible to distribute. For example, material was needed on the laws of the several states in regard to real property, and court decisions, procedure, and forms pertinent thereto. Such information existed only in compilations of statutes, reports and other large sets of law books which were general in scope.

To meet this need and similar needs in regard to other pertinent subjects, the Committee on War Work of the American Bar Association undertook, at the suggestion of The Judge Advocate General, to arrange for the preparation of treatises on the laws of each state as to these subjects. As a consequence, that Committee, with the assistance of the War Work Committees of the several state bar associations and the Junior Bar Conference of the American Bar Association, compiled, edited and arranged for the publication of, a "Compendium of the Laws Relating to Problems of Men in the Armed Forces" for each state and the District of Columbia. These compendiums, in separate pamphlets for each state, were published gratuitously in a limited edition by the West Publishing Company of St. Paul, Minnesota, as a war-time public service.

These compendiums were distributed with Legal Assistance Memorandums from time to time as they were published for each state. The first was distributed with Legal Assistance Memorandum No. 9, 2 December 1943, others with subsequent memorandums, and the last with Legal Assistance Memorandum No. 18, 10 August 1944 (see list of materials, Appendix 7-4). As the preparation, editing and publication of this material was a monumental task, it was decided at the outset that it would probably take a considerable length of time to complete, and it was therefore determined to publish and distribute it in separate pamphlets as the material for each state was completed, so that the information could be distributed on a progressive basis as soon as it became available, rather than to delay for the publication of the material for all the states in one book. As indicated above, a considerable time did elapse in completion of this project, thus justifying the decision to handle it in this manner.

This decision and other problems regarding the compendiums, such as the subjects they should cover, the format of the pamphlets, the method of publication, and the division of the quantities available for distribution, were determined by representatives of the Legal Assistance Branch, Navy Legal Assistance, and the American Bar Association Committee in a series of conferences. The pamphlets were published in an edition of five thousand copies of each state compendium, which was divided approximately as follows: Two thousand to the bar, seventeen hundred to the Army, and thirteen hundred to the Navy.

The limited quantity of the pamphlets available for distribution made it necessary to control the distribution very carefully in order that sets of the pamphlets could be furnished to regularly established legal assistance offices which needed them, and to avoid dissipating the supply by furnishing sets to other offices, agencies, and individuals not officially a part of or charged with any duties under the legal assistance plan. Countless requests for the compendiums were received from such sources by this branch, and also by the American Bar Association and the West Publishing Company which by arrangement referred all requests received by them from Army sources to the branch for proper disposition. This control made it possible to coordinate the distribution of the pamphlets.

The subject of domestic relations was not covered in the original compendiums, although its inclusion was recommended by the office. Before the publication and distribution of the compendiums had been completed, it became apparent that this deficiency should be remedied. Consequently a "Supplement to the Compendiums of Laws Relating to Problems of Men in the Armed Forces-Laws on Domestic Relations", was compiled, edited and published by the Committee on War Work, American Bar Association, in substantially the same manner as the original compendiums. The supplement was, however, published with the material for all the states

and certain other jurisdictions in one pamphlet. This pamphlet was distributed initially with Legal Assistance Memorandum No. 21, 4 December 1944. The same procedure for the division of the available supply and the control of the distribution thereof, used with the original compendiums, was followed.

In comparable manner, amendments to the original compendiums, covering changes in the laws of the several states since their publication, are currently in the course of publication. It is planned to distribute and control the supply by the same procedure.

The original compendiums, the supplement, and the amendments were a major factor in enabling legal assistance officers to perform their duties. This substantial and continuing contribution by the American Bar Association was of inestimable value, and is an example of the efforts it made, as joint sponsor of the legal assistance plan, to support its operation.

Other bar organizations also made substantial contributions in this field. Notable among these was the National Association of Legal Aid Organizations, which arranged for the preparation and publication of material on the subjects of Marriage in Absentia, Wills, and Divorce. This material was procured, distributed, and the supply controlled, as in the case of the compendiums. The value of these publications was evidenced by the volume of requests for copies that were received. Their production is indicative of the manner in which the legal aid organizations supported and cooperated in the operation of the legal assistance plan.

Reference materials on other subjects, distributed with Legal Assistance Memorandums, were procured from commercial sources (see List, Appendix 7-4), whenever they were available and needed, to supplement official publications and materials obtained through the cooperation of the bar organizations. However, in some instances reference materials or information needed for distribution were not available from any of these sources. In such cases, the Legal Assistance Branch undertook to prepare the needed materials which, after publication in an appropriate manner, were distributed with the memorandums.

One of these projects was the preparation of paragraph 4 (Legal Advice and Assistance), and sections VIII (Joint Bank Accounts), X (Power of Attorney), XI (Wills), XII (Estates), XIII (Safe Deposit Boxes), XVI (Soldiers' and Sailors' Civil Relief Act), and XXII (Automobile), of War Department Pamphlet No. 21-5, 1 April 1944, "Personal Affairs of Military Personnel and Aid for Their Dependents" (SPJGU 1943/17179; 1944/1412). In the previous editions of this pamphlet (20 October 1942 and 1 January 1943), the material under some of these subjects was prepared in the Military Affairs Division largely by personnel subsequently

assigned to the Legal Assistance Branch (SPJGA 1942/1319; 1942/2733; 1942/4120; 1943/59). The later revision was made in part by some of the same personnel in performance of functions transferred to the Legal Assistance Branch on its establishment.

Among the other materials prepared during the planning period, in anticipation of their subsequent need and use in the legal assistance project, were a memorandum on powers of attorney (SPJGA 300.9, 8 June 1942); Circular No. 32, War Department, 1943 (Oaths and Acknowledgments under AW 114; SPJGA 1943/2334), and, at the request of the Selective Service System and the American Bar Association, the subject of Personal Affairs under Part III of the "Manual of Law for Use By Advisory Boards for Registrants", 2nd Edition September 1942 (Government Printing Office; SPJGA 1942/2158).

The Legal Assistance Branch collaborated with representatives of the Navy, the American Bar Association, and the Selective Service System, in the preparation of a booklet entitled, "Important Information for Servicemen", 1 March 1944. This booklet, which was published by the Selective Service System and distributed by it to each man accepted for service prior to his induction, was designed to inform inductees in brief and simple language of the things they should do to arrange their legal and personal affairs, before they entered on active service. Incorporated in the booklet were ideas, suggestions and material received from several bar organizations, and in particular from the War Committee of the Bar of the City of New York in regard to the main text, and the Colorado Bar Association in regard to the record form in the back of the booklet (SPJGU 1943/19310).

To provide general information and to correct objectionable practices which had arisen in regard to the preparation of wills of servicemen (e. g. by assembly line methods using blank forms, and the ordering of their execution by some commanding officers), this branch prepared and recommended (SPJGU 1944/2536) the publication of Circular No. 97, War Department, 1944, Wills of Military Personnel. Material was also prepared for several other publications, including portions of War Department Pamphlet 21-4, Information for Soldiers Going Back to Civilian Life, 4 November 1944 (SPJGU 1944/6702).

In order that legal assistance offices could have ready reference to the information contained in the Legal Assistance Memorandums, and in all the pamphlets, booklets, circulars, and other reference materials described, a Legal Assistance Index, 16 March 1945, was prepared and distributed (SPJGU 1945/45D). This index covered Legal Assistance Memorandums Numbers 1 through 24, and the publications inclosed therewith, as well as generally accessible War Department publications containing

pertinent or collateral information. Under particular subject headings (i. e., wills, taxes, estates, and many others), reference was made in the index to each of the various publications which contained information on that subject.

A project, started while this activity was under the Military Affairs Division and subsequently carried on by the Legal Assistance Branch, was in connection with remedial state legislation in regard to the taking of acknowledgments of legal instruments and the performance of other notarial acts by Army officers. Although Article of War 114 conferred general notarial powers on certain classes of Army officers, the legal effectiveness of their acts for non-Federal or commercial purposes was dependent on state laws. Prior to 1942 only a few states had legislation of this nature, and it was necessary to bring the need for remedial legislation in this regard to the attention of the other states. This was done through, and with the cooperation of, the Office of the Under Secretary of War, the Department of Justice and the Council of State Governments (SPJGA 1942/5814). As a result, many states during their 1943 legislative sessions enacted legislation in this field. These laws and those previously enacted on this subject were summarized in Circular No. 217, War Department, 1943, and Circular No. 292, War Department, 1943 (SPJGA 1943/12980; 1943/16094).

A study disclosed, however, that there was a great lack of uniformity in these laws and that in many cases there were important deficiencies. Accordingly, this matter was again presented (SPJGU 1943/17242), in the manner indicated above, to the legislatures of the seven states having regular meetings in 1944, several of which took action in this matter either for the first time or in amending existing law. By the close of the 1944 legislative sessions, all forty-eight states had enacted some kind of legislation in this field. Accordingly, Circular No. 419, War Department, 1944, was prepared, which summarized these laws and brought them up to date, and superseded Circulars No. 32, 217, and 292, War Department, 1943 (SPJGU 1944/12411).

From the standpoint of uniformity, this matter was again brought to the attention of the forty-four states having regular sessions in 1945. This project was of substantial benefit to servicemen generally, by making it possible for them to execute effective legal instruments, such as deeds, affidavits, pleadings and powers of attorney, wherever they may be stationed throughout the world. Without the initiative and continuing efforts of this office on this project, it is very doubtful whether remedial action would have been taken in many of the states.

The experience with remedial state legislation, gained in connection with the acknowledgment laws, led to a continuing study of other fields where such remedial legislation appeared necessary or desirable

in connection with the personal legal affairs of servicemen and their dependents generally. As a result, proposals for such legislation on four other subjects, i. e., Proof of Wills (SPJGU 1943/17242), Extension of Validity of Powers of Attorney (SPJGU 1943/16885), Conservators for Missing Persons (SPJGU 1943/19401), and Evidence of Death (SPJGU 1944/10725), were prepared and processed.

In the fall of 1943, three of these proposals, and a continuation of the acknowledgment proposal, were approved by the War Department, cleared by the Federal-State Relations Section of the Department of Justice with other interested Federal agencies, and approved by the Council of State Governments for presentation to the states. This work required a very considerable amount of time and effort in studying and drafting the proposals, conferring with representatives of other agencies, and in presenting them to, and securing the approval of the Drafting Committee of the Council of State Governments at its meeting in Washington on 30 November and 1 December 1943 (SPJGU 1943/17242A).

These four proposals were subsequently submitted by the Council of State Governments to the seven states having regular legislative sessions in 1944, along with other proposals sponsored by the Council, by means of booklets prepared on an individual state basis. Considerable action was taken by this group of states in regard thereto.

In anticipation of the 1945 legislative sessions of forty-four states, these four proposals were later republished in a separate booklet (Council of State Governments, 1 July 1944), which was given wide distribution, not only to state legislative officials, but also to state and local bar associations and others interested in these problems. Thereafter, a fifth proposal (Evidence) was initiated and processed (SPJGU 1944/10725). This proposal was contained in Report No. 2, 1 December 1944, of the Council of State Governments regarding suggested state legislation for 1945, the four other proposals having been previously republished as part of Report No. 1, 1 November 1944.

These five proposals were verbally presented and explained by the Chief of the Legal Assistance Branch, at the request of the Council of State Governments, at four regional meetings held by the Council during the month of December, 1944, in Phoenix, Arizona; New Orleans, Louisiana; Hartford, Connecticut; and Chicago, Illinois. These regional meetings were attended by Governors, Attorneys General and other state officials representing the forty-four states having regular legislative sessions in 1945 (SPJGU 1945/1919; 1945/1920). The reports available at the time this history was written as to the action currently being taken on these proposals was very incomplete, but indicated that many states had taken or would take remedial action on some or all of the five proposals.

This project of remedial state legislation was ancillary to the main work of supervision and operation of the legal assistance plan. However, as it was felt that it had an important bearing on the legal affairs of servicemen and their dependents, such activity was undertaken as a proper and necessary function in carrying out the mission of The Judge Advocate General. Full cooperation and support was received in this work from the Office of the Under Secretary of War, the Federal-State Relations Section of the Department of Justice, representatives of other Federal agencies, the Council of State Governments, the Committees on War Work of the American and State Bar Associations, and the many state officials concerned. This work was an important public relations matter of considerable benefit to this office and the War Department.

Another important activity was the establishment, maintenance and improvement of liaison with officials of the American Bar Association and of the many state and local bar associations and other lawyer organizations. This was accomplished by correspondence, by personal contact, especially in conferences and at annual or other meetings, and by indirect methods. This was a necessary and essential activity in order that the legal assistance plan might function smoothly, that the civilian bar might be informed of its procedures, and that their support and cooperation might be kept at a high level. It also served to personalize the operation in a manner in conformity with the usual practice of the legal profession. For this reason, similar local contact and liaison between the civilian bar and legal assistance officers and staff judge advocates concerned was continually encouraged.

In order that the civilian bar might receive proper recognition for its contribution to the operation of the legal assistance plan, it was recommended that the War Department award suitable Certificates of Appreciation (Appendix 7-5) to those bar organizations entitled thereto (SPJGU 1943/17438). This recommendation was approved and the presentation of the certificates was assigned to The Judge Advocate General to determine and arrange. It was determined to present a certificate to each state bar association and to the National Association of Legal Aid Organizations, at the time of their respective annual meetings or on some other appropriate occasion (SPJGU 1943/17438). This procedure was followed, beginning in May, 1944, and continuing to April, 1945, during which time a certificate was presented to the state bar association of each of the forty-eight states and of the District of Columbia, as well as to the National Association of Legal Aid Organizations.

The presentation was made in each case by a representative of the War Department, designated by The Judge Advocate General, on an appropriate occasion selected by the bar organization concerned. In some

instances the presentation was made by the Deputy Judge Advocate General, by members of the Legal Assistance Branch, or by other personnel of this office, while in other cases the appropriate Service Command judge advocate or a member of his staff made the presentation (See list, Appendix 7-6). Arrangements for each of the presentations were made with the Chairman of the Committee on War Work of the particular bar organization, in collaboration with the Chief of Legal Assistance of the Navy, so that a similar Navy certificate could be presented simultaneously with the Army certificate in manner comparable to an Army-Navy E Award. Conferences between local Army and Navy legal assistance officers and members of the bar were arranged and held in conjunction with most of the presentations. These presentations not only served to give credit, but also served to stimulate the continuing and further efforts of the civilian bar in support of the legal assistance plan. This project was of substantial benefit to this office and the War Department from the standpoint of public relations.

Round-table conferences were arranged and encouraged wherever possible between groups of legal assistance officers and members of the civilian bar participating in the plan, to provide an exchange of ideas and suggestions and the solution of mutual problems. Some of these conferences were held in conjunction with bar meetings as above indicated, others were held at service command or other headquarters and the civilian bar was invited to attend. Personnel of the Legal Assistance Branch attended many of these conferences so that the policies and views of The Judge Advocate General could be made known, and so that the Branch could obtain information as to procedures and problems in the field. This activity was of inestimable value and was considered an essential part of the operation of the plan.

Many other activities of a wide and varied nature were undertaken in the performance of the two main functions of supervising the operation of the plan and in providing personal legal assistance to military personnel on duty with the War Department in Washington. In regard to the latter, the Legal Assistance Branch operated in effect as a legal assistance office in much the same way as legal assistance offices operated throughout the Army. This provided the personnel of the Branch an opportunity to learn by actual experience the problems involved in the operation of the plan, and enabled them to use this knowledge in their supervisory capacity. The bulk of this work was in the preparation and execution of wills and powers of attorney, and the handling of cases involving the protection afforded by the Soldiers' and Sailors' Civil Relief Act, supra; the leasing and transfer of real property and eviction therefrom; problems regarding automobiles and other personal property; income and other kinds of taxes; and domestic relations matters. Many other types of cases were handled and an infinite variety of personal legal problems were encountered, some easy of solution and others difficult and complex. All the legal problems

which arise in normal times, plus many unusual problems caused by war conditions or the fact that the person being served was in the Army, were presented in the course of rendering this service.

Special arrangements were made each year to handle the seasonal income tax "rush" (SPJGU 1944/1516; 1945/1365). This was a particularly difficult problem during the first few months of 1944, due to the complications involved in the adjustment of taxes for two years at the same time under the Current Tax Payment Act of 1943 (P. L. 68, 78th Cong.). The Tax Division of the Judge Advocate General's Office assisted in handling this problem. That division also prepared, from time to time, several War Department circulars regarding the Federal income tax liability of military personnel, which were distributed with the legal assistance memorandums to all legal assistance officers and were found by them to be of material benefit in assisting servicemen with their tax problems.

In addition to legal assistance rendered to persons coming to the office, a large volume of service was rendered by telephone and in response to requests received by mail, either direct or by reference from other War Department or Federal agencies, members of Congress, and the White House, from military personnel or their dependents.

4. Branch Organization, Personnel and Statistics

When first activated the Legal Assistance Branch was a branch of the Executive Division of this office under the direct supervision of the Executive. It soon became apparent, however, that the work of the branch was a separate and distinct activity of this office not related to the executive functions. Accordingly, in the summer of 1943, the branch, pursuant to verbal orders, began to operate independently of the Executive Division and under the direct supervision of the Assistant Judge Advocate General in charge of civil matters.

This situation was formalized by Office Orders No. 200, 1 October 1943, which constituted the branch as a "separate branch" of the Judge Advocate General's Office under the jurisdiction of an Assistant Judge Advocate General (later the Deputy Judge Advocate General). After that time the branch operated in the same manner as did the divisions of the office, with all the responsibilities, functions and duties thereof.

The branch began operations with personnel consisting of a Chief, one other officer, and one civilian employee. Additional personnel were allotted thereafter from time to time, until by 31 March 1945 it reached a complement of five officers and four civilian employees.

The volume of work constantly increased. During the first year of operation the branch handled a total of 10,492 tabulated matters as follows:

Carded cases

629

Correspondence and informal matters	469
Wills and powers of attorney	3646
Interviews	<u>5748</u>
Total	10,492

During the second year 11,478 tabulated cases were handled, viz:

Carded cases	1288
Correspondence and informal matters	2374
Wills and powers of attorney	1804
Interviews	<u>6012</u>
Total	11,478

In connection with the matters tabulated above, it should be particularly noted that the major projects engaged in by the branch, as described in Section 3 above, although in many instances only tabulated as one item, involved many activities and much time and effort over extended periods of time. This was particularly true of various supervisory or administrative activities, many of which because of their nature could not be tabulated above. This type of work constantly increased and consumed more and more of the time of the personnel of the branch during its two years of operation.

In other words, the executive or administrative work performed by the Legal Assistance Branch in supervising the operation of the plan and in initiating and maintaining activities in support or implementation thereof - most of which was of a pioneering nature without benefit of previous experience or precedent - was a major part of the work of the Branch. A constant study and search was made for ways and means to provide all possible legal assistance for military personnel and their dependents, wherever located, in regard to their personal legal affairs. This was the basic objective of the Branch and of the legal assistance plan.

5. Field Operations

(16 March 1943 to 31 March 1945)

The operation of the legal assistance plan throughout the Army progressed rapidly after its inception on 16 March 1943. Legal assistance officers were appointed, and legal assistance offices were established, pursuant to paragraph 4, Circular No. 74, supra, in ever increasing numbers for Army posts and units. Many of the offices were, of course, established soon after the promulgation of the circular. During the first six months, approximately 600 legal assistance offices were established and by the end of the first year approximately 850 such offices were in operation. Thereafter, the number of offices continued to grow more slowly, but by the end of the second year the total in operation was over 1200. Most of the expansion during the second year was at overseas installations, which

was encouraged whenever possible, although the establishment of legal assistance offices overseas was optional with the local commander under the plan (par. 4, Cir. No. 74, supra).

As there were frequent changes, e. g., new offices established and old offices moved or closed because the post or unit was inactivated or absorbed by other elements, it was impossible to ascertain at any given time the exact number of offices actually functioning. However, considerably more than the 1200 offices mentioned above were in operation at one time or another during the period.

This revolving situation made the problem of the procurement and supply of the legal assistance reference materials, described in Section 3 above, very difficult, as it was necessary to estimate existing and prospective needs on a problematical rather than a factual basis, without benefit of any previous experience or guide.

Nevertheless, this problem was adequately handled and each regularly established legal assistance office, of which this office was notified, was supplied with a full set of the reference materials. In view of war developments and the anticipated readjustments in legal assistance offices arising out of the conclusion of hostilities in Europe, the redeployment of the Army in the Pacific theater, and eventual demobilization, steps were taken to procure a sufficient supply of these reference materials to equip all legal assistance offices that probably will be newly established during these readjustment periods.

The following estimates of the extent and scope of legal assistance activities throughout the Army were made on the basis of reports received by this office from individual legal assistance offices pursuant to subparagraph 8e, Circular No. 74, supra (see Legal Assistance Memorandums No. 8, 16 and 23). As there was no directive of general application requiring that such reports be made, the majority of legal assistance offices did not report their activities. The reports which were submitted to this office were made pursuant to orders of a service command or corresponding local command, or on the initiative of the Legal Assistance Officer concerned. However, a substantial number of reports were received, which, it is believed, can be relied on as a reasonably accurate cross-section of the work performed by legal assistance offices generally.

A total of 786 separate reports were received from the inception of the plan on 16 March 1943 to 1 April 1944. These reports showed a total of 298,825 cases handled, an average of 380 cases per report. It is estimated, considering the varying periods of time covered by the individual reports, that on the average approximately 213 cases per month were handled by each legal assistance office reporting. Of the reported cases, 35% were tax matters; 21% related to powers of attorney; 20% to wills;

5% to domestic relations; and the remaining 19% to affidavits, citizenship, estates, insurance, real and personal property, torts and other types of legal problems.

An average of about 800 legal assistance offices were in operation in the Army between 16 March 1943 and 31 March 1944. On the basis of the above estimate of 213 cases per office per month, it is estimated that more than 2,000,000 matters were handled during that period by these offices. This work was largely performed by Legal Assistance Officers and their assistants in addition to other duties. It was reported that insufficient time from other duties or lack of personnel to render adequately this service prevented, in many instances, the handling of a much greater number of cases.

The comparable figures for the second year, as shown by the reports received from 1 April 1944 to 31 March 1945, show that an estimated total of 3,500,000 cases were handled by an average of 1100 legal assistance offices in operation throughout the service during that period. The average number of cases handled per office per month was 265. Of the cases reported during the period, 22% were tax matters; 25% related to powers of attorney; 23% to wills; 7% to domestic relations; and the remaining 23% to the other types of legal problems.

The above figures for the two years when combined show that an estimated grand total of 5,500,000 cases were handled by legal assistance offices from the inception of the plan to 31 March 1945. Of these, approximately 28% related to taxation; 23% to powers of attorney; 22% to wills; 6% to domestic relations; and 21% to other legal problems.

In reference to the domestic relations matters tabulated above, although they constituted only a small percentage of the total number of matters handled, they required a considerably larger percentage of time and effort than did the more routine matters of wills, powers of attorney, and taxation. The same was generally true of the percentages relating to the "other types of legal problems", mentioned above. As these other types and domestic relations matters often required court action, they comprised the bulk of the cases referred to the civilian bar for final disposition. As a consequence, the relative percentages of types of cases handled by the civilian bar differed materially from those handled by legal assistance offices.

Divorce and separation problems constituted most of the domestic relations matters handled and they continually grew in numbers.

It was apparent that the provisions of the Servicemen's Dependents Allowance Act of 1942 (37 USC 201), requiring payment of an allowance to the lawful wife of a serviceman, even though she was faithless, undeserving,

or separated from her husband, and if separated, regardless of the time they had been separated (see Legal Assistance Memorandum No. 21), was a motivating factor in many of the requests received from servicemen for assistance in obtaining a divorce. The reason for this lay in the fact that in many cases divorce was the only way a serviceman could prevent a portion of his pay being sent to an unfaithful or undeserving wife, or a wife from whom he was separated, sometimes for many years prior to his induction. As a consequence, the impact of the law caused a great many servicemen to turn to legal assistance offices for help in obtaining a divorce. Some of these requests were deserving, while others were frivolous, based on hearsay and false rumor or otherwise unfounded, or the result of misunderstanding. However, a large percentage of the requests did not result in court action, the legal assistance office being able in many cases to effect reconciliation between the parties, often with the aid of the chaplain or the Red Cross, or to demonstrate to the satisfaction of the serviceman that his fears were groundless or his case was without foundation. Nevertheless, the volume of deserving cases continued to grow and became an increasing problem for both legal assistance offices and the civilian bar.

On the other hand, many requests from servicemen in divorce matters were for assistance in defending divorce actions brought by their wives. Although there are no statistics available, it is believed that almost as many divorces have been sought by wives as by servicemen. The defense of these cases, under the Soldiers' and Sailors' Civil Relief Act, supra, or otherwise, also required the expenditure of much time and effort by the civilian bar and legal assistance offices generally.

The reports also showed that the personnel assigned to the legal assistance offices which accomplished the work above indicated averaged about 4 persons per office, and of these, 3 were lawyers in the service (2 commissioned and 1 enlisted), and 1 was non-lawyer personnel. The average legal assistance office thus was staffed with a legal assistance officer (lawyer); an assistant legal assistance officer (lawyer); an enlisted lawyer (usually a non-commissioned officer, as legal clerk, MOS 279); and an enlisted man (non-lawyer), as stenographer and file clerk. This pattern, of course, varied considerably according to local circumstances and needs. In some cases the legal assistance officer had no staff to assist him, in other cases he had two or more assistant legal assistance officers, as well as several enlisted lawyers and stenographers on his staff. Members of the Women's Army Corps, both officer and enlisted, were assigned to some, but not many, legal assistance offices. On 31 March 1945, there were a total of approximately 3600 lawyers in the service, officers and enlisted men, and 1200 non-lawyer clerks and stenographers, engaged in the operation of legal assistance offices throughout the Army.

The use of enlisted lawyers in legal assistance offices was encouraged in order that as many lawyers in the service as possible might be engaged in this work, and thus put their professional training to use in a manner beneficial to both the individual and the operation of the plan. Military personnel seeking legal assistance had made available to them, wherever possible, the option of obtaining such assistance from either a commissioned lawyer, an enlisted lawyer, or a civilian attorney, in order that the person being assisted would have the opportunity to select counsel in whom he would have confidence and with whom he would feel free to discuss his problem. Experience showed that some enlisted men wished to consult only an officer, others only another enlisted man, and still others did not want to confide in anyone in the Army and would consult only a civilian lawyer. Although the reasons for such preferences by the persons served were usually more fancied than real, and their confidences were fully protected in any event (par. 10a, Cir. 74, supra), recognition was made of this important element in the establishment of a proper attorney and client relationship through the plan in keeping with the fundamental right of anyone to choose his own counsel.

In addition to the general supervision of the plan that was exercised by the Judge Advocate General's Office, as discussed in Sections 3 and 4, above, regional supervision (par. 2b, 8a, & 15, Cir. No. 74, as amended), over legal assistance activities in their respective jurisdictions was exercised by the staff judge advocates of the several service commands or, in the case of Air Forces activities after the issuance of Circular No. 73, supra, by the staff judge advocates of the air (technical) service commands and the Air Judge Advocate. This function of these judge advocates was usually performed in large part by the legal assistance officers on their respective staffs, and entailed many activities and a large amount of time and effort on the part of these officers, who effectively and efficiently did this work in collaboration and cooperation with the Legal Assistance Branch.

Post or unit judge advocates who directly supervised the activities of the legal assistance offices of their commands as the "Director" thereof (par. 5, 8a, & 15, Cir. No. 74, supra), likewise contributed much time and effort in performing this function. In some places they served as the legal assistance officer for their post or unit in addition to their other duties. This was particularly true in overseas commands.

Thus, the legal assistance activities of the members of the Judge Advocate General's Department were, after the institution of the plan on 16 March 1943, largely supervisory in character, the actual work being done by legal assistance officers, usually commissioned in other branches of the service. However, due to the fact that their activities

were supervised by The Judge Advocate General and other judge advocates, these legal assistance officers were in a sense quasi-members of the Judge Advocate General's Department and their activities may be regarded as a part of the activities of the Department. The whole operation of the legal assistance plan in the Army was an activity of the Judge Advocate General's Department.

In connection with the regional supervision by certain staff judge advocates, the Legal Assistance Branch prepared and dispatched to them special memorandums, as deemed necessary from time to time, to assist and guide them in these duties (SPJGE 1943/6291, SPJGE 1943/6291E, SPJGU 1944/2630). These memorandums were concerned with general policies and procedures, especially in regard to collaboration with the Navy district legal officers, who performed similar functions under the Navy legal assistance plan, and to the adjustment of the supervisory functions between service command and air service command staff judge advocates after the publication of Circular No. 73, supra. The Army Air Forces issued AAF Regulation 110-1, 23 December 1944, to supplement and implement Circular No. 74, supra, as amended by Circular No. 73. This regulation, which had a stimulating and generally beneficial effect on legal assistance activities within the Army Air Forces, was substantially concurred in by this office prior to publication (SPJGU 1944/12921), as being based on, and largely a paraphrase of, the mentioned circulars. On a regional or local basis, comparable directives were issued by other commands at various times to implement and organize legal assistance activities within the particular command. Many overseas commands took such action.

There was continuing effort on the part of all concerned with the operation of the plan in the Army to accomplish its purposes and objects, and to further in every way possible the legal assistance activities within the jurisdiction of the particular individual or command. This was so, it is believed, not only because such duties had been assigned to those involved, but more significantly, because those who participated in this activity were able to observe the need therefor and the benefits attained thereby - not only directly by the person served but also by the service and the war effort in general - through the effect the operation of the plan had on the morale of large numbers of servicemen and their dependents. As a consequence, the lawyers in the Army, regardless of rank, grade, position or assigned duty, responded to this opportunity to be of service when called upon, in a manner that reflected great credit on the legal profession. Many of them performed their legal assistance work in addition to their other duties and at considerable personal sacrifice of time and effort. Their continual interest, constructive suggestions, and enthusiasm in doing the job to the best of their ability, contributed in large measure to the effective operation of the plan and the accomplishment of the volume of work above indicated.

6. Civilian Bar Activities
(16 March 1943 to 31 March 1945)

In addition to the figures on the number of cases handled by legal assistance offices under the plan, a large volume of cases was handled by the members of the civilian bar participating in the plan. Many of these cases came to them directly from the persons needing assistance, particularly from dependents of military personnel residing in the community. Other cases were referred to them by the Red Cross and other agencies, as well as by the legal assistance offices of both the Army and the Navy.

The number of such cases cannot be ascertained or even estimated. Reports such as those made by legal assistance officers were not made by the civilian bar. It was impracticable, and in fact virtually impossible, to attempt to obtain such reports, for the reason that the membership of the civilian bar committees constantly changed and was in too great number to permit any comprehensive reporting system. It is estimated that in the neighborhood of 27,000 civilian lawyers actively participated in the plan through the various bar organizations. Roughly speaking, there was at least one participating civilian lawyer in every county in the United States.

This response on the part of the civilian bar was a credit to the legal profession and to the American and State Bar Associations for the effective way in which they marshalled the manpower of the civilian bar in support of the endeavor. The reports received from legal assistance officers and from other sources, indicated, almost without exception, that excellent cooperation was received from the civilian bar and that they promptly and effectively handled cases referred to them under the plan. The very few complaints this office received concerning the handling of cases by the civilian bar, in nearly every instance were found on investigation to be either groundless or the result of misunderstanding.

From an organizational standpoint, the American Bar Association and its officials and committees continually provided leadership and stimulation to the participation by the civilian bar in the plan. Examples of this activity were the compilation of the Compendiums of Laws and the holding of special Regional War Meetings for groups of states. The first of these meetings, held in New York City on 7 December 1942, was discussed in Section 3 above. Other similar meetings were held in Birmingham, Alabama, on 9 December 1943, and in St. Louis, Missouri, on 4 February 1944 (Vol. 30 ABA Journal (Jan. 1944) p. 23; id. (March, 1944) pp. 120, 167). More of such meetings were planned but were not held due to transportation restrictions. At each of the meetings that were held, a prominent part of the program was devoted to the work of the Association in regard to legal assistance, so that all present might be better informed of its purposes and methods of operation and thus be

able to render more effective service. A representative of the Legal Assistance Branch attended each of these meetings and participated in the program.

The legal assistance project also had a part on the program of each of the 1943 and 1944 Annual Meetings of the American Bar Association. At the meeting held in Chicago, on August 23-26, 1943, a panel discussion on legal assistance was held. The President of the Association presided at the meeting, which was attended by many civilian lawyers and legal assistance officers of both services from all parts of the United States. The panel leading the discussion was composed of representatives of this office, the Office of the Judge Advocate General of the Navy, and the Committee on War Work of the Association (Vol. 29 ABA Journal (Aug. 1943) p. 423). The Judge Advocate General of the Army personally participated in the program by making a brief address and by serving on the panel. At a later General Assembly session, he also made a principal address, in which he discussed the work of the lawyer in this war in connection with legal assistance and other fields of activity (Vol. 29 ABA Journal (Nov. 1943) p. 629).

The following year the Annual Meeting of the American Bar Association was held in Chicago on September 10-14, 1944, and legal assistance again had a part in the program. On the first day, a panel discussion was held in conjunction with the scheduled meeting of the Committee on War Work (Vol. 30 ABA Journal (July, 1944) p. 401). At the special invitation of the Chairman, this meeting was attended by most of the persons charged with supervisory functions under the legal assistance plan (Chairmen of State Bar Association Committees on War Work, staff judge advocates of Service Commands and Air Service Commands, and Navy District legal officers), as well as by the members of the Committee. The panel leading this discussion was composed of the Chairman, an Assistant Judge Advocate General, the Chief of the Legal Assistance Branch, and the Chief of Legal Assistance of the Navy, each of whom made a brief address regarding his respective function under the legal assistance plan. General discussion then followed, in which all present participated, concerning the operation of the plan, the supervision thereof at all levels, and future activities and procedures to better accomplish its purposes.

At the session of the Annual Meeting held on 14 September 1944, The Judge Advocate General of the Army delivered an address to the General Assembly of the Association, in which he made particular mention of the activities of the bar under the legal assistance plan, and expressed appreciation in behalf of the War Department (Vol. 30 ABA Journal (Nov. 1944) p. 618). The Judge Advocate General of the Navy also addressed the meeting and made similar statements of appreciation in behalf of the Navy regarding the legal assistance activities of the bar. The President of the Association

presided at the session and stated, in the course of his introductory remarks, that "This will be a glorious chapter in what our civilian lawyers have been able to do at home in all-out support of a war in which we have been too old to take part."

Undoubtedly, these meetings did much to further the operation of the legal assistance plan. In addition, the several Presidents of the American Bar Association actively supported this work, and stimulated and encouraged the participation of civilian lawyers by giving the legal assistance plan a prominent part in nearly every public address they made during their respective terms of office. As one of the usual duties of the President was to visit and address many meetings of state and local bar associations, this activity by the Presidents materially enhanced this endeavor throughout the nation.

Similar support was received from the officials of the many state and local bar associations and legal aid organizations. Legal assistance was, likewise, frequently given a prominent part at the meetings of many of these bar organizations. The National Association of Legal Aid Organizations devoted a part of the program of its annual meetings in 1943 and 1944 to a discussion of this work. Representatives of the Legal Assistance Branch and of the Navy were invited to and participated in both of these meetings, which were held in Cleveland, on 12 October 1943, and in Kansas City, on 12 October 1944 (NALAO "Brief Case", Vol. I No. 10 (Oct. 1943), id. Vol. II, No. 8 (Oct. 1944)).

The service rendered by the civilian bar under the plan was gratuitous in the vast majority of the cases. However, in some types of cases and under some circumstances, modest fees were charged. It was understood and recognized in the formulation of the plan that it would not be proper or realistic to provide that all services by participating civilian lawyers should be gratuitous. As many kinds of legal matters involve extensive services, prolonged litigation, or otherwise require a very considerable expenditure of time by the lawyer handling the case, often to the substantial monetary benefit of the person served, as for example in damage suits and estate matters, it was not to be expected that large numbers of civilian lawyers would, or could, afford to volunteer to handle such cases gratuitously.

Accordingly, it was provided in the plan that "in any proper case the legal assistance office may refer the serviceman to civilian counsel for retention by the serviceman upon the usual civilian basis." (Par. 3, Cir. No. 74). As it was not feasible or possible, because of many variable factors, to set out a formula as to what constituted a "proper case", the determination thereof was necessarily left to the individual bar organizations participating in the plan. The policies

adopted by these organizations varied somewhat, especially in regard to the handling of divorce and other domestic relations cases; however, summaries of these policies were provided to all legal assistance officers for their information and guidance.

In actual practice, little if any difficulty was encountered by legal assistance officers with respect to fees charged by civilian lawyers to whom they referred cases. It was uniformly reported that most of the work of the civilian bar was gratuitous, and that where fees were charged in proper cases they were relatively low, usually the minimum standard or less for the particular type of case, with consideration being shown to the serviceman's ability to pay.

The basic purpose of the plan was to make adequate legal advice and assistance available to military personnel and their dependents, and the question of whether such assistance would or would not be gratuitous in a particular case was an ancillary or secondary consideration to this basic purpose. The essential problem involved was to make sure that servicemen and their dependents, not having lawyers of their own choice and requiring civilian counsel in the solution of their legal affairs, would be referred to competent, reliable and sympathetic lawyers selected by and acting under the supervision of the various bar organizations.

7. Conclusion

Legal assistance activities in the Army from 1 July 1940, to 31 March 1945, grew and developed rapidly from almost nothing into an operation of great magnitude and scope during that period, and particularly since the institution of the legal assistance plan on 16 March 1943 (Cir. No. 74, supra). This plan was a pioneering endeavor from the beginning and was the first official, uniform and comprehensive system of legal assistance for military personnel in the history of the Army. Of greater significance was the fact that this project was a joint endeavor of two Federal agencies (War and Navy Departments) and a non-governmental civilian association (American Bar Association), all working in concert, with complete collaboration, accord, and unity of purpose and action, in a direct and effective manner unhampered by unnecessary formalities, protocol, or other administrative impedimenta.

The work of the Legal Assistance Branch encompassed a great variety of activities in the performance of its functions. It supervised and administered the plan; engaged in public relations; provided actual legal assistance to persons applying in person or by mail; initiated and processed remedial state legislation; prepared and distributed publications on a variety of subjects; maintained contact with legal assistance officers

in the field by periodic memorandums, voluminous correspondence and many group conferences; maintained liaison, conferred and collaborated with representatives of the Navy and the bar; and in many other ways carried out its functions and mission to the maximum possible extent.

In conclusion, it can be stated that the disposition of the estimated five and a half million cases handled by the legal assistance offices during the past two years, has been a substantial contribution to the morale of those served and the war effort in general.

A P P E N D I C E S

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OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON

December 29, 1941.

MEMORANDUM FOR:

SUBJECT: Extended Active Duty.

1. In order to avoid hardship where possible, and properly to plan for the orderly reception and training of officers who have been tentatively selected for duty in the near future, The Judge Advocate General desires your answers to the following questions:

- a. What is the earliest date on which you can report for duty without undue hardship? (Please describe the hardship, if any, which would result if your orders should require you to report for duty at an earlier date.)
- b. What is the earliest date on which you can report for duty without inconvenience?
- c. Assuming that the Government has no need for your services immediately, on what date (within the next six months) would you prefer to report?
- d. Have you undergone a final type physical examination within the last two months? When and where was such examination taken?
- e. List by name and relationship persons who are financially (or otherwise) dependent upon you.

2. It is understood that you were recently advised to undergo a final type physical examination. If you have not already taken this examination, it should be taken as soon as possible.

For The Judge Advocate General:

Robert M. Springer,
Lieutenant Colonel, J.A.G.D.,
Assistant Executive.

WAR DEPARTMENT
Army Service Forces
Office of The Judge Advocate General
Washington

SPJGO

Re: Application for Commission, Army of the United States, by

Dear Sir:

The above applicant, a resident of your city, has submitted an application for a commission in the Army of the United States. This office desires further information regarding his reputation as a lawyer and as a citizen.

It will be considered a patriotic service if you will furnish a frank statement setting forth your estimate of his qualifications with respect to the following points: (1) legal ability; (2) character; (3) patriotism; and (4) personality, and any other information that you think might be helpful in passing upon the qualifications of this applicant. In connection with the first of these points, please rate his professional standing, in comparison with other members of your Bar, as "excellent", "very good", "good", or "fair".

The officers of this department are, in the main, responsible for the proper administration of military justice which affects the discipline of the Army and must have (a) better than average legal ability, (b) ability to get along with people and (c) good old-fashioned "horse sense". Your cooperation is earnestly requested in assisting this office to select competent and suitable officers.

If you have not had any personal contact with the applicant, it will be appreciated if you will make such investigation as you think necessary to form a basis for a report on his qualifications and send the same to this office by return mail or as soon thereafter as possible.

This information is solicited without the knowledge of the applicant and your reply will be held confidential. An official envelope, which requires no postage, is inclosed.

Sincerely yours,

Howard A. Brundage,
Lt. Col., J.A.G.D.,
Classification Officer.

1 Incl.
Envelope

WAR DEPARTMENT
The Adjutant General's Office
Washington

MEMORANDUM)
No. W605-4-42)

August 28, 1942.

APPOINTMENT OF OFFICERS IN THE ARMY OF THE UNITED STATES FOR DUTY WITH
THE JUDGE ADVOCATE GENERAL'S DEPARTMENT

1. The procurement objective granted The Judge Advocate General under the provisions of AR 605-10 has been amended to authorize the appointment as officers in the Army of the United States for duty with The Judge Advocate General's Office of warrant officers and enlisted men who are now in the Service.

2. The Judge Advocate General will consider applications for temporary appointment as officers in the Army of the United States for duty with The Judge Advocate General's Department, from warrant officers and enlisted men of the Army who--

- a. Have excellent records.
- b. Have more than four months' enlisted service.
- c. Are duly licensed attorneys at law in good standing.
- d. Have practical experience in the practice of law. Four year experience is desirable but is not essential for appointment in grades below that of captain.

3. It is desired that commanders assist The Judge Advocate General in attaining his procurement objective by accepting applications from candidates of the above category on W.D., A.G.O. Form 0850. Report thereof on W.D., A.G.O. Form 63, and the Form 0850, properly executed will be forwarded with the recommendation of the commander concerned, through channels, to The Office of the Judge Advocate General.

4. The grade to be offered in each case will be determined by the War Department.

5. The opportunities afforded by this letter will be given wide publicity in all commands and activities.

(AG 210.1 (8-19-42) RE-SPGAO-PS)

By order of the Secretary of War:

H. B. LEWIS,
Brigadier General,
Acting The Adjutant General.

DISTRIBUTION:

A.

(W350-72-43)

WAR DEPARTMENT
The Adjutant General's Office
Washington

MEMORANDUM)
No. W350-72-43)

March 24, 1943.

ESTABLISHMENT OF JUDGE ADVOCATE GENERAL OFFICER CANDIDATE SCHOOL,
ANN ARBOR, MICHIGAN

1. The Officer Candidate School of the Judge Advocate General, with a maximum quarterly capacity of 150 students, is hereby constituted under the direction of the Judge Advocate General.

2. Applicants will be processed and selected in a manner similar to that prescribed for The Adjutant General in AR 625-5, November 26, 1942, "Officer Candidates." The Judge Advocate General will have final authority to accept or reject applicants accepted by the examining boards.

3. The appointment of graduates of this school will conform to the current provisions of AR 625-5, provided that the Judge Advocate General is authorized to recommend graduates to the Secretary of War's Personnel Board for immediate promotion to the grade of first lieutenant in numbers not to exceed 50 percent of each class. Promotion will be based on the graduate's record in the school, his professional ability, and his experience.

(AG 352 (3-1-43)OB-D-A-MP-FH)

By order of the Secretary of War:

J. A. ULIO,
Major General,
The Adjutant General.

DISTRIBUTION:
A.

WAR DEPARTMENT
The Adjutant General's Office
Washington

MEMORANDUM)
No. W350-80-43)

April 1, 1943.

JUDGE ADVOCATE GENERAL OFFICER CANDIDATE SCHOOL, ANN ARBOR, MICHIGAN

Pending publication and distribution of Changes No. 6 to AR 625-5, November 26, 1942, "Officer Candidates," the following procedure for the processing of applications for the Judge Advocate General Officer Candidate School established by Memorandum No. W350-72-43, March 24, 1943, this office, subject, "Establishment of Judge Advocate General Officer Candidate School, Ann Arbor, Michigan," is announced for the information and guidance of all concerned:

1. Applicants must have attained their twenty-eighth birthday and be graduates of a law school; at least four years practice of law is desirable but not essential.

2. Applicants qualified for general or limited service under paragraph 8f, AR 625-5, are eligible.

3. No quotas will be allotted for the Judge Advocate General Officer Candidate School. Applications will be processed in the same manner as for other schools, with the following exceptions:

a. Acceptance or rejection.--Examining boards will not pass upon technical qualifications of applicants but will determine their general suitability as officer material. Rejected applicants will be notified as provided in AR 625-5. Acceptance by local commanders will be provisional, pending decision of The Judge Advocate General. Applications of provisionally accepted applicants, together with all papers, including report of physical examination and remarks by examining boards concerning applicants' ratings, will be forwarded, direct to The Judge Advocate General. Recent small unmounted photographs of applicants are required. Supporting information which will assist in the evaluation of qualifications is desirable but not essential.

b. Selections.--From these provisionally accepted applicants whose papers are forwarded to The Judge Advocate General, the proper number for each class will be selected. The Judge Advocate General will promptly notify each applicant concerning his rejection, acceptance, or selection. If accepted, but not selected, the applicant will be given some indication as to the approximate date he may expect to be selected for a particular class at the Judge Advocate General Officer Candidate School.

4. Applicants who have heretofore filed applications for direct commissions and assignment to the Judge Advocate General's Department

(W350-80-43)

will file new applications in the same manner as other applicants if they desire consideration.

5. The first officer candidate class will enter the Judge Advocate General Officer Candidate School on or about June 1, 1943. Investigation and evaluation of the professional and other qualifications of each applicant will require from two to four weeks after receipt of application by The Judge Advocate General.

6. It is desired that commanders assist The Judge Advocate General in procuring qualified candidates. The opportunities afforded by this memorandum will be given wide publicity in all commands and activities.

(AG 352 (4-1-43)OB-D-A-MP-H)

By order of the Secretary of War:

J. A. ULIO,
Major General,
The Adjutant General

DISTRIBUTION:

A.

CIRCULAR }
No. 57 }

WAR DEPARTMENT
WASHINGTON 25, D. C., 21 February 1945

Effective until 21 August 1946 unless sooner rescinded or superseded

COCCIDIOIDOMYCOSIS—Disposition of afflicted individuals.....	Section I
JUDGE ADVOCATE GENERAL'S DEPARTMENT—Detail of officers.....	II

I. COCCIDIOIDOMYCOSIS.—Disposition of individuals with coccidioidomycosis will be made in accordance with the following provisions:

1. General service.—Return to full military duty is authorized when the following criteria are met:

a. Freedom from symptoms of active disease.

b. Laboratory evidence of inactivity including:

- (1) Erythrocyte sedimentation rate normal on two or more successive determinations not less than 4 days apart.
- (2) Complete clearing of the pulmonary lesion as shown by roentgenography; or in the case of a persistent small pulmonary lesion without cavitation, stability of the lesion during an observation period of 6 months on limited service (see par. 2).
- (3) Sputum examinations for *Coccidioides*, if performed, must be negative. However, sputum examinations for *Coccidioides* are *not* required because of the undependability of the coverslip method, the excessive danger of laboratory infections when cultural methods are employed, and the necessity for establishing by animal inoculation the identity of *Coccidioides* obtained on culture.

2. Limited service.—*a.* If patients meet all criteria for general service except for persistence of small residual pulmonary lesions without cavitation, the following modes of disposition will apply:

- (1) Enlisted men will be returned to duty of a temporarily restricted character, not including field duty, and limited to continental United States. Profile serial and form letter as set forth in paragraph 5, section II, Circular No. 217, War Department, 1944, will be completed.
- (2) Officers, following appearance before a disposition board and appropriate physical classification, will be placed on temporary limited service, without field duty, limited to the continental United States.

b. Provision will be made for re-examinations at a general or regional hospital after 3 and 6 months.

c. Officers and enlisted men with special skills, for whom suitable assignments exist, may be placed on temporary limited service in spite of the persistence of a small pulmonary cavity, provided there is no significant surrounding inflammatory reaction, and the disease is well stabilized as determined by observation in hospital over a period of 6 months. In such cases, re-examination at a general or regional hospital every 6 months will be made as long as the cavity persists and 3 and 6 months after its apparent closure. If the cavity increases in size or hemoptysis occurs, or there is other evidence of progression, the patient will be rehospitalized.

3. Flying status.—No individual having a pulmonary cavity may be on flying status.

4. Separation from service.—All patients in whom the disease is still clinically active after 6 months of continuous hospitalization, and patients having residual pulmonary cavitation which persists longer than 6 months, with the exceptions set forth in paragraph 2*c*, will be separated from active service and transferred to

AGO 406B—Feb. 622702°—45

the Veterans Administration or to their own care in accordance with current directives governing the separation of officers and enlisted personnel. Criteria indicating clinical activity include continued fever, rapid sedimentation rate, persistent discharging sinuses, and other recognized manifestations of chronic infectious disease.

[AG 210.31 (7 Feb 45)]

II. JUDGE ADVOCATE GENERAL'S DEPARTMENT.—1. Qualified officers in the grade of second lieutenant to lieutenant colonel, inclusive, of the various arms and services are needed for assignment to positions normally occupied by members of the Judge Advocate General's Department. Such officers will be detailed in the Judge Advocate General's Department. Details will be accomplished upon the recommendation of The Judge Advocate General by War Department orders in accordance with the provisions of paragraph 5d, AR 605-145, 6 May 1943.

2. Written applications for detail will be forwarded through proper channels to The Adjutant General (Attention: SPXPO-A) as provided in paragraph 8, AR 605-145. In oversea theaters the application will be referred to the theater judge advocate for his recommendation. Application will be accompanied by a fully accomplished WD AGO Form 0850 or 0857 and a copy of WD AGO Form 66-1 or 66-2. Commanding officers will forward all applications, recommending approval or disapproval. Indorsement will include a statement of the subject officer's availability for reassignment to another command. Officers now serving overseas and not otherwise entitled or under orders to return to the United States will not be permanently reassigned to the United States but may be utilized within the theater in which they are serving or an adjacent theater.

3. Ordinarily only officers under 40 years of age and physically qualified for at least limited oversea service will be recommended. The minimum qualifications will be that the officer has attained his 28th birthday, is a graduate of a law school, and is admitted to practice law. At least 4 years' practice of law is desirable but not essential. The practice of law may include full time governmental, judicial, military legal experience or private practice. The qualifications of all applicants will be passed upon and details will be recommended by the selection board of The Judge Advocate General.

4. Officers detailed will usually be ordered to attend the officers' training class of 8 weeks' duration at The Judge Advocate General's School, Ann Arbor, Michigan. A class will commence on 26 March 1945 and approximately every 9 weeks thereafter until the needs of The Judge Advocate General's Department are satisfied. Officers will be assigned to perform duties as described in AR 25-5, 7 May 1942, and to such duties as are consistent with the over-all mission of The Judge Advocate General as the chief legal advisor of the Secretary of War, the War Department, and the Military Establishment.

5. This circular will be given the greatest possible circulation among individual officers of the Army with a legal background. Particularly, such publicity will be given as will bring it to the personal attention of each officer with a legal background on duty within the continental limits of the United States.

[AG 210.31 (29 Jan 45)]

BY ORDER OF THE SECRETARY OF WAR:

OFFICIAL:

J. A. ULIO
Major General
The Adjutant General

G. C. MARSHALL
Chief of Staff

AGO 406B

U. S. GOVERNMENT PRINTING OFFICE: 1945

2-6

(Please communicate with the Liaison Office, Room 3701, Munitions Building, Extension 4039, on all legal contacts, requests for witnesses, etc.)

WAR DEPARTMENT
OFFICE OF THE UNDER SECRETARY
WASHINGTON, D. C.

3-1

P C GENERAL DIRECTIVE NO. 27

March 7, 1942.

MEMORANDUM For The Chief of the Air Corps,
The Chief, Chemical Warfare Service,
The Chief of Coast Artillery,
The Chief of Engineers,
The Chief, National Guard Bureau,
The Chief of Ordnance,
The Quartermaster General,
The Chief Signal Officer,
The Surgeon General.

Copy to: The Judge Advocate General - for information,
The Chief of Finance - for information,
The Inspector General - for information,
The Adjutant General - for information.

Subject: Procedure for handling Litigation, including Suits
involving Cost-Plus-A-Fixed-Fee Contractors.

1. Since publication of P C GENERAL DIRECTIVE NO. 84, it has been observed that full compliance therewith has not been effected in all cases. In a number of instances, notification that process has been served on cost-plus-a-fixed-fee contractors or some other class of defendants has not been given to the Litigation Section, Office of The Judge Advocate General, Washington, D. C., either directly to that office or through the Chief of Branch but has come from the Department of Justice, with a request for advice and recommendation as to action desired by the War Department. Since the information furnished to that Department in such cases has been only fragmentary, much unnecessary delay has resulted in obtaining and developing the essential facts. In other instances, the teletype, radio or telegraphic notice given to that office has failed to contain certain essential information concerning the suits filed.

2. The United States Judicial Code, Title 28, Section 72, provides that under certain conditions a suit may be removed to the United States District Court up to the time for filing a first pleading on behalf of the defendant. It is essential that immediate action be taken in all cases involving the interest of the United States to acquaint the Litigation Section, Office of The Judge Advocate General, with complete

details concerning any and all suits which are instituted against the cost-plus-a-fixed-fee contractor or subcontractor or other class of defendants.

3. Effective immediately, the following procedure will be strictly observed in all cases:

(a) The defendant will immediately, upon receiving suit papers in any action filed against him, furnish a copy of all such papers to the contracting officer or appropriate War Department representative. This will be in addition to the requirements of any insurance policy which may be in force.

(b) Teletype, radio, or telegraphic notification of such suit should be sent immediately to the Litigation Section, Office of The Judge Advocate General, Washington, D. C., by the War Department representative in charge of the project of activity out of which the suit arises, giving all pertinent facts concerning the suit. In the usual case, these facts will include the court in which the suit has been filed, the names of parties to the suit, the date of service of process, a statement of the alleged cause of action, the amount sued for, the date on which answer to the suit must be filed, a statement of the principal defense to the suit which the defendant may raise, and a statement as to whether the amount sued for is fully covered by insurance and if so, whether or not the insurance carrier will accept full responsibility for the defense of the suit.

(c) Copies in triplicate of all suit papers and statement of available facts will be forwarded immediately to the Litigation Section. If a board of inquiry is convened to investigate, or acts on the case, copies of all reports of the board's proceedings and findings will be included in the papers transmitted. Since the Litigation Section, Office of The Judge Advocate General, has the duty of maintaining all War Department legal liaison with the Department of Justice and other Government departments, any Chief of Branch concerned, upon request of The Judge Advocate General, will immediately transmit to his office any information in his possession that may be requested. Requests for Government representation will not be made to the Department of Justice by War Department field representatives but will be made directly to The Judge Advocate General. Violations of this well-established War Department policy have caused confusion and prevented proper co-ordination in the handling of litigation with the Department of Justice.

(d) The agreement for representation to be signed by the cost-plus-a-fixed-fee contractor or other defendant, three copies of which will be forwarded to the Litigation Section, will read as follows:

The undersigned hereby requests the Attorney General of the United States to designate counsel

to defend on behalf of the undersigned the action
entitled _____ v. _____
_____. It is further
understood that by assuming the defense of said
action, the obligations of the United States under
United States Contract No. _____
are not altered or increased; it is further agreed
that such representation will not be construed as
a waiver or estoppel of any rights which any in-
terested party may have under said contract.

4. This directive supersedes P & C GENERAL DIRECTIVE No. 84.

By direction of the Under Secretary of War:

/S/ John W. N. Schulz.

John W. N. Schulz,
Brigadier General, U. S. Army,
Director, Contract Division.

(Memo. 850-44)

DISTRIBUTION:

Commanding Generals:

Army Air Forces.

Army Service Forces.

Assistant Chief of Staff, Operations Division, WDGS.

Director of Materiel.

Chiefs of technical services.

Judge Advocate General.

3-2

SEE REVERSE FOR SECTION III

to indemnify the Government against all or some part of those risks, depends in every case on the nature of the particular item to be supplied. Where a contract calls for the supply of several items the risk may be allocated in one manner as to some items and in a different manner as to other items.

¶ 1117.3 Some items are in all respects made to the contractor's own specifications, or are standard commercial items of a type regularly dealt in as such by the contractor, and are not made to Government-furnished specifications (except "performance" specifications) in any material respect. In the procurement of such items the War Department will normally require the contractor to indemnify the Government against all patent infringement risks involved therein. For this purpose the contract will normally contain the contract article set forth in paragraph 335.4. It may, in addition, contain the contract article set forth in paragraph 335.6.

¶ 1117.4 Other items are, from the standpoint of structure or composition, in part made as described in paragraph 1117.3 above and in some other part made to meet Government-furnished specifications (other than "performance" specifications). In the procurement of such items the War Department will normally require the contractor to indemnify the Government against all patent infringement risks involved therein except those which necessarily result from the contractor's compliance with specifications (unless originating with the contractor) forming a part of the contract or with specific written instructions given by the contracting officer for the purpose of directing the manner of performance under the contract. For this purpose the contract will normally contain the contract article set forth in paragraph 335.5 and, in addition, the contract article set forth in paragraph 335.6.

¶ 1117.5 Other items are in all respects made to meet Government-furnished specifications (other than "performance" specifications), or are in every substantial respect different from any item which has ever regularly been dealt in as a standard commercial item by the particular contractor, and are not made to the contractor's own specifications in any material respect. In the procurement of such items the War Department will normally not require the contractor to indemnify the Government against any part of the patent infringement risks involved therein. For this purpose the contract will normally contain the contract article set forth in paragraph 335.6, and normally will not contain either of the contract articles set forth in paragraphs 335.4 or 335.5.

¶ 1117.6 In every contract where there is reason to believe that the manufacture, use or disposal of any of the items to be supplied will create risk of patent infringement (and without regard to whether the con-

tract contains either of the indemnity clauses of paragraphs 335.4 or 335.5, or no indemnity clause), or may involve the payment of royalties, the contract will normally contain the contract article set forth in paragraph 335.6 which specifies the conditions under which the Government's authorization and consent is to be given, and provides for assistance in discovering patent liabilities and for securing to the Government the benefit of royalty reductions.

¶ 1117.7 Provision whereby the contractor agrees to indemnify the Government against all or any of the patent infringement risks involved may be included in or omitted from any particular contract or specified class of contracts where, within the discretion of the chief of the technical service concerned (see paragraph 1118 below), such action is necessary or appropriate to facilitate procurement.

¶ 1117.8 Where the giving of bond in support of the contractor's indemnity obligation is deemed necessary (see paragraph 406.5), the contract will normally contain the contract article set forth in paragraph 335.7.

¶ 1118 Discretion of the chiefs of technical services.—In executing the policy stated in paragraphs 1116.1 to 1116.13, and 1117.2 to 1117.8, the chief of each technical service shall have the following authority:

(1) He may issue such instructions for the guidance of his service as may be appropriate to effectuate the policy above referred to.

(2) He may, in particular contracts or specified classes of contracts, authorize deviations from the policy, or the omission or alteration of any of the contract articles set forth in paragraphs 335.1 to 335.8, whenever in his judgment such action is necessary or appropriate to facilitate procurement, subject to the limitations set forth in subparagraphs (3) and (4) below.

(3) No provision whereby the Government expressly agrees to indemnify the contractor against liability for patent infringement shall be included in any contract except with the express written approval of the Director, Purchases Division, Headquarters, Army Service Forces; but this subparagraph does not apply to the use of contract articles, such as that set forth in paragraph 335.6, specifying the conditions under which the Government's authorization and consent is to be given.

(4) No provision whereby the domestic practice by or for the Government of foreground patents is either (a) limited in term to less than the life of any patent involved, or (b) limited as respects user to any particular governmental purpose, or (c) limited as respects disposition otherwise than according to law, shall be included in any development contract, except with the express written approval of the Director, Pur-

PR 11 MISCELLANEOUS PURCHASE INSTRUCTIONS

chases Division, Headquarters, Army Service Forces; but this subparagraph does not apply to the use in bailment contracts of a provision whereby such practice is limited to a term running at least for the duration of the war and six months.

(5) He may redelegate the powers granted to him under this paragraph to the chief legal officer and

to the chief patent officer in the headquarters of his service, except that the Commanding General, Army Air Forces may redelegate such power to any officer within the headquarters of the Army Air Forces and within the headquarters of any of the major commands of the Army Air Forces.

¶ 1119 Reserved.

SECTION III LITIGATION AND RELATED MATTERS

¶ 1120 Procedure for handling litigation involving cost-plus-a-fixed-fee contractors.—

¶ 1120.1 General.—It is of the utmost importance that The Judge Advocate General be promptly notified of the institution of all legal actions in which the interests of the United States are involved, including legal actions against cost-plus-a-fixed-fee contractors and subcontractors. This will make it possible to take steps to remove legal actions instituted in state courts to the federal courts and to otherwise protect the interests of the Government. Information furnished to The Judge Advocate General must be full and complete and not fragmentary.

¶ 1120.2 Procedure.—The following procedure is prescribed with respect to legal actions involving cost-plus-a-fixed-fee contractors and subcontractors:

(1) Such contractors should be advised that immediately upon receipt of process in any legal action filed against them, they must furnish a copy of all papers to the contracting officer or appropriate War Department representative. This will be in addition to any similar requirement of any outstanding insurance policy.

(2) Information and papers should be forwarded, as provided in subparagraphs (3) through (5) below, with respect to each legal action against cost-plus-a-fixed-fee contractors and subcontractors, except

(a) Any legal action based upon an alleged liability that is fully covered by insurance, either under the usual type of insurance policy or under the War Department Insurance Rating Plan (see par. 473 *et seq.*), if the insurance company agrees to accept full responsibility for the defense of the action and for the payment of any judgment that may be rendered against the defendant, or

(b) Any legal action upon a claim which

is within the provisions of a self-insurance plan approved pursuant to paragraph 436.4, if the self-insurance plan provides for the handling of such action by an attorney compensated on an annual retainer basis.

(3) Immediate report of the legal action will be made direct to The Judge Advocate General, Washington, D. C., by the War Department representative in charge of the project or activity out of which the action arises. Such report will be expedited and, where necessary, will be made by telegraph or teletype with prompt confirmation by mail. Each report will give all pertinent facts concerning the action. In the usual case, these facts will include the following:

- (a) Name of parties to the action.
- (b) Its nature.
- (c) Correct designation of the court in which the action is brought.
- (d) When and on whom service was made.
- (e) Time when answer must be filed or other action taken by the defense.
- (f) Nature of the principal defense to the suit.
- (g) The relation of the defendant to the United States.
- (h) Amount claimed; to what extent, if any, such amount is covered by insurance.

(4) Copies in triplicate of all suit papers and a statement of available facts will be forwarded immediately to The Judge Advocate General, Washington, D. C. If a board of inquiry is convened to investigate, or acts on the case, copies of all reports of the board's proceedings and findings will be included in the papers transmitted. Any other information in the possession of the chief of the technical service concerned, which may be requested by The Judge Advocate General, will be immediately transmitted to him. Requests for Government representation will

gations will be held by both agencies when found feasible.

4. *Review of Determination of the Regional Office of the Wage and Hour Division:*—Within ten days after notice of the determination of the regional office of the Wage and Hour Division, the contracting agency may, if dissatisfied with, and unwilling to settle on the basis of the determination of the regional office of the Wage and Hour Division, appeal to the Wage and Hour Administrator for his final determination of the claim. If part or the whole of the claim is found valid by the Administrator, the United States Attorney will effect settlement of the claim and disposition of the suit accordingly, except that if the contracting agency should conclude that the determination of the Administrator is in its view so clearly unsound as to render assent thereto improper, such agency may elect not to be bound by such determination and to proceed as provided in Paragraph 5.

5. *Participation of the Department of Justice in Discussions:*—At the instance of either contracting agency or of the Administrator, the Department of Justice will, if the case appears sufficiently important and the legal issues sufficiently doubtful, join in any discussion among the parties preceding the determination of the Administrator, and will informally accord to the parties the benefits of its views on the legal issues. It is understood that the Department of Justice is not intended to act as an appellate tribunal and that requests for its participation in discussions will be limited to the few important and doubtful cases. Each case in which a contracting agency has elected, pursuant to Paragraph 4, not to be bound by a determination of the Administrator shall be made the subject of discussion with the Department of Justice. Whenever any such case is the subject of discussion with the Department of Justice that Department may determine the Government's litigation position. If the Department of Justice makes such determination the action of all parties hereto with respect to the disposition of the particular case shall be in accord with the determination of the issues so made. In the event the Department of Justice declines in such cases to make such determination of the issues, the Department may decide not to provide further legal representation in any litigation of such case, in which event the cost-plus-a-fixed-fee contractor shall be represented by private counsel and neither the Administrator nor the contracting agency nor any of their representatives shall appear or participate in the litigation.

6. *Suits on Claims Against Cost-Plus-a-Fixed-Fee Contractors To Be Handled by the Department of Justice:*—The Department of Justice will have its United States Attorneys appear for cost-plus-a-fixed-fee contractors in all suits on claims filed against them, and will seek extensions of time sufficient to permit the foregoing procedures to operate. Subject to the Attorney General's usual discretion to avoid untenable positions in court, the conduct of such litigation will

be in conformity with the administrative determinations made pursuant to such procedures.

7. *Duration:*—The procedures provided in this agreement are recognized as experimental in nature, and any signatory hereto shall be free to withdraw from this agreement. In the absence of such withdrawal, the procedures shall endure until the purposes set forth in Paragraph 1 are accomplished."

(2) The Under Secretary of War by memorandum dated 15 December 1943, to the Commanding Generals of the Army Air Forces and the Army Service Forces, with reference to the above agreement, directed that:

To carry out the purposes of the agreement the procedure set forth below will be followed:

(a) The Judge Advocate General will be notified, as provided in AR 410-5 and other applicable regulations, promptly upon receipt of notice that suit based upon the Fair Labor Standards Act has been filed against a War Department cost-plus-a-fixed-fee contractor. He will request the Attorney General to direct the United States District Attorney to appear in the suit on behalf of the contractor and to obtain the extension of time contemplated by Paragraph 5 of the agreement.

(b) The Judge Advocate General will determine the position of the War Department in respect of such suits, to the same extent as in other cases referred to him under AR 410-5, and will further determine which cases should be appealed by the War Department to the Wage & Hour Administrator or the Attorney General, pursuant to the provisions of the attached agreement. He will also represent the War Department in all such appeals.

(3) In conformity with the above agreement and directive, upon notification of the institution of a suit based upon the Fair Labor Standards Act against a cost-plus-a-fixed-fee contractor as provided in paragraph 1120.2, the Judge Advocate General will request the Attorney General to direct the United States District Attorney to appear in the suit on behalf of the contractor and to obtain the extension of time contemplated by paragraph 5 of the agreement. The technical service promptly will make or cause to be made such investigation as may be necessary to ascertain the precise nature of the work performed by the complaining employee during the period for which he seeks additional compensation, and promptly

will report such information and such other information as the Judge Advocate General may request to the Judge Advocate General with the technical service's recommendation as to the position to be taken by the War Department in respect of the suit. Such investigation as to the nature of the employee's employment during the period may be made in collaboration with an investigator of the Wage and Hour Division of the Department of Labor in any case in which the technical service deems this appropriate.

(4) The Judge Advocate General will determine which claims in litigation shall be referred to the Department of Labor for the further investigation and for determination as permitted by paragraphs 3 and 4 of the agreement and which claims shall be referred by the War Department to the Department of Justice as permitted by paragraph 5 of the agreement, and will represent the War Department in connection therewith.

(5) In those cases in which the Department of Justice determines the legal position to be taken by the Government and decides that the claim should be litigated, it will conduct the litigation in accordance with the course of action determined upon as provided in the agreement. Should the Department of Justice refuse to determine the legal position to be taken by the Government and should the Judge Advocate General decide that the claim should be litigated, he will so advise the technical service in order that private counsel may be engaged to represent the contractor. Attention is called to 22 Comp. Gen. 993 to the effect that cost-plus-a-fixed-fee contractors in proper cases may be reimbursed the reasonable and necessary costs, including attorneys' fees, incurred in the defense of such suits. (See also the Comptroller General's opinion to the Secretary of War of 15 December 1943 (B-38642) affirming such position).

(6) The Judge Advocate General will advise the technical services as to claims which it has been determined should be compromised rather than litigated. Attention is called to the Comptroller General's opinion to the Secretary of War of 15 December 1943 (B-38642) to the effect that the War Department properly may, upon proper administrative determination as therein indicated that the settlement in each instance was fully warranted as being in the best interest of the Government, reimburse contractors for payments to employees in settle-

ment of claims for overtime asserted in section 7 of the Fair Labor Standards Act, in amounts less than the total amounts which would be required to be paid in the event adverse judgments were obtained, even if the consummation of the settlement necessitated adjustment of disputed questions as to the amounts of overtime involved as well as questions pertaining to the application of the Act.

[¶ 1121] Reports of criminal conduct in connection with War Department contracts.—

(1) There has been set up in the Criminal Division of the Department of Justice a special unit whose duty it is to take appropriate action as expeditiously as possible in all cases in which criminal conduct is shown to exist in connection with contracts entered into by the Government with business concerns in connection with the war program.

(2) The Under Secretary of War desires that a report be made to his office of any instances of criminal conduct in connection with War Department contracts. A report of such an instance should contain a full statement of the facts indicating criminal conduct. Such reports to the Under Secretary of War should be transmitted through channels to the Director, Purchases Division, Headquarters, Army Service Forces, for submission to the Office of the Under Secretary.

[¶ 1122] Joint action with Navy with respect to contingent fees.—(1) The Director, Purchases Division, Headquarters, Army Service Forces, has been designated to coordinate with the appropriate representatives of the Navy on problems involving the subject of contingent fees and excessive compensation of sales representatives for obtaining Government prime contracts and subcontracts thereunder.

(2) The Director, Renegotiation Division, Headquarters, Army Service Forces, will be in charge of relations with the Navy in the matter of renegotiation of brokers and commission and selling agents under Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942 as amended. Such brokers and agents, so far as subject to statutory renegotiation (See Public Law 149, 78th Congress) are assigned for that purpose to the Service and Sales Renegotiation Section, Procurement Legal Division, Office of the Under Secretary of the Navy with the exception of those engaged in the sale of textiles and foodstuffs which are assigned to the Price Adjustment Section of the Quartermaster

General (See Joint Renegotiation Manual, pars. 133, 202.2, 203.4, 336). Information coming to the attention of War Department personnel indicating that commissions or other compensation may have been paid to a broker or selling agent subject to statutory renegotiation will be reported to the Assignment and Statistics Branch, Renegotiation Division, Headquarters, Army Service Forces.

(3) The chief of each technical service shall designate an officer primarily charged with the

duty of coordinating the activities of such service with those of the other technical services, in matters relating to contingent fees and excessive sales expenses of contractors. The name of the officer so designated shall be furnished to the Director, Purchases Division, Headquarters, Army Service Forces, by memorandum, giving the full name, title, position, mailing address, and telephone extension number of such representative.

¶ 1123-1129] Reserved.

SECTION IV PRICE AND RATIONING REGULATIONS

¶ 1130] General.

¶ 1130.1] **Scope of this section.**—This section deals primarily with certain problems arising from or associated with the relation of the maximum price and rationing regulations issued by the Office of Price Administration (hereinafter sometimes referred to as OPA) to War Department purchases and sales. It discusses separately (1) price regulations in general, (2) problems primarily associated with purchases, (3) information pertinent to sales, and (4) matters relating to rationing. (For a further discussion as to OPA matters primarily relating to War Department sales, see paragraphs 7-111 et seq.) The discussion is introductory and is not intended to be complete. Complete details and the text of OPA regulations and orders may be found in the Federal Register, or may be procured from any OPA office. Should these sources fail, inquiries should be sent through the chief of the technical service concerned to the OPA Branch, Purchases Division, Headquarters, Army Service Forces, Washington 25, D.C.

¶ 1130.2] **Function of OPA Branch.**—(1) Because of penalties imposed by the Emergency Price Control Act of 1942, as amended, upon contractors who violate price ceilings, contractors must proceed with caution in the acceptance of contracts. To expedite procurement and sales, it is important that War Department personnel be familiar with the problems involved and able, whenever possible, to be of assistance or guidance to contractors. It is an important function of the OPA Branch to undertake the solution of specific problems.

(2) Whenever contact or negotiation is necessary between one of the services and the Office of Price Administration on any price regulation or rationing problem which involves a general policy or might affect more than one of the services, the negotiations will be conducted through the Chief, OPA Branch, Purchases Division.

¶ 1131] OPA price regulations in general.

¶ 1131.1] **General.**—(1) The Office of Price Administration, pursuant to the Emergency Price Con-

trol Act of 1942, as amended, and appropriate delegations of authority, establishes ceiling prices for certain sales of commodities and services. These ceilings are established either by (a) Price Schedules; (b) Maximum Price Regulations; (c) Temporary Maximum Price Regulations; (d) the General Maximum Price Regulation; or (e) other directives. Certain exemptions from price control have been granted and methods for obtaining relief provided, as discussed more fully hereafter.

(2) **Definition of commodity.** By statutory definition, the term commodity, as to which a ceiling price may be established, includes, with certain exceptions set forth in the statute, commodities, articles, products, materials and services.

¶ 1131.2] **Specific Price Regulations (Price Schedules and Maximum Price Regulations).**—The distinction between Price Schedules and Maximum Price Regulations is historical only. Both are price regulations, essentially similar in nature, and are hereafter referred to without distinction as specific price regulations. They establish ceiling prices for the commodities or services specified therein.

¶ 1131.3] **The General Maximum Price Regulation (GMPR).**—The General Maximum Price Regulation (hereafter referred to as GMPR) places a price ceiling on practically all commodities and services sold or rendered by manufacturers, wholesalers and retailers, if not covered by specific price regulations (see pars. 1131.5, 1132.6 for exemptions). In general, ceiling prices on items covered by this regulation are based on the highest prices charged in March, 1942. Other formulae are used in the event the March 1942 method is inapplicable. Specific price regulations, as to the specific articles or services covered therein, take precedence over the GMPR, whether issued prior or subsequent to the GMPR.

¶ 1131.4] **The service regulation—MPR 165.**—As above noted (par. 1131.3) all services (along with commodities) were brought under control of the OPA by the GMPR. Effective August 19, 1942, Maximum Price Regulation 165 brought under specific control a long

list of services, leaving those not specifically listed still covered by the GMPR, subject to exemptions (see par. 1132.6).

[¶ 1131.5] Exemptions.—(1) *General.* OPA has granted exemption of certain purchases and sales from price control. In some cases, specific commodities and services have been exempted from all price control. In other cases, though in general the commodities and services are subject to price ceilings, some purchases and sales thereof, depending on the identity of the buyer or seller, or on other special considerations, have been exempted.

(2) *How exemptions are effected.* (a) In the case of commodities and services covered by the GMPR, exemptions are granted respectively by OPA Revised Supplementary Regulation No. 1 and OPA Supplementary Regulation No. 11.

(b) In the case of commodities or services covered by specific price regulations, exemptions are granted by the terms of the regulation itself, either (i) by specific terms or (ii) by incorporating in the regulation by reference terms of other directives.

(c) In addition to the foregoing methods, exemptions may be granted in specific cases or otherwise by the terms of various OPA orders.

(d) When determining whether or not an exemption exists, the language apparently granting the exemption must be carefully examined, bearing in mind particularly that although certain transactions may be exempt from price control by the GMPR, they still may be subject to control by specific price regulations unless such regulations, or orders issued supplementary thereto, specifically exempt them.

(3) *Particular exemptions of interest.* Reference is made to certain exemptions of primary interest in connection with purchases (see pars. 1132.2 to 1132.6) and sales (see par. 1134.2).

[¶ 1131.6] Procedure for obtaining relief.—(1) *General.* The OPA has provided methods for obtaining relief with respect to price control, in proper cases, by way of elevation of ceiling prices, exemption, or otherwise.

(2) *Obtaining higher maximum price.* (a) OPA Procedural Regulation No. 6, effective July 3, 1942, as amended, sets forth the procedure to be followed (except where other OPA regulations specifically otherwise provide) to obtain higher maximum prices for commodities or services under Government contracts or subcontracts. In substance, the Regulation provides that (i) any seller who has entered into or proposes to enter into a Government contract, or a subcontract thereunder, who believes that his maximum price or prices impedes or threatens to impede the production, manufacture or distribution of a commodity or the supply of a service which is essential to the war program and which is or will be the subject of such contract or subcontract, may apply for adjustment of his maximum price or prices; (ii) any government agency

may appear as an interested party in the case of any such application; (iii) upon the filing of an application for adjustment, or within five days prior thereto and until final disposition of the application, contracts may be entered into or proposals and bids submitted at the higher price or prices requested in the application, and deliveries may be made under such contracts, *except that the seller may not receive and the buyer may not pay the amount by which the price exceeds the maximum price unless and until an order granting a higher price has been issued;* (iv) the seller shall include in any sale, contract to sell, or offer to sell at the price requested in the application the following: (A) the maximum price for the commodity or service in question; (B) a statement that the quoted price is subject to the approval of the Office of Price Administration; and (C) a statement that an appropriate application has been filed, or will be filed within five days, with the Office of Price Administration, and (v) applications involving War Department contracts exceeding \$5,000,000 in value must be filed with the OPA in Washington, D.C. (Other applications, [with a few exceptions] may be filed either with the appropriate regional office of the OPA or with the OPA in Washington, D.C.)

(b) *Special procedure to obtain higher maximum prices* is provided by amendments to MPR 136, (Machines and Parts and Machinery Services), effective April 12, 1943 and June 25, 1943, respectively, to which reference is made for complete details. This procedure is available to any person who has entered into a "war contract", defined as a contract for the sale of a machine or part purchased for the ultimate use of the armed forces of the United States or for lend-lease purposes, or for use in the production or manufacture of any such commodity. Provision is also made for adjustments of the maximum prices of machinery services.

(3) *Certain specific cases.* For methods of obtaining relief in certain cases primarily relating to purchases (see pars. 1132.3 to 1132.5).

[¶ 1131.7] Dissemination of information by chiefs of technical services.—Whenever the Office of Price Administration makes an industry-wide revision of ceiling prices on any item purchased by the War Department, or other revision in ceiling prices affecting products purchased by the War Department, the chief of the technical service involved will notify all contracting officers.

[¶ 1132] Purchases.

[¶ 1132.1] General.—Paragraphs 1132 to 1132.10 deal with OPA matters primarily relating to purchases. (For a discussion as to sales see pars. 7-11 et seq.; 1134 to 1134.3.) Interested personnel should, in addition, be familiar with the preceding paragraphs of this section.

[¶ 1132.2] Exemptions of purchases by virtue of War Department-OPA Agreement, September 1942.—

not be made to the Department of Justice by War Department field representatives but will be made directly to The Judge Advocate General, who has the duty of maintaining all War Department legal liaison with the Department of Justice and other Government departments. Violations of this procedure will cause confusion and prevent proper coordination in the handling of litigation with the Department of Justice.

(5) An agreement for representation should be signed by the cost-plus-a-fixed-fee contractor or other defendant and three copies thereof should be forwarded to The Judge Advocate General, Washington, D. C. Such agreement should read as follows:

The undersigned hereby requests the Attorney General of the United States to designate counsel to defend on behalf of the undersigned the action entitled v. It is agreed that the assumption by the Attorney General of the defense of said action does not alter or increase the obligations of the United States under United States Contract No. It is further agreed that such representation will not be construed as a waiver or estoppel of any rights which any interested party may have under said contract.

[¶ 1120.3] Procedure to determine legal position to be taken in suits based upon the Fair Labor Standards Act of 1938.—(1) In order that any differences of opinion between the War or Navy Departments and the Department of Labor as to the legal position which should be taken by the Government in suits against cost-plus-a-fixed-fee contractors based upon the Fair Labor Standards Act may be resolved, the War Department, the Navy Department, the Department of Labor and the Department of Justice have entered into the following agreement as to the administrative procedures to be followed to determine the position to be taken by the Government in such suits:

MEMORANDUM OF AGREEMENT ON UNIFORM ADMINISTRATIVE PROCEDURES

1. *Purposes:*—The procedures herein outlined are provided in order to:

- (a) Secure in the disposition of litigated claims settled and uniform application of the Fair Labor Standards Act to the types of work performed by cost-plus-a-fixed-fee contractors.
- (b) Obtain either an effective and economical defense by the Department of Justice against claims under the Fair Labor Standards Act, or the quick payment of such claims, depending upon whether such claims are determined pursuant to these procedures to be valid or invalid; and
- (c) Establish a method for handling claims which is fair and equitable in protection of the claimant, the United States, and the cost-plus-a-fixed-fee contractor.

2. *Definitions:*—For purposes of this agreement, the term—

- (a) "Contracting Agency" means the War Department, or the Navy Department, as the case may be.
- (b) "Cost-Plus-a-Fixed-Fee Contractor" means a contractor who has entered into a contract with a contracting agency, acting in its own behalf, or in behalf of the United States, pursuant to which the contracting agency, or the United States, is obligated to pay the labor costs of the work performed under the contract.
- (c) "Claim" means a suit based upon the Fair Labor Standards Act for additional payments for work performed for a cost-plus-a-fixed-fee contractor; and the term "claimant" means a person by whom or on whose behalf such suit is instituted.

3. *Prompt Investigation, Determination, and Payment of a Valid Claim:*—Claims will be immediately investigated by the contracting agency. If in the judgment of the contracting agency the claim should be paid, the United States Attorney will be promptly notified and he will effect settlement of the claim and disposition of the suit. If such is not the judgment of the contracting agency, the claim, together with the contracting agency's recommendation and report of the investigation, will be referred to the appropriate regional office of the Wage and Hour Division for such further and prompt investigation as may be necessary, and for determination. Contemporary or joint investi-

[The page following this is 1123]

3-4

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.



S-687

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

September 13, 1943.

3-4

Dear Sir:

For your information there is enclosed a copy of a memorandum received from the War Department, dated September 4, 1943, signed by Colonel Paul Cleveland, Chief, Advance Payment and Loan Branch, with reference to the procedure to be followed in connection with loans in distress which have been guaranteed by the War Department.

Very truly yours,

A handwritten signature in cursive script, appearing to read "L. P. Bethea".

L. P. Bethea,
Assistant Secretary.

Enclosure

TO THE PRESIDENTS OF ALL FEDERAL RESERVE BANKS
(Copy of enclosure sent to all Liaison Officers.)



WAR DEPARTMENT
Headquarters Army Service Forces

Washington

4 September 1943.

MEMORANDUM TO: The Board of Governors of the Federal Reserve System.

Subject: Guaranteed loans in distress.

1. There is transmitted herewith a memorandum dated 4 September 1943 dealing with the procedure to be followed in connection with loans in distress which have been guaranteed by the War Department.

2. The enclosed memorandum supersedes the preliminary draft dated January 28, 1943. It will be noted that the enclosed memorandum is primarily a condensation of the original draft and contains virtually no changes of substance. The forwarding of the revised form has been deferred in order that the procedure might be tested by actual experience but in the comparatively few cases of loans in distress which have occurred it has been found that the procedure originally suggested has proved workable in nearly every instance.

3. It is requested that a copy of the enclosed memorandum be furnished to each Federal Reserve Bank and to each Liaison Officer.

(Signed) Paul Cleveland

PAUL CLEVELAND
Colonel, F.D.,
Chief, Advance Payment & Loan Branch,
Special Financial Services Division,
Office of the Fiscal Director.

1 Encl.

WAR DEPARTMENT
Headquarters Army Service Forces

Washington

4 September 1943.

MEMORANDUM: From the War Department to the Board of Governors of the Federal Reserve System.

SUBJECT: Procedure for Guaranteed Loans in Distress.

1. As soon as the financing institution learns of the borrower's weakness, the War Department should receive a detailed report, together with a tentative recommendation by the financing institution as to the best course to be followed. This report should be sent to the Reserve Bank in quadruplicate--one copy for the Reserve Bank, one for the Liaison Officer, and two to be immediately forwarded to the Board of Governors for delivery to the War Department. The Reserve Bank may supplement the report by direct investigation. In forwarding the report, the Reserve Bank should include its recommendations. The report should include the latest available balance sheet and income account of the borrower, showing what assets, if any, are encumbered, and an itemized statement of the collateral for the loan, with an estimate of its probable liquidating value, together with an estimate of the value of rights against endorsers or other third parties, if any.

2. The Liaison Officer, as soon as the borrower's weakness is brought to his attention, should in all cases do the following:

a. Learn from the technical service concerned and apprise the Reserve Bank and the War Department of the status of the borrower in the war production program, giving an indication as to whether the service desires to retain the contractor as a going concern and a source of supply and is willing to make necessary adjustments to that end.

b. In cases in which he has ascertained that the Navy Department or the Maritime Commission or another Governmental agency has a substantial interest in contracts or subcontracts with the borrower, notify the War Department of such fact, together with the Government contract numbers, if available.

3. If litigation is imminent, the Liaison Officer should also do the following, regardless of whether the report of the financing institution has been received:

a. The Liaison Officer should notify the Contracting and Disbursing Officers (or the prime contractor if a subcontractor is involved) of the War Department's interest and should learn and report to the War Department the amounts estimated to be due the borrower under assigned contracts.

b. If there have been cancellations of the borrower's war production contracts, and no request for an adjustment of the guaranteed percentage has been made, the Liaison Officer should indicate whether the percentage of guarantee is believed to be subject to increase.

4. If there has been no purchase by the guarantor, the financing institution may retain its own counsel and may take appropriate legal steps, subject to the terms of the guarantee agreement. In these cases, the designated Litigation Officer of The Judge Advocate General's Department may be called upon by the Reserve Bank to represent the contingent interest of the Government and his services will be available to assist the financing institution, or such counsel as it may retain. A list of the Litigation Officers is attached hereto. Ordinarily, a request for the services of the Litigation Officer should be sent to the War Department which will make the needed arrangements with the Office of The Judge Advocate General.

a. As provided in guarantee agreements containing mandatory condition (C), and in the April 6, 1943 form of guarantee agreement, the expense of the foregoing action after default is to be shared between the guarantor and the financing institution. The financing institution will, of course, not be charged for the services of the Litigation Officer. When the financing institution submits a statement for counsel fees and other expenses it must be certified by the Reserve Bank as reasonable in amount and as necessary to the best of its knowledge and belief for the enforcement of the loan or preservation of the collateral after default and must be approved by a Financial Contracting Officer. The financing institution must certify that "the bill is correct and just and payment therefor has not been received".

b. In cases under the 1942 form of guarantee agreement, the Reserve Bank may be authorized by a Financial Contracting Officer to execute an amendment to the guarantee agreement providing for a waiver of the requirement that a demand for purchase must be made within 60 days after the maturity of the loan.

5. If there has been a purchase pursuant to the guarantee agreement (whether or not the guarantor has become the holder under the guarantee agreement) the interest of the guarantor will be represented in legal proceedings by the Department of Justice, acting through the local United States Attorney. Since the United States is the owner of the obligation following a purchase, Section 314 of Title 5 U. S. Code would prevent the payment of legal expenses incurred by others than the Department of Justice in protecting the interest of the United States. The financing institution may, of course, be represented at its own expense by its independent counsel as to its interest. The financing institution will not be charged for the services of Government counsel.

6. When cases occur to which paragraph 5 applies, the War Department will communicate with the Department of Justice. The Attorney General in turn will direct the local United States Attorneys to take prompt action to protect the interest of the United States. The Reserve Banks and the financing institutions will be expected to cooperate with the United States Attorneys and the Litigation Officers. The Judge Advocate General will direct the Litigation Officer to communicate and cooperate with the United States Attorney.

7. It must be recognized that in some cases the interests of both the financing institution and the guarantor will be served by the prompt making of a demand for purchase. The financing institution should consider this possibility when making the report referred to above. For example, if the guarantor becomes the owner of the guaranteed portion of the obligation prior to the institution of receivership or bankruptcy proceedings, the Government's statutory priority in such proceedings (except those under Chapter X of the Bankruptcy Act) may be of substantial importance. Also, there may be a potential set-off present between the liability which, after a purchase, would be due the guarantor from the borrower and amounts due the borrower under Government contracts. In order to occupy a set-off position, the Government may have to become the owner of the debt prior to the institution of bankruptcy proceedings.

8. It is believed that the necessary expense of legal advice rendered by counsel for the Reserve Banks may properly be paid by the guarantor in view of the provisions of paragraph 6 of Executive Order 9112. The services of the Litigation Officers may also be utilized by the Reserve Banks. The services of counsel for the several Reserve Banks should continue to be available to the Litigation Officer or the

local United States Attorney subsequent to the institution of legal action in the name of the United States. It is contemplated that there will be continued cooperation among the Reserve Banks, the Liaison Officers, and the Litigation Officers in order to protect the interest of the War Department.

9. The power of Financial Contracting Officers of the War Department to enter (otherwise than in court proceedings) into modification, readjustment and termination agreements covering the liability of the War Department arising out of guarantee agreements, and to make payments in accordance with such agreements, has been conferred by special delegation from the Under Secretary of War.

10. All such modifications, readjustments, or terminations effected outside of litigation must be approved by a Financial Contracting Officer who may execute the necessary agreements, releases, or other documents on behalf of the War Department. A possible decentralization of this power in less important cases may be considered in the future but is not planned at present pending further experience. It is understood, however, that the War Department in matters of this kind and in matters arising during the course of litigation will continue to receive the recommendations of the Reserve Banks as fiscal agents of the United States.

War Department of the United States.

(Signed) Paul Cleveland

By: PAUL CLEVELAND,
Colonel, F.D.,
Chief, Advance Payment & Loan Branch,
Special Financial Services Division,
Office of the Fiscal Director.

JUDGE ADVOCATE GENERAL'S DEPARTMENT
LITIGATION OFFICERS

Service Command	Litigation Officer	Office	Telephone
1st	Capt. Benjamin H. Long	Boston, Mass.	Beacon 1300 ex. 25
2nd	Major Robert Carey, Jr. or Capt. Clarence S. Eastham	Governors Island, N. Y.	Whitehall 4-7700 ex. 295
3rd	Capt. John H. Midlen	Baltimore, Md.	Mullberry 8320 ex. 617
4th	Capt. Reid B. Barnes or Capt. Myron T. Nailling	Atlanta, Ga.	Walnut 8924 ex. 255
5th	Major Wm. C. Moore	Ft. Hayes, Columbus, Ohio	Main 2171 ex. 514
6th	Capt. Kenneth L. Karr	Chicago, Illinois	Randolph 1311 ex. 730
7th	Capt. Bert E. Church	4202 U. S. Court- house, K.C., Mo.	Victor 3814
8th	Capt. Lorenza H. Calhoun	Ft. Sam Houston, Dallas, Texas.	Riverside 6951 ex. 693
9th	Major Geo. S. Brown	F.R.E. San Fran- cisco, Calif.	Sutter 8420

JUDGE ADVOCATE GENERAL'S OFFICE

CENTRAL PATENT SECTION

MAJ. F. H. VANDERWERKER, J.A.G.D. CHIEF
CAPT. J. F. M€CARTNEY, J.A.G.D.

EDNA E. FUSSELL - CAF - 6 - CHIEF CLERK

ELIZABETH WILSON - CAF - 4

JOSEPH N. CROWE - P - 5

PEARL M€KINNEY - CAF - 4

P. FRANKLIN LITTLE - P - 4

THELMA MISKELL - CAF - 4

HARRY E. M€GILL - P - 3

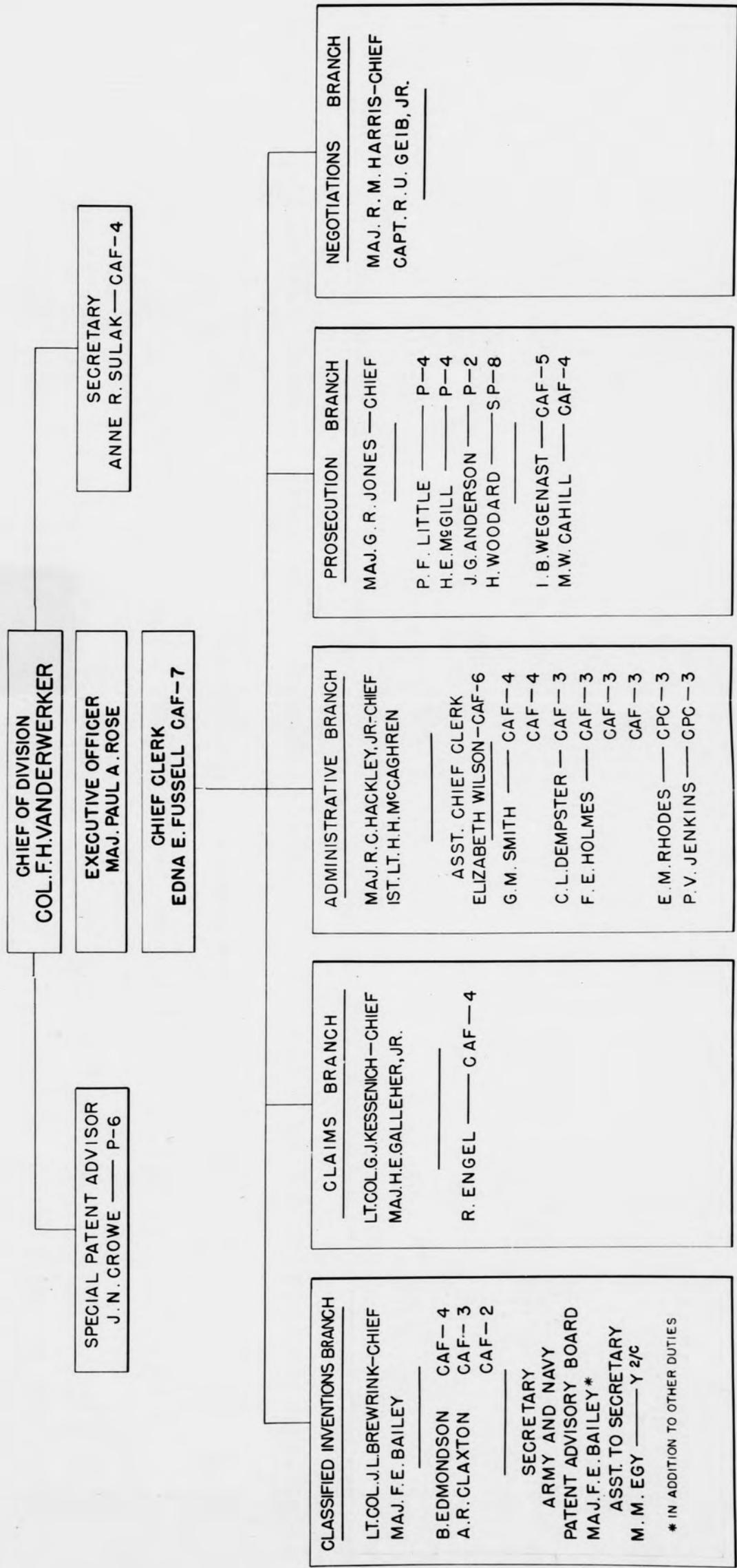
GEORGE HARVEY - CAF - 2

JOHN G. ANDERSON - P - 2

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**WAR DEPARTMENT
OFFICE OF THE JUDGE ADVOCATE GENERAL
PATENTS DIVISION
PERSONNEL CHART**

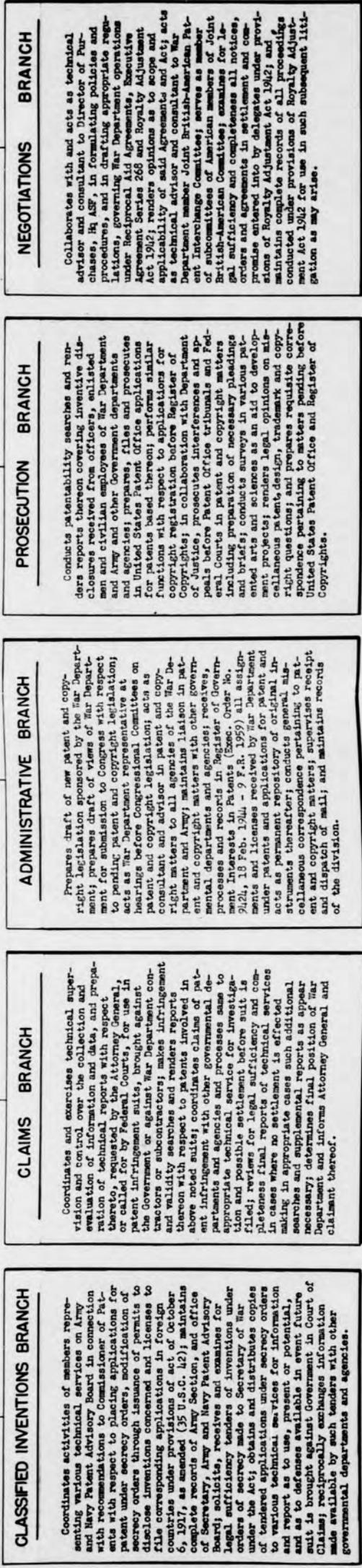
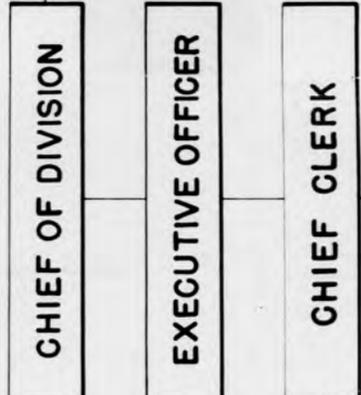


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WAR DEPARTMENT OFFICE OF THE JUDGE ADVOCATE GENERAL PATENTS DIVISION FUNCTIONAL CHART

CHAIRMAN — ARMY AND NAVY PATENT ADVISORY BOARD
WAR DEPT. LIAISON OFFICER — NATIONAL PATENT PLANNING COMMISSION
TECHNICAL ADVISOR TO
WAR DEPT. REPRESENTATIVE — BRITISH-AMERICAN PATENT INTERCHANGE COMMITTEE
J. A. G. D. LIAISON OFFICER — NATIONAL INVENTORS COUNCIL
WAR DEPT. MEMBER — JOINT PATENT COMMITTEE



CLASSIFIED INVENTIONS BRANCH

Coordinates activities of members representing various technical services on Army and Navy Patent Advisory Board in connection with recommendations to Commissioner of Patents with respect to placing applications for patent under secrecy orders, modification of secrecy orders through issuance of permits to disclose inventions concerned and licenses to file corresponding applications in foreign countries under provisions of act of October 6, 1917, as amended (35 U.S.C. 42); maintains complete records of Army Section; and office of Secretary, Army and Navy Patent Advisory Board; solicits, receives and examines for legal sufficiency tenders of inventions under orders of secrecy made to Secretary of War under the Act; obtains and distributes copies of tendered applications under secrecy orders to various technical services for information and report as to use, present or potential, and as to defenses available in event future suit is brought against Government in Court of Claims; reciprocally exchanges information made available by such tenders with other governmental departments and agencies.

CLAIMS BRANCH

Coordinates and exercises technical supervision and control over the collection and evaluation of information and data, and preparation of technical reports with respect thereto, requested by the Army, General, or called for by Federal Courts, in connection with patent infringement suits, brought against the Government or against War Department contractors or subcontractors; makes infringement and validity searches and renders reports thereon with respect to patents involved in patent infringement suits; coordinates claims of patentments and agencies and processes same to appropriate technical services for investigation and possible settlement before suit is filed; reviews for legal sufficiency and completeness final reports of technical services in cases where no settlement is effected making in appropriate cases such additional searches and supplemental reports as appear necessary; determines final position of War Department and informs Attorney General and claimant thereof.

ADMINISTRATIVE BRANCH

Prepares draft of new patent and copyright legislation proposed by the War Department; prepares draft of views of War Department for submission to Congress with respect to pending patent and copyright legislation; acts as War Department representative at hearings before Congressional Committees on patent and copyright legislation; acts as consultant and advisor in patent and copyright matters to all agencies of the War Department and Army; maintains liaison in patent and copyright matters with other governmental departments and agencies; receives, processes and records in (Exec. Order No. 7424, 13 Feb. 1944 - 9 F.R. 1959) all assignments and licenses received by War Department under patent and applications for patent and acts as permanent repository of original instruments thereon; conducts general administrative correspondence pertaining to patent and copyright matters; supervises receipt and dispatch of mail; and maintains records of the division.

PROSECUTION BRANCH

Conducts patentability searches and renders reports thereon covering inventive disclosures received from officers, enlisted men and civilian employees of War Department and Army and other Government departments and agencies; prepares, files and prosecutes in United States Patent Office applications for patents based thereon; prepares similar applications with respect to applications for copyright legislation before Register of Copyrights; in collaboration with Department of Justice, prosecutes interferences and appeals before Patent Office tribunals and Federal Courts in patent and copyright matters including preparation of necessary pleadings and briefs; conducts surveys in various patented arts and sciences as an aid to development projects; renders legal opinions on miscellaneous patent, design, trademark and copyright questions; and prepares requisite correspondence pertaining to matters pending before United States Patent Office and Register of Copyrights.

NEGOTIATIONS BRANCH

Collaborates with and acts as technical advisor and consultant to Director of Purchases, Hq. ASF, in formulating policies and procedures, and in drafting appropriate regulations, governing War Department operations under Reciprocal Aid Agreements, Executive Agreement Series 266 and Royalty Adjustment Act 1942; renders opinions as to scope and applicability of said Agreements and Act; acts as technical advisor and consultant to War Department member Joint British-American Patent Interchange Committee; serves as member of subcommittees of American members of Joint British-American Committee; examines for legal sufficiency and completeness all notices, orders and agreements in settlement and compromise entered into by delegates under provisions of Royalty Adjustment Act 1942; and maintains complete records of all proceedings conducted under provisions of Royalty Adjustment Act 1942 for use in such subsequent litigation as may arise.

APPROVED 1 MARCH 1945
Thomas F. Dandurand
COLONEL, J. A. G. D.
CHIEF OF DIVISION

OSRD - Long Form Patent Clause

(a) The contractor hereby grants to the Government of the United States an irrevocable option to purchase a non-exclusive license or licenses, subject to the payment of royalties, to make, have made, and use, for military, naval, and national defense purposes, and to sell in accordance with law, material, and to use processes, under all United States patents and applications for patents owned or controlled by the contractor covering inventions heretofore developed and actually or constructively reduced to practice and concerned with the subject matter of this contract. Any such license shall be granted upon reasonable terms subject to negotiation at the time the Government may desire to exercise its option hereunder.

(b) The contractor agrees to and does hereby, in consideration of the premises and in consideration of payments to be made by the Government under this contract, grant unto the Government a non-exclusive, irrevocable, royalty-free license, to make, have made, and use, for military, naval, and national defense purposes, and to sell or otherwise dispose of in accordance with law, material, and to use processes, under all inventions made in carrying out the work contemplated by this contract, including all inventions exclusive of inventions covered by subparagraph (a) which for the first time were actually or constructively reduced to practice as a result of the work contemplated by this contract, whether patented or unpatented. The contractor agrees to make to the Government, prior to the final settlement under this contract, a complete disclosure of all inventions made in carrying out the work contemplated by this contract and to designate in writing which of the said inventions have been or will be covered by applications for patents filed or caused to be filed by the contractor. The contractor shall have the right, upon notification by the Government, to elect whether it or the Government shall file applications for patents on inventions in addition to those designated by the contractor as aforesaid.

(c) As to all such inventions that are not covered by applications for patents as specified in subparagraph (b) the contractor agrees that the Government shall have the right, at the Government's expense, to file, prosecute, and act upon applications for patents thereon, and the contractor shall secure the execution of the necessary papers and do all things requisite to protect the Government's interest in prosecuting such applications to a final issue. When an application for patent is filed by the Government as aforesaid, all right, title, and interest in and under the patent shall be assigned to the Government by the contractor except that the contractor may retain a non-exclusive license non-transferable except to an assignee of the entire business to which said license is appurtenant.

(d) The contractor covenants that he has not entered into and will not enter into any arrangement to evade the intent of this Article

for the Government to obtain without further payment a non-exclusive license to patents, applications for patents and inventions as called for in subparagraph (b) above.

(e) It is agreed that the execution of this contract shall not constitute a waiver of any rights the Government may have under patents or applications for patents.

OSRD - Short Form Patent Clause

It is understood and agreed that whenever any patentable discovery or invention is made by the Contractor or its employees in the course of the work called for in Par. No. hereof, the Contracting Officer shall have the sole power to determine whether or not a patent application shall be filed, and to determine the disposition of the title to and the rights under any application or patent that may result. It is further understood and agreed that the judgment of the Contracting Officer on such matters shall be accepted as final, and the Contractor, for itself and for its employees, agrees that the inventor or inventors will execute all documents and do all things necessary or proper to carry out the judgment of the Contracting Officer. The Contractor agrees that it will include the provisions of this paragraph in all contracts of employment with persons who do any part of the work called for in Par. No. hereof.

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Office For Emergency Management
OFFICE OF SCIENTIFIC RESEARCH AND DEVELOPMENT
1530 P Street NW.
Washington, D. C.

VANNEVAR BUSH
Director

September 29, 1941

The Honorable
The Secretary of War
Washington, D. C.

Dear Mr. Secretary:

By virtue of the patent clause contained in contracts entered into by the Office of Scientific Research and Development, particularly those involving the National Defense Research Committee to cover research projects, the Government of the United States obtains in some cases an irrevocable, non-exclusive royalty-free license and in others an assignment of the entire right, title, and interest in the invention. In the latter case the Government must prepare and prosecute the patent applications covering the inventions.

We neither have nor contemplate a patent section in either the Office of Scientific Research and Development or in the National Defense Research Committee. Accordingly, I am turning to the War and Navy Departments for their assistance. I suggest that the War Department undertake to prepare and prosecute every patent application in which the invention in its entirety belongs to the Government of the United States, and assume the responsibility for those cases in which it is possible to identify your department as the source of the project, and that the Navy do the same thing where that department is the origin. Should a case arise in which it is difficult or impossible to trace the origin the War and Navy Departments might decide between themselves as to which should assume the responsibility.

If the general plan which I have outlined meets with your approval, will you please inform me with which bureau or official in your department contact should be made as these cases arise.

Sincerely yours,

(Sgd) V. Bush

V. Bush, Director

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COPY

Patents
JAG 072

OCT 22 1941

Dr. Vannevar Bush, Director,
Office of Scientific Research and Development,
1530 P Street, N. W.,
Washington, D. C.

Dear Dr. Bush:

The War Department has considered your letter, dated September 29, 1941, with reference to the patenting of inventions growing out of contracts entered into by the Office of Scientific Research and Development and the National Defense Research Committee, in which the entire right, title and interest in the invention flows to the Government. You suggest a general plan whereby the War Department will undertake to prepare and prosecute those patent applications covering such inventions in which it is possible to identify the War Department as the source of the project, and whereby the Navy Department will do likewise in those cases where it can be identified as the source of the project, and should a case arise in which it is difficult or impossible to trace the origin, the War and Navy Departments will decide between themselves as to which should assume the responsibility in question.

The War Department approves of the general plan outlined in your letter and will be glad to cooperate with you in carrying it into execution. As these cases arise, contact should be made with Lieutenant Colonel Francis H. Vanderwerker, J.A.G.D., Chief, Patent Section, Office of The Judge Advocate General, Munitions Building, Washington, D. C., whose room number is 3844 and whose telephone number is War Department extension 2785. In those cases where it is impossible or difficult to trace the origin of the invention specifically to either a War Department or Navy Department project, it is believed that no difficulty will be experienced in arranging for the ultimate disposition thereof in the manner which you suggest.

The War Department is pleased to be of assistance to you in this matter.

Sincerely yours,

(Sgd) HENRY L. STIMSON

Secretary of War.

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COPY

18 March 1944

The Honorable Henry L. Stimson
The Secretary of War
Washington, D. C.

My dear Mr. Secretary:

Certain operations of this Office involve research or developmental work performed by either independent contractors or military and other personnel on duty with or employed by this agency. The Government of the United States is entitled, in certain instances, to all right, title and interest in any inventions made in the course of such work; in other instances, to an irrevocable, non-exclusive, royalty-free license. In connection with these matters, the Government often must prepare and prosecute patent applications covering the inventions.

We neither have nor contemplate a Patent Section in the Office of Strategic Services, and to prevent a duplication of such work on matters of joint interest to the War Department and this agency, I wish to request your assistance in properly protecting the interests of the Government. It is my suggestion that the War Department undertake to prepare and prosecute patent applications emanating from this Office in which such action is appropriate and either (a) the invention or inventions have been submitted to this agency by Army personnel on duty here, or (b) whoever the inventor may be, his invention is of interest to any unit of the War Department. I am requesting that the Secretary of the Navy render similar assistance with respect to inventions made by naval personnel on duty here and any others which are of interest to the Navy Department. Should a case arise in which it is difficult or impossible to establish the appropriate Department for such action, the War and Navy Departments might decide between themselves as to which should assume the responsibility.

The volume and the nature of such matters are now such that this Office requires the services of a commissioned Army officer with proper qualifications to act on behalf of this agency in preparing and coordinating the work for ultimate submission to the War and Navy Departments. No officer qualified and available for such a post is now assigned to this Office of Strategic Services. I therefore shall appreciate your consideration of the transfer of such an officer from the Office of the Judge Advocate General to this agency.

These matters have been discussed by representatives of this agency with Colonel Francis H. Vanderwerker, J.A.G.D., Chief, Patent Division, Office of the Judge Advocate General, Munitions Building, Washington, D.C.

Sincerely yours,

William J. Donovan
Director

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COPY

WDGAP 210.31 OSS

March 31, 1944

Brigadier General William J. Donovan,
Director, Office of Strategic Services,
Washington, D. C.

Dear General Donovan:

This will acknowledge receipt of your letter of March 18, 1944, requesting assistance in preparing and prosecuting patent applications.

This matter has been discussed with the Patents Division, Judge Advocate General's Department, which Division is familiar with your problem and will assist you in every way possible.

It is suggested that you contact the Patents Division of The Judge Advocate General's Office to effect the necessary arrangements in this matter.

Sincerely yours,

(Sgd) Henry L. Stimson

Secretary of War.

bw

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List of Suits Pending
in the United States Court of Claims
as of 1 July 1940

<u>Docket No.</u>	<u>Name of Claimant</u>	<u>Amount Claimed</u>
33642	Marconi Wireless Telegraph Company	\$ 6,000,000.00
C-26	National Electric Signalling Company	7,525,000.00
D-388	Robert Esnault-Pelterie	1,689,300.00
M-65	Wm. S. Ferguson	4,090,200.75
M-231	Myers Arms Corporation	3,000,000.00
41829	David McD. Shearer	4,000,000.00
41941	Hazel L. Fauber	2,000,000.00
42133	Reed Propeller Company	Reasonable and entire compen.
42620	Walter Kidde & Company	Reasonable and entire compen.
42837	Uldric Thompson, Jr.	Reasonable and entire compen.
42876	Ordnance Engineering Corporation	3,600,000.00
43339	Steel Union Sheet Piling	85,000.00
44608	Joll Perry	250,000.00
44448	Reed Propeller Company	Reasonable and entire compen.
44686	Louis Steinberger	3,000,000.00
45182	John Pedersen	200,000.00
43608	C.A.M.Wells, Adm. Smith Estate	250,000.00
	17 Cases -	<u>\$35,689,500.75</u>

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List of New Suits Filed
in the United States Court of Claims
from 1 July 1940 to 31 March 1945 inclusive

<u>Docket No.</u>	<u>Name of Claimant</u>	<u>Amount Claimed</u>
45196	John Pedersen	\$ 66,280.00
45220	Borg Warner Corporation	735,526.28
45330	John Hays Hammond	5,000,000.00
45332	John Hays Hammond	5,000,000.00
45611	Bunn and Richardson	600,000.00
45657	Walter S. Hoover	225,000.00
45799	Charles J. Cooke	100,000.00
46000	Louis H. Crook	Reasonable and entire compen.
46322	John Stub	Reasonable and entire compen.
46364	Safety Fumigant Company	Reasonable and entire compen.
	10 Cases -	\$11,726,806.28

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Approved Calls of the Court answered
from 1 July 1940 to 31 March 1945, inclusive

Docket No.

D-388
44608
45182
45196
45611

46000

Name of Claimant

Robert Esnault Pelterie
Joll Perry
John D. Pedersen
John D. Pedersen
Alexander M. Bunn and
William E. Richardson
Lewis H. Crook, et al.

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Suits Dismissed
by the United States Court of Claims
1 July 1940 to 31 March 1945 inclusive

<u>Docket No.</u>	<u>Name of Claimant</u>	<u>Amount Claimed</u>
M-231	Myers Arms Corporation	\$ 3,000,000.00
43339	Steel Union Sheet Piling	85,000.00
43608	C.A.M. Wells, Adm. Smith Estate	250,000.00
44686	Louis Steinberger	3,000,000.00
42133	Reed Propeller Company	Reasonable and entire compen.
42620	Walter Kidde & Company	Reasonable and entire compen.
44448	Reed Propeller Company	Reasonable and entire compen.
45330	John Hays Hammond	5,000,000.00
45332	John Hays Hammond	5,000,000.00
42837	Uldric Thompson, Jr.	Reasonable and <u>entire compen.</u>
	10 Cases -	\$16,335,000.00

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Judgments Entered by
the United States Court of Claims
1 July 1940 to 31 March 1945 inclusive

<u>Docket No.</u>	<u>Name of Claimant</u>	<u>Amount Claimed</u>	<u>Amount Awarded</u>
33642	Marconi Wireless Tel. Co.	\$ 6,000,000.00	\$ 77,812.63
42876	Ordnance Engineering Co.	3,600,000.00	147,827.61
D-388	Robert Esnault-Pelterie	1,689,300.00	509,860.84
41829	David McD. Shearer	4,000,000.00	319,673.16
C-26	National Electric Signalling Company	<u>7,525,000.00</u>	<u>345,852.61</u>
	5 Cases -	\$22,814,300.00	\$1,401,026.85

4-14

Mr. President

Aide-memoire

The British Government have informed me that they would greatly appreciate an immediate and general interchange of secret technical information with the United States, particularly in the ultra short wave radio field.

It is not the wish of His Majesty's Government to make this proposal the subject of a bargain of any description. Rather do they wish, in order to show their readiness for the fullest cooperation, to be perfectly open with you and to give you full details of any equipment or devices in which you are interested without in any way pressing you beforehand to give specific undertakings on your side, although of course they would hope you would reciprocate by discussing certain secret information of a technical nature which they are anxious to have urgently.

I presume that, if you approve in principle of this interchange of information, you would wish to discuss it further with the War and Navy Departments before giving a decision, and, should you so wish, I would be glad to place my Air Attache and the scientific assistant to the Air Attache at the disposal of the staff of the C.G.S. (General Marshall) and C.N.O. (Admiral Stark) with a view to their discussing what technical matters might be of interest to these Services.

As to subsequent procedure, should you approve the exchange of information, it has been suggested by my Government that, in order to avoid any risk of the information reaching our enemy, a small secret British mission consisting of two or three service officers and civilian scientists should

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be despatched immediately to this country to enter into discussions with Army and Navy experts. This mission should, I suggest, bring with them full details of all new technical developments, especially in the radio field, which have been successfully used or experimented with during the last nine months. These might include our method of detecting the approach of enemy aircraft at considerable distances, which has proved so successful; the use of short waves to enable our own aircraft to identify enemy aircraft, and the application of such short waves to anti-aircraft gunnery for firing at aircraft which are concealed by clouds or darkness. We for our part are probably more anxious to be permitted to employ the full resources of the radio industry in this country with a view to obtaining the greatest power possible for the emission of ultra short waves than anything else.

LOTHIAN

8th July, 1940

COPY

Excellency:

I have the honor to refer to your Aide-Memoire dated July 8, 1940, proposing a general interchange of secret technical information between the United States and British Governments, particularly in the ultra short wave radio field.

I have brought your Aide-Memoire to the attention of the Secretary of War and the Secretary of the Navy, who now state that they are prepared to undertake conversations with a small secret British Mission, consisting of two or three service officers and civilian scientists. The furnishing of any technical or scientific information to your Government will, of course, be based on the understanding that the procurement of related articles or devices from sources of supply in this country will be subject to approval by the War and Navy Departments, such approval being dependent upon non-interference with our own procurement program.

General Sherman Miles, Assistant Chief of Staff of the War Department, and Rear Admiral Walter S. Anderson, Director of Naval Intelligence, have been designated representatives of the War and Navy Departments, respectively, to coordinate the details for the interchange of information covered in your Aide-Memoire. It is suggested that, in the first instance, your Air Attache and the scientific assistant to the Air Attache communicate with General Miles and Rear Admiral Anderson with a view to discussing the scope of the proposed conversations and also in order that the British

Mission,

His Excellency
The Right Honorable
The Marquess of Lothian, C.H.,
British Ambassador.

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Mission, before its departure for the United States, may be informed
of the information in which the War and Navy Departments are interested.

Accept, Excellency, the renewed assurances of my highest consideration.

COPY

WAR DEPARTMENT
War Department General Staff
Military Intelligence Division G-2
Washington

September 10, 1940

4-17

MEMORANDUM FOR THE JUDGE ADVOCATE GENERAL:

Subject: Exchange of Secret Technical Information
with Representatives of British Government

1. Confirming telephone conversation of yesterday, with your office, it is the understanding of this Division that Captain F. H. Vanderwerker, J.A.G.D., has been designated by you to serve as the Army representative of a joint committee composed of one representative from the Army, one from the Navy, and one from the British Technical Mission headed by Sir Henry Tizard.

2. The particular function of this Committee, to be known as the Commercial Committee, is to agree upon and advise the War and Navy Departments and the British Mission with respect to methods of handling the exchange of secret technical information in cases involving the patent rights of citizens of the respective countries, of their assignees, or of manufacturers concerned with the manufacture of patented devices.

3. Captain Vanderwerker will be informed of the time and date of meeting of this Committee. Forwarded herewith for his information are copies of memoranda and instructions pertaining to the subject.

(sgd) Sherman Miles,

Sherman Miles,
Brigadier General, U.S. Army,
Acting Assitant Chief of Staff, G-2

Encls. 5
ess

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EXECUTIVE AGREEMENT SERIES 268

INTERCHANGE OF
PATENT RIGHTS, INFORMATION, INVENTIONS,
DESIGNS, OR PROCESSES

+

AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND GREAT BRITAIN

Signed at Washington August 24, 1942
Effective January 1, 1942



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1942

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DEPARTMENT OF STATE
PUBLICATION 1803



The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, in further fulfillment of the policy set forth in their agreement of February 23, 1942 on the principles applying to mutual aid in the prosecution of the war against aggression,^[1] have considered the interchange of patent rights, information, and similar matters, and have authorized their representatives to agree as follows:

ARTICLE I

Each Government, in so far as it may lawfully do so, will procure and make available to the other Government for use in war production patent rights, information, inventions, designs, or processes requested by the other Government. In the case of the United States of America, the law authorizing such procurement and transfer is now the Act of the Congress of the United States approved March 11, 1941 (Public 11, 77th Congress).^[2] Each Government will bear the cost of the procurement of such patent rights, information, inventions, designs, or processes from its own nationals. In this Agreement the term "nationals" shall include all corporations and natural persons domiciled, resident, or otherwise within the jurisdiction of the Government concerned (as well as the Government itself and all of its agencies), except natural persons who are exclusively citizens or subjects of the country of the other Government. The basic principle as to which Government shall undertake and bear the cost of procurement in doubtful cases shall be decided in accordance with whether dollar or sterling costs are necessarily involved. In the former case the Government of the United States of America will effect acquisition and in the latter case the Government of the United Kingdom will effect acquisition, but each Government will pay the remuneration and other expenses of its own representatives incurred in connection with communicating any research or manufacturing information to the other Government.

ARTICLE II

All patent rights so acquired shall be acquired and used for the purposes of, and until the termination of, the war only, unless otherwise expressly provided, except that contracts entered into (for the produc-

¹ [Executive Agreement Series 241.]

² [55 Stat. 31.]

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tion, use or disposition of articles) which cannot be terminated without penalty, may be completed, and all articles on hand at the termination of the war, or completed as permitted herein, may be used and disposed of. Information, inventions, designs, or processes so acquired and not covered by patents or patent applications shall be acquired upon such terms as may most expeditiously make such information, inventions, designs, or processes available for the purposes of the war, with provision, to the extent practicable, for the limitation of the use thereof for the purposes of and until the termination of the war. When the information, invention, design, or process is of a category for which the other Government requests secrecy upon security grounds, each Government will take such steps as it deems practicable to ensure the appropriate degree of secrecy in manufacture and use. The term "termination of the war", for the purposes of this Agreement, shall mean the date when the Government of the United States of America and the Government of the United Kingdom have ceased to be jointly engaged in actual hostilities against a common enemy, or such other date as may be mutually agreed upon, and shall not be dependent on the date of the signing of a peace treaty.

ARTICLE III

Such acquisition by the Government of the United States of America will be effected in accordance with regular Lend-Lease procedure (or its then current equivalent) and will be financed under such program, except that other procedure may be used in those instances where no expenditure of funds is necessary.

ARTICLE IV

Such acquisition by the Government of the United Kingdom will be effected on the basis of written requests submitted by any authorized department or agency of the Government of the United States of America to the British Supply Council (or to such other agency of the Government of the United Kingdom as may be designated from time to time). Copies of all such requests will be furnished to the Office of Lend-Lease Administration. The British Supply Council will furnish to that Office reports as to all patent rights, information, inventions, designs, or processes obtained and transferred to the agency requesting the same and the acquisition cost thereof, if any.

ARTICLE V

In so far as is found practicable in the circumstances of each case, adequate licenses or assignments and contract rights shall be acquired by each Government, in accordance with the requests of the other Government, and transferred to the other Government. Where desirable

each Government will sponsor necessary relationships and permit dealings between the original grantor and the ultimate user. It is contemplated that normally the rights obtained should, subject to the limitations contained in Article II of this Agreement, among other things, include:

(a) The right to make, to have made, to use, and to dispose of, articles embodying the subject-matter of the patent rights, information, inventions, designs, or processes, so acquired, including the right to use and practice any of the aforesaid.

(b) Provision for securing to the recipient Government or its designees all necessary personal expert services and supplementary information.

(c) Permission to transfer, assign, license, or otherwise dispose of, any or all of the rights and privileges acquired, to the other Government, with further permission to the latter to transfer, assign, license, or otherwise dispose of any or all of the same to contractors, sub-contractors, or other appropriate designees of the recipient Government, for war production purposes only.

(d) The reservation on the part of the acquiring Government that it, and parties in interest holding under it, shall have the right at any time to contest the validity of any patent rights acquired.

(e) Whenever practicable, a guarantee by the licensor or patentee as to the validity of his patent, in respect of which the license is granted, with an indemnity against any infringement claims.

(f) Provision for the exchange of information, between the licensor or patentee and ultimate licensee, as to improvements or the results of research on the subject-matter of the license, together with the use of any patents which may be obtained in respect of such improvements, with a further provision that the like information and right to use additional patents shall simultaneously be furnished to both Governments.

ARTICLE VI

Subject to the provisos set out in Article VII hereunder, the Government of the United Kingdom agrees and undertakes to indemnify and save harmless the Government of the United States of America against all claims asserted by corporations or subjects of the United Kingdom arising as a result of the use and practice of any patent rights, inventions, information, designs, or processes furnished by the Government of the United Kingdom to the Government of the United States of America and used by the latter Government pursuant to the provisions of Article II of this Agreement, or arising as a result of

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production, use, or disposition, by or on behalf of the Government of the United States of America, of articles:

(a) Supplied to the Government of the United Kingdom under Lend-Lease or equivalent procedure; or

(b) Embodying the subject-matter of patent rights, information, inventions, designs, or processes furnished (or which purport to have been furnished) by the Government of the United Kingdom to the Government of the United States of America and used by the Government of the United States of America pursuant to the provisions of Article II of this Agreement; or

(c) So produced, used, or disposed of, pursuant to a request made or authority given by the Government of the United Kingdom to the Government of the United States of America;

provided always that the Government of the United States of America will, whenever in its judgment practicable, avail itself of any indemnity from a third party of which it shall have the benefit, in lieu of the indemnity from the Government of the United Kingdom contained in this Agreement. The Government of the United Kingdom will not look to the Government of the United States of America for any corresponding indemnity against claims asserted by nationals of the United States in the United Kingdom.

ARTICLE VII

The indemnity by the Government of the United Kingdom to the Government of the United States of America shall be subject to the following conditions, namely:

(a) That the Government of the United States of America, as soon as practicable after receiving notice of any claim by which a liability might fall upon the Government of the United Kingdom under the indemnity, will notify the Government of the United Kingdom of such claim having been made.

(b) That the Government of the United States of America will not make any compromise or settlement out of court with any such claimant, without the prior knowledge and concurrence of the Government of the United Kingdom.

(c) That, in all cases in which no prior compromise or settlement of a claim shall have been made, as in paragraph (b) of this Article, and the claim becomes the subject of legal proceedings in the United States Court of Claims, or other appropriate United States Court, the Government of the United Kingdom will (if it shall so request) be permitted to assist the Government of the United States of America in defending any such proceedings.

ARTICLE VIII

The Government of the United Kingdom shall not be liable in respect of claims asserted by nationals of the United States of America in the United States as a result of the use and practice of any patent rights, information, inventions, designs, or processes, or as a result of production, use, or disposition of articles embodying the subject-matter of any of the aforesaid.

ARTICLE IX

In order to avoid conflict with the understanding contained in this Agreement, departments or agencies of the Government of the United States of America which negotiate contracts for production in the United States pursuant to specifications furnished by or on behalf of the Government of the United Kingdom, will not require contractors in the United States to give indemnities to the Government of the United States of America which would be likely to result in efforts by the contractors to obtain an offsetting indemnity from the Government of the United Kingdom; the Government of the United Kingdom assumes a reciprocal obligation toward the Government of the United States of America.

ARTICLE X

Anything contained in this Agreement to the contrary notwithstanding, any obligations heretofore or hereafter undertaken by the Government of the United Kingdom pursuant to the provisions of Section 7 of the Act of the Congress of the United States approved March 11, 1941 (Public 11, 77th Congress), as such obligations may be interpreted by the President of the United States of America or by a United States court of competent jurisdiction, shall be performed by the Government of the United Kingdom.

ARTICLE XI

All payments made by the Government of the United States of America and the Government of the United Kingdom, respectively, in carrying out the terms of this Agreement shall be accounted for by the appropriate agencies of the two Governments as aid extended and benefits received by the Government of the United States of America in accordance with the Act of the Congress of the United States approved March 11, 1941 (Public 11, 77th Congress) and the agreement between the two Governments entered into at Washington on February 23, 1942.

ARTICLE XII

Each Government will give to the other Government all possible

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information and other assistance required in connection with computing any payments to be made to nationals of the other Government with respect to the use of their patent rights, information, inventions, designs or processes.

ARTICLE XIII

A joint committee of representatives of the Government of the United States of America and of the Government of the United Kingdom shall be established for the purpose of dealing with problems arising in connection with operations under this Agreement and of making appropriate recommendations to proper authorities with respect thereto.

ARTICLE XIV

License agreements, or other contractual obligations between nationals of the United States of America on the one hand and nationals of the United Kingdom on the other hand, existing on January 1, 1942, and continuing in effect, or any claim for royalty arising thereunder, shall not be deemed to be within the scope of this Agreement.

ARTICLE XV

This agreement shall be deemed to have been in effect and operation as from January 1, 1942. Each Government shall have the option to terminate this Agreement as from any date specified in a notice given by the Government exercising such option to the other Government, which date shall be not less than six months from the giving of such notice, and the provisions of this Agreement shall cease to be effective from the date so specified, but without prejudice to any liability which may then already have been incurred, or which may thereafter arise, pursuant to any obligations undertaken by either Government by virtue of this Agreement.

Signed and sealed in duplicate at Washington this twenty-fourth day of August, 1942.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA :

CORDELL HULL [SEAL]

*Secretary of State of the
United States of America*

FOR THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND :

HALIFAX [SEAL]

*His Majesty's Ambassador Ex-
traordinary and Plenipoten-
tiary at Washington*

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MEMORANDUM)
No. W 380-44)

WAR DEPARTMENT,
Washington 25, D. C., 25 February 1944.

EXCHANGE OF TECHNICAL INFORMATION
WITH FOREIGN NATIONALS

4-19

1. Letter AG 400.3295 (6-18-42) MS-B-M, 24 June 1942, is rescinded. The procedure hereinafter set forth will be followed.

2. Reference is made to paragraph 14b, AR 380-5, as amended by Changes No. 17, 15 February 1944, quoted below:

b. (1) Exchanges of classified or unclassified military information, other than technical information, with foreign nationals will be made only through or with the express permission of the Assistant Chief of Staff, G-2, War Department General Staff.

(2) Exchanges of classified or unclassified technical information with foreign nationals will be made in accordance with existing War Department instructions issued on this subject to the Commanding Generals, Army Ground Forces, Army Air Forces, and Army Service Forces.

3. a. Technical information as used herein and in paragraph 14b, AR 380-5, will be deemed to include any professional or scientific data, or any model, design, photograph, photographic negative, document, medical formula, application for patent, or other article or material, containing a plan, specification, or descriptive or technical information or "Know-how" of any kind which can be used or adapted for use in connection with any patented or unpatented process, design, invention, synthesis, or operation in the production, manufacture, reconstruction, servicing, repair, or use of any article or material relating specifically to military equipment and accessories.

b. Government-owned technical information as used herein comprises that technical information to which the United States Government possesses the entire right, title, and interest or such a clearly defined transferable present interest that action with regard thereto under these regulations will not prejudice the rights of others.

4. The Commanding Generals, Army Air Forces and Army Service Forces, will be responsible for the exchange or transmittal of classified or unclassified technical information which relates to materiel or equipment within the categories procured through or developed by their respective forces, and may delegate the authority to approve or disapprove the exchange or transmittal of such technical information to duly appointed representatives. In addition the Commanding Generals, Army Air Forces and Army Service Forces,

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(W 380-44)

will periodically indicate to their duly appointed representatives what information may or may not be exchanged with or transmitted to the accredited representatives of foreign nations. Furthermore, the commanding general of the force responsible for a research project or for the design, development, test, or production or procurement of an article of materiel or a component thereof will notify the commanding generals of all of the other forces concerned as to any limitation that may be placed upon the exchange of technical information relating to that materiel.

5. Unless expressly prohibited by the Commanding General, Army Air Forces, or the Commanding General, Army Service Forces, as the case may be, such technical information may be exchanged or transmitted in the following manner:

a. Technical information relating to radar and/or radio countermeasures may be exchanged or transmitted between--

- (1) United States private companies and United Kingdom private companies through the Office of Scientific Research and Development in accordance with plans approved by the Joint Chiefs of Staff or under the provisions of b (3) (b) below.
- (2) United States private companies and the United Kingdom Government or the United States Government and the United Kingdom Government through the Office of Scientific Research and Development as in (1) above or as provided in Executive Agreement Series 268 as referred to in b below.
- (3) Any other parties or governments as prescribed in b below.

b. Technical information relating to materiel, equipment, and developments, other than radar and/or radio countermeasures, may be transmitted as follows:

- (1) If the information requested is Government-owned, the duly appointed representative of the force concerned will approve or disapprove the transmittal and, if disapproved, will so inform the accredited representative of the foreign nation concerned. If approved, he will transmit the information direct to the said accredited representative and will retain copies of all letters covering the transmittal. These letters will indicate briefly the nature and value of the information in question, and will contain the express condition that the information is to be used for the purpose of and until the termination of the current war only.
- (2) If the information is privately owned in whole or in part by a United States company or individual and is requisitioned in accordance with the provisions of Executive Agreement Series 268 of 24 August 1942, or other applicable agreement, the duly appointed representative of the force concerned will forward the requisition to the Commanding General, Army Air Forces, or

the Commanding General, Army Service Forces, as the case may be, for processing and recording in accordance with the provisions of the applicable agreement. All information transmitted pursuant to any such requisition will be subject to the express condition that such information is to be used for the purposes of and until the termination of the current war only.

- (3) (a) If the information is privately owned in whole or in part by a United States company or individual and is requested by an accredited representative of a foreign nation in any manner other than by a requisition pursuant to (2) above, the duly appointed representative of the force concerned will approve or disapprove the transmittal. If disapproved, he will so inform the accredited representative of the foreign nation concerned. If approved, he will prepare and execute a letter addressed to the private owner, substantially in the form prescribed in (c) below, and will dispatch said letter, together with two copies thereof, to the Munitions Control Unit, Department of State, for the purpose and further processing set forth in (4) below.
- (b) If the information is privately owned in whole or in part by a United States company or individual desiring to transmit it to an accredited representative of a foreign nation, the request to transmit having been initiated by the said private owner, the duly appointed representative of the force concerned will approve or disapprove the transmittal. If disapproved, he will so inform the private owner. If approved, he will prepare and execute a letter addressed to the private owner, substantially in the form prescribed in (c) below, and will dispatch letter, together with two copies thereof, to the Munitions Control Unit, Department of State, for the purpose and further processing set forth in (4) below.
- (c) The letter to the private owner, mentioned in (a) and (b) above, will (1) identify the origin of the request and furnish a general description of the information involved; (2) state that, although the War Department will interpose no objection on the grounds of military security to the transmittal of the subject information, release thereof need be made only if agreeable to the private owner and may be made subject to such terms and conditions as he may elect to impose; (3) invite his attention to the provisions of the act of 6 October 1917 as amended (54 Stat. 710; 55 Stat. 657; 56 Stat. 370; 35 U.S.C., sections 42, 42a, 42b, and 42c); (4) suggest that, if the information is the subject of an application for patent filed in the

United States Patent Office, in which a secrecy order has been issued by the Commissioner of Patents, under the provisions of the act of 6 October 1917, as amended, supra, or discloses an invention made in the United States, and is to form the basis of an application for patent in a foreign country, a permit for such transmission, or a license to make application for foreign patent, must be obtained from the Commissioner of Patents; (5) caution him that, despite the terms of this letter, an export license may be required by the Foreign Economic Administration; (6) invite his attention to the provisions of the Espionage Act, 50 U.S.C., sections 31 and 32, as amended; and (7) request him to notify the War Department of the final action taken with regard to the transmittal of the subject information. In addition the said representative will retain copies of all letters relating to the transmittal.

- (4) The purpose of dispatching the letter addressed to the private owner, mentioned in (3) above, to the Munitions Control Unit, Department of State, is to effect proper coordination of the proposed transmittal with other interested governmental agencies. Conditioned upon whether or not the proposed transmittal is held to conflict with the foreign policy of this Government, the Department of State will approve or disapprove the proposed transmittal. If the transmittal is disapproved and the request originated from an accredited representative of a foreign nation, the Department of State will so notify said accredited representative. If the transmittal is disapproved and the request was initiated by a private owner, the Department of State will so notify said private owner. In each of the above cases, the Department of State will notify the duly appointed representative of the force concerned of its decision. If the transmittal is approved and the request originated from an accredited representative of a foreign nation, the Department of State will dispatch the letter to the private owner and forward a copy thereof to the said accredited representative. If the transmittal is approved and the request was initiated by a private owner, the Department of State will dispatch the letter to the private owner. In each of the above cases, the Department of State will notify the duly appointed representative of the force concerned of the action taken.

c. In case of doubt as to the propriety of authorizing any exchange or transmittal of technical information, the duly appointed representative of the force concerned will refer the question for decision to his appropriate superior authorities.

d. Classified and unclassified technical information may be exchanged with or transmitted to the accredited representatives of

foreign nations by the duly appointed representative of the force concerned without the maintenance of any record as to the nature or value of the information so exchanged or transmitted, provided, the said representative of the force concerned, in his discretion, determines that the maintenance of such record is impracticable.

6. a. The Commanding General, Army Ground Forces, will be responsible only for the exchange or transmittal of classified or unclassified technical information which results from field trials and performance tests on materiel and equipment released to the Army Ground Forces by the Army Service Forces or the Army Air Forces for standard military use, or which results from experimental or developmental tests conducted by the Army Ground Forces either alone or in conjunction with the Army Service Forces or the Army Air Forces, and he may delegate the authority to approve or disapprove the exchange or transmittal of such information to duly appointed representatives.

b. The Commanding General, Army Ground Forces, or his duly appointed representatives, may exchange such information with or transmit such information to the accredited representatives of such foreign nations as have been specifically accredited to the Army Ground Forces for such purposes, and such exchanges or transmittals may be made without complying with the provisions set forth in paragraph 5. Any limitations, however, imposed by the procuring forces will be rigidly observed.

c. Whenever requests are made of Army Ground Forces representatives by accredited representatives of foreign nations for technical information of any type other than those outlined in this paragraph, the said accredited representatives of foreign nations will be directed by the Army Ground Forces representatives to make their requests direct to the Army Service Forces or the Army Air Forces for consideration under the provisions outlined in paragraph 5.

7. The interest of the Navy Department in materiel, equipment, and developments in which it has a joint interest with the War Department will at all times be protected. To this end all duly appointed representatives approving exchanges or transmittals of technical information to accredited representatives of foreign nations will be responsible for obtaining the concurrence of the Navy Department except in those cases in which agreement for exchange or transmittal has already been reached with the Navy Department. In case of information relating to materiel, equipment, and developments within the categories procured through the Army Service Forces and Army Air Forces, the duly appointed representatives of the Commanding Generals, Army Service Forces and Army Air Forces, will obtain Navy concurrences through the appropriate bureau of the Navy Department.

8. Upon request the Assistant Chief of Staff, G-2, will advise the Commanding Generals, Army Ground Forces, Army Air Forces, and Army Service Forces, of the foreign nations entitled to receive clas-

(W380-44)

sified technical information and the names of the accredited representatives of such nations.

9. These changes in procedure will in no wise alter existing fiscal procedure for reporting expenses incurred in supplying such technical information and publications to beneficiary governments through the regular monthly Defense Aid reports to the Foreign Economic Administration.

10. Oral or written exchanges or transmittals of technical information with diplomatic representatives (military, naval, and air attaches) of foreign nations will continue to be made only through the Assistant Chief of Staff, G-2, or with the express permission of the Assistant Chief of Staff, G-2.

11. This memorandum will be brought to the attention of all interested offices.

(AG 350.05(1 Feb 44))

By order of the Secretary of War:

G. C. MARSHALL,
Chief of Staff.

OFFICIAL:

J. A. ULIO,
Major General,
The Adjutant General.

DISTRIBUTION:

E
Divisions of the War Department General Staff.
Office of the Under Secretary of War.
The Inspector General.
Commanding Generals:
Army Ground Forces.
Army Air Forces.
Army Service Forces.

MEMORANDUM)
No. 380-44)

WAR DEPARTMENT,
Washington 25, D. C., 24 July 1944

EXCHANGE OF TECHNICAL INFORMATION
WITH FOREIGN NATIONALS

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1. Reference is made to War Department Memorandum No. W 380-44, 25 February 1944, subject as above.

2. Paragraph 5b(1) and (2) of the memorandum cited is rescinded and the following substituted therefor:

5b. Technical information relating to materiel, equipment, and developments, other than radar and/or radio countermeasures, except as specified in a(3) above, may be transmitted as follows:

(1) If the information requested is Government-owned, the duly appointed representative of the force concerned will approve or disapprove the transmittal and, if disapproved, will so inform the accredited representative of the foreign nation concerned. If approved, he will transmit the information direct to the said accredited representative and will retain copies of all letters covering the transmittal. These letters will indicate briefly the nature and value of the information in question, and will, unless the commanding general of the force concerned otherwise directs, contain the express condition that the information is to be used for the purpose of and until the termination of the current war only, except that, in transmittals to the United Kingdom, the letter may contain such terms, conditions, and limitations respecting the use of the information, not inconsistent with the provisions of Executive Agreement Series 268 of 24 August 1942, as the commanding general of the force concerned shall determine.

(2) If the information is privately owned in whole or in part by a United States company or individual and is requisitioned in accordance with the provisions of Executive Agreement Series 268 of 24 August, 1942, or other applicable agreement, the duly appointed representative of the force concerned will forward the requisition to the Commanding General, Army Air Forces, or the Commanding General, Army Service Forces, as the case may be, for processing and recording in accordance with the provisions of the applicable agreement. All information transmitted pursuant to any such requisition will be subject to such terms, conditions, and limitations respecting its use as (a) may be necessary to effectuate the terms on which the same was procured from the private owner, and/or (b) may be determined by the

(Memo. 380-44)

duly appointed representative of the force concerned within the limitations of Executive Agreement Series 268 of 24 August, 1942 or other applicable agreement.

3. The last sentence of paragraph 5b(3) (a) and (b) is amended as follows:

If approved, he will prepare and execute a letter addressed to the private owner, substantially in the form prescribed in (c) below, and will dispatch said letter, together with three copies thereof, to the Munitions Control Unit, Department of State, for the purpose and further processing set forth in (4) below.

4. This memorandum will be brought to the attention of all interested offices.

(AG 350.05 (21 Jul 41))

By order of the Secretary of War:

G. C. MARSHALL,
Chief of Staff.

OFFICIAL:

J. A. ULIO,
Major General,
The Adjutant General.

DISTRIBUTION:

Divisions of the War Department General Staff.
Office of the Under Secretary of War.
The Inspector General.
Commanding General:
Army Ground Forces.
Army Air Forces.
Army Service Forces.

COPY

INTER-OFFICE MEMORANDUM
War Department, Air Corps
Office, Assistant Chief
Materiel Division

FPS:HEG:erg
Wright Field, Dayton, Ohio
Date March 27, 1942

TO: Chief, Contract Section
Wright Field, Dayton, Ohio

SUBJECT: Patent Royalties

1. There are indications that sources of supply for materials procured for the Army Air Forces include concerns who are bound by license agreements, made in time of peace, to pay royalties for the use of patented inventions in amounts which, in the existing situation with its enormously increased quantities, may be so highly excessive as to involve undue enrichment of patent owners and be prejudicial to the prosecution of the war program. In this connection, attention is invited specifically to the recent negotiations with representatives of the Wright Aeronautical Corporation and the Studebaker Corporation and to the resulting reductions of royalties to be paid on Studebaker's production, which on that one contract will amount to a sum in excess of \$500,000.00 less than what would have been payable by Studebaker had it accepted a license agreement from the Wright Aeronautical Corporation as originally proposed.

2. In the Wright-Studebaker case above, Wright had a license and royalty agreement of several years' standing with the owner of certain patents. The Studebaker contract (for 18,000 aeronautical engines) contemplated the licensing by Wright Aero of Studebaker, Wright Aero having the right to sublicense under its pre-existing license agreement. It was found, however, that the agreement to which Wright Aero was a party provided for the payment of royalties believed to be reasonable in the light of circumstances existing when that agreement was made, but which in view of the great increase in use of the inventions concerned due to the expansion of the production of aeronautical engines as a part of the war effort, were considered as having become excessive. Therefore, although a licensing agreement between Wright Aero and Studebaker had been made a condition to the Studebaker contract, the representatives of your Section and this office succeeded in preventing the accomplishment of the proposed licensing agreement pending an investigation of the royalty situation. The result was that Wright Aero conducted further negotiations with the owner of the patents concerned, with the result that the patent owner agreed to a reduction of the combined royalties payable to such owner from \$37.50 to \$3.50 per engine, this representing a saving of over half a million dollars on that one contract, as indicated above. Further benefits were secured which go much beyond the Studebaker contract in that, as this office has been informed, the patent owner has agreed to the reduced royalties being made applicable to other contracts, including Wright

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Chief, Contract Section, Wright Field
"Patent Royalties"
March 27, 1942

Aero contracts. Although, because of the fact that the situation came to light before Studebaker actually had accepted the license from Wright Aero, we had a very strong argument for reduction of the royalties (confronting the patent owner with the choice either of reducing same or being left to his action in the Court of Claims under the Act of 1910, as amended by the Act of 1918, - June 25, 1910, c. 423, 36 Stat. 851; July 1, 1918, c. 114, 40 Stat. 705), that argument would not apply insofar as the Wright Aero people themselves were concerned, and would not apparently have applied to Studebaker had we not prevented the execution of the proposed licensing agreement. (See Newport News Shipbuilding and Dry Dock Company v. Isherwood, C.C.A. Va. 1925, 5 F. 2d 924, reversing, D.C. 1922, 289 F. 282, Certiorari dismissed, 1925, 26 S. Ct. 13, 269 U.S. 552, 592, 70 L. Ed. 429.)

3. The whole subject of the effect of the Act of 1910, as amended by the Act of 1918, particularly the extent to which it operates (at least as interpreted in the one case cited above) to bind contractors directly and the Government indirectly to the payment of peacetime royalties if the supplier with whom the Government deals has a royalty agreement, has been the subject of discussion between this office and your Section. The conclusion arrived at is that the only way in which the Government can be sure of avoiding the unjust enrichment of patent owners, in amounts which will very seriously increase the burden on the public of carrying the present war program, is to secure an amendment of the Act of 1910 (as amended by the Act of 1918), whereby, if unreasonable provisions on the subject of royalties are in effect, the remedy of the patentee shall be by suit in the Court of Claims for reasonable and entire compensation, whether there be a royalty agreement to which the Government supplier is a party or not. To that end, a drafted bill has been prepared in this office and is submitted herewith. A draft of Inter-Office Memorandum transmitting the draft of bill mentioned above is submitted herewith, with the recommendation that it be signed and dispatched promptly.

FRANKLIN P. SHAW,
Colonel, J.A.G.D.
Judge Advocate.

Incls.
Draft of bill
Draft of transmitting memo.

A BILL

To amend the Act entitled "An Act to provide additional protection for owners of patents of the United States, and for other purposes" (approved June 25, 1910, c. 423, 36 Stat. 851), as amended by the Act entitled "An Act making appropriations for the Naval Service for the Fiscal Year ending June 30, 1919, and for other purposes" (approved July 1, 1918, c. 114, 40 Stat. 705).

1 Be it enacted by the Senate and House of Representatives of the
2 United States of America in Congress assembled, That the Act entitled
3 "An Act to provide additional protection for the owners of patents
4 of the United States, and for other purposes", approved June twenty-
5 fifth, nineteen hundred and ten, as amended by the Act entitled "An
6 Act making appropriations for the Naval Service for the Fiscal Year
7 ending June thirtieth, nineteen hundred and nineteen, and for other
8 purposes", approved July first, nineteen hundred and eighteen, shall
9 be, and the same is hereby, amended to read as follows, namely:

10 "That whenever an invention described in and covered by a
11 patent of the United States shall hereafter be used or manufactured
12 by or for the United States without license of the owner thereof or
13 lawful right to use or manufacture the same, or whenever such in-
14 vention shall be used or manufactured by or for the United States
15 with license from the owner thereof and such license includes
16 royalty provisions, the application of which, whenever the United
17 States is at war or in a state of limited or unlimited national
18 emergency as proclaimed by the President, insofar as rates or
19 amounts of royalty are concerned, has not been authorized or ratified,
20 as to the particular contract, order, agreement or project, by the
21 agency of the Government charged with the making or supervision of

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22 such contract, order, agreement or project, such owner's remedy shall
23 be by suit against the United States in the Court of Claims for the
24 recovery of his reasonable and entire compensation for such use and
25 manufacture: Provided, however, That said Court of Claims shall not
26 entertain a suit or award compensation under the provisions of this
27 Act where the claim for compensation is based on the use or manufac-
28 ture by or for the United States of any article owned, leased, used
29 by, or in the possession of the United States: Provided further,
30 That in any such suit the United States may avail itself of any and
31 all defenses, general or special, that might be pleaded by a defendant
32 in an action for infringement, as set forth in Title Sixty of the
33 Revised Statutes, or otherwise: And provided further, That the
34 benefits of this Act shall not inure to any patentee who, when he
35 makes such claim, is in the employment or service of the Government
36 of the United States, or the assignee of any such patentee; nor
37 shall this Act apply to any device discovered or invented by such
38 employee during the time of his employment or service."

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LIST OF ORDERS

ROYALTY ADJUSTMENT ACT
(56 Stat. 1013; 35 USC 89-96)

6-17

As of 31 March 1945.

<u>War No.</u>	<u>Service</u>	<u>Date</u>	<u>Navy No.</u>	<u>Date</u>	<u>Licensor</u>	<u>Licensee</u>
W-1	Ord	5/27/43	-	-	Harroun and Pribil	Saginaw Stamping and Tool Co.
W-2	AAF	7/12/43	N-1	6/14/43	Les Fils de J. Kahn and Rene J. Kahn Price	The Cleveland Pneumatic Tool Co.
W-3	Ord	7/28/43	-	-	Alma Motor Co.	Detroit-Timken Axle Co.
W-4	AAF AAF AAF	10/27/43 12/15/43(Suppl) 1/3/45(Suppl W-21)	N-2	10/23/43	Hispano-Suiza and A.P.C.	Fairchild Engine and Airplane Corp.
W-5	AAF	11/2/43	N-4	11/17/43	Wallace R. Turnbull	Curtiss-Wright Corp. Reed Propellor Co.
W-6	TC	11/25/43	N-6	12/6/43	Lanova Corporation and A.P.C.	The Buda Company Mack Manuf. Corp. Chrysler Corp. Atlas Imperial Diesel Engine Co.
W-7	AAF	11/26/43	N-12	6/7/44	Ringfeder, G.M.bH., Oscar R. Wikander, Alien Property Custodian	Edgewater Steel Co.
W-8	AAF	12/1/43 8/29/44(Suppl.) (Order withdrawn)	N-5	12/14/43	George T. Link Edwin A. Link	Link Aviation Devises Inc.
W-9	AAF	12/18/43	N-7	12/23/43	Roscoe A. Coffman	Federal Laboratory and Breeze Corp.
W-10	AAF	12/20/43	N-3	11/5/43	Archibald M. Hall Administrator of Estate of Charles Ward Hall	Curtiss Wright Corp.
W-11	AAF	12/24/43 4/3/44(Suppl.)	N-9	6/30/44	Rohm and Haas, A. G., Alien Property Custodian	Rohm and Haas Company

<u>War No.</u>	<u>Service</u>	<u>Date</u>	<u>Navy No.</u>	<u>Date</u>	<u>Licensor</u>	<u>Licensee</u>
W-12	AAF	4/25/44	N-14	7/17/44	John Milton Luers Patents Inc.	Empire Tool Co. and John Milton Luers
W-13	AAF	4/25/44	-	-	J. Mills Summers and Attachment Devises, Inc.	Camloc Fastener Co., Inc. J. Mills Summers & Hortense Summers & Camloc Fastener Co.
W-14	AAF	5/6/44	-	-	Eugene Vion, Alien Property Custodian	Bendix Aviation Corp. of Delaware
W-15	AAF	8/9/44	N-10	8/9/44	Lockheed Aircraft Corp.	Pittsburgh Plate Glass Co Libbey-Owens-Ford Glass Co
W-16.	SC	10/3/44	N-8	7/20/44	Arthur J. Schmitt	American Phenolic Corp. et al
W-17	Ord	10/26/44	-	-	Harold W. Evans	James Cunningham Son & Co.
W-18	Engrs	11/29/44	-	-	F. W. Coffing & R. R. Bookwalter	Coffing Hoist Co.
W-19	TC	11/29/44	-	-	Henry Fort Flowers	Magor Car Corp. Differential Steel Car Cp Pressed Steel Car Co.
*						
W-20	AAF	2/26/45	N -15	12/12/44	Carlos B. Livers	Clarke Aero Hydraulics Inc
W-21	AAF	1/3/45 (see W-4)	N-17	4/16/45	Hispano-Suiza et al	Fairchild Engine & Airplane Corp.
W-22	AAF	1/22/45	-	-	Bristol Airplane Co. Ltd	Wright Aeronautical Corp Inc
W-23	AAF	2/27/45	N-18	2/27/45	Simmonds Development Corp Ltd.	Simmonds Aeroaccessories
W-24	Engrs	2/26/45	N-16	12/7/44	George Gordon Urquhart Radcliffe Morris Urquhart	National Foam System, Inc.
W-25	AAF	3/13/45	N-19	3/13/45	Ture Gustaf Rennerfelt	Elastic Stop Nut Corp. of America

<u>War No.</u>	<u>Service</u>	<u>Date</u>	<u>Navy No.</u>	<u>Date</u>	<u>Licenser</u>	<u>Licensee</u>
* -	-	12/29/44	N-11	12/29/44	The Cold Metal Process Company	Allegheny Ludlum Steel Corporation et al

(This order was issued by The Cold Metal Process Company Joint Board, a board composed of delegates from the War, Navy and Treasury Departments, Maritime Commission, Defense Plant Corporation and Metal Reserve Corporation, the latter two being subsidiaries of the Reconstruction Finance Corporation and being represented by a single delegate.)

COPY

WAR DEPARTMENT
OFFICE OF THE UNDER SECRETARY
Washington, D.C.

11 April 1945

Honorable Francis M. Shea,
Assistant Attorney General,
Department of Justice,
Washington 25, D. C.

Re: Alma Motor Company v. The Timken-Detroit Axle
Company, United States, Intervenor, No. 806,
United States Supreme Court, October Term 1944.

My Dear Mr. Shea:

Reference is made to your letter of April 10, 1945, inquiring as to the monetary savings to the Government which may have resulted from royalty adjustment orders and royalty adjustment agreements made by the War and Navy Departments pursuant to the Royalty Adjustment Act of October 31, 1942 (56 Stat. 1013; 35 U.S.C. 89-96). Up to March 31, 1945, it is estimated that more than \$128,000,000 has been saved to the War and Navy Departments as a result of orders and agreements made pursuant to this Act. This represents both actual cash refunds from the licensees and licensors, insofar as excessive royalties had been collected from or charged to the United States, and reductions in the contract price of subsequent Government procurement, insofar as the royalties had not yet been passed on to the United States. In some cases, contract prices are not reduced, but the benefit of reduction in royalties is secured by a continuing refund to the Government.

The actual savings realized by the War and Navy Departments are, however, substantially in excess of the above figure. In a great number of instances in which compromises or settlements are made with patent owners under the Royalty Adjustment Act, reducing royalties charged or chargeable to the United States, the patent owner, as part of the settlement, releases all claims against the United States for past and future infringement under the Act of June 25, 1910 as amended (35 U.S.C. 68). The monetary savings effected by the release of such claims has been included in the above figure only to the extent that contractors have refunded to the Government reserves set up by them to pay liabilities released as above described. There is no doubt that the additional savings from the release of claims is substantial.

These savings are, of course, subject to reduction by the amounts which the patent owners in question may recover as "fair and just compensation" under Section 2 of the Act, in respect of royalty adjustment orders issued to date.

Sincerely,

- (S) ROBERT P. PATTERSON,
Under Secretary of War.
- (S) H. STRUVE HENSEL,
Assistant Secretary of the Navy.
- 4-24

WAR DEPARTMENT
SERVICES OF SUPPLY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON

Re: Application Serial No.
Filed
By
For

4-26

Dear Sir:

An examination of the records of this office indicates that you have not availed yourself of the opportunity afforded you by the act of October 6, 1917, as amended (35 U.S.C. 42), to tender to the Government of the United States for its use the invention described and claimed in the above-identified application which was placed in secrecy under the provisions of the cited act by the Commissioner of Patents. In his secrecy order the Commissioner suggested that such tender be made by a communication directed to the Secretary of War or to the Secretary of the Navy accompanied by a power to inspect the application and a copy of the application, including drawings. As pointed out by the Commissioner no modification of the secrecy order is necessary to permit this disclosure.

By reason of your failure to make such tender the War Department is prevented from obtaining access to the application and acquainting itself with the details of your invention with a view to its possible adoption and use in the successful prosecution of the war effort. If, as a result of tender, your invention is adopted and used, the act of October 6, 1917, as amended, supra, assures adequate compensation to you based upon such use.

Accordingly, for the reasons above set forth, I am directed by The Judge Advocate General to request that you tender your invention to the Government for its use by a communication to that effect addressed to the Secretary of War, accompanied by a power to inspect and make copies of the above-identified application. With this power it will not be necessary for you also to furnish a copy of the application.

For your convenience in this connection there is inclosed herewith a combined form of tender and power to inspect and make copies of the above-identified application which, if properly executed and returned to this office, will accomplish the desired result.

Your cooperation with respect to this matter will be appreciated.

Very truly yours,

Francis H. Vanderwerker,
Colonel, J.A.G.D.,
Chief, Patents Division.

4-26



Incl.
24-14950 Form of Tender.

TENDER OF INVENTION WITH POWER TO INSPECT AND MAKE COPIES

(Date)

Re: Application Serial No.
Filed
By
For
Assignee

Secretary of War,

Washington, D. C.

Sir:

The Commissioner of Patents having placed the invention covered by the above-identified patent application in secrecy under the provisions of the act of October 6, 1917, as amended (35 U.S.C. 42), tender is hereby made of said invention to the Government of the United States, as represented by the Secretary of War, for its use in accordance with the provisions of said act, reserving to the undersigned the rights and privileges granted thereby.

In connection with the above tender of invention, the Commissioner of Patents is hereby requested to permit the Secretary of War, or his duly authorized representatives, to inspect and to make copies of the above-identified application.

Respectfully,

REPORT OF USE OF INVENTION

Date: _____

(Service) (Unit)

(Reporter) (Title)

To: War Department, Office of The Judge Advocate General, Patents Division.

Subject: Patent Application Serial No. _____ Filed _____

Patent Title: _____

Inventor: _____ Assignee: _____

Technical Information

1. Is subject invention or any part thereof in use? (Yes) (No)
Is use contemplated? (Yes) (No)
Give details of use or contemplated use:

2. Has this invention been tested? (Yes) (No)
If so, what were the results?

- Does invention appear feasible and operable? (Yes) (No)
If not, why not?

3. Is any prior patent, publication, or use of this invention known? If yes, give dates and full citation. (Yes) (No)

4. Does this invention represent a valuable contribution to its field? (Yes) (No)

5. Would publication of a patent at this time be detrimental to the interests of the United States? (Yes) (No)

6. List any other Government Agencies that might be interested in seeing this application.

4-27

Legal and Patent Information

7. Does the Government have any rights to this invention: (Yes) (No)
If yes, explain.

8. If use is indicated above, does it appear possible that a claim may be allowed in this application covering such use? (Yes) (No)

9. If a possible liability exists, or may arise from use of the invention, what steps have been taken, or are contemplated, toward reaching an agreement with the owner covering such use?

(Signature of Reporter)

Reviewed: _____
(Patent or Legal Representative)

(Use additional sheets if necessary)

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War Department
Washington

March 8, 1941

5-1

MEMORANDUM TO GENERAL GULLION:

Mr. Stimson has asked me to send to you the following extract from notes made by him after the Cabinet meeting yesterday:

I brought up the question of State taxes on our cost plus fixed fee contracts. The Attorney General thought our chance of reversing the case of Standard Oil v. Lee very slim and thought it much better to try for legislation treating the contractor under such contracts as an agent of the government. The President directed him to prepare and introduce such bill.

As to the 18 wavering States which have not yet imposed such taxation, the President suggested that he could write a letter or make a statement indicating that the government would not place any further projects in States which levied such taxation upon the cost plus fixed fee contracts. He said he would be ready to do so at once.

E. C. Neary (s)
Elizabeth C. Neary
Personal secretary.

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March 7, 1941

MEMORANDUM FOR THE SOLICITOR GENERAL, ASSISTANT ATTORNEY GENERAL CLARK, AND ASSISTANT ATTORNEY GENERAL SHEA.

5-2

The Secretary of War raised at Cabinet meeting the question of taxation increasing the cost of national defense. He urged intervention in the Standard Oil case. I urged legislation and stated that the Treasury had opposed it and the grounds of their opposition. The President directed that two steps be taken:

1. That the War Department prepare and that all departments assist in obtaining legislation to immunize the defense program from local taxation, and

2. That a letter be prepared for him by the War Department which would direct that defense work be allocated to states which did not burden the defense work with taxes of this kind.

The Treasury proposed that their bill to tax securities of the states be included in the same bill. To this I objected, and the President directed that the tax on bond interest should not be included in this bill.

(Signed) Robert H. Jackson,
Attorney General

5-2

WAR DEPARTMENT
WASHINGTONC
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April 7, 1941.

MEMORANDUM FOR COL. O'KEEFE

The following is an extract from notes made by the Secretary of War after the Cabinet meeting on April 4, 1941:

"I brought up the question of State taxation upon cost-plus-fixed-fee contracts. After considerable discussion the President held that he estimated that the Government would make much more money by securing the taxation of future State securities than he would save by exemption of these contracts. He suggested that a bill be drawn which would contain two sides -- first, it would yield the question of taxation on these contracts; second, it would provide for the taxation of all future issued State securities.

I then warned him that he had better look out to see that Congress didn't accept one point and leave out the other, and he said he would instruct the leaders on that point. The Attorney General is to prepare the legislation."

/s/ Elizabeth C. Neary
Personal secretary to
The Secretary of War.

5-3

WAR DEPARTMENT
OFFICE OF THE UNDER SECRETARY
WASHINGTON, D. C.

November 18, 1941.

MEMORANDUM FOR The Judge Advocate General.

Subject: State and Local Taxes.

1. At a conference concerning the recent United States Supreme Court decision in *King & Boozer v. Alabama*, held in your office on Friday, November 14, with Colonel Hedrick, Lt. Colonel O'Keefe, Lt. Colonel Brannon, and representatives of the supply arms and services, and Major Arthur E. Sutherland, jr. of this office, the consensus of opinion of those present was that the following action should be taken concerning state and local taxes:

(a) The office of The Judge Advocate General should prepare for the guidance of contracting officers in the several states affected (estimated as twelve in number) instructions as to what taxes they may properly pay, to be circulated through this office.

(b) The office of The Judge Advocate General should prepare for submission to the Secretary of War for signature, a letter to the Attorney General, asking his advice as to what state and local taxes will be avoided by the Government's making direct purchases under cost-plus-a-fixed-fee contracts.

(c) The office of The Under Secretary of War should prepare a directive amending the directive of the Office of the Under Secretary of War, of May 7, 1941, concerning direct purchases. The amendment should so modify the directive as to permit the chiefs of supply arms and services to use their discretion in ordering their subordinates to make or not make direct purchases, depending on the administrative difficulties encountered.

(d) The office of the Under Secretary of War should draft legislation immunizing the United States and its contractors from local taxes.

2. These four points were taken up with the Under Secretary of War on November 15, and he assented to the course indicated.

By direction of the Under Secretary of War:

John W. N. Schulz,
Brigadier General, U. S. Army,
Director of Purchases and Contracts.

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Apr 10, 1942

Hon. A. J. Sabath
Committee on Rules
House of Representatives
Washington, D. C.

My dear Mr. Sabath:

I have your letter of March 25, 1942, in which you ask my views respecting H.R. 6750, a bill seeking to exempt certain transactions and property of war contractors from state and local taxes. The President has referred to me your letter of March 13 on the same subject.

I have given consideration to this bill. Its effects are not easily appraised, and conditions have changed materially since this kind of legislation was first proposed. Nevertheless, I think the Bill should not be passed. In my opinion the direct savings which its enactment would make for the Treasury though substantial, would not be so great as some rough estimates have implied; in any case, they would be offset by losses to state and local governments and a serious impairment of Federal-state-local relations. Moreover, I doubt that it would lighten the administrative burdens of the Government agencies concerned with procurement. These conclusions are explained below.

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The Congress and the President have made extended efforts to achieve a measure of harmony in the fiscal policies of the Federal, state and local governments. To this end, the Congress has made successive large grants of aid to state and local governments. The President pointed out in his Budget Message last January that the state and local governments are adapting their wartime fiscal policies and readjusting many of their services to support the war effort. It will be difficult indeed to retain this cooperative attitude if we take measures that cancel a substantial part of state and local revenues.

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In September, 1941, when a bill was proposed to accomplish the exemption of defense contractors from state and local taxes (S. 1739), we advised the interested departments that enactment of this legislation would not be in accord with the program of the President. At that time litigation to determine the right of the states to tax transactions with defense contractors was on its way to the Supreme Court. The decision rendered November 10, 1941, affirmed the right of the states under certain circumstances to tax transactions with defense contractors. The court pointed out that the Congress had declined to pass immunizing legislation. H. R. 6049, introduced a week later, was designed to extend the immunity. Its substance has been incorporated, with additions, in H. R. 6750.

After the attack at Pearl Harbor there was a rapid increase in Government orders for military supplies, equipment, and construction. The procurement agencies were confronted with a great increase in the volume of transactions to be checked and audited. Their principal difficulties concerning state and local taxes seem to arise from the necessity of determining whether and to what extent various taxes apply to particular contracts of the cost-plus-a-fixed-fee variety. I should like to find some way to eliminate this burden and annoyance, so that the military departments could concentrate their attentions on urgent matters more directly related to prosecution of the war, but I am afraid a provision of law exempting war contractors from selected state and local taxes will not have this result. Instead, it will change the character of the administrative work of the procurement agencies and may even increase its volume. Under H. R. 6750, the Federal Government would have to certify all the individual transactions and items of equipment of each war contractor that are to be exempted from state and local taxation. Obviously, we cannot exempt from state and local taxes all the property and all the transactions of a business enterprise simply because a substantial part of its business is being done with the Federal Government. H. R. 6750 does not attempt to do so. There would be no basis in law or in justice for doing so. The bill does provide that the President should certify to each contractor that "the production, processing, procuring, manufacture, construction, reconstruction, installation, maintenance, storage, or repair" of "(A) any weapon, munition, aircraft, vessel, or boat; (B) any building structure, work, or facility; (C) any machinery, tool, material or part of or equipment for any article described in subparagraph (A), (B), or (C)" is "for national defense or war purposes." The President or the officials to whom he delegated responsibility would have to make this certification on the basis of findings by field representatives. It seems to me that a very large field staff would be required to make recommendations with respect to all the transactions and properties of every business enterprise that has a war production contract, whether directly with the Government or as subcontractors.

If the administrative burdens of the military agencies are great under the present system, when the Government pays some taxes and resists others, these burdens might become intolerable when a system of exemption certificates had to be provided on a much broader scale.

I am informed that the Ways and Means Committee has approved and intends to offer on the floor of the House amendments which would have the effect of expressly excluding from H. R. 6750 state taxes on gasoline used on the highways, ad valorem personal property taxes, and certain other taxes on public utility services. These exclusions from the bill would reduce materially the amount of work involved in attempting to exempt transactions, for they would cut down the number of states and the number of kinds of taxes from which immunity is claimed. It seems to be conceded that allowing these tax payments as part of the cost of the contracts will not noticeably increase the work of approving contractors' accounts. But if administrative convenience does not require exemption of war contractors from the gasoline taxes to which they are subject in all states and from the personal property tax which applies in most states, it becomes difficult to argue that administrative convenience require exemption from the sales, gross receipts, and use taxes which are imposed by a smaller number of states. If the Committee amendments are voted and the bill adopted, the loss of revenue will be concentrated in those states that lean heavily upon sales and use tax revenues. In the hearings before the Ways and Means Committee early in March, representatives of the War and Navy Departments indicated that they did not care to have the bill extend to ad valorem personal property taxes. Nevertheless, they estimated that payment of state and local taxes affected by the bill would add from \$1.5 to \$2 billion to the cost of the defense program thus far formulated.

If these estimates be accepted as correct, this would mean that this tremendous amount of revenue -- equalling about one-fourth of the total state and local tax revenues in each of the last few years -- would be withdrawn from the states. Most of this amount would be withheld from a handful of industrialized states in which the continuance of state and local services is of particular importance to uninterrupted war production, and the Federal Government might find itself compelled to subsidize such services.

Our own studies indicate that the actual amount directly involved is much less than \$1.5 to \$2 billion. Two billion dollars is a sum more than three times as great as the whole amount collected last year by all the states using all taxes of the kinds affected by the bill. These taxes affect only a fraction of the goods and services involved in the war procurement program. Actually, a total of \$200 billion of war expenditures probably would not require payment of as much as \$500 million of sales, use, and gross receipts taxes to the states.

In any event, the loss of this revenue would be concentrated on a relatively small number of states. For them it would be exceedingly serious. I do not see how the Federal Government can afford to adopt under

any circumstances a policy that tends to disorganize state and local governments.

The bill contains a provision forbidding the states to claim, collect, or receive any tax of the affected types which has accrued since September 8, 1939. Some states had delayed collecting such taxes pending the Supreme Court decision in November, 1941, and accrued liabilities still are outstanding in many instances. This provision discriminates in favor of contractors who resisted such collections, even though the Court has in effect upheld their legal liability under the laws then existing. Likewise, it discriminates in favor of states that required contractors to make the controverted payments with the hope of getting refunds in the event the Court decision went contrary to the claim of the states. The injustice of such a provision is apparent.

In some discussion of H. R. 6750 and earlier bills, it has appeared that an important consideration disturbing procurement officials is the reported insistence of some state and local tax collectors upon access to confidential records of war contractors. The normal processes of tax collection should not involve any revelation of military secrets. In any event, the problem is much broader than the field of taxation affected by this bill. It is a problem that arises with respect to practically all state and local taxes, as well as other types of business regulation. If our dual system of government is to be perpetuated, we cannot immunize war contractors from the operation of state and local laws and regulations. If such laws and regulations endanger military secrecy to an extent that cannot be controlled by administrative arrangements or regulations, a policy should be established by law — but with broader coverage and more direct provisions than this bill contemplates. Immunizing an enterprise from some taxes on part of its business would not close its books to state or local tax auditors seeking to ascertain the amount of its actual liability or to enforce other taxes.

It seems to me that the appropriate tests of policy in this matter were well stated by the Department of Justice in its brief before the Supreme Court in the case of *Alabama v. King & Boozer*. The pertinent criteria, the Department argued, are these: "Is the tax nondiscriminating?" "Is the tax, in law, imposed upon the Government or the private person?" The taxes affected by H. R. 6750 are not discriminatory or differential taxes; they apply to all individuals and businesses, not to war contractors alone. They are not imposed upon the Government directly. Indeed, in many cases they are, as a matter of law, not even imposed on the war contractor directly, but only on his suppliers. By these tests, therefore, the extension of tax immunity is not warranted.

As you probably know, the Treasury Department has expressed opposition to H. R. 6750 and earlier bills on the same subject. The Treasury is much concerned about the effect on finances of state governments already imperiled by the curtailment of sales of automobiles and other consumers' durables, the shortage of tires and gasoline, and the prospective curtailment of other income as a result of war developments. Like the Bureau of the Budget, the

Treasury is also deeply concerned with the effects that this legislation may have upon the general problem of Federal-state fiscal relations. It is my understanding that the Treasury has been motivated in its objections primarily by these basic considerations, rather than the collateral circumstance of its interest in the elimination of the exemption from taxation of income from state and local securities.

I have written at length because the subject is complex, and it has seemed desirable to state my reasons with my conclusions, I appreciate the opportunity you have given me to do so.

Very truly yours,

(signed)

Harold D. Smith

Director

SALES, USE AND GROSS RECEIPTS TAXES

Taxing Jurisdiction	Type of Tax	APPLICATION OF TAX		
		C.P.F.F. Construction	C.P.F.F. Manufacturing	Lump-sum
Alabama	Sales	Statutory exemptions only	Exempt after July 1944 (tentative)	Taxable
	Use	Statutory exemptions only	Exempt after July 1944 (tentative)	Taxable
Arizona	Gross receipts	Not clear	Not clear	Taxable
Arkansas	Sales	Taxable after 11-10-41, except interstate sales	Exempt	Taxable
California	Sales	Taxable after 11-10-41	Exempt	Taxable
	Use	Taxable after 11-10-41	Exempt	Taxable
Colorado	Sales	Exempt	Exempt	Taxable after 2-1-42
	Use Service (repealed eff. 1 Mar 1945)	Exempt Exempt Exempt except subcontractors	Exempt Exempt Exempt except subcontractors	Taxable after 2-1-42 Taxable after 2-1-42
Illinois	Retailers' occupation tax	Construction items taxable (Recent court decisions indicate tax does not apply)	Exempt	Taxable, except sales to construction contractors (under recent decisions)
Indiana	Gross income	Reimbursement for materials exempt	Reimbursement for materials exempt	Exempt
Iowa	Sales	Taxable after 12-2-41	Exempt	Taxable
	Use	Taxable after 12-2-41	Exempt	Taxable
Kansas	Sales	Exempt	Exempt	Taxable after 8-18-42
	Use	Exempt	Exempt	Taxable after 8-18-42
Louisiana	Sales & use	Exempt after 1-19-43	Exempt after 1-19-43	Taxable

5-9

Taxing Jurisdiction	Type of Tax	APPLICATION OF		TAX
		C.P.F.F. Construction	C.P.F.F. Manufacturing	Lump-sum
Michigan	Sales	Taxable after 5-1-42 except on direct payment by U.S. (recent decisions indicate tax does not apply) Taxable after 5-1-42 except on direct payment by U.S. (recent decisions indicate tax does not apply)	Exempt	Taxable
	Use		Exempt	Taxable
Mississippi	Various excises	Generally taxable after 11-10-41	Generally taxable after 11-10-41	Taxable
Missouri	Sales	Taxable after 11-11-41	Exempt	Taxable
New Mexico	Gross sales	Not clear	Not clear	Taxable
New Orleans	Sales & use	Exempt after 1-19-43	Exempt after 1-19-43	Taxable
New York City	Sales	Exempt	Exempt	Taxable
	Gross receipts	Taxable	Taxable	Taxable
North Carolina	Sales	Statutory exemptions only	Statutory exemptions only	Statutory exemptions only
	Use	Statutory exemptions only	Statutory exemptions only	Statutory exemptions only
North Dakota	Sales	Taxable	Taxable	Taxable
	Use	Taxable	Taxable	Taxable
Ohio	Sales	Exempt	Exempt	Taxable
	Use	Exempt	Exempt	Taxable
Oklahoma	Sales	Statutory waiver	Statutory waiver	Taxable
	Use	Statutory waiver	Statutory waiver	Taxable

Taxing Jurisdiction	Type of Tax	APPLICATION OF		TAX
		C.P.F.F. Construction	C.P.F.F. Manufacturing	Lump-sum
Puerto Rico	Various excises	Exempt after 7 Apr 41 by act approved 23 Nov 42	Exempt after 7 Apr 41 by act approved 23 Nov 42	Taxable
South Dakota	Sales Use	Exempt Exempt	Exempt Exempt	Taxable Taxable
Texas	Cement tax	Taxable	Taxable	Taxable
Utah	Sales Use	Exempt prior to 11-11-41 Exempt after 8-20-42 Exempt prior to 11-11-41 Exempt after 8-20-42	Exempt Exempt	Taxable Taxable
Washington	Sales Use Gross receipts	Exempt Exempt Taxable after 5-1-41	Exempt Exempt Taxable after 5-1-41	Taxable Taxable Taxable
West Virginia	Sales Gross receipts	Exempt, except services Taxable	Exempt, except services Taxable	Exempt Taxable
Wyoming	Sales Use	Exempt Exempt	Exempt Exempt	Taxable Taxable

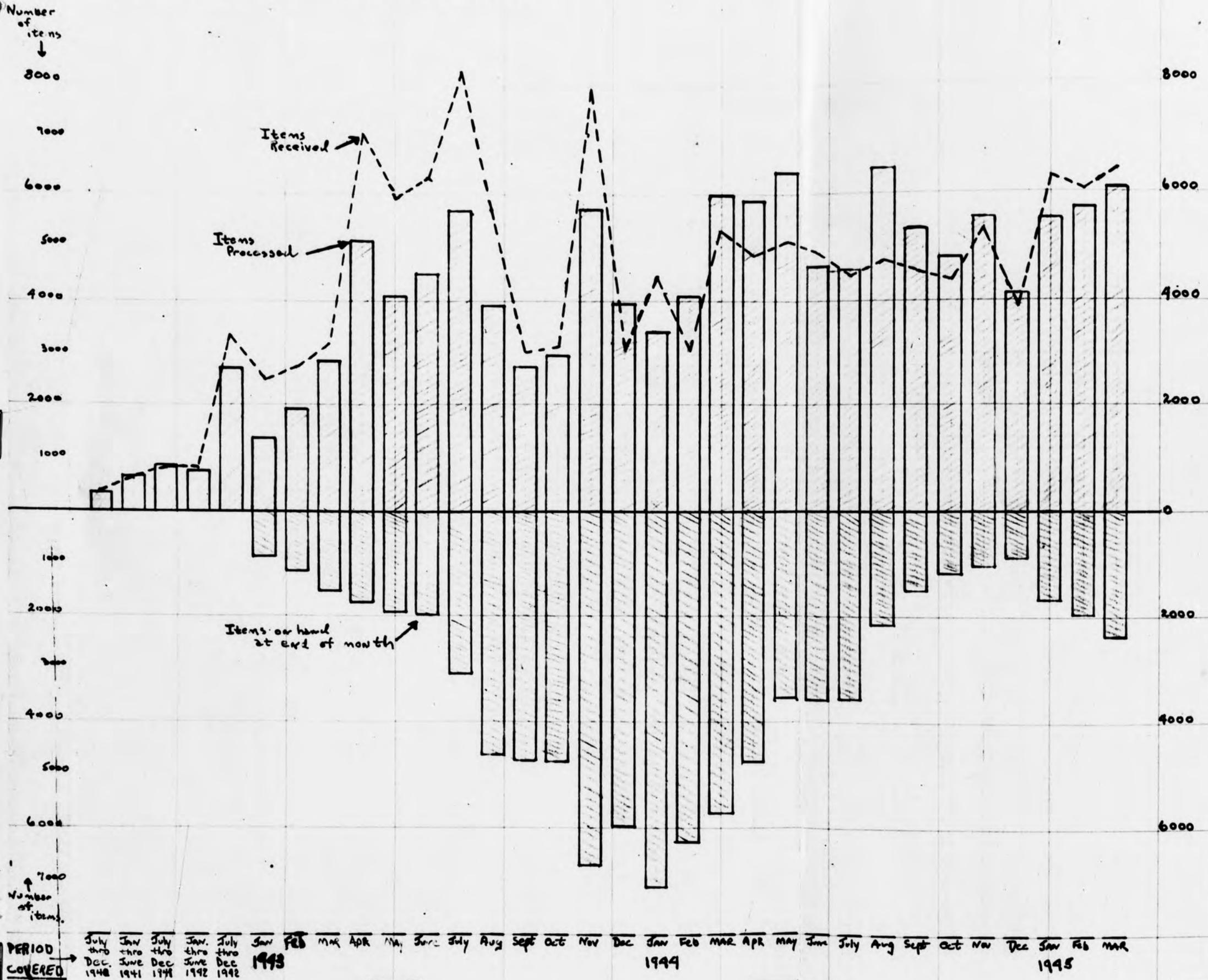
APPENDIX 6

SMITH, EXETER, NEBR., U.
SILE 008-1208

6-1

6-1

Items processed by Claims Division, J.A.G.O.



(C O P Y)

Excerpts from WAR DEPARTMENT ORDERS "C" dated 21 April 1941, and
WAR DEPARTMENT ORDERS "E" dated 28 November 1933

Pursuant to authority contained in the act of December 16, 1940
(Public, No. 891, 76th Congress):

* * * * *

(c) The Under Secretary of War will continue to perform the
duties and discharge the responsibilities placed on The Assistant Secre-
tary of War by Army Regulations No. 5-5, July 16, 1932, Orders E, War
Department, November 28, 1933, and all other existing orders or instruc-
tions.

* * * * *

HENRY L. STIMSON,
Secretary of War.

C.

War Department Orders E of May 7, 1930, prescribing the classes of
business to be acted upon by the Secretary of War, the Assistant Secre-
taries of War, and the Assistant and Chief Clerk, is hereby rescinded,
and the following is published for the information and guidance of all
concerned:

* * * * *

2. The Assistant Secretary of War is charged with supervising and
acting upon the following matters:

* * * * *

(B) Nonstatutory duties:

* * * * *

(b) Claims, foreign or domestic, by or against the War Depart-
ment, including those resulting from the operation of air-
craft.

* * * * *

6. All orders, regulations, and instructions contrary to the fore-
going are hereby revoked.

GEO. H. DERN,
Secretary of War.

E.

(C O P Y)

6-3

6-2

CLAIMS CHART

[Revised September 30, 1942, under supervision of Colonel Henry C. Clark, Chief of Claims Division, Office of the Judge Advocate General, War Dept., Washington, D.C.]

ARMY REG.	DATE OF ACT	TITLE AND SUBJECTS COVERED	AMOUNT	METHOD OF SETTLEMENT	NEG.	NON-NEG.	PERS. INJURY	PERS. PROP.	REAL PROP.	SUBROGATION PROP. DAMAGE ONLY	TIME LIMIT	REMARKS
AR 35-7030	Feb. 12, 1940 54 Stat. 23	Damages to or loss of private property resulting from the conduct of SPECIAL FIELD EXERCISES.	\$500 maximum.	Use AR 35-7020. Action on report of board, by commanding general of Army or corps area commander involved or officer on his staff, is final unless claimant appeals in 30 days to Secretary of War whose action is then final.	Yes	Yes	No	Yes	Yes	If due to negligence yes, otherwise no.	None except stale claims	All components of Army including National Guard while going to, engaged upon or returning from special field exercises. No review by Comptroller General. Claims over \$500 and up to \$1,000 use AR 35-7070 for negligence claims and AR 35-7050 for non-negligence claims.
AR 35-7040	Current annual Army appropriation act.	Damages to or loss of private property incident to training, practice, operation or maintenance of the Army. OPERATION OF ARMY ACT	\$500 maximum.	Use AR 35-7020. Sec. of War approves as to merit and amount, who transmits to G.A.O. for settlement; final authority in Comptroller General.	No	Yes	No	Yes	Yes	No	None except stale claims	Excludes damages caused by C. C. C.; criminal and willful acts of destruction and negligent acts of employees. Covers unavoidable accidents and mistakes of judgment. Use AR 35-7050 for non-negligence claims of this class involving over \$500 to \$1,000.
AR 35-7050	Aug. 24, 1912 5 U.S.C. 208; sec. 709, Mil. Law, 1929	CLAIMS FOR REIMBURSEMENT FOR DAMAGE TO OR LOSS OF PRIVATE PROPERTY by gunfire and for damages to other private property due to maneuvers, or other military operations.	Over \$500 with \$1,000 maximum.	Use AR 35-7020. Secretary of War approves as to merit and amount for certification to Congress.	No	Yes	No	Yes	Yes	No	None except stale claims	Comptroller General not concerned with this act. Use AR 35-7040 for non-negligence claims of this class for amounts of \$500 or less.
AR 35-7060	Current annual Army appropriation act.	Claims for damages to persons and private property resulting from the OPERATION OF AIRCRAFT.	\$250 maximum until June 30, 1942 \$500 for claims arising after June 30, 1942.	Use AR 35-7020. Claim filed with commanding officer of nearest aviation station. Survey by board. Indorsement by commanding officer. Approval Commanding General, Army Air Forces (W.D. Cir. 131 II, 1942), and Secretary of War. Comptroller General reviews.	No as to prop. Yes as to pers. injury.	Yes	Yes	Yes	Yes	No	None except stale claims	Includes damages local and foreign; as limited by AR 35-7090. Claims of military personnel and War Dept. personnel not compensable if damage prior to July 1, 1942, but are thereafter. Amounts above \$500 to \$1,000, use AR 35-7050; property damage due to negligence, less than \$1,000, use AR 35-7070. For personal injuries, not exceeding \$500 after 7/1/42 (or \$250 before 7/1/42), both negligent or non-negligent, use 35-7060. Damage incident to maneuvers or special field exercises use AR 35-7030, if less than \$500.
AR 35-7070	Dec. 28, 1922 31 U.S.C. 215-217; sec. 713, Mil. Law, 1929	Damage to or loss of private property caused by the negligence of any officer or employee of the Government acting within scope of his employment. ACT OF DEC. 28, 1922, OR NEGLIGENCE ACT.	\$1,000 maximum.	Use AR 35-7020. If Secretary of War approves, is submitted to Dir. of Budget for certification to Congress for appropriation.	Yes	No	No	Yes	Yes	If due to negligence yes, otherwise no.	1 yr.	Covers negligence of military and civil personnel within scope of employment. War Department accepts liability as joint tort-feasor. Covers claims foreign and domestic.
AR 35-7080	June 4, 1920; 10 U.S.C. 1577; 41 Stat. 808	CLAIMS UNDER 105TH ARTICLE OF WAR. Damage to or wrongful taking of property by persons subject to military law.	Unlimited.	Use AR 35-7020. If board of officers finds claim within AW 105, before directing pay stoppage, commanding officer will, when practicable, refer board report to a staff judge advocate for review and written recommendation of action to be taken. When board recommendation is approved by C.O., enter stoppage against offender per AR 35-2440 and pay collections to claimant. Approving authority's action is final.	No, unless beyond simple negligence. See remarks	No	No	Private property yes. Public property no.	Private property yes. Public property no.	No	None except stale claims	Applicable only when claim not payable from Government funds under some other law, when offender outside scope of employment, and with deprecation, willful misconduct or guilty intent. Never for simple negligence. Only if offender subject to military law and in service.
AR 35-7090	Public law 393, approved Jan. 2, 1942.	Claims for damages occasioned by Army forces in foreign countries. FOREIGN CLAIMS ACT. (Also includes damages and injuries by aircraft)	\$1,000 maximum.	Use AR 35-7020. Claims commission of officers appointed by Secretary of War passes on, and has final authority. Par. 2b, AR 35-7090, amended and enlarged (Change 1, 9/17/42) to include criminal acts, medical, hospital, and funeral expenses, pain and suffering, and in death claims loss of prospective support, considering local standards.	Yes	Yes	Yes	Yes	Yes	If due to negligence yes, otherwise no.	1 yr.	As to excluded claims see Par. 9, AR 35-7020. Covers inhabitants who dwell or reside permanently in said country or possession. Excludes military personnel and nationals or citizens of country with whom we are at war.
AR 35-7100	Mar. 4, 1921, 41 Stat. 1436; 31 U.S.C. 218, sec. 715, Mil. Law, 1929	CLAIMS OF MILITARY PERSONNEL for private property lost, damaged, or destroyed in the military service.	Value or replacement of required equipment and clothing.	See par. 8, AR 35-7020, and pars. 3 and 4, AR 35-7100. Chief of Finance and Secretary of War for approval. Comptroller General reviews payment. Court of Claims has jurisdiction in some instances. War and public disaster, C.O. can replace in kind.	Yes	Yes	No	Yes	No	No	2 yrs. peace time. 2 yrs. after peace in time of war	Does not include items fully covered by insurance. Must make demands on common carrier. Does not cover civilian employees. Covers damages or loss as result of: 1. Where ordered shipped on unseaworthy vessel. 2. Saving life, property of U.S. or on military duties related to emergency. 3. Travel under order, by common carrier or Govt. agency. Covers only that amount above insurance. 4. Destruction, capture or prevention of capture by enemy, abandonment, or lost in field during campaign.
AR 35-7220	Mar. 10, 1936 Army Reg.	Claims in favor of U.S. on account of damage to Government property. CLAIMS IN FAVOR OF U.S.	Unlimited.	Approved reports of survey (AR 35-6640) authorize collection of damage (W.D. Cir. #125(1941)). If not thus accomplished, either by C.O. or Chief of Finance, claim is sent to J.A.G.O. for recommendation. If suit warranted, is referred to Attorney General. Otherwise file is closed.	Yes	No	For loss of service, med. & hosp. expenses.	Yes	Yes	Not involved.	None and no laches	

(Cir. 92)

HEADQUARTERS
SERVICE OF SUPPLY

Circular)
No. 92)

Washington, December 2, 1942.

TRANSFER OF CERTAIN CLAIMS ACTIVITIES FROM THE CHIEF
OF FINANCE TO THE JUDGE ADVOCATE GENERAL

1. Effective this date, the following functions and activities pertaining to the administration of claims against the Government, heretofore performed by the Chief of Finance, are transferred to the Judge Advocate General:

a. The processing of claims for damage to private property arising as a result of activities of the Army, and of the National Guard incident to special field exercises, and of claims for damages incident to operations of the Civilian Conservation Corps under the jurisdiction of the War Department.

b. The processing of claims in connection with damages to persons and property in foreign countries, arising under the provisions of the act of April 18, 1918 (40 Stat. 532), and the act of January 2, 1942 (55 Stat. 880), and admiralty claims.

2. All records, files, property, supplies, and equipment in the Office of the Chief of Finance which pertain to these functions will be transferred to the office of the Judge Advocate General in accordance with arrangements to be made between these services.

3. All civilian personnel will be transferred through like arrangements. No military personnel will be transferred.

4. The necessary arrangements for the transfer of any funds involved will be made by the services concerned.

(SPX 153 (12-1-42)SPJGD-MP-R)

By command of Lieutenant General SOMERVELL:

W. D. STYER,
Major General, General Staff Corp,
Chief of Staff.

OFFICIAL:

J. A. ULIO,
Major General,
Adjutant General.

(W410-1-42)

WAR DEPARTMENT
The Adjutant General's Office
Washington

6-5

MEMORANDUM)
No. W410-1-42)

December 15, 1942.

COMMUNICATIONS RELATING TO THE SCOPE AND
APPLICATION OF THE LAWS AND REGULATIONS GOVERNING
THE SETTLEMENT OF CLAIMS IN FOREIGN COUNTRIES

1. Various communications have been received by different agencies of the War Department from United States military authorities in foreign countries requesting information as to the scope and application of foreign claims statutes and the regulations promulgated thereunder. Such communications usually present for consideration legal questions or administrative problems legal in character. In response to such requests, recommendations have been made by numerous agencies at different times, apparently without a knowledge or a fully coordinated understanding of the previous recommendations made and action taken by other agencies on similar questions. Such uncoordinated treatment has created confusion and uncertainty as to the scope of the foreign claims statutes and War Department policy as to procedure in connection with claims under such statutes.

2. In order to maintain an established policy as to procedure governing settlement of claims in foreign countries, uniformity in the interpretation and application of the laws and regulations pertaining thereto, and to insure properly coordinated advice and action, The Judge Advocate General is hereby designated as the centralized agency to study, report, and make recommendations on all matters relating to such claims.

3. All inquiries received in the War Department concerning the application or interpretation of the laws or regulations governing the settlement of claims in foreign countries will be promptly referred to The Judge Advocate General for remark and recommendation. The agency making such reference will be kept fully informed of the disposition and status of the case.

4. Any interested agency of the War Department, by informal and direct contact with The Judge Advocate General's Department, may obtain necessary information and advice on all matters involving foreign claims.

(AG 020 (12-10-42)SPJGD-MP-R)

By order of the Secretary of War:

/s/ J. A. Ulio
J. A. ULIO,
Major General,
The Adjutant General.

DISTRIBUTION:
A.

6-5

(Cir. 9)

WAR DEPARTMENT
Headquarters, Services of Supply
Washington

Circular)
No. 9)

February 10, 1943.

TRANSFER OF CLAIMS ACTIVITIES FROM THE CHIEF OF FINANCE
TO THE JUDGE ADVOCATE GENERAL

1. Effective February 1, 1943, all functions and activities not previously transferred, pertaining to claims (including those processed under AR 35-7100, February 1, 1939, "Finance Department -- Claims of military personnel for private property lost, damaged, or destroyed in the military service") for administrative settlement by the War Department in favor of or against the Government, heretofore performed by the Chief of Finance, are transferred to the Judge Advocate General. After approval or disapproval by the Under Secretary of War, the file on each claim will be returned direct to the Judge Advocate General for appropriate administrative action. Demands for payment of claims for damage to or loss or destruction of Government property will be made by the Judge Advocate General, and the Chief of Finance will transmit to the Judge Advocate General copies of surveys and other evidence of liability to the Government.

2. All records, files, property, supplies, and equipment of the Office of the Chief of Finance which pertain to the foregoing functions and activities will be transferred to the Office of the Judge Advocate General in accordance with arrangements to be made between these services.

3. All civilian personnel now engaged on the above-indicated functions and activities will be transferred through like arrangements. No military personnel will be transferred.

4. Necessary arrangements for the transfer of any funds involved will be made by the services concerned.

(SPX 020 (1-27-43)SPJGD-MP-FH)

By command of Major General STYER:

LeR. LUTES,
Major General, General Staff Corps,
Acting Chief of Staff.

OFFICIAL:
J. A. ULIO,
Major General
Adjutant General.

24-9555

6-6

(Cir. 13)

WAR DEPARTMENT
Headquarters, Services of Supply
Washington

Circular)
No. 13)

March 3, 1943.

DEFINITION OF TERMS--CIRCULAR NO. 9, HEADQUARTERS,
SERVICES OF SUPPLY, 1943

The following definition of terms is issued to clarify the provisions of paragraph 1, Circular No. 9, Headquarters, Services of Supply, February 10, 1943, subject, "Transfer of claims Activities from the Chief of Finance to The Judge Advocate General":

"Claims in favor of.....the Government" as used in the first sentence thereof, and "claims" as used in the third sentence, will be deemed to mean "claims in favor of the Government against persons not members of the military service when the claim does not arise in the course of operations under a contract between the United States and such person."

(SPX 020 (3-1-43)SPAAI-MP-FH)

By command of Lieutenant General SOMERVELL:

W. D. STYER,
Major General, General Staff Corps,
Chief of Staff.

OFFICIAL:
J. A. ULIO
Major General,
Adjutant General.

(W25-1-43)

WAR DEPARTMENT
The Adjutant General's Office
Washington

MEMORANDUM)
No. W25-1-43)

February 7, 1943.

TRANSFER OF ACTIVITIES FROM THE CHIEF OF FINANCE TO THE
JUDGE ADVOCATE GENERAL

Effective this date, the Judge Advocate General is charged with responsibility for preparing reports to Congress on private bills for the relief of claimants. The Chief of Finance is accordingly relieved of that responsibility.

(AG O20 (2-3-43)SPAAI-MP-FH)

By order of the Secretary of War:

J. A. ULIO,
Major General,
The Adjutant General.

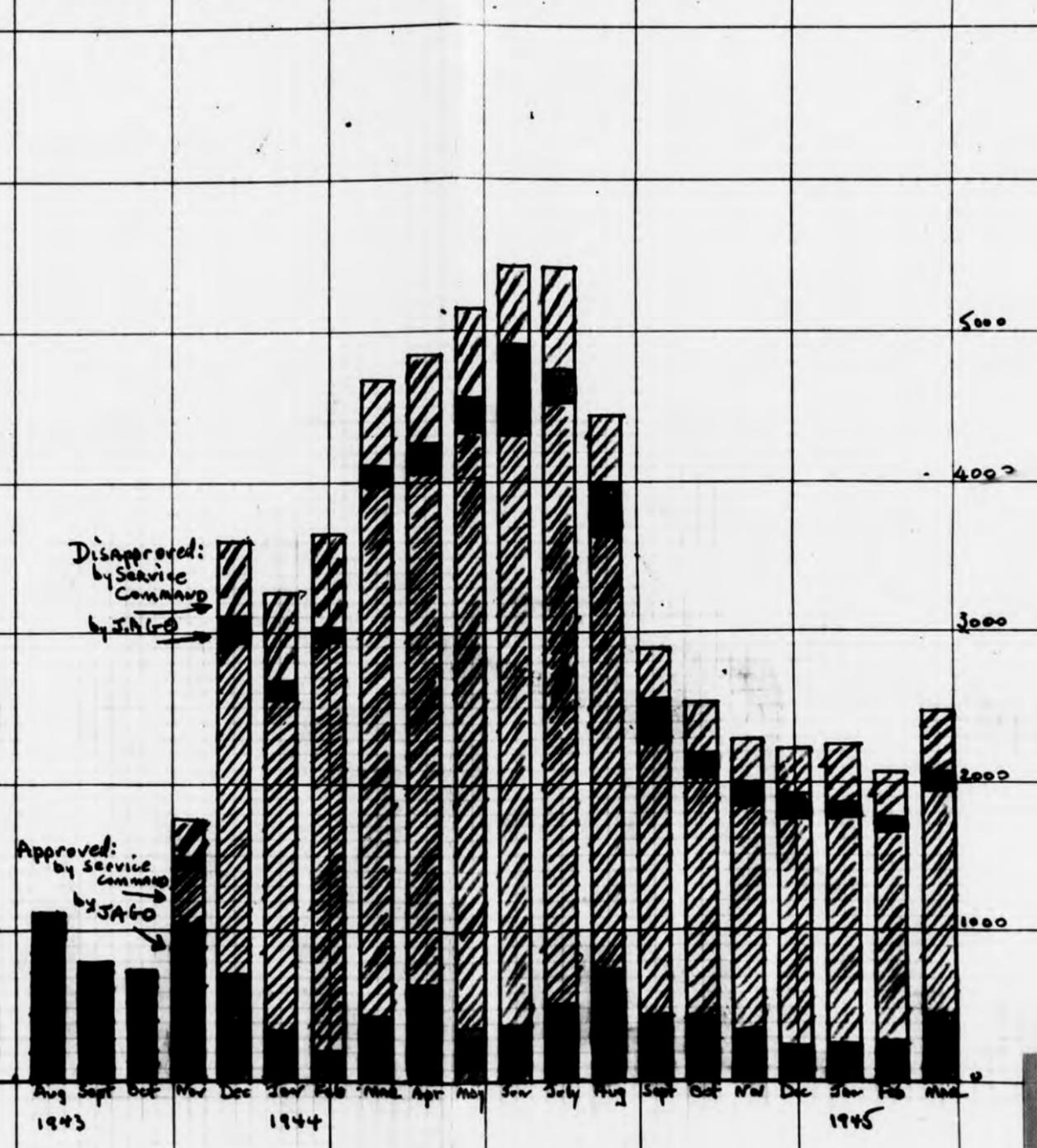
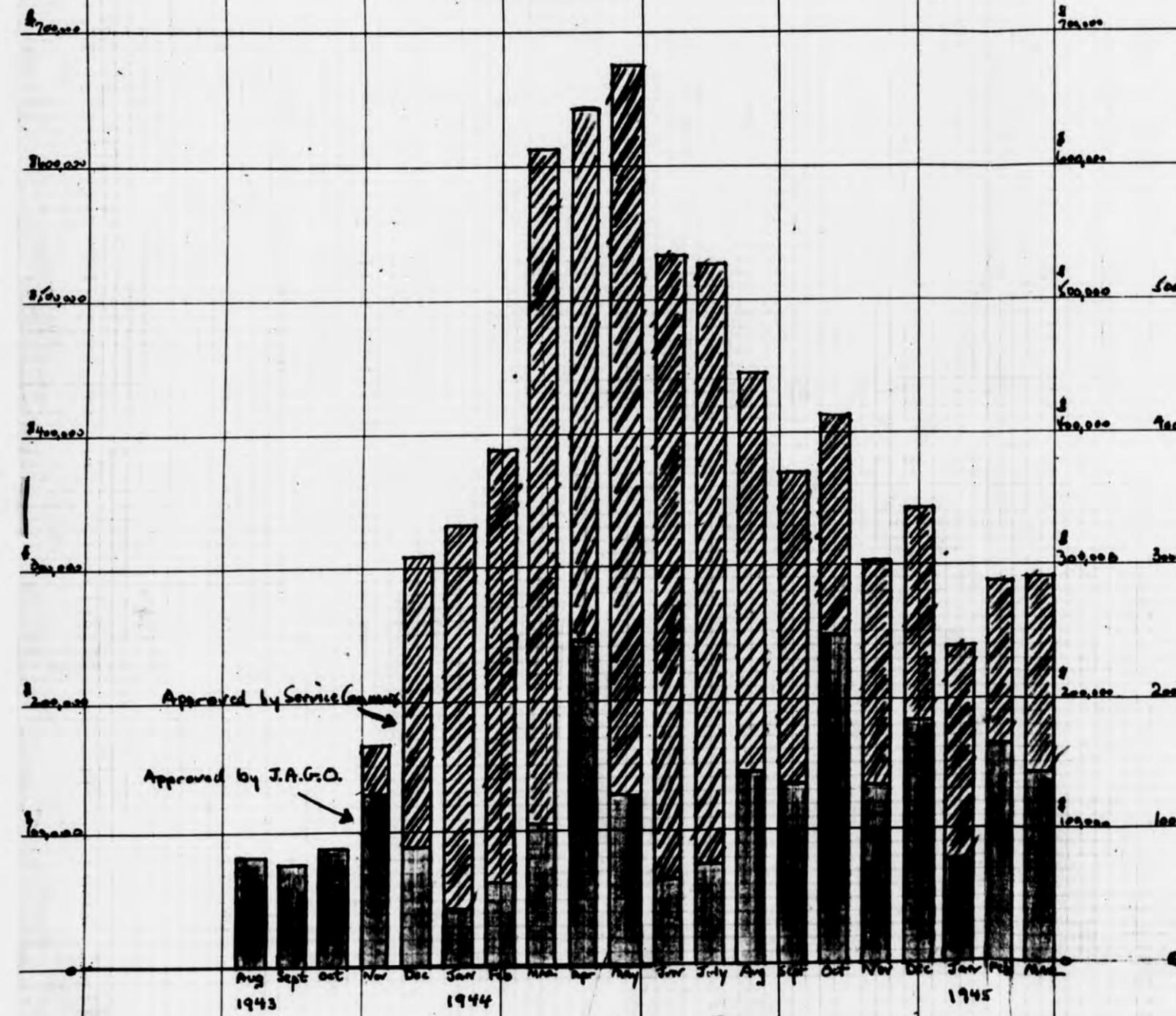
DISTRIBUTION:
A.

6-8

Claims Processed by JAGO and Service Commands

Amounts Paid

Number of Claims



April 14, 1944

WAR DEPARTMENT
OFFICE OF THE UNDER SECRETARY
Washington 25, D. C.

MEMORANDUM FOR CHIEF OF CLAIMS DIVISION, OFFICE OF THE JUDGE
ADVOCATE GENERAL:

Subject: Delegation of authority to approve or disapprove
claims against the United States.

1. Reference is made to the act of July 3, 1943 (Public Law 112, 78th Cong.), providing for the settlement of claims for damage to or loss or destruction of property or personal injury or death caused by military personnel or civilian employees, or otherwise incident to activities, of the War Department or of the Army. In section 1 of that Act it is provided that claims of the type therein specified may be approved by the Secretary of War and, subject to appeal to the Secretary of War, by such other officer or officers as he may designate for such purposes. Referring to such claims heretofore or hereafter arising, authority to approve or disapprove such claims in an amount not in excess of \$1,000 under the said act of July 3, 1943, is hereby delegated to you pursuant to the provisions of paragraph 22e, AR 25-25.

2. Reference is made to the act of March 3, 1885 (23 Stat. 350), as amended by the act of July 9, 1918 (40 Stat. 880), as amended by the act of March 4, 1921 (41 Stat. 1436), and by the act of July 3, 1943 (Public Law 112, 78th Cong.), and AR 25-100, providing for the administrative settlement of claims of military personnel and of civilian personnel and civilian employees of the War Department or of the Army for private property lost, damaged, destroyed, captured, or abandoned in the military service. In that act it is provided that the Secretary of War or such other officer or officers as he may designate may settle such claims. Referring to such claims heretofore or hereafter arising, authority to approve or disapprove claims under the said act of March 3, 1885, as amended, is hereby delegated to you.

3. Reference is made to Paragraph 2, Memorandum for The Provost Marshal General, 31 July 1943, pertaining to the assignment of an officer who shall, upon the filing of any claims presented by either the employee, or an employer, determine the amount of the actual monetary loss sustained resulting from removal from employment under the provisions of the Circular cited therein, and certify vouchers for payment of the amount of such actual monetary loss so determined. Referring to such claims heretofore or hereafter arising, authority to determine loss and to certify for payment thereof out of appropriated funds specified for the purpose pursuant to the provisions of said memorandum is hereby delegated to you.

/s/ Robert P. Patterson
ROBERT P. PATTERSON,
Under Secretary of War.

6-10

MEMORANDUM OF AGREEMENT

6-11

This Memorandum of Agreement, dated as of the 15th day of February 1945, is entered into between the appropriate representatives of the United States and the French Provisional Government for the purpose of evidencing and recording their mutual understanding as to the classes of claims asserted against the United States, the payment of which will be assumed by the French Provisional Government as Reciprocal Aid extended to the United States.

It is mutually agreed:

1. War Damage - No claim for damage to property or injury to, or death of persons arising out of action of or operations against the enemy or any other combat activities, or for any other damage or injury classified as war damage or war injury, shall be the responsibility of the United States Government.
2. Criminal Acts - The investigation and disposal of all claims of inhabitants of France which arise out of criminal and other acts, either of which involve moral turpitude (such as rape, assault, theft, or pillage), alleged to have been committed by members of the United States Armed Forces will be the responsibility of the United States Government, as it may determine.
3. Occupational Claims - All claims for damage to lands, bivouac areas, buildings and their contents, including claims for damage by fire, wilful or malicious damage, or by training and maneuvers, where the damage or destruction is the result of the use or occupation of such property for the purpose for which the same was requisitioned or otherwise used or occupied, will be paid by the French as Reciprocal Aid. The United States authorities will take adequate disciplinary action wherever possible in cases of wilful or malicious damage caused by the members of the United States Armed Forces and brought to the attention of such authorities by the French Government.
4. Traffic Accidents - All claims arising out of traffic accidents will be investigated and paid, or otherwise disposed of, by the French Government as matters of Reciprocal Aid, excepting those cases in which the United States Armed Forces certify that the driver was not on duty at the time of the accident.
5. Workmen's Compensation - All claims for compensation arising out of injury sustained during and as a result of employment by the United States Armed Forces shall be accepted by the French Government as matters for Reciprocal Aid. In accordance with the terms of the agreement, dated 25 September 1944, (copy attached), no responsibility for investigating or paying such claims will rest with the United States Government.

6. Other Claims - All other claims of inhabitants of France for damages of a civil nature, not covered by other agreements between the respective Governments, will be paid by the French as Reciprocal Aid. Without limiting the generality thereof, the term "damages of a civil nature" is understood to include claims resulting from:

- a. Accidental shootings and explosions.
- b. Damage to hired or requisitioned premises, subject to the procedural agreement already made.
- c. Practice gunfire.
- d. All other incidents (except those referred to in Para. 2 above) for which the French Government would have accepted financial responsibility in comparable circumstances had French Service Personnel been involved.

7. Effective Date - The liability of the French Government as herein expressed will be retroactive to 6 June 1944, and shall be applicable to claims presented before the 15th day of February 1946, or within one year after the date of the occurrence of the incident on which the claim is founded, whichever is the later.

8. Interim Payments - As soon as arrangements therefor can be perfected, but not later than 15 February 1945, the French Government will take over the investigation and payment of all claims assumed by it under the provisions of this agreement, prior to which time the United States Claims Service will process and pay such claims, it being understood that the financial responsibility shall rest with the French Government as provided in para. 7 above.

9. Publicity - Maximum publicity will be given by the French Government as to the procedure and responsibility for the categories of claims set out above.

10. Exclusions - Nothing hereinbefore contained shall be construed in any manner to affect the procedure for disposal of claims arising out of contract, aircraft operations and maritime collisions or other marine casualties, it being intended that separate agreements shall be entered into regarding claims arising out of aircraft and maritime operations.

11. Procedure - It is further mutually agreed that the procedure to be adopted for the investigation and processing of claims of the classes above defined will be arranged between the French and United States Services concerned.

This Agreement is in furtherance of and to implement the provisions of para. 16 (ii) of Memorandum No. 1 entitled "Relating to Administrative and Jurisdictional Questions", heretofore executed on behalf of the Governments of France, Great Britain and the United States.

MEMORANDUM FOR ADVANCED SPECIAL CLAIMS COURSE:

Subject: "Knock-for-Knock" agreement with Canadian Government.

Herewith is the text of the agreement entered into between the United States and Canada with respect to the settlement of claims arising out of traffic accidents between vehicles belonging to the armed forces of the respective nations.

"Enclosure No. 4 to despatch
No. 869 of March 23, 1944,
from the Embassy at Ottawa.

No. 121.

Sir:

I have the honor to acknowledge the receipt of your note no. 16 of March 1, 1944, outlining a proposed agreement with the Government of the United States establishing the basis to be adopted for the settlement of claims arising out of traffic accidents involving vehicles of the Armed Forces of Canada and vehicles of the Armed Forces of the United States.

I have now been authorized to inform you that the arrangement, as set forth in your note under acknowledgment, is agreeable to my Government [United States] that your note, together with this reply, will be regarded as constituting an agreement between our two Governments on the subject.

Ray Atherton

The Right Honorable
The Secretary of State
For External Affairs, Ottawa."

"Enclosure No. 3 to despatch
No. 869 of March 23, 1944,
from the Embassy at Ottawa.

DEPARTMENT OF
EXTERNAL AFFAIRS
CANADA

No. 16

Ottawa, March 1, 1944.

Excellency:

I have the honour to refer to my Note no. 130 of October 21, 1943, proposing a basis for the settlement of claims arising out of traffic accidents involving vehicles of the Armed Forces of Canada and vehicles of the Armed Forces of the United States.

The Government of Canada agree to the changes in the proposed Agreement suggested in your Note No. 75 of December 22, 1943.

The Government of Canada are now prepared to enter into an agreement with the Government of the United States establishing the basis to be adopted for the settlement of claims arising out of traffic accidents involving vehicles of the Armed Forces of Canada and vehicles of the Armed Forces of the United States in the following terms:-

(a) The agreement would cover all vehicles of the Armed Forces of the Government of Canada (hereinafter called Canadian vehicles) and all vehicles of the Armed Forces of the Government of the United States (hereinafter called United States vehicles).

(b) The agreement would apply to accidents wherever they occur which take place on or after December 7th, 1941, which have not already been disposed of, and which involve a Canadian or United States vehicle.

(c) Neither Government would make any claim against the other for any damage caused in an accident to which this agreement applies to any vehicle, stores or other property of the Government of Canada and used by the Royal Canadian Navy, the Canadian Army or the Royal Canadian Air Force, or to any vehicle, stores or other property of the Government of the United States and used by the United States Army, the United States Army Air Force, the United States Navy or the United States Navy Air Force.

(d) Neither Government would make any claim against the other in respect of the death of or injury to any member or civilian employee of the Armed Forces of Canada or of the United States caused by a United States vehicle or a Canadian vehicle in an accident to which this agreement applies, provided that no claims which members or civilian employees of the Armed Forces of Canada or of the United States may have in their own right on account of injury or death, would be affected by this agreement.

2. I shall be glad if you will inform me whether the Government of the United States agree to an arrangement on this basis. If so, this note and your reply to that effect will be regarded as constituting an agreement between our two Governments which will continue in force in respect of all accidents which may occur prior to the expiration of three months from the date on which either of the two Governments gives notice to the other of its intention to terminate the agreement.

Accept, Excellency, the renewed assurances of my highest consideration.

(sgd) J. E. Read

for
Secretary of State for
External Affairs"

Prepared in the office of The Judge Advocate General
14 May 1944

WAR DEPARTMENT
The Adjutant General's Office
Washington 25, D. C.

AG 153 (24 Apr 44)
OB-P-D-MB-M

13 May 1944.

SUBJECT: Settlement of claims arising in foreign countries under provisions of act of 2 January 1942, as amended, and AR 25-90.

TO: Commanding General, Persian Gulf Command
Commanding General, Eastern Defense Command (for Bermuda Base Command, and Newfoundland Base Command)
Commanding Officer, Greenland Base Command
Commanding Officer, United States Army Forces in Central Canada
Commanding Officer, United States Army Forces in Eastern Canada
Commanding General, Alaskan Department
Commanding General, Caribbean Defense Command
Commanding General, United States Army Forces in South Atlantic
Commanding General, United States Forces in European Theater of Operations
Commanding General, United States Forces in Central Pacific Area
Commanding General, United States Forces in South Pacific Area
Commander-in-Chief, Southwest Pacific Area
Commanding General, United States Army Forces, China-Burma-India
Commanding General, United States Army Forces in the Middle East
Commanding General, United States Army Forces in North African Theater of Operations
Commanding General, Northwest Service Command

1. The Under Secretary of War, by memorandum, 21 April 1944, a photostatic copy of which is Inclosure 1, has delegated to you the authority to establish foreign claims commissions and to appoint the personnel thereof, and to make changes in the personnel of such commissions and in the personnel of existing commissions, under the provisions of the act of 2 January 1942, as amended, and AR 25-90.

2. The prompt investigation and settlement of such claims against the United States arising within your command is your direct responsibility. You will appoint a sufficient number of commissions to permit the prompt and final settlement of claims within practicable contact with the points where the claims originate. It is suggested that such commissions consist either of one or three members.

3. It is the policy of the War Department that each member of a foreign claims commission have a background of adequate legal training or business experience, that at least one member of a commission consisting of more than one member have legal training and experience, and that each member of a commission consisting of only one member have legal

training and experience. It is also desirable that each member of a foreign claims commission have had training and experience with respect to the investigation and processing of claims under appropriate Army Regulations prior to his appointment. The Judge Advocate General is now training officers in the processing and settlement of such claims stressing proper coordination between theater claims agencies and theater agencies handling procurement, billeting, and real estate. Upon requisition by you, specifying, so far as possible, the nature of the proposed assignment these trained officers will be assigned to your command for duty either with the claims investigating service (see par. 20, AR 25-90) or for appointment as members of claims commissions, as you shall determine. Claims commission and claims service personnel, whether now or in the future on duty in your theater, are charged to your present troop basis. Any increase in overhead allotment requested by you to provide for additional claims personnel must be accompanied by indication of the compensating reduction in units in your theater troop basis.

4. The records of the War Department indicate that the foreign claims commissions listed in Inclosure 2, appointed by the Secretary of War, are now functioning within your command. Changes in the personnel of these commissions hereafter will be accomplished by direct appointment by you, such changes being reported by radio direct to The Judge Advocate General. Additional commissions will be appointed by you as deemed necessary and such appointments will be reported by radio direct to The Judge Advocate General who will assign an identifying number to each commission so appointed, subject to the last provision of paragraph 3.

5. Files relating to settled claims and monthly reports which in accordance with the provisions of AR 25-90 are to be forwarded by claims commissions direct to The Judge Advocate General will continue to be so forwarded. The term "direct," however, is interpreted to mean through such command channels within your command, if any, as you may direct.

6. There will also be submitted to The Judge Advocate General with respect to the claims service (see par. 20, AR 25-90, 3 July 1943), a monthly report setting forth substantially the following information: number of cases (whether or not a claim has been filed) on hand at the beginning of the month; number reported during the month; number forwarded, with an accompanying claim, to claims commissions; number closed due to the fact that there will be no claim; number held in suspense pending filing of a claim; and the number of cases on hand at the end of the month.

7. With the exception of the change in the method of appointment of members of claims commissions, as indicated in this memorandum, the provisions of AR 25-90, 3 July 1943, remain in full force and effect and will be followed.

By order of the Secretary of War:

/s/ ROBERT H. DUNLOP,
Brigadier General,
Acting The Adjutant General.

2 Inclos.

Letter from Under Secretary of War.

Copies furnished:

Under Secretary of War.

Assistant Chiefs of Staff, G-1, G-4, and OPD, WDGS.

Budget Division, WDSS

Civil Affairs Division, WDSS.

Commanding General, Army Service Forces.

The Judge Advocate General.

21 April 1944

MEMORANDUM FOR:

COMMANDING GENERAL, EASTERN DEFENSE COMMAND,
For: Bermuda Base Command,
Newfoundland Base Command;
COMMANDING GENERAL, GREENLAND BASE COMMAND;
COMMANDING GENERAL, UNITED STATES ARMY FORCES IN
CENTRAL CANADA;
COMMANDING GENERAL, UNITED STATES ARMY FORCES IN
EASTERN CANADA;
COMMANDING GENERAL, ALASKAN DEPARTMENT;
COMMANDING GENERAL, CARIBBEAN DEFENSE COMMAND;
COMMANDING GENERAL, UNITED STATES ARMY FORCES IN
SOUTH ATLANTIC;
COMMANDING GENERAL, UNITED STATES FORCES IN THE
EUROPEAN THEATER OF OPERATIONS;
COMMANDING GENERAL, UNITED STATES FORCES IN
CENTRAL PACIFIC AREA;
COMMANDING GENERAL, UNITED STATES FORCES IN
SOUTH PACIFIC AREA;
COMMANDER-IN-CHIEF, SOUTHWEST PACIFIC AREA;
COMMANDING GENERAL, UNITED STATES ARMY FORCES,
CHINA-BURMA-INDIA;
COMMANDING GENERAL, UNITED STATES ARMY FORCES IN
THE MIDDLE EAST;
COMMANDING GENERAL, PERSIAN GULF COMMAND;
COMMANDING GENERAL, UNITED STATES ARMY FORCES IN THE
NORTH AFRICAN THEATER OF OPERATIONS;
COMMANDING GENERAL, NORTHWEST SERVICE COMMAND.

Subject: Delegation of Authority to appoint Foreign Claims
Commissions under the act of January 2, 1942,
as amended (AR 25-90).

1. Reference is made to the act of January 2, 1942 (55 Stat. 880,
31 U.S.C. 224d), as amended by the act of April 22, 1943 (Public Law 39,
78th Congress), and AR 25-90, providing for the settlement of meritorious
claims of inhabitants of foreign countries against the United States for
damage to or loss or destruction of property or personal injury or death
caused by Army forces or otherwise incident to non-combat activities of

such forces in such foreign countries. In Section 1 of that act it is provided that the Secretary of War, and such officer or officers as the Secretary of War may designate for such purposes, may appoint a Claims Commission or Commissions, to be composed of one or more officers of the Army, to settle such claims.

2. Under the provisions of the act of January 2, 1942, as amended, and AR 25-90, authority to appoint such foreign claims commissions within your command, and to make changes in the personnel thereof and in the personnel of existing commissions, is hereby delegated to you.

/s/ Robert P. Patterson
ROBERT P. PATTERSON
Under Secretary of War.

HEADQUARTERS, ARMY SERVICE FORCES
Office of The Judge Advocate General
Washington 25, D. C.

SPJGD 1944/27717-C

23 FEB 1944

Subject: Claims and Analogous or Related Matters in Territory Occupied
by United States Armed Forces.

To: Commanding General, European Theater of Operations.

Attention: Colonel Edgar T. Fell, Chief of Claims Service.

1. When Colonel Edgar T. Fell, Chief of Claims Service in European Theater of Operations, was in Washington in December 1943, a conference was held in the War Department, relative to the above subject, which was attended by Colonel Fell and representatives of the Civil Affairs Division, General Staff, and of this office. The primary purpose of the conference was to determine the extent to which the Commanding General of a Theater of Operations is controlled in dealing with the above subject by the provisions of AR 100-64, AG Memorandum No. W100-19-43, 8 July 1943, entitled "Oversea Real Estate Policy", and AG Memorandum 150 (15 Sept. 43) OB-S-F-M (Secret) entitled "Claims in territory occupied by armed forces of the United States".

2. This subject has been given careful consideration by the Office of the Under Secretary of War, by the appropriate divisions of the War Department General Staff, by the Office of the Chief of Engineers, and by this office. Operations Division, General Staff, has approved the following message to you which was originally prepared as a radiogram but which they suggest be transmitted by air mail instead:

Subject Processing of claims in territory occupied by United States Armed Forces.

Reference is had to conferences with Colonel E. T. Fell, Chief of Claims in United Kingdom at War Department in December. When United States forces have occupied liberated territory in which expenses of occupation are not to be charged to inhabitants following types of claims may arise: (1) tort claims such as those arising out of motor vehicle accidents and plane crashes; (2) claims for damage to real estate not occupied under any lease or other contract; (3) claims for damage to personal property in possession of government but not pursuant to specific bailment or other contract; (4) claims for damage of tortious nature to real estate occupied by the government under a lease or other contract; (5) claims for damage of tortious nature to personal property in possession of United States pursuant to a bailment or other contract; (6) a. claims for damage of tortious nature to real estate occupied by the government under a lease or other contract coupled with other claims of purely contractual nature (not tortious) under the contract; (6) b. damage of tortious nature to personal property in possession of the government pursuant to a specific bailment or other contract coupled with other claims of a purely contractual nature (not tortious) under contract; (7) claims for personal property taken or used without compliance with formal requisitioning procedure and (8) contract claims arising out of procurement contracts for supplies and services.

Paragraph two. Under existing law tort claims for damage to or loss or destruction of property real or personal public or private or for personal injury or death of inhabitants of foreign countries can be settled from United States funds only under provisions of foreign claims act and AR twenty five dash ninety. Act of three July one nine four three and AR twenty five dash twenty five may be applicable to claims of persons not inhabitants of country in which claims arise but such claims will be negligible in number. Claims of types one, two and three, above, will be settled under provisions foreign claims act. Under that statute claims of types, four, five, six and seven, above, may be settled but this is not exclusive remedy. Such claims and claims of type eight above may be settled as incidents of contract and pursuant to Part one, Circular Number twenty one, War Department, one nine four three, without prior resort to General Accounting Office.

Paragraph three. The application of paragraph 3 of AG Memo Number W100-19-43, "Oversea Real Estate Policy", dated 8 July 1943, is suspended for the European Theater of Operations pending complete revision of the memorandum.

Paragraph four. Provisions of AR one hundred dash sixty four twenty nine September forty two and change one dated one March forty three do not limit authority of Commanders of United States forces outside continental United States, its territories and possessions but War Department Circular No. 21, 1943 controls. Change in these regulations to this effect will be issued.

Paragraph five. War Department has no objection to extension of your present claims service in United Kingdom to include on substantially same basis liberated territory occupied by United States forces in which expense of occupation is not to be charged to local taxation, and settlement by such claims service of emergency requisition and minor procurement claims including billeting claims in manner similar to methods adopted by Rents Requisitions and Claims Service in first world war.

Paragraph six. Memorandum AG one five zero (fifteen September forty three) OB dash S dash F dash M, entitled "Claims in territory occupied by armed forces of the United States" is by way of suggestion only and not binding on theater commanders.

Paragraph seven. In occupied enemy territory or in liberated territory where costs of occupation will be charged against local taxation War Department has no objection to theater claims service also processing claims to be paid from such local funds notwithstanding suggestion in memorandum AG one five zero (fifteen September forty three) OB dash S dash F dash M that such claims be processed by military government provided such processing is in close liaison with Civil Affairs.

/s/ Myron C. Cramer
/t/ MYRON C. CRAMER,
Major General,
The Judge Advocate General.

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WAR DEPARTMENT GENERAL STAFF
BUDGET DIVISION

WDSBU 150 (1-17-44)

Subject: Payment of claims for expenses incurred by personnel
in order to escape from enemy territory.

Date 11 September 1944

CG, ASF, Att: JAG

Attention: Colonel Ralph G. Boyd

The Secretary of War has approved the allotment of \$10,000 from "Contingencies of the Army, 1942-1945" to The Judge Advocate General for the settlement of properly established claims of military and civilian personnel of the War Department for amounts expended in effecting their escape from enemy territory and has approved expenditures therefrom. The Fiscal Director, Army Service Forces, has been so notified.

/s/ JOHN J. DUBBELDE, JR.,
Colonel, G.S.C.,
Assistant Budget Officer for the War Department.

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WAR DEPARTMENT
OFFICE OF THE UNDER SECRETARY
WASHINGTON 25, D. C.

NOV 8 1944

MEMORANDUM FOR CHIEF OF CLAIMS DIVISION, OFFICE OF THE JUDGE
ADVOCATE GENERAL:

Subject: Delegation of authority to approve or disapprove
claims against the United States.

1. Reference is made to the act of July 3, 1943 (Public Law 112, 78th Cong.), providing for the settlement of claims for damage to or loss or destruction of property or personal injury or death caused by military personnel or civilian employees, or otherwise incident to activities, of the War Department or of the Army. In section 1 of that Act it is provided that claims of the type therein specified may be approved by the Secretary of War and, subject to appeal to the Secretary of War, by such other officer or officers as he may designate for such purposes. Referring to such claims heretofore or hereafter arising, authority to approve or disapprove such claims under the said act of July 3, 1943, is hereby delegated to you, and to each Assistant Chief of Claims Division, pursuant to the provisions of paragraph 22e, AR 25-25.

2. Reference is made to the act of March 3, 1885 (23 Stat. 350), as amended by the act of July 9, 1918 (40 Stat. 880), as amended by the act of March 4, 1921 (41 Stat. 1436), and by the act of July 3, 1943 (Public Law 112, 78th Cong.), and AR 25-100, providing for the administrative settlement of claims of military personnel and of civilian personnel and civilian employees of the War Department or of the Army for private property lost, damaged, destroyed, captured, or abandoned in the military service. In that act it is provided that the Secretary of War or such other officer or officers as he may designate may settle such claims. Referring to such claims heretofore or hereafter arising, authority to approve or disapprove such claims under the said act of March 3, 1885, as amended, is hereby delegated to you, and to each Assistant Chief of Claims Division.

3. Reference is made to Paragraph 2, Memorandum for The Provost Marshal General, 31 July 1943, pertaining to the assignment of an officer who shall, upon the filing of any claims presented by either the employee, or an employer, determine the amount of the actual monetary loss sustained resulting from removal from employment under

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the provisions of the Circular cited therein, and certify vouchers for payment of the amount of such actual monetary loss so determined. Referring to such claims heretofore or hereafter arising, authority to determine loss and to certify for payment thereof out of appropriated funds specified for the purpose pursuant to the provisions of said memorandum is hereby delegated to you, and to each Assistant Chief of Claims Division.

/s/ Robert P. Patterson
ROBERT P. PATTERSON
Under Secretary of War.

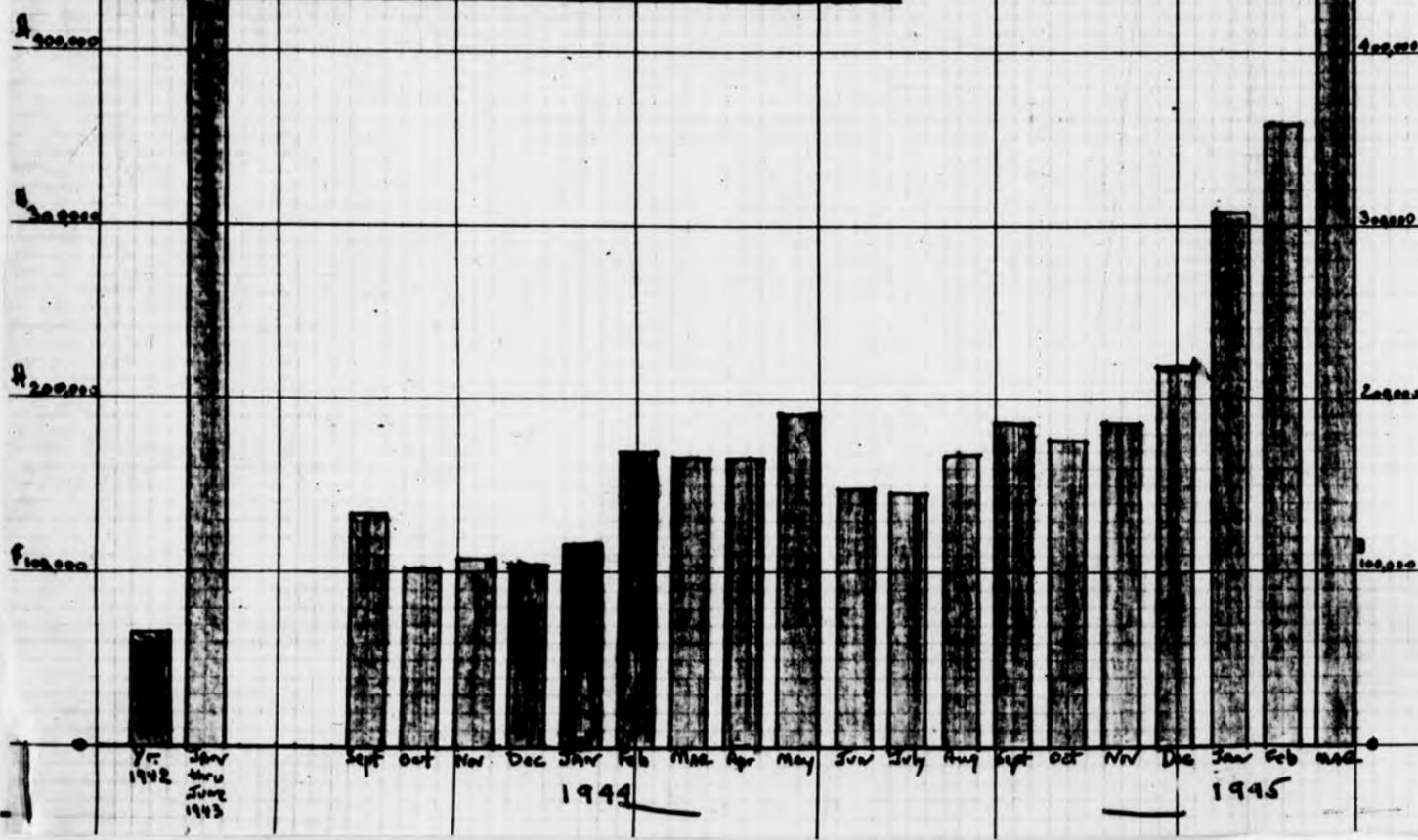
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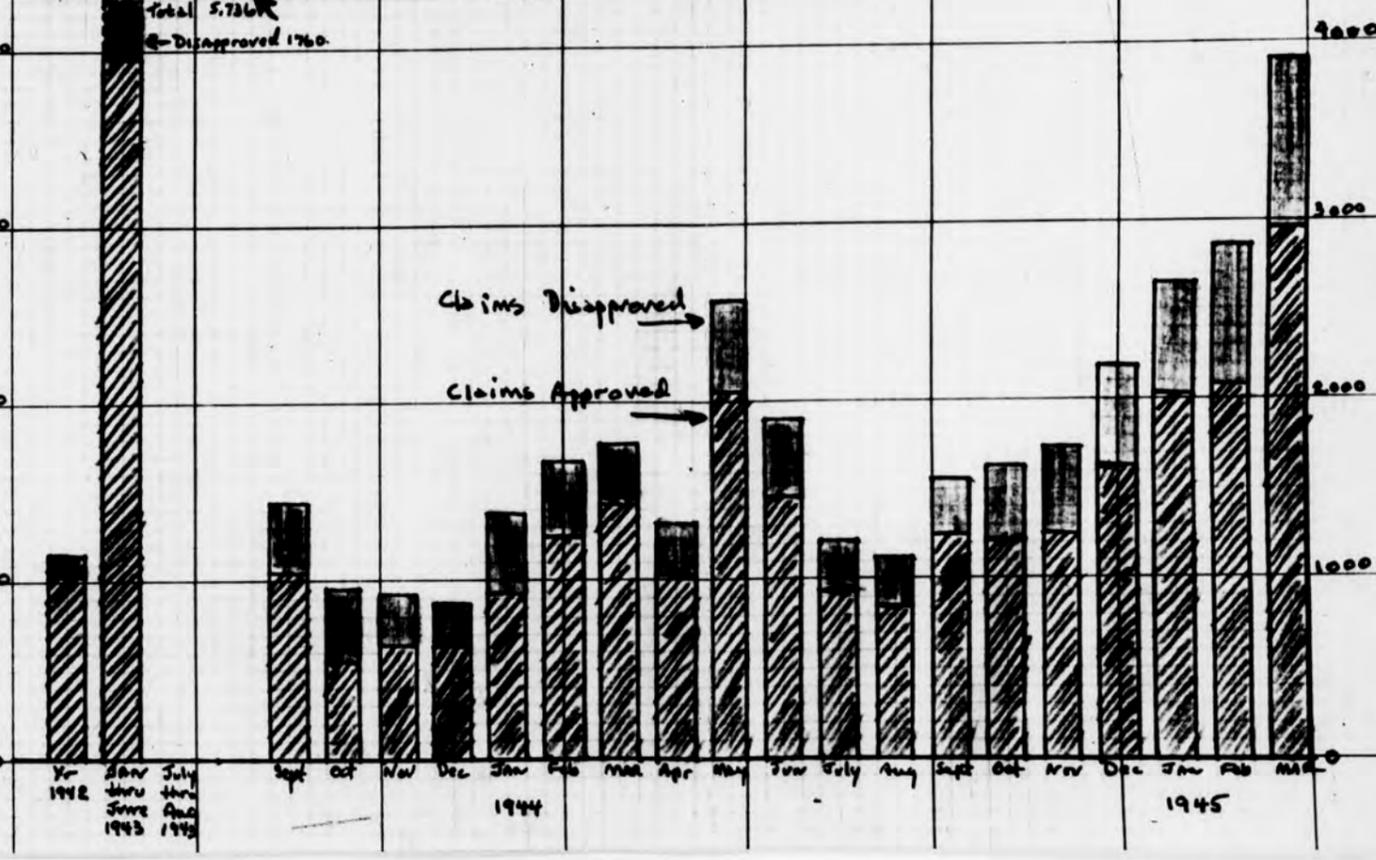
Amounts Collected Under AR 25-220



Amounts Paid By Foreign Claims Commissions: AR 25-90



Number of Claims Processed by Foreign Claims Commissions



U. S. AIR FORCE
SERIALS SECTION

APPENDIX 7

CIRCULAR }
 No. 74 }

WAR DEPARTMENT,
 WASHINGTON, March 16, 1943.

Legal advice and assistance for military personnel.—1. Sponsorship and purpose.—The War Department and the American Bar Association have agreed to sponsor jointly the following plan to make adequate legal advice and assistance available throughout the Military Establishment to military personnel in the conduct of their personal affairs. In this regard reference is made to paragraphs 1 to 4, inclusive, War Department pamphlet entitled "Personal Affairs of Military Personnel and Their Dependents."

2. General supervision.—The general organization, supervision, and direction of the plan has been assigned to The Judge Advocate General who will collaborate with the Committee on War Work of the American Bar Association. Similarly, the staff judge advocates of the service commands will collaborate with the committees on war work of the several State bar associations within their respective service commands to aid in the establishment and uniform operation of the plan. (See paragraph 15.)

3. Plan of organization.—Legal assistance offices will be established, as soon as possible and wherever practicable, throughout the Army, so that military personnel can obtain gratuitous legal service from volunteer civilian lawyers and from lawyers who are in the military service. *Such gratuitous legal service should not be considered as charity but entirely as a service of the same nature as medical, welfare, or other similar services provided for military personnel.* In any proper case the legal assistance office may refer the serviceman to civilian counsel for retention by the serviceman upon the usual civilian basis.

4. Establishment and authority.—The commanding general of each service command and the commanding officer of each post, camp, and station within the 48 States and the District of Columbia will establish a legal assistance office for his respective command. Each office will be designated as _____ Legal Assistance Office. The
 (Service command, post, camp, station, or unit)

commanding officer of any other installation, including an oversea command, may, if he deems it advisable, establish such an office, with such modifications as may be necessary to meet local conditions. In order to make such service available to all military personnel it is desired that the offices be established wherever possible, including, where practicable, centrally located offices to serve several neighboring small commands and transient military personnel. Such central offices will be established and operated under the direct authority of the commanding general of the service command within which such office is situated and will be designated as _____ Army Legal Assistance Office.
 (Name of town or city)

5. Military personnel.—The legal assistance office of any particular command will be under the direct supervision and control of the staff judge advocate of the command, if any, as the "Director" thereof. It will be operated by a qualified commissioned officer (see par. 7) who will be assigned to such duties and designated as "Legal assistance officer." Depending on the size of the command and the volume of service required, qualified "Assistant legal assistance officers" and such other military personnel as may be necessary to operate the office expeditiously will be assigned to such duty.

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All military personnel so assigned will be within current authorized strengths according to Tables of Organization and/or allotments, and normally will perform such duties in addition to their other duties. *Limited service personnel, if otherwise qualified, will be employed on this duty to the fullest extent.*

6. **Designated volunteer civilian lawyers.**—*a.* Each such legal assistance office should, as far as practicable, be composed of such military personnel as may be assigned to it and such volunteer civilian lawyers as may be designated for service with that particular office by the appropriate State Bar Association Committee on War Work. See paragraph 16.

b. Arrangements should be made to have one or more of the civilian lawyers so designated visit the legal assistance office on the post at regular intervals during prescribed hours to interview any military personnel who may need or desire their advice and counsel. Such visits should be well publicized and, so far as practicable, be fixed so as to correspond with intervals in the schedule of military duties or training. Arrangements should also be made to refer military personnel having legal problems direct to such designated civilian lawyers at their own offices or, in proper cases, to an established legal aid organization or other appropriate civilian organization or lawyer.

c. If it is impractical or impossible to designate such civilian lawyers, as above indicated, the office may be maintained without such civilian lawyers. In that event all cases requiring civilian counsel will be referred to the appropriate State Bar Association Committee on War Work (see par. 16) or established legal aid organization (see par. 17).

7. **Qualification of legal assistance officers.**—The basic qualification for a legal assistance officer will be that he is a licensed attorney at law. As there are a great many lawyers now on active duty, it is believed that qualified personnel for assignment as legal assistance officers are available within nearly all commands. However, if there is no qualified officer available for such assignment, a suitable officer may be assigned as acting legal assistance officer until a qualified officer becomes available. Such acting officers may perform all the functions of legal assistance officers (see par. 8), except those functions that involve the giving of legal advice and counsel.

8. **Functions of legal assistance officers.**—Legal assistance officers may properly perform the following functions:

a. Supervise, direct, and control the military personnel and operation of the legal assistance office in accordance with good legal practice and the policies of the commanding officer, subject to the general supervision and direction of The Judge Advocate General, and the appropriate local and service command staff judge advocates, if any. See paragraph 15.

b. Establish contact with the Committee on War Work of the State in which the command is located (see par. 16) for the purpose of organizing the office and obtaining the names of the local members of the bar who have volunteered and who have been designated by the committee to serve with that particular legal assistance office.

c. Collaborate and maintain liaison with such designated civilian lawyers in the organization and operation of the office.

d. Interview, advise, and assist military personnel and, in proper cases, refer such personnel to a designated civilian lawyer, or to an appropriate bar committee on war work, or established legal aid organization, for needed advice and service in regard to their personal legal problems. (See paragraphs 16 and 17.)

e. Make, from time to time, such reports and recommendations concerning the operation of their offices as may be required of them or that they may deem advisable. Such reports will be made to the commanding officer through the staff judge advocate of the command, if any, who will indorse his views thereon. Information copies of such reports and indorsements and of the orders establishing the office will be forwarded direct to the Legal Assistance Branch, The Judge Advocate General's Office, Washington, D. C., and to the staff judge advocate of the service command within which such office is located.

f. Do any and all things, within the limits of their authority and that they may do as officers of the Army of the United States, necessary to accomplish expeditiously the purpose for which their offices are established.

9. **Office facilities, location, and hours.**—Suitable office space will be provided wherever a legal assistance office is established. Each office will have such available equipment and supplies assigned to it as may be adequate for the purpose. It should be conveniently located so as to be available to all personnel of the command and should be open for business during the hours that will accomplish the purpose for which the office is established and will make such service available to military personnel without interfering with their regular duties. The location and office hours of the office, as well as the legal advice and assistance that it offers, will be published in local orders to be kept posted at all times on all unit bulletin boards.

10. **Confidential and privileged character of service provided.**—*a.* Inasmuch as the service to be provided by a legal assistance office is essentially legal, the usual attorney and client relationship must be maintained. Consequently, all matters upon which the office is consulted by persons entitled to do so and the files thereof will be treated and considered as *confidential and privileged* in a legal rather than a military sense. Such confidential matters will not be disclosed by the personnel of the office to anyone, except upon the specific permission of the person concerned, and such disclosure may not lawfully be ordered by superior military authority. Strict observance of this rule is essential to the proper working of the office in order to establish confidence in its integrity and to assure all military personnel regardless of grade or position that they may disclose frankly and completely all material facts of the case to the office personnel without fear that such confidences will be disclosed or used against them in any way.

b. A legal assistance office as such will *not* advise or assist military personnel in any case in which such personnel are or probably will be the subject of court-martial investigation or charges. Legal assistance officers should not be consulted by such personnel, and will refuse to receive confidences from them concerning such matters unless authorized by competent orders to defend them pursuant to Article of War 11 or 17.

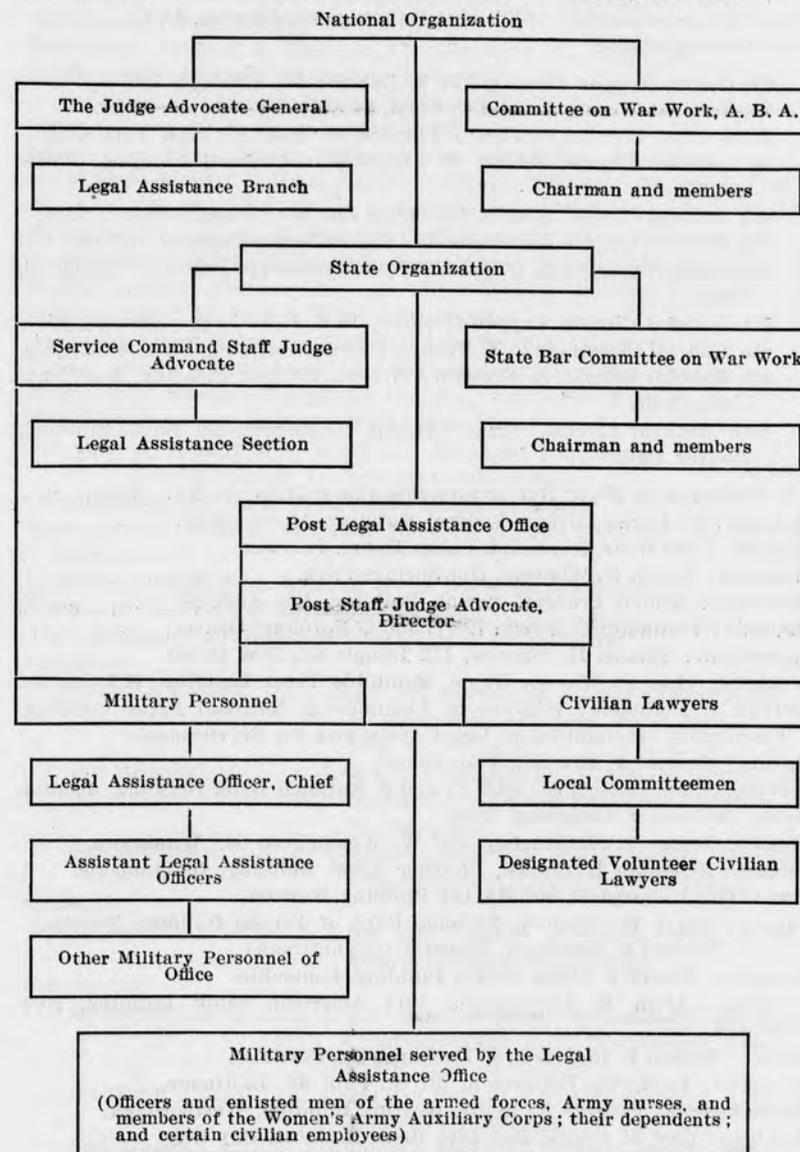
11. **Service only for military personnel.**—The service provided by the legal assistance offices will be made available only to military personnel and their dependents, and this will include all members of, and persons serving with, the armed forces of the United States, including Army nurses, members of the Women's Army Auxiliary Corps, and civilian employees actually employed and residing on the military reservation served by the office or employed at an oversea installation.

12. **Military personnel of the office.**—Military personnel of a legal assistance office will not appear before civil courts, boards, or commissions as attorneys for persons using the facilities of the office (see sec. II, Cir. 358, W. D., 1942). As a general rule such personnel will render service only at the legal assistance office; however, service may be rendered elsewhere in exceptional circumstances.

13. **Correspondence.**—The Judge Advocate General's Office and the service command staff judge advocates are authorized to correspond direct with such legal assistance offices concerning their supervisory duties in connection therewith. Legal assistance offices are authorized to correspond direct with, and to refer cases to, the legal assistance offices of other commands and other appropriate organizations and persons concerning legal assistance matters.

14. **Variations in procedure.**—Local conditions may make variations from the above-prescribed procedures necessary for the proper and effective organization and operation of any particular legal assistance office. For this reason the provisions of this circular are intended to be flexible and should be liberally construed in order that the purpose for which such office is established may be accomplished. In no event will a legal assistance office act as a collection agency in any transaction.

15. **Organization chart for Army legal assistance offices under joint sponsorship of War Department and American Bar Association.**



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16. Present directory of Bar Association Committees on War Work.—

a. Committee on War Work of the American Bar Association.

Committee headquarters: 1002 Hill Building, Washington, D. C.

Committee members:

- Chairman, Tappan Gregory, 19 S. LaSalle St., Chicago, Ill.
 1st Judicial Circuit, Donald T. Field, 84 State St., Boston, Mass.
 2d Judicial Circuit, Edward J. Dimock, 67 Wall St., New York City.
 3d Judicial Circuit, Joseph W. Henderson, Packard Building, Philadelphia, Pa.
 4th Judicial Circuit, Fred S. Hutchins, Box 854, Winston-Salem, N. C.
 5th Judicial Circuit, Alexander W. Smith, Grant Building, Atlanta, Ga.
 6th Judicial Circuit, L. C. Spieth, Union Commerce Building, Cleveland, Ohio.
 7th Judicial Circuit, Tappan Gregory, 19 S. LaSalle St., Chicago, Ill.
 8th Judicial Circuit, John F. Rhodes, Fidelity Building, Kansas City, Mo.
 9th Judicial Circuit, A. Crawford Greene, Balfour Building, San Francisco, Calif.
 10th Judicial Circuit, Frazer Arnold, First National Bank Building, Denver, Colo.

b. Chairmen of State Bar Association Committees on War Work.

- Alabama: E. Burns Parker, Federal Building, Montgomery.
 Arizona: Fred Blair Townsend, Luhrs Tower, Phoenix.
 Arkansas: Edwin H. Wootton, Hot Springs Park.
 California: Arnold Praeger, Rowan Building, Los Angeles.
 Colorado: Benjamin E. Sweet, 725 E and C Building, Denver.
 Connecticut: Samuel H. Platcow, 152 Temple St., New Haven.
 Delaware: Hon. P. Warren Green, Equitable Trust Building, Wilmington.
 District of Columbia: William R. Lichtenberg, National Press Building, Washington (Committee on Legal Assistance for Servicemen).
 Florida: Charles A. Mitchell, Vero Beach.
 Georgia: Hugh Dorsey, Jr., 1425 C. and S. National Bank Building, Atlanta.
 Idaho: William F. Galloway, Boise.
 Illinois: George S. McGaughey, 226 W. Washington St., Waukegan.
 Indiana: Jeremiah L. Cadick, Fletcher Trust Building, Indianapolis.
 Iowa: Tim J. Campbell, 505 Maytag Building, Newton.
 Kansas: Harry W. Colmery, National Bank of Topeka Building, Topeka.
 Everett E. Steerman, Emporia (co-chairman).
 Kentucky: Henry J. Stites, Starks Building, Louisville.
 Louisiana: Alvin R. Christovich, 1914 American Bank Building, New Orleans.
 Maine: Clement F. Robinson, 85 Exchange St., Portland.
 Maryland: B. Harris Henderson, 231 St. Paul St., Baltimore.
 Massachusetts: Francis X. Reilly, Keating Building, Westborough.
 Michigan: Carl H. Smith, Bay City Bank Building, Bay City.
 Minnesota: Hon. Albin S. Pearson, District Court, St. Paul.
 Mississippi: Forrest G. Cooper, Indianola.
 Missouri: Harry S. Rooks, 407 North Eighth St., St. Louis.
 Montana: J. B. C. Knight, Anaconda.
 Nebraska: Barton H. Kuhns, 930 First National Bank Building, Omaha.
 Nevada: John E. Robinson, First National Bank Building, Reno.

- New Hampshire: Louis E. Wyman, 45 Market St., Manchester.
 New Jersey: Hon. Richard Hartshorne, Hall of Records, Newark.
 New Mexico: Hon. John C. Watson, Santa Fe.
 New York: Jackson A. Dykman, 177 Montague St., Brooklyn.
 North Carolina: H. P. Taylor, Wadesboro.
 Andrew Joyner, Greensboro.
 North Dakota: O. B. Burtness, Grand Forks.
 Ohio: Lawrence C. Spieth, Union Commerce Building, Cleveland.
 Oklahoma: Randell S. Cobb, Assistant Attorney General, Oklahoma City.
 Oregon: Hon. Walter L. Tooze, Sailing Building, Portland.
 Pennsylvania: Joseph W. Henderson, Packard Building, Philadelphia.
 Rhode Island: W. L. Frost, 1016 Union Trust Building, Providence.
 South Carolina: Pinckney L. Cain, 1001 Palmetto Building, Columbia.
 South Dakota: Clifford A. Wilson, Hot Springs.
 Tennessee: J. Mac Peebles, National Life Building, Nashville.
 Texas: Claude V. Birkhead, 1512 Majestic Building, San Antonio.
 Utah: H. P. Thomas, Templeton Building, Salt Lake City.
 Vermont: John J. Deschenes, Burlington.
 Virginia: A. Russell Bowles, Mutual Building, Richmond.
 John C. Parker, Jr., Franklin (additional).
 Washington: Charles H. Paul, White Building, Seattle.
 West Virginia: Charles McCamic, National Bank of West Virginia Building, Wheeling.
 Wisconsin: Reginald I. Kenney, Wells Building, Milwaukee.
 Wyoming: Marshall S. Reynolds, Cheyenne.

17. Directory of established legal aid organizations.

California:

- Alameda County----- Legal Aid Society of Alameda County, Samuel H. Wagener, Attorney, Park Building, 473 14th St., Oakland.
 Los Angeles----- Legal Aid Foundation, Edwin F. Frank, Chief Counsel, 440 Cotton Exchange Building, 106 W. Third St.
 San Francisco----- Legal Aid Society of San Francisco, Alex Sheriffs, Attorney, 1160 Phelan Building.

Colorado:

- Denver----- Legal Aid Society of Denver, Paul F. Irey, Attorney, 314 Fourteenth St.

Connecticut:

- Bridgeport----- Legal Aid Division, Department of Public Charities, Oscar A. H. Dannenberg, Attorney, Public Welfare Building.
 Hartford----- Legal Aid Bureau, Alfred F. Kotchen, Attorney, Municipal Building.
 New Haven----- Municipal Legal Aid Bureau, Max H. Schwartz, Attorney, City Hall.

District of Columbia:

- Washington----- Legal Aid Bureau of the District of Columbia, Miss Beatrice A. Clephane, Attorney, 1400 L St. NW.

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- Florida:**
Jacksonville----- Duval County Legal Aid Association, Inc., M. G. Boyce, Executive Secretary, 400 Consolidated Building.
Miami----- Legal Aid Committee, Dade County Bar Association, Max R. Silver, Legal Aid Counsellor, 52 West Flagler St.
Tampa----- Legal Aid Bureau of Tampa, Fred T. Saussey, Jr., Attorney, Wallace S. Building.
- Georgia:**
Atlanta----- Atlanta Legal Aid Society, J. E. Thrift, Attorney, 216 Fulton County Court House.
- Illinois:**
Chicago----- Legal Aid Bureau of United Charities, Mrs. Marguerite R. Gariepy, Attorney, 330 South Wells St.
Chicago----- Legal Aid Department of the Jewish Social Service Bureau, Mrs. Sarah B. Schaar, Supervisor, 130 N. Wells St.
- Indiana:**
Indianapolis----- Legal Aid Society, George W. Eggleston, Attorney, 224 North Meridian St.
- Iowa:**
Des Moines----- Legal Aid Department, Polk County, Department of Social Welfare, Carl B. Parks, Attorney, 701 Fifth Ave.
- Kentucky:**
Louisville----- The Legal Aid Society of Louisville, Emmet R. Field, Attorney, 312 Realty Building.
- Louisiana:**
New Orleans----- Legal Aid Bureau, Eugene Thorpe, Attorney, 602 United Fruit Company Building.
- Maryland:**
Baltimore----- Legal Aid Bureau, Inc., Gerald Monsman, Counsel, 7 St. Paul St.
- Massachusetts:**
Boston----- The Boston Legal Aid Society, Raynor M. Gardiner, General Counsel, 16-A Ashburton Place.
New Bedford----- Legal Aid Society, C. C. Connor, Attorney, 234 Union St.
Springfield----- The Legal Aid Society of Springfield, Inc., Mrs. Gertrude D. Meaney, Attorney in Charge, 182 State St.
- Michigan:**
Detroit----- Legal Aid Bureau of the Detroit Bar Association, Louis C. Miriani, Attorney, 51 West Warren Ave.
Grand Rapids----- Legal Aid Bureau of the Family Welfare Association, Richard C. Annis, Attorney, 306 Association of Commerce Building.
Lansing----- Legal Aid Bureau, John Brattin, 573 Hollister Building.

- Minnesota:**
Minneapolis----- The Legal Aid Society of Minneapolis, Inc., Richard H. Bachelder, Attorney, 200 Citizens Aid Building.
St. Paul----- Legal Aid Department of the Family Service, Rollin West, Attorney, Wilder Building.
- Missouri:**
Kansas City----- Legal Aid Bureau, Otto O. Bowen, Commissioner, City Hall.
St. Louis----- Legal Aid Bureau, Department of Public Welfare, Milton C. Lauenstein, Director, 353 Municipal Courts Building.
- New Jersey:**
Perth Amboy----- Legal Aid Committee, Perth Amboy Bar Association, Matthew F. Melko, Chairman, 214 Smith St.
- New York:**
Albany----- Legal Aid Society of Albany, Inc., Arthur J. Harvey, Attorney, 82 State St.
Buffalo----- Legal Aid Bureau of Buffalo, Inc., Elmer C. Miller, Attorney, 416 Prudential Building.
New York City----- The Legal Aid Society, Louis Fabricant, Attorney, 11 Park Place.
New York City----- National Desertion Bureau, Charles Zunser, Attorney, 71 West 47th St.
Rochester----- Legal Aid Society, Emery A. Brownell, Attorney, 25 Exchange St.
Yonkers----- Legal Aid Committee, Family Service Society of Yonkers, Miss Julia V. Grandin, General Secretary, 55 South Broadway.
- North Carolina:**
Durham----- Duke University Legal Aid Clinic, John S. Bradway, Director, Law School.
- Ohio:**
Cincinnati----- Legal Aid Society of Cincinnati, George H. Silverman, Attorney, 312 West Ninth St.
Cleveland----- Legal Aid Society of Cleveland, Claude E. Clark, Attorney, 614 Fidelity Building.
Columbus----- Legal Aid Clinic, Professor Silas A. Harris, Director, Ohio State University.
- Oklahoma:**
Tulsa----- Legal Aid Committee of Tulsa County Bar Association, Ralton P. Edmonds, Chairman, % Legal Aid Department, Carter Oil Company, National Bank of Tulsa Building.
- Oregon:**
Portland----- Legal Aid Committee, Oregon State Bar Association, Mrs. Janet W. Starkey, Supervising Attorney, Judge James W. Crawford, Chairman, County Court House.

Pennsylvania:

- Erie*----- Legal Aid Department of the Welfare Bureau,
Anthony L. Gambatese, Director, 133 West
7th St.
- Harrisburg*----- Legal Aid Committee, Dauphin County Bar As-
sociation, William B. Rosenberg, Attorney,
603 State Theater Building.
- Philadelphia*----- Legal Aid Society of Philadelphia, George Scott
Stewart, Attorney, 400 Harrison Building, 4
South 15th St.
- Pittsburgh*----- Legal Aid Society, Wayne Theophilus, Attorney,
519 Smithfield St.

Rhode Island:

- Providence*----- Legal Aid Society of Rhode Island, LeRoy G.
Pilling, Attorney, 100 North Main St.

Texas:

- Dallas*----- Free Legal Aid Bureau, Miss Mabel Spellman,
Attorney, Municipal Building.

Utah:

- Salt Lake City*----- Legal Aid Society, Benjamin Spence, Attorney,
Beason Building.

Virginia:

- Richmond*----- Legal Aid Bureau, Family Service Society of
Richmond, Charles E. A. Knight, Attorney,
221 Governor St.

Washington:

- Seattle*----- Legal Aid Bureau of the Seattle Bar Associa-
tion, James A. Dougan, Director.

Wisconsin:

- Madison*----- Legal Aid Bureau of the Dane County Bar As-
sociation, Charles Vau Dell, Cantwell Build-
ing.
- Milwaukee*----- Legal Aid Society, Mrs. Julia B. Dolan, At-
torney, 502 Safety Building.

The foregoing list of established legal aid organizations was furnished by the National Association of Legal Aid Organizations, Mr. Louis Fabricant, President, 11 Park Place, New York, N. Y.

[A. G. 013.2 (12-26-42).]

BY ORDER OF THE SECRETARY OF WAR:

G. C. MARSHALL,
Chief of Staff.

OFFICIAL:

H. B. LEWIS,
Brigadier General,
Acting The Adjutant General.

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CIRCULAR }
No. 73 }

WAR DEPARTMENT,
WASHINGTON 25, D. C., 17 January 1944.

LEGAL ADVICE AND ASSISTANCE FOR MILITARY PERSONNEL.—
1. Paragraph 1, section VI, Circular No. 111, and section IV, Circular No. 156, War Department, 1943, are rescinded.

2. Paragraphs 2, 4, 8a, 8e, 11, 13, 15, 16, and 17, Circular No. 74, War Department, 1943, are rescinded and the following substituted therefor:

2. **General supervision.—a.** The general organization, supervision, and direction of the plan has been assigned to The Judge Advocate General who will collaborate with the Committee on War Work of the American Bar Association. Similarly, the staff judge advocates of service commands and air service commands will collaborate with the committees on war work of the several State bar associations within their respective commands to aid in the establishment and uniform operation of the plan. (See par. 15.)

b. The general supervision and direction of legal assistance offices at all Army installations, including Army Air Force installations, is under The Judge Advocate General. Regional supervision and direction of legal assistance offices at posts, camps, and stations throughout the Military Establishment will be exercised by the staff judge advocate of the appropriate service command of the Army Service Forces, except legal assistance offices at Army Air Force installations which are under the regional supervision and direction of the staff judge advocate of the appropriate air service command and the Air Judge Advocate. (See par. 15.)

4. **Establishment and authority.—**The commanding general of each service command, the commanding officer of each air service command, and the commanding officer of each post, camp, and station within the 48 States and the District of Columbia will establish a legal assistance office for his respective command. Each office will be designated as _____

(Service Command,
_____ Legal Assistance Office. The commanding
post, camp, station or unit)
officer of any other Army unit or installation, including an overseas command, may, if he deems it advisable, establish such an office, with such modifications as may be necessary to meet local conditions. In order to make such service available to all military personnel it is desired that the offices be established wherever possible, including, where practicable, centrally located offices to serve several neighboring small commands and transient military personnel. Such central offices will be established and operated under the direct authority of the commanding general of the service command within which such office is situated and will be designated as _____
(Name of town or city)

Army Legal Assistance Office.

8. **Functions of legal assistance officers.—a.** Supervise, direct, and control the military personnel and operation of the legal assistance office in accordance with good legal practice and the policies of the commanding officer, subject to the general supervision and direction of The Judge Advocate General, and the appropriate local and service command or air service command staff judge advocates, if any. (See par. 2b and 15.)

8e. Make, from time to time, such reports and recommendations concerning the operation of their offices as may be required of them or that they may deem advisable. Such reports will be made to the commanding officer through the staff judge advocate of the command, if any, who will indorse

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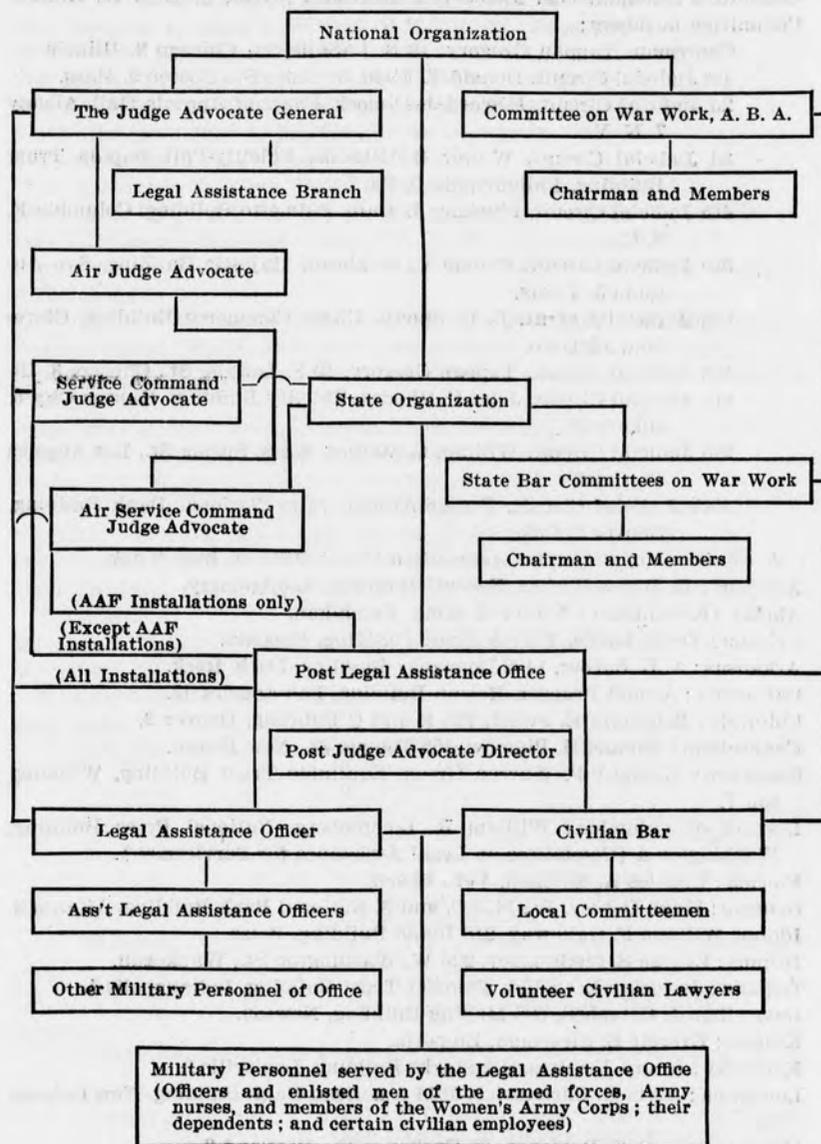
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his views thereon. Information copies of such reports and indorsements and of the orders establishing the office, or effecting changes in the personnel or operation thereof, will be forwarded direct to the Legal Assistance Branch, The Judge Advocate General's Office, Washington 25, D. C., and to the staff judge advocate of the service command, or in the case of Army Air Force installations to the staff judge advocate of the air service command, within which such office is located.

11. **Service only for military personnel.**—The service provided by the legal assistance offices will be made available only to military personnel and their dependents, and this will include all members of, and persons serving with, the armed forces of the United States, including Army nurses, members of the Women's Army Corps, and civilian employees actually employed and residing on the military reservation served by the office or employed at an overseas installation.

13. **Correspondence.**—The Judge Advocate General's Office, the Air Judge Advocate's Office and the staff judge advocates of service commands and air service commands are authorized to correspond direct with such legal assistance officers concerning their supervisory duties in connection therewith. Legal assistance offices are authorized to correspond direct with, and to refer cases to, the legal assistance offices of other commands and other appropriate organizations and persons concerning legal assistance matters.

15. Organization chart for Army legal assistance offices under joint sponsorship of War Department and American Bar Association.



16. Present directory of Bar Association Committees on War Work.—
a. Committee on War Work of the American Bar Association.
 Committee headquarters: 1140 North Dearborn Street, Chicago 10, Illinois.
 Committee members:

- Chairman, Tappan Gregory, 19 S. LaSalle St., Chicago 3, Illinois.
 1st Judicial Circuit, Donald T. Field, 84 State St., Boston 9, Mass.
 2d Judicial Circuit, Edward J. Dimock, Court of Appeals Hall, Albany 7, N. Y.
 3d Judicial Circuit, Walter B. Gibbons, Fidelity-Philadelphia Trust Building, Philadelphia 9, Pa.
 4th Judicial Circuit, Pinckney L. Cain, Palmetto Building, Columbia 6, S. C.
 5th Judicial Circuit, Claude V. Birkhead, Majestic Building, San Antonio 5, Texas.
 6th Judicial Circuit, L. C. Spieth, Union Commerce Building, Cleveland 14, Ohio.
 7th Judicial Circuit, Tappan Gregory, 19 S. LaSalle St., Chicago 3, Ill.
 8th Judicial Circuit, John F. Rhodes, Fidelity Building, Kansas City 6, Mo.
 9th Judicial Circuit, William C. Mathes, 458 S. Spring St., Los Angeles 13, Calif.
 10th Judicial Circuit, Frazer Arnold, First National Bank Building, Denver 2, Colo.

b. Chairmen of State Bar Association Committees on War Work.

- Alabama: E. Burns Parker, Federal Building, Montgomery.
 Alaska (Ketchikan): Walter B. King, Ketchikan.
 Arizona: Orme Lewis, Title & Trust Building, Phoenix.
 Arkansas: A. L. Barber, 1408 Donaghey Building, Little Rock.
 California: Arnold Praeger, Rowan Building, Los Angeles 13.
 Colorado: Benjamin E. Sweet, 725 E and C Building, Denver 2.
 Connecticut: Samuel H. Platcow, 152 Temple St., New Haven.
 Delaware: (Judge) P. Warren Green, Equitable Trust Building, Wilmington 7.
 District of Columbia: William R. Lichtenberg, National Press Building, Washington 4 (Committee on Legal Assistance for Servicemen).
 Florida: Charles A. Mitchell, Vero Beach.
 Georgia: Hugh Dorsey, Jr., 1425 C. and S. National Bank Building, Atlanta 3.
 Idaho: William F. Galloway, 218 Idaho Building, Boise.
 Illinois: George S. McGaughey, 226 W. Washington St., Waukegan.
 Indiana: Jeremiah L. Cadick, Fletcher Trust Building, Indianapolis 4.
 Iowa: Tim J. Campbell, 505 Maytag Building, Newton.
 Kansas: Everett E. Steerman, Emporia.
 Kentucky: Henry J. Stites, 802 Starks Building, Louisville 2.
 Louisiana: Alvin R. Christovich, 1914 American Bank Building, New Orleans 12.
 Maine: Clement F. Robinson, 85 Exchange St., Portland 3.
 Maryland: B. Harris Henderson, 231 St. Paul St., Baltimore.
 Massachusetts: (Judge) Francis X. Reilly, Keating Building, Westboro.
 Michigan: Carl H. Smith, 212 Phoenix Building, Bay City.
 Minnesota: (Judge) Albin S. Pearson, District Court, St. Paul.
 Mississippi: Forrest G. Cooper, Peoples Bank Building, Indianola.
 Missouri: Harry S. Rooks, 407 North Eighth St., St. Louis 1.

- Montana: J. B. C. Knight, Anaconda.
 Nebraska: Barton H. Kuhns, 930 First National Bank Building, Omaha 2.
 Nevada: John E. Robinson, First National Bank Building, Reno.
 New Hampshire: Louis E. Wyman, 45 Market St., Manchester.
 New Jersey: (Judge) Richard Hartshorne, Hall of Records, Newark.
 New Mexico: (Judge) John C. Watson, Sena Plaza, Santa Fe.
 New York: Edward Schoeneck, State Tower Building, Syracuse 2.
 North Carolina: John S. Bradway, Duke University, Durham.
 North Dakota: O. B. Burtness, Grand Forks.
 Ohio: Lawrence C. Spieth, Union Commerce Building, Cleveland 14.
 Oklahoma: Howard T. Tumilty, First National Building, Oklahoma City.
 Oregon: (Judge) Walter L. Tooze, 525 County Courthouse, Portland.
 Pennsylvania: Walter B. Gibbons, Fidelity-Philadelphia Trust Building, Philadelphia 9.
 Rhode Island: W. Louis Frost, 1511 Turks Head Building, Providence 3.
 South Carolina: Pinckney L. Cain, 1001 Palmetto Building, Columbia 6.
 South Dakota: Claude A. Hamilton, Security National Bank Building, Sioux Falls.
 Tennessee: J. Mac Peebles, National Life Building, Nashville.
 Texas: C. C. Renfro, Republic Bank Building, Dallas 1.
 Utah: H. P. Thomas, Templeton Building, Salt Lake City.
 Vermont: Frederick J. Fayette, 158 Bank Street, Burlington (acting).
 Virginia: Aubrey R. Bowles, Jr., Mutual Building, Richmond 19.
 Washington: Charles H. Paul, White Building, Seattle 1.
 West Virginia: Charles McCamic, National Bank of West Virginia Building, Wheeling.
 Wisconsin: Reginald I. Kenney, Wells Building, Milwaukee 2.
 Wyoming: Marshall S. Reynolds, Cheyenne.

17. Directory of established legal aid organizations.

- California:**
 Los Angeles----- Legal Aid Foundation, Edwin F. Franke, Chief Counsel, 440 Cotton Exchange Building, 106 W. Third St.
 (Note: The Los Angeles Legal Aid Foundation reports "that due to severe shortage of personnel, it can handle matters referred to it only with the understanding that they be handled as urgency and its physical ability to carry on dictates.")
 Oakland----- Legal Aid Society of Alameda County, Samuel H. Wagener, Attorney, 408-12th St.
 San Francisco----- Legal Aid Society of San Francisco, Alex Sheriffs, Attorney, 1160 Phelan Building.
Colorado:
 Denver----- Legal Aid Society of Denver, Paul F. Irely, Attorney, 314 Fourteenth St.
Connecticut:
 Bridgeport----- Legal Aid Division, Department of Public Charities, Oscar A. H. Dannenberg, Attorney, Public Welfare Building.
 Hartford----- Legal Aid Bureau, Alfred F. Kotchen, Attorney, Municipal Building.
 New Haven----- Municipal Legal Aid Bureau, Max H. Schwartz, Attorney, City Hall.

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- District of Columbia:**
Washington----- Legal Aid Bureau of the District of Columbia, Miss Beatrice A. Clephane, Attorney, 1400 L St., N. W.
- Florida:**
Jacksonville----- Duval County Legal Aid Association, Inc., M. G. Boyce, Executive Secretary, 400 Consolidated Building.
Miami----- Legal Aid Committee, Dade County Bar Association, Max R. Silver, Legal Aid Counsellor, 52 West Flagler St.
Tampa----- Legal Aid Bureau of Tampa, E. B. Drumright, Attorney, 315½ Franklin St.
- Georgia:**
Atlanta----- Atlanta Legal Aid Society, J. E. Thrift, Attorney, 216 Fulton County Court House.
- Illinois:**
Chicago----- Legal Aid Bureau of United Charities, Mrs. Marguerite R. Garipey, Attorney, 330 South Wells St.
Chicago----- Legal Aid Department of the Jewish Social Service Bureau, Mrs. Sarah B. Schaar, Supervisor, 130 N. Wells St.
- Indiana:**
Indianapolis----- Legal Aid Society, George W. Eggleston, Attorney, 224 North Meridian St.
- Iowa:**
Des Moines----- Legal Aid Department, Polk County, Department of Social Welfare, Carl B. Parks, Attorney, 701 Fifth Ave.
- Kentucky:**
Louisville----- The Legal Aid Society of Louisville, Emmet R. Field, Attorney, 312 Realty Building.
- Louisiana:**
New Orleans----- Legal Aid Bureau, Eugene Thorpe, Attorney, 602 United Fruit Company Building.
- Maryland:**
Baltimore----- Legal Aid Bureau, Inc., Gerald Monsman, Counsel, 7 St. Paul St.
- Massachusetts:**
Boston----- The Boston Legal Aid Society, Raynor M. Gardiner, General Counsel, 16-A Ashburton Place.
New Bedford----- Legal Aid Society, C. C. Conner, Attorney, 234 Union St.
Springfield----- The Legal Aid Society of Springfield, Inc., Mrs. Gertrude D. Meaney, Attorney in Charge, 182 State St.
- Michigan:**
Detroit----- Legal Aid Bureau of the Detroit Bar Association, Louis C. Miriani, Attorney, 51 West Warren Ave.
Grand Rapids----- Legal Aid Bureau of the Family Association, Richard C. Annis, Attorney, 308 Association of Commerce Building.
Lansing----- Legal Aid Bureau, John Brattin, 573 Hollister Building.
- Minnesota:**
Minneapolis----- The Legal Aid Society of Minneapolis, Inc., Richard H. Bachelder, Attorney, 200 Citizens Aid Building.
St. Paul----- Legal Aid Department of the Family Service, John Sturner, Attorney, Wilder Building.

- Missouri:**
Kansas City----- Legal Aid Bureau, Otto O. Bowen, Commissioner, City Hall.
St. Louis----- Legal Aid Bureau, Department of Public Welfare, Milton C. Lauenstein, Director, 353 Municipal Courts Building.
- New Jersey:**
Perth Amboy----- Legal Aid Committee, Perth Amboy Bar Association, Matthew F. Melko, Chairman, 280 Hobart St.
- New York:**
Albany----- Legal Aid Society of Albany, Inc., Arthur J. Harvey, Attorney, 82 State St.
Buffalo----- Legal Aid Bureau of Buffalo, Inc., Elmer C. Miller, Attorney, 416 Prudential Building.
New York City----- The Legal Aid Society, Louis Fabricant, Attorney, 11 Park Place.
New York City----- National Desertion Bureau, Charles Zunsner, Attorney, 71 West 47th St.
Rochester----- Legal Aid Society, Emery A. Brownell, Attorney, 25 Exchange St.
Yonkers----- Legal Aid Committee, Family Service Society of Yonkers, Miss Julia V. Grandin, General Secretary, 55 South Broadway.
- North Carolina:**
Durham----- Duke University Legal Aid Clinic, John S. Bradley, Director, Law School.
- Ohio:**
Cincinnati----- Legal Aid Society of Cincinnati, George H. Silverman, Attorney, 312 West Ninth St.
Cleveland----- Legal Aid Society of Cleveland, Claude E. Clarke, Attorney, 614 Fidelity Building.
Columbus----- Legal Aid Clinic, George H. Stevens, Director, Ohio State University.
- Oklahoma:**
Tulsa----- Legal Aid Committee of Tulsa County Bar Association, James B. Diggs, Jr., Chairman, Box 661.
- Oregon:**
Portland----- Legal Aid Committee, Oregon State Bar Association, Mrs. Janet W. Starkey, Supervising Attorney, Robert O. Boyd, Chairman, County Court House.
- Pennsylvania:**
Erie----- Legal Aid Department of the Welfare Bureau, Anthony L. Gambatese, Director, 133 West 7th St.
Harrisburg----- Legal Aid Committee, Dauphin County Bar Association, Louis Gordon, Attorney, Calder Building, 16 N. Second St.
Philadelphia----- Legal Aid Society of Philadelphia, George Scott Stewart, Attorney, 400 Harrison Building, 4 South 15th St.
Pittsburgh----- Legal Aid Society, Wayne Theophilus, Attorney, 519 Smithfield St.
- Rhode Island:**
Providence----- Legal Aid Society of Rhode Island, LeRoy G. Pilling, Attorney, 100 North Main St.
- Texas:**
Dallas----- Free Legal Aid Bureau, Mrs. Mabel Spellman Barber, Attorney, Municipal Building.

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- Utah:*
Salt Lake City----- Legal Aid Society, Benjamin Spence, Attorney,
Beason Building.
- Virginia:*
Richmond----- Legal Aid Bureau, Family Service Society of
Richmond, Charles E. A. Knight, Attorney,
221 Governor St.
- Washington:*
Seattle----- Legal Aid Bureau of the Seattle Bar Associa-
tion, James A. Dougan, Director, 527 Railway
Exchange Building.
- Wisconsin:*
Madison----- Legal Aid Bureau of the Dane County Bar As-
sociation, Kermit Caves, Family Welfare
Building, 22 N. Hancock St.
Milwaukee----- Legal Aid Society, Mrs. Julia B. Dolan, Attorney,
502 Safety Building.

The foregoing list of established legal aid organizations was furnished by the National Association of Legal Aid Organizations, Mr. Louis Fabricant, President, 11 Park Place, New York 7, N. Y., and Mr. Emery A. Brownell, Secretary, 25 Exchange Street, Rochester 4, New York.

[A. G. 013.2 (29 Jan 44).]

BY ORDER OF THE SECRETARY OF WAR:

G. C. MARSHALL,
Chief of Staff.

OFFICIAL:

J. A. ULIO,
Major General,
The Adjutant General.

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R-1164—Legal Assistance for Naval Personnel

JAG:J:JL:ac, 26 June 1943

Action: All Ships and Stations

1. The following instructions relative to the establishment of legal assistance offices in the naval service are hereby promulgated:

2. *Purpose.* These instructions are issued for the purpose of establishing in naval districts and elsewhere in the naval service legal assistance offices to provide legal assistance to naval personnel in the conduct of their personal affairs and to expand such services where now being rendered. This action is being taken in cooperation with the American Bar Association and various State bar associations.

3. *Legal-Assistance Offices.* The commandant of each naval district, and the commandant or other commanding officer of each navy yard, naval station, Marine Corps base, Marine barracks, or other naval activity where qualified lawyers are available in the naval service, will establish a legal-assistance office and assign one or more officers to perform duties as hereinafter described. The officer in command of any of the forces afloat may, if considered desirable, also establish a legal-assistance office with such modifications as may be necessary to meet existing conditions. Where a legal office already exists, such legal-assistance office may be a section of, or otherwise assimilated with, such legal office.

4. *Local Supervision.* The district legal officer of each naval district shall, under the direction of the commandant, exercise general supervision and coordination of all legal-assistance offices within the district.

5. *General Supervision.* The general organization, supervision, and direction of such legal-assistance offices and officers is assigned to the Judge Advocate General, who will collaborate with the American Bar Association in the establishment of a system of legal assistance. The district legal officers and other local legal officers will collaborate with the State and local bar associations and legal-aid societies within their respective districts. (See paragraphs 11 and 12.)

6. *Qualifications of Legal-Assistance Officers.* Legal-assistance officers shall be members of the bar of a State, Territory, or the District of Columbia but need not necessarily be commissioned officers. However, where available, officers so designated should possess sufficient maturity and legal experience to inspire confidence and to discharge their duties efficiently. If there is no such qualified person available for such assignment, a suitable officer may be assigned as acting legal-assistance officer until a qualified legal-assistance officer becomes available. Such acting officer may perform all the functions of a legal-assistance officer except giving legal advice and counsel or otherwise practicing law.

7. *Duties and Services of Legal-Assistance Offices.* Legal-assistance officers, in addition to any other duties which may be assigned to them, shall render such personal legal assistance to naval personnel and their dependents (including all components of the Navy, Marine Corps, and Coast Guard, and persons serving with naval forces anywhere, and where necessary the personnel of other branches of the armed forces) as is deemed necessary or desirable for their morale or efficiency, which may include but is not necessarily limited to the following:

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- (a) Establish contact with the committees on war work of bar associations and legal-aid societies for the purpose of arranging for the designation of members of the civilian bar to serve with such legal-assistance offices.
- (b) Collaborate and maintain liaison with such designated civilian lawyers in the organization and operation of any such legal-assistance office.
- (c) Interview, advise, and assist naval personnel and, in proper cases, refer such personnel to an appropriate bar committee or legal-aid organization or to such individual civilian lawyers as may have been designated by such bar committee or organization or other individual lawyers, avoiding, however, at all times in referring legal matters to civilian lawyers which may involve fees favoring any particular civilian lawyer or lawyers directly or indirectly.
- (d) If practicable, make arrangements to have one or more civilian lawyers visit each legal-assistance office at regular intervals during prescribed hours to interview any naval personnel who may desire their advice, counsel, or services. Such visits should be well publicized and, so far as practicable, be confined so as to correspond with the most appropriate intervals in the schedule of naval duties of naval personnel.
- (e) Perform such other services necessary to accomplish the objects and purposes of such legal-assistance offices.
- (f) Legal-assistance officers, however, will not advise or assist naval personnel in any case in which such personnel are or may be involved in an investigation or court martial or other official proceedings. In all such matters legal-assistance officers shall be governed by existing regulations, orders, and practices. Nor will legal-assistance officers appear in person or by pleadings in or before civil courts, boards, or commissions as attorneys for persons otherwise entitled to the advice and counsel of such legal-assistance officers. This provision, however, will not be construed to interfere with the present practice of naval officers appearing in police or other criminal courts as representatives of the commandant or commanding officer where naval personnel may be involved.
- (g) Legal-assistance officers will as far as possible avoid handling legal matters which should in their judgment appropriately be handled by private counsel. In no event should a legal-assistance officer act as a collection agency nor lend its aid to defeat the fair collection or legal enforcement of any just debt or obligation. Also, except in unusual circumstances, legal-assistance officers will render legal service only at the legal-assistance office.

8. *Direct Action of Legal-Assistance Officers.* The judge Advocate General's Office and the district legal officers are authorized to correspond directly with each other and with legal-assistance offices in the performance of their supervisory duties. Except where otherwise ordered by competent authority, all legal-assistance officers are authorized to correspond directly with, and refer legal matters to, legal-assistance offices of other naval districts, yards, or stations and appropriate organizations and persons insofar as they relate to personal legal matters of the persons served.

9. *Confidential and Privileged Character of Services Rendered.* The usual attorney and client relationship shall be maintained by legal-assistance offices. All matters upon which the office is consulted by persons entitled to do so, and the files thereof, will be treated and considered as *confidential and privi-*

leged in a legal rather than a military sense. Such confidential matters will not be disclosed by the personnel of the office to anyone, except upon the specific permission of the person concerned, and such disclosure may not lawfully be ordered by superior naval authority. Strict observance of this rule is essential to the proper working of the office in order to establish confidence in its integrity and to assure all naval personnel regardless of rank or grade that they may disclose frankly and completely all material facts of their legal matters to the office personnel without fear that such confidences will be disclosed or used against them in any way.

10. *Variations in Procedure.* Local conditions may make variations from the above-prescribed procedures necessary for the proper and effective organization and operation of any particular legal-assistance office. For this reason the provisions of these instructions are intended to be flexible and should be liberally construed in order that the purpose for which such office is established may be accomplished.

11. *Present Directory of Bar Association Committees on War Work.—*

- (a) *Committee on War Work of the American Bar Association.* Committee Headquarters: 1002 Hill Building, Washington, D. C. Committee members:
 - Chairman, Tappan Gregory, 19 S. LaSalle St., Chicago, Ill.
 - 1st Judicial Circuit, Donald T. Field, 84 State St., Boston, Mass.
 - 2nd Judicial Circuit, Edward J. Dimock, 67 Wall St., New York City.
 - 3rd Judicial Circuit, Joseph W. Henderson, Packard Building, Philadelphia, Pa.
 - 4th Judicial Circuit, Fred S. Hutchins, Box 854, Winston-Salem, N. C.
 - 5th Judicial Circuit, Alexander W. Smith, Grant Building, Atlanta, Ga.
 - 6th Judicial Circuit, L. C. Spieth, Union Commerce Building, Cleveland, Ohio.
 - 7th Judicial Circuit, Tappan Gregory, 19 S. LaSalle St., Chicago, Ill.
 - 8th Judicial Circuit, John F. Rhodes, Fidelity Building, Kansas City, Mo.
 - 9th Judicial Circuit, A. Crawford Greene, Balfour Building, San Francisco, Calif.
 - 10th Judicial Circuit, Frazer Arnold, First National Bank Building, Denver, Colo.
- (b) *Chairmen of State Bar Association Committees on War Work.*
 - Alabama: E. Burns Parker, Federal Building, Montgomery.
 - Arizona: John C. Haynes, Tucson.
 - Arkansas: Cooper Jacoway, Pyramid Building, Little Rock.
 - California: Arnold Praeger, Rowan Building, Los Angeles.
 - Colorado: Benjamin E. Sweet, 725 E and C Building, Denver.
 - Connecticut: Samuel H. Platcow, 152 Temple St., New Haven.
 - Delaware: Hon. P. Warren Green, Equitable Trust Building, Wilmington.
 - District of Columbia: William R. Lichtenberg, National Press Building, Washington (Committee on Legal Assistance for Servicemen).
 - Florida: Charles A. Mitchell, Vero Beach.
 - Georgia: Hugh Dorsey, Jr., 1425 C. and S. National Bank Building, Atlanta.
 - Idaho: William F. Galloway, Boise.
 - Illinois: George S. McGaughey, 226 W. Washington St., Waukegan.

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Indiana: Jeremiah L. Cadick, Fletcher Trust Building, Indianapolis.

Iowa: Tim J. Campbell, 505 Maytag Building, Newton.

Kansas: Harry W. Colmery, National Bank of Topeka Building, Topeka.

Kentucky: Everett E. Steerman, Emporia (co-chairman).

Louisiana: Henry J. Stites, Starks Building, Louisville.

Maine: Alvin R. Christovich, 1914 American Bank Building, New Orleans.

Maryland: Clement F. Robinson, 85 Exchange St., Portland.

Massachusetts: B. Harris Henderson, 231 St. Paul St., Baltimore.

Michigan: Francis X. Reilly, Keating Building, Westborough.

Minnesota: Carl H. Smith, Bay City Bank Building, Bay City.

Mississippi: Hon. Albin S. Pearson, District Court, St. Paul.

Missouri: Forrest G. Cooper, Indianola.

Montana: Harry S. Rooks, 407 North Eighth St., St. Louis.

Nebraska: J. B. C. Knight, Anaconda.

Nevada: Barton H. Kuhns, 930 First National Bank Building, Omaha.

New Hampshire: John E. Robinson, First National Bank Building, Reno.

New Jersey: Louis E. Wyman, 45 Market St., Manchester.

New Mexico: Hon. Richard Hartshorne, Hall of Records, Newark.

New York: Hon. John C. Watson, Santa Fe.

North Carolina: Edward Schoeneck, State Power Building, Syracuse.

North Dakota: John S. Bradway, Duke University, Durham.

Ohio: O. B. Burtness, Grand Forks.

Oklahoma: Lawrence G. Spieth, Union Commerce Building, Cleveland.

Oregon: Randell S. Cobb, Assistant Attorney General, Oklahoma City.

Pennsylvania: Hon. Walter L. Tooze, Sailing Building, Portland.

Rhode Island: Joseph W. Henderson, Packard Building, Philadelphia.

South Carolina: W. L. Frost, 1016 Union Trust Building, Providence.

South Dakota: Pinckney L. Cain, 1001 Palmetto Building, Columbia.

Tennessee: Claude A. Hamilton, Security National Bank Building, Sioux Falls.

Texas: J. Mac Peebles, National Life Building, Nashville.

Utah: Claude V. Birkhead, 1512 Majestic Building, San Antonio.

Vermont: H. P. Thomas, Templeton Building, Salt Lake City.

Virginia: John J. Deschenes, Burlington.

Washington: A. Russell Bowles, Mutual Building, Richmond.

West Virginia: John C. Parker, Jr., Franklin (additional).

Wisconsin: Thomas H. Willcox, National Bank of Commerce Building, Norfolk (additional).

Wyoming: Charles H. Paul, White Building, Seattle.

Wisconsin: Charles McCamic, National Bank of West Virginia Building, Wheeling.

Wyoming: Reginald I. Kenney, Wells Building, Milwaukee.

Wyoming: Marshall S. Reynolds, Cheyenne.

12. Directory of Established Legal Aid Organizations.

California:

Alameda County..... Legal Aid Society of Alameda County, Samuel H. Wagener, Attorney, Park Building, 473 14th St., Oakland.

Los Angeles..... Legal Aid Foundation, Edwin F. Frank, Chief Counsel, 440 Cotton Exchange Building, 106 W. Third St.

San Francisco..... Legal Aid Society of San Francisco, Alex Sherriffs, Attorney, 1160 Phelan Building.

Colorado:

Denver..... Legal Aid Society of Denver, Paul F. Irey, Attorney, 314 Fourteenth St.

Connecticut:

Bridgeport..... Legal Aid Division, Department of Public Charities, Oscar A. H. Dannenberg, Attorney, Public Welfare Building.

Hartford..... Legal Aid Bureau, Alfred F. Kotchen, Attorney, Municipal Building.

New Haven..... Municipal Legal Aid Bureau, Max H. Schwartz, Attorney, City Hall.

District of Columbia:

Washington..... Legal Aid Bureau of the District of Columbia, Miss Beatrice A. Clephane, Attorney, 1400 L St. NW.

Florida:

Jacksonville..... Duval County Legal Aid Association, Inc., M. G. Boyce, Executive Secretary, 400 Consolidated Building.

Miami..... Legal Aid Committee, Dade County Bar Association, Max R. Silver, Legal Aid Counsellor, 52 West Flagler St.

Tampa..... Legal Aid Bureau of Tampa, Fred T. Saussey, Jr., Attorney, Wallace S. Building.

Georgia:

Atlanta..... Atlanta Legal Aid Society, J. E. Thrift, Attorney, 216 Fulton County Court House.

Illinois:

Chicago..... Legal Aid Bureau of United Charities, Mrs. Marguerite R. Gariepy, Attorney, 330 South Wells St.

Chicago..... Legal Aid Department of the Jewish Social Service Bureau, Mrs. Sarah B. Schaar, Supervisor, 130 N. Wells St.

Indiana:

Indianapolis..... Legal Aid Society, George W. Eggleston, Attorney, 224 North Meridian St.

Iowa:

Des Moines..... Legal Aid Department, Polk County, Department of Social Welfare, Carl B. Parks, Attorney, 701 Fifth Ave.

- Kentucky:
Louisville..... The Legal Aid Society of Louisville, Emmet R. Field, Attorney, 312 Realty Building.
- Louisiana:
New Orleans..... Legal Aid Bureau, Eugene Thorpe, Attorney, 602 United Fruit Company Building.
- Maryland:
Baltimore..... Legal Aid Bureau, Inc., Gerald Monsman, Counsel, 7 St. Paul St.
- Massachusetts:
Boston..... The Boston Legal Aid Society, Raynor M. Gardiner, General Counsel, 16-A Ashburton Place.
New Bedford..... Legal Aid Society, C. C. Connor, Attorney, 234 Union St.
Springfield..... The Legal Aid Society of Springfield, Inc., Mrs. Gertrude D. Meaney, Attorney in Charge, 182 State St.
- Michigan:
Detroit..... Legal Aid Bureau of the Detroit Bar Association, Louis C. Miriani, Attorney, 51 West Warren Ave.
Grand Rapids..... Legal Aid Bureau of the Family Welfare Association, Richard C. Annis, Attorney, 306 Association of Commerce Building.
Lansing..... Legal Aid Bureau, John Brattin, 573 Hollister Building.
- Minnesota:
Minneapolis..... The Legal Aid Society of Minneapolis, Inc., Richard H. Bachelder, Attorney, 200 Citizens Aid Building.
St. Paul..... Legal Aid Department of the Family Service, Rollin West, Attorney, Wilder Building.
- Missouri:
Kansas City..... Legal Aid Bureau, Otto O. Bowen, Commissioner, City Hall.
St. Louis..... Legal Aid Bureau, Department of Public Welfare, Milton C. Lauenstein, Director, 353 Municipal Courts Building.
- New Jersey:
Perth Amboy..... Legal Aid Committee, Perth Amboy Bar Association, Matthew F. Melko, Chairman, 214 Smith St.
- New York:
Albany..... Legal Aid Society of Albany, Inc., Arthur J. Harvey, Attorney, 82 State St.
Buffalo..... Legal Aid Bureau of Buffalo, Inc., Elmer C. Miller, Attorney, 416 Prudential Building.
New York City..... The Legal Aid Society, Louis Fabricant, Attorney, 11 Park Place.
New York City..... National Desertion Bureau, Charles Zunsler, Attorney, 71 West 47th St.

- Rochester..... Legal Aid Society, Emery A. Brownell, Attorney, 25 Exchange St.
- Yonkers..... Legal Aid Committee, Family Service Society of Yonkers, Miss Julia V. Grandin, General Secretary, 55 South Broadway.
- North Carolina:
Durham..... Duke University Legal Aid Clinic, John S. Bradway, Director, Law School.
- Ohio:
Cincinnati..... Legal Aid Society of Cincinnati, George H. Silverman, Attorney, 312 West Ninth St.
Cleveland..... Legal Aid Society of Cleveland, Claude E. Clark, Attorney, 614 Fidelity Building.
Columbus..... Legal Aid Clinic, Professor Silas A. Harris, Director, Ohio State University.
- Oklahoma:
Tulsa..... Legal Aid Committee of Tulsa County Bar Association, Ralton P. Edmonds, Chairman, % Legal Aid Department, Carter Oil Company, National Bank of Tulsa Building.
- Oregon:
Portland..... Legal Aid Committee, Oregon State Bar Association, Mrs. Janet W. Starkey, Supervising Attorney, Judge James W. Crawford, Chairman, County Court House.
- Pennsylvania:
Erie..... Legal Aid Department of the Welfare Bureau, Anthony I. Gambatese, Director, 133 West 7th St.
Harrisburg..... Legal Aid Committee, Dauphin County Bar Association, William B. Rosenberg, Attorney, 603 State Theater Building.
Philadelphia..... Legal Aid Society of Philadelphia, George Scott Stewart, Attorney, 400 Harrison Building, 4 South 15th St.
Pittsburgh..... Legal Aid Society, Wayne Theophilus, Attorney, 519 Smithfield St.
- Rhode Island:
Providence..... Legal Aid Society of Rhode Island, LeRoy G. Pilling, Attorney, 100 North Main St.
- Texas:
Dallas..... Free Legal Aid Bureau, Miss Mabel Spellman, Attorney, Municipal Building.
- Utah:
Salt Lake City..... Legal Aid Society, Benjamin Spence, Attorney, Beason Building.
- Virginia:
Richmond..... Legal Aid Bureau, Family Service Society of Richmond, Charles E. A. Knight, Attorney, 221 Governor St.

Washington:

Seattle..... Legal Aid Bureau of the Seattle Bar Association, James A. Dougan, Director.

Wisconsin:

Madison..... Legal Aid Bureau of the Dane County Bar Association, Charles Van Dell, Cantwell Building.

Milwaukee..... Legal Aid Society, Mrs. Julia B. Dolan, Attorney, 502 Safety Building.

13. Where legal-assistance offices are to be established, as herein contemplated, they should be established as soon as possible without further directive.
—SecNav. James Forrestal.

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List of materials furnished to all legal assistance offices
as of 17 January 1944.

Legal Assistance Memorandum No. 1, 22 April 1943, and the following inclosures thereto:

- SPJG Op. #47 (1942); SPJGA 300.9, 8 June 1942, Memorandum on POWERS OF ATTORNEY.
- Op. #16. Military Affairs, JAG 300.9, 19 August 1941, Memorandum on WILLS.
- Pamphlet on SOLDIERS' and SAILORS' CIVIL RELIEF ACT (West Publishing Company).
- A MANUAL OF LAW for use by Advisory Boards for Registrants.
- War Department pamphlet PERSONAL AFFAIRS OF MILITARY PERSONNEL AND AID FOR THEIR DEPENDENTS (1943 edition),
- Circular No. 74, 16 March 1943. (Legal advice and assistance for military personnel)
- War Department pamphlet - BENEFIT GUIDE.

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Legal Assistance Memorandum No. 2, 20 May 1943, and the following inclosures thereto:

- Circular No. 32, War Department, 30 January 1943 (Oaths and acknowledgments under Article of War 114).
- Circular No. 111, War Department, 29 April 1943. (Amendments to Cir. No. 74, W. D., 1943).
- Adjutant General's Office Memorandum No. S25-2-43, 15 May 1943. (Legal advice and assistance for military personnel - Train wrecks resulting in injury or death while traveling under orders).

Legal Assistance Memorandum No. 3, 15 June 1943, and the following inclosures thereto:

- Current Tax Payment Act of 1943 with Explanation (Commerce Clearing House, Inc.). Note: The supply is now exhausted and the pamphlet is out of print.
- Pamphlet - THE RED CROSS AND THE ARMY.

Legal Assistance Memorandum No. 4, 30 June 1943, and the following inclosures thereto:

- House Document No. 237, 78th Congress, 1st Session (Current Tax Payment Act of 1943).
- SPJGT 1943/9983, Memorandum on Current Tax Payment Act of 1943.
- Mimeographed List of Chairmen of State Bar Association Committees on War Work, 17 June 1943.

Legal Assistance Memorandum No. 5, 22 July 1943, and the following inclosure thereto:

- Navy Department Bulletin, R-1164, 1 July 1943, Legal Assistance for Naval Personnel.

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Legal Assistance Memorandum No. 6, 24 August 1943, and the following inclosures thereto:

- Circular No. 156, War Department, 8 July 1943. (Amendment to Cir. No. 74, W.D., 1943).
- Unnumbered War Department Circular, 13 August 1943 - Current Payment and Deferments of Federal Income Tax.
- Treasury Department 1040-ES - Form, Instructions, and Work Sheet. (Declaration of Estimated Income and Victory Tax for 1943).

Legal Assistance Memorandum No. 7, 25 September 1943, and the following inclosures thereto:

- Circular No. 217, War Department, 18 September 1943. (Acknowledgments, Oaths, etc. under state laws).
- War Department pamphlet - Soldiers' and Sailors' Civil Relief Act of 1940 and Amendments of 1942.
- Mimeographed list of Chairmen of State Bar Association Committees on War Work, 25 September 1943.

Legal Assistance Memorandum No. 8, 5 November 1943, with the following inclosure thereto:

- Suggested form of Report of Legal Assistance Officers.

Legal Assistance Memorandum No. 9, 2 December 1943, and the following inclosures thereto:

- Circular No. 292, War Department, 10 November 1943. (Acknowledgments, Oaths, etc., amendments to Cir. No. 217, W.D., 1943).
- Compendiums of Laws - California, Indiana, Illinois, Louisiana, Michigan. (Prepared by American Bar Association).

Legal Assistance Memorandum No. 10, 17 January 1944, and the following inclosures thereto:

- Brief Case (Nov. 1943) - Article on Marriage in Absentia. (Published by National Association of Legal Aid Organizations).
- House Document No. 285, 78th Congress, 1st Session - Handbook for Servicemen.
- List of material furnished to date.
- Compendiums of Laws - North Carolina, Ohio, South Dakota, Washington, West Virginia. (Prepared by American Bar Association).

List of materials furnished to all legal assistance
offices from 17 January 1944 to 15 June 1944.

MEMORANDUM SJGT 1944/1811, undated, on Federal Income Tax Returns,
and the following inclosures thereto:

Treasury Department pamphlet - YOUR FEDERAL INCOME TAX.
Federal Income Tax 1943, Special Benefits to Members of the Armed
Forces (Lt. Todd, USNR). [Note: The supply is now exhausted
and the pamphlet is out of print.]
Compendiums of Laws - Arizona, North Dakota, Oklahoma, Pennsylvania,
Rhode Island (Prepared by American Bar Association).

Legal Assistance Memorandum No. 11, 14 February 1944, and the following
inclosures thereto:

Circular No. 63, War Department, 11 February 1944 (Final 1943
Federal Income Tax Returns).
Commerce Clearing House pamphlet - Servicemen and Their Wives Federal
Income Tax Procedure.
Compendiums of Laws - Alabama, Colorado, Connecticut, Delaware,
District of Columbia, Florida, Kansas, Kentucky, Massachusetts,
Minnesota, Missouri, Montana, Nebraska, New Hampshire, New
Mexico, Nevada, Utah, Wisconsin (Prepared by American Bar
Association).

Legal Assistance Memorandum No. 12, 24 February 1944, and the following
inclosures thereto:

Circular No. 310, War Department, 26 November 1943 (Servicemen's
Dependents Allowance Act of 1942 - Compilation).

Legal Assistance Memorandum No. 13, 21 March 1944, and the following
inclosures thereto:

Circular No. 73, War Department, 17 February 1944 (Legal Advice and
Assistance for Military Personnel).
Circular No. 112, War Department, 20 March 1944 (1944 Declaration of
Estimated Income and Victory Tax).
Selective Service booklet - Information for Servicemen.
Pamphlet (reprinted by The Lawyers Co-operative Publishing Co. from
ALR, Annotated) - Domicil or Residence of Person in the Armed
Forces.
Mimeographed Summary of "Policy of State and Local Bar Committees
on War Work in Handling of Domestic Relations Matters for
Servicemen.

Legal Assistance Memorandum No. 14, 14 April 1944, and the following in-
closures thereto:

Circular No. 54, War Department, 7 February 1944 (Army Emergency
Relief and American Red Cross - Operating Agreement).
Circular No. 97, War Department, 8 March 1944 (Wills of Military
Personnel).

Legal Assistance Memorandum No. 15, 5 May 1944, and the following inclosures thereto:

War Department Pamphlet No. 21-5, 1 April 1944 - Personal Affairs of Military Personnel and Aid for Their Dependents.
Compendiums of Laws - Iowa, Maine, Maryland, Mississippi, New Jersey, Oregon, Tennessee, Texas, Wyoming (Prepared by American Bar Association).

Legal Assistance Memorandum No. 16, 15 June 1944, and the following inclosures thereto:

OIA pamphlet - Questions and Answers on Federal Rent Control.
Pamphlet - Wills for Servicemen (Prepared by National Association of Legal Aid Organizations).
List of materials furnished from 17 January 1944 to 15 June 1944.

List of Materials Furnished to all Legal
Assistance Offices from 15 June 1944 to 2 January 1945.

Legal Assistance Memorandum No. 17, 14 July 1944, and the following inclosure thereto:

"Brief Case (May, 1944) - Article on Divorce, Annulment and Separation in the United States. (Published by National Association of Legal Aid Organizations).

Legal Assistance Memorandum No. 18, 10 August 1944, and the following inclosures thereto:

List of Chairmen of Local Bar Association Committees on War Work,
10 August 1944. (Mimeographed)
Compendiums on laws - Arkansas, Georgia, Idaho, New York, South Carolina,
Vermont and Virginia (prepared by American Bar Association).

Legal Assistance Memorandum No. 19, 28 September 1944, and the following inclosures thereto:

Policy of legal aid organizations in servicemen's divorce cases. (Mimeographed)
Circular No. 305, War Department, 18 July 1944 (Missing Persons Act).
Public Law 346 - 78th Congress ("G. I. Bill of Rights").
Public Law 359 - 78th Congress (Veterans Preference Act).
Public Law 415 - 78th Congress (Amendment to S&SCRA).

Legal Assistance Memorandum No. 20, 17 November 1944, and the following inclosures thereto:

Directory of Bar Organizations, 17 November 1944. (Mimeographed)
Circular No. 419, WD, 1944.
Senate Document No. 152, 78th Cong. 2nd Sess.

Legal Assistance Memorandum No. 21, 10 December 1944, and the following inclosures thereto:

Laws on Domestic Relations, Supplement to Compendium of Laws.
(Prepared by American Bar Association)

Legal Assistance Memorandum No. 22, 2 January 1945, and the following inclosures thereto:

Circular No. 475, WD, 1944 (Federal Income Tax).
Individual Income Tax Act of 1944 with Explanation (Prentice-Hall, Inc.).
How to Prepare Your Personal Income Tax Return (Prentice-Hall, Inc.).
List of Materials Furnished from 15 June 1944 to 2 January 1945.

Legal Assistance Memorandum No. 23, 31 January 1945, and the following inclosures thereto:

Matrimonial Data Sheet.

Cir. No. 397, WD, 1944 (State taxation of Military Personnel).

Public Law 465, 78th Cong. (Settling accounts of deceased military personnel).

Treasury Dept. Release - "Your Federal Income Tax", 2 Jan 1945.

Legal Assistance Memorandum No. 24, 20 February 1945, and the following inclosures thereto:

Commerce Clearing House pamphlet - Federal Income Tax Procedure of Servicemen and Wives.

Mimeographed copy of parts of Nationality Act as amended.

Legal Assistance Index, 16 March 1945.

Legal Assistance Memorandum No. 25, 20 April 1945, and the following inclosures thereto:

Extracts from two decisions of the Assistant Comptroller General of the United States relating to "Absentee Marriages".

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The Secretary of War
of the United States of America

has awarded this
Certificate of Appreciation

to

in grateful recognition of the active and effective participation of this organization, and of the individuals connected therewith, in the plan sponsored by the War Department and the American Bar Association to provide adequate legal assistance to military personnel and their dependents. The contribution of time and professional services made by patriotic civilian lawyers under this plan has materially enhanced the morale of the Army and the success of the war effort.



Countersigned:

MAJOR GENERAL,
THE JUDGE ADVOCATE GENERAL

Washington, D. C. _____, 194__

SECRETARY OF WAR

LIST OF STATE BAR ORGANIZATIONS
AWARDED
WAR DEPARTMENT CERTIFICATES OF APPRECIATION
1 May 1944 to 1 May 1945

Name of Bar Organization	Date	Place of Presentation	Bar official receiving award	Officer making presentation
Alabama State Bar Association	6 Jul 1944	Montgomery, Alabama	Clarence Inzer, President.	Maj. Seybourn H. Lynne, Hq. 4th Service Command
State Bar of Arizona	29 Nov 1944	Phoenix, Arizona	T. J. Byrne, President	Lt. Col. Albert E. Sheets, Hq. 9th Service Command
Bar Association of Arkansas	17 Nov 1944	Little Rock, Arkansas	Terrell Marshall, President	Lt. Col. Frank A. Lowry, Camp Joseph T. Robinson
State Bar of California	21 Sep 1944	Los Angeles, California	Russell F. O'Hara, President	Maj. Herbert E. Wenig, Hq. Western Defense Command
Colorado Bar Association	14 Oct 1944	Colorado Springs, Colorado	John R. Clark, President	Lt. Col. Milton J. Blake, JAGO
State Bar Association of Connecticut	16 Oct 1944	Hartford, Connecticut	Samuel H. Platcow, Chairman, Committee on War Work	Brig. Gen. Thomas H. Green, Deputy Judge Advocate General
Delaware State Bar Association	8 Sep 1944	Wilmington, Delaware	William Potter, President	Maj. Harold D. Beatty, JAGO
Bar Association of the District of Columbia	13 Jun 1944	Washington, D. C.	Milton W. King, President	Lt. Col. Milton J. Blake, JAGO

Name of Bar Organization	Date	Place of Presentation	Bar official receiving award	Officer making presentation
Florida State Bar Association	30 May 1944	Miami Beach, Florida	E. Harris Drew, President	Col. Edward B. Schlant, Hq. 4th Service Command
Georgia Bar Association	31 May 1944	Atlanta, Georgia	Marvin Allison, President	Lt. Col. John J. Jones, Hq. 4th Service Command
Idaho State Bar	6 Jul 1944	Boise, Idaho	Paul W. Hiatt, President	Lt. Col. Milton J. Blake, JAGO
Illinois State Bar Association	14 Jun 1944	Danville, Illinois	Warren B. Buckley, President	Maj. George H. Leonard, Hq. 6th Service Command
Indiana State Bar Association	1 Sep 1944	Indianapolis, Indiana	Carl M. Gray, President	Brig. Gen. John M. Weir, Asst. Judge Advocate General
Iowa State Bar Association	3 Jun 1944	Des Moines, Iowa	Pvt. Kenneth E. Neu, former President Iowa Junior Bar Association	Lt. Col. Bernard A. Brown, Hq. 7th Service Command
Bar Association of the State of Kansas	27 May 1944	Wichita, Kansas	E. C. Flood, President	Lt. Col. Henry C. Chiles, Hq. 7th Service Command
Kentucky State Bar Association	28 Sep 1944	Louisville, Kentucky	Henry J. Stites, Chairman, Committee on War Work	Maj. Herbert H. Lind, Hq. 5th Service Command
Louisiana State Bar Association	28 Apr 1945	New Orleans, Louisiana	Alvin R. Christovich, Chairman, Committee on War Work	Lt. Col. Paul M. Hebert, JAGO
Maine State Bar Association	3 Nov 1944	Portland, Maine	Charles E. Gurney, President	Capt. Orson N. Tolman, Hq. 1st Service Command
Maryland State Bar Association	1 Jul 1944	Baltimore, Maryland	Frederick W. C. Webb, President	Lt. Col. Charles M. Dickson, 3rd Service Command

Name of Bar Organization	Date	Place of Presentation	Bar official receiving award	Officer making presentation
Massachusetts Bar Association	10 Jun 1944	Swampscott, Massachusetts	Edwin O. Proctor, President	Lt. Col. Daniel L. O'Donnell, Hq. 1st Service Command
State Bar of Michigan	7 Sep 1944	Grand Rapids, Michigan	Charles M. Humphrey, President	Col. Edward H. Young, JAG School
Minnesota State Bar Association	13 Jul 1944	Duluth, Minnesota	William W. Gibson, President	Lt. Col. Henry C. Chiles, Hq. 7th Service Command
Mississippi State Bar	1 Jun 1944	Jackson, Mississippi	Ross Barnett, President and Forrest Cooper, Chairman, Committee on War Work	Lt. Col. Joseph E. Berman, Hq. 4th Service Command
Missouri Bar Association	29 Sep 1944	St. Louis, Missouri	Allen L. Oliver, President	Lt. Col. Henry C. Chiles, Hq. 7th Service Command
Montana Bar Association	15 Jul 1944	Billings, Montana	W. E. Keeley, President	Capt. Robert O. Hillis, Hq. 9th Service Command
Nebraska State Bar Association	28 Dec 1944	Omaha, Nebraska	George L. DeLacy, President	Lt. Col. Henry C. Chiles, Hq. 7th Service Command
State Bar of Nevada	18 Jan 1945	Reno, Nevada	E. F. Iunsford, President	Maj. Francis P. Walsh, Hq. 9th Service Command
New Hampshire Bar Association	24 Jun 1944	Nashua, New Hampshire	Louis E. Wyman, Chairman, Committee on War Work	Capt. Orson N. Tolman, Hq. 1st Service Command
New Jersey State Bar Association	3 Jun 1944	Atlantic City, New Jersey	Augustus C. Studer, President	Lt. Col. Milton J. Blake, JAGO

Name of Bar Organization	Date	Place of presentation	Bar official receiving award	Officer making presentation
State Bar of New Mexico	14 Oct 1944	Albuquerque, New Mexico	John C. Watson, Chairman, Committee on War Work	Maj. Ardell M. Young, Hq. 8th Service Command
New York State Bar Association	20 Jan 1945	New York, New York	Jackson A. Dykman, President	Lt. Col. Harold D. Beatty, JAGO
North Carolina Bar Association	17 Jun 1944	Raleigh, North Carolina	W. Frank Taylor, President	Maj. Clarence W. Hall, Hq. 4th Service Command
State Bar Association of North Dakota	24 Aug 1944	Minot, North Dakota	O. B. Herigstad, President	Maj. Ronald N. Davies, Hq. Fort Snelling
Ohio State Bar Association	10 Nov 1944	Columbus, Ohio	Waymon B. McLaskey, President	Maj. Herbert H. Lind, Hq. 5th Service Command
Oklahoma Bar Association	17 Nov 1944	Tulsa, Oklahoma	A. W. Trice, President	Maj. Albert G. Kulp, JAGO
Oregon State Bar	29 Sep 1944	Gearhart, Oregon	J. F. Kilkenny, President	Colonel. Thomas J. White, Hq. 9th Service Command
Pennsylvania Bar Association	23 Jun 1944	Atlantic City, New Jersey	William C. Mason, President	Lt. Col. Milton J. Blake, JAGO
Rhode Island Bar Association	18 Oct 1944	Providence, Rhode Island	Frederick R. Perkins, President	Lt. Col. Clifton I. Munroe, Hq. 1st Service Command
South Carolina Bar Association	21 Nov 1944	Columbia, South Carolina	Pinckney L. Cain, Chairman, Committee on War Work	Maj. Robert T. Ashmore, Hq. 4th Service Command
State Bar of South Dakota	10 Aug 1944	Huron, South Dakota	W. W. French, President	Lt. Col. Henry C. Chiles, Hq. 7th Service Command

Name of Bar Organization	Date	Place of presentation	Bar official receiving award	Officer making presentation
Bar Association of Tennessee	2 Jun 1944	Nashville, Tennessee	Albert W. Stockell, President, J. Mac Peebles, Chairman, Committee on War Work	Lt. Col. Cecil C. Wilson, Hq. 4th Service Command
State Bar of Texas	28 Jun 1944	Fort Worth, Texas	Major T. Bell, President	Col. Julian C. Hyer, Hq. 8th Service Command
Utah State Bar	6 Jan 1945	Salt Lake City, Utah	Melvin C. Harris, President	Col. Thomas J. White, Hq. 9th Service Command
Vermont Bar Association	4 Oct 1944	Montpelier, Vermont	Frank E. Barber, President	Maj. Leon D. Latham, Hq. 1st Service Command
Virginia State Bar and Virginia State Bar Association	3 Aug 1944 3 Aug 1944	Roanoke, Virginia Roanoke, Virginia	John C. Parker, Jr., President Col. Christopher B. Garnet, President	Lt. Col. Berryman Green, JAGO Lt. Col. Berryman Green, JAGO
Washington State Bar Association	29 Sep 1944	Tacoma, Washington	Mark M. Houlton, President	Lt. Col. Donald L. Gaines, Fort Lewis
West Virginia Bar Association	30 Sep 1944	Charleston, West Virginia	Homer A. Holt, President	Maj. Herbert H. Lind, Hq. 5th Service Command
State Bar Association of Wisconsin	23 Jun 1944	Milwaukee, Wisconsin	Richard T. Reinhold, President	Brig. Gen. James E. Morrisette, Assistant Judge Advocate General
Wyoming State Bar	25 Aug 1944	Casper, Wyoming	Marshall S. Reynolds, President	Lt. Col. Henry C. Chiles, Hq. 7th Service Command
National Association of Legal Aid Organizations	12 Oct 1944	Kansas City, Missouri	Louis Fabricant, President	Lt. Col. Milton J. Blake, JAGO