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Marihuana Dogs, Searches and Inspections—More Questions than Answers

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> . . . [W]e do not believe that the young American Citizen who enters the nation's armed forces, whether by enlistment or by conscription, can truly be said to have "impliedly consented" to a search of his or her personal living quarters, lockers, and belongings for evidence of a crime in the same sense that a gun merchant or a liquor dealer impliedly consents to an inspection of his or her records and certain areas of the business establishment. It may well be, as the United States Court of Appeals for the District of Columbia suggested in *Committee for G.I. Rights v. Callaway*, 518 F. 2d 466, 477 (D.C. Cir. 1975), that the 'soldier can not reasonably expect the Army barracks to be a sanctuary like his civilian home,' but military quarters have some aspects of a dwelling or a home and in those respects the military member may reasonably expect privacy protected by the Fourth Amendment (footnotes omitted).[1]

The quotation is from Judge Perry's opinion in *United States v. Roberts*. The opinion uses language upon which legal appeals can be based and new law generated. *Roberts* may be a landmark case concerning privacy rights of soldiers and what intrusion of those privacy rights will be tolerated under the concept of "inspections." Whether this case becomes the foundation for such a new era remains to be seen, but areas immediately affected are the continuing controversy over the use of marihuana dogs during an on-post inspection or search, and the admissibility of evidence seized during a shakedown inspection. This latter issue is examined first.

In *Roberts* an Air Force commander "decided to conduct a 'shakedown inspection' of the squadron for the sole purpose of discovering marihuana" (footnote omitted).[2] Both the Air Force Court of Military Review and the Court of Military Appeals had no problem in concluding that the action was a search,[3] for the Court of Military Appeals noted that while the commander desired to learn the extent of the drug problem in his unit as it affected the unit's ability to perform, "the circumstances surrounding the search, *infra*, indicate that Colonel *E* intended to, and in fact did, prosecute all persons he found in possession of contraband drugs."[4]

The circumstances surrounding the search in *Roberts* involved the gatherings of NCOs, security policemen, a *qualified* marihuana dog and handler, the 1st sergeant and the unit commander at 4:30 on a Saturday morning for a surprise inspection. The procedure involved the entry of the dog into a barracks consisting of closed-off rooms. A sergeant opened the individual doors, announced the inspection and the dog entered and sniffed around. If the dog alerted, the soldier was advised of his *Miranda-Tempia* rights. Authorization to search was obtained from the base commander and a search was made of the room. The admissibility of marihuana discovered in a cabinet in a barracks room was the subject of the appeal in *Roberts*. The Court of Military Appeals rendered a decision with three separate opinions.

The Army Lawyer

Table of Contents

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Judge Perry's opinion for the Court found the evidence inadmissible, as he struck down the so called "shakedown inspection" [5] as a "dragnet-type of search operation which, even in its military context, is constitutionally intolerable." [6] Judge Perry rejected the position of the Government that this type of action is a permissible administrative regulatory inspection and also rejected arguments that the action was an appropriate extension of the usual type of military inspection "which looks at the overall fitness of a unit to perform its military mission. . . ." [7] Does this mean that the validity of the shakedown inspection has finally been rejected? It would benefit service attorneys if a clear cut answer to this question could be derived from *Roberts,* and Judge Perry's opinion is clear, but he stands alone on this point.

Judge Cook approved of the shakedown inspection in his dissenting opinion, citing both previous decisions of the Court [8] and Supreme Court decisions upholding the concept of administrative inspections.[9]

Chief Judge Fletcher, on the other hand, simply stated: "For the reasons set forth in my separate opinion in *United States v. Thomas,* 24 U.S.C.M.A. 228, 233, 51 C.M.R. 607, 612 (1976), I concur in the result."[10] *Thomas* was not unlike *Roberts* factually for the dog in *Thomas* was allowed to walk freely through a barracks "sectioned into separate cubicles by articles of furniture." [11] If the dog alerted on particular lockers, a consent to search was requested. If denied, the right to search was sought from the appropriate commander. In his concurring opinion in *Thomas,* Chief Judge Fletcher stated: ". . . while I sanction the commander's constitutional right to conduct such inspections as part of his *command* function, the abuses inherent in any such inspection authority lead me to conclude that, to discourage future unlawful police activity, the fruits of all such inspections may not be used either as evidence in a criminal or quasi-criminal proceeding or as a basis for establishing probable cause under the Fourth Amendment" (footnotes omitted).[12]

Thus, in light of the opinions in both *Roberts* and *Thomas*, Chief Judge Fletcher and Judge Cook approve of the concept of the shakedown inspection, but both Judge Perry and Chief Judge Fletcher reject the admissibility in a criminal proceeding [13] of any evidence discovered, albeit for different reasons. For the prosecuting attorney, the result is that evidence seized during a shakedown inspection is inadmissible in a criminal proceeding.[14]

A "shakedown inspection" does not have to include a marihuana dog to fall within the definition set forth by Judge Perry. That definition is sufficiently broad to cover all circumstances in which the search activities involve an area where the soldier has an expectation of privacy and the searching authorities seek to discover fruits or evidence of a crime. This definition *does* permit the use of evidence seized during the course of a "traditional" inspection designed to ascertain the overall fitness of a unit and its readiness to perform.[15]

The line drawing as to what is a shakedown inspection and what constitutes a traditional inspection continues to be objectively difficult to assess, and the intent of the commander conducting or authorizing the inspection must be judged based on the circumstances surrounding the inspection itself.[16] In this regard, Judge Perry's opinion does not alter the examination required at the trial level when an objection to the admissibility of evidence seized during an inspection is offered.[17] Because Chief Judge Fletcher would exclude all evidence seized during any inspection and Judge Perry would only exclude evidence seized during a shakedown inspection, a prosecutor at trial must establish that evidence seized during an inspection resulted from a traditional inspection before it will be admissible.

This fragile line-drawing is difficult at best. However, the military judge and the prosecutor should heed the recent admonition in *United States v. Ledbetter*,[18] where a command sought to avoid a *Dunlap* problem by utilizing "the last minute release syndrom" [19] when it released an appellant from posttrial confinement realizing final action would not be taken before the 90th day. Chief Judge Fletcher in his opinion for the Court noted:

> It is regrettable that efforts by this Court to fashion guidelines with some flexibility invariably prompt more, rather than less, litigation. The ultimate, and I believe unfortunate result is subsequent decisions which solidify a standard with little, if any, discretion left to those who must apply it (citations omitted).[20]

The military judge and prosecutor are under an obligation to deal with the difficult line drawing required in light of *Thomas* and *Roberts* as to the admissibility of evidence seized during inspections. Failing to do so invites the Court to turn to rigid requirements (such as exclusion of all evidence seized during inspections) and there have been few involved in the military criminal justice system who have favored such standards which are presently being applied in the pretrial and posttrial processing of cases.

In addition to the shakedown inspection application of the *Roberts* decision, that decision should also be read as to its impact on the use of the marihuana dog. Judge Perry's opinion specifically refers to the appellant's "reasonable expectation of privacy in his closed room under the circumstances of this case . . .," as distinguished from the use of a dog in an "air space open to the public," [21] as existed in the case of *United States v. Solis*.[22] In his concluding statement Judge Perry again refers to the "opening of the door to the appellant's room" and the violation of appellant's privacy rights.[23] One might conclude from these statements that use of a marihuana dog in the common area of a barracks or elsewhere on post would be permitted by Judge Perry as a reasonable intrusion. However, there is more.

In support of his contention that the entry into Roberts' room was an unreasonable search and seizure, Judge Perry favorably cited Judge Ferguson's dissenting opinion in *Thomas* which held that the use of the mari-

huana dog is in and of itself a search.[24] Furthermore, Judge Perry favorably cites the language of the concurring opinion of Chief Judge Fletcher in *Thomas* that a marihuana dog's "distinguishing attribute is his nose with its ability to ferret out a substance, possession of which is criminally punishable under the Uniform Code." [25]

These portions of Judge Perry's opinion in *Roberts* indicate that he did not adopt a general position on how to define use of the marihuana dog. His favorable citation of both Judge Ferguson's opinion in *Thomas* and the *Solis* decision raise two distinct theories. Judge Ferguson's position in *Thomas* simply defined any use of the marihuana dog as a search, leaving only to be answered the question of whether the area where the dog alerts to, not the area of the dog's actual physical presence, is an area where a reasonable expectation of privacy exists. Contrary to this position is the court's refusal in *Solis* to determine whether a marihuana dog's sniffing constitutes a search.[26] The *Solis* court, in overruling the district court's opinion [27] that a search existed, considered the nature of the intrusion there permissible without calling the action a search.[28]

This distinction is vital, for under *Solis* it is permissible to employ the marihuana dog to provide one with probable cause to obtain a warrant to search,[29] or search immediately where exigent circumstances exist. Under the rationale adopted by Judge Ferguson, the dog can not provide probable cause to search, for the use of the dog *is* a search. Judge Perry adopted neither rationale, while citing both, because *Roberts* involved an illegal search—a shakedown inspection—even had the marihuana dog been absent. Thus, Judge Perry might uphold use of the marihuana dog in the common areas of a barracks or other locations on post as violating no right of privacy expectations. Then again, the citation of Judge Ferguson's opinion could lead one to conclude exactly the opposite.

Judge Cook finds the use of a marihuana dog, even in the private room of the barracks, to be justified.[30] That leads to an examination of Chief Judge Fletcher's position as to the admissibility of evidence where a marihuana dog is utilized.

It is clear from the Chief Judge's opinion in *Thomas* that "reasonable" inspections by commanders may be conducted with marihuana dogs, but evidence discovered is inadmissible in criminal proceedings.[31] Furthermore, the Chief Judge stated he was troubled by Judge Cook's conclusion in *Thomas* that a dog "is permissible adjunct to an 'administrative inspection' " and that a dog could be used to establish probable cause for a search.[32] The reasons for the Chief Judge's concern become clear later in his concurring opinion when he rejects the Government's argument that a marihuana dog merely enhances a commander's ability to inspect, noting "the fact remains that a marihuana dog's distinguishing attribute is his nose with its ability to ferret out a substance, possession of which is criminally punishable under the Uniform Code" (citations omitted). This language supports Judge Perry's conclusion in *Roberts* that:

> . . . while he [Chief Judge Fletcher] would permit a marihuana dog to be used for its trained purpose under reasonable circumstances, he and Judge Ferguson are in agreement that the dog may not be used to obtain probable cause for a subsequent search. Rather, the fruits of such a looking may not be admitted as evidence in a criminal prosecution unless probable cause existed prior to the dog's employment.[33]

Thus, the score is one for the use of marihuana dogs even without probable cause (Judge Cook), one leaning heavily to requiring probable cause before a dog can be employed (Chief Judge Fletcher) and one who has cited opinions for both sides and adopted neither (Judge Perry). However, if the dog is utilized in the course of an "inspection," Chief Judge Fletcher will exclude the evidence, probable cause or not. Judge Perry, on the other

hand, while definitely opposed to the warrantless use of the dog in areas of the barracks where an expectation of privacy exists, might allow the dog to provide probable cause when employed in common areas.[34]

It is submitted that the *Roberts* decision is more than a marihuana dog case. It should be read to cover *at least* two distinct issues—the marihuana dog use in general and validity of inspections, shakedown inspections in particular. The only *clear* result of *Roberts* is that the fruits of a shakedown inspection are inadmissible in a criminal proceeding, for the distinct reasons set forth by Judge Perry in *Roberts* and Chief Judge Fletcher in *Thomas*. The remaining issues concerning inspections and the use of the marihuana dog are ripe for litigation.

This liturgy of unanswered questions would hardly be worth making, were it not for the delicate position which service attorneys are in when called upon to render advice to commanders desiring to use marihuana dogs to conduct inspections. Should the attorney adopt the position of Chief Judge Fletcher as set forth in *Thomas*, which would allow *"reasonable* inspections to ferret out drug abuse even absent a showing of probable cause and even if the individual already is suspected of processing contraband," [35] but would prevent the admission of any evidence in a criminal proceeding? This position could permit abuse and harassment to be visited upon the barracks soldier.

The commander, knowing evidence discovered will not be admitted at a criminal proceeding, need have very little concern about what is "reasonable" in this context, for what need he fear, with the knowledge that no criminal prosecution would result regardless of what he finds? The commander is not likely to be subject to a civil suit because of the theory that an "undisciplined Army is a mob and he who is in it would weaken discipline if he could civilly litigate with others in the Army over the performance of another man's Army duty." [36] The commander's halter will be his own commander in such circumstances, but if they share a common overriding concern to eliminate drug abuse at any cost, the commander directing the inspection may have little problem in rationalizing action that subverts all privacy expectations recognized in Judge Perry's opinion in *Roberts*.

A wholesale adoption of this exclusionary rule, as related to contraband seized during an inspection, would effectively remove the Court from the role of balancing individual liberties against real and numerous military necessities. Issues that now wind through the appellate process, and the decisions that result, may well be the fulcrum upon which a reasonable balancing of interests depends.[37] The Court should not withdraw from this role.

The better approach is the more difficult, for it involves the weighing of interests. However, are not such burdens the very essence of an attorney's role, and is it not best that such issues be decided by the courts rather than by a commander whose overwhelming concern with a potential drug problem may blur privacy interests to the point of nonrecognition? In advising commanders, the military lawyer must answer these questions for himself, realizing that, at least for the present, Chief Judge Fletcher's position is not the position of the Court.

Notes

1. United States v. Roberts, No. 30,818 (U.S.C.M.A., decided Oct. 8, 1976) (Slip opinion at 8-9).

2. *Id.* at 2–3.

3. *Id.* at 3, n. 4 and 5.

4. *Id.* at 3, n. 4.

5. Judge Perry described the shakedown inspection "as a thorough search of a general area, such as a barracks or a group of buildings (as opposed to a particular living area or room) of all persons and things in that area (as opposed to a particular, suspected person) for specific fruits or evidence of a crime, based upon 'probable cause' to believe that such material will be found somewhere in that general area." *United States v. Roberts, supra* note 1, at 7.

6. *United States v. Roberts, supra* note 1, at 5.

7. *Id.* at 10.

8. United States v. Drew, 15 U.S.C.M.A. 449, 35 C.M.R. 421 (1965); United States v. Harman, 12 U.S.C.M.A. 180, 30 C.M.R. 180 (1961).

9. *See* Camara v. Municipal Court, 387 U.S. 523 (1967).

10. *United States v. Roberts, supra* note 1, at 10 (Fletcher, C. J., concurring).

11. United States v. Thomas, 24 U.S.C.M.A. 228, 229, 51 C.M.R. 607, 608 (1976), *digested in* 76-6 JALS 10. *See generally* Cooke, *United States v. Thomas and the Future of Unit Inspections*, THE ARMY LAWYER, July 1976, at 1.

12. 24 U.S.C.M.A. at 235, 51 C.M.R. at 614.

13. Chief Judge Fletcher noted in *Thomas* that he would exclude such evidence from a quasi-criminal proceeding as well. The definition of such proceedings is unclear, but one might ask whether any military proceeding where such evidence is used to adversely affect an individual is quasi-criminal in nature in attempting to punish one for the possession of criminal items. If this were true, then the only action a commander could take upon discovering criminal evidence during an inspection, under Chief Judge Fletcher's rationale, would be to remove those items.

14. *See* note 5, *supra* for a definition of "shakedown inspection."

15. *United States v. Roberts, supra* note 1, at 10.

16. *Id.* at 9, n. 15. In determining what constitutes a traditional inspection, one should consider United States v. King, 24 U.S.C.M.A. 239, 51 C.M.R. 618 (1976), *digested at* 76-6 JALS 12.

17. See Gilligan, *Inspections*, THE ARMY LAWYER, November 1972, at 11; United States v. Grace, 19 U.S.C.M.A. 409, 42 C.M.R. 11 (1970); United States v. Lange, 15 U.S.C.M.A. 486, 35 C.M.R. 458 (1965); United States v. Smith, 48 C.M.R. 155 (ACMR 1973), *pet. denied*, 48 C.M.R. 1000 (1973).

18. United States v. Ledbetter, No. 31,436 (U.S.C.M.A., decided Oct. 22, 1976).

19. *Id.* at 9, n. 5.

20. *Id.*

21. *United States v. Roberts, supra* note 1, at 9, n. 16.

22. 536 F.2d 880 (9th Cir. 1976).

23. *United States v. Roberts, supra* note 1, at 10.

24. *Id.* at 10, n. 17.

25. *Id.* at 9, n. 15.

26. *United States v. Solis, supra* note 22, at 882.

27. It should be noted that Judge Ferguson cited the district court opinion of United States v. Solis, 393 F. Supp. 325 (D.C. Calif. 1975), to support his dissent in *Thomas*. The district court was reversed. 536 F.2d 880 (9th Cir. 1976).

28. The *Solis* case involved the use of a dog to sniff in the vicinity of a truck parked at a service station. Agents had a tip that a truck in the vicinity contained drugs and the dog was used to establish probable cause to obtain a search warrant.

29. There is an argument that *Solis* is more restrictive than standing for the general theory that a dog can be used to obtain probable cause, for the court also referred to the dog as corroborating an informer's tip. 536 F.2d at 883.

30. *United States v. Roberts, supra* note 1, at 11, 12.

31. *United States v. Thomas*, 24 U.S.C.M.A. at 235, 61 C.M.R. at 614. Judge Perry noted in *Roberts* in footnote 10 that Chief Judge Fletcher did not define "reasonable."

32. 24 U.S.C.M.A. at 233, 51 C.M.R. at 612.

33. *United States v. Roberts, supra* note 1, at 6, n. 12.

34. *See* text accompanying *supra* notes 21-23.

35. 24 U.S.C.M.A. at 234, 51 C.M.R. at 613.

36. Gailey v. Van Buskirk, 345 F.2d 298 (9th Cir. 1965), *cert. denied*, 383 U.S. 948 (1966). *See also* Feres v. United States, 340 U.S. 135 (1950).

37. *See* Cooke, *United States v. Thomas and the Future of Unit Inspections*, THE ARMY LAWYER, July 1976, at 1.

The Determination of Availability of Requested Individual Military Counsel

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A troubling problem to the SJA is the actual availability determination for a requested individual military counsel under Article 38*b* of the *Uniform Code of Military Justice*. Para-

graph 48 of the *Manual for Courts-Martial* reiterates the phrase "reasonably available" but provides no explanation of the phrase nor does the dictionary provide meaningful guidance.

The question presented is under what circumstances is the convening authority *obliged* to furnish the individual military counsel requested by the accused. Courts have failed to provide exact criteria for the determination of "reasonably available." We know the decision is personal to the convening authority [1] and as a command decision will not be overturned by the courts unless the convening authority has abused his discretion, considering the following factors, *inter alia:* The requested counsel's present caseload; his distance from the place of trial; the length of trial delay to permit individual counsel to participate; and other reasonable considerations.[2]

Apart from other criteria of availability the Courts appear to recognize that one's position in the military might well serve as grounds for denial. The request need not be granted if to do so would "obstruct other important operations of the service concerned or the *orderly administration of military justice.*[3] Courts further consider "the duties assigned the requested officer, military exigencies, and similar considerations—in short, 'a balance between the conflicting demands upon the service' . . ." [4] Recently, the Army Court of Military Review held as a matter of law that attorneys assigned to the Defense Appellate Division are not available for selection as individual counsel presumably even if they are "reasonably available." [5]

Judge Costello's ruling, although stated as a matter of law, includes a well-substantiated factual argument demonstrating actual unavailability based on caseload, orderly administration and exigencies of the circumstances. He refers to his conclusion that appellate defense counsel are unavailable as a preemptive theory and buttress his conclusion with references to job descriptions and functions manuals.

The same rationale has equal application to numerous duty positions throughout the Corps, thus, all other criteria of availability aside, the SJA, his Deputy (on the theory of replacing the SJA in his absence), the Chief of Military Justice and the Brigade Adviser to the Special Courts-Martial convening authority should by reason of their positions vis-a-vis the "orderly administration of justice" [6] be automatically excludable. A consideration of the duties of an officer assigned to a particular position in light of the ABA Standards of Professional Ethics would strengthen any denial based upon one's position in the system of justice.[7]

Even though one's position in the command might be a criteria to consider, the convening authority should not overlook the "normal" considerations of availability. Existing workload is one factor that should be established factually. Even when coupled with a detriment to assigned workload caused by counsel's absence, workload may not be sufficient to deny a request.[8] Inordinate expense was held to partially justify a denial as to a request for a military judge on orders to the Philippines who would be required to travel to England for 30 days.[9] Counsel's assignment to cases triable by GCM is also an appropriate consideration as to unavailability to represent accused in SPCM.[10] The point of these cases is that no magic incantation exists, and no form can be printed which would justify a denial of requested counsel in every case.

A further consideration is that reasons which would justify denying a request for individual counsel under ordinary circumstances may not be sufficient where there is a preexisting attorney-client relationship with the requested attorney.[11] Convening authorities should be alert to the factual basis for establishing the requested counsel's "crucial duties and general workload" precluding availability. That is, the attorneys actual caseload presently as compared to that of other attorneys in the same office, and as further compared to the caseloads one, six and twelve months prior to the request. Additionally the prospect of an

accused's willingness to postpone trial must be dealt with as well as the possibility of postponing other duties of the requested counsel with no discernible adverse effects.[12] Since the SJA may not exercise this function for the convening authority,[13] any denial must contain "sound reasons." [14]

A justification that consists of no more than a description of the normal duties assigned to the requested counsel, packaged in an impressive sounding vocabulary and accompanied by a conclusory pronouncement that due to that counsel's overworked state and the importance of his mission, he simply could not be available to conduct the defense invites not only administrative appeal but injects an additional issue to be litigated.

To preserve this issue for appeal the request generally must be renewed at trial and the pertinent facts must be spread on the record.[15] These facts will allow a full exploration into the convening authority's decision, including policy considerations.

In summary, Courts have recognized that a convening authority's determination as to whether a particular attorney is "reasonably available" is a matter of discretion. However, each determination is subject to review for abuse of that discretion. Cases clearly dwell on the facts of the particular case as well as examine patterns or routines which suggest automatic denial rather than individual consideration of each request.

An alternative procedure to the availability determination has been suggested in *United States v. O'Bryant*,[16] where the requested counsel was considered unavailable because he was writing post-trial reviews, but the SJA through the convening authority did provide an optional list of attorneys for selection, one of which was selected. If this procedure were followed accompanied by an express waiver of the originally requested counsel's assistance, one might avoid the availability issue.

We next direct our attention to an appropriate strategy for the SJA to provide each accused with the best possible defense services. With the advent of the Field Defense Services (FDS) and the delineation of the responsibilities of the senior defense counsel [17] it becomes apparent that there shall be an ever-widening separation between assigned defense counsel and the SJA. It seems timely then, in view of these recent expressions toward the future relationship, the SJA's should construct an "SOP" for assignment of defense counsel as the principal resource to be utilized in the availability determination. This "SOP" could provide that all requests for individual counsel be referred to the senior defense counsel and after an individual determination of availability, a list from which an accused could select his individual counsel could be provided. This would seem by inference to resolve any availability issue [18] and additionally more clearly spell out the concept of an "orderly administration of military justice," [19] the "duties assigned the requested officer," and "military exigencies." [20] Care should be exercised to continue to process each case on its particular facts to avoid the appearance of routine treatment. In any event, the foregoing "SOP" when considered with the new concepts of defense counsel supervision would go far toward the construction of evidentiary proof of the SJA's desire to provide the best possible defense services to each accused. It would also demonstrate his support of The Judge Advocate General's policy to have senior defense counsel determine availability and case assignment.

In order to accomplish the foregoing it would be necessary in such an "SOP" to establish the "normal" criteria that each request is subjected to in order to resolve the requested officer's availability, *i.e.*, present caseload; caseload of other officers in same category; whether such caseloads are increasing or diminishing; the officer's position in the military system of administering justice; other military duties or exigencies; counsel's distance from trial; expense involved in utilizing the requested officer; length of time required to delay the trial to permit requested counsel to par-

ticipate; accused's willingness to postpone the proceedings pending requested counsel's participation; ability to postpone other duty requirements of requested counsel; pre-existing attorney-client relationship with requested counsel; number of hours presently required for requested counsel to fulfill existing assignments; deteriment to existing assignments caused by requested counsel's participation; level of court to which accused's case has been referred; and such other reasonable considerations as the particular facts might require.

This litany of "normal" criteria should be accompanied by a policy statement that utilizing his discretion the convening authority has no policy regarding availability of counsel and considers each case upon its merits and particular factual requirements in order to ensure that each soldier accused of an offense under the Code is provided the best possible defense services. A further statement outlining the desires toward the FDS and a complimentary acceptance of TJAG desires regarding this important work should precede the designation of a list of defense counsel who will be available for selection in each case consistent with the delineation of the components of the system to be utilized in the administration of justice. This would establish the criteria of both the system of selection as well as the system of justice existing in the command.

Utilizing the limited authorities in the manner suggested and adhering to that concept of fairness which so typifies our system of military justice, it is submitted that all issues of "availability of counsel" should be resolved at an administrative level while accomplishing the goals of the Corps toward the best possible defense services to each accused service member. It can be hoped that the lack of control over defense counsel by SJA's will result in a change to the law concerning the responsibility of the convening authority in availability determinations. Only a change to paragraph 48 of the MCM appears necessary, for the UCMJ is silent. A Manual change could relieve Commanders of the burden and transfer it to either the magistrate or the senior defense counsel. The MCM could be further amended to specifically exclude by position all prosecution personnel.

Notes

1. MANUAL FOR COURTS-MARTIAL, UNITED STATES, 1969 (Rev. ed.), para. 48*b*.

2. United States v. Quinones, 23 U.S.C.M.A. 451, 50 C.M.R. 476 (1975) where convening authority held to have abused discretion by too much emphasis that counsel worked more than 40 hours per week; *see also* United States v. Eason, 21 U.S.C.M.A. 335, 340, 45 C.M.R. 109, 114 (1972) where court considered an already established attorney-client relationship reversing the denial of a request and imposed a duty on the government wherever possible to shoulder the "financial, logistical, and administrative burden" associated with this fundamental principal of military due process.

3. United States v. Vanderpool, 4 U.S.C.M.A. 561, 566, 16 C.M.R. 135, 140 (1954) (emphasis added).

4. United States v. Cutting, 14 U.S.C.M.A. 347, 351, 34 C.M.R. 127, 131 (1964).

5. United States v. Herndon, CM 430760 (ACMR, decided 12 May 1976).

6. *Vanderpool, supra* note 3, at 566, 16 C.M.R. at 140.

7. Standard Relating to The Prosecution Function, ABA Project on Standards for Criminal Justice, 2.3(b). "Wherever feasible, the offices of chief prosecutor and his staff should be fulltime occupations." *See also*, 1.2(a). "A prosecutor should avoid the appearance or reality of a conflict with respect to his official duties."

8. *Quinones, supra* note 2.

9. United States v. Barton, 48 C.M.R. 358 (NCMR 1973).

10. United States v. Gatewood, 15 U.S.C.M.A. 433, 35 C.M.R. 405 (1965).

11. *Easton, supra* note 2, *contra Herndon, supra* note 5.

12. *Quinones, supra* note 2.

13. United States v. Hartfield, 17 U.S.C.M.A. 269, 38 C.M.R. 67 (1967).

14. *Quinones, supra* note 2.

15. United States v. Mitchell, 15 U.S.C.M.A. 516, 36 C.M.R. 14 (1965).

16. United States v. O'Bryant, NCM 74-1414 (NCMR 23 Dec. 1974) (unpublished).

17. Persons, *Field Defense Services*, THE ARMY LAWYER, Oct. 1976, at 1.

18. *O'Bryant*, *supra* note 16.

19. *Vanderpool*, *supra* note 3.

20. *Cutting*, *supra* note 4.

Judiciary Notes

From: U.S. Army Judiciary

Administrative Notes

1. Records of Trial. In examining general court-martial records of trial under the provisions of Article 69, UCMJ, it has been noted that in many instances *original* documents were missing (e.g., accused's request for enlisted members; accused's request for trial by military judge; the pretrial advice; the charge sheet). Staff judge advocates should establish procedures to insure that original documents that are required to be with the record of trial and its allied papers are safeguarded by the persons responsible for the assembly of the record.

2. Information Memorandum. During the recent JAG Conference, in October of this year, a memorandum was distributed to all those in attendance, with forms attached, on advising an individual of his rights to petition the United States Court of Military Appeals or request that final action be taken on his case.

For those individuals who were not able to attend the Conference, the information memorandum and forms are included herein.

JAAJ-CC

SUBJECT: Information Memorandum

All Staff Judge Advocates

1. Records received in the Clerk of the Court's Office, U.S. Army Judiciary, have shown that SJA offices in the field have not been complying with Interim Change to AR 27-10 (Chapter 15), as set forth in a message forwarded to major Army commands, and selected headquarters by the Criminal Law Division, Office of The Judge Advocate General (Reference: DAJA-CL 1976/1801, 021400Z Jul 76).

2. The contents of this message is set forth below.

a. Paragraph 15-4*b*(1) is changed to read as follows: If service of the ACMR decision is to be by mail, it will be sent by a letter addressed to the accused, certified first class mail, return receipt requested, restricted delivery. The use of special postal services is authorized as an exception to section IV, Chapter 7, AR 340-3. The letter, Form 15-3, will inclose a copy of the decision as well as a petition for grant of review, Form 15-5, and will advise the accused of his right to petition the USCMA for a grant of review and of his right to execute a "Request for Final Action." The form for requesting final action will not be sent by mail. The accused will be advised that it can only be executed after he/she returns to the nearest Army installation having an SJA office and consults with legally qualified counsel. A return-addressed, postage paid envelope will also be inclosed with the letter.

b. Figure 15-3 (Advice as to Appellate Rights) and Figure 15-4 (Request for Final Action) should be amended as reflected on the attached sample forms.

Office of _____
Headquarters _____
Fort _____

SUBJECT: Advice as to Appellate Rights*

[TO] Dated _____

1. In the attached decision, dated _____, the Army Court of Military Review (ACMR) in the _____ court-martial case of _____, SSN _____ _____, CM _____, (affirmed the findings of guilty and the sentence) (affirmed the findings of guilty and only to much of the sentence as provides for _____) ( ).

2. You, [Rank] [Name] _____, are hereby advised as follows:

a. You may petition the United States Court of Military Appeals within thirty (30) days after you receive the decision of the Army Court of Military Review.

b. In connection with the preparation of the petition (a form is attached) and representation before the United States Court of Military Appeals, you have the right either to have a civilian lawyer provided at your own expense, a detailed military lawyer, or both a civilian lawyer and detailed military lawyer.

c. If you do not desire to petition the United States Court of Military Appeals, action will be taken to finalize the conviction and sentence thirty days after your receipt of the Army Court of Military Review Decision affirming your conviction. Should you wish to finalize the findings of guilty as affirmed by the Army Court of Military Review before such time, you may submit a Request for Final Action form. This form is available at the nearest Army installation having an SJA office and can be submitted only after you consult with a military lawyer about the effect of such action.

d. If you have any questions concerning this matter, you may (contact) (write) _____ _____ at _____ _____.

e. If this advice was furnished to you by mail:

(1) Sign and date the receipts for the decision of the Army Court of Military Review, all three copies. You should keep the one marked "Copy for Accused" and return the other two, the ones marked, "Copy for JAAJ-CC" and "Copy for USCMA."

(2) If you wish to petition the United States Court of Military Appeals, sign and date the form entitled, "Petition for Grant of Review," and deliver it, personally or by mail, to the Office of the Staff Judge Advocate, Headquarters _____, Fort _____, within the thirty day period mentioned above.

(3) If you wish to submit a Request for Final Action, call the following number and an appointment will be made for you to consult with a military lawyer. Telephone: _____.

(4) You may use the inclosed, properly addressed envelope, which requires no postage, for returning the above-mentioned documents.

_____
_____
Assistant Staff Judge Advocate

3 Incl
1. Decision of ACMR
2. Petition for Grant of Review
3. Return envelope

* This form letter may be used to serve the ACMR decision by mail; it may be used as a guide to inform the accused of his rights when he is served personally.

UNITED STATES
v.
_____

CM _____

REQUEST FOR FINAL ACTION

The undersigned accused, having received a copy of the decision of the United States Army Court of Military Review in the above-entitled case on _____, having been fully advised as to his rights to petition the United States Court of Military Appeals for a grant of review with respect to any matters of law within 30 days under the provisions of the Uniform Code of Military Justice, Article 67(c), and the Manual for Courts-Martial, United States, 1969 (Rev.), paragraph 100c(1)(a), and having consulted with legally qualified counsel and being informed that the sentence as affirmed by the United States Army Court of Military Review will become final unless such a petition is filed, and having determined that he does not desire to petition for or prosecute an appeal to the Court of Military Appeals, hereby requests for his own convenience that appropriate action be taken to finalize the affirmed sentence without further delay. The undersigned fully understands that this request will not operate to extend the period of 30 days in which he may petition for a grant of review, that he may nevertheless so petition within the 30-day period notwithstanding this request. However, if he files a timely petition for a grant of review after having executed this request, any action taken toward effecting his discharge from the Army in reliance upon this request will be revoked, and in such case he will revert to his present status as a member of the Army and such status will not be affected by any purported discharge issued in reliance upon this request.

_____ 19____ _____
(Dated) (Signature of Accused)

Prior to the signing of the foregoing request, I advised the above accused fully of his right to petition the United States Court of Military Appeals to review the decision of the Army Court of Military Review and to be represented by a civilian lawyer provided at his own expense, a detailed military lawyer, or both a civilian lawyer and detailed military lawyer.

_____ 19____ _____
(Dated) (Signature of Legally Qualified Counsel)

_____
(Typed Name and Grade)

Claims Item

From: U.S. Army Claims Service

1. Citizens Band (CB) Radios. The Army policy on payment of claims resulting from losses of CB radios was recently stated in a TWX sent worldwide. Prior guidance is superseded by the message which is quoted for your information and guidance:

"SUBJ: Army Policy on Payment of Claims Resulting from Losses of Citizen Band (CB) Radios.

"1. In US Army Claims Service Bulletin No. 1-76 (Feb. 76), it was announced that claims for loss of CB radios from POV's would normally not be paid by the Army. CB radios are a prime target of criminals and thefts from POV's have reached epidemic proportions. Many insurance companies have policy exclusions for CB radios. However, special coverage is available at modest prices. Considering the modest cost of insurance, the Army has determined that individuals who can afford CB radio equipment can afford insurance. This rule does not apply to thefts from quarters, loss of or damage to CB radios in the shipment of household goods, or claims based upon alleged negligence of Government employees. As an exception to this policy, claims for loss of or damage to CB radios from a locked, secured area in a vehicle other than the passenger compartment, i.e., a locked trunk of vehicle, may be paid.

"2. All payments for CB equipment will be limited to 200 dollars.

"3. Please inform all of your personnel concerning this information."

JAG School Notes

1. 1st Defense Trial Advocacy Course. The First Defense Trial Advocacy Course was held at the School from 26-29 October 1976. Elizabeth F. Loftus, Ph.D., discussed the unreliability of eyewitness testimony. Dr. Loftus is a noted psychologist from the University of Washington who has authored over fifty articles in the last seven years and made numerous court appearances as an expert witness. Her fourth book, *Psychology and the Law*, is in preparation.

Mr. John C. Lowe, Chairman, Criminal Law Committee, Virginia Trial Lawyers Association, spoke on the defense of drug cases. Captain Robert L. Thompson, M.D., USN, Chairman, Dept. of Forensic Sciences, Armed Forces Institute of Pathology, Washington, DC, spoke on forensic medicine.

2. Dr. Toman Visits School. Dr. Jiri Toman, Director of Research, Henri Dunant Institute, of the International Committee of the Red Cross, Geneva, Switzerland, visited TJAGSA on 21-22 October 1976. Dr. Toman observed Law of War instruction and conferred with TJAGSA's International Law Division.

3. Guest Speakers From TJAGSA. Recently TJAGSA has furnished several guest speakers. Captain Cooke addressed the Navy JAG Conference on Recent COMA Trends on 20-21 October 1976. Lieutenant Colonel Hunt addressed the Transportation School's Advanced Class at Fort Eustis on 2 November 1976. Major Cooper and Captain Gray addressed the National Conference of Black Lawyers on the Defense of Court-Martial Cases on 22 October 1976. Majors Cooper and Dort and Captains Lederer and Varo conducted the military law instruction for Army, Navy and Air Force ROTC at the University of Virginia during the month of October.

Lieutenant Colonel Nutt, Chief, TJAGSA's Procurement Law Division, addressed TRADOC's Resource Management Conference on

27 October 1976 on the Anti-Deficiency Act. The address focused the attention of comptrollers and financial managers on current problems. Colonel Nutt stressed the need to deal closely with lawyers to anticipate potential violations of the Anti-Deficiency Act. Conferees were informed of what constituted a violation, how violations can be prevented, and what happens when "discovered."

4. TJAGSA Visitors. The Honorable Donald Brotzman, Assistant Secretary of the Army—Manpower and Reserve Affairs, visited the School on 15 September 1976. Brigadier General Victor A. De Fiori, JAGC, Judge Advocate, United States Army, Europe and Seventh Army, was the guest speaker at the 81st Basic Class Graduation on 8 October 1976. Justice White of the New Zealand Supreme Court visited the School on 8 October 1976 for a briefing by the Commandant. Captain Ken Bridges, Commandant, US Naval Justice School, visited the School on 22 October 1976.

5. Distribution of the Military Law Review. Copies of the *Military Law Review* are shipped to TAG Publications Center in Baltimore for distribution to the active Army and for TAGCEN's own stockage. The Center ships copies to active Army judge advocate offices in quantities requested by those offices on DA Form 12–4. Accordingly, any office may increase or decrease the number of copies it receives by simply amending its Form 12–4.

The only control the School exerts on the distribution process is to approve or disapprove an office's initial request to be placed on the distribution list. This control is maintained in accordance with DA Cir. 310–91 (28 Jan. 1973).

The *Military Law Review* should be distributed to each active duty judge advocate.

CLE News

1. 7th Advanced Procurement Attorney's Course. The Advanced Procurement Attorneys' Course, 3–14 January 1977, will address the theme: The Office of Federal Procurement Policy and New Developments in Federal Contract Law. This course is intended for government attorneys actively engaged in duties requiring a knowledge of procurement law. Guest speakers currently scheduled to speak to the Course attendees are:

The Honorable Mr. Hugh E. Witt, Administrator for Federal Procurement Policy, Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB).

Mr. Gilbert Cuneo, Executive Partner, Sellers, Conners and Cuneo, Washington, D. C.

Professor Ralph Nash, Professor of Law, The George Washington National Law Center.

Mr. Eldon Crowell, Partner, Reavis, Pogue, Neal and Rose, Washington, D. C.

Judge Richard C. Solibakke, Chairman, Armed Services Board of Contract Appeals.

Trial Judge David Schwartz, Court of Claims, Washington, D. C.

Mr. Charles Goodwin, Assistant Administrator for Procurement Law, OFPP, OMB.

Mr. Daniel S. Wilson, Special Assistant to Administrator for Federal Procurement Policy, OFPP, OMB.

Brigadier General Samuel L. Cockerham, Deputy Director for Logistics (Strategic Mobility), Department of the Army.

Lieutenant Colonel Daniel Unruh, Air Force Policy Member of the ASPR Committee.

Mr. Morris Amchan, Navy Trial Attorney, Armed Services Board of Contract Appeals.

Major William Whitten, Labor Advisor, Office of Assistant Secretary of the Army, (I&L).

Major Rollin Van Broekhoven, ASPR Committee Legal Member, Army, Office of the General Counsel, Washington, D. C.

Mr. Robert Worthing, ASPR Committee Legal Member, Air Force, Office of General Counsel, Washington, D. C.

Additional quotas for the course are available. Requests for quotas should be made to Major Commands.

2. 69th Procurement Attorneys' Course. The two-week 69th Procurement Attorneys' Course will be held at The Judge Advocate General's School from 7–18 February 1977. Instruction will cover the planning, solicitation, award, performance and disputes resolution phases of federal procurement. The course is primarily for the benefit of those government attorneys with six months or less procurement experience.

3. Law of War Instructor Course. This new course will offer team teaching instruction in the Hague and Geneva Conventions to judge advocate officers and officers with command experience. The officers taking the course will afterwards give instruction in teams in fulfillment of the requirements under AR 350–216. During the course the students will study both the law of war and methods of instruction. Practical application will include the filming of instruction given by the students and playback for critique and improvement. Course dates are: 2d Course—28 February 1977–2 March 1977; 3d Course—4–8 April 1977; 4th Course—6–10 June 1977.

4. Claims Course. The 1st Claims Course will be offered at the School from 17–20 January 1977. The course is designed to provide attorneys working in the claims field with knowledge of recent developments of military claims. The enrollment of 40 students will be instructed by the faculty of the Administrative and Civil Law Division, TJAGSA. Guest speakers from the U.S. Army Claims Service and the Tort Branch of the Litigation Division, OTJAG, will also participate in the course.

5. Environmental Law Course. The 5th Environmental Law Course will be conducted at the School during the period 17–20 January 1977. The course is designed to provide attorneys with the fundamentals of environmental law and its impact on the miliary. The course will provide the student with an overview of environmental law with particular emphasis on the National Environmental Policy Act of 1969 and the requirements for Environmental Impact Statements and Assessments. The student is expected to have some experience in the course area or have attended the Basic Officers Course.

6. Other Courses. The Third Allowability of Contract Costs Course will be held from 21–25 March 1977. The Fourth Fiscal Law Course will be held during 7–10 March 1977.

7. TJAGSA Courses.

November 30–December 3: 3d Fiscal Law Course (5F–F12).

December 6–9: 3d Military Administrative Law Developments Course (5F–F25).

December 13–17: 2d Allowability of Contract Costs Course (5F–F13).

January 3–7: 5th Military Lawyer's Assistant Course (Criminal Law) (512–71D20/50.)*

January 3–7: 6th Military Lawyer's Assistant Course (Legal Assistance) (512–71D20/50).*

January 3–14: 7th Procurement Attorneys' Advanced Course (5F–F11).

January 10–13: 4th Legal Assistance Course (5F–F23).

January 17–20: 5th Environmental Law Course (5F–F27).

January 17–20: 1st Claims Course (5F–F26).

January 24–28: 31st Senior Officer Legal Orientation Course (5F–F1).

* Tentative

January 31–April 1: 83d Judge Advocate Officer Basic Course (5–27–C20).

February 7–18: 69th Procurement Attorneys' Course (5F–F10).

February 28–March 4: 2d Law of War Instructor Course (5F–F42).

March 7–10: 4th Fiscal Law Course (5F–F12).

March 14–18: 2d Civil Rights Course (5F–F24).

March 21–25: 3d Allowability of Contract Costs Course (5F–F13).

April 4–8: 15th Federal Labor Relations Course (5F–F22).

April 4–8: 3d Law of War Instructor Course (5F–F42).

April 6–8: JAG National Guard Training Workshop.*

April 11–15: 32d Senior Officer Legal Orientation Course (5F–F1).

April 11–22: 70th Procurement Attorneys' Course (5F–F10).

April 18–20: 1st Government Information Practices (5F–F28).

April 18–21: 2d Defense Trial Advocacy Course (5F–F34).

May 2–4: 1st Negotiations (tentative title) (5F–F14).

May 2–6: 7th Staff Judge Advocate Orientation Course (by invitation only) (5F–F52).

May 9–13: 4th Management for Military Lawyers Course (5F–F51).

May 9–20: 2d Military Justice I Course (5F–F30).

May 16–20: 3d Criminal Trial Advocacy Course (5FF32).

May 16–27: 1st International Law II Course (SECRET clearance required) (5F–F40).

May 31–June 3: 6th Environmental Law Course (5F–F27).

June 6–10: Military Law Instructors Seminar.*

June 6–10: 4th Law of War Instructors Course (5F–F42).

June 6–17: NCO Advanced Phase II (71D 50).

* Tentative

June 13–17: 33d Senior Officer Legal Orientation Course (5F–F1).

June 20–July 1: USA Reserve School BOAC and CGSC (Criminal Law, Phase II Resident/Nonresident Instruction) (5–27–C23).

July 11–22: 12th Civil Law Course (5F–F21).

July 11–29: 16th Military Judge Course (5F–F33).

July 23–August 5: 71st Procurement Attorneys' Course (5F–F10).

August 1–5: 34th Senior Officer Legal Orientation Course (5F–F1).

August 8–12: 7th Law Office Management Course (7A–713A).

August 8–October 7: 84th Judge Advocate Officer Basic Course (5–27–C20).

August 22–May 1978: 26th Judge Advocate Officer Advanced (5–27–C22).

August 29–September 2: 16th Federal Labor Relations Course (5F–F22).

September 12–16: 35th Senior Officer Legal Orientation Course (5F–F1).

September 19–30: 72d Procurement Attorneys' Course (5F–F10).

8. Civilian Sponsored CLE Courses.

January

4–6: LEI, Paralegal Workshop, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202–254–3483. Cost: $200.

7–8: Pittsburgh Institute of Legal Medicine —Los Angeles County Medical Examiner/Coroner's Office, Medical-Legal/Forensic Science Seminar, Los Angeles, CA. Contact: Pittsburgh Institute of Legal Medicine, 1519 Frick Bldg., Pittsburgh, PA 15219.

9–14: NCDA, Prosecutor Office Administrators Course, Univ. of Houston, Houston, TX. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone: 713–749–1571.

11–13: LEI, Seminar For Attorney-Managers, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202–254–3483. Cost: $250.

12–14: Univ. of Santa Clara School of Law —Federal Publications, Cost Estimating For Government Contracts, Sheraton Natl. Arlington, VA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–8200. Cost: $425.

14–15: PLI, 9th Annual Criminal Advocacy Institute. The Psychology of Defense and Cross-Examination in a Criminal Trial, Hyatt Regency Hotel, Atlanta, GA. Contact: Nancy B. Hinman, Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: 212–765–5700. Cost: $160.

24–28: LEI, Trial Techniques in Administrative Proceedings Seminar, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202–254–3483. Cost: $400.

30–4 Feb: NCDA, Prosecutors Invetigators School, Detroit, MI. Contact: National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone: 713–749–1571.

February

1–3: LEI, Institute for New Government Attorneys, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202–254–3483. Cost: $200.

4–5: PLI, 9th Annual Criminal Advocacy Institute: The Psychology of Defense and Cross-Examination in a Criminal Trial, Sir Francis Drake Hotel, San Francisco, CA. Contact: Nancy B. Hinman, Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: 212–765–5700. Cost: $160.

9–15: ABA, American Bar Association Mid-year Meeting, Seattle, WA.

10–11: ABA Center for Administrative Justice, Symposium on "Conflict of Interest in the Regulatory Process," Twin Bridges Marriott, Washington, DC.

10–12: American Law Institute–ABA–Environmental Law Institute-The Smithsonian Institution, Environmental Law, Washington, DC. Contact: Director, Courses of Study, ALI-ABA Committee on CLE, 4025 Chestnut St., Philadelphia, PA 19104.

13–17: NCDA, Trial Techniques Seminar, Salt Lake City, UT. Contact: National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone: 713–749–1571.

20–24: NCDA, Newly Elected Prosecutors Institute, Houston, TX. Contact: National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone: 713–749–1571.

22–23: LEI, Seminar for Attorneys on FOI/Privacy Acts, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202–254–3483. Cost: $150.

25: Virginia State Bar, 7th Annual Criminal Law Seminar, Fredericksburg, VA. Contact: Director, CLE Committee, Univ. of Va. School of Law, Charlottesville, VA 22901.

March

1–3: LEI, Law of Federal Employment Seminar, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202–254–3483. Cost: $250.

9–11: ABA National Institute, Trial of a Criminal Corporate Case. Century Plaza Hotel, Los Angeles, CA.

14–16: FBA–BNA, Briefing Conference on

Federal Contracts, The Warwick, Philadelphia, PA. Contact: Federal Bar Association, 1815 H St. NW, Washington, DC 20006. Phone: 202-638-0252.

15-17: LEI, Trial Practice Seminar, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483. Cost: $300.

20-23: NCDA, Consumer Fraud Seminar, San Antonio, TX. Contact: National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone: 713-749-1571.

21-25: Pittsburgh Institute of Legal Medicine, Medical-Legal Seminar, Vail, CO. Contact: Cyril H. Wecht, M.D., J.D., Pittsburgh Institute of Legal Medicine, 1519 Frick Bldg., Pittsburgh, Pa 15219.

22-24: LEI, Legal Research for Paralegals Seminar, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483. Cost: $200.

28-1 APR: Pittsburgh Institute of Legal Medicine, Medical-Legal Seminar, Vail, CO. Contact: Cyril H. Wecht, M.D., J.D., Pittsburgh, Institute of Legal Medicine, 1519 Frick Bldg., Pittsburgh, PA 15219.

29-31: LEI, Program Development and Legal Controls Seminar, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, US Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483. Cost: $300.

Reserve Affairs Section

From: Reserve Affairs, TJAGSA

1. Reserve Component Technical Training (On-Site) Schedule. In view of the recent reorganization of the JAGSO Detachments, under TOE 27-600H, the Reserve Component Technical Training (On-Site) Program will commence the first week in December.

The schedule which follows, sets forth the subject, date, and city of the on-site training to be presented throughout CONUS for the academic year 1976-77. Also provided is a list of the local "action officers" and the training site location for each unit.

Reserve Component officers who do not receive notification of the on-site program through their unit of assignment are encouraged to confirm the date, time and location of the scheduled training. As with previous training, coordination should be initiated with units other than JAGSO detachments to provide maximum opportunity for interested JAG officers to take advantage of this training. In addition, all active duty JAGC officers assigned to posts, camps and stations located near the scheduled training site are encouraged to attend the sessions.

Detachment commanders who have not already done so are requested to amend their unit training schedule to conform to the published schedule. For those units performing OJT at various posts, it may be necessary to advise the SJA involved that your unit may not be available for OJT during the day of the "on-site" training.

Reserve Component JAG Corps officers assigned to troop program units other than Judge Advocate General Service Organizations should advise their commander of the "on-site" training and request equivalent training for unit assemblies during the month of the technical training.

Questions by local Reserve Component officers concerning the on-site instruction should be directed to the appropriate action officer.

Problems encountered by action officers or unit commanders should be directed to Captain Rob Walker Freer, Office of the Assistant Commandant for Reserve Affairs, The Judge Advocate General's School, Charlottesville, Virginia 22901. Captain Freer's telephone numbers are commercial (804) 293–6121 and AUTOVON 274–7100 extension 293–6121.

Reserve Component Technical Training (On Site) Schedule

	City	*Date & Times*	*Subject(s)*	*Action Officer/Phone*	*Training Site Location*
1	Orlando	4 Dec 76 0800–1200	Criminal Law	LTC Theodore H. Van Deventer 305–656–1753	Taft USAR Center
	Tampa	4 Dec 76 0800–1200	International Law	MAJ James L. Livingston 813–385–5156	USAR Center
	Miami	5 Dec 76 0800–1700	Criminal Law International Law	LTC Alden N. Drucker 305–538–1401	5601 San Amaro Drive Coral Gables, FL
2	Little Rock	11 Dec 76 0800–1200	International Law	MAJ Don Langston 501–785–2326	Seymour Terry Armory
	Omaha	11 Dec 76 0800–1700	Criminal Law Administrative Law	LTC John P. Churchman 712–322–4965	USAR Center
	Kansas City	12 Dec 76 0800–1700	Criminal Law Administrative Law International Law	MAJ Thomas Graves 816–474–0666	Long USAR Center
3	Tulsa	15 Jan 77 0800–1700	International Law Procurement	LTC Arthur W. Breeland 918–582–5201	USAR Center
	Memphis	16 Jan 77 0800–1200	Procurement	MAJ Robert G. Drewry 901–526–0542	Marine Hospital
	Albuquerque	16 Jan 77 0800–1200	International Law	LTC John McNett 505–264–7265	Bldg #327, Kirtland AFB
4	Norfolk	15 Jan 77 0800–1200	Criminal Law	MAJ Robert L. Bohannon 804–622–6357	2086 USAR Training Warehouse
5	Inkster	22 Jan 77 0800–1200	Procurement	LTC Cay A. Newhouse 313–264–1100—Ext. 2465	Raymond Zussinson USAR Center
	Minneapolis	22 Jan 77 0800–1700	Criminal Law Administrative Law	MAJ Robert M. Frazee 612–338–0661	Marriott Hotel Bloomington, MN
	Chicago	23 Jan 77 0800–1700	Criminal Law Administrative Law Procurement	CPT John C. Jahrling 312–829–4334	Moskala USAR Center
6	Los Angeles	5 Feb 77 0800–1700	Criminal Law Administrative Law International Law	MAJ Herman J. Wittorff 213–485–3640	JAG Office Fort MacArthur
	San Diego	6 Feb 77 0800–1200	International Law	MAJ Donald M. Clark 714–477–3177	Miramar Naval Air Station
	Tucson	6 Feb 77 0800–1200	Administrative Law	CPT Steve Dichter 602–792–6511	Tucson USAR Center
	Phoenix	6 Feb 77 0800–1200	Criminal Law	MAJ Daniel F. McIlroy 602–262–3431	Will Barnes USAR Center

	City	*Date & Times*	*Subject(s)*	*Action Officer/Phone*	*Training Site Location*
7	Jackson	12 Feb 77 0800–1700	Criminal Law Administrative Law	LTC Edward L. Cates 601–948–2333	USAR Center
	New Orleans	13 Feb 77 0800–1700	Criminal Law Administrative Law	COL Wayne Woody 504–866–2751	USAR Center 5010 Leroy Johnson Drive
8	Harrisburg, PA	19 Feb 77 0800–1200	Criminal Law	LTC Harvey S. Leedom 717–782–6310	Bldg #442 New Cumberland Army Depot
9	Cleveland	26 Feb 77 0800–1200	Procurement	MAJ David E. Burke 216–623–1350—Ext. 2006	Mote USAR Center
	Austin	26 Feb 77 0800–1700	Criminal Law International Law	MAJ Charles Sebesta 713–567–4362	USAR Center
	Dallas/Ft. Worth	27 Feb 77 0800–1700	Criminal Law Procurement	MAJ Virgil A. Lowrie 817–387–3831—Ext. 222	Muchert Reserve Center
	Baton Rouge	27 Feb 77 0800–1200	International Law	MAJ James B. Thompson 504–927–9301	Saurage USAR Center
10	Salt Lake City	5 Mar 77 0800–1700	Criminal Law Administrative Law	LTC G. Gail Weggeland 801–524–5796	Bldg #107 Fort Douglas, Utah
	Louisville	5 Mar 77 0800–1200	Procurement	LTC Martin F. Sullivan 502–587–0145	COL E. E. Major USAR Center
	Denver (Incl. Colorado Springs)	6 Mar 77 0800–1700	Criminal Law Procurement	LTC Bernard Thorn 303–573–7600	I–332, Fitzsimons Army Medical Center
	Topeka	6 Mar 77 0800–1200	Administrative Law	MAJ Donald Simons 913–296–3831	Menninger USAR Center
11	Seattle	12 Mar 77 0800–1700	Criminal Law Administrative Law International Law	MAJ John P. Cook 206–624–7990	Harvey Hall Fort Lawton
	San Francisco	13 Mar 77 0800–1700	Criminal Law Administrative Law International Law	LTC Robert J. Smith 415–941–6161	Bldg #1750, Golden Gate Reserve Center Presidio
	Honolulu	15–16 Mar 77 1900–2300	Criminal Law Administrative Law International Law	COL Donald C. Machado 808–438–9953	Bruyeres Quadrangle
12	Oklahoma City	19 Mar 77 0800–1200	Criminal Law	LTC Stewart M. Hunter 405–236–2727—Ext. 450	Krowse USAR Center
	Wichita	20 Mar 77 0800–1200	Criminal Law	COL Robert L. Chesnut 316–689–7171	USAR Training Center
13	New York	26 Mar 77 0800–1700	Criminal Law Administrative Law International Law	COL Morton Levinson 212–947–0941	Patterson USAR Center
	Boston	27 Mar 77 0800–1700	Criminal Law Administrative Law International Law	MAJ Peter F. MacDonald 617–583–2019	Boston USAR Center
14	Houston	16 Apr 77 0800–1700	Criminal Law Administrative Law	MAJ Donald M. Bishop 713–666–8000	Annex Bldg

	City	*Date & Times*	*Subject(s)*	*Action Officer/Phone*	*Training Site Location*
	San Antonio	17 Apr 77 0800–1700	Criminal Law Administrative Law	LTC Richard G. Weil 512–735–9261	2010 Harry Wurzback USARC
15	Richmond	16 Apr 77 0800–1200	Procurement	LTC Robert L. Masden 804–786–3001	Michelli USAR Center
16	Columbus	16 Apr 77 0800–1200	Criminal Law	COL Charles E. Brant 614–221–2121	Army Reserve Center
	Cleveland	17 Apr 77 0800–1200	Criminal Law	MAJ David E. Burke 216–623–1350—Ext. 2006	Mote USAR Center
17	Washington, DC	23 Apr 77	Criminal Law Administrative Law International Law Procurement	MAJ George R. Borsari 202–296–8900	Southern Maryland Memorial USAR Center
	San Juan, PR	24–25 Apr 77	Criminal Law Administrative Law International Law Procurement	MAJ Otto J. Riefkohl 809–764–4545—Ext. 227	
18	Des Moines	23 Apr 77 0800–1200	Administrative Law	LTC Walter McManus 515–225–5546	Bldg 59 Fort Des Moines
19	Indianapolis	30 Apr 77 0800–1200	Criminal Law	COL Theodore Wilson 317–923–4573	Boros Hall
	St. Louis	1 May 77 0800–1200	Criminal Law	CPT Robert L. Norris 314–278–6971	Training Center #1
20	Atlanta	30 Apr 77 0800–1700	Administrative Law International Law	CPT Robert A. Bartlett 404–521–2268	Chamblee Armory
21	Columbia, SC (Incl. Spartanburg, SC)	7 May 77 0800–1700	Criminal Law Administrative Law	LTC Hugh Rogers 803–359–2599	Forest Drive Armory
	Birmingham	8 May 77 0800–1700	Criminal Law Administrative Law	LTC George Reynolds 205–325–5332	142 W. Valley Avenue
22	Pittsburgh	14 May 11 0800–1700	Criminal Law Administrative Law	MAJ James A. Lynn 412–434–3709	Gen Malcom Hay Armory
	Philadelphia	15 May 77 0800–1700	Criminal Law Administrative Law	CPT Joseph S. Berarducci 215–225–6433	USAR Training Center Willow Grove, PA
23	Madison	21 May 22 0800–1200	Criminal Law	LTC Dean T. Massey 608–262–1234—Ext. 3568	Madison AFR Armory
	Milwaukee	22 May 77 0800–1200	Criminal Law	LTC James W. Moll 414–762–7000	537 West Silver Spring Drive

Legal Assistance Items

Captain (P) F. John Wagner, Jr. and Captain Stephen F. Lancaster, Administrative and Civil Law Division, TJAGSA

1. ITEMS OF INTEREST.

Commercial Affairs—Commercial Practices and Controls. On 2 September 1976 the Board of Governors of the Federal Reserve System announced that it would retain the existing requirement in its Regulation B—Equal Credit Opportunity—for creditors to report credit histories in the names of both husband and wife when the account is shared.

At the same time, the Board postponed the effective date of the requirement from 1 November 1976, to 1 June 1977.

The provision of the Regulation concerned (Section 202.6) requires creditors to furnish credit information "in the name of each spouse." The Board asked on 25 May 1976, for public comment on a possible change of this language to permit creditors to report credit information relating to a shared account of a married couple "in a manner reflecting the participation of both spouses."

In view of generally unfavorable comment, the Board decided to retain the existing language which in effect calls for credit reporting agencies to maintain two separate files for married couples sharing an account, but to extend the effective date in order to give creditors more time for revision of their files and record keeping systems. [Ref: Ch. 10, DA PAM 27-12]

Commercial Affairs—Commercial Practices and Controls—Truth in Lending. On 13 October 1976, the Board of Governors of the Federal Reserve System announced adoption of regulatory amendments to carry out provisions of the Consumer Leasing Act of 1976 requiring disclosure of terms under which personal property is leased.

The amendment to Regulation Z (Truth in Lending) will become effective 23 March 1977, when the Consumer Leasing Act becomes effective. The Act requires accurate, meaningful disclosure of the terms of leases of personal property, basically automobiles and furniture, leased primarily for personal, family, or household use, for more than four months and for which the total contractual obligation is less than $25,000. Enforcement will be the responsibility of the same agencies that enforce Truth in Lending. (Enforcement agencies are: Comptroller of the Currency, Board of Directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Corporation), Administrator of the National Credit Unit Administration, Civil Aeronautics Board, Secretary of Agriculture, Farm Credit Administration, Board of Governors of the Federal Reserve System and the Federal Trade Commission.

The disclosures required by the Act have been added as a new section (Section 226.15) of Regulation Z. Other amendments have been made elsewhere in the Regulation to comply with the Act, including the provisions of sections dealing with general disclosures, definitions, advertising and exemptions of States with substantially similar laws.

To assist in compliance with the new law the Board will propose sample disclosure forms for use with leases of personal property subject to the Act. Proper use of these forms will ensure compliance with the Board's regulation.

The consumer leasing amendments to Regulation Z reflect consideration of written suggestions and comment received by the Board following publication of proposed consumer leasing disclosure rules on 1 July 1976 and consideration of testimony received in a hearing held by the Board on 3 August 1976.

—The main disclosures required are:

1. A brief description of the leased property adequate to identify it to both parties to the lease.
2. The total amount of any payment or payments the lessee is to pay at the consummation of the lease, such as a refundable security deposit, advance payment or the like.
3. The number, amount and due dates of periodic payments and their total.
4. The total amount of taxes, fees, and other charges involved.
5. Identification of those responsible for maintaining or servicing the leased property.
6. How any penalty or delinquency charge will be determined, and the amount.
7. A statement whether the lessee has an option to purchase the property at the end of the lease term, or earlier, and at what price.
8. A statement of the conditions under which either party to the lease may terminate it, and how any penalty or other charge will be determined.
9. A statement that the lessee shall be responsible for the difference between the estimated value of the property leased and its realized value at the end of the lease or upon earlier termination, if such liability exists.
10. A statement that in an open-end lease the lessee may obtain a professional appraisal of the property by an independent third party at the end of the lease or upon earlier termination, and that this appraisal will be binding.
11. Where the lessee's liability at the end of the lease term is based upon the estimated value of the property:

—A statement of the value of the property at the consummation of the lease, the itemized total lease obligation at the end of the lease, and the difference between them.

—Where the estimated value of the leased property exceeds three times the average monthly lease payment for the property concerned, a statement that there is a rebuttable presumption that the estimated value is unreasonable and can only be collected by legal action of the lessor, taken at his expense, with certain exceptions.

The final regulation permits lessors to understate the estimated value of the property in leases with a purchase option as a safety factor in open-end automobile leasing.

At the same time, the Board exempted from the amendments many applications of the Act to lease of personal property that are incidental to the lease of real property, such as furniture in a rented, furnished apartment.

In letters to the Senate and Housing Banking Committees, the Board said neither the Act nor its legislative history mention combined leases of real and personal property. After considering all comments received on this question, the Board concluded that an exemption provides the most equitable solution pending specific legislative action, and imposes the smaller burden on consumers and lessors.

A new paragraph has been added to the advertising requirements of the regulation to permit the use of merchandise tags without full advertising disclosures where a number of items is being leased, so long as the tags clearly and conspicuously refer to a posted schedule of required disclosures.

The requirement in the 1 July proposal that all disclosures be made on a single page has been dropped.

The consumer leasing requirements do not apply to:

Transactions over $25,000.

Agricultural credit transactions.

Leases of personal property that are incident to the lease of real property and which provide that the lessee (1) has no liability for the value of the property at the end of the lease other than for abnormal wear and tear and (2) has no option to purchase the property leased. [Ref: Ch. 10, DA PAM 27-12]

Family Law—Domestic Relations—Divorce—Jurisdiction in Divorce Proceedings—Custody. The Ohio Court of Appeals disagrees with the Court of Appeals for Columbiana County in the case of *Heinney v. Heinney*, 40 Ohio App. 2D 571 (1973) where the court held "When a mother having legal custody of a minor child is domiciled in another state with such child, an Ohio court does not have continuing jurisdiction to modify the original custody order." This court pointed out that the *Heinney* decision was based on an earlier decision, *Cunningham v. Cunningham*, 166 Ohio St. 203 (1957) which held "where a minor child is properly domiciled in Ohio with the parent having legal custody thereof under a decree of a court of another state, the courts of this state are not required to accord full faith and credit to a subsequently modified custody decree of the court of such other state." This court did not agree with the presumption that a court lacks jurisdiction to make an order where there is no guarantee that the order will be enforced outside the state. The court stated that the overwhelming weight of authority throughout the country is that a court has continuing jurisdiction to modify the provisions of a divorce decree as to the custody of children when the custodial parent and children have taken up residence in another state. *Murck v. Murck* (Ohio App. Feb. 26, 1976, released Sept. 27, 1976), 2 FAM. L. REP. (BNA) 2806. [Ref: Ch. 20, DA PAM 27-12]

Family Law—Illegitimate Children. A mother of an illegitimate child sought to modify and increase a child's support order. The circuit court denied her motion for modification on the belief that public policy did not permit modification of support for illegitimate children, even though Michigan permitted modification in divorce situations involving legitimate children. The Michigan Court of Appeals reversed the trial court and remanded the case. The Appellate Court cited *Whybra v. Gustasson*, 365 Mich. 396 (1961) wherein the Michigan Supreme Court stated "In terms for need for support and education, we see no difference between children born "in and out of wedlock" and *Gomez v. Perez*, 409 U.S. 535 (1963) wherein the United States Supreme Court held that disparate statutory treatment between legitimate and illegitimates is constitutionally invalid. In *Gomez* the Supreme Court found that a state may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally. Even though no particular modification provisions were present in the Michigan Paternity Act specifically relating to illegitimate children, those children must be given the same rights as legitimate children insofar as modification of support decrees are concerned. *Boyles v. Brown* (Mich. App. Sept. 9, 1976), 2 FAM. L. REP. (BNA) 2785. [Ref: Ch. 23, DA PAM 27-12]

Family Law—Illegitimate Children. In *Eckel v. Hassan*, the New York Supreme Court of Nassau County held that a statute requiring an order of filiation be entered before an illegitimate child or the child's father be treated as a distributee of the other constituted invidious discrimination between legitimate and illegitimates. In this case the decedent died the day before he was to marry his pregnant fiancee. In this wrongful death action, there was a motion to amend the complaint, said amendment being the inclusion of the allegedly illegitimate child of the decedent as a distributee. The court held that the statute requiring an order of filiation was unconstitutional on invidious discrimination grounds. Consequently, such an order is not required for an illegitimate child to share the proceeds for

recovery of the wrongful death of the putative father or for the putative father to share in the proceeds of such an action in the death of the illegitimate child. *Eckel v. Hassan* (N.Y. Sup. Ct. Nassau Co. Sept. 24, 1976), 2 FAM. L. REP. (BNA) 2787. [Ref: Ch. 23, DA PAM 27-12]

Taxation—State and Local Income Tax. As reported in the September issue the state of New Jersey now has a personal income tax. The same article noted that there was no indication if the definition of a "resident taxpayer" would exempt military personnel domiciled in New Jersey from the income tax if they maintained no permanent place of abode in New Jersey, maintained a permanent place of abode elsewhere, and spent no more than 30 days of the taxable year in New Jersey. At this time it appears that the definition would exempt military personnel.

In response to a hypothetical fact situation involving a New Jersey resident entering the Armed Forces in New Jersey and being assigned to a post in California, where he remained for the entire tax year, the Division of Taxation, Department of the Treasure, State of New Jersey stated:

> . . . the serviceman who has been transferred to California with his family would not be subject to the New Jersey Income tax, if in fact, he maintains no permanent place of abode in New Jersey, maintains a permanent place of abode in his other state other than New Jersey and spends more than 30 days of the taxable year in the other state.

The phrase, "if in fact," was not elaborated on by the Division of taxation and therefore a Rhode Island interpretation of permanent place of abode is still possible. Servicemembers domiciled in New Jersey should clearly indicate on their New Jersey return in which state their permanent place of abode is located.

Under the New Jersey law a return must be filed by each individual with a gross income in excess of $3,000.00 ($1,500.00 if married filing a separate return). [Ref: *Legal Assistance Items*, THE ARMY LAWYER, Sept. 1976, at 16]

2. ARTICLES AND PUBLICATIONS OF INTEREST.

Decedents' Estates and Survivor's Benefits—Estate Planning.

Turley, *The Five or Five Power: An Obscure Estate Planning Tool*, 33 WASH. & LEE L. REV. 701 (1976). [Ref: Ch 13, DA PAM 27-12]

Taxation—Federal Income Tax—Settlement.

Padme, *Nonjudicial Settlement of Tax Controversies*, II. GONZAGA L. REV. 43 (1976). [Ref: Ch 41, DA PAM 27-12]

JAGC Personnel Section

From: PP&TO, OTJAG

1. Regular Army and Voluntary-Indefinite Selections for the Judge Advocate General's Corps. A selection board will convene on 15 March 1977 to consider applicants for Regular Army commissions. This board will also consider applicants for voluntary-indefinite status. Applications for either regular Army or voluntary-indefinite status must be received by 8 March 1977. Applicants for regular Army commissions, who are not already voluntary-indefinite, will automatically be considered for voluntary-indefinite status if their RA applications are disapproved.

Officers who service will be completed prior to the next selection board may request a short term extension under the provisions of AR 135-215 if they desire to be considered for

Regular Army or voluntary-indefinite by the next selection board. Extensions cannot be granted beyond the end of the fiscal year.

2. Processing of Requests for Relief From Active Duty and Resignations From the Judge Advocate General's Corp. RA and Vol-Indef officers can request release from active duty UP of Section XX, Chapter 3, AR 635–100. RA and Vol-Indef officers who have completed 6 years of service can also submit unqualified resignations UP of Chapter 3, AR 635–120.

Paragraph 3–18, AR 635–100 provides that applications will normally be submitted not earlier than 6 months nor later than 90 days prior to the desired date of release. Paragraph 3–2, AR 635–120 provides that the request will be submitted not later than 3 months nor earlier than 6 months prior to the desired date of separation.

Failure to comply with the provisions of these regulations in submitting requests for release from active duty or resignations, may jeopardize an officers chances of being released on the desired separation date.

3. War College Corresponding Studies Course. The Judge Advocate General's Corps has been allocated two spaces for the AY 77–79 US Army War College Corresponding Studies Course beginning on or about 1 July 1977. Applications for enrollment from active duty JAG officers must be submitted to DAJA–PT NLT 21 January 1977. Prerequisite and information for submitting applications for enrollment are contained in AR 351–11, dated 14 September 1976.

4. Assignments.

COLONELS

NAME	*FROM*	*TO*	*APPROX DATE*
O'DONNELL, Mathew B.	USA Leg Svc Agcy	MDW	Nov 76

CAPTAINS

DILWORTH, Hal C.	3d Inf Div 09033	US Army Missile Cmd Redstone Arsenal, AL	Jan 77
KENDER, Daniel C.	8th Inf Div	USAG Carlisle Bks	Jan 77
MOORE, Joseph W.	USATV Engr & Ft Leonard Wood	USA Leg Svc Agcy	Apr 77
MORGAN, Timothy J.	MDW	OTJAG	Dec 76
RICKARD, David C.	HQ Quartermaster Ctr & Ft Lee	USA Logistics Management Ctr & Ft Lee	Nov 76

5. Promotions.

RA COLONEL

O'DONNELL, Matthew B.	2 Nov 76
PECK, Darrell L.	2 Nov 76

AUS MAJOR

BOREK, Theodore B.	1 Nov 76
EISENBERG, Stephen A. J.	1 Nov 76
ROBBLEE, Paul A.	1 Nov 76

Current Materials of Interest

Articles.

Persons, *Military Justice: Fair and Efficient*, ARMY, Oct. 1976, at 116. By Major General Wilton B. Persons, Jr., The Judge Advovate General, US Army.

Giannelli & Gilligan, *Prison Searches and Seizures: "Locking" the Fourth Amendment out of Correctional Facilities*, 62 VA. L. REV. 1045 (1976). Major(P) Francis A. Gilligan is currently SJA at HQ, United States Army School/Training Center, Fort McClelland, AL.

Improvement of Legal Facilities.

In accordance with the interest expressed by the Secretary of the Army and the Chief of Staff of the Army in upgrading Army legal facilities, the Common Table of Allowances (CTA 50–913, 30 May 75) has been amended by DA Message 211901Z Oct 76 to authorize issuance of a new type of wood furniture to Staff Judge Advocate offices. Local funding must be obtained. SJA's are encouraged to obtain the upgraded furniture as soon as possible.

The following authorizations are announced pending publication of a change to CTA 50–913, 30 May 75.

1. Lin B92223/Bookcase/per 66 inches or fraction thereof of publications in Office of Judge Advocate or Staff Judge Advocate.

2. Lin F97984/Desk flat top/per JAGC officer and civilian attorney in Office of Judge Advocate or Staff Judge Advocate.

3. Lin D85418/Chair rotary/per desk flat top lin F97964.

4. Lin F99962/Desk L-unit/per administrative or secretarial position in Office of Judge Advocate or Staff Judge Advocate.

5. Lin F97528/Desk attachment/per desk lin F99962.

6. Lin D85819/Chair rotary/per desk lin F99962.

7. Lin D86777/Chair straight/per Office of JAGC officer and civilian attorney in Office of Judge Advocate or Staff Judge Advocate.

Authority to implement the approved bases of issue from within current operating funds is granted, pending publication of the next change to CTA 50–913, 30 May 75.

By Order of the Secretary of the Army:

BERNARD W. ROGERS
General, United States Army
Chief of Staff

Official:
PAUL T. SMITH
Major General, United States Army
The Adjutant General

*U.S. GOVERNMENT PRINTING OFFICE:1976 720-191/3 1-3