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Table of Contents

The Citizen Informant

*by LTC Herbert Green**
Student, Armed Forces Staff College

I. Introduction

In *Aguilar v. Texas*,[1] Houston police officers when applying for a search warrant submitted an affidavit which read, in part:

> Affiants have received reliable information from a credible person and do believe that heroin, marijuana, barbituates, and other narcotics and narcotic paraphernalia are being kept at the above described premises for the purposes of sale and use contrary to the provision of the law.[2]

The search warrant was issued, narcotics seized, and the accused eventually convicted.

On appeal the basic issue confronting the Supreme Court was whether the issuing magistrate was presented sufficient evidence from which he could conclude that probable cause for the search existed.

> The point of the Fourth Amendment, which often is not grasped by zealous police officers is not that it denies law en-

*The author wishes to acknowledge the research assistance provided by Miss Margaret Reichenberg, a second year student at the University of Montana Law School.

[1] 378 U.S. 108 (1964).

[2] 378 U.S. at 109.

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

REPLY TO ATTENTION OF

15 DEC 1981

DAJA-LA

SUBJECT: Army Legal Assistance Program - Policy Letter 81-3

ALL JUDGE ADVOCATES

1. Providing quality legal assistance to our soldiers, their family members, and other authorized personnel is an important mission for the Judge Advocate General's Corps. Legal assistance is a valuable and positive program for our soldiers. Commanders and soldiers recognize that an effective program will greatly enhance accomplishment of the Army's mission. Unfortunately, it has not received the support and emphasis it deserves.

2. Several actions have been taken during the last year to revitalize the Army Legal Assistance Program. A Legal Assistance Branch has been added to the Administrative and Civil Law Division of TJAGSA. The initial objectives for the School included the development of meaningful liaison with field legal assistance officers and the distribution of legal assistance related resource materials. Some publications have already been distributed and more are on the way. Additionally, the Legal Assistance regulation (AR 608-50), the Army Preventive Law regulation (AR 600-14), and the Legal Assistance Handbook (DA Pam 27-12) are being revised and rewritten. The results of these efforts will strengthen the legal assistance program and provide assistance to the practitioner - the individual legal assistance officer.

3. Each judge advocate has the responsibility to support wholeheartedly the Army Legal Assistance Program. The program has been revitalized at Department of the Army level, and I now expect Staff Judge Advocates to do the same at their commands and installations. At a minimum, I expect quality legal services, attractive and professional offices, courteous treatment of clients, and an effective method of determining client satisfaction. You should be innovative in providing and publicizing legal services. The Corps is at authorized strength which should allow maximum staffing of legal assistance offices. I would expect to see experienced officers, as well as those newly commissioned, to be assigned legal assistance duties as part of their normal career development.

4. The Army Legal Assistance Program will be a matter of JAGC general officer interest during Article 6 inspections.

Hugh J. Clausen

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

forcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.[3]

The problem in *Aguilar* was especially acute because when a search is based on a magistrate's determination of probable cause "reviewing courts will accept evidence of a less judicially competent or persuasive character then would have justified an officer in acting on his own without a warrant."[4] The Supreme Court held that the affidavit did not provide sufficient information from which the magistrate could find probable cause and reversed the conviction. The Court declared:

> The magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were and some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed . . . "was credible" or his information "reliable."[5]

Less than five years later, *Spinelli v. United States*,[6] presented the Supreme Court with the opportuinty to re-examine *Aguilar*. An affidavit offered in support of a search warrant application stated, in part, that "a confidential reliable informant" provided information to the Federal Bureau of Investigation that Spinelli was running a bookmaking operation. The Court reaffirmed its holding in *Aguilar* and held that the affidavit suffered from the same deficiencies as did the one presented in earlier case. No evidence was presented which supported the conclusion that the informant was credible. Moreover, no evidence was presented as to how the informant obtained the information. Accordingly, the conviction was reversed.

As a result of *Aguilar & Spinelli*, the predicate for determining probable cause came to be known as the two prong test. The first prong concerned the basis of the informant's knowledge. To satisfy this prong the government was required to demonstrate the trustworthiness of the information to the issuing magistrate; that is, how the informant discovered his informa-

[3]Johnson v. United States, 333 U.S. 10, 13-14 (1948).

[4]Aguilar v. Texas, 378 U.S. 108, 111 (1964)

[5]*Id.* at 114-15.

[6]393 U.S. 410 (1969).

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tion. The second prong of the test concerned the truthfulness of the informant. The government was required to establish that the informant was worthy of belief or that his information should be believed.[8]

Frequently, the first prong is established by a statement indicating that the information was obtained as a result of personal observation by the informant. When such a statement is not presented, the prong may be satisfied by the presentation of the information in such detail that it may be inferred that the information was obtained in a reliable manner.

> In the absence of a statement detailing the manner in which the information was gathered, it is especially important that the tip describe the accused's criminal activity in sufficient detail that the magistrate may know that he is relying on something more substantial than a casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation.[9]

The second or "credibility" prong is usually established by demonstrating that the informant has given accurate law enforcement information on previous occasions. In other words, the informant has a good track record.[10] When the informant does not have an established track record the second prong may be satisfied by the informant's declaration against penal interest[11] or by independent evidence which corroborates the informant's tip.[12]

When the informant has not established a track record, when no corroboration exists, and when there is no declaration against penal interest, can the government establish probable cause? The answer to this question may be considered in the factual context of the following scenarios:

1. A soldier runs into the military police station at his installation and states that he has just been robbed of $50 and he saw the prepetrator run into Room 107 of the Company C billets.
2. A private E-2 who arrived in his unit 2 days earlier from his initial entry training approaches his First Sergeant and says he has just overheard his roommates discussing heroin sales and saw one of them just place 25 tin foil packets containing a white powder into his wall locker and lock it.

The first prong of the *Aguilar* test presents no problem. In both scenarios there is a witness whose information is based on personal observation. The second prong is more difficult. There is no informant's track record to rely on; there is no apparent corroborating evidence; and there is no admission against penal interest. Is the government then unable to establish probable cause and, therefore, unable to make a valid search or apprehension? The answer to this question is no. Both the Federal and military courts have adopted the doctrine of the citizen informant and, based on that doctrine, may permit searches and apprehensions in the factual context of the above scenarios.

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[7] *See* United States v. Button, 653 F.2d 319, 322 n.3 (8th Cir. 1981)

[8] *See generally* United States v. Button, 653 F.2d 319 (8th Cir. 1981); United States v. Bradley, 50 C.M.R. 608 (N.C.M.R. 1975).

[9] Spinelli v. United States, 393 U.S. 410, 416 (1969).

[10] *See, e.g.*, United States v. Swihart, 554 F.2d 264, 268 (6th Cir. 1977).

[11] United States v. Harris, 403 U.S. 573 (1971).

[12] "A previous track record of reliability is not the only means whereby an informant's trustworthiness can be established. It can also be established by an independent police investigation which corroborates the informant's tip". United States v. Sporleder, 635 F.2d 809, 812 (10th Cir 1980). *See* Spinelli v. United States, 393 U.S. 410 (1969); United States v. Whitney, 633 F.2d 902, 906 (9th Cir. 1980); United States Hunley, 567 F.2d 822, 825 (8th Cir. 1977); United States v. Swihart, 554 F.2d 264, 268 (6th Cir. 1977).

[13] The test for determining whether probable cause exists for the issuance of a search warrant . . . [is] . . . the same standard applicable to a warrantless arrest . . . ." United States v. Wilson, 479 F.2d 936, 939 (7th Cir. 1973); *See* McCray v. Illinois, 386 U.S. 300, 304 (1967).

The purpose of this article is to examine the doctrine of the citizen informant and its application in the Federal and military criminal law systems.

II. The Federal System

A. Applicability of the Aguilar-Spinelli Test

Although it could be inferred from *Aguilar & Spinelli* that the two prong test should be utilized in all probable cause determinations, a number of Federal courts have limited the situations in which it applies.

United States v. Bell,[14] involved a bank robbery after which a number of innocent bystanders provided information which led to the defendant's arrest and to the seizure of incriminating evidence. Bell challenged his arrest and the search incident thereto claiming *inter alia* that the second prong of the *Aguilar-Spinelli* test was not met. The Court rejected this argument and in an often cited opinion declared:

> We have discovered no case that extends this requirement to the identified bystander or victim-eyewitness to a crime, and we now hold that no such requirement need be met. The rationale behind requiring a showing of credibility and reliability is to prevent searches based upon an unknown informants tip that may not reflect any thing more than idle rumor or irresponsible conjecture. Thus, without the establishment of the probability of reliability, a "neutral and detached magistrate" could not adequately assess the probative value of the tip in exercising his judgment as to the existence of probable cause. Many informants are intimately involved with the persons informed upon and with the illegal conduct at hand, and this circumstance could also affect their credibility. None of these considerations is present in the eyewitness situation such as was present here. Such observers are seldom involved with the miscreants or the crime. Eyewitnesses by definition are not passing along idle rumor, for they either have been the victims of the crime or have otherwise seen some portion of it. A "neutral and detached magistrate" could adequately assess the probative value of an eyewitness's information because, if it is reasonable and accepted as true, the magistrate must believe that it is based upon first hand knowledge. Thus we conclude that *Aguilar* and *Spinelli* requirements are limited to the informant situation only.[15]

At least two other circuits have adopted the *Bell* holding that the two prong test does not apply to information acquired from a nonprofessional eyewitness. In *United States v. Burke*,[16] an individual provided information that he had been in the defendant's apartment and while there had seen an unregistered shotgun. The defense contended that the affidavit was fatally flawed by the absence of a recital that the individual who provided the information was known to be credible. The court, citing *Bell*, upheld the search stating, "There has been a growing recognition that the language in *Aguilar* and *Spinelli* was addressed to the particular problem of professional informers and should not be applied in a wooden fashion to cases where the information comes from an alleged victim or witness to a crime."[17] The Tenth Circuit cited *Bell* with approval in *United States v. McCoy*.[18] There the court held that an affidavit based on information provided by eyewitness to a sky-jacking did not have to

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[14] 457 F.2d 1231 (5th Cir. 1972).

[15] 457 F.2d at 1238–39. The explanation in *Bell* appears to confuse the basis of knowledge first prong with the credibility second prong. *See* United States v. Button, 653 F.2d 319 (8th Cir. 1981). Nevertheless, the holding of the case is clear; the *Aguilar-Spinelli* test does not apply to cases in which the informant is an innocent bystander or victim.

[16] 517 F.2d 377 (2nd Cir. 1975).

[17] 517 F.2d at 380.

[18] 478 F.2d 176 (10th Cir. 1973); *Bell* has also been cited with approval in *United States v. Pennington*, 635 F.2d 1387 (10th Cir. 1980), and *United States v. Rollins*, 522 F.2d 160 (2d Cir. 1975).

satisfy the credibility of the informant, second prong of *Aguilar*.

Where the victim of the crime rather than a third party eyewitness provides the information which leads to an apprehension, the second prong of the test has also been held to be inapplicable. This is the case even though the victim is not an innocent one. In the *Cardaio* case,[19] Konrad was suspected of possession of marijuana. When he was approached by the police, he stated that he had been robbed of eight pounds of marijuana the night before by the petitioner. In upholding the subsequent arrest and search of the petitioner based on Konrad's information, the court stated that it had found no case in which it had been thought necessary to provide information about the previous reliability of the victim.[20] Two District of Columbia Circuit cases support this assertion. In *Trimble v. United States*,[21] a robbery victim enlisted the aid of the police while he pursued his assailant. The police apprehended the suspect and discovered the fruits of his crime. In upholding the actions of the police, the court found they had probable cause for the arrest and did not discuss the applicability of either prong of *Aguilar*. Similarly, in *Pendergast v. United States*,[22] without mentioning *Aguilar*, the court upheld an arrest which was based on an assault victim's on the scene identification of the defendant as his assailant.[23]

Another circuit has limited the two prong test to cases involving affidavits based on hearsay. In *United States v. Hunley*,[24] a drug buyer was arrested immediately after buying drugs from the defendant. He was taken before a magistrate and provided information which led to a search of the defendant's premises. In rejecting a defense argument based on the "credibility" prong, the court held that since the informant personally appeared before the magistrate there was no need to present independent evidence of the informant's credibility or track record.

B. Presumptive Credibility

Although, a number of cases have held the two prong test to be inapplicable in certain situations, the majority rule is that the test will be applied in determining whether probable cause was established. However, there is a significant divergency of opinion as to manner in which the test is to be applied. One view is that a good citizen witness or the victim of an offense is presumed to be credible, thereby satisfying the second prong of the test.[25] The Ninth

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[19] United States *ex rel* Cardaio v. Casseles, 446 F.2d 632 (2d Cir. 1971).

[20] *See also* Banks v. United States, 365 F.2d 976 (D.C. Cir. 1966).

[21] 369 F.2d 950 (D.C. Cir. 1966).

[22] 416 F.2d 776 (D.C. Cir. 1969).

[23] *Accord*, United States *ex rel* Walls v. Mancusi, 406 F.2d 505 (2d Cir. 1969). The Second Circuit has consistently held that when the information for an arrest or search comes from a participant in the crime, the second prong does not apply and there is no need to show past reliability of the informant. In one case an individual was apprehended in Puerto Rico while illegally transporting three kilograms of cocaine. She subsequently identified her accomplice in New York, and he was arrested. The court held that the failure to show the informant's track record was immaterial. United States v. Rueda, 549 F.2d 865 (2d Cir. 1977).

Similarly, it has upheld a search of a safety deposit box in a New York bank based upon information given in Bolivia by an individual apprehended for possession of cocaine. The individual stated he had seen cocaine in the safety deposit box, and that he regularly provided the drug for the owner of the safety deposit box. United States v. Dunloy, 584 F.2d 6 (2d Cir. 1978). The rationale for the participant in the crime exception to the *Aguilar* Test is pragmatic. Because of the very nature of their illegal activities, participants in the crime would be unable to establish a track record with the police. However, it is the very nature of their position as participants that makes it very likely that they are telling the truth about the crime. *See, e.g.*, United States v. Rueda, *supra*, at 868–70; United States v. Miley, 513 F.2d 1191, 1204 (2d Cir. 1975).

Arguably, this contention should apply to the first and not the second prong of *Aguilar* because a participant is in a position to obtain first hand knowledge of a crime. That one is a participant in a crime would not appear to be evidence of credibility.

[24] 567 F.2d. 822 (8th Cir. 1977).

[25] This approach is not without precedent. The Supreme Court has held that "observations of fellow officers of the Government engaged in a common investigation are plainly, a reliable basis for a warrant applied for by one

Circuit adopted this view in *United States v. McCrea.*[26] In that case two social workers at the home of a welfare recipient in Spokane, Washington, noticed a stock and handgrip of a machine gun and some ammunition. When asked about the weapon, the welfare recipient stated that it belonged to her ex-husband and that he was planning on going to Montana "on a machine gun shooting spree."[27] The social workers notified the authorities, a search warrant was obtained, and a number of weapons were seized. The court rejected the defendant's *Aguilar* based attack on the search and seizure and stated that "these were not professional informants, but known private citizens giving good faith observation upon which it was reasonable to rely."[28] In an earlier case,[29] the Ninth Circuit declared that when the informant is a victim, it need not be shown by other evidence that the informant is credible. This declaration was based on the courts observation in *Pendleton v. Nelson,*[30] that under California law, "a citizen who purports to be the victim of a crime is a reliable informant even though his reliability has not theretofore been proven or tested."[31]

The Eighth Circuit has also adopted the theory of presumptive credibility. In *Cundiff v. United States,*[32] a number of innocent bystanders to a daylight bank robbery gave the police information that traced the defendant from the bank to a motel. After the defendant's arrest, a search warrant based on the information supplied by the witness was obtained, the motel room searched, and the fruits of the robbery seized. The defendant attacked the search warrant claiming that the magistrate was not given sufficient information upon which to judge the credibility of the witnesses. In denying the motion to suppress, the court observed that "an informant who alleges he is an eyewitness to an actual crime perpetuated demonstrates sufficient reliability of the person."[33] The Circuit's adoption of presumptive credibility was reaffirmed in *United States v. Easter.*[34] The case upheld an arrest in the face of a strong dissent which argued that "probable cause was not shown unless we are prepared to ascribe reliability to everyone who claims to be a victim."[35] In *Easter,* a prosecution for possession of an illegal weapon found during a search incident to apprehension, an individual purporting to be a robbery victim called the police and stated he had been robbed. When the police arrived at the phone booth, he stated he had followed the perpetrators to a residence and took the police there. When the police entered the residence, the victim disregarded police instructions and fled the scene. He did not testify for the government. As in *Cundiff,* the defendants argued that the apprehension was illegal because there was no way to judge the credibility of the informant. And as in *Cundiff,* this argument was rejected based on the victim's status *qua* victim.[36]

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of their number." United States v. Ventresca, 380 U.S. 102, 111 (1965). *See also* United States v. Hayles, 471 F.2d 788, 793 (5th Cir. 1973).

[26] 583 F.2d 1083 (9th Cir. 1978).

[27] 583 F.2d at 1084.

[28] 583 F.2d at 1085. *But cf.* United States v. Jackson, 544 F.2d 407 (9th Cir. 1976). (Mother-in-law who supplies information is treated as informant to which the full *Aguilar* test applies and not as good citizen informant).

[29] United States v. Mahler, 442 F.2d 1172 (9th Cir. 1971).

[30] 404 F.2d 1074 (9th Cir. 1968).

[31] 404 F.2d at 1975.

[32] 501 F.2d 188 (8th Cir. 1974).

[33] 501 F.2d at 190.

[34] 552 F.2d 230 (8th Cir. 1977). *See also* United States v. Dresser, 542 F.2d 737, 740 n.3 (8th Cir. 1976).

[35] 552 F.2d at 235 (Heaney, J. dissenting).

[36] Both *Cundiff* and *Easter* are based on *McCreary v. Sigler,* 406 F.2d 1264 (8th Cir. 1969), which appears to be the first case in the circuit to adopt presumptive credibility. However, the court's holding was not based on this doctrine. Independent corroborating evidence was presented and was acknowledged to be a significant factor. A more recent Eighth circuit case, *United States v. Dennis,* 625 F.2d 782 (8th Cir. 1980), also recognizes the doctine of presumptive credibility. However, as in *McCreary,* independent corroborating evidence was presented.

The District of Columbia Circuit has adopted a modified form of presumptive credibility. In *Pendergrast v. United States*,[37] it held that probable cause is established when the victim:

> (1) communicates to the arresting officer information affording credible ground for believing that the offense was committed and (2) unequivocally identifies the accused as the perpetrator and (3) *materially impeaching circumstances are lacking.*[38]

The first and second requirements are basically quantum and specificity requirements for probable cause and must be established in every probable cause situation. The third requirement is the modification of presumptive credibility. It appears to be another way of declaring that presumptive credibility is a rebuttable doctrine and that the presumption will be accepted unless there are apparent grounds for not doing so.

A third approach, which is very similar to the District of Columbia rule, is that presumptive credibility will attach if there is no apparent motive to falsify the information. The Tenth Circuit followed this approach in *United States v. Gagnon.*[39] There a member of a hunting party came upon a newly constructed barn. When he looked inside he discovered marijuana, retrieved some, and took it to the authorities. They confirmed its nature by a field test. In affirming the conviction, the court declared:

> *Gagnon* argues Agent Means' affidavits failed to meet the second requirement of *Aguilar* that there be some showing of the informant's reliability since they did not recite that Parks was known historically to be reliable informant. We have long subscribed to the rule that an affidavit need not set forth facts of a named person's prior history as a reliable informant when the informant is a citizen/neighbor eyewitness with no apparent ulterior motive for proving false information. We will not disturb the district court's factual determination that Parks was an unpaid nonprofessional informant *with no apparent motive to fabricate.*[40]

Even when the informant has a motive to lie, this fact alone may not adversely affect the degree of credibility that attaches to the citizen informant. In *United States v. Copeland*,[41] the court recognized that the informant had "an axe to grind with"[42] the defendant. While this, declared the court, may explain his motivation

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The First circuit has declared that "an asserted victim of a crime is a reliable informant even though his or her reliability has not theretofore been proven or tested." Nelson v. Moore 470 F.2d 1192, 1197 (1st Cir. 1972). However, as in *McCreary and Dennis*, corroborating evidence was considered. In a recent case in which the track record of the informant was presented, the Second Circuit in dicta acknowledged the applicability of *Aguilar* and declared "arresting officers may act upon information provided by an eyewitness to a crime without a showing of reliability of the witness or his information." United States v. Agapito, 620 F.2d 324, 332 (2d Cir. 1980).

[37] 416 F.2d 776 (D.C. Cir. 1969).

[38] 416 F.2d at 785 (emphasis supplied). *See also* United States v. Anderson, 533 F.2d 1210 (D.C. Cir. 1976).

[39] 635 F.2d 766 (9th Cir. 1980).

[40] 635 F.2d at 768. (emphasis supplied). In a very similar case, *Rutherford v. Cupp*, 508 F.2d 122 (9th Cir. 1974), the court upheld a search warrant and noted that the informant had "no apparent ulterior motive." 508 F.2d at 123. *See also* United States v. Unger, 469 F.2d 1283, 1287 (7th Cir. 1972) ("nor does it appear that the accusations by the citizen were reported to the police merely to spite" the defendant).

In *United States v. Pryba*, 502 F.2d 391 (D.C. Cir. 1974), "the complete absence of any apparent motive to falsify" was noted. 502 F.2d at 403. The author of this opinion also wrote the opinion in *Pendergrast v. United States*, 416 F.2d 776, where he used different phraseology ("materially impeaching circumstances are lacking"). "The Supreme Court has noted that when certain kinds of crimes are involved informants are "much less likely" to lie than in narcotics cases or other common garden varieties of crime . . . . *Jaben v. United States*, 381 U.S. 214 (1965) . . . *Jaben* was a tax evasion case. The principle would appear equally applicable to a case of bankruptcy fraud." United States v. Sultan, 463 F.2d 1066, 1069 (2d Cir. 1972).

[41] 538 F.2d 639 (5th Cir. 1976).

[42] 538 F.2d at 642.

in providing the information, it does not necessarily lessen his credibility. "Any possible reduction in reliability in this respect is more than overcome by the informant's presentation of particular details in his tip."[43]

C. Less Stringent/Corroboration

Some courts reject both the docrine of presumptive credibility and the view that *Aguilar* does not apply to the citizen informant-victim situation. For these courts, *Aguilar* does apply, but in a modified or less stringent form. *United States v. Swihart*, his a good example of this middle ground approach. In that case the victim, Davis, was in the business of selling explosives. While conducting an inventory he discovered that almost 8000 pounds of gun powder was missing from his store room. Earlier that week the defendant who owned a gun store in another town had called Davis and inquired about the price and availability of the same type gun powder as that missing. Davis then visited the defendant's store and discovered gun powder bearing the same lot number as the missing gun powder. Subsequently Davis informed the Bureau of Alcohol, Tobacco and Firearms (ATF). A search warrant, based on Davis's information was obtained and a search of the defendant's property revealed the missing gun powder. At trial the defendant moved to suppress the evidence based mainly on the alleged failure of the government to establish the credibility of Davis or the reliability of his information. The motion was granted in the district court, but the circuit court reversed.

The appellate court acknowledged that its brother circuits had either held the victim to be presumptively credible or that the *Aguilar* test did not apply but rejected both approaches. Instead, it declared:

> In the case of the identified nonprofessional who is also the victim of the crime, the burden of satisfying the second prong of the *Aguilar-Spinelli* test, that the informant was credible or his information reliable, is *less stringent than in the case of the unidentified and/or professional informant.*[45]

Here, the court noted that the distinction between the two prongs of the test is somewhat obscured. The circumstance indicating how Davis discovered his information are so detailed that they contain built-in credibility guides to the informant's reliability."[46] Accordingly, it stated:

> Such particularization of the underlying circumstances, coupled with the inherent indicia of reliability of an unidentified nonprofessional such as Davis, sufficiently afforded probable cause for the search and the magistrate was fully authorized to issue the search warrant.[47]

The First Circuit has followed a related but different approach than that utilized in *Swihart*. In *United States v. Melvin*,[48] the court acknowledged that the full requirements of *Aguilar* need not be met when the informant is an innocent bystander. Nevertheless, the magistrate must be afforded a substantial basis for crediting the hearsay. This requirement could be satisfied by independent corroboration. Melvin was the owner of a tavern which blew up under suspicious circumstances. A bystander witness, after viewing photographs, stated that Melvin bore a strong resemblance to the man who drove away from the tavern in a white Cadillac moments before the explosion. Although the bystander was not identified and the circumstances of his observation were not set out in the affidavit, information was provided that a policeman had earlier seen Melvin's

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[43] 538 F.2d at 642. *See also* United States v. Hunley, 567 F.2d 822 (8th Cir. 1977). Arguably, the providing of detailed information should only apply to the first prong of *Aguilar*.

[44] 554 F.2d 264 (6th Cir. 1977).

[45] 554 F.2d at 269 (emphasis supplied)

[46] 554 F.2d at 269.

[47] 554 F.2d at 270. *See also* United States v. Huberts, 637 F.2d 630 (9th Cir. 1980).

[48] 596 F.2d 492 (1st Cir. 1979).

white cadillac at the tavern. This, the court noted, established sufficient corroboration for the statement of the witness. Accordingly, the search warrant for Melvin's residence based upon the affidavit was upheld.[49]

Even when the court's opinion does not specifically state that coroboration is required, courts often make reference to such evidence to bolster their own findings that probable cause existed. Moreover, very little evidence is needed to establish corroboration. In one case,[50] a citizen informant disclosed that he had seen weapons in the basement of an apartment building and based on his military experience gave a detailed description of them. In addition he drew a diagram of the basement and pointed out the building to the police. In upholding the subsequent search, the court indicated that the seemingly insignificant corroboration of the location of the building by the police was a factor in its determination that the informant was credible and that probable cause was established.[51]

D. The Informant's Identity

One reason the citizen informant is either presumed credible or is accorded a preferred status on the issue of credibility is the absence of a motive to fabricate. Because the second prong of *Aguilar* concerns truthfulness, the courts have continually sought to find some indicia of truthfulness when a bystander or victim is the informant. One of these indicia is the fact that the informant is identified. A person who permits his name to be used is telling the truth, because it is unlikely that one who identifies himself would fabricate a story. Whether such a theory is fact or in accord with "the factual and practical considerations of everyday life on which reasonable and prudent men . . . act"[52] is debatable. Nevertheless, the courts continually mention whether the informant is or is not identified. The effect of identification or the lack thereof varies widely. At least one court has stated that "mere identification by name does not establish reliability of the person."[53] Another has declared, "That a person is named is not alone sufficient grounds on which to credit an informer, but it is one factor which may be weighed in determining the sufficiency of an affidavit."[54] Still a third has indicated that information provided by an identified party in the circumstances of the case carries with it an indicia of reliability.[55] A fourth has stated that information obtained from identified eyewitnesses is of considerable significance.[56] One court has gone so far as to declare that anonymity is the key to the citizen witness's credibility, and when the victim or bystander is named, the *Aguilar* test does not apply.[57] Although, as noted, there is no uni-

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[49] *See also* United States v. Hunley, 567 F.2d 822, 826 (8th Cir. 1977); United States v. Mendoza, 547 F.2d 952 (5th Cir. 1977).

[50] United States v. Unger, 469 F.2d 1283 (7th Cir. 1972).

[51] *Accord,* United States v. Roman, 451 F.2d 579 (4th Cir. 1971). *See also* United States v. Romano, 482 F.2d 1182 (5th Cir. 1973), United States v. Wilson, 479 F.2d 936 (7th Cir. 1973). In view of the emphasis placed by the courts on corroborating evidence, no matter how slight or insignificant, the government should always attempt to present such evidence to the authorizing official when application for a search warrant or authorization is made. Similarly, the corroborating evidence known to the policeman who makes a warrantless apprehension should always be presented when a suppression motion is litigated.

[52] Brinegar v. United States, 338 U.S. 160, 175 (1949).

[53] McCreary v. Sigler, 406 F.2d 1264, 1268 (8th Cir. 1969).

[54] United States v. Spach, 518 F.2d 866, 879 (7th Cir. 1975); *see also* Rutherford v. Cupp, 508 F.2d 122 (9th Cir. 1974).

[55] United States v. Wilson, 479 F.2d 936 (7th Cir. 1973); *see also* Ignacio v. Guam, 413 F.2d 513 (9th Cir. 1969).

[56] United States v. McCoy, 478 F.2d 176 (10th Cir. 1973).

[57] United States v. Dorensbourg, 520 F.2d 985 (5th Cir. 1975). The identity need not be by name. In one case the Court held that no further evidence of the informant's reliability need be offered when the informant was identified as the Director of Recording of United Artist Records. United States v. Sherman, 576 F.2d 293 (10th Cir. 1978). Merely stating that an individual is an outstanding member of the community is insufficient identification when there is no evidence that the informant was a victim or a disinterested bystander

formity of opinion as to the effect of naming the citizen informant, the fact that the informant is identified is of some significance. Accordingly, unless some reason exists for not doing so (e.g., safety of the witness) when relying on the doctrine of the citizen informant, those seeking search authorizations should identify the informant.

E. Summary—Federal Law

Although there is no uniformity in the federal system with respect to the application of the *Aguilar* test when the information upon which the search or apprehension is to be based comes from an innocent bystander or victim of a crime, the courts do agree that the citizen "informant/victim" situation is different than that of the professional informant. The acknowledgment of this difference has led the courts to adopt various approaches. The inapplicability of *Aguilar*, presumptive credibility, the less stringent approach, the requirement for corroboration (no matter how slight), and the indicia of credibility represented by the identification of the informant are but some of the methods espoused by the courts. Although all are facially and to a degree substantively different, there is a common thread running through all of them. The acknowledgment that innocent victims and innocent bystanders will not have had the opportunity to establish a good track record with the police. Moreover, in a participatory democracy such as ours we must accept as a fundamental rule that good citizens in matters of importance will not lie to law enforcement authorities. As a matter of basic pragmatism and necessity, and as a matter of idealism as well, the law accepts the word of the good citizen and is willing to base upon it a finding of probable cause.

Based on federal law, can the government establish probable cause in the previously mentioned scenarios? The answer is that such a finding can be based on a number of theories. There is not a professional informant in either scenario. Rather there is an apparently innocent victim in the first and an innocent bystander in the second. Therefore *Aguilar* may be inapplicable. If it is applicable, the doctrine of presumptive credibility, especially where there is no apparent motive to fabricate, may also sustain a finding of probable cause. In both scenarios the informant is known, the location of the crime scene and of the perpetrators easily verifiable[58] and the information detailed enough to provide a "built-in credibility guide to the informant's reliability."[59] Any requirement for corroboration can be satisfied. In sum, there is ample authority in federal law for sustaining a search authorization or an apprehension based on the information provided in the scenarios. Certainly there are no grounds for complete capitulation by the government based on a mere failure to establish the track of the informant.

III. The Military System

A. Introduction

The military law of search and seizure recognizes that information from a good citizen or victim of an offense is to be treated differently from information received from a professional informant. However, military law is unclear as to the precise manner in which this information is to be considered.

B. Applicability of the *Aguilar-Spinelli* Test

The inapplicability of the two prong test to cases involving the citizen informant has been indicated in dicta in at least two military cases. In *United States v. McCain*,[60] a maid stated that while cleaning a barracks room she found a hypodermic needle and syringe with blood on it under the accused's bunk. She also stated that on several other occasions she found a bloody needle and syringe in the same room. Other in-

eyewitness. United States v. Button, 653 F.2d 319 (8th Cir. 1981).

[58] *See, e.g.*, United States v. Unger, 469 F.2d 1283 (7th Cir. 1972).

[59] United States v. Swihart, 554 F.2d 264 (6th Cir. 1977).

[60] 49 C.M.R. 514 (A.F.C.M.R. 1974).

formation was presented that the accused had recently been arrested for possession of marijuana and had previously been treated for drug abuse. Based on this information a search of the accused's room was authorized. At trial and on appeal the accused, citing *Aguilar*, contended that the search was improper because the commander who authorized it was not furnished with sufficient information upon which to judge the credibility of the maid. The court rejected this contention and declared: "*Aguilar* and *Spinelli* are not at all apposite to the case at hand. Those cases involve search warrants based on information that is inherently untrustworthy unless corroborated."[61] For example, the warrants were based on a bare conclusion in *Aguilar* by an unnamed informant[62] and an unsupported claim in *Spinelli* that the defendant had a reputation as a bookmaker.[63] Here, on the other hand, the information came from "an ordinary citizen who simply reported her findings to her supervisors."[64] Moreover, because there was independent corroborating evidence of drug use, probable cause was established.

Another panel of the Air Force Court of Military Review reached a similar conclusion in *United States v. Burden*.[65] A named informant with an established track record provided information which resulted in a command authorized search of the accused's property and the seizure of drugs in the accused's possession. The accused invoked *Aguilar* claiming that the evidence did not establish the credibility of the informant. The court rebuffed this position, cited *Burke*[67] and *Bell*[68] and declared:

> We believe that their reliance on the rationale of *Aguilar v. Texas* is misplaced. It is now generally recognized that the *Aguilar-Spinelli* doctrine is applicable to the particular problem of *unidentified informers* and does not apply where there is a named eyewitness informer.[69]

C. Presumptive-Credibility

The doctrine of presumptive credibility has received favorable attention from the Army Court of Military Review and is the basis of one direct holding by that court. In *United States v. Gutierrez*,[70] an informant reported that he had observed the accused attempt to sell heroin to another individual and that the accused had 16–20 balloons of heroin in a plastic bag in his pants pocket. A subsequent apprehension and search of the accused disclosed the heroin. In affirming the denial of the accused's motion to suppress based on the second prong of *Aguilar* the court declared, "the report here came from a good-citizen eyewitness, not from one criminal 'dropping a dime' on another. Such reports of crimes in progress are sufficiently reliable for a magistate."[71]

Two other panels of the Army court have also declared that the good citizen eyewitness

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[61] 49 C.M.R. at 516.

[62] *See* 378 U.S. 108 (1964).

[63] *See* Spinelli v. United States, 393 U.S. 410, 416 (1969).

[64] United States v. McCain, 49 C.M.R. 514, 516 (A.F.C.M.R. 1974).

[65] 5 M.J. 704 (A.F.C.M.R. 1978), *aff'd on other grounds*, 11 M.J. 151 (C.M.A. 1981).

[66] The informant had a particularly interesting track record. He had served as an Air Force Office of Special Investigations (OSI) informant in Hawaii and at several bases in the United States. Two of his transfers were caused by his disclosing his prior activities as an informant. Moreover "while he was at one of the bases, . . . he . . . made an allegation against his handling agent which was later proven false. This resulted in his being placed on the "burn list," a tabulation of sources not to be used by the OSI in future cases." United States v. Burden, 5 M.J. 704, 705 (A.F.C.M.R. 1978). All this information was relayed to the individual who authorized the search.

[67] United States v. Burke, 517 F.2d 377 (2d Cir. 1975); *see Aguilar, supra* note 2.

[68] United States v. Bell, F.2d 1231 (5th Cir. 1972), *see Aguilar, supra* note 2.

[69] United States v. Burden, 5 M.J. 704, 707 (A.F.C.M.R. 1978) (emphasis in original).

[70] 3 M.J. 796 (A.C.M.R. 1977).

[71] 3 M.J. at 798 n.2.

is presumed credible. In one case,[72] the panel stated" there is no question as to . . . the informant's . . . reliability, as he was an eyewitness whose reliability may be presumed."[73] In a later case,[74] the court opined that "a witness who purports to be a victim or an observer who reports criminal activity may be considered reliable even though his reliability has not been previously tested."[75]

The Court of Military Appeals has addressed this issue most recently in *United States v. Land*.[76] In *Land*, the accused's roommate provided information that he had seen the accused in possession of marijuana two or three days prior to the search and stated that the accused had admitted keeping marijuana in his off-post quarters. On appeal to the Court of Military Appeals, the accused claimed *inter alia* that the second prong of *Aguilar* was not met because there was insufficient evidence presented that the informant was credible. The government countered by arguing that the informant was a good citizen whose credibility was presumed. In his opinion for the court, Judge Cook acknowledged that the informant "may not be the kind of law-abiding person envisaged by the description citizen informant."[77] However, he found that the evidence established the actual credibility of the informant. Therefore, the second prong of the *Aguilar* test was met without resort to the law relating to the citizen informant. Judge Fletcher concurred in Judge Cook's opinion and stated: "As a matter of military law, it has not yet been decided that a presumption of reliability exists for the citizen informant as compared to the professional informant."[78]

Moreover, he found that the informant's presence on the drug scene was more than an accident, that he did not divulge the information on his own, that he was suspected of some involvement in narcotics, and that he was considered to be a police informant and not a good citizen witness. These facts, the judge opined, "which argue against the application of the presumption"[79] of credibility, also argue against the use of any less stringent standard to judge the credibility of the informant. Therefore, Judge Fletcher applied the full *Aguilar* standards to the informant and found him worthy of belief. Chief Judge Everett seemingly concurred[80] in both opinions.

In the aftermath of *Land*, at least this much seems clear. The Army Court of Military Review has, in at least one holding and several times in dicta, opined that the citizen informant is presumptively credible. The Court of Military Appeals has acknowledged that other courts have adopted presumptive credibility, but it has not yet decided the issue as a matter of military law.

D. Less Stringent/Corroboration

Although the matter of presumptive credibility remains unsettled, the Court of Military Appeals has declared that it will accept less evidence to establish the truthfulness of the informant when the informant is a good citizen witness or victim. In *United States v. Herberg*,[81] the accused drove an automobile with a broken rear tail light onto an Air Force Base.

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[72] United States v. Dingwell, 1 M.J. 594 (A.C.M.R. 1975).

[73] 1 M.J. at 598. Notwithstanding, the reliance on presumptive credibility of the eyewitness the conviction was reversed and the charges dismissed because the government's justification for the search, military necessity, was not supported by the evidence.

[74] United States v. Davis, 6 M.J. 874 (A.C.M.R. 1979), *petition denied*, 8 M.J. 234 (C.M.A. 1980).

[75] 6 M.J. at 878 n.12.; *see also* United States v. Morales, 49 C.M.R. 458, 460 (A.C.M.R. 1974), *rev'd on other grounds*, 1 M.J. 87 (C.M.A. 1975); *United States v. Hippensteel*, 48 C.M.R. 900, 902 (N.C.M.R. 1974).

[76] 10 M.J. 103 (C.M.A. 1980).

[77] 10 M.J. at 105.

[78] 10 M.J. at 106.

[79] *Id.*

[80] The Chief Judge wrote, "In accordance with the rationale cogently developed in the principal and concurring opinions, I agree that probable cause was established." 10 M.J. at 107.

[81] 35 C.M.R. 219 (C.M.A. 1965).

A few minutes later another automobile arrived at the base gate and its driver reported that he was nearly run off the road by the driver of an automobile with a broken rear tail light. Based on this information, the accused was apprehended. The apprehension led to a search of the accused's vehicle and incriminating evidence was discovered. At trial and on appeal the accused unsuccessfully contended that the truthfulness of the alleged victim had not been established, and, therefore, the apprehension was not based on probable cause. The court stated:

> Here the complainant was the victim and not an unidentified informant . . . . It is recognized that complaints registered by actual victims of offenses, unlike the reports of unidentified informers, do not require the same corroboration or verification in order to serve as probable cause for an arrest.[82]

The sighting by the gate guard of the accused's defective automobile was sufficient corroboration for the victim's complaint. Therefore the apprehension was upheld.[83]

Six years later the court was again confronted with this issue.[84] Two soldiers reported to their commander that they had been robbed in the billets by the accused. The commander ordered a search of the accused's wall locker and the fruits of the robberies and a quantity of marijuana were discovered. The court gave little credence to the accused's attack based on *Aguilar's* second prong. It declared: "Ample evidence existed that the accused had committed robbery. Where a victim reports an offense, less corroboration than would otherwise be needed may satisfy probable cause requirements."[85]

Accordingly, it held that probable cause for the apprehension of the accused was established by the victims' statements.[86]

The Air Force Court of Military Review in two recent cases has clearly stated that military law accepts less corroboration for a subsequent apprehension or search when the victim reports an offense. In *United States v. Conquest*,[87] the victim, the accused, and another individual were seated at a table in an NCO Club. The victim got up to dance. When she returned, her purse, left under the table, and the accused were gone. During the victim's dance, the accused had bent over to pick up his coat. Subsequently, the now empty purse was found along side the accused's barracks building, and a search of the accused's room revealed the missing contents of the purse. In upholding the legality of the search, the court stated that

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[82] 35 C.M.R. at 222. The Court of Military Appeals has also continually recognized that the identification of the informant is important. *See, e.g.*, United States v. Rushing, 11 M.J. 95, 97 (C.M.A. 1981) ("Thus the informant was "not an unnamed member of the underworld, but a known, reputable member of the authorizing officer's command"); United States v. Lidle, 45 C.M.R. 229, 231 (C.M.A. 1972); United States v. Goldman, 40 C.M.R. 101, 104 (C.M.A. 1969) ("those who authorized the search were justified in considering them more trustworthy than an unnamed informant"); United States v. Nelson, 38 C.M.R. 418, 421 (C.M.A. 1968) ("Here the report of the assault was not made by an unnamed or unknown informant, but directly by the victim"); *see generally* United States v. Barton, 11 M.J. 230 (C.M.A. 1981). A detailed treatment of the standards utilized when the informant is not identified may be found in United States v. Gamboa, 48 C.M.R. 591 (C.M.A. 1974). *See generally* United States v. Bradley, 50 C.M.R. 607, (N.C.M.R. 1975).

[83] Although the apprehension was based on probable cause, the court held that the subsequent search of the automobile was neither incident to apprehension nor properly authorized. Accordingly, the search was held to be illegal and the conviction reversed.

[84] United States v. Alston, 44 C.M.R. 11 (C.M.A. 1971).

[85] 44 C.M.R. at 13.

[86] As in *Herberg*, this conviction was reversed. The court found that while probable cause for the apprehension of the accused was established, the company commander's testimony established that when he authorized the search of the accused's wall locker he only believed there was a possibility that the missing money was there. Thus there was no reasonable belief that the missing property would be located in the place to be searched.

[87] 8 M.J. 741 (A.F.C.M.R. 1980), *aff'd* 10 M.J. 27 (C.M.A. 1080). *See also* United States v. Weekley, 3 M.J. 1065, 1067 n.1 (A.F.C.M.R. 1977).

"where the victim reports an offense, less corroboration than might otherwise be needed may satisfy probable cause."[88] Here the circumstances of the accused's proximity to the purse at the NCO Club and the location of the purse when it was found provided sufficient evidence to corroborate the truthfulness of the victim and of her report.

In a very similar case,[89] a different Air Force panel specifically concurred in the *Conquest* panel's declaration that when the victim reports an offense, less corroboration than might otherwise be needed may satisfy probable cause requirements. It found that the victim had established probable cause to search the accused's room. No futher evidence to establish her credibility was necessary. She stated that she was sitting at a table in the NCO Club with the accused; that she told the accused she had money in her purse; that the accused was at the table when she went to the restroom; that the accused was at the table when she returned; and that later that evening after she had left the accused she opened her purse and discovered the money was missing.

E. The Military Rules of Evidence

Rule 315(f) of the Military Rules of Evidence[90] provides in part:

> Before a person may conclude that probable cause to search exists, he or she must first have a reasonable belief that the information giving rise to the intent to search is believable and has a factual basis.[91]

This rule incorporates both prongs of the *Aguilar* test and requires that both prongs be met in every probable cause determination. Accordingly, for the military practitioner, the question of whether *Aguilar* applies to the good citizen informant is not an issue. It applies by virtue of the rule. The rule itself makes no reference to the good citizen informant. However, the drafters' analysis[92] indicates that one of the factors that can be utilized in determining the credibility of the informant is whether he is a good citizen. "Is the character of the informant, as known by the individual making the probable cause determination such as to make it reasonable to presume that the information is accurate."[93]

F. Summary-Military Law

The doctrine of the good citizen informant is accepted in military law. The military rules of evidence require that the believability of the informant be established in every probable cause determination. Accordingly, the trial counsel will not be pemitted to establish the legality of a search based on the inapplicability of the two prong test to the citizen informant. However, military law does recognize that the quantum of evidence necessary to establish the believability of the citizen informant is less than that which is necessary when the informant is unidentified or is one who is not a good citizen. Whether the good citizen is presumed believable is still an open question, although

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[88] 8 M.J. at 744

[89] United States v. Baur, 10 M.J. 789 (A.F.C.M.R. 1981).

[90] Chapter 27, Change 3 (1980), Manual for Courts-Martial (1969 Rev. ed.).

[91] Mil. R. Evid. 315(f). *See also* Mil. R. Evid. 316(b) with respect to seizures of property.

[92] App. 18, Rule 315, Manual for Courts-Martial (1969 Rev. ed.).

[93] *Id.* Although the analysis indicates that whether the informant is a good citizen is a factor to be utilized in determining the believability of the informant, it also indicates that this is a factor in determining whether the information is accurate. This is somewhat misleading. The fact that the informant is a good citizen is a matter respecting credibility or truthfulness—the second prong of *Aguilar*. Whether his information is accurate affects *Aguilar's* first prong, the underlying basis of the information, and not the truthfulness of the informant. An individual may be totally honest and truthful but supply inaccurate information because the method by which he came upon his information is faulty. Accordingly, it would have been preferable if the drafters had written "presume that the informant is truthful." *See, e.g.*, United States v. Button, 653 F.2d 319 (8th Cir. 1981); United States v. Bradley, 50 C.M.R. 608 (N.C.M.R. 1975). *See generally* United States v. Barton, 11 M.J. 230 (C.M.A. 1981).

the Army Court of Military Review has so held.

It is appropriate to now return to the question presented earlier: Can the trial counsel establish probable cause in the scenarios offered above? Under military law one cannot rely on the doctrine of the inapplicability of *Aguilar* because the military rules of evidence make the two prong test applicable. In light of *Land*, it is questionable that a presumption of credibility can be relied on. It appears the best tactic is the "less stringent, corroboration" approach. Under this approach, the test is whether under all the circumstances, considering motive to fabricate and other corroborating evidence, such as reputation of the perpetrators, it is reasonable to believe the informant. The answer is certainly not clear. However, since no motive to fabricate is apparent, and the report in the first scenario is from a victim, *Alston*[94] would seem to support the legality of searches in these cases. Nonetheless, it is clear that without the doctrine of the citizen informant the chances of establishing probable cause are negligible.

IV. Conclusion

The doctrine of the citizen informant was born of necessity but is rooted in reason. It represents a recognition that good citizens will not normally have the opportunity or the occasion to establish a track record with law enforcement authorities. It also recognizes that the good citizen is not likely to fabricate a story and implicate someone in as important a matter as a criminal offense. Certainly, the doctrine represents an accommodation to law enforcement authorities. In some respects it makes it easier to sustain police conduct. On the other hand, the individual citizen who is the subject of the police conduct is also protected. Protection comes from the limitation of the doctrine to those cases in which the informant is truly a good citizen or innocent victim who is not likely to lie. When the courts hold that the *Aguilar* requirements do not apply to the citizen informant cases, they are not declaring that protection is not needed from unreasonable police conduct. Rather they are stating that the protection comes in another form, *i.e.*, from an assumption that good citizens are truthful.

The different tests employed by the courts are significant because they deal with the quantum of evidence needed to uphold police conduct. There is very little or no difference between the practical effect of the non-applicability of *Aguilar* approach *vis a vis* the doctrine of presumptive credibility. However, in a case where even slight corroborating evidence does not exist, the necessity for presumptive credibility *vis a vis* the less stringent, corroboration approach is manifest. This article has set out the different tests and their utilization in our court systems to help make the trial practitioner more cognizant of a narrow, but often crucial, area of the law of search and seizure.

[94] United States v. Alston, 44 C.M.R. 11 (C.M.A. 1971).

American Bar Association Young Lawyers Division Annual Meeting

by Captain Jan W. Serene, ABA/YLD Delegate
Administrative Law Division, OTJAG

The American Bar Association (ABA) held its 1981 Annual Meeting in New Orleans, Louisiana, on 6–13 August 1981. Following is a brief summary of business, of interest to military practitioners, conducted at the meeting.

During the convention the ABA House of Delegates adopted a resolution calling for the publication in the Federal Register of a summary or text of any proposed changes to the Manual for Courts-Martial. The publication requirement, as proposed, would not apply during wartime or when waived for good cause by the President of the United States, such as, when the notice would be impracticable, unnecessary, or contrary to the public interest. The resolution was proposed by the Standing Committee on Military Law and is advisory only.

The Young Lawyers Division proposed adoption of a Uniform Standard for Admission of Attorneys by Reciprocity. Under the proposal, an attorney who had been admitted to practice in one or more states or the District of Columbia, and who had actively practiced law in good standing for not fewer than three years out of the immediately preceding five years, would be admitted to practice in any state without further examintion, provided that the attorney was a graduate of an ABA approved law school and complied with all other applicable requirements for admission in the jurisdiction. The proposal broadly defined "actively practiced law in good standing" to include attorneys who had worked as Judge Advocates. The House of Delegates defeated the proposed resolution after hearing argument that admission standards varied markedly between the states, and that each state had the right to establish its own admission standards.

The Commission on Evaluation of Professional Standards (Kutak Commission) reported on its Proposed Final Draft of Model Rules of Professional Conduct. The proposed draft is the result of the evaluations conducted on the comments received to the Commission's Discussion Draft of January 1980. The Final Draft is presented in two different formats, one resembling a restatement and the other in the traditional Model Code format. Although differing in format, the two proposals do not differ in substance. The Commission recommends adoption of the restatement format as being more informative or useful than the current Model Code format. The Kutak Commission will study comments to the Proposed Final Draft until late October, and plans to formally present the Model Rules to the House of Delegates of the ABA for debate at the Midyear Meeting in January 1982.

FROM THE DESK OF THE SERGEANT MAJOR

by Sergeant Major John Nolan

Year-End Review. The year 1981 was a good year for our legal clerks and court reporters, to include those in the Army Reserve and National Guard. Some specific highlights of 1981 enlisted progress are reviewed below:

(1) Army Reserve and National Guard enlisted personnel are participating in more ongoing active duty workshops, conferences, and regularly scheduled courses.

(2) The Judge Advocate General authorized two annual continuing education workshops, one for court reporters and military justice clerks and the other for chief legal clerks.

(3) Our legal clerks in grades E-1 through E-6 are credited with some of the best SQT scores in the US Army.

(4) We had an increase in the number of promotions, with the following totals:

E6 to E7—115
E7s to E8—11
E8 to E9—4

(5) There was an increase in the number of senior NCO's selected to attend the US Army Sergeants Major Academy. Seven out of a possible eleven NCO's were selected to attend.

(6) Approximately 100 enlisted personnel completed the Military Lawyers' Assistant Course and Law Office Management Course at TJAGSA.

(7) A number of new positions were created throughout the Corps, including the following: one chief legal clerk position at the US Army Recruiting Command, Fort Sheridan, IL; one chief legal clerk/operations NCO position at TJAGSA, Charlottesville, VA; six E7 positions at the US Army Claims Service, Fort Meade MD; one chief legal clerk/operations NCO position at the US Army Legal Services Agency, Falls Church, VA; and one legal clerk position at Sixth US Army, Presidio of San Francisco, CA.

(8) Two legal clerks were named Soldier of the Year.

(9) Over 400 personnel graduated from our basic legal clerk course at Fort Benjamin Harrison, Indiana, and 30 completed the Court Reporter Course at the Naval Justice School in Newport, RI.

USAREUR Annual Conference. The 1981 USAREUR/Seventh Army Annual Conference was held in Berchtesgaden, West Germany, during the period 21–25 November 1981.

1982 Enlisted Boards. The following enlisted boards are scheduled for 1982:

CSM (Promotion and Retention)	8–18 June
E9 (Standby Promotion)	2–3 March
E9 (Promotion Selection)	8–24 September
E8 (Standby Promotion)	12–13 May
E8 (Promotion Selection)	26 Oct–19 November
E7 (Promotion Selection)	7 Jan–12 February
E7 (Standby Promotion)	10–11 August
NCO Education System	6 April–7 May
Sergeants Major Academy	13–30 July

Criminal Law News

Monitoring and Recording Conversations. A survey of reported violations of paragraph 5–21, AR 600–20, Monitoring and Recording Conversations, reveals that an increasing number of such violations are occurring each year. The number of intentional violations may indicate a lack of knowledge concerning the legal significance of the prohibitions contained in AR 600–20. Paragraph 5–21 a. provides:

> a. Except as authorized in the regulations in c below, Army policy prohibits the acquisition by mechanical or electronic means of any communication, whether oral, wire, or nonpublic radio, by any officer or employee of the Department of the Army without the consent of all parties to the communication. This policy prohibits, for example, the act of listening to telephone conversations through the use of telephone extensions or telephone speaker phones, as well as the act of recording telephone or private face-to-face conversations, unless the prior consent of all parties to such monitoring or recording is obtained.

A question has arisen, in view of the fact that this provision is not punitive, regarding whether its violation constitutes an offense under the UCMJ.

Although paragraph 5–21 is nonpunitive, it creates a prescribed military duty within the meaning of Article 92(3), UCMJ. Violations of this paragraph may also constitute a violation of Article 134 of the Code.

A Matter of Record

Notes from Government Appellate Division, USALSA

1. Destroying Evidence to Prevent Seizure

In a recent case, an accused was charged with and convicted of obstruction of justice by dropping a quantity of marijuana out a window to prevent its seizure by the Staff Duty Officer. In cases like this, rather than alleging obstruction of justice, it is better to allege a violation of 18 U.S.C. § 2232 under Article 134. *See United States v. Fishel*, 12 M.J. 602 (ACMR 30 October 1981).

2. Jurisdiction

Recently, several jurisdictions have requested assistance in cases where the accused is not a member of the command which refers the charges to trial. Although there is very little case law on this subject, DA Pamphlet 27–174, Military Justice Jurisdiction of Courts-Martial (May 1980), does list one case at paragraph 2–1b(8) which supports the position that a member of the United States Army may be

tried by a court-martial appointed by any competent Army authority. However, the citation to *United States v. Wyatt* (footnote 101, page 2-10) is incorrect; it should be 15 ABR 217 (1943). The position advanced in *Wyatt* is also supported by paragraph 8, Manual for Courts-Martial, United States, 1969 (Revised edition), which lists only three requirements for court-martial jurisdiction: the court be convened by an official empowered to convene it, the membership of the court be in accordance with the law as to competency and number of members, and the court is invested by act of Congress to try the person and the offense charged.

3. Speedy Trial

Government accountability for speedy trial purposes begins with the imposition of pretrial restraint or preferral of charges, whichever occurs first. *United States v. Ward*, 1 M.J. 21 (CMA 1975). Even if a speedy trial motion is not made, trial counsel should insure that the allied papers reflect all defense requested delays. These delays can be documented by insisting that all requests for delay be put in writing. In a recent case, the failure to document defense requested delays in the record or in the allied papers led to an allegation of ineffective assistance of counsel when no speedy trial motion was made at trial and the accused was in pretrial confinement for 138 days.

4. Amendments to Charges and Specifications

Certain types of amendments to charges and specifications can be made without the need to reswear the charges. *Compare United States v. Johnson*, 12 USCMA 710, 31 CMR 296 (1962) *with United States v. Krutsinger*, 15 USCMA 235, 35 CMR 207 (1965). However, trial counsel must insure that the amended specification states an offense. In a recent case, the trial counsel amended a specification alleging "assault upon a noncommissioned officer in the execution of his office" to a specification alleging assault and battery by deleting the status of the victim and the allegation "in the execution of his office." He failed to check Appendix 6, Manual for Courts-Martial, United States, 1969 (Revised edition), to insure that the amended specification alleged an offense. The original specification alleged that the accused "did strike." Appellate defense counsel has argued the amended charge, under Article 128, UCMJ, failed to state an offense because there was no allegation that the striking was wrongful (*i.e.*, assault).

Judiciary Notes

US Army Legal Services Agency

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 are missing (e.g., the charge sheet; the Article 32 report of investigation; the pretrial advice; accused's request for enlisted court members; accused's request for trial by military judge). Staff judge advocates are urged to 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. Service of Record of Trial

The accused's receipt for his copy of the record of trial, or a certificate of mailing or delivery in lieu of such a receipt, should be among the allied papers at the time the record of trial is forwarded to the US Army Judiciary.

3. SJA Reviews

Article 61, Uniform Code of Military Justice, provides that the convening authority must refer the record of each general court-martial to his staff judge advocate who must submit his written opinion thereon to the convening au-

thority. There is no authority for dispensing with the staff judge advocate review in a general court-martial case even though the sentence is one that could have been adjudged by an inferior court-martial or the case results in an acquittal or an action that is tantamount to an acquittal. However, whever a case does result in either an acquittal or an action tantamount to an acquittal the review may be limited to a statement that the court-martial had jurisdiction over the accused and the offenses charged.

4. JAG-2 Report

Since May 1981, staff judge advocates of each general court-martial jurisdiction have been completing on a monthly basis the revised Report of Judicial and Disciplinary Activity in the Army (JAG-2). Many of the reports received in the Office of Clerk of Court (JALS-CC) contain errors or omissions in the nonjudicial punishment and summary court-martial sections. In many cases, the figures reported for total persons punished under Article 15 (1a and 1b) and the total persons tried by summary court (6a and 6b) have not been equal to the combined totals for the racial ethnic background figures listed in items 5 and 9 of the report. The figures in both sections should be checked carefully by the office responsible for preparing the report to assure that they balance. If they do not balance, the individual office that prepared the report must be contacted and asked to correct the error. This causes additional delay in producing the final report.

5. Digest-Article 69, UCMJ, Application

A summary court officer must conduct trial within sound legal principles, admitting only factually and legally relevant evidence. *See* US. v. McCullers, 7 MJ 824 (ACMR 1979). He has the primary duty and responsibility to insure that prescribed legal standards are applied concerning the admissibility of evidence at a court-martial and, most importantly, to safeguard the rights of an accused being tried before summary court-martial. *See* US v. Corley, 5 MJ 558 (ACMR 1978).

In a recent application submitted under the provisions of Article 69, UCMJ, *McKinley*, SUMCM 1981/5009, The Judge Advocate General granted relief in a summary court-martial because the sole evidence introduced against the accused in a drunk driving charge was a documentary blood alcohol test. The summary court officer, perhaps unknowingly, committed substantial error by allowing into evidence a document which was tantamount to an admission of guilt by the accused without the accused first knowingly, intelligently, and voluntarily consenting to its admission. *See* US v. Bertelson, 3 MJ 314 (CMA 1977).

Judge advocates must properly brief the summary court officer prior to his conducting a summary court-martial. The summary court officer must be informed that the admissibility of any documentary evidence is subject to the evidentiary rules of competency, materiality, authentication and privilege.

Regulatory Law Items

Regulatory Law Office, USALSA

Reports to Regulatory Law Office. In accordance with AR 27-40, all judge advocates and legal advisors are reminded to continue to report to Regulatory Law Office (JALS-RL) the existence of any action or proceeding involving communications, transportation, or utility services and environmental matters which affect the Army.

Address for Regulatory Law Office is USALSA, ATTN: JALS-RL, Falls Church, VA 22041. Current commercial telephone number is (202) 756-2015; AUTOVON 289-2015.

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

THE FUGATIVE FELON ACT AND PARENTAL CHILD ABDUCTION

The Fugitive Felon Act provides that traveling in interstate or foreign commerce with the intent of avoiding prosecution for a felony offense under the laws of the place from which one has fled is a federal offense.[1] Congress has expressly declared that interstate or international flight to avoid prosecution under state felony statutes prohibiting *parental* kidnapping, child abduction, and related offenses constitutes a commission of this federal offense.[2] Ostensibly, the full manpower and resources of both the Federal Bureau of Investigation and the Department of Justice are thus actively involved in apprehending and prosecuting the parent that "kidnaps" his or her child and removes that child from a state that makes such conduct a felony. In fact, policy considerations and the exercise of prosecutorial discretion limit the use of the Fugitive Felon Act in parental abduction stituations. The policy of the Department of Justice concerning parental abduction situations was presented recently in a subcommittee of the House of Representatives.[3] What follows are exercepts from that statement:

. . .

Although drawn as a penal statute and, therefore, permitting prosecution in Federal court for its violation, the primary purpose of the Fugitive Felon Act is to enable the FBI to assist state law enforcement agencies in the location and apprehension of fugitives from state justice. Therefore, prosecutions for violations of the Fugitive Felon Act are extremely rare. In fact, the statute prohibits prosecution unless formal written approval of the Attorney General or an Assistant Attorney General is obtained.

The Fugitive Felon Act is not *an alternative to interstate extradition. It has been held that an individual arrested on a Fugitive Felon warrant may not be removed from the asylum state under Rule 40, Federal Rules of Criminal Procedure, when no Federal prosecution is intended, because removal would circumvent valid state extradition laws.* United States v. Love, *425 F. Supp. 1248 (E.D.N.Y. 1977). When the FBI locates and arrests an individual on a Fugitive Felon warrant, the fugitive is not removed under Rule 40, Federal Rules of Criminal Procedure. The FBI simply places the fugitive in the custody of law enforcement authorities in the asylum state to await extradition or waiver of extradition, and the Fugitive Felon warrant is promptly dismissed. Therefore, as a matter of policy, we require that any state law enforcement agency requesting FBI assistance under the Fugitive Felon Act give assurances that they are determined to take all necessary steps to secure the return of the fugitive from the asylum state, and that it is their intention to bring him to trial on the state charges for which he is sought. Similarly, as a matter of policy, FBI assistance is not authorized when the location of the fugitive is known to the requesting state law enforcement agency. In such cases, the state seeking the fugitive can initiate an interstate extradition proceeding and request law enforcement authorities in the asylum state to place the fugitive in custody until there has been a*

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[1] Fugitive Felon Act, 18 U.S.C. § 1073.

[2] *Id.* Section 10.

[3] Statement of Mr. Lawrence Lippe, Chief of General Litigation, Criminal Division of the Department of Justice, before the Committee on the Judiciary, Subcommittee on Crimes of the House of Representatives concerning the Parental Kidnaping Prevention Act, September 24, 1981.

resolution of the extradition proceeding. For at least the past 20 years, Congress has recognized that the Fugitive Felon Act is a vehicle in aid of the extradition process, and that FBI involvement is to be limited to those serious criminal cases in which the state has demonstrated sufficient interest in obtaining return of the fugitive to warrant incurring the necessary expenses incident to extradition. H.R. Rep. No. 827, 87th Congress, 1st Session (1961). We assume it continues to be the intent of Congress that the Fugitive Felon Act be used to assist the states in serious criminal cases. We also assume that Congress does not now intend that the Department engage in abuse of legal process by using the Fugitive Felon Act merely as a pretext for forcing compliance with child custody decrees.

It has been a longstanding policy of the Department to avoid involving Federal law enforcement authorities in domestic relations disputes, including parental abduction situations. This policy had been based, in part, on the parental abduction exception in the Federal kidnapping statute, from which we inferred a Congressional intent that Federal law enforcement agencies stay out of such controversies. Consistent with that policy, the Department did not authorize FBI involvement under the Fugitive Felon Act for the purpose of apprehending a parent charged with a state felony, such as custodial interference, which arose out of the abduction of that parent's own minor child. In rare instances, the Department made exceptions to this policy in situations where there was "convincing evidence that the child was in danger of serious bodily harm as a result of the mental condition or past behavior patterns of the abducting parent."

In response to the expression of Congressional intent in the Parental Kidnapping Prevention Act, our policy was twice reassessed. Our reassessment convinced us that, for a number of reasons, it remained inappropriate to bring the Federal criminal justice system to bear routinely on otherwise law abiding persons charged with violations of child custody decrees. Nevertheless, to accommodate the intent of Congress, we now authorize the filing of a complaint, under the Fugitive Felon Act, where, in addition to having probable cause to believe an abducting parent, charged with a state felony, has fled from the state to avoid prosecution, a commitment from the state to extradite and prosecute has been received, there also is independent credible information that the child is in physical danger or is then in a condition of abuse or neglect. By expanding Federal involvement to cases involving abuse or neglect, we expect to furnish an increased level of assistance to the states in the legitimate enforcement of their criminal laws. At the same time, we hope to avoid the utilization of FBI investigative resources and the use of Federal criminal process as a pretext for enforcing civil obligations.

In implementing our guidelines, we have not formulated an inflexible definition of the words "condition of abuse and neglect." An inflexible definition might lead to the arbitrary denial of relief through the mechanical application of the standard. Instead, we have, in our communications to the United States Attorneys, given concrete illustrations of the factors to be considered.

In most cases the complaining parent or local law enforcement officials contact the local office of the FBI or the United States Attorney, where the case receives an initial screening. Those cases in which there is no probable cause basis for the filing of an unlawful flight complaint, or in which there has been no law enforcement request for assistance, and those cases which clearly do not meet the guidelines, may be declined by the U.S. Attorney's Office. The declination is, of course, without prejudice to renewal upon the development of further

evidence. Cases that appear to satisfy the requisites for a Fugitive Felon complaint and to meet the guidelines are forwarded to the Department for authorization. The review in the Criminal Division often reveals that the requirements of the Fugitive Felon Act and the commitment to extradite were lacking and that there was no basis for filing a Fugitive Felon complaint, wholly apart from the guidelines.

Our guidelines require independent credible information of abuse or neglect that is of a continuing nature, as opposed to an isolated episode devoid of lasting consequences in which the abducting parent may have deviated from generally accepted standards of parental care.

By way of illustration, the following are some of the circumstances that were determined to warrant FBI involvement:

1. parent previously arrested for child abuse offense

2. school principal stated that children had been beaten by the abducting parent.

3. parent previously involved son in child pornography

4. parent had several drunk driving convictions and was travelling great distances by automobile with an infant child

5. parent known to state law enforcement atuorities as a serious drug abuser

6. parent lost custody of child after court determination that parent was unable to provide adequate supervision and care

7. parent, a known drug dealer and associate of a motorcycle gang, previously abducted child and left child unattended for long periods of time

8. parent and child believed to be residing with psychotic, drug addicted, violence prone relative

9. welfare department report indicated that while in the custody of the abducting parent, the child was poorly clothed, was not being bathed, and hair infested with lice, and possibly was malnourished

10. court took custody away from parent based on an allegation of neglect; school principal stated children were malnourished; police officer stated abducting mother's boyfrined was an emotionally unstable sex offender

11. abducting parent, a member of a motorcycle gang, had a long history of violent conduct, including serious beating and abuse of his children

12. abducting parent had a history of emotional instability, and the child was epileptic and required daily medical attention

13. abducting parent threatened suicide and stated he would take the child to heaven with him.

. . .

Several requests for FBI assistance have been made in situations where the abducting parent was known to be residing in a foreign country. The issuance of a Fugitive Felon warrant in such situations is not appropriate because no extradition treaty makes unlawful flight to avoid prosecution an extraditable offense. In addition, it is our understanding that the views of almost all of our treaty partners is that child custody questions are essentially domestic law matters which should be handled through civil remedies not through criminal sanctions.

. . .

We are aware that our policy guidelines limiting FBI involvement in parental kidnapings are perceived by some to be inconsistent with the expression of Congressional intent in Section 10 of the Act. It has been suggested the Department has incorrectly characterized parental kidnapings as being essential domestic relations controversies and that we should authorize FBI involvement in these cases based on the same standards and policies that

would be applied to other state felony charges.

From a practical law enforcement perspective, we believe we cannot routinely involve the FBI in "child-snatching" situations based on the same criteria that would be applied to other felonies such as murder or armed robbery. A "child-snatcher," very simply, is different from the ordinary felon fleeing from state justice, as evidenced by the fact that some fifteen jurisdictions either do not criminalize child-snatching or treat it as a misdemeanor.

Moreover, abducting parents, unlike fleeting murderers and robbers, generally do not present a continuing threat of violence to society. In this regard, routine involvement in parental kidnapings necessarily would divert the FBI's limited resources away from fugitive cases involving violent criminals as well as from organized crime, white collar crime, public corruption and violent offense investigations.

Our experience in child-snatching matters, both before and since passage of the Act, suggests the possibility that state prosecutors sometimes charge an abducting parent with a felony merely as an accomodation to the complaining parent, with no intention of ultimately prosecuting the abducting parent. Over the past several years, we have authorized FBI involvement in a significant number of these cases, consistent with policy guidelines. We have found that in repeated instances, the state felony charges against the abducting parent were dropped shortly after the complaining parent regained custody of the child. We were, of course, unaware of the state prosecutor's intent, when we authorized the complaint. We suggest that the use of the Fugitive Felon Act in situations where state authorities have no actual intention of prosecuting the underlying felony charge would amount to an abuse of legal process.

. . .

In our view, routine involvement of the FBI in parental kidnaping situations will not further a genuine criminal law enforcement purpose. Accordingly, we believe strongly that there is a demonstrated need for policy limitations in these cases.

Our present policy guidelines are an effort to comply with Congressional intent by extending Federal involvement to cases involving abuse or neglect. Consistent with our other criminal law enforcement responsibilities, we fully expect to furnish increased assistance to the states in the legitimate enforcement of their criminal laws.

. . .

In response to this statement, the Chairman of the House Judiciary Subcommittee on Crimes warned the Justice Department that if it does not change its policy restricting FBI assistance to states in interstate felony child-snatching cases, Congress will respond with a statute making parental kidnapping a federal crime.

It should be apparent from the preceding remarks that the Fugitive Felon Act has not proven to be the panacea of the parental child abduction problem that Congress intended. Attorneys rendering legal assistance should be aware of not only the "black letter law" embodied in the Fugitive Felon Act as it applies to parental abduction of children, but also the policy of the Department of Justice in applying that law so that the client receives realistic as well as competent advice.

Reserve Affairs Items

Reserve Affairs Department, TJAGSA

1. CAS³ on USAR Officers

The Army's new Combined Arms and Services Staff College, called "Cass Cube" or CAS³, will have only minor impact in the near future

upon Army Reserve officers, say DA Reserve officials.

The CAS³ course is designed to train staff officers for Army field units. It focuses upon what staffs are, what they do, and how they do it. For the active component, CAS³ is designed for attendance after the officer advanced course and before the Command and General Staff College Course (CGSC). However, for Army Reservists, the CAS³ is the equivalent to the CGSC Course.

Although the Army has no immediate plans to introduce CAS³ into the USAR education system as an additional officer education requirement, Reserve officers may apply to attend the CAS³ resident course. This nine-week course at Fort Leavenworth, KS is preceded by a 15-part correspondence course phase. Completion of CAS³ satisfies USAR promotion requirements for lieutenant colonel, under the povisions of AR 135-155.

Prerequisites and application requirements for CAS³ and other USAR officer education courses are given in HQDA Letter 140-81-1, dated 17 March 1981. Officers may obtain more information by calling the Operations and Training Division of the Office of the Chief, US Army Reserve, at (202)325-8480; AUTOVON 221-8480.

2. USAR Shopping Privileges Change for Family Members

According to a recent DA message (MSG R 0321000Z Nov 81), family members of most USAR unit members are no longer required to have their Reserve sponsors present every time they shop at post exchanges.

The House Armed Services Committee has ruled that dependents of Reservists who are assigned to troop program units are entitled to one day of unaccompanied exchange shopping for each day of inactive duty for training (IDT) performed by the Reservist. The new privilege does not extend to dependents of Reservists attached, but not assigned, to troop program units.

To shop unaccompanied, family members must present the Reservist's leave and earnings statement or a unit letter of authorization. They must present a driver's license or some other form of identification to verify their relationship to the sponsor.

Shopping days used by unaccompanied family members who special-order merchandise, purchase on a lay-away basis or leave items for repair will be allowed to complete these transactions on another day, without having the day count against the total number of days of shopping privilege.

Shopping days used by unaccompanied family members will count against the total number of days that their sponsor can use exchange facilities. Reserve unit members are allowed one exchange shopping day for each unit training assembly performed. On an average, Reservists are entitled to 4 shopping days per month or 12 days per quarter. Shopping days may not be carried from one quarter to the next.

3. Change to BOAC Phase VI

The Judge Advocate Officer Advanced Course (Phase VI) will be conducted from 21 Jun-2 Jul 82. To obtain a quota for the Advanced Course, National Guard personnel should submit the appropriate NGB form through channels to Commandant, The Judge Advocate General's School, ATTN: JAGS-RA, Charlottesville, VA 22901 (not as previously announced in The Army Lawyer, Nov 81, at page 19).

4. Change to On-Site Training for AY 81-82

The schedule for the Reserve Component Technical (On-Site) Training for Academic Year 1981-82, published in The Army Lawyer, Sep 81, at page 32, should be amended as follows:

a. Tulsa, OK, previously scheduled for 10 Jan 82, has been shifted to the Oklahoma City session on 28 Feb 82 at the previously announced Oklahoma City site. Action officer is MAJ William Sullivan at (405) 521-0014/0301.

b. The Kansas City on-site has been advanced from 6-7 Feb 82 to 30-31 Jan 82. Action officer and location remain as stated.

c. The on-site in San Antonio, TX, has been rescheduled from 13-14 Feb 82 to 1 May 82 at the USAR Center, 2010 Harry Wurzback Road in San Antonio. Action officer is LTC John Compere at (512) 225-3031.

Bar Membership and Continuing Legal Education Requirements

As indicated in paragraphs 7-14 and 7-15 of the *JAGC Personnel Policies*, October 1981, it is the individual responsibility of each judge advocate to remain knowledgeable of continuing membership requirements of state bar associations. In addition to keeping bar associations informed of current mailing addresses, each judge advocate is individually responsible for knowing and satisfying any membership and continuing legal education requirements of the bar. These membership requirements and the availability of any exemptions or waivers for military personnel vary from jurisdiction to jurisdiction and are constantly changing.

Listed below are those states whose bar associations have adopted some form of mandatory or voluntary continuing legal education requirement with a brief description of the requirement and the name and address of the responsible local official.* This listing is current as of 1 July 1981 and represents the best information available to the Judge Advocate General's School. The requirements described are those pertaining to attorneys holding full membership in the bar association; special exemptions for military members or restricted memberships, if any, are noted if known. In addition to the jurisdiction listed, several other jurisdictions are currently considering adoption of voluntary or mandatory continuing legal education programs.

* Information taken from study done by Lynn A. Beatty, Michigan ICLE.

Mandatory CLE Jurisdictions

The ten jurisdictions below have adopted mandatory requirements under which participation in approved continuing legal education programs is a condition precedent to continue membership in good standing in the bar association. All TJAGSA *resident* CLE course have been approved by each of these jurisdictions, and attendance at TJAGSA resident CLE courses may be used to satisfy, in whole or in part, the CLE requirements of any of these jurisdictions.

STATE	LOCAL OFFICIAL	PROGRAM DESCRIPTION
Alabama	Camille Cook CLE Commission Box CL University, AL 35486 (205) 348-6230	—Mandatory. —Attorneys must complete 12 hours of approved continuing legal education per year beginning 1 January 1982. —Effective 1 January 1982.
Colorado	James H. Klein Executive Director Colorado Supreme Court	—Mandatory. —Attorneys must complete 45 units of ap-

STATE	LOCAL OFFICIAL	PROGRAM DESCRIPTION
	Board of Continuing Legal and Judicial Education 1515 Cleveland Pl., Suite 210 Denver, CO 80202 (303) 893-6842	proved continuing legal education (including 2 units of legal ethics) every three years. —Newly admitted attorneys must also complete 15 hours in basic legal and trial skills within three years. —Effective 1 January 1979.
Idaho	Barbara Miller Linda L. Holdeman Idaho State Bar P.O. Box 895 204 W. State St. Boise, ID 83701 (208) 342-8958	—Mandatory —Attorneys must complete 30 hours of approved continuing legal education every three years. —Effective 1 January 1979.
Iowa	Anna O'Flaherty Executive Secretary Iowa Commission on Continuing Legal Education State Capitol Des Moines, IA 50319 (515) 281-3718	—Mandatory. —Attorneys must complete or receive credit for 15 hours of approved continuing legal education each year. Attorneys may attend and be credited with up to 45 hours of approved CLE in any one year with up to 30 hours carried forward. —Effective 1 January 1976.
Minnesota	Douglas R. Heidenreich Executive Director Minnesota State Board of Continuing Legal Education 875 Summit Ave. St. Paul, MN 55105 (612) 227-5430	—Mandatory. —Attorneys must complete 45 hours of approved continuing legal education every three years. —Effective 3 April 1975.
North Dakota	Joel W. Gilbertson Executive Director State Bar of North Dakota P.O. Box 2136 Bismarck, ND 58502 (701) 255-1404	—Mandatory. —Attorneys must complete 45 hours of approved continuing legal education every three years. —Effective 1 January 1978.
South Carolina	Harris Hollis P.O. Box 2138 Columbia, SC 29202 (803) 799-5578	—Mandatory, except for active duty military personnel. —Attorneys must complete 12 hours of

STATE	LOCAL OFFICIAL	PROGRAM DESCRIPTION
		approved continuing legal education per year. —Effective 1 July 1981.
Washington	John Michalik Director of Continuing Legal Education Washington State Bar Association 505 Madison Seattle, WA 98104 (206) 622-6021	—Mandatory. —Attorneys must complete 15 hours of approved continuing legal education per year. —Effective 1 January 1977.
Wisconsin	Erica Moeser Director, Board of Attorneys Professional Competence Room 403, 110 E. Main St. Madison, WI 53703 (608) 266-9760	—Mandatory. —Attorneys must complete 15 hours of approved continuing legal education per year. —Effective 1 January 1977.
Wyoming	Daniel E. White Wyoming State Bar P.O. Box 109 Cheyenne, WY 82001 (307) 632-9061	—Mandatory —Attorneys must complete 15 hours of approved continuing legal education per year. —Effective 1 January 1979.

Voluntary CLE Jurisdictions

The two jurisdictions below have no mandatory CLE requirements. The bar associations do, however, maintain records of voluntary participation in approved continuing legal education programs. The bar associations present "Recognition Awards" to members whose participation in approved continuing legal education programs meets specified criteria.

STATE	LOCAL OFFICIAL	PROGRAM DESCRIPTION
Kentucky	Bruce Davis Assistant Director, CLE Kentucky Bar Association West Main at Kentucky River Frankfort, KY 40601 (502) 564-3795	—Voluntary. —Attorneys who complete 60 hours of approved continuing legal education (including 4 hours of legal ethics and 1 hour of law office management) within a three year period qualify to receive a "Recognition Award." —Effective 1 July 1978.

STATE	LOCAL OFFICIAL	PROGRAM DESCRIPTION
North Carolina	Walter Sheffield Director of Continuing Legal Education North Carolina Bar Association Foundation 1025 Wade Avenue Raleigh, NC 27605 (919) 828-0561	—Voluntary. —Attorneys who complete 45 hours of approved continuing legal education within a three year period qualify for a special recognition program.

Specialty Designation Jurisdictions

The states listed below require participation by attorneys in specified approved continuing legal education programs as a condition precedent to designation or certification of an attorney as a specialist in a particular area of the law. A certification program is one in which the bar association "CERTIFIES" an attorney's specialty or specialties. A designation program is one in which the bar association regulates an attorney's self-designation as a specialist in professional listings or advertising. With the exception of South Carolina, none of these states have separate general mandatory CLE requirements. Several other states are currently considering adopting specialty designation CLE Programs.

STATE	LOCAL OFFICIAL	PROGRAM DESCRIPTION
Arizona	David R. Fracer, Chairman Arizona Board of Legal Specialization State Bar Office 234 North Central Avenue Suite 858 Phoenix, AZ 85004 (602) 252-4804	—Specialization (Certification). —Three specialties • Criminal law • Tax law • Workmen's Compensation law —Certificates issued on the basis of experience in the field. Criminal law requires annual examination after certification. Recertification requires continuing education. Each specialty sets own requirements. —Criminal law—18 hours per year in 2 or more approved seminars. —Tax law—12 hours per year in 2 or more approved seminars. —Workmen's Compensation—12 hours per year in one or more approved seminars. —Adopted 14 July 1978.
California	Joan Wolff California Board of Legal Specialization	—Specialization (Certification). —Four Specialties. • Criminal law

STATE	LOCAL OFFICIAL	PROGRAM DESCRIPTION
	State Bar of California 555 Franklin St. San Francisco, CA 94109 (415) 561-8361	• Family law • Workers' Compensation law • Taxation law —Certificates issued to those who pass rigorous combination of examinations, experience and continuing education. Recertification required by participation in continuing legal education. —Criminal law—*Certification*: 42 hours of approved seminars within a 5 year period. *Recertification*: 36 hours of approved seminars within the 5 year period prior to recertification with not more than 20 hours in the year before certificate expired. —Workers' Compensation law— *Certification*: 36 hours of approved seminars within a 5 year period; *Recertification*: 30 hours of approved seminars within the 5 year period prior to recertification, in not less than 3 of the 5 years. —Taxation law—*Certification*: 60 hours of approved seminars within a 5 year period; *Recertification*: 75 hours of approved seminars within the 5 year period prior to recertification, and with not more than 8 hours within one year. —Family law—*Certification*: 36 hours of approved seminars within 5 year period; *Recertification*: 60 hours of approved seminars within the 5 year period prior to recertification, with not more than 20 hours in any calendar year. —In effect since 1972.
Connecticut	Kim Bridges Hartford, CT (203) 249-9141	—Specialization program currently under consideration.
Florida	Rayford H. Taylor, Designation Director Florida Designation Plan	—Specialization (Designation). —25 recognized specialties: Admin. & Gov't. Law; Admiralty; Antitrust &

STATE	LOCAL OFFICIAL	PROGRAM DESCRIPTION
	The Florida Bar Tallahassee, FL 32301 (904) 222-5286	Trade Reg. Law; Appellate Practice; Aviation Law; Bankruptcy; Civil Rights; Collections; Corp. & Bus. Law; Crim. Law; Environmental Law; General Practice; Immigration & Naturalization Law; Int'l. Law; Labor Law; Marital & Family Law; Patent, Trademark & Copyright Law; Real Property Law; Securities; Taxation; Trial Practice (General); Trial Practice (Personal Injury & Wrongful Death); Wills; Estate & Estate Planning; and Workers' Compensation. —Attorneys may designate up to three specialties by application to the Designation Coordination Committee. Initial designation approved based on completion of at least 30 hours of approved continuing legal education within three years preceding application plus three years experience in area to be designated. To maintain continued designation approval, attorneys must participate in approved continuing legal education programs in each designated area annually. —Effective 3 October 1975.
Georgia		—Specialization (Designation). —29 recognized specialties. —Attorneys may designate up to 3 specialties. —Initial approval based upon "substantial experience" over a 3 year period (20 percent of a full-time practice in each area designated). —To maintain continued approval attorneys must complete 30 hours of approved continuing legal education every 3 years in each area designated. —Effective 1979.
New Jersey	Robert Friberg Box 1480 State House Annex Trenton, NJ 08625 (609) 292-4837	—Specialization (Certification). —Trial Attorney Certification based on written and oral examinations, trial experience and "substantial educational involvement" within 3 years immedi-

STATE	LOCAL OFFICIAL	PROGRAM DESCRIPTION
		ately preceding application. —Effective 1 April 1979.
New Mexico	Sharon Metheny State Bar of New Mexico P.O. Box 25883 Albuquerque, NM 87125 (505) 842-6132	—Specialization (Designation). —Program requirements still under development.
South Carolina	Harris Hollis P.O. Box 2138 Columbia, SC 29202 (803) 799-5578	—Specialization (Certification). —Program requirements still under development.
Texas	John Roberts Executive Director Texas Board of Legal Specialization State Bar of Texas P.O. Box 12487 Austin, TX 78711 (512) 475-6909	—Specialization (Certification). —7 recognized specialties: Family Law; Labor Law; Criminal Law; Estate Planning & Probate Law; Civil Trial Law; Personnal Injury Trial Law; and Immigration & Nationality Law. —Certification is based on examination, experience and education. Participation in approved continuing legal education programs is required for continued specialty certification. Exact requirements vary by specialty. —Effective 1974.

South Carolina CLE Exception

In the September 1981 issue, *The Army Lawyer* noted that South Carolina has instituted a mandatory CLE program for all active members of the South Carolina Bar. (CLE News, para. 3, p. 38).

As an exception, South Carolina does not require military members of its bar to participate in the mandatory CLE program. Thus, judge advocates on active duty who are members of the South Carolina Bar are exempt from the general requirement.

It is the responsibility of each individual active duty judge advocate who is a member of the South Carolina Bar to confirm his or her exempt status with bar officials.

TJAGSA Activities—Important Changes

Worldwide JAG Conference

The Worldwide JAG Conference originally scheduled for 12–15 October 1982, will be held during the period 5–8 October 1982 at TJAGSA.

99th Judge Advocate Officer Basic Course

The 99th Judge Advocate Officer Basic Course, originally scheduled for 26 July–1 October 1982, will be conducted 18 October–17 December 1982.

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 been 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 operation of the quota system may be addressed to Mrs. Kathryn R. 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. Fourth Military Lawyer's Assistant Course.

The 4th Military Lawyer's Assistant Course (512-71D/20/30) will be conducted at The Judge Advocate General's School during the period 12-16 July 1982. The course is open only to enlisted servicemembers in grades E-3 through E-6 and civilian employees who are serving as paraprofessionals in a military legal office, or whose immediate future assignment entails providing professional assistance to an attorney. Attendees must have served a minimum of one year in a legal clerk/legal paraprofessional position and must have satisfactorily completed the Law for Legal Clerks Correspondence Course NLT 12 May 1982. (No waivers will be granted.) Offices planning to send personnel must insure individuals are eligible before submitting names for attendance.

3. 6th Criminal Trial Advocacy Course.

The 6th Criminal Trial Advocacy Course will be conducted at The Judge Advocate General's School, Charlottesville, Virginia, from 23-27 August 1982. This course will be offered three times annually for both trial and defense counsel. The course will replace the separate Prosecution Trial Advocacy and Defense Trial Advocacy courses, except that the Prosecution Trial Advocacy Course scheduled for 8-12 February 1982 will be conducted.

The 6th Criminal Trial Advocacy Course is designed to improve and polish the experienced trial lawyer's advocacy skills. Only active duty military attorneys certified as counsel under Article 27b(2), UCMJ, with at least six months and no more than twelve months of experience as a trial attorney are eligible to attend. An individual is ineligible to attend if he or she has attended a TJAGSA Criminal Law CLE course within the previous twelve months.

The course will offer intensive instruction and exercises on problems confronting counsel from pretrial investigation through appellate review. Issues in evidence, professional responsibility, procedure, trial advocacy, and topical aspects of current military law will be addressed. A substantial portion of the course involves student participation in practical exercises.

4. 6th Criminal Law New Developments Course.

The 6th Criminal Law New Developments Course, previously scheduled for 23-25 August 1982, will be conducted from 1-3 September 1982.

5. U.S. Army Claims Service Claims Seminar.

The U.S. Army Claims Service (USARCS) will conduct a four-day Claims Seminar at The Judge Advocate General's School, Charlottesville, Virginia, from 14-17 June 1982. Seminar attendees will be afforded an opportunity to attend those portions of the seminar which deal with their particular expertise and area of interest. The seminar will be broken into two separate sessions:

Session 1—Personnel Claims, Recovery, and Administration, Monday and Tuesday, 14–15 June 1982, 0830–1630 hours.

Session 2—Tort, Medical Care Recovery, Litigation, and Foreign Claims, Wednesday and Thursday, 16–17 June 1982, 0830–1630 hours.

Attendees are required to register for one or both sessions. Registration is mandatory and registration forms may be acquired by contacting USARCS, ATTN: Mrs. Audrey Slusher (Autovon 923-7622/7960 or Commercial (301)677-7622/7960).

6. TJAGSA CLE Course Schedule

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).

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 23–27: 6th Criminal Trial Advocacy Course (NA)

September 1–3: 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 5–8: 1982 Worldwide JAGC Conference.

October 18–December 17: 99th Basic Course (5–27–C20).

7. Civilian Sponsored CLE Courses

April

1: ABICLE, Law Office Economics, Mobile, AL.

1: VACLE, Real Estate Law, McLean, VA.

1–2: PLI, Federal Civil Rights Litigation, New York City, NY.

1–3: ALIABA, Fundamentals of Bankruptcy Law, Kansas City, MO.

2: ABICLE, Law Office Economics, Montgomery, AL.

2: VACLE, Real Estate Law, Staunton, VA.

2: NYSBA, Tax Aspects of Divorce & Separation, Buffalo, NY.

8: ABICLE, Law Office Economics, Huntsville, AL.

8: VACLE, Real Estate Law, Norfolk, VA.

9: ABICLE, Law Office Economics, Birmingham, AL.

9: VACLE, Real Estate Law, Richmond, VA.

14: ABICLE, Alabama Business Corporation Law, Birmingham, AL.

16: FBA, 9th Annual Federal Practice Conference, Capitol Hilton, Washington, DC.

16: ABICLE, Corporate Law Institute, Point Clear, AL.

16: NYSBA, Financial Management & Marketing of Legal Services, Albany, NY.

16: GICLE, Workers' Compensation, Albany, GA

16–17: KCLE, Domestic Relations, Lexington, KY.

22: VACLE, Commercial Law, Roanoke, VA.

22: GICLE, Workers' Compensation, Macon, GA.

22–23: PLI, New Methods of Financing, New York City, NY.

22–24: ALIABA, UPA, ULPA, Taxation, Securities, and Bankruptcy, San Francisco, CA.

23: NYSBA, Bankruptcy Practice & Procedure, New York City, NY.

23: VACLE, Commercial Law, Richmond, VA.

23: NYSBA, Tax Aspects of Divorce & Separation, Albany, NY.

23: ABICLE, Trial Institute, Birmingham, AL.

23: GICLE, Will Drafting, Savannah, GA.

25–27: VACLE, Advanced Estate Planning & Administration, Irvington, VA.

27: FBA, Government Contract Litigation, Washington, DC.

29–5/1: GICLE, Real Property Law, St. Simons Is., GA.

29: VACLE, Commercial Law, McLean, VA.

29–30: PLI, Tax, SEC & Accounting Aspects, San Francisco, CA.

30: VACLE, Commercial Law, Norfolk, VA.

30: GICLE, Workers' Compensation, Atlanta, GA.

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.

ABICLE: Alabama Bar Institute for Continuing Legal Education, Box CL, University, AL 35486

AKBA: Akaska 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 Law 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 Foundation, 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 15-180	Army Discharge Review Board	2	1 Dec 81
AR 37-20	Administrative Control of Appropriated Funds	902	30 Oct 81
AR 135-91	Service Obligations, Methods of Fulfillment, Participation Requirements	906	2 Nov 81
AR 135-155	Promotion of Commissioned Officers and Warrant Officers Other Than General Officers	902	24 Nov 81
AR 135-175	Separation of Officers	6	15 Nov 81
AR 135-180	Qualifying Service for Retired Pay Nonregular Service	901	16 Oct 81
AR 135-210	Order to Active Duty as Individuals During Peacetime	904	13 Nov 81
AR 140-10	Assignments, Attachments, Details, and Transfers	910	9 Nov 81
AR 140-145	Mobilization Designation Program	901	13 Nov 81
AR 190-53	Interception of Wire and Oral Communications for Law Enforcement Purposes	I01	25 Nov 81
AR 195-5	Evidence Procedures		15 Oct 81
AR 340-8	Army Word Processing Program	901	13 Nov 81
AR 351-22	The Judge Advocate General's Funded Legal Education Program		15 Oct 81
AR 600-9	Army Physical Fitness and Weight Control Program	901	2 Nov 81
AR 600-31	Suspension of Favorable Personnel Action for Military Personnel in National Security Cases and Other Investigations or Proceedings		1 Nov 81
AR 600-85	Alcohol and Drug Abuse Prevention and Control Program		1 Dec 81
AR 600-200	Enlisted Personnel Management System	905	20 Oct 81
AR 600-290	Passports and Visas		1 Dec 81
AR 601-100	Appointment of Commissioned and Warrant Officers in the Regular Army	901	13 Nov 81
AR 601-102	Voluntary Duty with the Judge Advocate General's Corps		1 Oct 81
AR 623-105	Officer Evaluation Reporting System	904	20 Oct 81
AR 623-105	Officer Evaluation Reporting System		15 Nov 81
AR 624-100	Promotion of Officers on Active Duty	903	16 Nov 81
AR 635-100	Officer Personnel	905	15 Sep 81
AR 635-120	Officer Resignations and Discharges	903	15 Sep 81
AR 635-200	Enlisted Personnel	901	30 Sep 81
AR 710-2	Supply Policy Below Wholesale Level		1 Oct 81
AR 735-5	General Principles, Policies, and Basic Procedures	901	17 Nov 81
DA PAM 27-21	Military Administrative Law Handbook	5	15 Sep 81
DA PAM 310-1	Index of Administrative Publications		15 Sep 81

2. Articles.

Eisenberg, Stephen A.J., LTC, *Searches and Seizures of the Person*, 8 Mil. Police 39-43 (Fall 1981).

"Pronouncements of the United States Supreme Court Relating to the Criminal Law Field: 1980-81," The National Journal of Criminal Defense, VOL VII, (Fall 1981) No. 2, p. 161-297, College for Criminal Defense, College of Law, University of Houston, Houston, Texas 77004.

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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