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The Deliberative Privilege under M.R.E. 509 *

Major Larry R. Dean **
Instructor, Criminal Law Division, TJAGSA

I. Introduction

> Do you swear (or affirm) that you will faithfully perform all the duties incumbent upon you as a member of this court: that you will faithfully and impartially try, according to the evidence, your conscience, and the laws applicable to trials by courts-martial, the case of the accused now before this court: and that you will not disclose or discover the vote or opinion of any particular member of the court upon a challenge or upon the findings or sentence unless required to do so in due course of law, so help you God?[1]

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*The opinions and conclusions expressed in this article are those of the author and do not necessarily represent the views of The Judge Advocate General's School, the Department of the Army, or any other governmental agency.

**JAGC, U.S. Army. Former military judge, USALSA, stationed at Ft. Carson, Colorado, 1977-79; assigned to Office of the Staff Judge Advocate, HQ, 5th Infantry Div. (Mech.), Ft. Polk, La., 1974-77. B.S., 1970, Univ. of So. Miss.; J.D., 1973, Tulane University. Completed 28th Judge Advocate Officer Graduate Course, TJAGSA, 1979-80.

[1] U.S. Dep't of Army, Pamphlet 27-15, Military Justice Handbook, Trial Guide 26 (1980); Manual for Courts-

This oath, administered to the court members at the beginning of each trial, emphasizes the weighty task being undertaken and mandates that members may breach the secrecy of their deliberations only when required to do so in "due course of law."[2] This latter aspect of the oath is an embodiment of a segment of law that has long recognized the inviolability of the deliberations of court members. Only in limited circumstances may the sanctity of the deliberative process be breached.

II. Extent of the Privilege

Military Rule of Evidence 509 (hereinafter referred to as M.R.E. 509) preserves the sanctity of the deliberative process and, concomitantly, recognizes the court member's oath by establishing a "privilege" for "... the deliberations of courts ..."[3] The most important aspect of M.R.E. 509 is that the members are precluded from impeaching their own verdict.[4] This goal is achieved by prohibiting, except under limited circumstances, testimony or affidavits by a court member alleging an impropriety in the deliberative process. These limited circumstances, exceptions to the privilege, are set forth in Military Rule of Evidence 606(b) (hereinafter referred to as M.R.E. 606(b)). Under these exceptions, a court member can ignore the confidential relationship and

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Martial, United States, 1969 (Rev. ed.), para. 114*b* (hereinafter cited as MCM, 1969).

[2] According to MCM, note 1, *supra*, para. 77*a*, a court member violates the oath by divulging the vote or opinion of any member.

[3] Rule 509, M.R.E., provides that:

> [e]xcept as provided in Rule 606, the deliberations of courts and grand and petit juries are privileged to the extent that such matters are privileged in trial of criminal cases in the United States courts, but the results of the deliberations are not privileged.

The text of the Military Rules of Evidence may be found in the new Appendix 18 to the Manual for Courts-Martial, added by Change 3, dated 1 September 1980; and also in West's Military Justice Reporter at 8 M.J. LXVII through CCXXXIX (1980). The Military Rules of Evidence because law effective on September 1, 1980, as a result of Exec. Order No. 12,198, published at 45 Fed. Reg. 16,932 (1980).

Readers of the present article may be interested in *Privileges Under the Miltiary Rules of Evidence*, by Captain Joseph A. Woodruff, published at 92 Mil. L. Rev. 5 (spring 1981).

[4] MCM, note 1, *supra*, para. 151*a* accomplished the same result.

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become a witness or offer an affidavit on the following issues:

> ... Whether extraneous prejudicial information was improperly brought to the attention of the members of the court-martial, whether any outside influence was improperly brought to bear upon the members, or whether there was unlawful command influence.[5]

While this rule may operate to subject the accused to a finding or sentence that was not reached in accordance with law, this potentially harsh situation is the result of a policy decision which encourages members to have open discussions during deliberations without fear of reprisal, and which promotes the finality of verdicts. The examination of the case law in this article explains the rule, its exceptions, and the harshness of the rule to the accused.

The privilege is clearly defined by *United States v. Perez-Pagan.*[6] In *Perez-Pagan,* an affidavit by a court member established that the members ignored one of the judge's instructions and used an improper voting procedure. The Army Court of Military Review held that the sanctity of the deliberations must be preserved and refused to consider the affidavit as impeaching the verdict. The same court considered the impeachement issue again in *United States v. Higdon,*[7] and reached a similar result. In *Higdon,* affidavits established that the members in reaching their findings took into account the consequences of the acquittal, the expense of bringing the accused to trial, and the probability that other evidence existed which was not presented. The court refused to allow the findings to be impeached and rejected the affidavits. In *United States v. Harris,*[8] the alleged impropriety was that the sentence had been reached by the "flip of a coin." The court noted the desire for unhampered jury discussions and the desirability of finality of verdicts, and held the privilege applicable. The sentence could not be impeached.

When the privilege applies, it prohibits not only testimony or affidavits by court members but also by third parties. The *Harris* court refused to accept an affidavit by the accused who overheard the members in the deliberation room. *Perez-Pagan* rejected statements and evidence presented by a court reporter. In refusing to consider voting documents removed from the deliberation room by the reporter after trial, the court characterized the documents collected by the reporter as "purloined".[9] In another case, the court rejected statements by the defense counsel who attempted to impeach the verdict.[10] Fairly stated, the privilege extends to all third parties. Thus, in *United Sates v. Bourchier,*[11] the Court of Military Appeals refused to allow the verdict to be impeached by a third party who overheard a conversation about an impropriety that occurred during deliberations. If the rule did not apply to third parties, these individuals could virtually vitiate

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[5] Mil. R. Evid. 606(b) provides that:

> [u]pon an inquiry into the validity of the findings or sentence, a member may not testify as to any matter or statement occurring during the course of the deliberations of the members of the court-martial or to the effect of anything upon the member's or any other member's mind or emotions as influencing the member to assent to or dissent from the findings or sentence or concerning the member's mental process in connection therewith, except that a member may testify on the question whether extraneous prejudicial information was improperly brought to the attention of the members of the court-martial, whether any outside influence was improperly brought to bear upon any member, or whether there was unlawful command influence. Nor may the member's affidavit or evidence of any statement by the member concerning a matter about which the member would be precluded from testifying be received for these purposes.

[6] 47 C.M.R. 719 (A.C.M.R. 1973).

[7] 2 M.J. 445 (A.C.M.R. 1975).

[8] 32 C.M.R. 878 (A.F.B.R. 1962).

[9] 47 C.M.R. at 720.

[10] United States v. Rogers, CM 436957 (A.C.M.R. 18 Sep. 1978) (unpublished).

[11] 17 C.M.R. 15 (C.M.A. 1954).

the privilege and its desired objective of deliberation room sanctity by becoming uninvited eavesdroppers.

III. Exceptions to the Privilege

Prior to the adoption of the Miltiary Rules of Evidence, there was only one recognized exception to the privilege; if "extraneous prejudicial information"[12] was brought to the court's attention, testimony and affidavits were permitted in order to reveal the nature of the matter involved. Now three grounds are recognized as exceptions. The exceptions are expanded by M.R.E. 606(b) to include not only extraneous prejudicial information but also improper outside influence on a member and unlawful command influence.[13]

"Extraneous prejudicial information" is just what the phrase indicates—prejudicial information improperly brought to the court's attention. In *United States v. Thompson,*[14] certain court members observed a bulletin board during a recess which indicated the sentence of a co-accused. That sentence was later discussed in the deliberation room in the presence of other members. The Court determined that this improper consideration of the conviction and sentence of a co-accused during deliberations on the sentence amounted to extraneous prejudicial information. Consequently, the Court accepted the affidavits of the members offered to impeach the sentence. Similarly, prejudicial newspaper accounts taken into the deliberation room,[15] and prejudicial remarks by a bailiff to a court member,[16] have been considered to be extraneous prejudicial information.

Under M.R.E. 606(b), unlawful command influence, whether exerted from inside or outside the deliberation room, is not privileged and can be attacked. Pre-rule cases were in disagreement as to whether in-court command influence was privileged. In *United States v. Lill,*[17] the Army Board of Review held in 1954 that certain actions by a senior member were not a basis for impeaching the verdict. The member, a general officer, told some junior members that they were "stupid as hell" when they talked about acquittal, was loud and domineering, and used rank over the junior members during the deliberations. *Lill* is probably contrary to the 1957 case of *United States v. Connors.*[18] In *Connors,* the senior member of the court suggested that an excessive sentence be adjudged so the convening authority could exercise clemency. The court acknowledged that, traditionally, extraneous influence was the only exception to the privilege, but noted that the exception may be broadened if there is "good cause."[19] The court held that command control within the deliberation room was "good cause."

While the drafters of the Military Rules of Evidence intended to include in-court command control as an exception to the privilege,[20] their intent to include command control exerted from outside the deliberation room is not clearly expressed. Not only does M.R.E. 606(b) not specifically include command control exerted from outside the deliberation room as an exception, but the primary pre-rule case rejected attacks on such conduct. *Bourchier* involved conviction of a Navy lieutenant for rape.[21] Affidavits offered by the defense indicated that various court members had been pressured by the convening authority to vote for conviction.[22] While the government countered with affidavits to refute these allegations, the court stated that consideration of the government's affidavits was unnecessary because command influence could not be used as a basis for attacking a finding.[23]

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[12] United States v. Perez-Pagan, 47 C.M.R. 719 (A.C.M.R. 1973).
[13] Mil. R. Evid. 606, MCM, note 1, *supra,* App. 18.
[14] 32 C.M.R. 776 (A.B.R. 1962).
[15] United States v. Mattox, 146 U.S. 140 (1892).
[16] *Id. Cf.* Parker v. Gladden, 385 U.S. 363 (1966)
[17] 15 C.M.R. 472 (A.B.R. 1954).
[18] 23 C.M.R. 636 (A.B.R. 1957).
[19] *Id.* at 640.
[20] Mil. R. Evid. 606(b), MCM, note 1, *supra,* App. 18.
[21] 17 C.M.R. at 19.
[22] 17 C.M.R. at 26.
[23] 17 C.M.R. at 27.

While the command influence exception of the Military Rules of Evidence and its Analysis do not specifically overrule the *Bourchier* rationale, the better view is that it does so by implication. Obviously, the drafters were aware of the *Bouchier* constraints, but were also mindful of the Article 37[24] prohibitions on command control. The use of the general term "command influence"[26] should be interpreted to include command influence exerted from outside the deliberation room as an exception to the deliberative privilege.

The addition of the "improper outside influence" exception will have little significant impact on military practice. Under federal practice, this exception generally includes attempts to tamper with the jury, "*e.g.*, a threat to the safety of a member of [a juror's] family,"[26] and bias of a member developed outside the courtroom.[27] In pre-rule military practice, outside influences were often included under the heading of extraneous prejudicial information.[28] Therefore, this exception creates a different category, but the same kind of information will be allowed to impeach a finding or sentence. The primary thrust of this exception is to prevent jury tampering and to insure that cases are decided based on the evidence presented in court.

Early indications are that M.R.E. 509 and M.R.E. 606(b) will not substantially change pre-rule law. For example, in *United States v. Hance*,[29] the Army Court of Military Review declined to allow impeachment of the verdict based on post-trial statements by court members that five of the nine members were not convinced of guilt beyond a reasonable doubt and that four members were not convinced that the accused was mentally competent to premeditate murder. In rejecting the statements as privileged, the court noted the absence of extraneous influence and cited M.R.E. 606(b).

In the more recent case of *United States v. Bishop*,[30] the Court of Military Appeals specifically noted the consonance of M.R.E. 606(b) with pre-rule practice. The court determined that extraneous information was before the members because some members conducted an unauthorized viewing of the crime scene. The court determined that even though this was extraneous information, the information was not prejudicial because the viewing was a "fortuitous and casual" occurrence.[31]

IV. Procedural Questions

Litigation of the privilege's applicability may present a procedural dilemma. The problem centers around the lack of a prescribed method for determining whether an exception applies. While M.R.E. 606(b) would appear to prevent all testimony or affidavits by court members with regard to privileged information, a limited waiver must apply. Stated differently, "the court may sometimes find it necessary to breach the privilege slightly in order to determine if it exists."[32] While this will place the court in the position of hearing evidence and then rejecting the evidence, "nothing else is available."[33]

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[24] Uniform Code of Military Justice, Art. 37, 10 U.S.C. §837 (1976).

[25] Mil. R. Evid. 606(b).

[26] J. Weinstein and M. Berger, *Weinstein's Evidence*, p. 606-3 (1978).

[27] Ryan v. United States, 191 F.2d 779 (D.C. Cir. 1951), *cert. denied*, 342 U.S. 928 (1952). In federal practice, an unauthorized view of the crime scene may be treated as an outside influence. United States *ex rel.* DeLucia v. McMann, 373 F.2d 759 (2nd Cir. 1967).

[28] While *Perez-Pagan* states that "extraneous information" is the only exception to the privilege, the court also notes that "outside influence ... improperly brought to bear on a juror ..." is an exception, and lumps the two categories. 47 C.M.R. at 722.

[29] 10 M.J. 622 (A.C.M.R. 1980).

[30] 11 M.J. 7 (C.M.R. 1981).

[31] *Id.* at 10. Under federal practice, this would have been treated as an outside influence. *See* note 27, *supra*.

[32] J. Weinstein and M. Berger, *supra* note 26, at para. 104(04).

[33] *Id.*, citing United States v. Weisman, 111 F.2d 260, 261-262 (2nd Cir. 1940).

The mechanics of the disclosure could vary based on the time at which the impropriety is discovered. If the allegation of misconduct is covered and raised during trial, the military judge could subject the members to voir dire,[34] after initially determining that an impropriety fitting an exception is involved. This should be an individual voir dire conducted out of the presence of other members to avoid possible disqualification of the unaffected members.[35] Alternatively, an in-chamber inquiry has been suggested as a procedural device for disclosure.[36] One federal case supports inquiry solely by the judge,[37] but another suggests that cross-examination by an attorney is required for the inquiry to be meaningful.[38]

While the military judge has no apparent authority to exclude the accused and counsel from hearing the inquiry, there is authority for the military judge to exclude the spectators and conduct an in camera inquiry.[39] This method of determining the applicability of the privilege is preferable because the right of the accused to a fair trial and the right of the government to the deliberative privilege are served.

A post-trial allegation of misconduct during deliberations could be resolved by the convening authority. First, the convening authority could decide that the information is privileged and therefore that the accused is entitled to no relief. Second, the convening authority could require affidavits by the members if the information does not fit within the privilege. Alternatively, the convening authority could refer the matter to the military judge for a *DuBay*-type hearing.[40] The judge could then adopt one of the methods suggested earlier for determining whether the finding or sentence was impeached.

An inquiry at or near the time of the verdict appears necessary to prevent waiver. The preference of appellate courts for preserving the finality of verdicts is extremely strong, and generally verdicts are not subject to attack. In this light, post-trial statements about the deliberations are viewed with skepticism, because of the inability to recreate the conditions that existed at the time of the verdict or sentence. Indicative of this preference for finality is a federal case in which the court refused to consider the post-trial affidavit of a juror who indicated he voted not guilty, even though he stated to the contrary in a jury poll.[41] Military authority is in accord. A military accused has "no standing" to assert an impropreity in the deliberations when he delays six weeks in bringing the allegation of impropriety to the attention of the convening authority.[42] Likewise, an impropriety raised for the first time during a motion for a new trial has been viewed as an eleventh hour defense contention and rejected.[43]

Ethical issues may also be involved.[44] Counsel must be sensitive to the ethical problem of contacting court members, even when the contact is post-trial. Federal cases indicate that, while some courts may not discipline attorneys for the improper conduct of interviewing jurors after trial through an investigator,[45] other

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[34] MCM, note 1, *supra*, para 62*h*. Under MCM, para. 62*d*, challenges for cause are allowed at any stage of the proceeding.

[35] MCM, para 62*b*.

[36] J. Weinstein and M. Berger, *supra* note 32, at para. 104(04).

[37] United States v. Spinella, 506 F.2d 426 (5th Cir. 1975).

[38] Ryan v. United States, 191 F.2d 779 (D.C. Cir. 1951), *cert. denied*, 342 U.S. 928 (1952).

[39] M.R.E. 505 and 506. United States v. Bennett, 3 M.J. 903 (A.C.M.R. 1977).

[40] United States v. DuBay, 37 C.M.R. 411 (C.M.A. 1967). *See* United States v. Lanzer, 3 M.J. 60 (C.M.A. 1977).

[41] United States v. Schroeder, 433 F.2d 846 (8th Cir. 1970), *cert. denied*, 401 U.S. 943 (1971).

[42] United States v. Harris, 32 C.M.R. 878 (A.F.B.R. 1962).

[43] United States v. Bourchier, 17 C.M.R. 15 (C.M.A. 1954).

[44] This is noted as a potential ethical issue in the Commentary on Standard 15-4.7, ABA Standards for Criminal Justice, Trial by Jury.

[45] United States v. Driscoll, 276 F. Supp. 333 (S.D.N.Y. 1967).

courts have viewed similar conduct by an attorney as "reprehensible".[46] Commentary on military practice suggests that questions of court-member misconduct be taken directly to the judge or to the convening authority, rather than to the court member, to avoid ethical pitfalls.[47] If the attorney questions the members out of court, allegations of jury tampering or violation of members' oath might be raised.

When matter fitting an exception is before the members, military courts consider the evidence and determine the likely effect the matter had on the members. Once a prima facie case of non-privileged misconduct has been presented, the government can salvage the findings or sentence by a "*clear and positive* showing that the . . . [impropriety] *did not* and *could not* operate in any way to influence the court's decision."[48]

[46] United States v. Brasco, 516 F.2d 816 (2nd Cir. 1975), *cert. denied*, 423 U.S. 860 (1975).

[47] Cook, *Ethics of Trial Advocates*, The Army Lawyer, Dec. 1977, at 1.

[48] United States v. Gaston, 45 C.M.R. 837, 838 (A.C.M.R. 1972); United States v. Adamiak, 4 C.M.A. 412, 15 C.M.R. 412 (1954).

V. Conclusion

This privilege is not intended to be a boon for either the prosecution or the defense. In theory, the members may err in favor of the accused or the government. The policy consideration favoring sanctity of the deliberation room applies in either event. In practice, the defense will normally raise the allegation of misconduct. In that case, the privilege requires the judge to conduct a delicate balancing of interests. On one side of the scale is the accused's interest in a fair trial. On the other side of the scale is the privilege protecting the sanctity of the deliberations. If an exception to the privilege is raised, the scale tips in favor of the accused, and the judge uses a scalpel to disclose only that misconduct. If an exception is not raised, the scale is not moved. The judge then uses a cleaver to cut off further inquiry. In all instances, the rule favors the sanctity of the deliberative process.

Present but Unarticulated Probable Cause To Apprehend*

CPT Kenneth H. Clevenger **
Government Appellate Division, USALSA

I. Introduction

In a recent unpublished decision, the Army Court of Military Review set aside a finding of guilty of wrongful possession of 519 tablets of phencyclide (PCP). Appellant moved to suppress the drugs, which had been seized during a search of his person incident to his apprehension. Appellant claimed that the apprehension was supported by probable cause.

The facts of the case are as follows: Appellant was observed by two military policemen sitting in his car in an on-post parking lot apparently reading. A punitive local regulation made it an offense so to loiter in a parking lot. Hence, appellant was subject to apprehension on that basis. The military police did not intend to apprehend appellant for a violation of the loitering regulation but did approach him to advise him of the rule. Upon reaching the car, the police saw a shovel which appeared to be mili-

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**JAGC, U.S. Army. Appellate defense attorney, GAD, USALSA, April 1979 to present. Assigned to Office of the Staff Judge Advocate, HQ, 21st Support Command, Kaiserslautern, Germany, 1976–1979. Completed 80th Judge Advocate Officers Basic Course, Feb.–Apr. 1976.

tary property in the back seat. They testified that they had no extrinsic evidence which connected the shovel to any criminal activity. Nonetheless, appellant was ordered out of the car and apprehended for misappropriation of the shovel. A search of appellant revealed the PCP tablets.

At trial, the Government argued, first, that probable cause existed to seize the shovel as misappropriated Government property, and therefore, to apprehend appellant, and, second, that the evidence seized was in plain view which, therefore, supported the apprehension. The judge ruled that the appearance of the shovel in the car provided probable cause to apprehend.

On appeal, appellant renewed his claim that his apprehension was unsupported by probable cause. The Government argued that, under the circumstances, the appearance of the shovel established probable cause to apprehend, and, in the alternative, that the police had probable cause to apprehend appellant based on the violation of the loitering regulation.

After considering the testimony, the Army Court of Military Review was not convinced that probable cause was established to apprehend appellant for misappropriation. The Court did not address the alternatively asserted probable cause theory. The Government elected neither to petition for reconsideration nor to certify the issue presented to the Court of Military Appeals.

II. The Rule

This article calls the attention of counsel for the Government to an insufficiently recognized aspect of probable cause litigation in military justice. That a police agent must have probable cause to apprehend is axiomatic. Generally, the apprehending agent will have a specific, articulable basis upon which probable cause may be found. However, counsel need not limit to the policeman's asserted theory the Government's probable cause analysis either at trial or on appeal before the Court of Military Review. Facts which support a finding of probable cause to apprehend may be relied upon to uphold the validity of an apprehension, even where those facts where not relied upon or articulated by the apprehending agent. The only limitations on the application of this rule are the provable facts and counsel's preparation.

When an issue concerning the legality of an apprehension is raised, facts supporting every available theory of probable cause should be advanced in support of the Government's burden to establish the lawfulness of the apprehension. In 1979, the Louisiana Supreme Court succintly summarized the issue in *State ex rel. Palermo v. Hawsey,*[1] when, referring to its earlier decision in *State v. Wilkins,*[2] the court said that *Wilkens* holds "that an arrest for a crime for which probable cause to arrest does not exist can be justified by the probable cause to arrest for another offense."

III. Use of the Rule in State Practice

The rule has been applied in several states. In the Maryland case of *Sims v. State,*[3] the defendant was arrested by a policeman for assault and battery, a misdemeanor in Maryland. However, that offense did not occur in the officer's presence. Thus, under the traditional common law view which prevailed in Maryland, the warrantless arrest for a misdemeanor would have been illegal. Nonetheless, the appeals court found that probable cause existed to support a warrantless arrest for the felony of assault with intent to murder. The opinion notes:

> In assessing the validity of an arrest under the rule [which requires probable cause to arrest] the essential ingredient is that probable cause existed within the knowledge of the arresting officer and not that he necessarily construed that knowledge correctly. It is not the belief of the officer that deter-

[1] 377 So.2d 338, 340 (La. 1979).

[2] 364 So.2d 934 (La. 1978).

[3] 4. Md. App. 160, 242 A.2d 185 (Ct. Spec. App. 1968).

> mines the validity of the arrest. . . . We think untenable the proposition that an arrest based on probable cause becomes unconstitutional because the crime is inaccurately described by an officer. . . .[4]

Oregon also recognizes this rule in the law of arrests. In *State v. Cloman*,[5] the defendant was arrested for violation of an "after-hours" ordinance later declared unconstitutional.[6] The Supreme Court of Oregon, however, found that probable cause existed for arresting defendant for another crime.

> We hold that if the officers had probable cause to arrest, the arrest is not rendered illegal because the officers expressed another and improper cause for arrest.[7]

Courts in New York and California have likewise found arrests valid where the necessary probable cause was not based upon the same probable cause theory asserted by the arresting officer. In *People v. Smith*,[8] a New York case, the police stopped a car for speeding. The defendant, the driver, produced a false identification, had no valid registration for the car, and was seen to handle in a furtive manner a paper bag protruding from under the front seat. The police seized the bag from the car, searched it, and found incriminating evidence. The subsequent arrest was not based upon any articulated theory of probable cause. The court said:

> [e]ven if a police officer does not know at the time of arrest of any specific crime which the defendant had committed or was committing, probable cause can nonetheless exist, and a determination that the arrest and search and seizure were lawful is not precluded...[9]
>
> A reasonable ground for belief that a crime has been or is being committed to constitute probable cause does not rest upon the subjective reaction of the police officer making the arrest. It depends, rather upon an objective appraisal of the facts and circumstances to determine the existence or nonexistence of probable cause.
>
> . . . .
>
> The validity of an arrest where the substantive requirements to support it are present, cannot be made to rest upon the recognition by the police officer of these requirements and an articulation and specification by him of the basis for the arrest, particularly where there also are present other valid grounds for a lawful arrest. Arrests should be tested and interpreted in a common sense and realistic fashion and not be formalistic and ritualistic requirements.[10]

A California appellate court, applying this rule in reviewing an arrest, said "the arresting officer is not required to cite the right code section in order to validate an arrest for an offense committed in the officer's presence."[11]

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[4] 242 A.2d at 189.

[5] 456 P.2d 67 (Ore. 1969).

[6] The *Cloman* litigation took place prior to the United States Supreme Court decision in Michigan v. DeFillippo, 443 U.S. 31, 99 S.Ct. 2627, 61 L.Ed.2d 343 (1979). That decision definitely settled that an arrest could be valid even if based upon a statute subsequently declared unconstitutional.

[7] 456 P.2d at 72.

[8] 62 Misc.2d 473, 308 N.Y.S.2d 909 (Sup. Ct. 1970).

[9] The cases cited by the New York court in support of this proposition were People v. Merola, 30 A.D.2d 963, 294 N.Y.S.2d 301 (1968); People v. Messina, 21 A.D.2d 821, 251 N.Y.S.2d 592 (1964); People v. Cassone, 20 A.D.2d 118, 245 N.Y.S.2d 843 (1963), *aff'd.*, 14 N.Y.S.2d 798, 251 N.Y.S.2d 33, 22 N.E.2d 214 (1964), *cert. denied*, 379 U.S. 892, 85 S.Ct. 167, 13 L.Ed.2d 95.

[10] 308 N.Y.S.2d at 913-15.

[11] People v. Colbert, 6 Cal.App.3d 79, 84, 85 Cal. Rptr. 617, 620 (1970).

The policy which supports the application of the rule was well stated by the Supreme Court of New Jersey:

> The question then is whether it should matter that the arresting officer selected one of the known bases of arrest rather than another, and that, hypothetically for our immediate discussion, the basis selected is later adjudged to be inadequate. There are cases involving civil actions for false arrest in which the officer has been held in the single ground he used at the time of arrest ...[12] We need not say whether we would subscribe to that view in a civil suit, for here other values are involved. As we have said, the issue is whether an adjudged criminal shall be set free at the expense of the individual's right to be protected from criminal attack. It would be a windfall to the criminal, and serve no laudable end, to suppress evidence of his guilt upon the fortuitous ground that the arresting officer, who knew of several bases for the arrest, selected one a judge later found inadequate. *Commonwealth v. Lawton*, 348 Mass. 129, 202 N.E.2d 824, 826 (Sup.Jud.Ct. 1964).[13]

This brief recitation of state law highlights past judicial opinion on the subject and does not survey all state jurisdictions exhaustively. It should suffice, however, as a general basis upon which to justify a trial counsel's efforts to present facts supporting alternate theories of probable cause to apprehend and to argue such theories.

[12]The cases and other authorities cited by the New Jersey court were Donovan v. Guy, 347 Mich. 457, 80 N.W.2d 190 (Sup. Ct. 1956); Gildon v. Finnegan, 213 Wis. 539, 252 N.W. 369 (Sup. Ct. 1934); Annotation, 64 A.L.R. 653 (1929).

[13]State v. Zito, 54 N.J. 206, 213, 254 A.2d 769, 772 (1969).

IV. Use of the Rule in Federal Practice

In the federal realm, a majority of the circuits of the United States Courts of Appeals have applied a similar rule, permitting admission of evidence when probable cause for apprehension objectively exists, regardless of the subjective opinion of the arresting police officer.[14]

A 1965 opinion of the Eighth Circuit fully addressed the policy rationale behind the rule. In

[14]*E.g.*, Klinger v. United States, 409 F.2d 299 (8th Cir.), *cert. denied*, 396 U.S. 859, 90 S. Ct. 127, 24 L.Ed.2d 110 (1969) ("Because probable cause for an arrest is determined by objective facts, it is immaterial that [the police officer] . . . testified that he did not think that he had "enough facts" upon which to [make an arrest on the ground approved by the appeals court]. His subjective opinion is not material."); Chaney v. Wainwright, 460 F.2d 1263 (5th Cir. 1972) ("Because probable cause for arrest for a related offense existed at the time of the arrest, the search incident to the arrest was valid even though the arresting officer did not accurately name the offense for which probable cause existed."); Ramirez v. Rodriguez, 467 F.2d 822 (10th Cir. 1972), *cert. denied*, 410 U.S. 987, 93 S.Ct. 1518, 36 L.Ed.2d 185 (1973). ("If probable cause exists, the actual words used by the arresting officer [even if they describe an offense for which probable cause does not exist] will not vitiate an otherwise valid arrest and search."); United States v. Smith, 468 F.2d 381 (3d Cir. 1972) (An officer's misstatement of an unsuitable ground for arrest [made without a warrant] neither voids the arrest nor a search incident thereto, because a police officer in chase should not be required to immediately say with particularity the exact grounds on which he is exercising his authority); United States v. Dunavan, 485 F.2d 201 (6th Cir. 1973) (" . . . the validity of an arrest is to be judged by whether the arresting officers actually had probable cause for the arrest rather than by whether the officers gave the arrested person the right reason."); United States v. Joyner, 492 F.2d 655 (D.C. Cir. 1974) (Court found that in both Florida and the District of Columbia "an arrest will be upheld if probable cause exists to support arrest for an offense that is not denominated as the reason for the arrest by the arresting officer."); United States *ex rel.* LaBelle v. LaVallee, 517 F.2d 750 (2d Cir. 1975), *cert. denied*, 423 U.S. 1062, 96 S.Ct. 803, 46 L.Ed.2d 655 (1976) ("[t]he fact that the police labeled the offense for which petitioner was arrested as misdemeanor assault [which was an unlawful basis for his arrest] is not dispositive of the issue of the legality of the arrest.")

See also 2 LaFave, Search and Seizure: A Treatise on the Fourth Amendment, § 5.1 nn. 136-39 (1978).

McNeely v. United States,[15] a police officer approached a car parked late at night at a closed gas station. The car and its two occupants immediately drove off at high speed, and failed to stop in response to the policeman's signals. One occupant was seen throwing out a bag of tools. When the car was finally stopped, both occupants were arrested on a littering charge because of the discarded tool bag. The contents of the bag were recovered and, by comparison of the contents with evidence found on McNeely's person, a connection was proven between McNeely and a burglary. The Court of Appeals upheld the arrest for littering as the basis of the search of McNeely. The opinion went on to note that probable cause to arrest was established by McNeely's other actions that night and said:

> ... we cannot hold that the arresting officer to make a valid arrest must immediately state the actual and correct grounds for arresting appellants when he had probable cause for making such an arrest. Such a requirement could be dangerous to the arresting officer and would be an additional unnecessary burden on enforcement officials. The law cannot expect a patrolman, unschooled in the technicalities of criminal and constitutional law, following the heat of a chase, to always be able to immediately state with particularity the exact grounds on which he is exercising his authority. We believe that if the officer had probable cause to arrest and otherwise validly performed the arrest, he is not under the circumstances of this case required to immediately recognize and accurately broadcast the exact grounds for this action or suffer the arrest to come under constitutional criticism. Therefore, since Patrolman Walton had probable cause to believe the occupants of the car were engaged in felonious activity, the arrest of McNeely was valid regardless of the initially stated ground for arrest.[16]

The rule that an apprehension may be validated by an existing yet unarticulated probable cause theory essentially posits a purely objective standard for determining whether probable cause to apprehend exists. The subjective considerations of the apprehending police agent are immaterial. Support for this view is found in the Supreme Court's 1968 opinion in *Terry v. Ohio*:[17]

> The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate.[18]

The only limitation on the rule is that the apprehension must not be a pretext or a ruse designed to cover an otherwise unlawful search for incriminating evidence. However, as long as some valid theory of probable cause existed at the time of the arrest, the claim of a ruse or pretextual arrest should be rebuttable upon the facts.[19]

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[15] 353 F.2d 913 (8th Cir. 1965).

[16] 353 F.2d at 918.

[17] 392 U.S. 1, 88 S.Ct. 1869, 20 L.Ed.2d 889 (1968).

[18] 392 U.S. at 21-22. *See also* Director Gen. or R.R. v. Kastenbaum, 263 U.S. 25, 27-28, 44 S. Ct. 52, 68 L.Ed. 146 (1923) Cook, *Probable Cause to Arrest*, 24 Vand.L. Rev. 317, 322-24 (1971).

[19] *See* United States *ex. rel.* LaBelle v. LaVallee, 517 F.2d at 754 n.5, discussed also in note 14, *supra*. If a police officer is acting out of personal animosity or bias, and the accused can establish the existence of such a

V. The Status of the Rule in Military Law

The rule that facts which support a finding of probable cause to apprehend may be relied upon to uphold the validity of an apprehension even where those facts were not relied upon or articulated by the apprehending agent has never been adopted in military practice. As a consequence, confusion remains as to the use of subjective versus objective factors in testing apprehensions.

However, military practioners should be aware that the Court of Military Appeals has demonstrated a vigilant watch on sham apprehensions. In a case where probable cause existed for an apprehension for a minor offense but other evidence overwhelmingly demonstrated that the apprehension was actually a pretext for a generalized search, the Court of Military Appeals set aside the conviction and dismissed the charge.[20]

There is authority in military law for the notion that establishing probable cause to apprehend requires consideration of a subjective element, the apprehending agent's view of his own actions.[21] However, the cases so holding do not posit a clear requirement that the subjective aspect of a policeman's probable-cause-to-apprehend decision be examined and control the outcome of the subsequent judicial inquiry. Indeed, in a case like *United States v. Powell*,[22] reference to the policeman's training and experience should properly be viewed as a separate objective element and not as a subjective consideration. For example, a well trained, highly experienced narcotics enforcement officer may "know" from experience that certain furtive actions between two known suspects constitute a drug transaction, *i.e.*, a subjective belief. However, when a court is evaluating probable cause, the officer's experience and training are objective facts which the court may consider to give credence to his observations because he knows what otherwise innocuous appearing actions are normally associated with drug dealing.

It should also be noted that the rule allowing judicial inquiry into objective facts which were present but not articulated as a basis for an apprehension differs from the standard applied in determinations concerning the existence of probable cause to search.[23] Significantly, the Court of Military Appeals did not cite its 1971 decision in *United States v. Alston*,[24] which was a search case, as dispositive authority in its 1973 opinion in *United States v. Atkins*,[25] a case involving apprehension. This was so despite the close factual similarities between the two cases. This suggests that the court recognizes the distinction between the tests for probable cause to apprehend and probable cause to search and that only cases involving a

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vendetta-type situation, then a court may be less likely to find or approve of an alternate theory of probable cause upon which to validate the apprehension because of the bad faith of the police.

[20] United States v. Santo, 20 C.M.A. 294, 43 C.M.R. 134 (1974).

[21] *See, e.g.*, United States v. Powell, 7 M.J. 435 (C.M.A. 1979) (the probable cause equation includes consideration of the police officer's training and experience); United States v. Atkins, 22 C.M.A. 244, 46 C.M.R. 244 (1973), *reversing* 46 C.M.R. 672 (A.C.M.R. 1972) (wherein the Army court found probable cause to apphrened notwithstanding the apprehending agent's testimony that he did not think he had probable cause without considering an unwarned admission by the accused. The Court of Military Appeals' conclusion that "the record establishes" a fact upon which the court relies to find a lack of probable cause to apprehend is arguably *ultra vires*, *see* Article 67(d), U.C.M.J.); United States v. Mitchell, 43 C.M.R. 490 (A.C.M.R. 1970) (the issue was the reasonableness of a mistake of fact as to the identity of a suspect whom the police had probable cause to apprehend and not as to the existence of a criminal *res* or *delict* upon which to base the apprehension); and United States v. Young, 44 C.M.R. 670 (A.F.C.M.R. 1971), *pet. denied*, 44 C.M.R. 940 (1972) (the language is *dicta* because the court found probable cause was established by the objective facts).

[22] 7 M.J. 435 (C.M.A. 1979) (summarized briefly in note 21, *supra*).

[23] *Cf.* United States v. Alston, 20 C.M.A. 581, 44 C.M.R 11 (1971); United States v. Owens, 48 C.M.R. 636 (A.F.C.M.R. 1974).

[24] 20 C.M.A. 581, 44 C.M.R. 11 (1971).

[25] 22 C.M.A. 244, 46 C.M.R. 244 (1973).

search issue require application of the subjective test.

The use of different standards is reasonable, considering the neutral and detached role required of an official who authorizes a search, as opposed to the risks and responsibilities of a policeman on his beat who must make a quick decision to apprehend without the leisure to explore every remote source of subjective uncertainly which might be suggested by hindsight or cross-examination.

VI. Conclusion

As stated above, the Court of Military Appeals seems to recognize a difference in the standard for measuring probable cause in the litigation of search and apprehension issues. However, it has never expressly adopted a purely objective test for probable cause to apprehend.

In the absence of express recognition of the rule allowing probable cause to apprehend to be established by facts which provide a present but unarticulated basis for the apprehension, counsel should take care to litigate this issue fully when relying on such alternate theories. However, even in the absence of controlling military precedent, Army trial counsel should be able to persuade trial judges to look with favor upon a purely objective standard both because of its favorable policy considerations and in light of the increased flexibility it offers a trial judge.[26] In addition, a complete factual record will be a valuable asset on appeal for demonstrating the existence of probable cause to apprehend.

Trial counsel should be alert to employ the rule which invokes the existence of a present but unarticulated basis for probable cause to apprehend to establish the validity of an apprehension even though such a theory was not considered by the apprehending agent. By doing so, the quality of both trial and appellate litigation in the military justice system will be improved.

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[26] The validity of an apprehension is generally raised in the context of an attempt to suppress evidence seized during a search conducted pursuant to apprehension. Because of this, the requirement of Rule 311(d)(4), Military Rules of Evidence, that the essential factual basis of the judge's ruling be stated on the record, is eased by providing alternate theories. Because the judge need not divulge his legal reasoning, his factual findings could cover several theories of probable cause to apprehend. Thus, even if the trial judge is right for the wrong reasons, his ruling may be upheld on appeal.

Legal Assistance Items

Major Joel R. Alvarey, Major Walter B. Huffman,
Major John F. Joyce, Captain Timothy J. Grendell, and
Major Harlan M. Heffelfinger
Administrative and Civil Law Division, TJAGSA

Consumer Affairs—Truth in Lending Act

Ford Motor Credit Company (FMCC) provided forms and approved the credit of purchasers of vehicles prior to the dealers executing the sales contracts. FMCC was designated as an assignee of the contract. Plaintiffs argued that the failure to identify FMCC as a creditor violated the Act. The Supreme Court held that FMCC was a "creditor" within the definition of the Truth in Lending Act and Regulation Z. The dealers were considered arrangers of credit while FMCC was considered the extender of credit. Although FMCC was not identified as a creditor, notice that it was an assignee was sufficient to meet the requirements of the Truth in Lending Act and Regulation Z. The Court stated that to add more would not meaningfully benefit the consumer. *Ford Motor Credit Co. v. Cenance*, ____ Sup. Ct. ____, 49 U.S.L.W. 3892, 68 L.Ed. 2d 744 (1981).

Validity of Foreign Divorce—Louisiana

The Attorney General of Louisiana, in Opinion Number 80-1687, dated 24 June 1981, has determined that Louisiana will not recognize a divorce obtained under foreign law by a Louisiana resident serving on military orders in a foreign country. The Attorney General predicates his opinion on the principle that the judicial power to grant divorce is based on domicile and the holding of Louisiana courts that a member of the military service is presumed to retain his Louisiana domicile until he abandons it and establishes it elsewhere. The Attorney General also opined that the State of Louisiana will recognize a marriage validly and properly contracted under foreign law by service personnel serving in a foreign country.

Rental Agreement was not subject to Truth in Lending Act. Clark v. The Rent-It Corporation, CCH ¶ 97,126A (S.D. Ia. 1981).

The Truth in Lending Act is applicable to "credit sales," which are defined as sales in which the seller is a creditor. This includes a lease if the lessee contracts to pay for the use of the property a sum substantially equivalent to the aggregate value of the property leased, and will become or has the option to become the owner of the property. (15 U.S.C. 1602(g)).

The plaintiff's lease agreement for a television set provided that he could become the owner of the set after payment of $17 a week for 78 weeks. Plaintiff alleges this is a disguised credit sale, so the Truth in Lending Act disclosures should have been provided. The Court held that this is not a credit sale because the agreement obligated the lessee to rent the set for one week only. Termination could be made at any time after that. One week's rent is substantially less than the value of the television set.

A Matter of Record

Notes from Government Appellate Division, USALSA

1. Larceny of Services

Article 121, Uniform Code of Military Justice, lists the objects which can be the subject of larceny as "any money, personal property, or article of value of any kind." In *United States v. Abeyta*, ___ M.J. ___, SPCM 15438 (ACMR 2 September 1981), the Army Court of Military Review found that taxi cab services cannot be the subject of a larceny as defined by Article 121, Code. Similarly, case law holds that phone services, use and occupancy of government quarters, and use of a rental car cannot be the subject of larceny. *United States v. Case*, 37 CMR 606 (ABR 1966), *pet. denied*, 37 CMR 470 (CMA 1967); *United States v. Jones*, 23 CMR 818 (AFBR 1956); *United States v. McCracken*, 19 CMR 876 (AFBR 1955). The Court in *Abeyta* declined to follow *United States v. Brazil*, 5 M.J. 509 (ACMR 1979).

The theft of phone services, cab services, or other services can be prosecuted under the Uniform Code of Military Justice in a number of ways. First, as recognized by the Court in *Abeyta*, theft of services may be alleged as an offense sounding in fraud under Article 134, Code. *See also United States v. Herndon*, 15 USCMA 510, 36 CMR 8 (1965). Second, the theft of services can be charged as a crime and offense not capital in violation of Article 134, Code, and 18 U.S.C. § 641, if the services taken are property of the United States. Third, it may be possible to charge the theft of services as a violation of a state statute assimilated through 18 U.S.C. § 13. *See United States v. Wright*, 5 M.J. 106 (CMA 1978), and *United States v. Herndon, supra*, if the issue of preemption is raised.

2. Estelle v. Smith and United States v. Mathews

In *United States v. Mathews*, 6 M.J. 357 (CMA 1979), the Court of Military Appeals, per Judge Fletcher, held that "[s]elf-incrimination

therefore, stops as to the crime charged at the time the plea of guilty is accepted" and Article 31, Code, is not applicable to extenuation and mitigation hearings "except where evidence could be produced that would give rise to a charge being laid to a different crime." *Id.*, at 358. This case has been widely read to allow for an inquiry of the accused in order to fulfill the requirements for the admission of records of nonjudicial punishment.

The Supreme Court in *Estelle v. Smith*, ___ U.S. ___, 101 S.Ct. 1866, 68 L.Ed.2d 359 (1981), held that the Fifth Amendment protections against self-incrimination are as applicable during sentencing in a capital case as they are in the findings or guilt phase. This holding is based, in part, upon the gravity of the decision to be made during the penalty phase of a capital case. While the Supreme Court has applied different rules and standards to capital cases than to noncapital cases, the language in *Estelle v. Smith* may be broad enough to apply to criminal cases generally.

Thus, the continued use of "*Mathews* inquiries" may be unwise, especially since recourse to such an inquiry should be necessary in only a few cases. *See United States v. Taylor*, SPCM 15697, slip op. at 3–4 n. 4 (ACMR 3 September 1981). First, *United States v. Mack*, 9 M.J. 300 (CMA 1980), eliminated the need for a "*Mathews* inquiry" if the record of nonjudicial punishment was properly completed. Second, some omissions from the form may not render the form inadmissible. *See United States v. Haynes*, 10 M.J. 694 (ACMR 1981). Further, if there is no objection to the exhibit, there is no need for the military judge to inquire further since the lack of objection constitutes a waiver under Military Rule of Evidence 103(a). *United States v. Beaudion*, 11 M.J. 838 (ACMR 1981). Thus if the form is not complete (*Mack* does not control), the omission is substantial (see *Haynes*), and the defense objects to the document, the use of a *Mathews* inquiry will probably not cure the defect anyway.

Criminal Law News

Criminal Law Division, OTJAG

"Clear Injustice" under AR 27–10

Recently, relying on paragraph 3–20, AR 27–10, a commander set aside five records of NJP imposed during the years 1969 to 1972 and directed their filing in the Restricted (R) fiche of the individual's OMPF. He set aside the NJP because the punishment imposed would, under today's regulatory provision, be classified as "minor punishment."

This office opined that such removal was not in accordance with regulatory provisions for two reasons. First, paragraph 3–15b, AR 27–10, C20, which allows a commander imposing minor punishment an alternative in deciding the filing of the NJP is applicable only to those punishments imposed after 20 May 1890. Second, the provisions of paragraph 3–20, AR 27–10, allowing for a set aside when the punishment has resulted in a "clear injustice," are also inapplicable to this case. To allow a commander to take this action, based on the circumstances of this case, would be tantamount to allowing him to circumvent the intent of the regulation. It was the opinion of this office that a commander has no authority, under paragraph 3–20, AR 27–10, to set aside an Article 15 on the basis that its proper filing, pursuant to a valid Army Regulation, creates what he perceives to be a "clear injustice." DAJA–CL 1981/8632.

Taxicab Services Cannot be Stolen, U.S. v. Abeyta, SPCM 15438, ___ M.J. ___ (ACMR, 2 Sep 1981)

The US Army Court of Military Review opined, expressly overruling United States v. Brazil, 5 MJ 508 (ACMR 1979), that taxicab services cannot be stolen in violation of Article 121, UCMJ. The court held that the terms "money, personal property, or article of value,"

as used in Article 121, were not meant to encompass items not having a corporeal existence. Alternatives available for the theft of taxicab services, or other services, may be found under Article 134 as obtaining services under false pretenses or dishonorably failing to pay just debt. See, form specifications 138 and 148, Appendix 6c, MCM; Paragraph 4–138 and 4–148, DA Pam 27–9, Military Judge's Guide.

Effective Date of *Kalscheuer* Decision

On 17 August 1981, the United States Court of Military Appeals issued its decision in *United States v. Kalscheuer*, 11 M.J. 373 (C.M.A. 1981). In that case the court opined that any delegation of the authority to authorize searches is invalid, except delegations to military judges or military magistrates. The case is discussed in Note, *Recent Case—Delegation of Authority to Authorize Searches*, The Army Lawyer, Sept. 1981, at 25.

The effective date of the *Kalscheuer* holding is 27 August 1981, not 17 August 1981. The authority for this is a recent criminal law message, 191400Z Aug 81, DAJA–CL 1981/8727, for SJA, subject: Delegation of Authority to Authorize Searches. The court's mandate is normally issued ten days after the date of a decision.

Administrative and Civil Law Section

Administrative and Civil Law Division, TJAGSA

Soldiers' and Sailors' Civil Relief Act—The tolling of the statute of limitations is automatic, Bickford v. United States, Ct. Cl. No. 372–79c.

The plaintiff, a former JAGC Captain of the Regular Army, unsuccessfully challenged the validity of the Excess Leave Program under which he attended law school. He argued that the Secretary of the Army was without authority to deny him pay and allowances during his three years in law school. One issue was whether the statute of limitations precluded his claim.

The Government argued that under the six-year statute of limitations, the Court lacked jurisdiction to entertain plaintiff's claim since suit was filed more than nine years after his claim first accrued. The Court disagreed.

The SSCRA (50 U.S.C. App. § 525) states in part: "The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court . . . by or against any person in military service . . . whether such cause of action or the right or privilege to institute such service. . . ." The Court held that by the express terms of the SSCRA the tolling of the statute of limitations is unconditional. The only critical factor is military service: once that circumstance is established, the period of limitation is *automatically* tolled for the duration of service for *all* servicemembers.

Judiciary Notes

U.S. Army Legal Services Agency

Digest—Article 69, UCMJ, Applications

In *Jones*, SPCM 1981/5049, the accused contended that the failure of the military judge to consider correctional custody as a viable punishment at his trial by special court-martial was error and, therefore, prejudicial to his substantial rights. According to paragraph 1–5*a*, AR 190–34, correctional custody is "[a] form of nonjudicial punishment which includes deprivation of liberty without confinement, authorized by article 15, UCMJ, chapter XXVI, 1969 (Revised) and chapter 3, AR 27–10". It is the view of The Judge Advocate General that courts-martial may not legally impose correctional

DEPARTMENT OF THE ARMY

CONVICTIONS AND NONJUDICIAL PUNISHMENTS

Reporting Period

1 JANUARY TO 30 JUNE 1981

	NUMBER AND RATE/1000 OF PERSONS CONVICTED AND PERSONS PUNISHED UNDER ARTICLE 15 UCMJ					
	WORLD-WIDE		CONUS		OVERSEAS	
	Number	Rate/1000	Number	Rate/1000	Number	Rate/1000
General Courts-Martial	650	.84	283	.58	367	1.28
Special Courts-Martial	2,069	2.66	1,198	2.45	871	3.03
Summary Courts-Martial	2,068	2.66	1,462	2.98	606	2.10
Total Courts-Martial	4,787	6.16	2,943	6.01	1,844	6.41
Nonjudicial Punishments (Art. 15 UCMJ)	79,819	102.6	53,689	109.6	26,130	9.08
US Federal & State Courts (Felony* Convictions)	207	.27	206	.26	1	.001

	NUMBER OF DISCHARGES ADJUDGED & ACTUALLY EXECUTED DURING REPORT PERIOD							
	DISCHARGES ADJUDGED						DISCHARGES EXECUTED	
Type Court	WORLD-WIDE		CONUS		OVERSEAS			
	DD**	BCD**	DD	BCD	DD	BCD	DD	BCD
GCM	236	265	99	160	137	105	211	732
SPCM		714		415		299		

*A conviction is reportable when the offense is a felony under the law of the jurisdiction in which the accused was convicted.

**Dishonorable Discharge; Bad Conduct Discharge

custody as a part of a sentence and that a convening authority may not legally mitigate any legal sentence to correctional custody. The rationale for this position is that since neither Congress nor the President has provided for imposition of correctional custody by a court-martial, while specifically providing for it as a nonjudicial punishment, there is an implied denial of the authority of a court-martial to impose it. Therefore, such punishment is not within the jurisdiction of a court-martial. Relief was denied.

FROM THE DESK OF THE SERGEANT MAJOR

By Sergeant Major John Nolan

1. The Competitive Edge. "What can I do to be competitive in my Army career?" This is frequently asked of me by legal clerks and court reporters. All of you should be asking it of yourselves, in order to best direct your efforts toward success and to make the most of development opportunities. First of all, we need to understand our Army, not only its mission and functions, but also its value and beliefs, and the areas it offers in which to excel. The Army is a profession that requires dedication, sacrifice, and commitment. Service to our country, in the highest and finest sense, is the principal reward. The Army is also opportunity. As perhaps no other institution, the Army offers the opportunity to serve, to develop, to grow, to share and to contribute. Lieutenant General Richard H. Thompson, Deputy Chief of Staff for Logistics, wrote an excellent article, "How to Succeed in Logistics." Some of his comments are relevant to all of us, and so I will share them with you.

a. Be active—a competitor and a doer—guided by technical knowledge, logical thought, and common sense. Don't do anything stupid.

b. Go after the tough jobs. Contrary to popular belief, it can be beneficial to volunteer.

c. Don't work merely for efficiency reports and scores. Give each job your best and the reports and scores will take care of themselves.

d. Don't be afraid to ask for help or information when you when you need it, and don't be so foolish as to "shoot from the hip." Don't be afraid to say, "I don't know;" but once you say this, go find the answer.

e. When you evaluate subordinates, emphasize the importance of their jobs in plain and simple language. If they have done well, say so. If they have not, then tell them so.

f. All of us know that we all make mistakes. However, we must understand and learn from those mistakes.

2. SQT—Common Tasks Consolidated. Common SQT tasks, formerly found in the Soldiers Manual for each separate MOS, have been collected into a single Soldiers Manual of Common Tasks (SMCT). The list was consolidated and revised to include 16 tasks ranging from communications to weapons qualification and maintenance. The SMCT will standardize performance levels and allow more efficient changes to the list. The manual was distributed several months ago to every active and reserve unit. Skill qualification tests which are administered after 1 October 1981 must use the SMCT for reference. The next SQT is scheduled for December 1981. The list of common tasks will be deleted from current Soldiers Manuals as they are revised.

3. Publications.

a. Change 21 to AR 27-10 (Military Justice) is being published, with an effective date of 15 October 1981. In addition to distribution through normal channels, a copy of Change 21 will be mailed to all SJA/JA offices.

b. Change 10 to DA Pamphlet 570-551 (Staffing Guide for US Army Garrisons) has been distributed to the field, with an effective date of 1 August 1981. It significantly changes the sections pertaining to Staff Judge Advocate/Judge Advocate Offices.

c. DA Circular 350-81-2 (Skill Qualification Test Announcement for FY 82) has been distributed to all commands.

4. Awards. The new Army Achievement Medal (AAM) allows *15* promotion points for soldiers advancing to grades E5 and E6. Of the four new awards that took effect on 1 August 1981, which were designed to recognize soldier contributions during peacetime, the AAM is the only one worth promotion points. All Active Army, National Guard, and Army Reserve soldiers may be recommended for the AAM, which requires approval by a commander in the grade of colonel. The medal will be awarded to servicemembers for important achievements deserving special recognition, but not considered as qualifying for the Army Commendation Medal (ARCOM). The ARCOM is worth 20 points. The other three peacetime awards—the Army Sevice Ribbon, the NCO Professional Development Ribbon, and the Overseas Ribbon— will be awarded to soldiers meeting necessary requirements.

5. Congratulations to SP5 Ronald A. Hill, who was recently selected as Soldier of the Year at Fort Jackson, South Carolina, and to SGM Walter G. Jester, on his recent promotion.

Reserve Affairs Items

Reserve Affairs Department, TJAGSA

1. USAR 0-4 Board to Convene in March

In recent years, promotion boards considering officers for promotion to the grade of major, USAR, have been convening during the first week in May. However, for 1982, and possibly for succeeding years, the 0-4 USAR board will convene during the first weekend in *March*. Those individuals facing mandatory promotion consideration next year who have not yet finished the JA Officer Advanced Course *must* do so by the date the board convenes in order to avoid being passed over for educational deficiency. In order to be safe, the course should be finished by the first of the year, in order for the Reserve Components Personnel and Administration Center to enter the course completion on the records being examined by the promotion board. If an individual finishes the course before the board convenes but after RCPAC can enter the completion on the OMPF, the officer may be erroneously passed over and be put through the professional and personal inconvenience of a stand-by board. The Correspondence Course Office of TJAGSA will *not* be able to quickly process an avalanche of last minute course completions because of personnel shortages anticipated during this period. *Get the course done NOW*. The Correspondence Course Office is bulk-shipping entire phases to those who request them. If you are not sure whether you will be considered for mandatory promotion in 1982, call MAJ Bill Gentry at RCPAC, toll free (800) 325-1862.

2. JAGSO Triennial Training

The Judge Advocate General's Service Organizations Triennial Training will be conducted at The Judge Advocate General's School from 21 Jun to 2 Jul 82 for Contract Law and International Law Teams. Inprocessing of team members will take place on Sunday, 20 Jun 82. Only officers will attend the team training as there will be no facilities, programs, or training available at TJAGSA for enlisted members. The 1155th U.S. Army Reserve School, Edison, New Jersey, will host the training.

3. BOAC Phase VI

The Judge Advocate Officer Advanced Course (Phase VI) will also be conducted from 21 Jun-2 Jul 82. The Judge Advocate Reserve Components General Staff Course has been discontinued. To obtain a quota for the Advanced Course, reserve members must submit a DA Form 1058 thru channels to Cdr., RCPAC, ATTN: AGUZ-OPS-JA, 9700 Page Blvd., St. Louis, MO 63132. National Guardsmen should submit the appropriate NGB form thru chan-

DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON, D.C. 20310

REPLY TO ATTENTION OF:
DAJA-ZA

14 OCT 1981

SUBJECT: Training of JAGC MOBDES Officers

SEE DISTRIBUTION

1. There has recently been an increase in JAGC mobilization designee (MOBDES) positions resulting from a comprehensive review and updating of mobilization TDA's at installation level. This reflects continuing emphasis on Reserve Component personnel as an integral part of the total force and an improvement in our mobilization readiness.

2. I urge all Staff Judge Advocates to familiarize themselves thoroughly with and actively support the system of training MOBDES officers set forth in AR 140-145, under which it is mandatory that all designees perform a minimum of twelve days annual training (AT) with their proponent agencies. SJAs must maintain close and continuing liaison with their assigned MOBDES officers to insure that this is done. Active duty tours should be coordinated and AT orders requested from U. S. Army Reserve Components Personnel and Administration Center, ATTN: AGUZ-OPM-CM, 9700 Page Boulevard, St. Louis, Missouri 63132, as far in advance as possible. Further, SJAs should assure that their MOBDES officers receive maximum training benefit in the duties normally associated with their assigned positions. Designees should not be used in other duties merely for the convenience of the SJA.

3. In the past, MOBDES positions have been filled by nominating individual applicants for particular positions. This has proven too cumbersome and administratively burdensome and it has not been possible to fill positions as fast as they have been created. To correct this situation, I have approved a system of mandatory fills of available MOBDES positions, effective immediately. In this manner, I hope to have at least 90% of our MOBDES positions filled by the end of CY 81, as contrasted with the present 69% fill.

DAJA-ZA
SUBJECT: Training of JAGC MOBDES Officers

14 OCT 1981

4. POC for the MOBDES program is LTC(P) Richard K. Smith, who may be reached at the JAG School, (803) 293-6121.

Hugh J. Clausen

HUGH J. CLAUSEN
Major General, USA
The Judge Advocate General

DISTRIBUTION:

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SJA, USA Army Communications Command
SJA, Military District of Washington
SJA, U. S. Military Academy, West Point

nels to Cdr., First U.S. Army, ATTN: AFKA-RT-IS, Fort George Meade, MD 20755.

4. Court Reporter/Legal Clerk Training for AT 82

Court Reporter (71E) training will be held for enlisted personnel 28 Jun to 9 Jul 82 at the Naval Justice School, Newport, Rhode Island. Legal Clerk Basic Course (71D10/20) and Advanced Course (71D40) will be held for enlisted personnel 18-30 Jul 82 at Fort Meade, Maryland. The 3289th U.S. Army Reserve School, Hanahan, South Carolina, will host the training. To obtain a quota for the course, a DA Form 1058 must be submitted thru channels to Cdr., First U.S. Army, ATTN: AFKA-RT-IS, Fort George G. Meade, MD 20755. Inquiries concerning the course may be directed to the same address.

5. Mobilization Designee Vacancies

There are a large number of mobilization designee positions now vacant. Judge advocates who desire to apply for one or more of the many vacant MOB DES positions are encouraged to review the list of vacant positions printed below. Such officers should complete the Application for Mobilization Designation (DA Form 2976) and forward it to The Judge Advocate General's School, ATTN: JAGS-RA (Lieutenant Colonel Smith) Charlottesville, Virginia 22901. Interested officers are reminded that mobilization designees are normally guaranteed a minimum of two weeks training with their mobilization agency.

Current positions available are as follows:

GRD	PARA	LINE	SEQ	POSITION	AGENCY	CITY
LTC	36C	04	01	Legal Off	Ofc DCS Opns Plans	Washington, DC
LTC	18	01C	01	Legal Off	DCS Personnel	Washington, DC
MAJ	01K	01A	02	Judge Advocate	Fitzsimons AMC	Aurora, CO
MAT	02C	01A	01	Judge Advocate	Wm Beaumont AMC	El Paso, TX
MAJ	04	01A	02	Judge Advocate	Letterman AMC	Presidio SF, CA
CPT	02	01A	01	Judge Advocate	USA Garrison	Ft Detrick, MD
MAJ	06	03A	02	Asst SJA	USA Health Svs Cmd	Ft S Houston, TX
MAJ	03	04A	01	Legal Officer	Ofc Gen Counsel	Washington, DC
MAJ	05	07	10	Military Judge	USA Legal Svcs Agency	Falls Church, VA
MAJ	05	07	10	Military Judge	USA Legal Svcs Agency	Falls Church, VA
MAJ	05	07	11	Military Judge	USA Legal Svcs Agency	Falls Church, VA
CPT	06	06	01	Judge Advocate	USA Legal Svcs Agency	Falls Church, VA
MAJ	07	05	02	App Attorney	USA Legal Svcs Agency	Falls Church, VA
MAJ	07	05	03	App Attorney	USA Legal Svcs Agency	Falls Church, VA
MAJ	08	08	02	App Attorney	USA Legal Svcs Agency	Falls Church, VA
MAJ	09	06	02	Trial Attorney	USA Legal Svcs Agency	Falls Church, VA
MAJ	09	06	03	Trial Attorney	USA Legal Svcs Agency	Falls Church, VA
MAJ	13	10	01	Sp Project Off	USA Legal Svcs Agency	Falls Church, VA
MAJ	13	12	01	Sr Def Counsel	USA Legal Svcs Agency	Falls Church, VA
MAJ	13	12	02	Sr Def Counsel	USA Legal Svcs Agency	Falls Church, VA
MAJ	13	12	03	Sr Def Counsel	USA Legal Svcs Agency	Falls Church, VA
MAJ	13	12	04	Sr Def Counsel	USA Legal Svcs Agency	Falls Church, VA
MAJ	13	12	05	Sr Def Counsel	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	03	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	04	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	05	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	06	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	07	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	08	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	09	Trial DC	USA Legal Svcs Agency	Falls Church, VA
CPT	13	18	10	Trial DC	USA Legal Svcs Agency	Falls Church, VA
LTC	04	08	01	DC Gen Clms	USA Clms Service	Ft Meade, MD
LTC	05A	02	01	Deputy Chief	USA Clms Service	Ft Meade, MD

GRD	PARA	LINE	SEQ	POSITION	AGENCY	CITY
LTC	05	01A	01	Asst Chief	Ofc Judge Advocate General	Washington, DC
LTC	05	02A	01	Plans Officer	Ofc Judge Advocate General	Washington, DC
MAJ	05	03A	03	Staff Officer	Ofc Judge Advocate General	Washington, DC
LTC	09	01A	01	Dep Ch DA Adv	Ofc Judge Advocate General	Washington, DC
CPT	10A	02A	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC
LTC	10B	01A	01	Asst Chief	Ofc Judge Advocate General	Washington, DC
LTC	10C	01A	01	Asst Chief	Ofc Judge Advocate General	Washington, DC
MAJ	10C	02A	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC
MAJ	10C	02B	02	Judge Advocate	Ofc Judge Advocate General	Washington, DC
MAJ	10C	02B	03	Judge Advocate	Ofc Judge Advocate General	Washington, DC
CPT	10C	03A	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC
CPT	10C	03A	02	Judge Advocate	Ofc Judge Advocate General	Washington, DC
MAJ	10D	01A	01	Asst Chief	Ofc Judge Advocate General	Washington, DC
LTC	10E	01A	01	Asst Chief	Ofc Judge Advocate General	Washington, DC
CPT	10E	02A	02	Judge Advocate	Ofc Judge Advocate General	Washington, DC
LTC	10F	01	01	Chief	Ofc Judge Advocate General	Washington, DC
MAJ	10F	02	01	Asst Chief	Ofc Judge Advocate General	Washington, DC
LTC	10G	01	01	Chief	Ofc Judge Advocate General	Washington, DC
LTC	12A	01A	02	Judge Advocate	Ofc Judge Advocate General	Washington, DC
MAJ	12A	02A	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC
LTC	13	01A	01	Asst Chief	Ofc Judge Advocate General	Washington, DC
LTC	13C	01A	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC
MAJ	13C	02A	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC
LTC	14D	02	01	Judge Advocate	Ofc Judge Advocate General	Washington, DC
CPT	04	04	02	Asst SJA	MTMC Eastern Area	Bayonne, NJ
CPT	07E	02	01	Clms O Tfc B	Gulf Outport	New Orleans, LA
MAJ	23	05	01	Legal Off	HQ EUCOM	APO New York
MAJ	20I	02	01	Leg Advisor	USA Missile Cmd	Redstone Ars, AL
CPT	20I	03	02	Leg Advisor	USA Missile Cmd	Redstone Ars, AL
CPT	20I	03	03	Leg Advisor	USA Missile Cmd	Redstone Ars, AL
MAJ	75	01A	01	Judge Advocate	USA Dep Newcumberland	Newcumberland, PA
CPT	75	01A	01	Leg/Clms Off	USA Dep Sharpe	Lathrop, CA
CPT	75	02	01	Atty Advisor	USA Dep Tobyhanna	Tobyhanna, PA

GRD	PARA	LINE	SEQ	POSITION	AGENCY	CITY
CPT	75	02	02	Atty Advisor	USA Dep Tobyhanna	Tobyhanna, PA
MAJ	75	01A	01	Post JA	USA Depot Tooele	Tooele, UT
MAJ	07	02	01	Judge Advocate	USARSCH Technology Sch	Moffet Field, CA
MAJ	11C	01A	01	Proc Attorney	USA ARRCOM	Rock Island, IL
MAJ	11C	01A	02	Proc Attorney	USA ARRCOM	Rock Island, IL
CPT	04H	04B	01	Asst SJA	USA CERCOM	Ft Monmouth, NJ
CPT	04H	04B	02	Asst SJA	USA CERCOM	Ft Monmouth, NJ
CPT	04H	04B	03	Asst SJA	USA CERCOM	Ft Monmouth, NJ
CPT	04H	04B	04	Asst SJA	USA CERCOM	Ft Monmouth, NJ
CPT	04H	04B	05	Asst SJA	USA CERCOM	Ft Monmouth, NJ
CPT	04H	04B	06	Asst SJA	USA CERCOM	Ft Monmouth, NJ
CPT	04H	04B	07	Asst SJA	USA CERCOM	Ft Monmouth, NJ
CPT	04H	04B	08	Asst SJA	USA CERCOM	Ft Monmouth, NJ
MAJ	02	01B	01	Asst JA	HQ Ft Huachuca	Ft. Huachuca, AZ
MAJ	02	01B	02	Asst JA	HQ Ft Huachuca	Ft. Huachuca, AZ
MAJ	02	01B	03	Asst JA	HQ Ft Huachuca	Ft. Huachuca, AZ
MAJ	02	01B	04	Asst JA	HQ Ft Huachuca	Ft. Huachuca, AZ
MAJ	02	01B	05	Asst JA	HQ Ft Huachuca	Ft. Huachuca, AZ
LTC	46B	02	01	Legal Off	USA Corps of Engrs	Washington, DC
MAJ	48C	03	01	Legal Off	USA Corps of Engrs	Washington, DC
CPT	57	03	02	Asst SJA	172d Inf Bde	Ft. Richardson, AK
CPT	10A	03	01	Asst SJA	Sixth US Army	Presidio SF, CA
LTC	05A	01	01	Ch Mil Affairs	USA Garrison	Ft. Bragg, NC
MAJ	05B	02	01	Defense Counsel	USA Garrison	Ft. Bragg, NC
MAJ	05B	03	01	Trial Counsel	USA Garrison	Ft. Bragg, NC
CPT	05B	08	01	Trial Counsel	USA Garrison	Ft. Bragg, NC
CPT	03A	02	04	Trial Counsel	101st ABN Division	Ft. Campbell, KY
CPT	03B	02	01	Defense Counsel	101st ABN Division	Ft. Campbell, KY
MAJ	03D	01	01	Asst SJA	USA Garrison	Ft. Stewart, GA
CPT	03D	06	02	Asst SJA-DC	USA Garrison	Ft. Stewart, GA
CPT	03E	02	01	Asst SJA	USA Garrison	Ft. Stewart, GA
CPT	102	B02	01	Asst SJA-TC	USA Garrison	Ft. Stewart, GA
CPT	52C	02	02	Asst SJA	USA Garrison	Ft. Stewart, GA
LTC	03D	01	01	Ch Admin Law	USA Garrison	Ft. Hood, TX
MAJ	03D	02	02	Asst Judge Advocate	USA Garrison	Ft. Hood, TX
MAJ	03F	01	01	Claims Off	USA Garrison	Ft. Hood, TX
MAJ	03B	02	01	Ch Trial Counsel	5th Inf Div	Ft. Polk, LA
CPT	03B	03	02	Def Counsel	5th Inf Div	Ft. Polk, LA
MAJ	03B	01	01	Chief	USA Garrison	Ft. Sheridan, IL
MAJ	02A	02	01	Ch Def Counsel	USA Garrison	Ft. Riley, KS
MAJ	03B	03	01	Ch Def Counsel	USA Garrison	Ft. Carson, CO
CPT	03B	04	02	Judge Advocate	USA Garrison	Ft. Drum, NY
CPT	03D	01	01	Judge Advocate	USA Garrison	Ft. Drum, NY
CPT	03B	03	02	Judge Advocate	USA Garrison	Annville, PA
CPT	03B	03	03	Judge Advocate	USA Garrison	Annville, PA
CPT	03B	03	02	Judge Advocate	USA Garrison	Sparta, WI
CPT	03B	03	04	Judge Advocate	USA Garrison	Sparta, WI
MAJ	65	02	01	Judge Advocate	USAR Garrison	Sparta, WI
MAJ	03D	01	01	Ch Admin Law Br	USA Garrison	Ft. Lewis, WA
MAJ	62C	03	01	Asst Crim Law Off	USA Forces Cmd	Ft. McPherson, GA
CPT	03D	02	01	JA	USA Garrison	Ft. Buchanan, PR
CPT	31I	04	01	Instr	USA EN Center	Ft. Belvoir, VA
CPT	31I	04	02	Instr	USA EN Center	Ft. Belvoir, VA
CPT	31I	04	03	Instr	USA EN Center	Ft. Belvoir, VA
CPT	31I	04	04	Instr	USA EN Center	Ft. Belvoir, VA
CPT	31I	04	05	Instr	USA EN Center	Ft. Belvoir, VA

GRD	PARA	LINE	SEQ	POSITION	AGENCY	CITY
MAJ	05	03B	01	Asst SJA	QMC Ft Lee	Ft. Lee, VA
MAJ	04A	02A	01	Sr Def Counsel	USA Inf Cen	Ft. Benning, GA
CPT	04A	04A	01	Trial Counsel	USA Inf Cen	Ft. Benning, GA
CPT	04B	03	01	Admin Law Off	USA Inf Cen	Ft. Benning, GA
CPT	04B	04	01	Admin Law Off	USA Inf Cen	Ft. Benning, GA
CPT	04B	07A	01	Claims Off	USA Inf Cen	Ft. Benning, GA
MAJ	14B	02	02	Asst SJA	USA Signal Cen	Ft. Gordon, GA
MAJ	02A	01A	01	Asst C Crim Law	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02A	02	01	Trial Counsel	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02A	02	02	Trial Counsel	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02A	02	03	Trial Counsel	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02A	02A	01	Defense Counsel	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02A	02A	02	Defense Counsel	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02A	02A	03	Defense Counsel	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02B	01A	01	Asst C Adm Civ Law	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02B	02A	01	Asst Admin Law O	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02B	03B	01	Civil Law Off	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02B	03C	01	Legal Asst Off	USATC & Ft Jackson	Ft. Jackson, SC
CPT	02B	03C	02	Legal Asst Off	USATC & Ft Jackson	Ft. Jackson, SC
CPT	07A	03	02	Judge Advocate	AVN Center	Ft. Rucker, AL
CPT	07A	04	01	Mil Judge	AVN Center	Ft. Rucker, AL
CPT	38A	03	01	Asst SJA	USA Garrison	Ft. Chaffee, AR
CPT	38A	03	02	Asst SJA	USA Garrison	Ft. Chaffee, AR
MAJ	38B	01	01	Admin Law Off	USA Garrison	Ft. Chaffee, AR
MAJ	38B	02	01	Admin Law Off	USA Garrison	Ft. Chaffee, AR
CPT	30D	01B	01	Admin Law	USA AD Center	Ft. Bliss, TX
CPT	04	03A	01	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
CPT	04	03A	02	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
CPT	04	03A	03	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
CPT	04	03A	04	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
CPT	04	03A	05	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
CPT	04	03A	06	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
CPT	04	03A	07	Asst SJA	USA Combine Arm Cen	Ft. Leavenworth, KS
MAJ	06	02	01	Dep SJA	USA Admin Center	Ft. B Harrison, IN
CPT	06	05	01	Asst JA	USA Admin Center	Ft. B Harrison, IN
CPT	10D	06	01	Instr	USA Intel Cen Sch	Ft. Huachuca, AZ
CPT	10D	06	03	Instr	USA Intel Cen Sch	Ft. Huachuca, AZ
MAJ	12	02	01	Asst JA	ARNG TSA Cp Atterbury	Edinburg, IN
MAJ	12	02	02	Asst JA	ARNG TSA Cp Atterbury	Edinburg, IN

The SJA office at CINCPAC, Camp Smith, Hawaii, has announced an 0–6 JAGC mobilization designee vacancy. Applicant must be resident of Hawaii and be an 04, 05, or 06. Interested applicants should submit DA Form 2976 directly to TJAGSA, Reserve Affairs Department, Lieutenant Colonel Smith.

CLE News

1. Resident Course Quotas

Attendance at resident CLE courses conducted at The Judge Advocate General's School is restricted to those who have allocated quotas. Quota allocations are obtained from local training offices which receive them from the MACOM's. Reservists obtain quotas through their unit or RCPAC if they are non-unit reservists. Army National Guard personnel request quotas through their units. The Judge Advocate General's School deals directly with MACOM and other major agency training offices. Specific questions as to the operations of the quota system may be addressed to Mrs.

Kathryn S. Head, Nonresident Instruction Branch, The Judge Advocate General's School, Army, Charlottesville, Virginia 22901 (Telephone: AUTOVON 274-7110, extension 293-6286; commercial phone: (804) 293-6286; FTS: 938-1304).

2. The 1982 Government Contracts Law Symposium. The faculty of the Contract Law Division of The Judge Advocate General's School are pleased to announce the following topics and guest speakers for the 1982 Government Contract Law Symposium (formerly called the Contract Attorneys Advanced Course): "Modern Negotiated Contracting," Professor Ralph Nash, George Washington University Law School; "Labor Problems in the CITA Program," Colonel Robert Nutt, Chief, Labor and Civilian Personnel Office, OTJAG; "New Debarment Rules," John S. Miller, Office of General Counsel, GSA; "New Labor Standards Regulations," an attorney from Department of Labor (invited)' "Construction Contracting Update," Thomas J. Kelleher of Smith, Currie, and Hancock, Atlanta: "Contract Disputes," Rollin Van Broekhoven, Member ASBCA, and Eldon Crowell of Crowell and Moring, Washington, D.C.; "Dealing with Intellectual Property," Lieutenant Colonel Neil K. Nydeggar, OTJAG: "New Initiatives in the Federal Procurement System,'' Donald Sowle, Administrator, Office of Federal Procurement Policy (invited); "How Congress Handles Government Contracts Legislation," Dean Emory Sneeden, University of South Carolina Law School; "Fraud, Waste, and Abuse in Government Contracts: Can The Lawyer Help Us Reduce It," Major General Robert B. Solomon, Deputy Inspector General; "Problems and New Legislation in Government Contracts," member of Congress (invited). The Symposium will be held 11-15 January 1982.

3. Legal Clerk/Court Reporter Workshop at MDW.

The 2d Annual Legal Clerk/Court Reporter Workshop will be conducted from 28 February 1982 to 3 March 1982. The workshop will be hosted by the Staff Judge Advocate, Headquarters, U.S. Army Military District of Washington, Fort Lesley J. McNair, Washington, D.C. The conference site is the Fort Myer NCO Club, Fort Myer, Virginia.

The principle objective of the workshop is to provide to GCM-jurisdiction legal clerks and court reporters necessary current information and instruction concerning the administration of military justice. Specific topics covered include changes to the Manual for Courts-Martial; the requirements of AR 27-10; records of trial; convening, promulgating, supplementary, and final orders; appeals; and all matters relating to court proceedings. Updates concerning claims and legal assistance matters will be provided. Air Force and Navy procedural updates will also be available. The workshop is further intended to promote a better working relationship in the criminal law area between OTJAG and field staff judge advocates.

Each SJA office with CONUS, Korea, Japan, Puerto Rico, Panama, and Hawaii, has been sent an announcement letter with the agenda and administrative instructions for the workshop. Allocations to attend the course will be strictly controlled by the SJA, HQ, MDW. Attendance will be limited to from 100 to 125. It is probable that not all personnel wanting to attend this workshop will be able to do so. Staff judge advocates requesting allocations should list in order of priority the personnel desirous of attending.

Per diem and travel allowances for personnel attending this workshop must be funded by the sending command. Quarters and mess are not available.

The point of contact for the workshop is MSG George E. Thorne, Jr., Chief Legal Clerk/NCOIC, OSJA, MDW, AUTOVON 223-6030/6031/6032. Inquiries concerning the workshop should be addressed to:

Commander
HQ, US Army Military District of Washington

ATTN: Office of the Staff Judge Advocate,
MSG George E. Thorne, Jr.,
Chief Legal Clerk/NCOIC
Fort Lesley J. McNair
Washington, D.C. 20319

Attendees will be billeted at the Quality Inn, 300 Army-Navy Drive, Arlington, VA. Registration begins at 1300 hours, Sunday, 28 February 1982, in the main lobby area of the Quality Inn. A hospitality hour will follow registration from 1800 to 2000 hours.

4. Homer Ferguson Conference, 25–26 May 1982.

The 7th Annual Homer Ferguson Conference on Appellate Advocy will be held on 25 and 26 May 1982 at the George Washington University Marvin Center, Washington, D.C. The conference is sponsored by the United States Court of Military Appeals.

The Homer Ferguson Conference gives military and civilian practitioners an opportunity to receive concentrated instruction intended to develop and maintain the skills necessary for appellate court practice within the military justice system or elsewhere. The confereees may obtain certified credit to meet the continuing legal education requirements of their respective state bars.

For further information about the 1982 conference, please contact:
Mr. Robert Miele
U.S. Court of Military Appeals
450 E Street, N.W.
Washington, D.C. 20442
Tel. (202) 693-7100, extension 31.

The conference is named for Judge Homer Ferguson, who served on the U.S. Court of Military Appeals as an associate judge from 17 February 1956 until 1 May 1971. From 1943 to 1954, Judge Ferguson served as a United States Senator from Michigan, and in 1955–1956, as United States ambassador to the Phillippines.

5. TJAGSA CLE Courses

January 4–8: 18th Law of War Workshop (5F–F42).

January 4–15: 2nd Administrative Law for Military Installations (5F–F24).

January 11–15: 1982 Government Contract Law Symposium (5F–F11).

January 21–23: JAG USAR Workshop.

January 25–29: 64th Senior Officer Legal Orientation (5F–F1).

January 25–April 2: 98th Basic Course (5–27–C20).

February 8–12: 3rd Prosecution Trial Advocacy (5F–F32).

February 22–March 5: 91st Contract Attorneys (5F–F10).

March 8–12: 10th Legal Assistance (5F–F23).

March 22–26: 21st Federal Labor Relations (5F–F22).

March 29–April 9: 92nd Contract Attorneys (5F–F10).

April 5–9: 65th Senior Officer Legal Orientation (5F–F1).

April 20–23: 14th Fiscal Law (5F–F12).

April 26–30: 12th Staff Judge Advocate (5F–F52).

May 3–14: 3d Administrative Law for Military Installations (5F–F24).

May 12–14: 4th Contract Attorneys Workshop (5F–F15).

May 17–20: 10th Methods of Instruction.

May 17–June 4: 24th Military Judge (5F–F33).

May 24–28: 19th Law of War Workshop (5F–F42).

June 7–11: 67th Senior Officer Legal Orientation (5F–F1).

June 21–July 2: JAGSO Team Training.

June 21–July 2: BOAC (Phase VI-Contract Law).

July 12–16: 4th Military Lawyer's Assistant (512–71D/20/30).

July 19–August 6: 25th Military Judge (5F–F33).

July 26–October 1: 99th Basic Course (5–27–C20).

August 2–6: 11th Law Office Management (7A–713A).

August 9–20: 93rd Contract Attorneys (5F–F10).

August 16–May 20, 1983: 31st Graduate Course (5–27–C22).

August 23–25: 6th Criminal Law New Developments (5F–F35).

September 13–17: 20th Law of War Workshop (5F–F42).

September 20–24: 68th Senior Officer Legal Orientation (5F–F1).

October 12–15: 1982 Worldwide JAGC Conference.

October 18–December 17: 100th Basic Course (5–27–C20).

6. Civilian Sponsored CLE Courses

February

4: VACLE, Law Office Management, Roanoke, VA.

4–5: NYULT, Employee Benefit Plans & Executive Compensation, New York City, NY.

4–5: PLI, Federal Government Litigation, Washington, DC.

4–6: ALIABA, Fundamentals of Bankruptcy Law, New Orleans, LA.

4–6: UMLC, Medical Institute for Attorneys, Miami Beach, FL

5: VACLE, Law Office Management, Richmond, VA.

5–6: GICLE, Appellate Practice and Procedure, Atlanta, GA.

5–6: ALIABA, Occupational Disease Litigation, Washington, DC.

7–11: NCDA, Trial Advocacy for Prosecutors, San Francisco, CA.

11: VACLE, Law Office Management, Alexandria, VA.

11–12: PLI, Employee Benefits, San Francisco, CA.

12: KCLE, Evidence, Fort Mitchell, KY.

12: VACLE, Law Office Management, Norfolk, VA.

12–13: GICLE, Family Law, Albany, GA.

12–13: PLI, Medical Malpractice Litigation, San Francisco, CA.

18–19: PLI, Current Developments in Patent Law, New York City, NY.

18–19: NCLE, Family Law, Lincoln, NE.

18–20: ALIABA, Environmental Law, Washington, DC.

19: VACLE, Criminal Law Seminar, Fredricksburg, VA.

19–20: GICLE, Family Law, Savannah, GA.

20: VACLE, Criminal Law Seminar, Williamsburg, VA.

21–25: NCDA, Prosecutor's Role in Investigations, Atlanta, GA.

25–26: PLI, Current Developments in Copyright Law, New York City, NY.

25–27: ALIABA, Trial Evidence in Federal Courts, San Francisco, CA.

26–27: GICLE, Estate Planning, Athens, GA.

26–27: GICLE, Family Law, Atlanta, GA.

26–27: KCLE, Federal-Kentucky Income Taxation, Lexington, KY.

For further information on civilian courses, please contact the institution offering the course, as listed below:

AAA: American Arbitration Association, 140 West 51st Street, New York, NY 10020.

AAJE: American Academy of Judicial Education, Suite 437, 539 Woodward Building, 1426 H Street NW, Washington, DC 20005. Phone: (202) 783-5151.

ABA: American Bar Association, 1155 E. 60th Street, Chicago, IL 60637.

AICLE: Alabama Institute for Continuing Legal Education, Box CL, University, AL 36486.

AKBA: Alaska Bar Association, P.O. Box 279, Anchorage, AK 99501.

ALIABA: American Law Institute-American Bar Association Committee on Continuing Professional Education, 4025 Chestnut Street, Philadelphia, PA 19104.

ARKCLE: Arkansas Institute for Continuing Legal Education, 400 West Markham, Little Rock, AR 72201.

ATLA: The Association of Trial Lawyers of America, 1050 31st St., N.W. (or Box 3717), Washington, DC 20007

BNA: The Bureau of National Affairs Inc., 1231 25th Street, N.W., Washington, DC 20037.

CALM: Center for Advanced Legal Management, 1767 Morris Avenue, Union, NJ 07083.

CCEB: Continuing Education of the Bar, University of California Extension, 2150 Shattuck Avenue, Berkeley, CA 94704.

CCH: Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, IL 60646.

CCLE: Continuing Legal Education in Colorado, Inc., University of Denver Law Center, 200 W. 14th Avenue, Denver, CO 80204.

CLEW: Continuing Legal Education for Wisconsin, 905 University Avenue, Suite 309, Madison, WI 53706.

DLS: Delaware Law School, Widener College, P.O. Box 7474, Concord Pike, Wilmington, DE 19803.

FBA: Federal Bar Association, 1815 H Street, N.W., Washington, DC 20006. Phone: (202) 638-0252.

FJC: The Federal Judicial Center, Dolly Madison House, 1520 H Street, N.W., Washington, DC 20003.

FLB: The Florida Bar, Tallahassee, FL 32304.

FPI: Federal Publications, Inc., Seminar Division Office, Suite 500, 1725 K Street NW, Washington, DC 20006. Phone: (202) 337-7000.

GICLE: The Institute of Continuing Legal Education in Georgia, University of Georgia School of Law, Athens, GA 30602.

GTULC: Georgetown University Law Center, Washington, DC 20001.

HICLE: Hawaii Institute for Continuing Legal Education, University of Hawaii School of Law, 1400 Lower Campus Road, Honolulu, HI 96822.

ICLEF: Indiana Continuing Legal Education Forum, Suite 202, 230 East Ohio Street, Indianapolis, IN 46204.

ICM: Institute for Court Management, Suite 210, 1624 Market St., Denver, CO 80202. Phone: (303) 543-3063.

IPT: Institute for Paralegal Training, 235 South 17th Street, Philadelphia, PA 19103.

KCLE: University of Kentucky, College of Law, Office of Continuing Legal Education, Lexington, KY 40506.

LSBA: Louisiana State Bar Association, 225 Baronne Street, Suite 210, New Orleans, LA 70112.

LSU: Center of Continuing Professional Development, Louisiana State University Law Center, Room 275, Baton Rouge, LA 70803.

MCLNEL: Massachusetts Continuing Legal Education—New England Law Institute, Inc.,

133 Federal Street, Boston, MA 02108, and 1387 Main Street, Springfield, MA 01103.

MIC: Management Information Corporation, 140 Barclay Center, Cherry Hill, NJ 08034.

MOB: The Missouri Bar Center, 326 Monroe, P.O. Box 119, Jefferson City, MO 65102.

NCAJ: National Center for Administration of Justice, Consortium of Universities of the Washington Metropolitan Area, 1776 Massachusetts Ave., NW, Washington, DC 20036. Phone: (202) 466-3920.

NCATL: North Carolina Academy of Trial Lawyers, Education Foundation Inc., P.O. Box 767, Raleigh, NC. 27602.

NCCD: National College for Criminal Defense, College of Law, University of Houston, 4800 Calhoun, Houston, TX 77004.

NCDA: National College of District Attorneys, College of Law, University of Houston, Houston, TX 77004. Phone: (713) 749-1571.

NCJFCJ: National Council of Juvenile and Family Court Judges, University of Nevada, P.O. Box 8978, Reno, NV 89507.

NCLE: Nebraska Continuing Legal Education, Inc., 1019 Sharpe Building, Lincoln, NB 68508.

NCSC: National Center for State Courts, 1660 Lincoln Street, Suite 200, Denver, CO 80203

NDAA: National District Attorneys Association, 666 North Lake Shore Drive, Suite 1432, Chicago, IL 60611.

NITA: National Institute for Trial Advocacy, William Mitchell College of Law, St. Paul, MN 55104

NJC: National Judicial College, Judicial College Building, University of Nevada, Reno, NV 89507.

NLADA: National Legal Aid & Defender Association, 1625 K Street, NW, Eighth Floor, Washington, DC 20006. Phone: (202) 452-0620.

NPI: National Practice Institute Continuing Legal Education, 861 West Butler Square, 100 North 6th Street, Minneapolis, MN 55403. Phone: 1-800-328-4444 (In MN call (612) 338-1977).

NPLTC: National Public Training Center, 2000 P Street, N.W., Suite 600, Washington, D.C. 20036

NWU: Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611

NYSBA: New York State Bar Association, One Elk Street, Albany, NY 12207.

NYSTLA: New York State Trial Lawyers Association, Inc., 132 Nassau Street, New York, NY 12207.

NYULT: New York University, School of Continuing Education, Continuing Education in Law and Taxation, 11 West 42nd Street, New York, NY 10036.

OLCI: Ohio Legal Center Institute, 33 West 11th Avenue, Columbus, OH 43201.

PATLA: Pennsylvania Trial Lawyers Association, 1405 Locust Street, Philadelphia, PA 19102.

PBI: Pennsylvania Bar Institute, P.O. Box 1027, 104 South Street, Harrisburg, PA 17108.

PLI: Practising Law Institute, 810 Seventh Avenue, New York, NY 10019. Phone: (212) 765-5700.

SBM: State Bar of Montana, 2030 Eleventh Avenue, P.O. Box 4669, Helena, MT 59601.

SBT: State Bar of Texas, Professional Development Program, P.O. Box 12487, Austin, TX 78711.

SCB: South Carolina Bar, Continuing Legal Education, P.O. Box 11039, Columbia, SC 29211.

SLF: The Southwestern Legal Founation, P.O. Box 707, Richardson, TX 75080.

SMU: Continuing Legal Education, School of Law, Southern Methodist University, Dallas, TX 75275

SNFRAN: University of San Francisco, School of Law, Fulton at Parker Avenues, San Francisco, CA 94117.

UHCL: University of Houston, College of Law, Central Campus, Houston, TX 77004.

UMLC: University of Miami Law Center, P.O. Box 248087, Coral Gables, FL 33124.

UTCLE: Utah State Bar, Continuing Legal Education, 425 East First South, Salt Lake City, UT 84111.

VACLE: Joint Committee of Continuing Legal Education of the Virginia State Bar and The Virginia Bar Association, School of Law, University of Virginia, Charlottesville, VA 22901.

VUSL: Villanova University, School of Law, Villanova, PA 19085.

Current Materials of Interest

1. Regulations

Number	*Title*	*Change*	*Date*
AR 27-10	Legal Services	C21	15 Sep 81
AR 27-10	Legal Services	903	28 Sep 81
AR 37-2	General Accounting and Reporting for Finance and Accounting Offices	C1	15 Sep 81
AR 135-91	Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures	C8	15 Aug 81
AR 135-91	Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures	905	17 Sep 81
AR 135-175	Separation of Officers	C5	15 Sep 80
AR 135-175	Separation of Officers	902	18 Feb 81
AR 135-175	Separation of Officers	903	19 Jun 81
AR 135-178	Separation of Enlisted Personnel	901	16 Sep 81
AR 135-200	Active Duty for Training and Annual Training of Individual Members	901	25 Mar 81
AR 140-10	Assignments, Attachments, Details, and Transfers	I07	17 Sep 81
AR 140-185	Training and Retirement Points Credits and Unit Level Strength Accounting Records	901	17 Sep 81
AR 200-1	Environmental Detection and Enhancement	901	23 Dec 80
AR 601-102	Voluntary Duty with the Judge Advocate General's Corps		1 Sep 78
AR 601-280	Army Reenlistment Program	C5	15 Sep 81
AR 735-11	Accounting for Lost, Damaged and Destroyed Property		15 Sep 81

2. Articles.

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Gold, J. A., *Wiser than the Laws? The Legal Accountability of the Medical Profession*, 7 Am. J. L. & Med. 145 (1981).

Hawkins, Carl S., *Retaining Traditional Tort Liability in the Nonmedical Professions*, 1981 Brigham Young U. L. Rev. 33.

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Wenker, Kenneth H., LtCol., USAF, *Morality and Military Obediance*, 32 Air U. Rev. 76 (Jul.-Aug. 1981).

Westmoreland, William C., General, and Major General George S. Prugh, *Judges in Command: The Judicialized Uniform Code of Military Justice in Combat (A Draft Code Amendment)*, 4 Harv. J. L. & Pub. Pol'y 199 (1981).

By Order of the Secretary of the Army:

E. C. MEYER
General, United States Army
Chief of Staff

Official:

ROBERT M. JOYCE
Brigadier General, United States Army
The Adjutant General

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