

THE REPORTER

50th Anniversary Edition

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“A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect.”
~ Sir Walter Scott

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Contributions from all readers are invited. Items are welcome on any area of the law, legal practice, or procedure that would be of interest to members of The Air Force Judge Advocate General's Department. Items or inquiries should be directed to The Air Force Judge Advocate General School, CPD/JAR (150 Chennault Circle, Maxwell AFB, AL 36112-6418)(Comm (334) 953-2802/DSN 493-2802).

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From the Commandant . . .

In 1976, I was a second lieutenant, fresh from the United States Air Force Academy, assigned to the 56th Combat Support Group (TAC) at MacDill Air Force Base, Florida. Unlike a majority of Judge Advocates, my first exposure to the Judge Advocate General's Department was not through the Judge Advocate Staff Officer Orientation Course. In September of 1976, I was chosen to serve as a court member in the special court-martial of an Airman First Class who was accused of being absent without leave. Interestingly enough, the trial judge in the case was Captain, now Brigadier General, Gilbert J. Regan, and, the trial counsel was Captain Robert E. Sutemeier, now Colonel retired and former Commandant of the Air Force Judge Advocate General School. As I sat in that courtroom in 1976, I would never have imagined that some twenty three years later, as the Judge Advocate General's Department celebrates its 50th Anniversary, I would be writing this introduction to a special edition of THE REPORTER as the Commandant of the Air Force Judge Advocate General School.

An anniversary is a time of celebration as well as a time of reflection. The 50th Anniversary of the Judge Advocate

General's Department is no exception. As we celebrate our fifty years as a Department and look toward the future with excitement and anticipation as to what the next fifty years will bring, we must not forget the rich and honorable history of our Department, for it is a history that has made us a department which plays a vital role in accomplishing the Air Force Mission. To ensure the history of our Department is not forgotten, Major General Bryan G. Hawley, recently retired and the 12th Judge Advocate General of the United States Air Force, commissioned an edition of THE REPORTER dedicated to honoring our past. This Special History Edition is the result.

I would like to thank the many current and former judge advocates and paralegals who contributed to this special edition. I am convinced that after reading this Special History Edition of THE REPORTER, you will all have a renewed sense of pride in belonging to one of the greatest departments within the United States Air Force: The Air Force Judge Advocate General's Department.

From The Editors . . .

It is with great pleasure that we present you with this Special 50th Anniversary Edition of THE REPORTER. When originally approached with the concept of dedicating an edition of THE REPORTER to celebrating our Department's 50th Anniversary, the editors envisioned the addition of a few congratulatory letters to one of the regularly published quarterly editions. However, as we reflected on the importance of our golden anniversary, and found there was a dearth of published materials on the history of the Department, we began to conceive of a special edition comprised solely of history articles, anecdotes, and photographs. With the unconditional support of the Commandant of the Air Force Judge Advocate General School (AFJAGS), we were able to unleash the creativity of many past and present members of the Department, and bring you this one-of-a-kind, special edition of THE REPORTER.

This edition is not meant to be a complete history of the Air Force Judge Advocate General's Department. Only a multi-volume book could be so ambitious as to attempt that task. Instead, we have tried to provide you with a series of literal and figurative snapshots that span the last fifty years. Inevitably, some reader will search for a reference to a piece of history they are familiar with and find it missing. Another reader will recall a recorded event differently than one of our authors. We realize that capturing history can be difficult and that accuracy is sometimes hard to achieve. Memories fade, documents do not tell the entire story, and storytellers relate history from their point of view. To the extent possible, the editorial staff has checked facts and received permission to

publish stories. Most of the source documents and interview notes are maintained at AFJAGS.

If you were personally involved in one of these anecdotes, we invite you to write or e-mail us with your comments, corrections or additions. Similarly, if by reading the following pages, your memory of other stories and JAG lore is stimulated, please share those stories with us.

The editors cannot thank enough the numerous people who worked hard and long to bring you this tribute to our past. As you turn the pages and travel back through our proud history, you will hear the voices of many pivotal members of the JAG Department. We extend our special thanks to Major Generals Moorman, Morehouse, Nelson and Martin, Brigadier Generals Jones and Rodriguez, and Colonel Fowler who either wrote articles or kindly provided materials and reviewed articles. We also thank the JAG School Foundation for their support.

Every article in this edition, unlike regular editions, is attributed to an author because each of them went above and beyond the call of duty in researching and writing their article. They have recorded, for the first time, a clear picture of what makes us who we are. The editors thank each of them for their support in this endeavor to preserve our Department's heritage. Finally, as editor-in-chief, I extend my personal gratitude to the AFJAGS faculty and staff who meticulously reviewed each article, checked and double checked facts, and patiently supported this truly team effort - and again- to Colonel Ehrhart for his confidence in the editors.



SECRETARY OF THE AIR FORCE
WASHINGTON

Commanders Depend on JAGs

On behalf of the United States Air Force, we congratulate the outstanding men and women, past and present, of the Air Force Judge Advocate General’s (JAG) Department on the occasion of the Department’s 50th Anniversary. Although judge advocates have served the Air Force since its inception in 1947, the Air Force Judge Advocate General’s Department was officially formed by regulation on 25 January 1949.

The JAG Department has a rich and colorful history. JAGs and paralegals have been at commanders’ sides in nearly every operation since the department formed, including Korea, Vietnam, Grenada, and the Persian Gulf. In addition to combat theaters, JAGs have often been critical components of forces conducting humanitarian, peacekeeping, and contingency operations. Often, much of the JAG’s work is carried on behind the scenes, negotiating with foreign leaders, making arrangements for proper services, and ensuring agreements are in place to protect our service members abroad. As important, and even less conspicuous, are the paralegals and other legal staff that support these operations.

History has shown that the key ingredient for a successful military force is good order and discipline. Commanders have always depended on JAG advice to preserve and maintain a well-disciplined force. In addition, as the Air Force evolved and adapted to ever changing environments, commanders relied on JAGs to resolve the complex legal issues that accompanied change and expansion. To meet these challenges, the JAG Department has grown to a force of over 4,680 personnel, including JAGs, civilian attorneys, enlisted members, civilian support staff, and Reserve and National Guard personnel. The JAG Department has also expanded its expertise in critical legal specialties such as aviation, civil, claims, criminal, environmental, ethics, international, labor, legal assistance, medical, operations, procurement, space, and tax law. These changes ensure continued superb advice into the 21st Century.

Speaking for the men and women who have served or are now serving in the United States Air Force, we are honored to recognize the most outstanding law firm in the world — the Air Force Judge Advocate General’s Department. Our grateful thanks for a job well done.

Michael E. Ryan
General, USAF
Chief of Staff

F. Whitten Peters
Acting Secretary of the Air Force

MEMORANDUM FOR MEMBERS OF THE JUDGE ADVOCATE GENERAL'S DEPARTMENT

SUBJECT: 50TH ANNIVERSARY OF THE JUDGE AVOCATE GENERAL'S DEPARTMENT



On 25 January 1999, members of the Judge Advocate General's Department, United States Air Force, began a yearlong celebration of our 50th Anniversary. As the thirteenth Judge Advocate General, and a member of the Department for more than half of its existence, it is my distinct privilege and honor to add my heartfelt congratulations to those of General Ryan and Mr. Peters.

This Special 50th Anniversary Edition of *The Reporter* provides all members of the Department, past, present, and future, with a window to review our history. I am pleased to present you with this fitting tribute to our golden anniversary. The edition captures an overall history of our Department, and perhaps more significantly, snapshots of some of the experiences of those individuals who made up the Department over the past 50 years.

You will read about some of the significant accomplishments past and present members of the Department have achieved for the Air Force. We provided wise and balanced counsel to commanders in the administration of our military justice system, discharged our obligations as defense counsel and prosecutors, and maintained the fairness and integrity of our military justice system as independent military judges. We defended commanders' rights to issue sometimes unpleasant orders, to enforce discipline, and to make sensible decisions on contractual matters and labor issues. We stood, and continue to stand, side-by-side with our Air Force brothers and sisters in harm's way. Our advice and counsel during operations has been and will continue to be a vital piece of the Air Force's ability to accomplish its mission. We demonstrated our amazing flexibility by adapting and expanding into areas of the law never contemplated 50 years ago. And, we have continually provided the core support needed by our airmen in the area of legal assistance and claims. The wide variety of professional legal services we have provided to military personnel throughout the world over the past 50 years have demonstrated that the Department is and has been comprised of highly motivated and talented attorneys, paralegals and civilians.

More than just being a law firm, we are and have been military professionals. As the first Judge Advocate General, Major General Harmon, believed, we are part of the basic fabric of the operational Air Force. We are airmen, officers and enlisted, who happen also to be lawyers and paralegals.

Presently, the nearly 1340 active duty judge advocates are joined in their service to this great Nation by over 1000 military paralegals, 340 civilian attorneys, and a talented cadre of support personnel, military and civilian totaling over 600. The talents and strengths of our full time personnel are immeasurably magnified by the 650 JAGs in the AF Reserve and 250 in the ANG and their Reserve Component military paralegals. All work together as a seamless team in support of the Air Force and build upon our heritage of integrity, service before self and excellence in all we do.

Each of us owes those who have gone before a debt of gratitude for providing us with a solid foundation upon which to stand as we represent the premier clients of the world, our commanders and the great men and women who serve under them in the United States Air Force. I am honored to serve as your Judge Advocate General and look forward to helping lead the Department and our Air Force in building on its already enviable record as we move into the new millenium serving our great Nation and the ideals for which it stands.

WILLIAM A. MOORMAN
Major General, USAF
The Judge Advocate General

MEMORANDUM FOR MEMBERS OF THE JUDGE ADVOCATE GENERAL'S DEPARTMENT

SUBJECT: 50th ANNIVERSARY OF THE JUDGE ADVOCATE GENERAL'S DEPARTMENT

I am honored to add my congratulatory memorandum, for this 50th Anniversary Edition of *The Reporter*, to those of General Ryan, Mr. Peters, and General Moorman. Little could I have known 19 years ago, as I entered The Judge Advocate General's Department as a retraining senior airman, that I would have the privilege of addressing such a prestigious audience, on such a special occasion, while serving as the ninth Senior Paralegal Manager to The Judge Advocate General.

Much has changed in the intervening 19 years since I entered this department. The concepts and realities that drove the world arena have moved in directions we could not have imagined then. So too has our Department changed. We have embraced technological and philosophical advancements that have made us the Department of Defense's premier legal firm. It is fascinating to reflect upon the advancements we've made over the 19 years I've been a part of this Department. As we reflect on the Department's entire history, on the occasion of our 50th Anniversary, we should be in awe of our collective accomplishments.

This 50th Anniversary Edition of *The Reporter* gives us just such an opportunity to reflect on the accomplishments of our predecessors as well as those of our contemporaries. It offers us an opportunity to capture moments in our history, develop pride in those who helped make that history, inspire our junior personnel to surpass our accomplishments, and preserve our history for future Department personnel to build upon.

For fifty years our legal personnel: attorneys, paralegals, and civilians — active duty and Air Reserve Component, have been making the history you will read about between the pages of this commemorative edition. Every person in The Judge Advocate General's Department continues to add to that history today. The work we perform, the directions we take, and the leaders we produce will be the basis for the history future Department personnel will study and hopefully build upon.

I trust you will find this anniversary edition a treasure and a keepsake to document your connection with our Department on this historic occasion. I am certainly proud to include my congratulations to this historic document, and I'm also proud to have been a part of The Judge Advocate General Department's history for 19 of its 50 years. Representing the collective history of our paralegal force over the Department's entire 50-year history, it is my honor to wish each of you a Happy 50th Anniversary!



DAVID A. HASKINS, CMSgt, USAF
Senior Paralegal Manager to
The Judge Advocate General



**DEPARTMENT OF THE AIR FORCE
WASHINGTON**

**GENERAL ORDERS)
NO. 7)**

25 January 1949

Announcement is made of the establishment of The Judge Advocate General's Department, United States Air Force, by the Act of June 25, 1948 (Pub Law 775, 80th Congress). The Judge Advocate General's Department is comprised of The Judge Advocate General and the following officers designated by the Chief of Staff as Judge Advocates: (1) officers of the United States Air Force, and (2) officers of other components of the Air Force of the United States on active duty detailed to The Judge Advocate General's Department. Wherever the term "Office of The Judge Advocate General" has been heretofore used, such term shall be construed to refer to The Judge Advocate General's Department.

The organization and structure of the Judge Advocate General's Department will be announced in an appropriate Air Force publication.

BY ORDER OF THE SECRETARY OF THE AIR FORCE

**HOYT S. VANDENBERG
Chief of Staff, United States Air Force**

50 Golden Years

LIEUTENANT COLONEL MICHAEL N. SCHMITT
MAJOR JOSEPH E. COLE

Stability and growth — words often used to describe the desired qualities of a financial investment. These very qualities also distinguish the legal stewardship of the United States Air Force that has been the hallmark of The Air Force Judge Advocate General's Department since its creation in 1949.¹ Indeed, not unlike a successful investment, the JAG Department has matured nicely over the past half-century. This Special 50th Anniversary

Edition of *THE REPORTER* not only celebrates that maturation, but also sets the stage for the Department's entry into the 21st Century as a critical component of tomorrow's Expeditionary Aerospace Force.

In this introductory article we will very briefly attempt to place this celebratory effort in context by highlighting the historical lineage of the modern judge advocate, reviewing the initial development of our Department, and tentatively, perhaps even somewhat presumptuously, speculating on the future environment in which it will function. The articles that follow will explore the Department's heritage in much greater detail. As will become immediately apparent, it is a golden heritage of which the almost 4,000 active duty, reserve and guard judge advocates, paralegals and civilians comprising the JAG family can be justifiably proud.

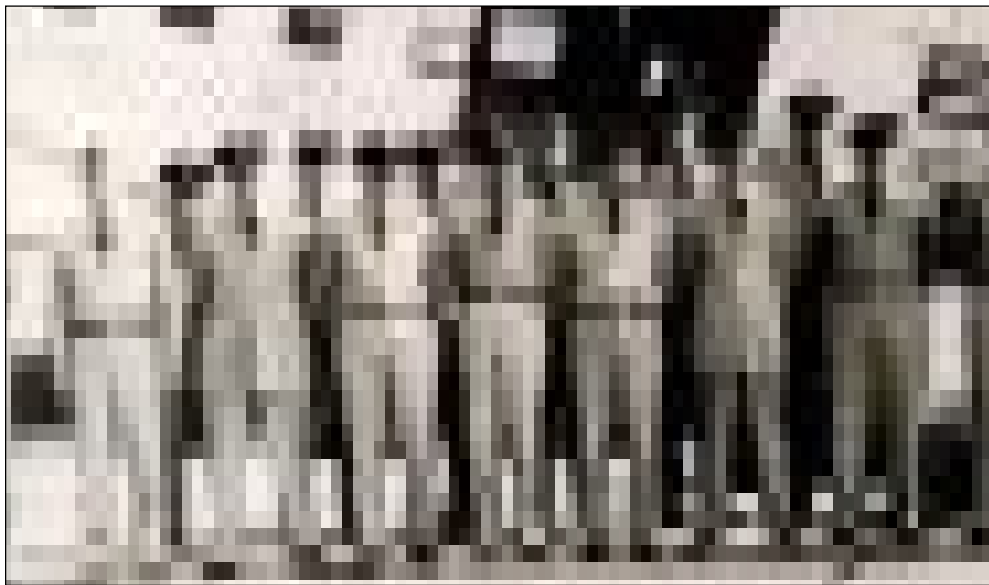
The Emergence of Military Legal Systems

The practice of military law in today's Air Force can trace its roots to antiquity. It was the Roman Empire that first employed a legal system for its military distinct from that governing the general population. Underpinning this development

was the unique organizational structure of the Roman government. The senior judicial officials in the empire were Praetors, officials subordinate only to the Roman leaders, Consuls. Praetors were also military commanders with responsibility over two legions each.² Interestingly, in addition to their "operational" duties (and the corresponding summary disciplinary authority they exercised as commanders), Praetors sometimes served more formally as military "judges."³ They or any other senior commander could delegate this judicial responsibility to a military Tribune, the principal assistant to the commander in matters involving routine discipline. Military leaders themselves,⁴ Tribunes could either sit alone or in concert with other Tribunes when judging military offenders,⁵ and

Lieutenant Colonel Schmitt (B.A. and M.A., Southwest Texas State University; M.A., Naval War College; J.D., University of Texas; LL.M., Yale University) is Professor of Law, United States Air Force Academy. He is a member of the Texas Bar.

Major Cole (B.S., University of Missouri; J.D., Saint Louis University) is Assistant Professor of Law, United States Air Force Academy. He is a member of the Missouri Bar.



Founding Fathers:
(clockwise from above left) the first JASOC class; Col Lindstrom; Maj Gen Harmon and President Eisenhower; and Majs Lafarque, Birnbaum, and Mattoon.

applied customary “law,” rather than the written edicts enforced by civilian judicial officers.⁶ In a sense then, Praetors were precursors of present day Judge Advocate Generals, Tribunes might well be analogized to unit Staff Judge Advocates and military judges, and the applicable disciplinary standards operated in a fashion not unlike that of Article 134 of the Uniform Code of Military Justice (UCMJ or Code).

The Roman precedent of commanders performing judicial functions remained a relative constant in the centuries that followed. For instance, during the Middle Ages civil judges also served as military commanders who exercised “judicial” and disciplinary authority over their troops.⁷ This tradition of unitary judicial authority and military leadership was in great part the product of feudal society, in which those with wealth and land served as warrior leaders of their fiefdoms and acted as arbiters of all disputes within their respective realms of responsibility.⁸

Over time, responsibility for civil and criminal matters relating to those in the English military became concentrated in the person of the Marshal.⁹ The Marshal’s Court is the primogenitor of our own modern military court; hence-- “court-martial.” Between 1385 and 1775, the Articles of War developed as a formal code of law for application in courts-martial.¹⁰ The British Articles served as the model for our own Articles of War, adopted by the Second Continental Congress in 1775.¹¹ As John Adams would note the following year when considering revisions to the Articles, the British and Roman systems

“had carried two empires to the head of mankind” and therefore “it would be vain for us to seek in our own invention...for a more complete system of military discipline.”¹² In their various incarnations, these initial Articles would govern the U.S. military justice system in war and peace until the enactment of the Uniform Code of Military Justice following World War II.¹³ The current Code retains as its purpose precisely that which has undergirded military disciplinary systems throughout history, the preservation of good order and discipline.

The Formative Years

Contemporaneously with issuance of the Articles, the Continental Congress elected the first Judge Advocate of the Army, William Tudor.¹⁴ Although the position of Judge Advocate General existed from 1775-1802, it was not until 1849 that the position was permanently established.¹⁵ By the start of the First World War, the number of officers in the Judge Advocate General’s Department had grown from one Lieutenant Colonel to 32 officers, including a Brigadier General as The Judge Advocate General. A reserve program for attorneys had also been established.¹⁶ In an early demonstration of the value of the total force concept, this reserve component performed admirably during the huge mobilizations that occurred as major conflagrations beset the world in the years to follow.¹⁷ By the end of the Second World War, the size of the Department reached a historical high of over 2,000 members, four-fifths of

“The most important qualities of judge advocate personnel — soundness of moral principle and character or, in simple words, absolute honesty. . . So, when you have reached your legal conclusions and rendered your advice, stand firm behind it. Your client, whether he be commander or accused, a subject of legal assistance or a claimant, will appreciate your integrity. . . .”

~ former Chief of Staff, General George S. Brown

whom had been in civilian practice prior to the outbreak of the conflict.¹⁸

It was during World War Two (WWII) that the seeds of a separate Air Force Judge Advocate General’s Department were sown. Even though an Army Air Corps had been established in 1926,¹⁹ it was not until creation of the “Army Air Forces” in 1942 that separate legal counsel, in the form of the Office of the Air Judge Advocate of the Army, existed for the air component of the armed forces.²⁰ Some 1, 200 officers were assigned to the new organization, which was divided into six divisions: Military Justice; Military Affairs; Patents; Contracts and Claims; Litigation; and Legal Assistance.²¹

In much the same way that conflict generated the need for reorganization of the military during WWII, a growing realization that the United States was increasingly at odds with the Soviet Union and its “fellow travelers” — that a “Cold War” had begun — impelled dramatic change in the defense structure of the United States. Most notably, the National Security Act of 1947 established a single Defense Department to replace the former Departments of the Navy and War, centralized intelligence functions in the new Central Intelligence Agency, created the National Security Council, and set up a separate Air Force.²² Less than a year later, the Air Force Military Justice Act of June 1948 provided for “the administration of military justice within the United States Air Force” and created the position of The Judge Advocate General (TJAG).²³ The new organization that resulted from this legislation consisted of 205 officers, 62 of whom transferred to the Air Force from the Army’s Judge Advocate General’s Department.²⁴

Appointed to lead them as TJAG that September, and promoted directly from the rank of Colonel, was Major General Reginald C. Harmon. Called to active duty as a Major during the war, General Harmon had served in the Air Corps, primarily as a procurement attorney. Following the war, he remained on active duty as Staff Judge Advocate of Air Materiel Command.²⁵ His selection aptly signaled the significance that procurement law played, and continues to play, in a technologically-focused armed service such as the Air Force.

Within a year of General Harmon’s appointment, the Office of the Judge Advocate General was modified into the Judge Advocate General’s Department,²⁶ an organization that by then had grown to over 400 attorneys. Albeit the “new kid on the block,” the Department certainly did not exist in the shadow of its Army and Navy counterparts. For instance, it was General Harmon that Secretary of Defense James Forrestal selected to lead the joint effort to codify the laws pertaining to

the Department of Defense and the various services.²⁷ Similarly, the Air Force initiated the reporter system for judicial opinions still employed today throughout the armed services.²⁸

Although General Harmon later confessed to being surprised by his selection as TJAG,²⁹ history demonstrates that he was the right person to lay the foundation for the Department. Drawing on his management and leadership experiences as an elected official³⁰ and successful civilian practitioner, General Harmon organized the Department along clear lines of functional responsibility.³¹ Perhaps of greatest import in the years to follow was his decision to structure the new organization as a department rather than a corps.³² He perceptively understood that the profession would function much more effectively if judge advocates remained staff officers in the conventional management infrastructure of the Air Force; they would be part of the team itself, not an external entity dispensing legal advice without a stake in the process. As General Harmon simply noted, “I thought we ought to be part of the family.”³³

This paradigm continues to infuse the Air Force approach toward legal functions even today. Indeed, the newest TJAG, Major General William A. Moorman, recently acknowledged the determinative impact of this vision on the Department: “It was [General Harmon’s] vision that Air Force judge advocates should be, and remain, a part of the basic operational Air Force. He believed that JAGs were not just lawyers in uniform. Rather, we were and are AF officers who happen also to be lawyers.”³⁴



Major General Harmon, the first TJAG.

In the early years, the organization consisted of the Examination Division, the Civil Law Directorate, and the Executive Office. The Examination Division (soon to become the Military Justice Division) reviewed all court-martial records requiring TJAG action; the Civil Law Directorate included an array of functional divisions such as claims, legislation, patents, and military affairs; and the Executive Office was responsible for assignment and certification of judge advocates.³⁵ It proved a flexible, responsive, and effective structure for the fledgling Air Force and Judge Advocate Department. A case in point is the Examination Division. The creation of a separate Air Force resulted in the transfer of hundreds of court-martial cases requiring appellate review to the Air Force from the Army. Although none of the original judge advocates transferred from the Army had any board of review experience,³⁶ by December 1949 the backlog had been exhausted and the Division was operating normally.³⁷ Another example is the Legislative Division of the Civil Law Directorate. The creation of a new service predictably generated a flurry of administrative and legislative activity. Responding to this need, General Harmon poured resources and personnel into the Division; by 1949 it was one of the largest in the Department.³⁸

As the Department struggled to organize itself, the very substance of military law was being revolutionized. During WWII, a sense of general dissatisfaction with the prosecution and administration of military justice had surfaced. While the pre-war court-martial system seemed to work well enough for a small primarily professional military force comprised of Regular officers and enlisted personnel, it proved unable to efficiently meet the demands the rapid and extensive wartime mobilization placed on it. Particular concern focused on the sheer number of courts-martial, and the perceived harshness of their sentences, during the war.³⁹ Additionally, commanders were often viewed as exercising unlawful (or at least inappropriate) influence on the judicial process.⁴⁰

In response, and following completion of a plethora of post-war reports and studies regarding these issues,⁴¹ Congress passed the Elston Act in what was effectively an interim effort to address the perceived ills in the judicial process. However, Congress continued to address the practice of military justice and in 1950 enacted the Uniform Code of Military Justice (UCMJ).⁴² With the effective date (May 1951) of the UCMJ fast-approaching, the need for an accompanying Manual for Courts-Martial (MCM) became pressing. Fortunately, the services had anticipated passage of the UCMJ and created the

Flying Status or Judge Advocate

Q: I believe it was while you were at Eglin that the matter of being a legal officer and still being on flying status came to a turning point?

M/G Cheney: Yes, that's right, it was in 1952. The notification of action proposed by the Air Force went out to all judge advocates on flying status in about March of that year. The notice was to the effect that all such judge advocates would be removed from flying status unless they objected. If they objected they would cease performing judge advocate duties and be assigned to duties that required an aeronautical rating. It came down to a matter of deciding which career you wanted to follow, a legal career or a flying career. By that time I had extensive experience as a military lawyer, having performed such duties for six years. Also, I was rated as a navigator, senior navigator, and not as a pilot. And it had become pretty obvious to me that if you wanted to perform duties as a rated officer, you had better be rated as a pilot. There were very few jobs requiring a rating that were open to ratings other than the pilot rating. For instance, at that time, you had to be a pilot to hold a command position. It was clear to me that if you were rated other than as a pilot, your career was going to be as a staff officer. And as I saw it, if I was going to be in a staff position, I would much rather it be as a member of a profession, in my case the law. And so I chose to remain a judge advocate, even though it meant a decrease in pay. The decision cost those who made it their flying pay and that required some adjustment.

Q: Do you think it was the right action for the Air Force to take?

M/G Cheney: Yes, I do. I never had any complaint with it. There were good reasons for it. For example, if you are a judge advocate and are on flying status, you have to take time out of the office to maintain your rating and that can mean days at a time. When you do that, someone else in the office has to do the work you would have done. Not only that, you were getting paid more than the fellow who did your work. That causes resentment. And then, too, looking at it from the Air Force's point of view, why pay someone to keep proficient in a specialty that it probably won't be able to use him in?

(Excerpt from NAVIGATING THE LAW, Oral History of Major General James S. Cheney, former TJAG)

Interdepartmental Working Group for the Preparation of the Manual for Courts-Martial in 1950 to prepare a draft. On May 31, 1951, both the UCMJ and the Manual for Courts-Martial took effect.⁴³ The military services would thereafter share a unified source of military justice administration that created new levels of due process and review, addressed unlawful command influence, and changed procedures to ensure the integration of lawyers earlier and more often into the system.

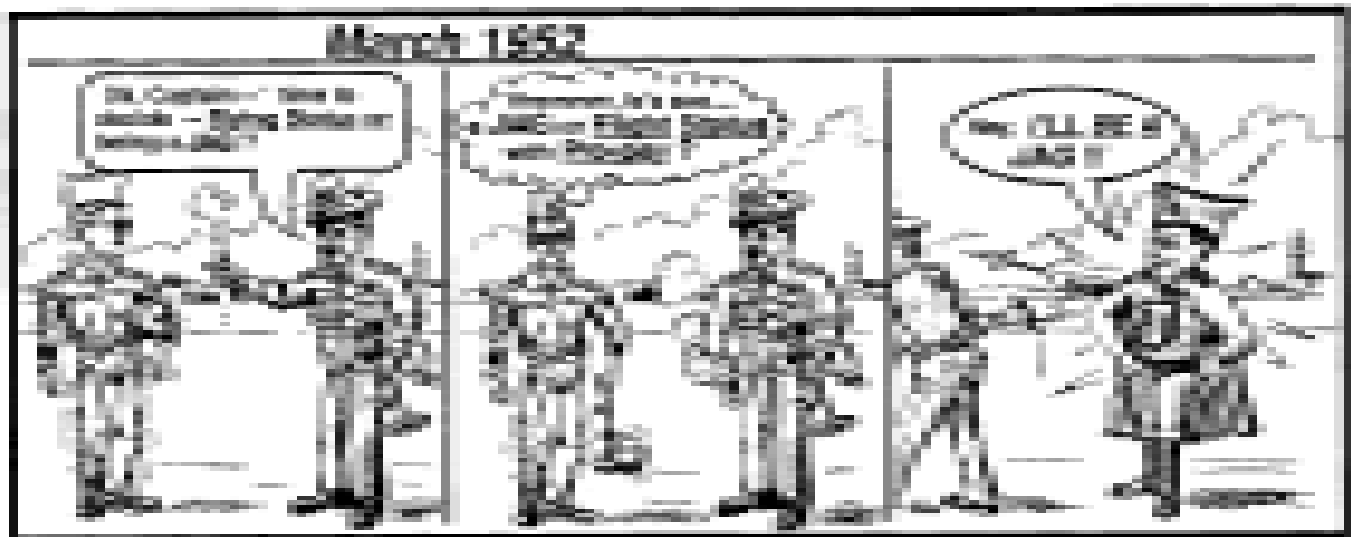
The Air Force's commitment to the incipient system was firm. An expression of this covenant was provided by then Brigadier General Albert M. Kuhfeld at a conference of Air Force judge advocates in 1951. He "warned the audience that trying to skirt the new law would not be acceptable [and] singled out for prohibition the idea of appointing to a court some lawyer who would act as a *sub rosa* law member. This was explicitly contrary to the spirit of the code [and according to General Kuhfeld] would not be countenanced."⁴⁴ Today, of course, General Kuhfeld's legacy of fidelity to the law and the system in which it is applied is memorialized in the annual award in his name presented to the Air Force's outstanding young judge advocate.

While implementation of the UCMJ provided a measure of stability to the administration of justice for the nascent Air Force, the Department struggled with personnel issues of its own. In particular, a fair number of judge advocates at the time were rated officers on flying status. As a result of budgetary pressures, in 1950 the Air Force began considering removal of all rated personnel not directly involved in flying from flying status, thereby effecting savings of flight pay. General Harmon unsuccessfully opposed the proposal. However, when the decision to remove JAGs from flying status was made, General Harmon convinced Air Force Chief of Staff General Hoyt S. Vandenberg to permit those affected to choose between flying and law. Though General Vandenberg feared a mass exodus from the Department, General Harmon argued that he

would "rather lose more than I can afford to lose than to keep somebody who doesn't want to stay."⁴⁵ Ultimately, 98 judge advocates chose to remain on flying status.⁴⁶ Among them was Captain Russell E. Dougherty, who explained to General Harmon that "I had one little girl, and now I've had twin boys. I'm getting a more expensive family, and I can't afford to lose my flying status. I'd much rather stay in the law business than leave, but I've just got to do it."⁴⁷ Captain Dougherty would go on to earn four stars and command Strategic Air Command.

During the twelve years of General Harmon's tenure as The Judge Advocate General, certainly one of the greatest challenges faced by the Department was the Korean War.⁴⁸ Until the Korean Peninsula became engulfed in armed conflict, the Department had centered its efforts on organizational matters. The onset of war refocused attention on providing essential legal support for military operations. Thrust into the operational environment, JAGs and legal specialists, including large numbers of reservists deployed to South Korea, performed admirably under austere conditions. Their contributions, and the circumstances under which they labored, are aptly described by one participant, Colonel Walter L. Lewis, in the pages of this special edition.⁴⁹

The conflict did have one unanticipated result. As war broke out, General Harmon directed the creation of the JAG School at Maxwell Air Force Base in 1950 to more effectively and quickly train the judge advocates the Air Force would need in that conflict. Not unexpectedly, the 14 week program tended to focus on the new UCMJ and Manual for Courts-Martial, although a block of instruction on Civil Law was included in the curriculum. In the abstract, General Harmon was not enamored with the idea of a JAG School. Harkening back to his civilian experiences, he questioned why the Air Force would need such an institution if civilian law firms did not, relying instead on on-the-job training. Thus, the school was



(Clockwise from top left) SSgt Stephens records a court-martial; Capts S. Meadows, C. Brubaker, and L. Matthews (1977); Lt Cols Di Maria and Ingrad on the A-10 production line.



closed in 1955, a mere two years following the Korean War armistice; the motivating event for the school gone, General Harmon simply saw no need for it. Not coincidentally, the Air Force JAG school reopened in 1968 at the peak of the next major international armed conflict; the Vietnam War.⁵⁰

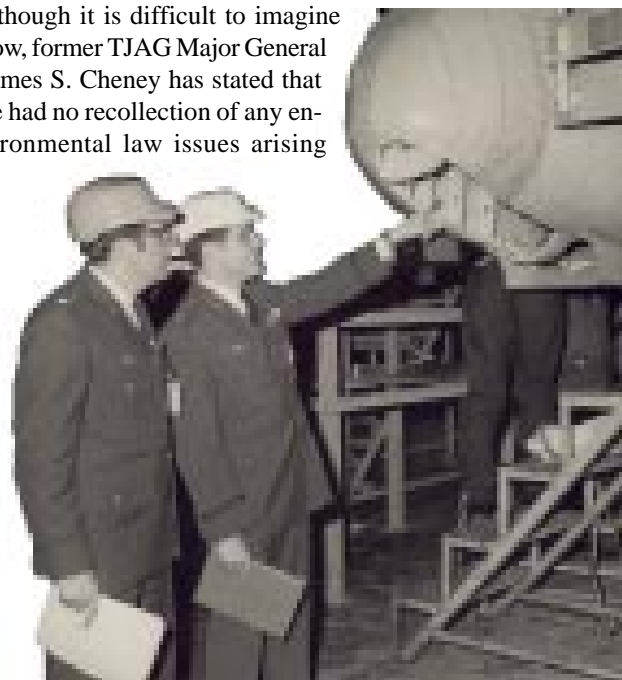
The Department Matures

By 1960, the Department was well-established, with over 1,200 officers on active duty.⁵¹ That year, Major General Harmon retired, and his deputy, Major General Kuhfeld was appointed TJAG. Not only had the Department grown in numbers, but its functional responsibilities were continually expanding as well. While the primary emphasis remained, and will always be, the preservation of good order and discipline through the administration of military justice, other areas such as procurement, foreign law, claims, tax and litigation, patents, military affairs, and legal assistance demanded increased attention in the years that followed.⁵² Of course, the Department continued to emphasize, as General Harmon had always insisted, the judge advocate's role as the commander's advisor on matters far beyond those strictly legal in nature.⁵³ This willingness to contribute beyond the textual boundaries of the law continues as a hallmark of JAG professionalism.

The maturing process for the Department was quite apparent in the field of military justice,⁵⁴ a process well chronicled in later articles in this special edition. Several events merit particular mention. Among the most important was passage of the Military Justice Act of 1968.⁵⁵ This legislation led to establishment of an independent Air Force judiciary and creation of the Air Force Court of Military Review. Henceforth, military judges would replace law officers in Air Force trials. Four years later, the first steps toward independent defense services were taken when the Secretary of Defense directed the Task Force on the Administration of Military Justice in the Armed Forces to review the state of military justice. As a result of the Task Force's report, the Secretary directed each of the services to develop plans by which defense services would become the direct responsibility of the respective TJAG.

The Air Force response came in the form of the Area Defense Counsel Program, first implemented in January of 1974, and formally approved by Air Force Chief of Staff General David Jones the following year.⁵⁶ It was also during this period that major rewrites of the Manual for Courts-Martial occurred, first in 1969 and later in 1984,⁵⁷ and that the jurisdictional reach of military courts was settled by the Supreme Court in *Solario v. U.S.*⁵⁸ Henceforth, military tribunals could exercise jurisdiction based solely on the status of the accused as a member of the armed forces.

Yet, it was in areas of law other than military justice that the most significant changes in the structure, organization, and functions of the Department occurred, for it had to anticipate and respond to new and unfamiliar trends in the practice of law. To place the extent of the evolution in perspective, and although it is difficult to imagine now, former TJAG Major General James S. Cheney has stated that he had no recollection of any environmental law issues arising



during his tenure as TJAG between 1969-1973.⁵⁹ Today, by contrast, environmental law is a robust and growing practice in all the armed services. Medical law provides another excellent example of how the Department was forced to evolve. When medical malpractice litigation in the private sector began to rise, the importance of medical-legal expertise became abundantly apparent, so much so that in 1965 the Surgeon General of the Air Force contacted the TJAG to emphasize the need for medical law expertise.⁶⁰ The response came in the form of the Forensic Medicine Program and establishment of a new specialty, the Forensic Medicine Consultant Advisor, forerunner to today's Medical Law Consultant.

The Department's approach to the increasing diversity and complexity of its practice in these and other fields proved innovative and visionary. Aside from organizational responses such as creation of the Central Labor Law Office and identification of regional environmental counsel, it took three particularly noteworthy steps to bolster JAG ability to handle emerging issues. First, the Department committed very early

on to education, not only in the emphasis placed on the JAG School in the wake of its 1968 rebirth, but also on graduate degree programs. Since at least 1962, judge advocates have attended Master of Laws education program at civilian institutions and, in the last decade, The Army Judge Advocate General's School. In fact, it was in 1962 that future TJAG Major General Walter Reed earned his Masters Degree from McGill University in Montreal. By the 1970s, an average of 10 judge advocates a year entered LL.M programs, a number which has grown to an average of 25. Wisely, the Department has always allocated the available positions based upon the evolving nature of its own practice. As an example, LL.M. programs in computer law and in arbitration and mediation have recently been approved.

The second response was more momentous still; creation of a cadre of enlisted legal experts. In May 1955, the Air Force approved a new specialty within the administrative career field — Legal Specialist. Three years later, it became its own career field. In 1970, Chief Master Sergeant Steve Swigonski was

One of the most positive changes has been the evolution of the Department itself...we now recognize our many dedicated paralegals, civilian attorneys, and civilian support personnel as members of the Department.

Reed

~ Major General Walter D.



Paralegals train to be court reporters

selected as the first Special Assistant to The Judge Advocate General for Legal Airman Affairs, and in 1988 Legal Specialists were redesignated “paralegals.” The presence of these well-trained specialists to assist judge advocates, and in many cases to take on judge advocate tasks, has proven a force multiplier of inestimable value.

Finally, the Department recognized very early on that technology could also serve as a force multiplier. Most notably, in 1963 the Air Force received authorization to develop and test the Legal Information Through Electronics (LITE) system in cooperation with the University of Pittsburgh’s Health Law Center. Envisioned as a full text legal information retrieval system, LITE was quickly a success, an understandable phenomenon given that it was far more advanced than anything available to the civilian bar. Although responsibility for LITE initially fell to the Air Force Accounting and Finance Center, in 1969 control and supervision of the system was transferred to The Judge Advocate General. Five years later, its name was changed to the now familiar “FLITE.” Since then, FLITE has become an essential component of virtually every judge advocate’s practice, whatever the nature of that practice.

The Department’s achievements as it matured can be attributed to a commitment to developing our primary assets, the judge advocates and paralegals who comprise the Department, and providing them the tools necessary to cope with the rapid pace of change they faced. The success of this commitment was perhaps best illustrated during the conflict that tore at the very fabric of American society, the Vietnam War.

Judge Advocates were thrown into a hostile cauldron replete with drugs, racial unrest, pervasive moral problems, and the like. Veterans of the conflict recount tales completely alien

to most of those serving the Department today. For instance, Colonel Michael Emerson tells the story of the Commander of the Aerial Port Squadron at Tan Son Nhut who supplied his troops with marijuana...and then smoked it with them.⁶¹ Colonel Richard Rothenburg relates how an Academy graduate shot himself to get a Purple Heart and how a guard shot a Vietnamese man who stopped a woman from disrobing for him.⁶² Other accounts are found in several of the articles in this edition. Given the environment in which they operated, especially in the area of military justice, judge advocates acquitted themselves in exemplary fashion.

Foward Into The Future

The demise of the Cold War has effected profound change in the global security situation, changes that have directly impacted the functions of the Department. During the Cold War, the Air Force was garrison-based, operating from fixed locations and with large contingents permanently deployed forward. Our potential enemies were well defined and operated across fixed and easily identifiable geopolitical borders. Resultingly, operations were planned months, even years, in advance of likely execution.

The Persian Gulf War signaled a changed reality. That conflict surprised the United States and the world with the speed by which it unfolded. The unexpected was a new phenomenon for the Air Force and its lawyers. At the same time, the scale and scope of the international response the Iraqi attack provoked was equally unprecedented, for until the collapse of the Soviet empire, international responses to global breaches of peace had been muted by the existence of off-setting vetoes in the United Nations Security Council. Now, however, the UN Charter security scheme seemed to work, as forces

Photos courtesy of Lt. Col. Meadows (of Maj Hollingsworth), TSgt Smith and Capt Plummer



JAG Department members reap the benefits of being team members and receive incentive rides. (clockwise from top left) Capt C. Plummer; TSgt E. Smith; and Maj T. Hollingsworth.

During World War II...the function of Staff Judge Advocate was usually discharged as an additional duty by an officer who, whether or not he was a lawyer, was assigned other principal duties that were considered to be more important.

~ Major General

James S. Cheney

from countries as diverse as Argentina, Australia, Czechoslovakia, Denmark, Italy, Saudi Arabia, Syria, and the United Kingdom conducted combined operations to expel the Iraqis from occupied Kuwait.⁶³

Although the Air Force JAG response to the immediate deployment of large numbers of U.S. troops failed to operate according to any pre-existing plan,⁶⁴ the 49 judge advocates and 46 paralegals who went to the Gulf performed magnificently once there,⁶⁵ whether providing legal assistance, processing military justice actions, or scrubbing Air Tasking Orders for compliance with the law of armed conflict.⁶⁶ Whereas Vietnam demonstrated that the Department was maturing well, DESERT STORM proved that it had truly come of age.

The Department's maturity has been evidenced repeatedly since the Gulf War cease-fire was signed in 1991. In particular, peace operations, from small scale peace-keeping to robust peace-enforcement and peace-making, have captured center stage. The operations, made possible by the snapping of the Security Council superpower deadlock, have become part of the JAG lore: DENY FLIGHT, SOUTHERN WATCH, PROVIDE COMFORT/NORTHERN WATCH, PROVIDE RELIEF/RESTORE HOPE, DESERT FOX. As of February 1999, 28 judge advocates and paralegals were deployed in support of these and similar operations worldwide.⁶⁷ In the new global security environment, our Expeditionary Aerospace Force and its Aerospace Expeditionary Forces are serviced by expeditionary judge advocates with newfound expertise in combat claims, temporary status of forces agreements, deployment fiscal law, and rules of engagement.

As in meeting the demands of earlier evolutions in the nature of the JAG practice, the Department has aggressively responded to the changed needs of the Air Force. An Office of Operations Law - Long Range Planning reporting directly to the TJAG was activated in 1997.⁶⁸ The JAG School and the Office of Staff Judge Advocate, Air Combat Command have joined forces to develop a new, more realistic Operations Law Course. Air Force judge advocates are increasingly active in the international legal arena, serving, for example, as instructors at the International Institute of Humanitarian Law and adjunct faculty with the Defense International Institute of International Legal Studies. Clearly, the Department has lived up to Major General Harmon's prediction; judge advocates have become an essential part of the operational team.

What does the future hold? Of course, predictive efforts are speculative at best. Perhaps, though, we should look back over the past decade to ask what qualities our Department must have to prosper in the near-term. Obviously, recent experiences teach us that we must be prepared for the unexpected. This will require legal functions to be immediately deployable anywhere in the world; given destination "unknown," we must, of course, also be worldly, that is, cognizant of events throughout the global community and comfortable in remote and unusual environments. In the future, JAGs have to be prepared to operate jointly with our sister services and in combined operations with allies that we would not otherwise imagine. Crisis action planning will have to come easily to tomorrow's judge advocate and s/he will have to under-




(Clockwise from left)
TSgt R. Pacheco, during Desert Storm; Col J. Swanson in Saudi Arabia; a JAG in Vietnam.



stand the client's business, the conduct of aerial operations, better than has ever previously been the case.⁶⁹ Commanders will have no time, and certainly little patience, for legal advisers who cannot advise them on their terms.

And the more distant future? Only time will tell what type of practice the young officers in the Judge Advocate Staff Officer Course (JASOC) today will engage in when they fill our boots. Will the "revolution in military affairs" further alter the nature of operational law?⁷⁰ Will US national security policy require continued maintenance of permanent overseas bases? To what extent will the military privatize? What moral compass will guide us in the next century? These and similar seemingly unanswerable questions will determine the future of the Department; it is, therefore, our professional obligation to seek them out and actively reflect on them.⁷¹

Ultimately, the prognosis is good, for over time those who have gone before us have crafted an institutional culture that will continue to serve the Department well into the next millennium. It is a culture that reflects the core values underpinning the Air Force itself — integrity first, service before self, excellence in all we do. There can be little doubt that the Judge Advocate General's Department is well positioned to continue its tradition of responsively meeting the legal needs of the Air Force and the United States. 

¹ United States Air Force – Administration of Military Justice, Pub. L. 80-775, ch. 648, 62 Stat. 1014, June 25, 1948.

² During the peak of the Roman Empire, a legion comprised 4,200 troops. C. E. BRAND, ROMAN MILITARY LAW 47 (1968).

³ While the Praetors were military commanders, they were also civilian political officials. At some point, they became more involved with the administration of the city, and the armies were then generally commanded by the Consuls. *Id.* at 63.

⁴ The Tribune’s position in the military was quasi-political. He enjoyed the rank and dignity associated with his military position, yet he was fairly insignificant in the battle command. *Id.* at 50.

⁵ *Id.* at 77.

⁶ *Id.* at 23.

⁷ JAMES SNEDECKER, A BRIEF HISTORY OF COURTS-MARTIAL 4 (1954).

⁸ An example of this can be found in the Dooms of King Edward the Elder. Delegating his authority to his lesser lords, King Edward created the following doom (law): “King Edward’s commands to all his reeves: that you deem such right dooms as you know to be most right and as stand in the doom-book. Nor for any cause shall you fail to declare the customary law; and [you shall see to it] that a day is set for every cause, when that which you decide concerning it shall be carried out.” CARL STEPHENSON FREDERICK GEORGE MARCHAM, SOURCES OF ENGLISH CONSTITUTIONAL HISTORY, Vol. I, A SELECTION OF DOCUMENTS FROM A.D. 600 TO THE INTERREGNUM 12 (1972).

⁹ SNEDECKER, *supra* note 7, at 13-14.

¹⁰ *Id.* at 16.

¹¹ *Id.* at 20.

¹² THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL’S CORPS, 1775-1975 (1975), at 11.

¹³ Act of May 8, 1950, ch. 169, 64 Stat. 108 (1950).

¹⁴ As a summary history of the Air Force Judge Advocate General Department, this article focuses on the Air Force’s Army heritage. The development of military law in the United States Navy followed a different path. Originally tracing its roots from customary British law, naval law became much more regulatory in nature after the Constitution of the United States in 1789. Inasmuch as the Constitution gave Congress the power “to provide and maintain a Navy,” the service became increasingly subject to rules and regulations enacted by Congress. In 1862, Congress passed the Articles for the Government of the Navy, known in the vernacular as the “Rocks and Shoals.” This code, and its subsequent revisions, remained in effect until the enactment of the UCMJ in 1951. Commander EDWARD M. BYRNE, MILITARY LAW 5 (2d ed. 1976).

¹⁵ *History of the Office of the Judge Advocate General*, JAG L. REV., July-Aug. 1968, at 6, 6.

¹⁶ ARMY LAWYER, *supra* note 12, at 107.

¹⁷ *Id.* at 159.

¹⁸ *Id.* at 186.

¹⁹ Initially, the “Air Force” consisted of the Aviation Section of the Signal Corps. In 1918, the Air Service was created as a separate branch in the Army. The Air Corps Act of 1926 established the Service as a Corps, though the change did not have great substantive effect. Will H. Carroll, *A Short Account*

of the Early Years of the Office of the Judge Advocate General, THE REPORTER, Feb. 1979, at 2, 2.

²⁰ *History of the Office of the Judge Advocate General*, *supra* note 15, at 6. The change came with President Roosevelt’s issuance of Executive Order 9082 on 28 February 1942. In it he directed that the Army be reorganized under the Chief of Staff into the Army Ground Force, the Army Air Forces, and the Services of Supply. The Office of the Air Judge Advocate fell under the Deputy Chief of the Air Staff. Interestingly, no corresponding office was created for either of the other two organizations, their legal advice continuing to be provided by the existing Army JAG Department. *Id.* at 7.

²¹ *Id.*

²² National Security Act of 1947, ch. 343, 61 Stat. 495 (1947).

²³ *Supra* note 1.

²⁴ *History of the Office of the Judge Advocate General*, *supra* note 15, at 8.

²⁵ *Id.*

²⁶ USAF GO # 7, 25 Jan 1949, Chronology and Personnel List, on file at the Judge Advocate General’s School.

²⁷ Letter from Major General Harmon to Major General Thomas Bruton, August 4, 1983, *reprinted in* THE REPORTER, Fall 1983, at n.p.

²⁸ *Id.*

²⁹ *The USAF Judge Advocate General’s Department: A History*, THE REPORTER, Dec. 1995, at 32, 32.

³⁰ Major General Harmon served two terms as the mayor of Urbana, Illinois, from 1929-1933. THE USAF JAG BULLETIN REPORTER, Mar. 1960, at 3, 5.

³¹ Maj Gen Harmon’s management style of avoiding bureaucracy and empowering subordinates with authority was unusual in the structured military of the 1940s and 1950s, but has been the hallmark of Air Force leadership for many years. Carroll, *supra* note 19 at 7.

³² Traditionally, a corps is a body of professionals treated separately from the line of the military, whereas, a department is an organizational component of the overall military function. *The Early Years, Reorganization*, THE REPORTER, Dec. 1996, at 32, 32. Interestingly, in 1948 the Army went the other way, transforming itself from a Department to a Corps. The Selective Service Act of 1948, Pub. L. 80-625.

³³ *The Harmon Years Continued*, THE REPORTER, Sept. 1996, at 28, 28.

³⁴ TJAG Speech, Jan. 27, 1999, http://aflsa.jag.af.mil/groups/air_force/speeches/TJAG_investiture.htm.

³⁵ On the organization of the Department during this period, see Carroll, *supra* note 19, at 5-7.

³⁶ Recollection of Major General Kuhfeld. Carroll, *supra* note 19 at 5.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Approximately two million convictions were handed down by courts-martial during World War II. WILLIAM T. GENEROUS, JR., SWORDS AND SCALES 14 (1973), citing Congressional floor debates on the UCMJ.

⁴⁰ *Id.* at 15.

⁴¹ See discussion in GENEROUS, *supra* note 39 at 14-21.

⁴² Act of May 5, 1950, 65 Stat. 108. The legislation also provided for establishment of a civilian appellate court, the Court of Military Review.

⁴³ On this subject, see *The USAF Judge Advocate General's Department: A History* (The Early Years, continued), THE REPORTER, Dec. 1995, at 32, 33-34.

⁴⁴ GENEROUS, *supra* note 39, at 68, citing Judge Advocate General, Conference of the JAG, USAF, April 9-10, 1951, Bolling AFB, Report, on file at Stanford University Library Government Documents Collection.

⁴⁵ *The Harmon Years Continued*, *supra* note 33, at 29.

⁴⁶ *Historian*, THE REPORTER, March 1997, at 31, 31.

⁴⁷ *The Harmon Years Continued*, *supra* note 33, at 30.

⁴⁸ On the subject of Judge Advocates in the Korean War, see Colonel (ret.) Walter L. Lewis, *The JAG in the Korean War*, THE REPORTER, Winter 1984, at 2.

⁴⁹ See *id.*, reprinted in this edition.

⁵⁰ *The Jag School*, THE REPORTER, June 1995, at 31, 31.

⁵¹ Major General Reginald Harmon, *Our Mission and Function*, JAG BULLETIN, March 1959, at 4, 5.

⁵² *Id.* at 5-9.

⁵³ See Major General Harmon's comments in *The Harmon Years Continued*, *supra* note 33, at 28.

⁵⁴ There have been major criticisms of the system over the years despite changes in it. See, e.g., JOHN M. LINDLEY, "A SOLDIER IS ALSO A CITIZEN," THE CONTROVERSY OVER MILITARY JUSTICE, 1917-1920 (1990); ROBERT SHERRILL, MILITARY JUSTICE IS TO JUSTICE AS MILITARY MUSIC IS TO MUSIC (1969).

⁵⁵ Public Law 90-632, Oct. 24, 1968.

⁵⁶ Major Lynn G. Norton, *The Area Defense Counsel Program*, THE REPORTER, this edition.

⁵⁷ See the Manual for Courts-Martial United States (1998 Edition), Appendix 25, for a historical look at the executive orders that have amended the manual since 1984.

⁵⁸ 483 U.S. 435 (1987), reversing its decision requiring service-connectedness. *O'Callahan v. Parker*, 395 U.S. 258 (1969).

⁵⁹ Oral History of Major General James S. Cheney, USAF (ret.), "Navigating the Law," (March 10-12, 1992).

⁶⁰ Walter D. Phillips, *The Forensic Medicine Program*, THE REPORTER, Aug. 1978, at 23, 23.

⁶¹ Interview with Colonel Michael Emerson, Air Force Academy, (12 March 1999).

⁶² Phone interview by AFJAG School with Colonel Richard Rothenburg, (27 January 1999).

⁶³ The Coalition effort is discussed in DEPARTMENT OF DEFENSE, FINAL REPORT TO CONGRESS: CONDUCT OF THE PERSIAN GULF WAR (April 1992), at app. I.

⁶⁴ See Colonel Scott L. Silliman, *JAG Goes to War: The Desert Storm Deployment*, 37 A.F.L.Rev. 85 (1994).

⁶⁵ In direct support of Operations DESERT SHIELD/STORM as of 11 March 1991. *Id.* at 91.

⁶⁶ See generally, Steven Keeva, *Lawyers in the War Room*, ABA JOURNAL, Dec. 1991, at 52.

⁶⁷ Interview with Lt Col Terrie M. Gent, HQ USAF/JA-O, (15 March 1999).

⁶⁸ The JA-O website is at: aflsa.jag.af.mil/GROUPS/AIR_FORCE/JA-O.

⁶⁹ Useful introductions to the operational world are: TOM CLANCY, *FIGHTER WING* (1995); Robert A. Coe and Michael N. Schmitt, *Fighter Ops for Shoe Clerks*, 42 A.F.L. REV. 49 (1997).

⁷⁰ On the "revolution in military affairs," see WILLIAM S. COHEN (SECRETARY OF DEFENSE), ANNUAL REPORT TO THE PRESIDENT AND THE CONGRESS, ch. 13 (The Revolution in Military Affairs and Joint Vision 2010) (1998); Dennis M. Drew, *Technology and the American Way of War: Worshipping a False Idol?* A.F. J. LOGISTICS, Winter 1987, at 21; James R. Fitzsimonds, *The Coming Military Revolution: Opportunities and Risks*, PARAMETERS, Summer 1995, at 30; Dan Goure, *Is There a Military-Technical Revolution in America's Future?*, WASHINGTON QUART., Autumn 1993, at 175; Andrew F. Krepinevich, *Cavalry to Computer: The Pattern of Military Revolutions*, in STRATEGY AND FORCE PLANNING 582 (Naval War College Faculty eds., 1995); Andrew F. Krepinevich, *Keeping Pace with the Military-Technical Revolution*, ISSUES IN SCIENCE & TECHNOLOGY, Summer 1994, at 23; Kenneth F. McKenzie, *Beyond Luddites and Magicians: Examining the MTR*, PARAMETERS, Summer 1995, at 15; Abhi Shelat, *An Empty Revolution: MTR Expectations Fall Short*, HARV. INT'L REV., Summer 1994, at 52.

⁷¹ For instance, on the future and international law, see Charles J. Dunlap, Jr., *Technology and the 21st Century Battlefied: Recomplicating Moral Life for the Statesman and the Soldier*, U.S. Army War College Strategic Studies Institute Monograph (Jan. 1999); Michael N. Schmitt, *Bellum Americanum: The U.S. View of Twenty-First Century War and Its Possible Implications for the Law of Armed Conflict*, 19 MICH. J. INT'L L.1051 (1998); Michael N. Schmitt, *Future War and the Principle of Distinction*, forthcoming in 1999 ISRAEL YEARBOOK ON HUMAN RIGHTS AND YALE HUMAN RIGHTS AND DEVELOPMENT JOURNAL (1999).

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An Australian Tropical Town

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MILITARY LAW AT PORT MORESBY, 1943

A Memoir

**COLONEL MYRON L. BIRNBAUM,
RETIRED**

Port Moresby, New Guinea, 1943 – the shell of an Australian tropical town surrounded by miles of open areas sprinkled with trees, into which thousands of American and Australian troops were moving in preparation for an effort to dislodge the Japanese –first, from the shore of the island and then on northward.

I arrived on the scene in late 1942—an artillery officer with a law degree and a year of practice plus about two years of active duty behind me. I had been in a troopship in mid-Pacific on 7 December 1941, flown into and evacuated out of Java, stationed briefly at several Australian cities, before I arrived as a replacement at what was then an Aussie dependency. As the result of transportation delays, the job for which I had been requested was already filled when I arrived, but I met a San Francisco lawyer named Dodd McRae, who like many others had been turned from civilian life into a judge advocate through the wartime JAG School at Ann Arbor. He was there on TDY from Australia, charged with expediting some general courts-martial, especially nine sodomy cases reflecting a homosexual “ring.” He was delighted to have an attorney at hand, albeit a tyro, who might defend the cases.

How I got eight out of nine acquittals and/or “busts” is another story. The first reaction was a proposal to shanghai me to Milne Bay, farther east on the island and even less attractive—there were enemy forces still menacing that base. But Dodd, in standard reaction, said, “Nonsense—make him your TJA.” And thus I began some fourteen months as [a]lmost all the law there was at Moresby.

The town itself marked the end of a peninsula enclosing a landlocked bay, much like San Francisco, except that the distance from the sea beach to the bay was less than a half mile. There was only one pier area alongside the town with deep enough anchorage for ocean-going vessels, and that of mod-

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**Captain
Birnbaum
at Port
Moresby,
1943.**

U.S. Army Signal
Corps Photo.

est length. However, near the far end of the bay, there was deep-water anchorage. The American engineers had built a very substantial pier into deep water which would accommodate several ships. The native population had been moved “across the Bay”—off-limits to Yanks and Aussies.

Fanned out on both sides of the main road up-country from the town were military installations—tents, improvised frame structures, and thatched huts. The Papuans quickly and efficiently made excellent versions of the latter, and an approved request to the Aussie “town major” would promptly produce a handsome structure of almost any desired size, with a modicum of interior partitions, waterproof and relatively cool in the prevailing heat and humidity. Many of the units were service units—port battalions (i.e., stevedores), engineers, quartermaster, ordnance, medical, some light antiaircraft. However, the most notable units were elements of the Army Air Corps. In the air assault against the Japanese on the north shore of the island and farther beyond, I recall seeing in the Moresby area at various times and in various numbers: P-38s, P-39s, P-40s, P-47s, A-20s, B-17s, B-24s, B-25s, B-26s, and innumerable C-46s and C-47s, occasional C-53s, on mail and courier runs from the States, and some Aussie planes, mostly passing through. B-25s were the workhorses, performing tasks never envisioned by the designers, often based on modifications and techniques devised by the legendary Pappy Myers. The number of airstrips built in the area reached six, primarily designated by their distance from “town” – 3, 5, 7, 12, 14, and 16 mile. (They had names, too – Ward’s (the original), Jackson (still the postwar airfield), Laloki, Bomana.)

It would take pages to set the stage, but our charter is to say something of the court-martial practice in this dubious

paradise. The law of the time was the Articles of War as explicated in the 1928 Manual for Courts-Martial (some minor changes led to a 1943 revised preprint). The only other available law book was the Digest of Opinions of the Judge Advocate General, 1912-1940. My work included prosecution of special and general courts-martial, as well as occasionally acting as summary court for cases arising within the “Base Section” itself.

To say that everything was simpler than 1983 practice understates the obvious. True, there was an investigation under [Article of War] 70 before a general court-martial, but I acted as investigating officer and then as trial judge advocate in the same case.² General court-martial jurisdiction was at a headquarters at Brisbane, Australia, as remote and impersonal as an Olympian god. There was no judge advocate at Moresby most of the time, though a couple appeared on brief TDYs. My rater was the local adjutant general.

Administration was streamlined, and the Army “indorsement” system was the key to correspondence. But with few typewriters, no photocopiers, and a shortage of typing and carbon papers, only the essentials were committed to type. During most of the period I had one enlisted assistant, a patient, diligent, long-suffering two- (later three-) striper named Cichon (pronounced Shee-on) who did all of the administration which I didn’t and acted as court reporter in all of my general courts-martial. His problem: On his best day his shorthand wasn’t much over 55 wpm; his typing, 35 wpm. The office typewriter was a Royal portable, rugged, dependable, but infuriating.³ From this modest device emanated the records which determined the fate, even the life or death, of many dozens of soldiers.

The offenses we tried were a mixed bag: disobedience and disrespect; larceny; disorderly conduct; assault and related

cases; sleeping on post and leaving post;⁴ possibly a false claim or perjury; a sprinkling of others. [There were] few AWOLs or desertions-nowhere to go. Almost no drunkenness except when someone made jungle juice, as MacArthur rather effectively barred alcoholic beverages from the area. No rape-almost no women with the forces, and the native women were carefully kept beyond off-limits boundaries by the Australians. I did prosecute and obtained convictions on three murders as capital cases; there may have been one or two manslaughters as well. 🦅

¹ The articles which stem from this typewriter usually are assiduous in avoiding the first person. But this falls in the category of war stories, and we’ll let the I’s and me’s fall where they may.

² Though this shocks contemporary practitioners, I still find no problem with it. As investigating officer, I was meticulous, as I knew I would have to rely on my work. As prosecutor, I could always depend on the investigation; I had done it myself. Many countries use such a system.

³ Until shortly before WWII, statute precluded Army units (not HQs) from utilizing any labor-saving devices; this included typewriters. Companies and batteries in the 1930s generally had one beat-up typewriter, purchased from “company funds.” These Royals, purchased by the thousands in 1939-40 or so, became ubiquitous in the Army during the War.

⁴ One of the knottiest legal points was that these were distinct offenses. If a sentinel was found sleeping, the greatest precision was needed in defining the limits of his post. A wrong guess resulted in acquittal.

Me and Mr. B

COLONEL J. JEREMIAH MAHONEY

Colonel Myron L. Birnbaum was long retired from active duty by the time I met him in early 1980. Of course, I had heard of him because—as a civilian—he was the Special Assistant to the Director of the Judiciary for Clemency and Rehabilitation. In the early 1970’s, many of my clients, many of the accused I prosecuted, and many of those I sentenced as a special court-martial judge¹ wound up going through the 3320th Retraining Group, at Lowry AFB, Colorado.² But, as I say, I never met this memorable character until I was assigned to the Air Force Court of Military Review as an appellate judge.

As a Captain, Mr. Birnbaum had been stationed in New Guinea during WW II. I know this—not because we ever discussed it—but because a REPORTER article³ detailed the early military career of Mr. Birnbaum. One of the accompanying photos showed him in tropical environs wearing a khaki uniform with a pith helmet. That uniform, later modified slightly and designated Air Force Shade “1505,” was worn by me on the last authorized day before its phase-out in 1978, when I was serving as a trial judge at Clark Air Base, Republic of the Philippines. The common uniform, reminiscent of colonial times, was a tenuous link, but I felt a kindred experience—serving in hot humid parts of the Pacific—even though I had the advantages of only a cold war, and air-conditioning.

Mr. Birnbaum made reference to his prior military experience only when he needed to give a concrete example of some arcane concept he was expounding upon. Some of those anecdotes were preserved in footnotes; other are lost except to the extent the learned lesson was assimilated and embraced in a published opinion. Most of the basic questions I had for “Col. B”⁴ were not

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Capt J. Jeremiah Mahoney in "Shade 1505" at Clark AB, Philippines, 1976.



Photo courtesy of Colonel J. Jeremiah Mahoney

"those procedures evolved because that's the way we always did it"

ones of law, but were along the lines of why UCMJ procedures evolved the way they did. Today, of course, I understand that those procedures evolved because that's the way we always did it—or the way the Army did it—or the Brits before them. But then, I was of a mind to find out *why*, and Mr. Birnbaum was the available repository of Departmental History.

I was first referred to "Mr. B" by Colonel Bill Early, who was the Chief Judge of the Court of Review until his retirement in 1981.⁵ Because of statutory restrictions⁶ Colonel Early was not my supervisor, but he was the first colonel with whom I had a routine working relationship, and he was one of the most thoughtful, tactful, and intellectual Judge Advocates I had encountered up to that early⁷ point in my career. He was of a disposition to let fellow judges run a jurisprudential inspiration into the ground before gently easing them back to reality.⁸ Part of that "running to ground" was often an historical consultation with "Mr. B."

Mr. Birnbaum was never a mentor in the sense that the word is used today, but he always found time for me—and countless others—who sought out the historical underpinnings of our system of military justice. Almost any question prompted a stab into the numerous and slightly-overlapping piles of papers on his overcrowded desk. The office itself was small and unimpressive, with few mementos on the wall. Each foray into the stack resulted in a colorful story, possibly embellished slightly to hold the interest of the listener, or to emphasize the insight and wisdom of the teller. Of course, not every venture into the stack retrieved the precise story Mr. Birnbaum had in mind to illustrate his point. But all of the stories were too good to be brushed aside without at least a brief synopsis, so—not infrequently—three or more sagas played out before the originally sought nugget was found and explicated.⁹

"Mr. B" retired in the grade of colonel in 1971, and immediately began civilian employment as the Special Assistant for

Clemency and Rehabilitation Matters.¹⁰ He was fond of recounting that he actually *lost* money as a result of his civilian job, since his military retirement was reduced by the amount of his civilian pay, on top of which he had to pay commuting and parking expenses. In that regard, he was the driver of a carpool, and at least weekly the exiles at Buzzard Point¹¹ were entertained by stories—ranging from humorous to stark terror—emanating from members of "Mr. B's" carpool. There were benign foibles, bad radio stations played too loudly,¹² near misses, and an occasional fender bender. In the latter category, it was hard to tell simply by looking at "Mr. B's" 1968 Ford station wagon, because it was the obvious victim of countless rough encounters, and only the accidental scraping off of road dust—or the traumatic exposure of unruddered metal—would confirm a new insult. One of our clerks on the Court of Review, Mrs. Elva Smith, sometimes took hours to settle down from the horrors of the morning commute, and often spoke wistfully of the day she could retire or find another carpool.

In addition to his vast knowledge and colorful personality, "Mr. B" was well known as the Department's Poet Laureate. A retirement or farewell luncheon at Buzzard Point was hardly complete without presentation of a thoughtfully researched and well-tuned piece of poetry. Typically, "Mr. B" read the poem himself, and presented the framed version to the recipient. I felt more honor in that personalized tribute than any other memento I was presented upon my reassignment from the Court of Review. It hangs on my office wall to this day, still prompting impertinent questions from young judge advocates.¹³ 🦋

¹ From the inception of the 1968 UCMJ as included in the MCM, 1969 (revised), there were part-time special court-martial judges throughout the Air Force until the fall of 1972 when full-time special court-martial military judges were assigned to each of the eight world-wide judicial circuits. Like many captains in those days, I was appointed a part-time judge after accumulating about 25 cases by the middle of my second year of active duty. I served as such until I was appointed as a full time special court judge two years later, in the Fall of 1973.

² The 3320th was established at Amarillo AFB, Texas in 1951, and moved to Lowry AFB, Colorado in 1967. It was redesignated as the 3320th Corrections and Rehabilitation Group in 1976, and downsized to a squadron the following year. It was deactivated with the closure of Lowry AFB in 1993, and its function is now performed by the Return-to-Duty Program at the Charleston Naval Brig.

³ THE REPORTER, Fall 1983 No. 1, at 8-9. After graduating from Stanford Law School and practicing for a year, Lt. Birnbaum found himself on a troopship in mid-Pacific on 7 December 1941. He arrived at his first duty station, Port Moresby, New Guinea, after unplanned stops at Java and several Australian cities, occasioned by the outbreak of World War II. By the time he arrived, his billet as an artillery officer had already been filled, so he seized the opportunity to make himself available to the nearest judge advocate, and wound up serving the next 14 months as a trial judge advocate.

⁴ Colonel Birnbaum was universally referred to and addressed as “Mr. B,” or “Col B.” Both were terms of respect.

⁵ Colonel William N. Early is now the Central Legal Staff Director for the Court of Appeals for the Armed Forces.

⁶ Title 10 U.S.C. 866(g), Article 66(g), UCMJ.

⁷ No pun intended. I was a major at the time. Coincidentally, however, it was not uncommon for more senior judge advocates to refer to the chief judge as the “late” Bill Early.

⁸ On a more practical note, it was Colonel Early, in collaboration with Mr. Birnbaum, who had the foresight to establish the standardized 2½ inch thickness limit for each volume in a record of trial.

⁹ It was my casual observation, confirmed by others, that “Mr. B” never quite got any piece of paper back in its previous position, although it almost always went back in the same pile. Once, when another judge wanted to see the same source document “Mr. B” had shown to me three days earlier, he related that “Mr. B” went directly to its new location, without hesitation.

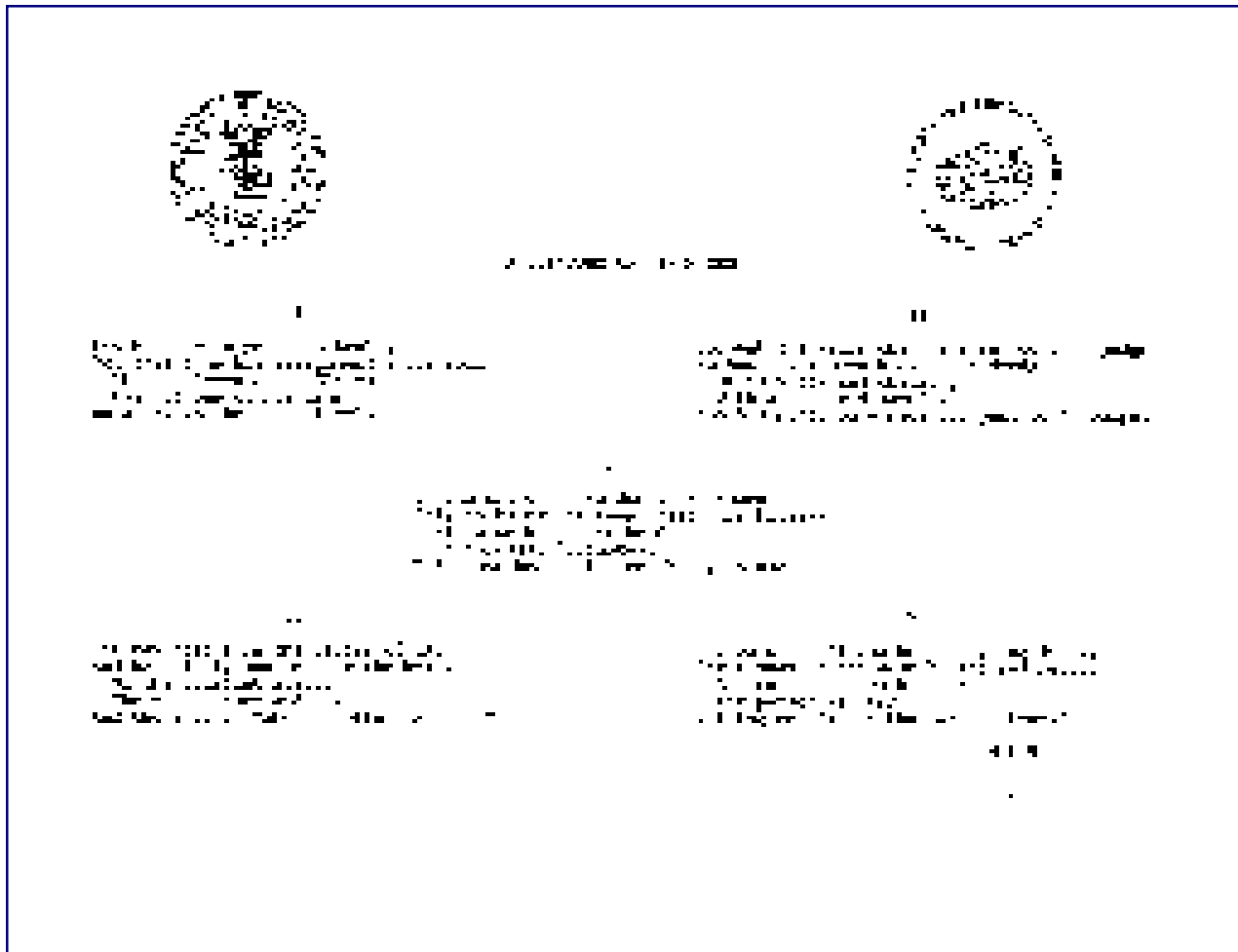
¹⁰ While still serving in that capacity, Colonel Birnbaum passed away in 1984.

¹¹ “Buzzard Point” was the name of the geographic location in the southwestern part of the District of Columbia, on the northern shore of the Anacostia River, directly across from the Naval Station Anacostia, which is east of—and contigu-

ous to—Bolling Air Force Base. The location—which still appears on most maps—was aptly named because that “point” on the river was used by the cavalry at nearby Fort McNair as the designated dumping ground for dead horses. The building in which most of the JAG department was located was a GSA leased building that formerly housed the local FBI unit. The FBI had evacuated most of its people because the neighborhood was too rough, desolate, and unpleasant. Shortly thereafter, Air Force JAG was kicked out of the Forrestal Building (with its scenic view of the Mall, near the Smithsonian Institute) to accommodate Dr. Schlesinger, and the newly created Department of Energy. When the JAG offices moved to Buzzard Point, the only remaining FBI function was the local high-security lockup, maintained on the top floor. So it was that we were able to look out our windows and witness the commotion and media frenzy accompanying the delivery of John W. Hinckley, Jr., on 30 March 1981, for booking and arraignment.

¹² This may have been due to the confluence of Mr. B’s diminished hearing and his background as a jazz musician (saxophone was the rumored instrument) in the late 30’s and early 40’s, while at Stanford University.

¹³ The attached “quincunx of limericks” is Mr. Birnbaum’s only reported poetic dalliance beyond iambic pentameter.



Courtesy of Colonel J. Jeremiah Mahoney

*From Enlisted Court Reporter at Kirtland AFB Legal Office in 1949
to Retirement as a Judge Advocate in 1973*

Fascinating Journey

LIEUTENANT COLONEL LARRY I. ASHLOCK, RETIRED

It was a different era then. In early May 1949, I arrived at the train station in downtown Albuquerque, New Mexico, fresh from completing the 26-week stenographic course at Fort Francis E. Warren (now Francis E. Warren AFB), Cheyenne, Wyoming, eager to put that training to use at my first duty station, Kirtland AFB. I was a 17-year-old Private First Class. I telephoned the base of my arrival, and in due time was picked up by a sergeant in a jeep. The buildings at Kirtland were white, temporary wooden structures of World War II vintage. The parade ground occupied a prominent location. Except for collar or lapel insignia and the shoulder patch, the Air Force uniform was identical to the Army's: khaki in warm weather, olive drab in cold. It was, as they said, a "brown shoe" Air Force. Officers wore a distinctive, higher quality uniform, generally of gabardine. There were no "WAFs" (Women Air Force) and relatively few civilian employees.

The barracks were two-story, open-bay types with unfinished, uninsulated interiors and, of course, were hot in summer and cold in winter. They contained two or three rooms upstairs for the highest ranking NCOs. The rest of the men had designated space in the open bay, a GI cot, and a GI footlocker. The HQ Squadron commander and first sergeant conducted frequent stand-by inspections on Saturday mornings. All troops who lived in the barracks (some were married and lived elsewhere) stood at attention beside their bunk, attired in a fresh Class "A" uniform and spit-shined shoes. Besides personal appearance and grooming, the inspectors checked the opened footlockers and the manner in which cots were made up for compliance with the rules.

Sometimes the stand-by inspections were followed by a parade, although parades gradually became less frequent. But, KP and bay orderly duties never abated. I rejoiced when, in July 1951, I became a staff sergeant and hence was no longer subject to those duties.

Paydays were monthly and, at least for some time, required that enlisted men stand at parade rest in the pay line

Lieutenant Colonel Ashlock (LL.B., University of Iowa; S.J.D., George Washington University) retired from service as an Air Force judge advocate on 31 July 1973.

until they reached the pay officer, to whom they would report and salute. The pay officer, normally the squadron commander, wore a sidearm. He would call out the man's name and the amount of pay due him. A man seated beside the pay officer counted out the cash. Standing near the end of the pay line were a few men who wanted to make sure they collected what was owed them by reason of loans or poker debts.

There was a consolidated mess hall at Kirtland AFB. For breakfast, you could choose eggs or cold cereal, but lunches and evening meals featured a single menu. One man guarded the milk supply at all times, passing out a half-pint carton per man. Seconds were rare.

For recreation, there was a gym, swimming pool and the usual sports. There was also a live band every Saturday night at the nicely renovated NCO Club. The Service Club director brought a busload of local young women out to the base for a dance once or twice a week.

My first duty assignment was in the single-story, H-shaped headquarters building, in front of which stood a P-39 Bell Air Cobra fighter plane on static display. My boss was the Base Sergeant Major, Master Sergeant Thomas (master sergeant was then the highest enlisted rank). He was, as he should be, all business. He set up a desk for me in an entryway adjoining the office of Captain Noland, the Adjutant, leading to the office of the base commander, Colonel Harold A. Gunn. Colonel Gunn had no secretary; the Sergeant Major and Adjutant performed that function. It was largely a man's Air Force back then. My main duty was to type a stencil of the Daily Bulletin, which contained such official information as the duty roster for Officer of the Day, as well as unofficial matters. This was a choice job for anyone, let alone a neophyte. Still, after several weeks I asked for and was permitted to transfer to the Base Legal Office, where I hoped to put my shorthand to greater use.

Into The Legal World

The Legal Office was located in one corner of a second H-shaped building, directly behind Base HQ. That building was shared by the Base Inspector General, Provost Marshal (today's Security Forces chief), and a "crypto" office. The Legal Officer was Major Talmadge D. Cooper, a nonlawyer

pilot. A rather dashing figure, he was sometimes accompanied by his beautiful Irish Setter as he strode into or out of his office, which occupied most of one of our two rooms. The office NCOIC, Master Sergeant Wilburn G. Moore, had served as a major in the China-Burma-India Theater of operations. One of his main duties was Claims. Under him was then-Staff Sergeant Ray D. Paar, a self-effacing, highly able older gentleman who taught me the court-reporting ropes via “OJT.” He wore pilot’s wings he had earned during the First World War. I respected both of these fine NCOs with whom I worked over the next three and one-half years. Finally, there was Liz—she was a clerk, and me.

The stark courtroom adjoined our cramped office. The court members’ bench covered most of the far wall, across one end of the “H.” In front of the bench stood counsel tables and a small desk for the court reporter. Near the entrance was a low railing with a swinging gate. To the best of my recollection, there was no seating for spectators, nor do I recall ever having seen the flag displayed.

The few trials at that time were usually special courts-martial. In addition to courts-martial, administrative board hearings were held in the courtroom to determine whether enlisted men should be “kicked out” for ineptitude or repeated misconduct. Sergeant Paar recorded the court and board proceedings in shorthand, then transcribed his notes in preparing the record. I sat in the courtroom with him, observing and recording as much as I could.

While I was at Kirtland AFB, stenotype machines existed, but none of our reporters used anything but shorthand. We heard talk of steno-masks being tried out at some other locations. I bought and was learning to use a stenotype machine by the time I left Kirtland.

Sometime during that first year, a new, blue-covered Manual for Courts-Martial, U.S. Air Forces, 1949, was published, replacing the 1928 manual.

Nineteen-fifty was an eventful year. On June 25, the Korean War began, and all enlisted men were “frozen” in the service for one year, including men whose enlistments expired during that time. Also, Congress enacted the Uniform Code of Military Justice (it was far closer to the Articles of War applicable to the Army than to the Articles for the Government of the Navy). In the same year, the Air Force adopted the blue uniform, replacing an interim hybrid that consisted of khakis adorned with a blue cap, tie, belt, winged star chevrons, and black shoes.

Racial integration came to Kirtland AFB during 1950, but it seemed to be a nonevent. During basic training at Lackland AFB in the summer of 1948, I had seen tarpaper-covered barracks that housed black airmen in a separate area of the base. I never saw anything of the kind at Kirtland AFB. Actually, there were few minority servicemen on the base to integrate.

To the best of my knowledge, there were never any racial or ethnic problems.

It was probably in 1950 that the Legal Office changed in size and composition. Lieutenant Colonel Thatcher Harwood, a dignified, reserved lawyer, and all business succeeded Major Cooper. He was joined by several other military lawyers, most of whom were also pilots, and two civilian court reporters. Before long, the office moved to a nearby, separate, one-story building of our own. Conditions remained crowded—even more so than before. Only two officers had a private office: Colonel Harwood, of course, and Major Shapiro, who was the only officer who gave what little legal assistance was provided. Few people sought legal assistance, possibly because it was not then offered to dependents. That might explain why I do not recall ever seeing any civilians in the Major’s office.

Despite the conditions, the work atmosphere was always businesslike. There was very little chitchat. Unlike my later experiences elsewhere, there were no office parties or other mixed gatherings. Everyone was considerate and courteous. This extended both ways. Officers and senior NCOs always addressed subordinates by rank or title and surname. This was typical of officer-NCO-enlisted-civilian relationships that then existed elsewhere on the base. It worked well.

In 1950, I began taking college courses off base. Unlike today, few, if any, such courses were offered on base. However, one of the best features of the Air Force was that it did encourage educational self-improvement, and it paid for all or most of the expenses.

Legal Work

I believe Colonel Gunn had authority, as Base and Wing Commander, to convene only special courts-martial. Most trials were by special court, which had no law member or law officer. They were usually prosecuted and defended by lay counsel, but occasionally Captain Murphy, a military lawyer, and perhaps other attorneys from our office, defended accused airmen. Even a local civilian attorney, Richard Krannawitter (called “Diamond Dick” for his bejeweled tiepin and ring), defended a case or two.

More than one case involved unlawful cohabitation. Although these cases also commonly involved a charge of falsely claiming a dependent’s allowance, prosecuting unlawful cohabitation might seem remarkable by today’s standards. There were two or three cases involving possession of marijuana; that was the first I had ever heard of the drug. Each defendant received a heavy sentence, possibly the maximum the court could adjudge.

One case to which I was assigned must have been a general court-martial because the accused was a captain charged with writing bad checks. The case must have been before the

Standing near the end of the pay line were a few men who wanted to make sure they collected what was owed them by reason of loans or poker debts.

UCMJ became effective, because the military “judge” never sat apart from the court members while I was at Kirtland AFB, so far as I recall (however, I was not the only court reporter.) A handwriting expert gave precise and detailed explanations for his conclusion that the accused’s handwriting was on the checks, and the captain was convicted.

Colonel Harwood took me and perhaps one of his military lawyers on TDY to Fort Hood at Killeen, Texas, for the trial of a serviceman who had stolen a box of hand grenades from a storage “igloo” there. Colonel Harwood must have served as law member or law officer. Not surprisingly, I felt uneasy when the prosecutor put the grenades on my reporter’s desk to be marked for identification!

Besides general and special courts-martial, there were summary courts-martial, conducted by one officer, usually of field grade and often a unit commander. Inasmuch as the maximum sentence was relatively minor (30 days of confinement, no punitive discharge), the only record made of the case was the charge sheet. Before the UCMJ took effect, unit commanders imposed nonjudicial punishment under Article of War 104, later replaced by Article 15.

The Legal Office also conducted or advised on such varied matters as Line of Duty investigations and Flying Evaluation Boards.

In the Legal Office, I was privileged to work with lawyer-pilots, men of integrity and achievement – and some mischief. Colonel Harwood had a big, shiny 1949 Buick sedan in which he took pride. One day, as he and some of the other officers went out to his parked car to drive to lunch, there was a loud bang. I hurried to the window and looked out, where I saw smoke billowing from under the Buick’s hood and some of the officers nearly doubled over with laughter. It seems that Major Boland, one of the lawyer-pilots, had rigged up a smoke bomb.

I saw several aircraft while at Kirtland, although some may not have been based there. These aircraft included the F-80, the Air Force’s first operational jet, if my understanding is correct; the old, reliable C-47 “Gooney Bird” workhorse; and a small, twin-engine plane whose tail section resembled a B-24 Liberator’s. I once accompanied my Squadron Commander, First Lieutenant Harris, when he piloted one of these planes on a brief trip. I do not recall the mission, but it demonstrated the readiness of a military reporter to go on short notice.

Becoming An Officer

The Air Force, understandably, needed pilots during the Korean War. In 1952, it was rumored that lawyer-pilots would be required to choose which career path they would follow. Sometime during that year, having by then completed about two and one-half years of college (including a year’s credit for military experience), I took the qualifying tests for pilot training, then given at Lowry AFB, followed by a physical. The medical officer tested and retested my vision before concluding it did not meet the uncorrected 20/20 vision requirement. It was a big disappointment, but I promptly applied for Officer Candidate School (OCS), took the tests, and was accepted into the next class, which began in early January of 1953.

It was in OCS at Lackland AFB that I first saw WAFs. I felt sorry for them because they evidently had to undergo the same arduous program as we men, while wearing the unbecoming “Li’l Abner” brogans that were part of their uniform. It was also in OCS that I first encountered a television set in a dayroom, but we had very little time to enjoy it.

I was proud to be able to help my classmates when the subject of Military Justice was taught. Near the end of that course, a mock trial was conducted in a large auditorium for the benefit of the Officer Candidates, and I was asked to serve as law officer. It was the only time I wore a colonel’s eagles!

After OCS and further training, I served for three years as an intelligence officer, first with RB-36s at Ramey AFB, Puerto Rico, then with B-47s at Hunter AFB, Savannah, Georgia. By continuing off-duty studies, I accumulated the three years of college then required for admission to the Iowa Law School in my hometown, Iowa City. I left the Air Force, intending and hoping to return as a judge advocate.

Becoming A Judge Advocate

With the help of my wife, who worked as a registered nurse, and the GI Bill, I was financially able to complete law school. After graduation and upon the recommendation of a professor, I had the opportunity to serve for a year as a law clerk for the honorable Henry N. Graven, a Federal District Judge. Part way through the year, having been active in the Air Force Reserve, I was promoted to captain and applied for recall to active duty. Orders were slow in coming, and my year ended. Concerned, I picked up the telephone in the small town where Judge Graven lived and had an office, and asked the operator to “Get me the Pentagon!” She replied, “Where’s that?”

Orders came, assigning me to a large training command base. During the second year there, I became deeply troubled by what to me was clearly improper command influence affecting a sergeant. I tendered my resignation, but it was rejected because construction of the Berlin Wall had begun in 1961 and tensions with the Soviets were high. Fortunately, my boss was good enough to transfer me to another base, where another senior judge advocate asked if I was interested in a regular commission; I was.

During my “Pentagon tour” at Air Force HQ in 1972, I earned a doctorate (S.J.D.) from the George Washington University Law Center. My dissertation, entitled “The Military Trial Judge,” encompassed changes made by the Military Justice Act of 1968 and earlier laws. My last duty assignment was as Deputy Staff Judge Advocate, Fifth Air Force, in the outskirts of Tokyo.

In July 1973, I retired in order to pursue the private practice of law. I will forever be indebted to the fine military lawyers at Kirtland AFB for the inspiration that they provided. 🙏

PARTNERS AT LAST

A brief retrospection on
the Air Force Judge Advocate Reserve

MAJOR MICHAEL E. GUILLORY

Any reflection on the first fifty years of the Air Force Judge Advocate General's (JAG) Department would not be complete without consideration of its Reserve counterpart. The two departments have coexisted almost from the very beginning, and today enjoy a symbiotic relationship in which neither could function without the other. While it is now difficult to imagine the active and reserve sides not working together, this affiliation has only developed over the last twenty years. Before then, reservists were more like the practice squad on a college football team. They were part of the outfit, but there was no place on the bench to seat them. This article will briefly explore how the relationship began, and the steps that were taken to achieve the current interdependence.¹

Because history is best understood when seen through the eyes of the participants, three men who experienced the initial fifty years were asked to share their memories. While no one person can tell the entire story, collectively

these now retired reservists provide a chronicle as replete as any wartime arsenal. Before we meet our protagonists, however, some background information is in order.

A Slow Beginning

The rough start was not due to a lack of lofty aspirations or ambitious goals. As early as 1946, the Army Air Force saw the need to train organized reserve units and individual reservists.² The idea was to maintain a balanced force of active duty, reserve units, and individuals. Individual reservists were to be "trained, commissioned, and enlisted personnel with military experience, available for assignments, to augment units of the Regular Army Air Forces, Air Units of the National Guard, and the Air Reserve."³ The Air Reserve plan called for training "to develop and qualify individuals for their contemplated duties in the event of an emergency" and to "discover, develop, and qualify officers with special abilities to assume technical, staff, or command

responsibilities." As the plan indicates, the emphasis was on maintaining readiness for mobilization, not assisting with daily mission requirements.

Colonel Michael B. Jennison, USAFR, indicates in his book, *The Tuesday Knight Group. Air Force Reserve Judge Advocate Training*⁴, that the Army Air Force planners wanted centralized management for the reserve forces. To this end they assigned responsibility for reserve training to the Air Defense Command, under Lieutenant General George E. Stratemeyer. General Stratemeyer's first individual mobi-

Major Guillory (B.A., Louisiana State University, J.D., Tulane University) is a Category B reservist assigned as an instructor to The Air Force Judge Advocate General School, Maxwell Air Force Base, Alabama. He is a member of the Florida State Bar and resides in Tampa. He apologizes for the continuing football metaphor, but the paper was completed on Super Bowl Sunday, and the pre-game hype proved contagious.

The rough start was not due to a lack of lofty aspirations or ambitious goals.

lization assignee effort was to assign reservists to positions at the headquarters and to its six Numbered Air Forces across the country. As the quote below indicates, he wanted them to be available and fully familiar with their immediate duties in case of mobilization:

To the air reservist who is qualified and in a position to devote slightly more time to the program than the average air reservist, we are offering a special type of training. This is known as the mobilization assignment. It consists of an assignment to a regular air force operation unit of an air force headquarters echelon or higher, as an understudy of a full-time regular Air Force officer or enlisted man in a standard position in the unit's organization. In this position, the individual contributes part-time duty whenever he finds it convenient. He also is called for two weeks' tour of active duty, to be served in the headquarters to which he is assigned, if he so desires. This frequent and close working with a specific group makes these air reservists most valuable. Should an emergency occur, we would be able to expand our staffs immediately with the addition of trained personnel already cognizant of our general operating procedures.⁵

After the Air Force became a separate service, Air Defense Command issued a regulation governing mobilization assignments. Air Force Regulation (AFR) 35-26 defined a mobilization assignment as "the assignment of an individual reservist to the position which he will fill in the event of a national emergency."⁶ A year later, General Hoyt S. Vandenburg, the Air Force Chief of Staff, directed all the major commands to take up reserve training responsibilities and the Continental Air Command

(CONAC) was established. CONAC, with General Stratemeyer as its first commander, took over Air Defense Command's responsibilities for air defense of the United States, tactical support of the ground forces, and reserve and Air National Guard training.

As far as judge advocates were concerned, the first Air Force TJAG, Major General Reginald Harmon, "had some firm views about what (his) reservists ought to do with their time. He was determined that (they) would get the training they needed to be useful upon mobilization."⁷ When General Harmon organized The Judge Advocate General's Department Reserve in 1949,⁸ he told Colonel Tom King, his first senior reserve counterpart, "I want a program that is useful in wartime or no program. I don't want to have a training program in name only. Train them for the jobs they'll have to take on active duty. We were an Army in between-the-wars doldrums, with no ambition to make a useful program. Idleness promotes idleness. I would have a useful program or no program."⁹

The initial mission of The Judge Advocate General's Department Reserve mirrored that of the Air Force Reserve as a whole. AFR 45-25, paragraph 3 stated that the role was "to furnish, in the event of an emergency, qualified Air Force judge advocate officers trained in time of peace in order to meet the mobilization requirements of the Department of the Air Force."

To facilitate all reserve training, the Air Force revised and extended its reserve-training operation in what became known as the Fiscal Year 1950 Reserve Program. In addition to existing unit, mobilization assignment, and correspondence course projects, the Fiscal Year 1950 program established the Volunteer Air Reserve Training (VART). The VART was the first major effort to train large numbers of individual reservists who were not considered essential for immediate mobilization. The program consisted of Air Reserve groups, squadrons, and flights managed by the reservists themselves, with active duty liaison personnel.¹⁰ The VART units trained by listening to lectures on their Air Force specialties, along with semi-

nars, field trips, and other training courses available in the area.

With the regulations and training programs then in place, early Air Force reservists could not be faulted for expecting to receive significant attention from their active duty brethren. However, as the recollections of two men who experienced the times reveal, the true picture was far different.

When hostilities ceased at the end of the Second World War, our first reservist, Robert M. Martin of Dallas, Texas, joined thousands of his fellow servicemen in returning to civilian life and using the GI bill to attend college. Martin, who had been a cryptographer with the Army Signal Corps, attended the University of Texas Law School and graduated in 1947. In 1950, he was recruited into the JAG Reserve along with thirty other former military-members-turned-lawyer by one of Major General Reginald C. Harmon's emissaries. Martin became a First Lieutenant and was assigned to the 9170th VART in Dallas as a mobilization augmentee (MA).

While Martin and his fellow MAs expected to train for possible mobilization, they instead spent the next eight years attending classes on nonmilitary subjects at what they affectionately referred to as the "Little Red School House."¹¹ These evening-a-month sessions were for non-pay/points-only. In fairness to the Air Force, it should be noted that CONAC did rent office space in Dallas and provided specialized legal courses for the reserve judge advocates. But beyond the CONAC courses and the lectures — and officially being called Category B reservists in 1956 — the 9170th members' only other involvement with the Air Force came every five or six years when a promotion order arrived in the mail.

Lieutenant Martin did attend a luncheon with General Harmon on one occasion, however. The brash lieutenant asked TJAG why the Department was not interested in having more WWII veterans on active duty. General Harmon replied that they were all a bunch of ex-pilots who had gone to law school and were no better informed about military law than recent graduates, so he would just as soon get his

judge advocates right out of school.¹² Apparently the General thought that younger lawyers would be more amenable to training.

A significant change did occur in Captain Martin's reserve life in 1960 when the Air Force removed reserve training responsibility from CONAC and placed it under the major commands. Category B reservists also began to receive pay for participation at this time. He was assigned to Headquarters Air Defense Command in Colorado Springs¹³ for his two week annual tours and, in consideration of his domicile, allowed to perform his inactive duty training sessions (IDTs) at the 9027th Flying Training Squadron at Perrin AFB, Sherman, Texas. By working for the major commands, MAs were now able to assist the active duty and perform legal work. Despite this improvement, Captain Martin and his fellow reservists were still not permitted to say that they helped the mission of the Air Force. The official policy remained that they were training for mobilization — a tenet that nearly would become reality in October of 1962 with the Cuban missile crisis.

As the United States and the Soviet Union edged toward war, recently promoted Major Martin received a small card in the mail advising him to prepare to mobilize. Along with the card came instructions to have his bags packed and to listen to the radio for the activation signal. Despite his wife's reluctance, Major Martin tuned in. Fortunately, the crisis abated and his mobilization orders never came.

Major Martin would spend the next ten years performing his monthly IDTs in Texas and his annual tours in Colorado. In 1965, the Air Reserve Records Center in Denver, which had been established in 1953 to house all reserve records, became the Air Reserve Personnel Center (ARPC). This signaled the first step toward the consolidation of reserve matters that continues today. Because everyday management of the reservists was still handled by the major commands and Air Reserve regions, MAs such as Martin detected no differences. They did their tours and were promoted every five or six years. The

I want a program that is useful in wartime or no program.

real metamorphosis would not begin until the activation of the 9005th Air Reserve Squadron on 1 July 1972.

When Major General James Cheney became TJAG in 1969 he did not like the inconsistent training within the Reserve. To remedy this problem, he created the 9005th at ARPC, and all Category B MAs were reassigned from the major commands to the new squadron. In addition to centralizing the management, this also eliminated a system where promotions and careers depended on the staffing levels at the assigned command. With the 9005th in place, the Reserve Department was ready for the sweeping changes that would come with the Total Force concept. But before we venture any farther, we must first visit with our Category A reservist, Lawrence Miller, to discover what had been occurring in the unit world.

Lawrence Miller, of Errol, New Hampshire, had been a radio operator/gunner on B-17s during the Second World War. Afterwards, he went to Syracuse University and then Boston University for law school. In 1950, as the Korean conflict kicked off, then-Staff Sergeant Miller was recalled to return to flying. Because he was in law school, a board recommended that he be allowed to complete his education provided that he join an active reserve unit. Miller completed his studies and in 1954 attended JASOC class 54-B at Maxwell AFB. After graduation, he joined the 89th fighter/bomber wing, a reserve unit that had been created at Hanscom AFB after the original unit had mobilized for combat. He received his commission and became a first lieutenant and the unit judge advocate.

Upon his arrival at the unit, Lieutenant Miller quickly learned that the legal work would not be very taxing. Heeding General Harmon's warning about idleness, Miller began to spend his weekends and two-week annual tours managing the unit's small arms training program. While he may not have been honing his military legal skills, he at least put the time to good use. He would eventually become a competitive shooter and try out for the U.S. Olympic team. In the end, however, his ca-

reer as a judge advocate would ultimately prove more successful.

Even though Lieutenant Miller's only involvement with active duty judge advocates was the occasional ORI, his skills as the small arms range manager were apparently recognized. In the course of six years he was promoted to Captain, and then Major. By 1962, Major Miller had three groups and six attorneys working for him. In October of that year, however, the Cuban missile crisis would force him to give up command of the range, at least for a few months.

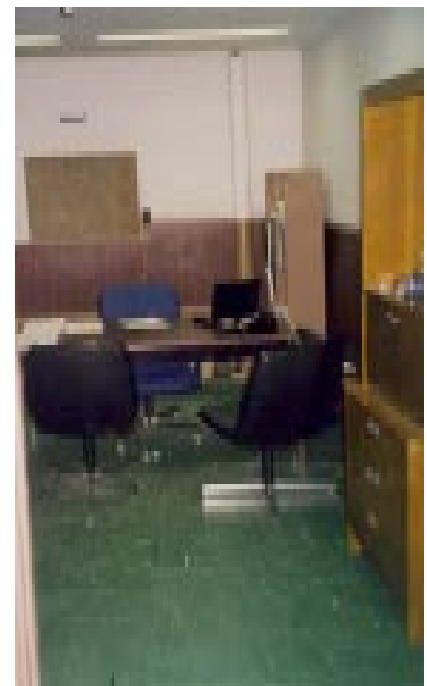
Prior to the activation of the 89th during the crisis, the unit had been more of a country club for WWII veterans than a fighting force. The pilots were flying outdated aircraft and their missions consisted primarily of trips to the Caribbean. But at least they could fly. As a judge advocate, Major Miller had no support from the active side by way of books, instructions, or training. This changed when the unit was activated for the missile crisis. Major Miller and his staff of attorneys began running discharge boards and performing legal functions; tasks that caught the attention of the active duty judge advocates. After the missiles were removed from Cuba, Major Miller was summoned to Washington. He suspected that the reason he had been called to the capitol was that the active duty attorneys were surprised to learn that he had existed.¹⁴

While in Washington, Major Miller complained to The Judge Advocate General, Albert Kuhlfield, and anyone else who would listen, about the lack of support. But the issue that concerned the active duty side the most was who was in charge of the unit judge advocates — the unit commander or TJAG. Nothing was resolved, and after a week Major Miller returned to Massachusetts. For the next ten years little would change in the unit world. In 1968, CONAC was renamed Headquarters Air Force Reserve (AFRES) and made responsible for the Category A reserve operational units. But this had no real impact on Major Miller. As with Major Martin, Miller's life would not be transformed until the arrival of the Total Force concept during the following decade.

Total Force

With the post-Vietnam drawdown and the elimination of the draft, the Department of Defense was searching for a way to maintain mission readiness. The answer was the Total Force concept, which envisioned the integration of the active and reserve components in combat operations, training, and all other routine missions. From the beginning, the idea meant different things to different people. For Martin it was belated recognition of what MAs were already doing. Miller saw the change as elevating the units from being unwanted stepchildren to becoming an integral part of the mission.

By 1973 Major General Harold R. Vague had become TJAG. Shortly afterwards, he assigned then-Colonel Martin as the MA to the Assistant Judge Advocate General. This got Martin promoted to Brigadier General. General Vague told his new general that he should devote his energy to ensuring that all Reserve JAGs were ready to be mobilized. At the same time, Miller, who was now a colonel and whose wife had recently died, agreed to go on active duty as the Reserve Advisor to TJAG. Before then active duty JAGs working in career management had handled the reserve position as an additional duty.



The last of these was Lieutenant Colonel Robert Norris, who in Colonel Miller's opinion was, glad to pass on the job.¹⁵

Now working together, Brigadier General Martin and Colonel Miller recognized the need to improve reserve training if reservists were going to play a larger role in defense operations. General Martin knew that at the base offices most MAs were exclusively doing legal assistance. For his part, Colonel Miller had seen too many Category A JAGs go to Vietnam unprepared when their units were recalled. In response to their concerns, General Vague issued AFR 45-2 (Training of Reserve of the Air Force Judge Advocates) in May of 1975. The regulation acknowledged that legal assistance was important, but also instructed reservists to train to augment the active duty forces by learning military justice and civil law. It further created the refresher course at the JAG School that is now called the Reserve Forces Judge Advocate Course, and required that all reservists attend every five years.

In 1975 Brigadier General Martin became the MA to TJAG and received another star. While the promotion was a milestone for General Martin, the true significance was the assignment. Prior to this, the preceding MAs had come from the Headquarters Group in Washington D.C., familiarly known as the Tuesday Knights because they performed their training on Tuesday evenings. General Martin's selection sent a message to the Reserve world that everyone was a valuable player, no matter his or her geographical location.

Still believing that more frequent training was needed, Major General Martin and Colonel Miller would collaborate once again. In 1978 they created the Annual Survey of the Law. Under the format that they devised, fourteen legal subjects were discussed at weekend courses. To make travel easier, five geographically scattered bases were utilized.

After nearly thirty-five years of service, Major General Martin retired in October of 1980. In return for his dedication he was awarded the Distin-

guished Service Medal, the first given to a reserve JAG.

Colonel Miller would retire in 1982, after spending nine years as the Reserve Advisor to TJAG. During this period he worked for three different men, and along with General Martin, he was integral in implementing necessary changes for the reserve community. Colonel Miller also made an impression on the active duty JAGs. Apparently, General Vague often carried a ruler to measure insignia, which so concerned Colonel Miller that he would use a caliper to put on his devices. One day the general was conducting his inspections and came upon Lieutenant Colonel Keith Nelson, an active duty JAG working in career management. When Lieutenant Colonel Nelson failed the ruler test, General Vague commented that, "if the reservist knows how to put on his uniform, why can't you."¹⁶ Lieutenant Colonel Nelson would eventually master the wearing of his uniform, and as TJAG would be one of the strongest innovators in improving the Reserve.

While the concept of total force was



Moving from associate to partner, reservists have become an integral part of the JAG Department.

first envisioned in the seventies, it was not until the eighties that the integration we see today between the active and reserve forces became a reality. This can be seen in both the attitudes and the actions of the two JAG Departments. An article in the spring 84 issue of *THE REPORTER*, VOLUME 14, No. 3, succinctly captures the new attitude:

Speaking of the reserves, remember how different it was when reserve officers came to your office, and (if we will be honest with ourselves) most of us dreaded the day? What will we do with them? Unless we had a heavy legal assistance load, they would go to the exchange, and go to the exchange, and go to the exchange. Today we have such an integrated program with the reserves that we simply could not operate the Air Force JAG function without them.

From 1980 to 1985 Major General Thomas Bruton was TJAG. The changes made during his tenure reflected the new partnership between the active and reserve departments. In 1984, General Bruton made then Colonel Michel Levant the first reservist appointed to the Air Force Court of Military Review. A year later the General made Colonel Levant the first reserve military judge. Another important improvement under General Bruton was the Harper Plan¹⁷, which changed the way reservists were assigned. Before then, bases near large metropolitan areas, such as McGuire AFB, often had fifty-to-sixty MAs. In contrast, the more remote northern tier bases usually did without. The Harper Plan eliminated the practice of attaching MAs to bases near their homes, no matter what the manning. It also provided that the number of reserve MAs would not exceed the active duty JAGs at the base, and that assignments were based on the needs of the Air Force, not personal convenience. While the plan did meet some resistance — reservists assigned far away from home did not like having to pay their own travel

expenses to perform their inactive duty training (IDT) — MAs were now placed where they were needed, and every base could benefit from their skills.

Upon General Bruton's retirement in 1985, Major General Robert Norris became TJAG. As was traditional, he turned over responsibility of the reserve program to his deputy. In this case it was the one-time Lieutenant Colonel with the uniform problems, now a Brigadier General, Keith Nelson. To better understand where some of General Nelson's ideas for the Reserve originated, we turn to an MA who worked closely with him for several years, Brigadier General Michael McCarthy.

While on active duty, General McCarthy had been a prosecutor, defense counsel, military judge, and staff judge advocate.¹⁸ However, when he became an MA in 1966 he was only qualified to do legal assistance. After years of discontentment with the work and training he was given as a reservist, General McCarthy was given an opportunity to express his dissatisfaction in 1981 when Colonel Keith Nelson, the Tactical Air Command (TAC) staff judge advocate, asked his reservists for their opinions. General McCarthy suggested creating a reserve training program where reservists were rotated through each section in a legal office every few years so that they learned how to perform the tasks they would

need if they were ever mobilized. He also recommended maintaining a folder in which the training was documented. Colonel Nelson adopted the ideas. After serving in nearly every major command and improving reserve training in each, General McCarthy retired in 1993.

One of General Nelson's first acts as Deputy TJAG was to implement the TAC reserve training program Air Force wide. He also ended the practice of re-assigning reservists to round out their experience. In a letter to the major command staff judge advocates he stated:

No IMA will be reattached from a base with Reserve undermanning without the approval of the Deputy Judge Advocate General. Requests for re-attachment will be submitted to ARPC/JAR, who will forward them to AF/JAER with a recommendation for approval or disapproval. In general, mission requirements preclude a career progression program for reserve judge advocates, or career broadening assignments for IMAs below the grade of O-6.¹⁹

General Nelson did not limit his changes to the training program and assignments. In 1988, he made the An-



Air Reserve Personnel Center and Maj Gen Dennis Gray

nual Survey of the Law more uniform in its curriculum by eliminating the different locations and directing that the survey would be held only in Denver and at the JAG school at Maxwell. Before long Denver was the exclusive location. That same year, the Air Force promulgated the first canons of ethics for the Reserve Department. Before then, the American Bar Association and the various state bars had attempted to handle the unique ethical issues encountered by attorneys working for the Air Force on a part-time basis. While some reservists expressed opposition to the uniform rules, and many gray areas still existed, most accepted the canons as necessary guidance for a legal environment that was growing more complex every year.

When General Norris retired in 1988, General Nelson became the TJAG. Unlike his predecessors, he maintained control of the reserve program rather than delegate it to his deputy. Shortly after becoming TJAG, General Nelson completely revised AFR 45-2, the reserve training regulation. The new regulation directed the use of formal training folders and specific training forms, shortened the Reserve Forces Judge Advocate Course to one week, and established that reservists would now attend it and the Annual Survey of the Law every four years. This last change created the current cycle of attending one training course every two years. In 1989, General Nelson eliminated overseas training by reservists. His rationale was that Reserve JAGs were not an augmentation force, but rather were there to replace active duty personnel in base legal offices. The first major test of mobilization to follow, the Gulf War, would not prove him wrong.

That reserve forces were becoming indispensable became apparent as early as 1984 with Operation ELDORADO CANYON, the attacks on Libya. Without the assistance of unit and ANG tankers, the mission could not have been carried out. But the first significant test of the integrated concept came during the showdown with Iraq in 1990 when over 30,000 Air Force reservists were mobilized. While most were assigned to units or came from the Guard, several

thousand were IMAs. From the IMA pool, only a few were judge advocates, but a reserve attorney and a paralegal did deploy to the AOR. For attorneys, the lack of active duty JAGs going overseas had obviated the need for mobilization. However, this did not stop reservists from flocking to their assigned bases to assist the legal offices with the last minute demand for wills and Powers of Attorney.

The fighting in the desert had eliminated any lingering doubts about the need for a well-trained reserve force, but the ending of the Cold War would provide the ultimate validation of the Total Force concept. As the active forces have been reduced and the emphasis of the mission changed to more peacekeeping and humanitarian roles, the Reserve has become indispensable. Evidence of this can be found in Air Force Policy Directive (AFPD) 51-8, the new training directive issued in 1993 by The Judge Advocate General, Major General Nolan Sklute. Paragraph 1.1 states that: "The Air Force relies to a significant degree on Air Reserve Component judge advocates and paralegals in meeting its defense commitments."²⁰

Today and Tomorrow

While the active forces have borne the brunt of the troop reductions, the Reserve has not been unaffected. For the first time since the post-Vietnam drawdown of the mid-seventies, the Reserve Department conducted a screen-out board and 75 people were shown the door. Funding also was cut and the Category B program began to run out of money for man-days by the end of fiscal year. But positive changes have also resulted. In 1996, ROPMA, the Reserve Officer Personnel Management Act, became law. Unlike the previous system where reservists were practically guaranteed to make O-5 as long as they had minimum participation and remained alive, ROPMA, when fully implemented, will shorten the time between promotions and promote the best qualified, ensuring a quality force for the future.

Today we have such an integrated program with the reserves that we simply could not operate the Air Force JAG function without them.

To assist the active side in meeting the challenges brought about by the high operation tempos, the Air Force JAG Reserve has instituted several programs. An extensive database has now been created that identifies reservists by specialty codes. This should enable staff judge advocates and their staff to exploit more easily the expertise of the reserve force. Telecommuting has also been authorized as a means to perform work. Special projects can now be assigned to reservists and completed without the added time and expense of travel.

With the creation of the Expeditionary Aerospace Force concept and the emphasis on operational law, the Reserve is also becoming more involved in deployment related areas. JAG Flag, the annual deployment exercise for judge advocates and paralegals, includes a reserve team. Additionally, the JAG School now conducts the Deployed Air Reserve Components Operations and Law Course for ANG and unit commanders and their attorneys, who will now likely deploy together.

For a glimpse as to where the Reserve is heading, we need look no farther than the recent transformation of AFRES into the Air Force Reserve Command (AFRC). ARPC is now a direct reporting unit to the new command, and most people see this as the first step toward unification of the unit and IMA worlds. With an increasing emphasis being shown toward also integrating the Unit and ANG judge advocates, the day in which the Reserve will be a seamless organization where reservists transfer between all three groups may not be very far off.

During its first fifty years the Air Force JAG Reserve has grown from a disparate collection of underutilized, poorly trained backups into an increasingly integrated force multiplier that the active side could not function without. The current MA to TJAG, Major General Dennis Gray sees the move toward integration continuing and creating even more flexibility in assignments and training.²¹ If so, the Reserve should become an even stronger player in the future, and instead of trying to find a

place on the bench, will be more concerned with playing in the game. 🏆

¹ While the Air Force Reserve includes Category A and B reservists and Air National Guardsmen, this article will primarily focus on mobilization augmentees, and, to a lesser extent, unit reservists.

² R. Simons, *History of the Individual Mobilization Augmentee Program 5* (1991) (Air Reserve Personnel Center Special Study)

³ *Army Air Forces' Plan for the Air Reserve*, Copsey, Robert L., Major General, USAF, "Your Reserve History," in CONACM 45-1, Reserve Recruiting Manual (1954). At the end of the Second World War the Army Air Force Reserve had 130 bases with tactical and training aircraft. By 1947 this number was reduced to only 70 active bases, and before long the numbers dwindled to forty-one, and then twenty-three. Manpower peaked at 458,000 people in April 1948 with participation opportunities limited to bases near large population centers. Satellite base operations for flying training did not survive the budget cuts, and by the start of the Korean War, barely over a quarter of the more than 400,000 reservists were participating in any kind of training.

⁴ MICHAEL B. JENNISON, *THE TUESDAY KNIGHT GROUP. AIR FORCE RESERVE JUDGE ADVOCATE TRAINING* (Printed by Air Force Legal Services Agency (1996)).

⁵ Lieutenant General George E. Stratemeyer, Address at the Air Reserve Association annual convention, Oklahoma City (Nov 1947); JENNISON, *supra* note 4, at 7.

⁶ AFR 35-26 (December 1947).

⁷ Jennison interview with Major General Reginald A. Harmon (USAF ret.) (Jan 1991), JENNISON, *supra* note 4, at 6.

⁸ Air Force Chief of Staff, General Hoyt S. Vandenburg signed General Order No. 7, dated 25 January 1949, establishing the JAG Department. Six months later General Vandenburg signed General Order No. 49 dated 13 July 1949, establishing the JAG Department Reserve.

⁹ Jennison interview with Harmon, JENNISON, *supra* note 4, at 6.

¹⁰ JENNISON, *supra* note 4, at 8.

¹¹ Telephone interview with Major General Martin (USAFR ret.) (21 January 1999). General Martin recalled one boring lecture in particular about the solar system. Hence the tag, "Little Red School House".

¹² *Id.* General Harmon's comments are as remembered by General Martin, and not direct quotes.

¹³ The forerunner of Space Command.

¹⁴ Telephone interview with Colonel Lawrence Miller (USAFR ret.) (20 January 1999).

¹⁵ *Id.*

¹⁶ *Id.* The author also thanks Major General Nelson (USAF ret.) for permission to use this story.

¹⁷ Named after Major General William L. Harper (USAFR ret), the man who designed the program. JENNISON, *supra* note 4, at 74. In his interview with Colonel Jennison on 26 March 1990, General Harper related the following: "The Harper Plan—I think they named it after me because they thought it wasn't going to work. I designed the program because there just weren't any means for deciding how to assign people to bases. Some bases were just overflowing and had too many people to give meaningful work to. Others couldn't get a reservist when they wanted one. It was time to do a little selection in assignments. We tried it, and it worked. People complained, but they accepted it."

¹⁸ Telephone interview with Brigadier General Michael McCarthy (USAFR ret.) (24 January 1999).

¹⁹ General Nelson letter dated 26 August 1987.

²⁰ Reiterated with the revision to AFPD 51-8 issued on 15 November 1998.

²¹ Telephone interview with Major General Dennis Gray (USAFR) (22 January 1999).

In 1981, the Air National Guard (ANG) State commander of an unnamed state was desperate for a judge advocate staff officer.¹ Recruiting a judge advocate (JAG or JA) was so difficult that the brigadier general felt compelled to personally recruit an Army National Guard transportation officer—a mere lieutenant—who happened to be a civilian lawyer, to fill his lieutenant colonel slot. Upon arrival on base, the new JAG found that no one could remember ever having a lawyer on staff. The chaplain had occupied the JAG slot for years. The new JAG was assured he could learn all that was needed to know for his new job by nine weeks of immersion into military law at the Judge Advocate Staff Officer Course (JASOC).

Nine weeks at the Air Force Judge Advocate General School (JAG School) at Maxwell Air Force Base proved that no one at JASOC knew much about the Air

National Guard. To the lieutenant, it appeared that JAG School instructors did not sense that the legal requirements for the Air Guard were unique and the Air Force “answer” often did not apply to the Guard. The focus assumed that ANG judge advocates would be called-up on federal status like their Air Force Reserve counterparts, to backfill active duty offices. Therefore, the rules would merge on federal status so why worry about unique state issues that the instructors weren’t qualified to answer. That focus would change much later in the Department’s history.

Once back at the State Headquarters unit, our now-fully trained judge advocate found plenty of work to do. Fortunately, there was no one within the state

to contradict any pontificated legal opinion. One time, early in his tenure, our new ANG JA came upon a unique legal issue where sage guidance was needed. Since there were almost four weeks between unit drills, there seemed plenty of time to get proper advice. A detailed letter was fired off to The National

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Lieutenant Colonel Marsh (B.S., Mississippi University for Women; J.D., University of Arizona) is the Deputy Staff Judge Advocate for the 187th Fighter Wing, Alabama Air National Guard. She is a member of the Alabama Bar.



The ANG Journey

Junior Associate to Full Partner

COLONEL WILLIAM ALEXANDER

LIEUTENANT COLONEL SANDRA G. MARSH

Guard Bureau/JA for answers. Eighteen months later, after numerous follow-up letters and telephone calls, a surprise letter from the Bureau was delivered to the JA. That letter said, in essence, “figure it out yourself.” Well, an answer had been crafted and implemented seventeen months earlier. But that letter from the Guard Bureau aptly described the entirety of legal support for Air National Guard judge advocates at the time. And ANG JAs have been figuring it out for ourselves ever since.

Low visibility. In the early 1980s, Air National Guard judge advocates were required to attend Annual Survey of the Law (ASOL) and the Reserve Forces Judge Advocate Course (RFJAC), courses which did not discuss uniquely Guard issues. Other than these two courses, there were no training requirements or programs in place to assist Air Guard JAG officers in maintaining currency in areas in which they were expected to be proficient. Essentially, each state was left to its own resources to find solutions for legal problems facing ANG commanders and units. Fortunately, the level of training and support for the Air National Guard has risen exponentially

from The Judge Advocate General (TJAG) and the JAG School.

Interaction among ANG JAs and paralegals with their counterparts on active duty and in the reserves was extremely limited. Some Guard JAs occasionally trained for two weeks at an active duty base office. This two-week tour was the extent of Guard and active duty JA contact for many officers. And even then, the Guard judge advocates were underutilized, often doing nothing other than legal assistance. Though most Air Guard legal teams served their commanders admirably, their strengths and abilities were largely unknown to TJAG and the Air Force legal community.

What did our new ANG JA from that unnamed state do for his first two-week annual training tour? He went to Pope Air Force Base to work at the base legal office. Typical of the era, he was assigned, along with Air Force Reserve attorneys, to do legal assistance for the entire tour.

Can they perform? The low visibility of the ANG JA program led then-TJAG Major General Thomas Bruton to inquire how ANG judge advocates spent their time on drill weekends. He further questioned whether ANG judge advocates could perform their federal mission commensurate with their grade if mobilized. General Bruton envisioned ANG judge advocates serving as “back-fill” for active duty judge advocates in the event of mobilization, rather than remaining with their ANG units. He expressed concerns about ANG majors, lieutenant colonels and colonels having sufficient training and experience to be assigned as Staff Judge Advocates (SJAs) for Numbered Air Forces (NAFs) or Major Commands (MAJCOMs). He likewise showed con-

cern over ANG assignments as Military Judges, or as Directors or Deputy Directors of HQ USAF/JA Divisions (e.g., Civil Law, International Law, Claims, General Litigation).

With regard to General Bruton’s first question, ANG judge advocates then spent drill weekends performing many of the same functions as we do now - advising commanders on a variety of legal issues, serving as recorders, defense counsel and legal advisors for administrative boards, giving required briefings, preparing unit members for mobilization and providing legal assistance. As to TJAG’s second question regarding the capability of ANG judge advocates to perform a federal mission commensurate with their grade, the answer was . . . well, maybe not.

Completing required training. In 1982, requirements for ANG officers to maintain federal status as judge advocates included completing JASOC, attending RFJAC once every six years, and attending ASOL annually. A preliminary study conducted in 1982 by Brigadier General Thomas A. Facelle, the second ANG Assistant to TJAG, indicated that 83 of the 130 ANG judge advocates required to meet these course attendance standards did not. At the time, there was a detailed management, training and career program for judge advocates in the Air Force Reserves. By regulation, MAJCOM Staff Judge Advocates bore the responsibility for training reserve component judge advocates. However, ANG judge advocates were not included in the regulation-governed program and TJAG had no comparable program for the ANG.

General Facelle immediately established a goal of bringing ANG judge advocates current in required course attendance. Additionally, he implemented a plan to forge closer relationships with the MAJCOM Staff Judge Advocates and to establish training standards to satisfy all requirements of an ANG judge advocate’s federal mission. The plan included assignment of ANG judge advocates as liaisons to the MAJCOM and NAF Staff Judge Advocates. The liai-



sons were to be responsible for establishing relationships and rapport between ANG judge advocates and their active duty counterparts, monitoring compliance with training requirements, and facilitating meaningful training through active duty tours. General Facelle's plan further included the formation of an ANG JA Policy Council consisting of twelve ANG judge advocates to assist in the process. The Council workload was an additional duty grabbed by JA volunteers eager to make the Air Guard JA program a force multiplier. The ultimate goal of the newly formed Council was to make the "Total Force" policy a reality with regard to ANG JA.

The Council quickly made development and implementation of uniform training programs to be used by all ANG judge advocates and paralegals one of its top priorities. A Senior Enlisted Advisor was soon appointed to the Council to oversee paralegal training. By the end of 1983, all ANG judge advocates were in compliance with the training course attendance requirements. Additional training initiatives were underway, such as distribution of self-inspection checklists and encouraging training tours at active duty bases.

The most important initiative at the time was the preparation of the Air National Guard Commander's Legal Deskbook. Under the guidance and editor's pen of then-Lieutenant Colonel Robert Gruber, judge advocates from across the country authored a well-documented reference guide on legal issues unique to the Guard. The Deskbook was sorely needed in the field and upon publication was highly praised by all. A high compliment followed in the publication of *Commander and the Law*, an active duty deskbook similar to the Guard deskbook.

Recognizing ANG value. Over the next several years, ANG judge advocates demonstrated their commitment to their wartime missions and their relationship with the Air Force JA community grew. Air Guard judge advocates were invited to partici-

pate in active duty conferences. Active duty judge advocates performed staff assistance visits at ANG units. ANG judge advocates were among those chosen by TJAG as recruiters for the active duty judge advocate program. Students attending JASOC, RFJAC and the SJA course were given briefings about the ANG. TJAG pledged his support to help ANG judge advocates improve their skills, particularly in the area of military justice, and directed gaining Major Commands (MAJCOMs) to become more involved in overseeing the training. When a second judge advocate position was authorized for each ANG flying unit, TJAG established a policy for filling the positions, if possible, with judge advocates leaving active duty or transferring from the Air Force reserve program.

A comprehensive, uniform training plan for ANG judge advocates was officially implemented in 1987 when Air National Guard Regulation (ANGR) 50-9 was published. The regulation included a requirement for a training tour at an active duty base every other year, with a letter of evaluation to be rendered by the supervising active duty judge advocate. Training requirements were, for the first time, actively monitored and enforced.

The JAG School contributed greatly to the training program through its responsiveness to the continuing legal education needs of ANG judge advocates and paralegals. The School printed and distributed copies of the ANG JA Deskbook and the ANG Commander's Legal Deskbook, as well as a number of active duty publications, to ANG legal offices. The School made additional slots in its courses available for the ANG, moving the ANG to a position of equality with AF reserve personnel in terms of opportunity for course attendance.

As a result of the ANG's increased emphasis on training to meet federal mission requirements and the positive support of active duty judge advocates, TJAG was increasingly able to rely upon ANG judge advocates and paralegals to assist in active duty legal offices with manning shortages.

In 1990, TJAG recognized that ANG judge advocates are "citizen-soldiers" with civilian job responsibilities; TJAG approved reducing the requirement for active duty base tours to once every three years, and the requirement for ASOL attendance to every other year, with an extra day devoted exclusively to ANG topics.

Part of the Operational package. While increased commitment to meeting federal requirements was necessary and productive, for both the ANG and active duty judge advocate programs, the primary responsibility of ANG legal offices continued to be serving the needs of their commanders and units. This responsibility was never so visible as during Operations DESERT SHIELD and DESERT STORM when, within a period of 60 days, ANG legal offices prepared 17,700 wills and 13,894 powers of attorney and conducted 24,190 counseling sessions.

Increased cooperation between the ANG and AF Reserve judge advocates culminated in the first Deployed Air Reserve Components Operations Law Course (DARCOLC), held at the JAG School in early 1994. In the course,



Maj Gen Timothy Lowenberg

Current planners get optimum flexibility in the use of judge advocates from any of the components for almost any mission.

Reserve and Guard judge advocates and their commanders worked through a deployment scenario presenting a number of legal issues impacting command decisions. It was the outside continental United States (OCONUS) deployment from Hell scenario. The issues presented were historical and confounding issues from actual deployments.

The course was geared toward alerting the Commander-Judge Advocate team to legal problems that could arise on any deployment. The course prepared the team to resolve those problems. ANG and Reserve judge advocates served as lecturers and seminar leaders for the course. The course resulted in better-informed commanders and, importantly, increased commanders' appreciation for their judge advocates. In every instance, DARCOLC formed stronger bonds between commanders and JAs. Word of the course's usefulness spread quickly and now commanders, even active duty commanders, are eager to attend. The course is currently offered annually at the JAG School, and some consider the ANG/Air Reserve DARCOLC the best course at the School.

Absolutely, they can perform! By the mid-1990s, by all accounts, the ANG Judge Advocate program had moved from its previous status as "don't expect too much of that Associate," to that of a Partner. ANG JAs were more fully utilized as their training had better prepared them for the task at hand. Now, in 1996 where was our ANG junior partner from that unnamed state? That summer he deployed for two weeks to Spangdahlem, Germany to work at the base legal office for the 52nd Fighter Wing. He mentored a new judge advocate through his first court-martial, acted as the legal advisor for an administrative discharge board, wrote several briefing papers, and authored an original base policy for body piercing and tattoos. He was given a "Team Eifel" award by the Staff Judge Advocate for his contributions.

Prior to 1993, the United States

Air Force lacked any Civil Affairs capability; facilitating civilian-military relationships in a deployed environment. In late 1993, the ANG became the first and only Air Force component to have a Civil Affairs mission. TJAG's Civil Affairs responsibilities were assumed by ANG judge advocates in State Headquarters positions and given that mission as their wartime tasking. These senior judge advocates were identified for the mission because they possessed the experience and mature judgment necessary to be effective.

To be eligible to serve in a Civil Affairs capacity, ANG judge advocates are required to complete training at the John F. Kennedy Special Warfare School at Fort Bragg, North Carolina. The program started with one ANG JA deployed to Haiti; the mission proved highly successful and resulted in several judge advocates deployed in high visibility assignments to Bosnia-Herzegovina in support of the Dayton Accords. The recognized importance of the mission has led to creation of the position of ANG Assistant to Air Force Special Operations Command (AFSOC/JA), which is dedicated to the Civil Affairs mission.

The nature of the duties assumed by ANG judge advocates in the Civil Affairs arena continues to quickly expand. In 1999, ANG judge advocates will begin their fourth and fifth rotations to Bosnia-Herzegovina for 179-day tours. Work assignments in Bosnia have included the legal advisor to the Office of the High Representative, Chief of Environmental Law, the Election Commission, the War Crimes Investigation, the Bosnian Criminal Justice Reform Group, and more. Success has begotten more requests for ANG support. NATO and UN schools are now open to ANG Judge Advocates. The possibility of using ANG paralegals for Civil Affairs is presently under consideration.

In 1998, the Director of Training for the United Nations Peacekeeping Organization (UN/PKO) stated his concept of operations for ANG judge advocates. The concept included ANG judge advocates deployed as legal advisors to all United Nations Special Representa-


tives for the Secretary General (UNSRSG) in all major military exercises sponsored by the United States at the CINC-JCS level. Even more dramatic, the UN/PKO concept includes using ANG judge advocates to actually deploy with UN Special Representatives of the Secretary General to act as legal advisors on international humanitarian law issues. The concepts are currently being implemented. Two ANG judge advocates have been assigned to augment the full-time military staff at the United States Mission to the United Nations. ANG JAs have been selected to deploy in April and May 1999 as legal advisors to the UN Special Representatives for military exercises in Bolivia and South Africa. The United Nations has made a formal request to the United States government for Air National Guard Judge Advocates to develop and teach an eight day course on international humanitarian law to national military leaders worldwide. Presently that course is being developed by Air Guard JAs and upon approval by DoD, the State Department, and the UN, the course is expected to be first delivered in Jamaica in August, 1999.

ANG judge advocates who retired in the 1980s would not recognize the program of the late 1990s. The differences in significant assignments and commander dependence are staggering. In 1980, no one would have dreamed of ANG judge advocates being deployed as legal advisors for United Nations Peacekeeping Operations.

Has our ANG judge advocate from the unnamed state retired yet? Not yet; he's trying to contribute to TJAG's ANG JA Council and working as an Assistant to the JAG school and as an adjunct instructor; he's helping to put together (along with HQ USAF International Law Division and other ANG JAs) that UN course on international humanitarian law and hoping to go to Jamaica in August, 1999.

Worthy force multipliers. Major General Timothy Lowenberg, the current ANG Assistant to TJAG, has been at the forefront of progress of the Air Guard judge

advocate program. General Lowenberg recently spoke about the new legal partnership in the Air Force. He remarked, "During the past two decades, Air Force leaders of great vision created the environment for the Air Guard and Air Reserves to grow into worthy force multipliers for the active duty. That early vision of a Total Force is now paying huge dividends; current planners get optimum flexibility in the use of judge advocates from any of the components for almost any mission."

"Air Guard Judge Advocates bring valuable legal experience, both military and civilian, to the table of assets The Judge Advocate General uses to meet the legal challenges faced by the Air Force today. As we continue to prove ourselves with each important assignment, professional collegiality is gained and expectations grow. The Total Air Force Law Firm includes the Active, the Guard, and the Reserve. The Judge Advocate General of the Air Force now considers his Air National Guard judge advocates as full partners in the law firm. As full partners, we support one another, we respect one another, and we work together for the good of the Air Force and the good of the nation." 

¹ All facts are from the published TJAG's ANG Council History, *Father of the Council; The Facelle Years: 1982-1984; Dawning of A New Era: The Elliott Years: 1985-1989; Full Partnership and Beyond: The Pate Years: 1990-1993* (Vol. I through III) maintained at the AF Judge Advocate General School and at http://aflsa.jag.af.mil/GROUPS/NATIONAL_GUARD/ANG/SOURCE/history.htm (checked 16 March 1999), or from the author's personal knowledge or experience.

As full partners, we support one another, respect one another, and work together for the good of the Air Force and the Nation.



CAPTAIN DENISE M. BURKE
TECHNICAL SERGEANT SHERRIE L. ROGERS

IF NOT

For Paralegals...

The continuing success of the Air Force Judge Advocate General's Department in delivering quality legal services would not be possible without the contributions of talented and dedicated Air Force paralegals.

Paralegals, previously known as clerk-typists, legal specialists and legal technicians, have seen their duties and responsibilities evolve and grow with each passing year. Today's paralegals are well-trained, invaluable assets to legal offices worldwide. Their success stems, in part, from the significant and lasting contributions made by the preceding generations of

paralegals. These contributions include the creation of new paralegal positions and the implementation of comprehensive training programs. Important innovations have included the approval of the paralegal badge and the increased recognition of the contributions of Reserve and Air National Guard paralegals.

In the beginning, paralegals were classified as "administrative specialists." Despite their legal duties, some service members continued to refer to them as "clerk-typists." In the late 1940s, a fortunate few paralegals carried a letter properly introducing the bearer as a "legal specialist." This letter helped to garner recognition for the primary duties and responsibilities of Air Force paralegals. Several years later on 1 May

1955, the Air Force formally recognized the enlisted personnel working in the legal offices and authorized a new Air Force Specialty Code (AFSC). It changed from Legal Services AFSC "705X0" to Paralegal AFSC "881X0" in 1988 to the present day Paralegal AFSC "5J0X1" in 1991.

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Technical Sergeant Rogers is the Course Director for the Paralegal Craftsman Course, Air Force Judge Advocate General School.



(last page) CMSgt J. Prince at Basic Training, Lackland AFB in 1947; **(left to right)** Brig Gen House congratulating A1C K. Griffin for being honor graduate of paralegal class 721206A with CMSgt B. Miller; A1Cs Bojarski pinning on two line name tags.

Over the years, recognition of the contributions of the paralegals increased and their influence in the Department grew. On 3 September 1970, The Judge Advocate General (TJAG), Major General James C. Cheney, selected CMSgt Steve Swigonski to be the first “Special Assistant to TJAG for Legal Airman Affairs.” This position has since been renamed Senior Paralegal Manager to TJAG and nine chief master sergeants have served in the position.¹

Additional responsibility was given to Air Force paralegals when “test” Area Defense Counsel (ADC) offices were set up in the First Judicial Circuit on 1 January 1974. The pilot ADC program was implemented worldwide the same year and included new enlisted paralegal positions. These new positions were created at both the circuit-level and in the new defense counsel offices. They included Chief Court Ad-

ministrator, Circuit Court Administrator, Assistant Circuit Court Administrator and Area Defense Administrator (now known as Defense Paralegal). The Area Defense Counsel Program with its new paralegal positions was approved by the Chief of Staff of the Air Force on 22 July 1975.² In response to new paralegal duties and responsibilities, departmental leaders recognized the need for new training courses and initiatives.

Innovations in training

In October 1953, the first six-week Air Force Stenomask School was held at Bolling AFB, Washington D.C. At the time, the Air Force did not have a legal

school, so in 1954 legal specialists began attending the Naval Justice School at Newport, Rhode Island. On 5 January 1972, the Air Force’s Legal Services Specialist Course (3-level school) was opened at Keesler AFB, Mississippi. It was a comprehensive, six-week course, training new paralegals in their legal duties and responsibilities. Until 1993, many of the paralegal courses were taught at Keesler AFB, although some were held at the Air Force Judge Advocate General School (JAG School) at Maxwell AFB, Alabama.

New paralegal courses were developed throughout the 1970s, responding to the needs and expectations of

Paralegals learning in their old home at Keesler AFB.

Class 720329A graduation photo: (front, left to right) TSgt De Shaw, SSgt D. Segin, Sgt J. Holland, A1C L. Doyle, A1C G. Outten, A1C F. Cross, Amn T. Baker, and guest speaker Lt Col C. Slagle, Jr.; (back, left to right) Sgt J. Burge, Sgt S. Hefner, Amn C. Nowack, Amn F. Wilkes, Amn S. Rumery, Amn C. Parker, and Amn L. Turner.





Paralegals in action. (from left) a poster paralegal; Col R. Barbara presents a MSM to CMSgt J. Flake; and paralegals learning in their new home at Maxwell AFB.

paralegals and their supervising attorneys. Recognizing the need to train supervisory paralegals, a pilot Legal Services NCOIC Course was conducted from 5-16 August 1974 at the JAG School. The course was later renamed the Legal Services Advanced Course (LSAC) in 1976 and received the current title of Law Office Manager's Course (LOMC) in 1988. The Career Development Course (CDC) for 5-skill level was introduced in January 1975. Later, the Legal Services Specialist Refresher Course for Air National Guard and Reservists was approved in January 1978 and the first course was taught at Keesler AFB in August 1978.

Innovations in training continued in the 1980s. In 1980, the first Claims and Tort Litigation Course (CTLC) for legal specialists was taught at the JAG School. The short-lived Paralegal Advanced Legal Course (PALC) was held in 1992, but was quickly phased out in 1994. It was later incorporated along with CTLC in the Provisional Paralegal Craftsman Course that was introduced in August 1995.

To have all the Department's courses taught in one location, a new JAG School at Maxwell AFB was completed in 1993 and all of the enlisted paralegal courses were moved from Keesler AFB. Having all legal courses taught in one location encouraged "team building" and mutual respect between judge advocates and paralegals. Recognizing this "team concept," Judge Advocate Staff Officer Course (JASOC) students and 7-level paralegals were first paired up to work together on moot discharge boards in August 1997. This "experiment" has been an unqualified success,

helping attorneys and paralegals recognize the unique talents they each possess. In March 1998, legal research using LEXIS software was added to the 7-level curriculum.

Continuing education for Air Force paralegals has always been encouraged and increasing levels of proficiency are being required for upgrades. An associates degree program in paralegal studies was approved and implemented on 1 October 1979 by the Community College of the Air Force (CCAF). Further, upgrade to the 7-skill level required completion of the 2-volume Air Force Job Qualification System (AFJQS) that was adopted in December 1985. However, the proficiency requirements were changed again in October 1986. Now, a paralegal must be proficient in military justice or claims for the award of the

5-skill level and a paralegal must be proficient in both areas for the award of a 7-skill level.

Paralegal training has kept pace with technology. On 25 July 1997, the Paralegal Journeyman Course became the first CD-ROM CDC in Air Force history. The program was developed by SMSgt Val Eason and MSgt Jose Qulit. On 1 December 1998, the Air Force Personnel Center (AFPC) approved the use of these CDs in the Weighted Airman Promotion System (WAPS), making the paralegal career field the first in Air Force history to use CDs for WAPS preparation.³ Promotion and enhanced professional development opportunities are not the only benefits paralegals have enjoyed over the years.

(continued next page)



A paralegal using the stenomask method of court reporting.

"The perks"

Periodically, the Air Force has had difficulty keeping trained and experienced paralegals in the service. So in June 1971, the paralegal career field was awarded a variable reenlistment bonus.⁴ However, as first term reenlistment rates increased, the bonus was discontinued in February 1976. Today, we have come "full circle." An enlistment bonus was implemented for Zone A (21 months – 6 years of service) on 18 June 1998 and for Zone B (6 – 10 years of service) on 18 December 1998.⁵

In August 1971, TJAG authorized the wear of the two-line nametag.⁶ However in July 1983, paralegals assigned to the Air Force Logistics Command (AFLC), the Air Training Command (ATC) and to Pacific Air Forces (PACAF) were no longer authorized to wear the nametag. The commanders of these major commands (MAJCOM) had withdrawn the authority. Eventually, the nametag was completely phased out. The paralegal badge was approved in 1994 and active duty, as well as Reserve and Air National Guard (ANG) paralegals, began wearing the new badge.

The Total Force: Reserve and ANG paralegals

The new badge was just one way Air Reserve Component (ARC) paralegals also achieved recognition. Their service was commemorated by the creation of the Outstanding Reserve Legal Services Airman of the Year Award in 1983. The award was later renamed after CMSgt David Westbrook. In instituting this award and others, the Depart-

ment acknowledged the significant contributions made by ARC paralegals who supplement the active duty force and are frequently deployed worldwide. To ensure that they were fully equipped to perform their duties, additional requirements for Reserve and ANG paralegals were instituted.

In the 1980s, further training, as well as recognition of achievement, was also being mandated for Reserve and ANG paralegals. A new TJAG policy implemented in December 1984 required all reservists E-6 and below to receive updated training at least once every 5 years through the Refresher Course, CTLC or LSAC. During that same month, the first Reserve Forces Legal Services Personnel screening board was held at Air Reserve Personnel Center (ARPC) at Lowry AFB, CO. These innovations demonstrate that ARC paralegals will continue to be an invaluable asset to the Air Force.

As the Air Force Judge Advocate General's Department has evolved and changed, so have Air Force paralegals. They have worked along side judge advocates delivering the highest quality legal services. Their contributions have been numerous and significant. Without a doubt, this talented, dedicated and well-trained force will continue to excel! ⚡

¹ See biographies of the Senior

Paralegal Managers in this edition of THE REPORTER.

² See article on the ADC program by Major Norton in this edition of THE REPORTER.

³ Interview with MSgt Jose Quilit, Law Office Manager, Eglin AFB, Florida (3 December 1998).

⁴ Interview with SMSgt James Whitaker (USAF ret.), Air Force Judge Advocate General School staff (1 February 1999).

⁵ Telephone interview with CMSgt David A. Haskins, Senior Paralegal Manager to The Judge Advocate General (1 February 1999).

⁶ See article on Paralegal Badge in this edition of THE REPORTER.

Hard at work. (clockwise from immediately below) TSgt S. Rogers, TSgt Frazier teaching transcribing; SSgt R. Crockett.



Accepting The Challenge

TECHNICAL SERGEANT ANGELA X. BLACKSHAW

The Air Force Individual Mobilization Augmentee (IMA) paralegal program became an integral part of the Air Force legal department during the 1972 reorganization of The Judge Advocate General's Department Reserve and the Judge Advocate IMA program. The IMA paralegal component was established in 1975 as part of the 9005th Air Reserve Squadron, HQ Air Reserve Personnel Center (ARPC), Lowry AFB, Colorado. Today, of approximately 550 Guard and Reserve paralegals, more than 200 of those are IMA paralegals who provide vital research and administrative and clerical support at virtually every spot on the globe where there can be said to be a "legal office" or Area Defense Counsel office. They are led by CMSgt Deborah 'Fish' Fischer, the Chief, Reserve Paralegal Program, Office of the Staff Judge Advocate, who assumed her duties in 1994.

While IMA paralegals have contributed in many ways over the years, some of the more significant recent contributions occurred: in 1991, during Operations DESERT SHIELD/STORM; in 1992, when they provided extensive claims assistance after Hurricane Andrew; in 1995 during Operation SOUTHERN WATCH, Riyadh Saudi Arabia; in 1996 with NATO Bosnia and Operation SOUTHERN WATCH; helping to alleviate the extensive claims backlog at AFLSA/JACC in 1997; and in 1998 following Typhoon Paka.

In 1975, the first five Reserve IMA paralegals were assigned to HQ ARPC.

CMSgt Heyo W. Peters, CMSgt Walter H. Dodd, CMSgt Clyde E. Carter, CMSgt Eric W. Alexander, and CMSgt David Westbrook are the fabulous five whose outstanding contributions and dedicated service created what is known today as Air Reserve Component (ARC) Paralegals. Each one contributed to the success of the Reserve Paralegal Program.


In 1977, CMSgt Ken Fisher became the first Paralegal Program Manager. His tenure established such programs as the Reserve Paralegal Conference, Outstanding Reserve Legal Service Airman of the Year award, the MAJCOM Reserve Paralegal Workshop conducted at HQ ARPC. He also was key in the establishment of reservists attending the Legal Services Refresher Course, the Paralegal Advanced Legal Course, and the Claims and Tort Litigation Course. His countless efforts to build the paralegal program into an integral part of the Reserve Forces are noteworthy because, although some are renamed, these programs still exist today as part of the ARC paralegal training program.

In 1985, SMSgt (now CMSgt, Retired) Kushner took the reins as Reserve Paralegal Program Manager. In 1988, SMSgt Lani Burnett was selected to fill the Reserve Title 10, Statutory tour at HQ ARPC as the Chief, Reserve Paralegal Program. This position was upgraded and SMSgt Burnett was promoted to Chief Master Sergeant. She was the first reservist to fill this position. Her accomplishments include the first centralized Annual Survey of the Law Course

in June 1992. In 1992,
SMSgt Deborah

Fischer was selected as the acting Chief, Reserve Paralegal Program. In 1994 she assumed her Active Guard/Reserve tour as the Chief, Reserve Paralegal Program.

For the past four years, Chief Fischer's leadership, dedication, and vision have prepared the Reserve Paralegal program for the new millennium. By building upon the "Share the Wealth" program, paralegals can now take advantage of travel, training, and manning assistance in their support to legal offices worldwide. Chief Fischer has also established the Reserve Forces Senior Paralegal Executive Council, bringing together the senior paralegal leadership in the Guard, Reserve, and active duty to share information and set policy to ensure the best ARC paralegal program.

Like unit reservists, IMAs are the first-line backup for the Air Force in the event of war, national emergency or natural disaster. However, IMAs are unique in that they operate somewhat unilaterally—conducting their service lives outside the traditional organizational structure of unit reservists and, in conjunction with the needs of their active duty units, often taking the initiative to arrange their own participation and training. IMAs train with the active duty Air Force. Their minimum participation are twenty-four Inactive Duty Training periods: twelve days of IDTs and twelve days of annual tour each fiscal year. You will find highly trained, professional IMA paralegals working along side their active duty counterparts to carry out the Air Force mission of readiness. 

Technical Sergeant Blackshaw (A.A. in Information Resources Management; B.S. in Administrative Information Management; M.A. in Information Systems Management) is an IMA Paralegal at Pope AFB. In her civilian capacity, she works for Information Systems Management in Fayetteville NC.

Reserve Forces Paralegal Course 99-A.



The Judge Advocate General



Reginald C. Harmon, Major General

A graduate of the University of Illinois College of Law, General Harmon was originally commissioned in the Army Reserve (Field Artillery) in 1926. He was called to active duty in October 1940 at Wright Field, Ohio and served throughout World War II in charge of legal representation for the Army Air Corps industrial expansion program. In 1945 General Harmon was named Staff Judge Advocate of the Air Materiel Command, a position he held until 1948.

On 8 September 1948 General Harmon was appointed by the President as the first Judge Advocate General of the newly created United States Air Force. He served in that capacity for almost twelve years.

As the first Judge Advocate General of the Air Force, General Harmon was instrumental in a number of important developments including the establishment in 1950 of the first Judge Advocate General School at Maxwell AFB, the adoption of the first Uniform Code of Military Justice, and the professional publication of standard military law references including The Court-Martial Reports and the Digests of Opinions of The Judge Advocates General of the Armed Forces.

In 1955 General Harmon served as a United States Delegate to the First United Nations Congress in Geneva on the Prevention of Crime and the Treatment of Offenders. General Harmon retired from active duty on 31 March 1960.

Albert M. Kuhfeld, Major General

A graduate of the University of Minnesota, General Kuhfeld was originally commissioned in the Army Reserve (Infantry) in 1926. He was called to active duty in March 1942 and served at Camp Crowder, Missouri, Salina, Kansas, and in the Claims Division of The Judge Advocate General's Office in Washington, D.C. In June 1943 General Kuhfeld was assigned to the Southwest Pacific, where he ultimately served as the Judge Advocate for 5th Air Force.

After World War II, General Kuhfeld returned to the United States and had assignments at the Office of The Air Judge Advocate in Washington, D.C., Ninth Air Force at Biggs Field, Texas, and Headquarters, Air Transport Command. In July 1948 he moved to the Office of The Judge Advocate General of the newly created United States Air Force, where he served as Chairman of a Board of Review, on the Air Force Judicial Council, and as Assistant Judge Advocate General for Military Justice.

In February 1953 General Kuhfeld was appointed the Assistant Judge Advocate General, a position he held for seven years. During that time, he was instrumental in implementing many of the Status of Forces Agreements that define the legal status of American forces overseas.

General Kuhfeld was appointed by the President as The Judge Advocate General effective 1 April 1960 and served until 30 September 1964.





Robert W. Manss, Major General

A graduate of the University of Michigan and the University of Cincinnati School of Law, General Manss enlisted in the Army Air Corps in 1942. After competing Officer Candidate School he served with the 56th Bombardment Squadron at Key Field, Mississippi. In 1944 General Manss was assigned to the 404th Fighter Group, and served in the European Theater of Operations until 1946, eventually as the 404th Group Intelligence Officer.

After a brief return to private law practice, General Manss returned to active military service in 1947 at Headquarters, Air Materiel Command. He served there as Chief, Military Affairs and Military Justice Division until 1952. He then transferred to Pepperrell Air Base, Newfoundland, where he was Staff Judge Advocate until 1955.

General Manss moved to the Office of the Judge Advocate General in Washington, D.C. in 1955, and the following year became Chief of the Tax and Litigation Division. In 1959 he became the Staff Judge Advocate, Air Research and Development Command, where he served until 1963.

In April 1963 General Manss returned to Washington, D.C. as the Assistant Judge Advocate General. He was appointed by the President as The Judge Advocate General effective 1 October 1964 and served until September 1969.

James S. Cheney, Major General

A graduate of Young L.G. Harris Junior College and Atlanta Law School, General Cheney joined the Army Air Corps as an aviation cadet in October 1941. After serving as an instructor navigator, he joined 8th Air Force in England in March 1943. He flew 57 combat missions with the 306th and 303rd Bombardment Groups.

In 1946 General Cheney became Base Legal Officer for the 313th Troop Carrier Group. He also served as Deputy Staff Judge Advocate for the European Air Transport Service, and as Base and Wing Legal Officer with the 61st Troop Carrier Wing.

After returning briefly to the United States, General Cheney left for the Far East in July 1950, and flew as a navigator with the 3rd Bombardment Group. He then served as Legal Officer at Iwakuni Air Base, Japan and later with 5th Air Force.

In 1951 General Cheney became Deputy Staff Judge Advocate, Headquarters Air Proving Ground. He moved to Washington, D.C. in 1954, first as a member and then Chairman of a Board of Review, and later as Executive Officer to The Judge Advocate General. In 1960 General Cheney became Staff Judge Advocate, 3rd Air Force, and in 1962 Deputy Staff Judge Advocate, United States Air Forces Europe. He returned to the Office of The Judge Advocate General in 1964 as Director of Military Justice. In 1967 he became Staff Judge Advocate, Pacific Air Forces.

In February 1969 General Cheney became the Assistant Judge Advocate General. He was appointed The Judge Advocate General by the President in September 1969 and served until September 1973.



Harold R. Vague, Major General

A graduate of the University of Colorado, General Vague enlisted in the Army Air Corps in March 1942. After attending aviation cadet training he received navigator wings and was commissioned in June 1943. General Vague flew 25 combat missions on B-17 aircraft in the European Theater of Operations.

General Vague served in various staff positions until 1947, when he was able to return to the University of Colorado to complete his law degree. He then attended navigator/bombardier training and in 1950 went to Biggs Air Force Base, Texas as a navigator/bombardier in B-50 aircraft. He later served at Biggs as Assistant Legal Officer for the 97th Bombardment Group.

In 1951 General Vague was assigned to 8th Air Force, where he served as Assistant Chief, Military Justice Division. In 1955 he moved to the United States Air Force Academy, where he served first as a legal staff officer, and then from 1956 to 1959 as an associate professor of law. In 1959, General Vague became Staff Judge Advocate for the 3rd Air Division, and in 1961 Chief of the Legislative Division in the Office of The Judge Advocate General. In 1965 he was assigned as Staff Judge Advocate, 15th Air Force, and in 1969 as Staff Judge Advocate, Headquarters, Pacific Air Forces.

General Vague returned to Washington, D.C. in 1971 as the Assistant Judge Advocate General. He was appointed The Judge Advocate General by the President on 1 October 1973 and served until 1 October 1977.



Walter D. Reed, Major General

General Reed enlisted in the Army Air Corps in August 1943, and later entered the aviation cadet program. After being commissioned, he was ultimately assigned to a B-29 bombardment group at Salina, Kansas. He was released from active duty in 1946 and entered Drake University, where he graduated from the College of Commerce and the School of Law.

General Reed was recalled to active duty in 1951 and served as an assistant staff judge advocate at Holloman AFB, and then as Staff Judge Advocate of the 18th Fighter-Bomber Wing in Korea. He returned to the United States in 1953 and served at the Air Force Missile Test Center in both military justice and civil law assignments.

In 1958 General Reed was assigned to the Directorate of International Law at Headquarters United States Air Forces Europe. He attended The Hague Academy of International Law in 1960, and in 1962 earned a Master of Laws degree from McGill University. In 1963 General Reed joined the International Law Division of the Office of The Judge Advocate General. From 1967 to 1969, he served in Bangkok as Legal Advisor to the United States Ambassador to Thailand.

General Reed next became the Assistant Staff Judge Advocate, Headquarters Air Force Systems Command, and then in 1970, Chief of the International Law Division, Office of The Judge Advocate General. In May 1973 he became Director of Civil Law, and then in October 1973, the Assistant Judge Advocate General.

General Reed was appointed The Judge Advocate General by the President on 1 October 1977 and served until 31 August 1980.

Thomas B. Bruton, Major General

A graduate of the University of Colorado, both undergraduate and law school, General Bruton later earned masters degrees at both The George Washington University and Auburn University. He was commissioned through ROTC and entered active duty in September 1954. He first served as an assistant staff judge advocate at McGuire AFB, Otis AFB, and then Selfridge AFB.

In 1956 General Bruton transferred to Wheelus Air Base, Libya, and then in 1957 to Wiesbaden Air Base, Germany. In 1959 he moved to Headquarters 17th Air Force, Ramstein Air Base, Germany. General Bruton returned to the United States in 1960, first as an instructor and later assistant professor of law at the Air Force Academy.

After completing Air Command and Staff College in 1965, General Bruton served at 2nd Air Division and then Headquarters, 7th Air Force, Tan Son Nhut Air Base, Republic of Vietnam. In 1966 he joined the Litigation Division, Office of The Judge Advocate General, first as a member and later as chief.

After completing Air War College in 1971, General Bruton became Deputy Staff Judge Advocate, Military Airlift Command. In 1973 he transferred to Headquarters, United States Air Forces Europe, first as Deputy Staff Judge Advocate and then as the Staff Judge Advocate. General Bruton returned to the Military Airlift Command as Staff Judge Advocate in 1977 and then in 1978 became Staff Judge Advocate, Strategic Air Command.

General Bruton was appointed The Judge Advocate General by the President in September 1980 and served until September 1985.



Robert W. Norris, Major General

A graduate of the University of Alabama, both undergraduate and law school, General Norris was commissioned through ROTC, and entered active duty in March 1955. He then served as an assistant staff judge advocate at Amarillo AFB, Texas and Ladd AFB, Alaska and then was released from active duty in 1957. He was recalled to active duty in 1959, and served first as an assistant staff judge advocate and then as the Staff Judge Advocate, Brooks AFB, Texas.

In 1963 General Norris moved to Hickam AFB, Hawaii, where he served as deputy director of civil law, Headquarters Pacific Air Forces. After completing Air Command and Staff College in 1968, he became director of civil law, Headquarters Tactical Air Command. In 1969 General Norris moved to the Career Management Division, Office of The Judge Advocate General and in 1973 he became chief of that division.

General Norris graduated from the National War College in 1975, and became Staff Judge Advocate, 314th Air Division, Osan Air Base, Korea. He returned to Washington, D.C. in 1976 and served as Chief, Defense Services Division, Chief, International Law Division, and finally Director of Civil Law. General Norris became Staff Judge Advocate, Strategic Air Command in 1982.

General Norris became Deputy Judge Advocate General in 1983 and was appointed The Judge Advocate General by the President in September 1985, serving until June 1988.

Keith E. Nelson, Major General

A graduate of the University of North Dakota, both undergraduate and law school, General Nelson was commissioned through ROTC and entered active duty in August 1959. He served as an assistant staff judge advocate, first at Chennault AFB, Louisiana, then at Spangdahlem Air Base, Germany. General Nelson returned to the United States in 1965 and became Staff Judge Advocate, Grand Forks AFB, North Dakota.

After graduating from Air Command and Staff College in 1969, General Nelson transferred to England, where he served as the Staff Judge Advocate at Royal Air Force Station, Wethersfield and Royal Air Force Station, Bentwaters. He returned to the United States in 1973 to become deputy chief, Career Management and Plans Division, Office of The Judge Advocate General. He became chief of that division in 1974, and then in 1977 moved to Maxwell AFB as Commandant of the Air Force Judge Advocate General School.

General Nelson became Staff Judge Advocate, Tactical Air Command in 1981, and in 1982 he returned to Washington, D.C. to become Director of the Air Force Judiciary and Vice Commander, Air Force Legal Services Center. In 1984 he became Staff Judge Advocate, Strategic Air Command.

In September 1985 General Nelson returned to Washington, D.C. as the Deputy Judge Advocate General. He was appointed The Judge Advocate General by the President in June 1988 and served until May 1991.



David C. Morehouse, Major General

A graduate of the University of Nebraska, Lincoln, and Creighton Law School, General Morehouse received a direct commission in August 1960. He served initially as an assistant staff judge advocate at Mountain Home AFB, Offutt AFB, and Ramey AFB, Puerto Rico.

In 1968 General Morehouse became the Staff Judge Advocate, 3rd Tactical Fighter Wing, Bien Hoa Air Base, Republic of Vietnam. He returned to the United States in 1969 as the Deputy Staff Judge Advocate at Travis AFB, California and the Chief of Military Justice, 22nd Air Force.

From August 1971 to August 1972, General Morehouse attended The George Washington University through the Air Force Institute of Technology Program and earned a Master of Laws degree. He remained in Washington, D.C. as a member of the Litigation Division, Office of The Judge Advocate General and in 1973 became assistant executive to The Judge Advocate General. After completing the National War College in 1977, General Morehouse was assigned to Hickam AFB, Hawaii as Staff Judge Advocate, 15th Air Base Wing.

General Morehouse became Staff Judge Advocate, Air Force Manpower and Personnel Center in 1980. In 1982 he was assigned as Staff Judge Advocate, Tactical Air Command and in 1985, as Staff Judge Advocate, Strategic Air Command.

General Morehouse became the Deputy Judge Advocate General in 1988 and was appointed The Judge Advocate General by the President in May 1991, serving until July 1993.



Nolan Sklute, Major General

A graduate of Union College, New York, and Cornell University School of Law, General Sklute was commissioned through ROTC and entered active duty in January 1966. He served initially as an assistant staff judge advocate, first at Luke AFB, Arizona, then at Athenai Airport, Greece.

In 1971 General Sklute attended the National Law Center and earned a Master of Laws degree in government contracts. He remained in Washington, D.C. serving first as a member, then chief, of the General Litigation Branch. After completing the Armed Forces Staff College, General Sklute was assigned to March AFB, California as the Staff Judge Advocate. He became the Staff Judge Advocate at Bitburg Air Base, Germany in 1979.

General Sklute returned to Washington, D.C. in 1982 to attend the National War College. He then served as the deputy chief of the Claims and Tort Litigation Division, the executive to The Judge Advocate General, and finally as the Director of Civil Law, all at Headquarters, USAF.

General Sklute became the Staff Judge Advocate, Air Force Logistics Command and Commander, Air Force Contract Law Center, Wright-Patterson AFB Ohio in 1988.

In 1991, General Sklute returned to Washington, D.C. as the Deputy Judge Advocate General. The President appointed him The Judge Advocate General in August 1993, where he served until February 1996.

Bryan G. Hawley, Major General

A graduate of the University of North Dakota, both undergraduate and law school, General Hawley entered the Air Force in October 1967 as an assistant staff judge advocate assigned to Castle AFB, California. He next served as the chief of military affairs and civil law and as a certified military judge while assigned to Elmendorf AFB, Alaska. After an assignment as chief of civil law at Alaskan Air Command, in 1972 General Hawley began a four year tour as a faculty member at the United States Air Force Academy. General Hawley was assigned as Staff Judge Advocate at Ellsworth AFB, South Dakota in 1976, which was followed by a tour as the chief of the Preventive Law and Legal Aid Group at Headquarters, USAF, Washington, D.C., beginning in 1979. Remaining in Washington, D.C. through July 1985, General Hawley served as the military assistant to the Air Force General Counsel, followed by a year as a student at the National War College.

Returning to the bench as a military judge in July 1985, General Hawley became the Chief Judge of the 6th Judicial Circuit at Rhein-Main Air Base, West Germany, serving until May 1988. Upon his return to the United States, General Hawley embarked upon two consecutive staff judge advocate assignments, first at 9th Air Force and United States Central Command Air Forces, Shaw AFB, South Carolina, then at Headquarters, Military Airlift Command, Scott AFB, Illinois. Returning to Washington, D.C. in August 1991, General Hawley served as the Director of the Air Force Judiciary until July 1992 when he assumed command of the Air Force Legal Services Agency at Bolling AFB, D.C.

In April 1994, General Hawley became the Staff Judge Advocate for Air Combat Command, Langley AFB, Virginia. General Hawley was appointed The Judge Advocate General by the President in February 1996, serving until January 1999.



William A. Moorman, Major General

A graduate of the University of Illinois, both undergraduate and law school, General Moorman was commissioned through ROTC and entered the Air Force in September 1971. After assignments at Richards-Gebaur AFB, Missouri and Yokota AB, Japan, General Moorman returned to the United States in August 1977 as the deputy staff judge advocate, then Staff Judge Advocate, 31st Tactical Fighter Wing, Homestead AFB, Florida.

After completing Air Command and Staff College in July 1980, General Moorman became Staff Judge Advocate, 832nd Air Division, Luke AFB, Arizona, followed by tours in Washington, D.C. beginning in July 1983 as chief of Preventive Law and Legal Aid Group, then as chief, Career Management and Plans Division, Office of the Judge Advocate General, and, finally, in August 1988, as a student at the National War College. In June 1989, General Moorman became Staff Judge Advocate for 12th Air Force/US Southern Command Air Forces, Bergstrom AFB, Texas. In August 1991, General Moorman assumed duties as the deputy staff judge advocate, Strategic Air Command, Offutt AFB, Nebraska followed by a tour as Staff Judge Advocate, United States Strategic Command from June 1992 to July 1993. Returning overseas in August 1993, General Moorman next became the Staff Judge Advocate, United States Air Forces in Europe, Ramstein AB, Germany.

Upon his return to the United States in July 1995, General Moorman assumed command of the Air Force Legal Services Agency, Bolling AFB, Washington, D.C., serving until March 1996, when he began his tour as Staff Judge Advocate, Air Combat Command, Langley AFB, Virginia.

Appointed by the President, General Moorman became the 13th The Judge Advocate General on 27 January 1999.





Before We Had Wings

“YOU, SIR, ARE A SPY” The Judge Advocate General, Colonel John Laurance, Examines British Major John Andre, 1780. Reprinted by permission of the artist, Mr. Don Stivers, 1998.

MAJOR NORMAN THOMPSON

In September 1864, a successful, thirty five-year-old Missouri lawyer named Henry Hitchcock refused a personal offer from Secretary of War Edwin M. Stanton to be assigned as judge advocate in his hometown of St. Louis, asking instead for “service at the front.”¹ His request was granted. In November of that year, he was commissioned a major, assigned to the Judge Advocate General’s Department, and sent to

General William T. Sherman’s headquarters in Atlanta. He subsequently accompanied the General on his two most famous campaigns: the March to the Sea and the March through the Carolinas. Since there was little traditional judge advocate work available at headquarters, he was given the position of As-

sistant Adjutant-General and tasked to help the General with personal correspondence and other staff matters.²

Major Hitchcock served his commander and his profession with distinction.³ He was also an early practitioner of “operations law,” engaging Sherman and his staff in lively and frank discus-

sions about the application of the law of war to his sometimes brutal military operations.⁴ Sherman wrote of his new

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judge advocate: “He is a lawyer and scholar and can draw up my rude thoughts in better array, as well as lend me a hand in the voluminous work of the office.”⁵ Those few words, from the pen of a general who was himself a lawyer, are but one example of the praise so many American commanders have had for their judge advocates throughout our history. Even today, a good JAG is much more than a master of the criminal and civil law—he or she is also a key staff officer, a problem solver, trusted advisor, and the ethical standard bearer for the command.

Of course, Major Hitchcock’s story is only one among thousands that could be told of the judge advocates who have served our country from the American Revolution to the present day. This article will focus on the Revolutionary War origins and development of the U.S. Army⁶ judge advocate position from 1775 through the birth of the Air Force and the Uniform Code of Military Justice (UCMJ) in the middle of this century. Let us begin by looking back to a war that commenced 89 years before Major Hitchcock served with General Sherman.

In The Beginning...And A Little Before. United States Army Judge Advocates proudly wear a regimental crest composed of their branch insignia and the date “1775.” The elegant badge makes a simple but impressive point: “We are as old as the Army itself.” The fact is, judge advocates existed before our nation did. Indeed, they were the first judicial officers appointed under the authority of the emergent United States. More than a decade before the Framers of the Constitution conceived the institutions of the Congress, Presidency, and Supreme Court, fourteen years before there was a Chief Justice or an Attorney General, and a year before the Declaration of Independence was signed, the Second Continental Congress appointed the first Judge Advocate of the Army, Lt Col William Tudor, in 1775. Both the judge advocate title and the military laws of the Continental Army were adopted directly from the British Army. Early American judge advocates like Lt Col

Tudor were lawyers *and* combat soldiers. They not only kept good order and discipline in the Army, but also commanded and fought along side the troops to win American independence.⁷

Lt Col Tudor served nearly 225 years ago, but the true origins of our profession are found in the ancient past, where organized systems of military justice are known to have existed as far back as ancient Mesopotamia.⁸ The Romans also had a comprehensive system of military justice and specialized officials to administer it.⁹ After the Fall of the Roman Empire, military law evolved into a diverse set of codes and customs on the Continent and in post-Norman Conquest England.¹⁰ The exact development of military law during this period is somewhat foggy,¹¹ but things begin to come into focus with the development of the British Articles of War, the grandfather of our modern UCMJ. The British Articles, which were issued by royal decree until 1879, have their earliest roots in the 1190 Ordinance of Richard I.¹² They were first issued as “Articles of War” by Richard II, in 1385, and gradually evolved over the next 500 years until they were finally replaced by statutes in the 19th Century.¹³

By 1765, the Articles of War issued by King George III had developed into a comprehensive code of 111 Articles, covering virtually all aspects of military discipline and the administration of military justice. These were the Articles of War, slightly modified in 1774, in effect at the outbreak of the Revolutionary War,¹⁴ and in 1775, the Second Continental Congress adopted them, nearly *in toto*, for use in the regulation of the Continental Army.¹⁵

Around 1666, the British Articles had started to make reference to the role of the “judge advocate.” Although the title was in use well prior to this, having evolved from the much older title of “judge-martial” or “judge-marshal.” The prefix “judge” recognized that these officers, in addition to acting as prosecutors, were also given judicial authority to decide certain cases and hand down punishments.¹⁶ The British Articles of 1765 specifically referenced the “Judge Advocate General” as the official who would “prosecute in

His Majesty’s Name.”¹⁷ Adoption of the British Articles of War and the office of Judge Advocate General made perfect sense to the Founders. They already knew these laws and actors, and had seen them produce perhaps the most disciplined Army in history.¹⁸ So these “new” *American* Articles of War were the legal framework given to our Revolutionary War Judge Advocates General: Brevet Colonel William Tudor (1775-1777),¹⁹ Colonel John Laurance (1777-1782), and Colonel Thomas Edwards (1782-1783).

1775-1782: Our Founding Father Judge Advocates.

In the beginning, the Continental Army had a legal staff of one: Colonel Tudor, and it was not unusual for him to be found personally prosecuting courts-martial. As the war progressed, however, the Continental Congress provided the Judge Advocate General²⁰ with two additional judge advocates at General Headquarters, and one for each separate army and territorial department (Northern, Middle, and Southern). If not already commissioned, these subordinate judge advocates were given the rank of captain, and authorized the subsistence of a lieutenant colonel. However, most of these officers also held commissions in regiments of the line, and were referred to by those ranks.²¹

Judge advocates of the Revolutionary period functioned as full-time staff officers as well as military prosecutors, board recorders, and law officers.²² The judge advocate wore three hats in court: he was legal advisor to the court-martial, government prosecutor, and “friend” of the accused, presenting any evidence favorable to him. The members were responsible for making legal rulings, findings of fact, and recommendations on sentence. Verdicts were not announced in court. They first had to be approved by the commander, and were then reported to the accused, who was usually in custody.²³ Individual defense counsel were permitted in Revolutionary War courts-martial, but their function was somewhat limited. General James Wilkinson explained: “No one will deny to a prisoner the aid of Counsel, who may sug-

gest Questions or objections to him, to prepare his defence in writing—but he is not to open his mouth in Court.”²⁴

The following excerpts, from the Orderly Book of the 3rd North Carolina Regiment of the North Carolina Brigade,²⁵ which was part of Washington’s Army during 1777 and 1778, give the reader a feel for the crimes and punishments of the time. General Washington’s very personal approach to discipline is also apparent [spelling and abbreviations are original]:

July 7, 1777 Headquarters

Morristown: “John Halfpenny ...charged with getting drunk, causing a riot and abusing his officers, no evidence appearing against him the court orders him to be released from his confinement. Dennis O’ Bryan a soldier belonging to the NC Regt ...charged with his having deserted from that detachment. The prisoner pleads guilty but it appears to the court that he is incapable of Rendering any service to the country as he appears to be not able in body and a stupid, foolish person. Sentenced him to be drummed out of the service.

17th August 1777 Camp at

Trent Town: John Mitchell charged with desertion, being acquitted by the court martial, is to be released from his confinement and to join his Regt. Thomas Stead charged with having stolen 30 Dollars from Capt. Steel, was found guilty of the charge & sentenced by the court to receive 50 lashes on his bare back, and after two day’s confinement, unless he returns the said 30 Dollars, to receive 50 more and to be put under stoppages monthly until he shall have paid the same, which sentence is approved....

11th August 1778, Head Quarters

White Plains: At a General Court Martial...Capt. Seely...tried for leaving his

guard before he was properly relieved; found guilty of the charge...and sentenced to be reprimanded in the Genl Orders. The Commander in Chief [General Washington] confirms the sentence, tho’ he could wish a severer punishment had been decreed to an offence, which is of the highest military criminality... and the safety of the army altogether depending on the strict discipline and unremitting vigilance.... At the same court, Neal McGonnigal... tried for threatening Capt. Scott’s life; also for drawing his bayonet and stabbing him repeatedly while in the execution of his office; found guilty of the charges ex-

hibited against him, and sentenced...to be shot to death. His Excellency, the Commander in Chief, approves the sentence.

21st August 1778, Friday Head Quarters, White Plains:

The Commander in Chief has thought proper to pardon...Neal McGonnigal. Notwithstanding the general good character of the latter criminal as a soldier, the wounds he has received fighting for his country, the warm solicitation of several respectable officers in his behalf & even the special intercession of Capt. Scott himself to whom the injury was offered, it is with extreme difficulty the Commander in

And Now...The Rest of the Story

As with many of our nation’s founders, John Adams was a lawyer. As such, he had a variety of students over the years study law under his tutelage. One such student, William, was particularly impressive. William was a Boston native, having been born there on 30 June 1750 and graduated from Harvard College in 1769. After studying law under John Adams, he was admitted to the Massachusetts Bar in 1772 at the age of 22. He practiced law in Boston until the outbreak of war against the Crown.

When General George Washington assumed command of the American forces in their campaign to take Boston, he obtained authority to enforce his orders through the newly established American Articles of War. Article IV of Section XV of the British Articles was adopted verbatim by the fledgling nation, and read “The Judge Advocate General, or some person deputed by him, shall prosecute in His Majesty’s name.” General Washington appointed William to the position of “Judge Advocate of the Army” on 29 July 1775. The Second Continental Congress, sitting at Philadelphia, confirmed the appointment by electing 26 year old William to be The Judge Advocate General (TJAG) of the 35 Regiment strong Continental Army. William was made a brevet colonel in the Army of the United States. He served as TJAG until 9 April 1777, when he resigned as the TJAG, but continued in service to his new Nation in Henley’s Additional Continental Regiment until April 1778 whereupon he returned to his home in Boston and resumed his law practice. He later became a member of the Massachusetts General Court and Secretary of State of Massachusetts.

William married and had children, who had more children, and so on, until Thomas, the great-great-grandson of the first Judge Advocate General, was born. This child grew to adulthood and followed in his forefather’s footsteps by obtaining his law degree from Syracuse University and entering the military. Young Tom entered the United States Army where he served as an intelligence officer. After a short time in the Army, he entered the Air Force where he serves today as a judge advocate. Colonel Thomas Tudor, great-great-grandson of the first Judge Advocate General, Colonel William Tudor, is presently the Chief, International Law Division, HQ US Air Forces in Europe. And now you know....the rest of the story.

(From an interview with Colonel Tudor)

Chief could prevail with himself to pardon an offence so atrocious.... Even the least disrespect from a soldier to an officer is criminal and deserves severe punishment.... The Genl is happy to reflect that this is the first time an instance of the kind has come before him, he thinks it necessary to warn every soldier that a similar one will never hereafter be forgiven, whatever may be the character of the offender or the intercession of the officers. [Also], several deserters from this Army to the Enemy who have since returned, having been permitted with impunity to join their Regiments, the Genl, to prevent an abuse of his lenity...takes occasion to declare in explicit terms that no man who shall desert to the enemy after the publication of this order, will ever be allowed to enjoy the like indulgence....

Despite his stern warnings, desertion to the enemy continued to be a problem throughout the War. By the time of the decisive Battle of Yorktown in October 1781, Washington was so fed up, he was ready to dispense with courts-martial and due process altogether, announcing by general order: "Every deserter from the American Troops after this public Notice is given who shall be found within the enemies lines at York, if the place falls into our hands, will be instantly Hanged."²⁶ He made good on the promise, hanging every deserter on the spot the day after he took Yorktown.²⁷

Colonel John Laurance, the second Judge Advocate General of the Army, personally prosecuted some of the most important military cases of the Revolutionary War, including the trial of Major General Benedict Arnold, in 1779, for permitting a vessel to leave an enemy port, closing the shops in Philadelphia, and using public wagons for his own private business. His conviction and subsequent reprimand by General Washington embittered him, and appear to have contributed to his infamous acts of treason in 1780.²⁸ Colonel

Laurance also acted as recorder to a board of officers which recommend that Major John Andre, Adjutant General of the British Army, be executed as a spy for sneaking behind the lines in civilian clothes and conspiring with Arnold for the surrender of West Point.²⁹

Laurance was followed as Judge Advocate General by his deputy, Colonel Thomas Edwards, who gained notoriety in 1783 as a victim of the accepted and rather unsubtle command influence of the day. This occurred when a certain Major Reid was acquitted at a court-martial prosecuted by Edwards on charges of disobedience of orders and unmilitary conduct towards Brigadier General Hasen. After the trial, General Hasen preferred charges against Colonel Edwards for neglect, incompetence, and partiality toward the accused in the prosecution. General Washington referred the matter to a board of officers, which found the charges unsupported by the evidence, and spared Colonel Edwards conviction and punishment. Edwards was the last Judge Advocate General of the Continental Army.³⁰

Altogether, 15 judge advocates served during the Revolutionary War.³¹ Most held important leadership positions in the Army in addition to their legal duties, and several went on to distinguished careers after the War. Probably the most notable of these was Captain John Marshall, who served directly under General Washington at Valley Forge as Deputy Judge Advocate in the Army. He also commanded troops at the battles of Brandywine, Germantown, and Monmouth.³² Marshall went on to serve for two years as Secretary of State and 34 years as Chief Justice of the United States Supreme Court, authoring many of the Court's pivotal early decisions. A contemporary's words are a harbinger of his juridical greatness:

[H]is capacity was held in such estimation by many of his brother officers, that in many disputes...he was constantly chosen arbiter; and that officers, irritated by differences or animated by debate, often submitted the contested points to his judgment, which being given in

writing, and accompanied...by sound reason in support of his decision, obtained general acquiescence.³³

As the Revolutionary War drew to a close, the Continental Army was largely disbanded, and the remaining Army was reduced to one 700-man regiment. Not surprisingly, no Judge Advocate General was appointed after Colonel Edwards until 1794, when Captain Campbell Smith was appointed "Judge Marshal and Advocate General" of the reorganized Army, then known as the "Legion of the United States." On 2 June 1797, his title changed to Judge Advocate of the Army, reflecting another Army reorganization. Finally, in 1802, the office of the Judge Advocate of the Army was abolished by Congress and did not reemerge until 1849.³⁴

1802-1849: The Adjutant General Takes The Reins. During the interim years, the Adjutant General of the Army assumed the functions of the Judge Advocate General. However, judge advocates did not disappear altogether. They were appointed from time to time, as needed, to Army divisions, and on an *ad hoc* basis from the line to serve at courts-martial.³⁵ In an odd turn of events, the Adjutant General himself, Colonel Roger Jones, was court-martialed in 1830. During a disagreement with Army Chief of Staff Alexander Macomb, Colonel Jones shouted at the General: "I defy you, sir; I defy you!" He was convicted and received a reprimand, but was allowed to remain Adjutant General of the Army for an additional 22 years.³⁶ Colonel Jones went on to publish many influential Army regulations describing the duties of judge advocates and outlining various court-martial procedures.³⁷ Another unusual case from this period involved General Winfield Scott, the famous field commander during the Mexican-American War. Scott, who was also a lawyer and member of the Virginia bar, believed that one of his subordinates, Major General Gideon Pillow, had published a libelous account of his 1846-47 campaigns in Mexico. In

a display of command influence unusual even by 19th Century standards, Scott preferred the charges, convened the court of inquiry, and *personally* acted as lead prosecutor! However, even with the skillful assistance of the Acting Judge Advocate of the Army³⁸ General Pillow was acquitted.³⁹

The Civil War And Reconstruction - A Time Of Growth. Congress reestablished the office of Judge Advocate of the Army on 2 March 1849, and Brevet Major John F. Lee occupied the post until 1862.⁴⁰ Lee, a West Point trained ordnance officer and decorated war hero, had studied law, but never completed his training. Nevertheless, he was so well known in the Army for his knowledge of military law and skill as a judge advocate that Congress reestablished the office specifically to procure his permanent assignment to review courts-martial records.⁴¹ By 1861, Lee reviewed these for an Army of over 16,000 troops, and initiated the practice of issuing legal opinions on some non-criminal subjects as well.⁴²

After the outbreak of war and President Lincoln's call for national mobilization, massive numbers of new recruits entered the service, and the Army's legal department had to expand.

Ultimately, over two million men served in the Union Army, and by War's end, over 100,000 of them had been court-martialed.⁴³ As one might guess, the judge advocate ranks swelled along with those of the Army. On 17 July 1862, Congress abolished Lee's position, and reinstated the office of the Judge Advocate *General* of the Army. Major Lee was not invited to take the job—partly because he was not a lawyer, but particularly because he had previously declared the trial of civilians by “military commissions” to be unconstitutional. President Lincoln thought otherwise. After heading the Department for thirteen years, Lee retired rather than return to duties as an ordnance officer.⁴⁴

Congress also authorized the appointment of thirty-three judge advocates in the rank of major. Most were assigned to armies in the field, but seven or eight were kept at Headquarters in Washington.⁴⁵ Of course, thirty-three JAGs did not try 100,000 courts-martial. In the vast majority of routine and minor cases the earlier practice of appointing line officers to act as *ad hoc* judge advocates continued.⁴⁶ Procedurally, little had changed since the Revolutionary War,⁴⁷ but Congress significantly expanded the supervisory duties of the

Judge Advocate General. Field judge advocates still worked for field commanders, but the law now specified that they did so *under the direction* of the Judge Advocate General.⁴⁸ This “technical channel” for transmitting professional guidance and assistance outside of the normal chain of command is still an important part of the way we do business today. Congress also established the Bureau of Military Justice, an important forerunner of today's service appellate courts.⁴⁹

Brevet Major General Joseph Holt was Judge Advocate General during the Civil War and for 10 years thereafter.⁵⁰ President Lincoln handpicked Holt because he was a powerful Washington insider at the time of his appointment. Many were criticizing Lincoln's attempt to expand the jurisdiction of military courts to try civilians suspected of disloyalty. Lincoln wanted unfettered power to arrest, imprison, and try such persons in front of military commissions, and to deny the defendants the right of *habeas corpus*. He ordered Holt to defend the jurisdiction of these commissions, which Holt did successfully, convincing the Supreme Court not to review such cases. After the War, the Court revisited the issue in *Ex Parte Milligan*,⁵¹ and declared the peacetime use of military commissions unconstitutional.⁵² General Holt also personally prosecuted the most important cases of his day, including Henry Wirz, the notorious commandant of the Andersonville prisoner-of-war camp, and the Lincoln assassination conspirators.⁵³

The Civil War also produced the only judge advocate ever awarded the Medal of Honor, Major Wells H. Blodgett. As in the Revolutionary War, judge advocates actively participated in battle. Blodgett received the nation's highest award for valor by approaching enemy lines on his own initiative, and “with a single orderly,” capturing an eight-man armed picket.⁵⁴ Another notable Civil War judge advocate, John A. Bingham, left his seat in Congress to enter the service. He was a key prosecutor in the Lincoln assassination trial, and later returned to Congress and



A court-martial during the Civil War (Concord, New Hampshire).

authored the Fourteenth Amendment.⁵⁵

In 1874, the Articles of War were overhauled. A number of procedural protections for the accused were added and the precursor to the modern summary court-martial was created: a new kind of wartime court-martial, the “field officer court,” which was empowered to try minor offenses previously tried by regimental and garrison courts.⁵⁶

In an infamous case reminiscent of the Colonel Roger Jones trial, Brigadier General David G. Swaim, Judge Advocate General from 1881 to 1894, was court-martialed while in office. In 1884, the Secretary of War ordered his trial for financial improprieties. After a 52-day trial, he was found guilty, and sentenced to be suspended from rank and duty for twelve years, but he was not removed from office.⁵⁷ This left an Acting Judge Advocate General, Colonel Guido Norman Lieber, in place for over ten years. Finally, Swaim was allowed to retire, and Lieber was promoted and appointed Judge Advocate General from 1895-1901. General Lieber, a hero of the Civil War, served as a judge advocate for over 40 years, including sixteen as head of the Department. He remains the longest serving Judge Advocate General, and is credited with repeatedly saving the JAG Department from the Congressional ax during this period of relative military calm.⁵⁸

World War I - The Seeds Of Change. In 1917, large numbers of Americans once again mobilized for war, this time on distant shores. The size of the force grew exponentially and rapidly, and by 11 November 1918, over 4.2 million Americans had served in “The Great War.”⁵⁹ The JAG Department grew at a similar pace to meet the needs of this unprecedented armed force. When America entered the war on 6 April 1917, there were seventeen judge advocates on active duty. Just nineteen months later, when the War ended, that number had reached 426.⁶⁰ This rapid expansion brought a number of prominent civilian attorneys into the Department. Among these were Major Felix Frankfurter, the Harvard Law School professor who later became a noted Supreme Court justice; Colonel

Edmund Morgan, also of Harvard, who thirty years later drafted the UCMJ; and Northwestern Law School dean John H. Wigmore, the well-known evidence expert, who later oversaw two major rewrites of the Manual for Courts-Martial.⁶¹

Military justice was still the judge advocate’s primary duty, but there was substantial growth in non-criminal practice as well. Commanders increasingly asked their JAGs for advice on administrative law matters, contracts, international law, and the law of war. World War I judge advocates also recognized the prejudicial legal impact of overseas duty on the average soldier, and responded by starting the first formal legal assistance programs. With each new duty, the judge advocate became more integrated into the command staff, and the need for a permanent cadre of military legal officers became apparent. In keeping with his larger Department and rapidly expanding duties, the Judge Advocate General was also given the rank of major general in 1917.⁶²

After the War, major changes began to take shape in military law and practice. The Articles of War were debated and amended by Congress in 1920. The new Articles gave service members many additional rights and started a gradual trend toward reducing command influence and making the military justice system look and operate more like its civilian counterpart. These changes included: 1) the requirement for a pretrial hearing and “staff judge advocate”⁶³ recommendation before a case could be referred to a general court-martial, 2) the appointment of a lawyer *from the JAG Department* to act as “law member” on every general court-martial,⁶⁴ 3) an appointed defense counsel in general and special courts-martial, and 4) the establishment of a service appellate court known as the “Board of Review.” These changes started a trend away from a discipline-centered system and toward a more justice-centered one that led to the birth of the UCMJ three decades later. The seeds of this change germinated in an ideological schism between none other than the Judge Advocate General, Major General Enoch H. Crowder (1911-

1923), and his deputy, Brigadier General Samuel T. Ansell, who was Acting Judge Advocate General of the Army during WW I.⁶⁵

The debate started in October 1917, when Ansell learned that a number of court-martial sentences, including some high-profile death sentences, had been executed without benefit of a legal review by his office. The most notorious of these incidents involved the mass trial of 63 African-American soldiers for murders allegedly committed by them during an August 1917 riot in Houston, Texas. The morning after the trial, without appeal or opportunity to seek clemency, thirteen of the men were summarily hanged. This sent Ansell into a rage, and he began to publicly characterize the military justice system as “un-American,” “unconstitutional,” and “lawless.”⁶⁶ General Crowder, who had been temporarily appointed Provost Marshal General and placed in charge of the Selective Service System, became concerned about Ansell’s public criticisms, and returned to his Judge Advocate General billet to defend the system. Chief Judge Cox sums up the heart of the Ansell-Crowder debate nicely:

The constitutional question which emerged was whether Congress could establish a military justice system in which the commander imposed punishment without regard for rules of law. In other words, should the will of the commander or the rule of law reign supreme in the American military justice system?⁶⁷

General Ansell lost the debate and was eventually forced to resign,⁶⁸ but he did not give up his fight to change the system. He continued to lobby Congress, and was eventually asked to redraft the Articles of War. His draft was essentially an early version of the UCMJ, but it was considered too radical for its time, and only a few of the reforms were adopted, as discussed above, in the 1920 amendments to the Articles of War.⁶⁹ However, General Ansell lived until 1954, and eventually

saw his reforms carried out by one of his former JAG protégés, Professor Edmund Morgan. Ironically, Morgan was commissioned by Congress to draft the UCMJ, and Ansell's original 1920s era proposal was Morgan's model for the new Code.⁷⁰ Samuel Ansell is now recognized as the "father of modern American military law."⁷¹ In many respects he was not unlike his contemporary, Brigadier General William "Billy" Mitchell, now recognized as the visionary father of modern air power. Both men were a generation ahead of their time, and both spoke out publicly for reform. In General Mitchell's case though, the result was his now infamous court-martial.

In 1925, Brigadier General Billy Mitchell was a nationally known WW I hero, and an outspoken proponent of air power. As Assistant Chief of the Army Air Corps, he arranged demonstrations of the effectiveness of air power, including the ability to sink a battleship from the air. When these demonstrations failed to rally the support for his views, he started to speak out about the failure of his superiors to

accept air power's usefulness. In April 1925, he was posted to a dead-end job in Texas and reduced to his permanent grade of Colonel, but he continued to agitate for reform. Things came to a head in September 1925, when he held a press conference in the wake of two highly publicized air disasters and publicly accused the Army and Navy Departments of "incompetency, criminal negligence, and almost treasonable administration of our national defense."⁷²

Mitchell was recalled to Washington and court-martialed for insubordination, conduct prejudicial to good order and discipline, and bringing discredit on the War Department. Mitchell's defense was the truth of his statements, and he put on a parade of air power giants to back him up, including future 5-Star General Henry. H. "Hap" Arnold, who testified, in more diplomatic terms, that Mitchell's statements were correct. The prosecutor was Major Allen Gullion, later The Judge Advocate General (1937-1941). He called General Mitchell a "flamboyant charlatan" whose ideas were "wild nonfeasible schemes." Mitchell was

convicted and suspended from rank, command, and duty for five years. Disheartened, he resigned from the service and died 10 years later, before his visions for the full exploitation of air power became reality.⁷³

Except for the Billy Mitchell affair, the interwar period was a relatively quiet time for the JAG Department. After the post-WW I drawdown, the Army's strength averaged about 150,000 for the next twenty years, but the JAG Department was proportionately larger than it had ever been, averaging around 120 full-time active duty judge advocates.⁷⁴ The larger Department was justified by the greater role carved out for JAGs under the 1920 Articles of War and an increasing reliance on JAGs by commanders. During this period, requests for legal opinions on civil law matters, such as interpretation and construction of Army regulations, increased dramatically and judge advocates became more involved in internal Army operations.⁷⁵

A final point of interest for this period was the advent of the title "The Judge Advocate General." It came about when the office was styled as such in a general order issued by the War Department on 31 January 1924. The title and the acronym "TJAG" stuck, and have remained a part of our tradition ever since.⁷⁶

World War II And Beyond – The Birth Of Military Justice.

The size and scope of the Second World War dwarfed all other wars before and after. Between 1941 and 1945, over sixteen million American men and women served in the United States military, and the Judge Advocate General's Department grew rapidly along with the force. By 1945 there were over 3,500 Army JAGs on active duty, under the supervision of Major General Myron C. Cramer, TJAG from 1941 to 1945.⁷⁷ The War was big business, and the JAG Department greatly expanded the scope of its operations to handle the needs of its clients. JAG headquarters was organized into three main branches: Military Justice, Civil Matters, and War Crimes. There was also a separate international law division, and an admin-



The court-martial of then-Colonel William (Billy) Mitchell, 1925.

istrative division to manage the Department's personnel. The Civil Matters Branch had divisions for contracts, patents, taxes, litigation, claims, and legal assistance, among others. The Military Justice Branch included six Boards of Review; necessary to satisfy the requirements for appellate review of courts-martial mandated by the 1920 Articles of War.⁷⁸

The first seeds of the Air Force Judge Advocate General's Department were sown during this period as well. In March 1942, several hundred judge advocates were assigned to the Office of the Air Judge Advocate of the Army, led by Brigadier General Lawrence H. Hedrick. This separate group of "air lawyers" were managed and assigned by the Air Corps, but the Army TJAG still maintained overall supervisory responsibility for all Army legal functions. By 1945, there were nearly 1500 Air Corps JAGs—nearly half of all the lawyers in the Army. Many of them would later form the cadre of the Air Force Judge Advocate General's Department.⁷⁹

The War attracted a variety of lawyers to the JAG profession. With so many new JAGs entering active duty, from such diverse backgrounds, training became a priority, and on 9 February 1942 the forerunner of today's modern JAG school opened at the University of Michigan Law School, in Ann Arbor. During the four years of its existence, the school trained over 2,500 JAGs. Subjects included military justice, claims, contracts, law of war, tax, constitutional law, military reservations, and military government. Judge advocates learned "soldiering" as well, including military tactics, map reading, chemical warfare, staff functions, and weapons training.⁸⁰

In the field, judge advocates were fast becoming true general practitioners, giving commanders a full range of civil, criminal, and international legal advice. Providing legal assistance to individual soldiers and airmen was also a priority. Armed with the new Soldiers' and Sailors' Civil Relief Act of 1940, JAGs assisted over eight million military members during the War.⁸¹ Despite an ever-expanding practice, military justice still

occupied the lion's share of the judge advocate time. During the War, over *two million* American military members were tried by court-martial, and over 80,000 were convicted at general courts-martial—a staggering average of 60 general court-martial convictions for every day of the war.⁸²

A number of judge advocates also distinguished themselves in WW II combat, most notably First Lieutenant Samuel Spitzer. On 31 July 1944, he walked openly, without a weapon, down the center of a Nazi-occupied French town calling out in German that the town was surrounded by American forces and demanding surrender. His bluff worked; 508 German soldiers laid down their weapons and surrendered to his unit. For his extraordinary courage in the face of the enemy he was awarded the Silver Star.⁸³

Judge Advocates also served important functions in the post-War governments of occupied Germany and Japan. In Germany, 60 JAGs were detailed to investigate and prosecute war crimes. Between 1945 and 1948, JAGs prosecuted 1,672 war criminals in front of military commissions and military government courts. They obtained 1,416 convictions, and successfully obtained the death penalty in 244 cases. The best-known war crimes trial was, of course, the 1945-46 "Nuremberg Trial," in which twenty-four high-ranking Nazis were tried for "crimes against humanity and peace." U.S. Supreme Court Justice Robert H. Jackson led the prosecution team, and one of his principle assistants was Colonel Robert Story, an Air Corps JAG. The trial lasted nine months and resulted in twenty-one convictions. Ten of the defendants, including the notorious Hermann Goering, were sentenced to death.⁸⁴

After the War, many military members, including some judge advocates, expressed dissatisfaction with their experiences under the military justice system, which was widely viewed as unfair, arbitrary, and subject to substantial command influence.⁸⁵ One such judge advocate, Ernest W. Gibson, who later served as governor of Maine, described his experiences:

I was dismissed as a Law Officer

because...a man was acquitted...when the Commanding General wanted him convicted—yet the evidence didn't warrant it. I was called down and told that if I didn't convict in a greater number of cases, I would be marked down in my Efficiency Rating; and I squared off and said that wasn't my conception of justice and that they had better remove me, which was done forthwith.⁸⁶

Congressional hearings between 1948 and 1950 led to sweeping reforms of the military justice system. These culminated in passage of the Military Justice Act of 1950,⁸⁷ giving us the modern, justice-based Uniform Code of Military Justice. The Code took effect on 5 May 1951, creating one system of justice for all U.S. service members.

Conclusion – Remembering Our Roots. Thus, 176 years after William Tudor became the first American judge advocate, we had come full circle. We had a new armed force—an *Air Force*, charged with marshaling and exploiting a technology not yet 50 years old; a new criminal code, the UCMJ, which laid down substantially the same crimes, punishments, and trial procedures for all services members; and a new Judge Advocate General's Department. As we move forward into the next millennium, let us not forget our historic roots, our rich and sometimes colorful history, and the Army officers who created and nurtured the profession of the American military lawyer—the judge advocate. 🇺🇸

¹ HENRY HITCHCOCK AND M.A. DEWOLFE HOWE, ED., *MARCHING WITH SHERMAN, PASSAGES FROM THE LETTERS AND CAMPAIGN DIARIES OF HENRY HITCHCOCK, MAJOR AND ASSISTANT ADJUTANT GENERAL OF VOLUNTEERS, NOVEMBER 1864—MAY 1865* 7 (1927, 1995 Reprint).

² *Id.* at pages 16, 19-20. Historically, there was a close (albeit, not always cordial) relationship between the Adjutant General and Judge Advocate General. Field adjutants of this period were staff officers, who acted as *aides-de-camp*, assisting commanders with administrative matters.

³ *Id.* at page 5. Later in life, he served as professor and dean of faculty at St. Louis Law School and as a founder and president of the American Bar Association.

⁴ *Id.* at pages 9-10.

⁵ *Id.* at page vi; and 2 MEMOIRS OF GENERAL WILLIAM T. SHERMAN 187 (1875, 1984 DeCapo reprint).

⁶ As we are the progeny of the U.S. Army, our survey will be limited to the JAGs of that service branch.

⁷ THE ARMY LAWYER: A HISTORY OF THE JUDGE ADVOCATE GENERAL'S CORPS, 1775-1975, 7-11 (1975) [hereinafter THE ARMY LAWYER].

⁸ Matthews, *Legal Aspects of Military Service in Ancient Mesopotamia*, 94 MIL. L. REV. 135 (1981).

⁹ WILLIAM WINTHROP, MILITARY LAW AND PRECEDENTS 17, 45 (2d ed. 1896, 1920 reprint). The crimes in these early armies were familiar ones: desertion, mutiny, cowardice, violence towards superiors, and theft of armaments. Many of the punishments, including maiming, exposure to the elements, and decimation, were extreme by today's standards, but others, such as capital punishment and dishonorable discharge, are still in use today.

¹⁰ DAVID A. SCHLUETER, MILITARY CRIMINAL JUSTICE § 1-4 at 15-16 (4th ed. Supp. 1998).

¹¹ 1 FRANCIS A. GILLIGAN & FREDRIC I. LEDERER, COURT-MARTIAL PROCEDURE § 1-30.00 at 5 (1st ed. Supp. 1998). There has recently been some debate over the true origins of the British Articles of War and the English court-martial. See, e.g., Lt. Col. William R. Hagan, *Overlooked Textbooks Jettison Some Durable Military Law Legends*, 113 MIL. L. REV. 163, 165 and 174-200 (1986).

¹² *Id.* § 1-42.00 at page 10; and WINTHROP *supra* note 9, at page 903. His brief enactment (a single page) was issued to regulate the troops traveling to Jerusalem during the Third Crusade, and dealt primarily with the crimes of homicide, assault, and robbery.

¹³ WINTHROP *supra* note 9, at pages 18-21. Articles of War were issued by Richard II (1385), Henry V (ca. 1413-22), Henry VII (ca. 1485-1509), Henry VIII (ca. 1509-47), Charles I (1629 and 1639), Charles II (1662-3, 1666, and 1672), and James II (1685 and 1688). In 1689, Parliament passed the first Mutiny Act, and British military law began to migrate toward a statutory system, but the Articles of War continued to be issued by royal decree until they were replaced by statutes in 1879.

¹⁴ *Id.* at page 931.

¹⁵ *Id.* at pages 21-23.

¹⁶ *Id.* at page 179.

¹⁷ *Id.* at page 180. The American Articles of War were amended in 1776 to eliminate all references to the King and substituted therefore "the United States of America."

¹⁸ THE ARMY LAWYER, *supra* note 7, at page 11. In arguing for this approach, John Adams commented that the British and Roman systems "had carried two empires to the head of mankind" and that "it would be vain for us to seek in our own invention . . . for a more complete system of military discipline."

¹⁹ A brevet commission gave a military officer higher nominal rank than that for which he received pay. The practice was common in the 18th and 19th centuries, but has since been discontinued in the U.S.

²⁰ THE ARMY LAWYER, *supra* note 7, at page 11. The new title was given to the office on 10 August 1776.

²¹ William F. Fratcher, *History of the Judge Advocate General's Corps, United States Army*, 4 MIL. L. REV. 89, 90 (1959).

²² *Id.* at page 91.

²³ WINTHROP *supra* note 9, at pages 186-199.

²⁴ [Emphasis added] THE ARMY LAWYER, *supra* note 7, at pages 29, 90.

²⁵ The Recreated 2nd North Carolina Regiment of the Continental Line, *The Orderly Book of Jacob Turner: Crimes and Punishments in the Continental Army of 1777 & 1778* (visited Mar. 9, 1999) <<http://web.infoave.net/~rblevins/18THCRIM.htm>>.

²⁶ BURKE DAVIS, THE CAMPAIGN THAT WON AMERICA, THE STORY OF YORKTOWN 205 (1970).

²⁷ *Id.* at pages 280-281. On the same day; however, in a show of unprecedented mercy, he released all other prisoners from his stockades, regardless of offense.

²⁸ Fratcher *supra* note 21, at page 91.

²⁹ *Id.* This trial is the subject of the Army JAG Corps' Regimental Print, entitled "You, Sir, Are a Spy!"

³⁰ THE ARMY LAWYER, *supra* note 7, at pages 21-22.

³¹ *Id.* at page 19.

³² *Id.* at page 23-24.

³³ *Id.* at page 24.

³⁴ *Id.* at pages 26-27; and see also DIGEST OF OPINIONS: THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES, 1967-1968, v (1968).

³⁵ *Id.* at page 27.

³⁶ *Id.* at pages 38-40.

³⁷ *Id.* at page 39.

³⁸ *Id.* at page 40. During this period, the Adjutant General of the Army typically appointed an "Acting Judge Advocate of the Army" to assist with the administration of legal functions at Army Headquarters.

³⁹ *Id.* at pages 40-41.

⁴⁰ DIGEST OF OPINIONS, *supra* note 31, at page v; and THE ARMY LAWYER, *supra* note 6, at page 42-43. Lee was the grandson of Richard Henry Lee, President of the Continental Congress of 1776.

⁴¹ THE ARMY LAWYER, *supra* note 7, at page 43.

⁴² *Id.* at page 49.

⁴³ THOMAS P. LOWRY, M.D., TARNISHED EAGLES: THE COURT-MARTIAL OF FIFTY UNION COLONELS AND LIEUTENANT COLONELS, xiii (1997).

⁴⁴ THE ARMY LAWYER, *supra* note 7, at page 47.

⁴⁵ *Id.* at page 54.

⁴⁶ *Id.*

⁴⁷ SCHLUETER *supra* note 12, § 1-6(B) at pages 29-30.

⁴⁸ THE ARMY LAWYER, *supra* note 7, at pages 50-51.

⁴⁹ *Id.* at page 51.

⁵⁰ DIGEST OF OPINIONS, *supra* note 31, at page v.

⁵¹ 71 U.S. 2 (1866).

⁵² *Id.*; and THE ARMY LAWYER, *supra* note 7, at pages 52-53.

⁵³ *Id.*

⁵⁴ *Id.* at page 56.

⁵⁵ *Id.* at pages 54-55.

⁵⁶ SCHLUETER *supra* note 12, § 1-6(B) at pages 31-32.

⁵⁷ THE ARMY LAWYER, *supra* note 7, at pages

79-83. Swaim spent the rest of his life trying in vain to clear his name.

⁵⁸ *Id.* at pages 85-86.

⁵⁹ *Id.* at page 122.

⁶⁰ *Id.* at page 116.

⁶¹ *Id.* at page 120.

⁶² *Id.* at page 116.

⁶³ *Id.* at pages 136-137. This was the first official use of the title "staff judge advocate."

⁶⁴ *Id.* This was a major change from the former practice of appointing line officers, many of whom were not lawyers, to act as judge advocates at general courts-martial. The law member made binding evidentiary rulings and acted in many other respects like a military judge, but was also a voting member of the panel.

⁶⁵ Hon. Walter T. Cox III, *The Army and the Constitution*, 118 MIL. L. REV. 1, 10. (1986). General Crowder had been detailed as Provost Marshal General so he could oversee implementation of the Selective Service Act during the War.

⁶⁶ *Id.* [citing Ansell, *Military Justice*, 5 CORNELL L.Q. 1 (1919).]

⁶⁷ *Id.* at page 10.

⁶⁸ THE ARMY LAWYER, *supra* note 7, at page 115.

⁶⁹ *Id.* at pages 124-38.

⁷⁰ *Id.* at pages 198-99.

⁷¹ Cox, *supra* note 67, at page 9.

⁷² THE ARMY LAWYER, *supra* note 7, at pages 143-46.

⁷³ *Id.*

⁷⁴ *Id.* at pages 146-58.

⁷⁵ *Id.* at pages 152-53.

⁷⁶ *Id.* at page 139.

⁷⁷ *Id.* at page 186; and *Notes from the Field: Judge Advocate "First's"*, THE ARMY LAWYER, 37 (July 1997). This number includes 1500 Army Air Corps JAGs.

⁷⁸ *Id.* at page 168.

⁷⁹ *Id.* at page 198; and *Notes from the Field*, note 79 *supra*.

⁸⁰ *Id.* at pages 186-187.

⁸¹ *Id.* at page 185.

⁸² Cox, *supra* note 67, at page 11.

⁸³ *Notes from the Field*, note 79 *supra*, at pages 38-39.

⁸⁴ THE ARMY LAWYER, *supra* note 7, at pages 181-84; TELFORD TAYLOR, THE ANATOMY OF THE NUREMBERG TRIAL, A PERSONAL MEMOIR 56 (1992); and see generally FRANK M. BUSCHER, THE U.S. WAR CRIMES TRIAL PROGRAM IN GERMANY, 1946-1955 (1989).

⁸⁵ Cox, *supra* note 67, at page 11.

⁸⁶ *Id.* quoting Willis, *The United States Court of Military Appeals: Its Origin, Operation and Future*, 55 MIL. L. REV. 39, 39 note 3 (1972).

⁸⁷ 10 U.S.C. §§ 801-940, 5 May 1950. See also Alich, *Sharpen the Sword of Military Justice*, this edition of THE REPORTER.



A Sign of the JAG



MR. GARY NULL

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The first recorded instance of a request for a separate insignia for Air Force Judge Advocates is a 21 September 1961 letter from then-First Lieutenant Edward S. Cogan to Major General Albert M. Kuhfeld, the Judge Advocate General of the Air Force at the time. After first noting that he favored proficiency pay for judge advocates, First Lieutenant Cogan wrote:

The purpose of this letter, however, is to plead for something more fundamental and, I believe, essential. The uniform of the USAF lawyer, unlike that of the USAF doctor, dentist, veterinarian, chaplain, rated individuals, and Army lawyer, bears no indicia of his profession. Our training is something of which we are no less proud than are other military personnel who are entitled to the hallmarks of their trade. Why, then, can't we be authorized to wear some insignia—a crossed pen and sword, or an emblem indicating Justice and her scales—reflecting to everyone that we are members of a time-honored profession?

General Kuhfeld replied in the negative, noting: "The wearing of distinctive emblems would, in our case, be in opposition to our position [as part] of the management team of the Air Force."

General Kuhfeld also noted, "It is most gratifying that you felt free to send your candid opinions directly to me." Undaunted, the lieutenant wrote again and pointed out to General Kuhfeld, "Your primary thesis is that the wearing of a special emblem would be in opposition to our position as part of the management team of the Air Force. This argument appears to be, in essence, an exercise in semantics."

General Kuhfeld again responded to Lieutenant Cogan stating, "As we previously pointed out, we are line officers of the Air Force, not a separate corps . . . You mention that an 'overwhelming majority' of our Air Force judge advocates share your views; while this may be true, we have not been aware of it nor have we found that the absence of an insignia acted to the detriment of the Judge Advocate General's Department."

General Kuhfeld retired in September 1964. He never approved of a separate insignia for judge advocates. His successor, Maj Gen Robert W. Manss also resisted the idea of a distinctive insignia for judge advocates, noting that "I felt

that it wasn't going to help the Department or the people in it by hanging another piece of hardware on their uniform. I think that the way you establish a reputation and gain respect and prestige is by your work."

But in August 1965 the Secretary of the Air Force, Eugene M. Zuckert, received a letter from L. Mendal Rivers, Chairman of the House Armed Services Committee. Chairman Rivers wrote:


I know that from time to time suggestions have been made to you that a distinctive insignia be initiated for Judge Advocates on active duty with the USAF. While I recognize that the Air Force does not look with favor upon separate identities for its personnel, nevertheless I do call your attention to the fact that physicians, nurses, chaplains, some 16 different types of aviators, missilemen, the Air Police, the Air Force Recruiting Service, and the Joint Chiefs of Staff insignia are authorized. Why not one for Judge Advocates?

Meanwhile, in Aerospace Defense Command [now Space Command] the Staff Judge Advocate, Brigadier General Martin Menter, had sent out a questionnaire to his subordinate judge advocates. He recalled: "I sent out a memorandum to all the JAs under the ADC, asking the recipient to fill out a provided form and to put down what they felt was necessary for the retention of judge advocates in the Air Force. They were instructed not to sign their name. I got the reactions and tabulated them."

With the results of the survey in hand, General Menter went to Washington to speak with General Manss. He showed the results of the survey to General Manss and stated a judge advocate insignia would "visually . . . reflect that he is the legal advisor, would enhance JAG status, morale and, I would hope, consequently, JAG retentions. When he makes an observation as to the law his view more likely would not be challenged and possibly overcome by the view of a non-attorney with a higher rank. Thus, the JAG function and the Air Force would benefit."

Faced with this pressure from above and below, General Manss reconsidered his position against a judge advocate insignia and, on 6 October 1967, sent a letter to the USAF Uniform Board stating:

I hereby recommend that a distinctive insignia for Air Force judge advocates be adopted. Over the years there has been considerable agitation for a distinctive judge advocate insignia, principally, although not entirely, among the younger officers. Recently, upwards of 30 [percent] of the junior judge advocates ... listed this as one of their 'gripes' and a reason for not thinking seriously of a career in the military. They tie the absence of insignia to lack of prestige and/or recognition.


General Manss' recommendation was adopted and the Chief of Staff of the Air Force, General John P. McConnell, approved a distinctive badge for wear by Air Force judge advocates as of 11 December 1967. The Army's Institute of Heraldry, Cameron Station, Virginia, designed the insignia by using the logo of the Air Force JAG Law Review as the source of the various elements contained in the insignia. 

TJAGD Coin

Unit coins have been in use by elite units of the American military establishment for many years. Unit coins were first used as a form of identification by unit members and later transformed into a game played by unit members using their coins to foster and enhance esprit de corps. A certain feeling of well being has been associated with owning one's organization coin through all of life's challenges and complications.

The coin is a method by which members of the Judge Advocate General's Department can maximize esprit de corps and generate a common bond among all of its members. Every year since its minting, hundreds of visitors to the JAG School have obtained the JAG coin. A special anniversary edition of the coin has also been recently minted.

The idea of the coin was first conceived during the Air Force Officer Orientation Course in September 1995 at the Gunter-Maxwell Annex by then-First Lt Charles Plummer. The idea was inspired and nurtured by SSgt Lisa Rios, an Officer Training School instructor at the course. Later that year, Lt Plummer and then- Capt Robert Howell finalized a proposed design of the coin. The coin was approved by the Air Force Judge Advocate General School Commandant, Colonel Jack Rives. The JAG Department coin became a reality in January 1996.

The front of the coin displays the authorized crest of the Judge Advocate General's Department while the reverse shows the original symbol of the Army Air Corps, the first symbol of the modern Air Force. 


(From AFJAGS records and consultation with Captain Christopher Plummer)



Twenty Three Years Later...

A separate badge for paralegals was originally contemplated in 1969 during the PACAF judge advocate/NCOIC conference. Then-Master Sergeant Bill Whalen (CMSgt, Ret.) was appointed the project officer and entrusted with developing a distinctive badge that could be worn by paralegals Air Force wide. Once a proposed design was settled upon, General Harold R. Vague, then the PAFAC Staff Judge Advocate, sent the proposal to USAF/JA recommending legal airmen be allowed wear a badge, citing among other reasons, increasing retention of first and second term airmen. Major General James S. Cheney, TJAG and Chief Master Sergeant Steve Swigonski, the first Special Assistant to the Judge Advocate General, supported the proposal and the request was submitted to the Uniform Board in May 1971, although the proposed design was different than that submitted by PACAF. The request was promptly disapproved by the Air Force Uniform Board. However, in the same letter disapproving the badge, the Uniform Board delegated to "major commanders or comparable authority" the ability to authorize two line nametags. In August 1971, General Cheney authorized the wear of two line nametags by legal airman.

Although the possibility of a distinctive badge for paralegals was occasionally raised over the years following the 1971 denial, the paralegal badge was not approved until twenty-three years later. It was approved in June 1994 as part of the Air Force "Year of Training" initiative when functional badges were approved for all Air Force career fields. The badge paralegals now proudly wear is similar to the original design proposed by PACAF paralegals in 1969.

The insignia consists of the scales of justice with quills and was taken from the Air Force judge advocate badge. The scales of justice represent the military legal system, through which the Air Force maintains good order and discipline. Whether a defense paralegal or a member of the base or higher level legal office, the scales represent the commitment of the paralegal to the goal of justice in all adverse actions. The scales also highlight the common critical link between the paralegal and the judge advocate. The quill, while a new addition to the design, has long symbolized the scribe or tools by which the written word is produced. The quills are crossed and rest under the base of the scales of justice to symbolize the essential support of the Air Force legal system given by our paralegal force. 

(From records maintained at AFJAGS)

ANNUAL JUDGE ADVOCATE GENERAL'S DINING-IN

The custom of Dining-In has its beginnings in the shadows of antiquity. Some authorities contend that Dining-In derives from a Viking tradition of celebrating great battles and feats of heroes by formal ceremony. They claim the custom was adopted in early English monasteries, was embraced by early universities, and later spread to military units when the Officer's Open Mess was established. Other authorities maintain that the practice originated among Saxon nobles of the 10th Century

Some say that when England was the reigning power in India, there was an English Army post where Dining-In received its first impetus. It seems that the Com-

mander of this Indian Outpost had officers under his command who lived on the post but were never around for dinner at the mess hall. The local area was much more interesting than the Officer's Mess and as a result, the Post Commander found himself dining alone many nights. To bring the officers back to the Mess and to create camaraderie, the Post Commander instituted a program whereby all officers would dine once a month in the Mess; a full military ceremony.

The practice of Dining-In in this Country probably originated with Washington's Continentals. However, the Army points with pride to the first recorded Dining-In as that conducted by the "Gary Owens" Calvary Regiment. The present program of Dining-In probably had its beginning in the Air Corps

when the late General Hap Arnold used to hold his famous "Wing Dings."

In 1988, The Judge Advocate General, Major General Keith E. Nelson brought the ancient tradition of Dining-In to the JAG Department. General Nelson started what has become an annual Mess Dress occasion. In the beginning the function was a Dining-In, as it has been most of the 11 years since its inception. Occasionally the formal function has been a Dining-Out and non-military guests have been invited.

TJAG Mess Dress events have occasionally been the scene of hilarity, alongside tradition and pomp. In March 1992 Major General David C. Morehouse presided over his first Dining-In as The Judge Advocate General, and it truly was a memorable evening. Attended by over 160 Air Force judge advocates



Major General Morehouse's party shirt is revealed during a no-notice inspection by Colonel Fred Kuhn.

in the Washington D.C. area, it was notable for several reasons. For example, it was the first TJAG Dining-In where the President of the Mess and other distinguished members at the head table were sent to the grog bowl. Colonel Fredolin W. Kuhn, then AFLSA/CC, conducted a no-notice uniform inspection, and discovered that General Morehouse was wearing an unauthorized Korean-tailored tuxedo shirt. By order of the Commander and acclamation of the mess, General Morehouse was sent to the grog bowl, and an atmosphere of no-holds-barred fun was established that lasted throughout the evening. During the dessert course, Colonels Raul Barbara and Michael Nye led Table #13 in an assortment of ribs, jousts, and jokes, mostly directed toward the Head Table. Finally, General Morehouse had enough, and with (mostly) feigned exasperation, he decreed, "Table 13, for various and sundry offenses against the Mess, to the Grog Bowl!" To a man and without discussion, those seated at Table #13 all stood, grasped the edge of the table, lifted it high in the air and carried it to the grog bowl, where they left it to re-

turn to their circle of chairs. The Mess roared its approval with the thunder of rapping spoons. Not to be outdone, General Morehouse immediately amended his previous order, and di-

rected the men of Table #13 to the grog. So off they marched to the grog bowl, undaunted and basking in the brilliant humor of the moment. 🏆



Major General Morehouse salutes the Mess as Mr. Vice (then-Captain Bruce Ambrose) watches

(Story and photos submitted by Major Bruce Ambrose, a.k.a. Mister Vice)



Table #13 in front of grog bowl, and violators saluting the Mess. (left to right) An unidentified Maj, Lt Col David Northup, Col Michael Nye, Lt Col Vic Donovan, Maj T.J. Hasty, Col Raul Barbara, Lt Col Rod Wolthoff, Maj Will Gunn, Lt Col Jan Faber)

Senior Paralegal Manager to The Judge Advocate General

Chief Master Sergeant Steve Swigonski, 1970–1972

Steve Swigonski was the first Senior Paralegal Manager to The Judge Advocate General, a position then entitled Special Assistant to The Judge Advocate General. He was born on 2 September 1928 in Benton, Illinois. He enlisted in the U.S. Air Force on 20 February 1948 from his hometown of Benton Illinois. His assignments include; the Office of the Inspector General; Colorado Springs, Colorado; Manston, England; Sewart AFB, Tennessee; HQ 12th Air Force; Waco AFB, Texas; HQ USAFE; Wiesbaden AB, Germany; and the Office of the Staff Judge Advocate, Davis-Monthan AFB, Arizona. As a member of the NCO Advisory committee at HQ USAFE, he made a study of airmen transient billets at Wiesbaden AB. His recommendations were implemented. He also prepared a study guide for the 70570 APT. He is one of four NCOs who prepared the first legal career field SKTs. Chief Swigonski is hailed as being instrumental in establishing the Paralegal Apprentice School that opened at Keesler AFB on 5 January 1972. Selected from a number of outstanding senior NCOs, he was the first to assume the position of Special Assistant to The Judge Advocate General on 3 September 1970. He held this position until his retirement in 1972.



Chief Master Sergeant Billy G. Miller, 1972–1977

Billy G. Miller was born in Wausau, Florida on 9 September 1929 and graduated from Chipley High School in 1947. He received his Bachelor of Science Degree in Education, Social Studies and History from Florida State University in August 1950. After teaching for a year, he enlisted in the Air Force in 1951. After completing basic training at Lackland AFB, Texas he was assigned to HQ Security Service at Kelly AFB, Texas working in the intelligence career field. Later that year, due to humanitarian reasons, Chief Miller was transferred to Tyndall AFB, Florida and assigned to work in the legal office. In April 1954 the Chief was transferred to 20 AF/JA, Kadena AB, Okinawa. After this tour, he again returned to Tyndall AFB, Florida and remained until he was reassigned in 1961 to Sembach AFB, Germany. The Chief returned to the states in 1964 being assigned to Truax Field, Wisconsin until it closed in 1965. Next came Ent AFB, Colorado where he stayed until 1970 when Chief Miller again returned to Europe being assigned to Lindsey AS, Germany until 1972. While stationed there, the Chief completed the requirements for his Masters Degree in Education from Ball State University. Chief Miller was selected as the Special Assistant to The Judge Advocate General in October 1972, a position he held until his retirement in 1977.



Chief Master Sergeant Thomas R. Castleman, 1977–1983

Thomas R. Castleman was born 24 April 1933 in Harriman, Tennessee. He graduated from high school in 1951 and enlisted in the Air Force. His group was the first to enter and be sworn in under the new Uniform Code of Military Justice adopted in 1951. After basic training Chief Castleman went to a specialized course similar to a technical school, in stenography and business administration held at the University of Alabama. From there he was assigned to a legal office in Sondrestrom AB, Greenland. The following year, 1953, Chief Castleman was assigned to Hunter AFB, Georgia. A very short break in service came and then Chief Castleman returned to active duty and was assigned to McGhee-Tyson AFB, Tennessee; Stewart AFB, New York; and in 1960 he attended Naval Justice School. After receiving legal training, he was assigned to Lajes Field, Azores; Kirtland AFB, New Mexico; HQ Air Force Systems Command at Andrews AFB, Maryland; and HQ PACAF at Hickam AFB, Hawaii. In June 1977, Chief Castleman was selected to become the third Senior Paralegal Manager to the Judge Advocate General and remained until his retirement in 1983.





Chief Master Sergeant Jerry L. Becker, 1983–1986

Jerry L. Becker was born on 26 September 1942 in Billings, Montana. Chief Becker graduated from high school in 1960 and enlisted in the Air Force on 5 December 1961. He received a Bachelor of Science Degree in Education from Southern Illinois University in June 1979. Chief Becker completed the Senior NCO Academy and is a graduate from the MAC NCO Academy at Norton AFB, California. He is a graduate of the Naval Justice School. His assignments included Lackland AFB, Texas; Amarillo AFB, Texas; Wiesbaden AB, Germany; F.E. Warren AFB, Wyoming; RAF Upper Heyford, England; Izmir, Turkey; Malmstrom AFB, Montana; Keflavik, Iceland; McChord AFB, Washington; Headquarters United States Air Forces in Europe, Ramstein AFB, Germany; and Headquarters United States Air Force, Washington D.C. Chief Becker was the Special Assistant to The Judge Advocate General from 1983 until 1986 and retired later that year from Lowry AFB, Colorado.



Chief Master Sergeant George K. Moffett, 1986–1991

George K. Moffett was born on 15 September 1941 in New York City, New York. After graduating from high school in 1960, he attended St. Bonaventure University, where he majored in business administration. Chief Moffett is a graduate of the Senior NCO Academy and the ADC NCO Academy at Hamilton Air Force Base, California. He is a graduate of Naval Justice School. Chief Moffett enlisted in the U.S. Air Force on 20 April 1962. His assignments include Lackland AFB, Texas; Cigli AB, Turkey; Whiteman AFB, Missouri; Tan Son Nhut AB, Vietnam; Ent AFB, Colorado; Headquarters United States Air Force, Washington D.C.; RAF Upper Heyford, United Kingdom and Headquarters PACAF, Hickam AFB, Hawaii. Chief Moffett assumed the position of Senior Enlisted Advisor to The Judge Advocate General in October 1986. He held this position for three years until his retirement.



Chief Master Sergeant Kerry L. Miller, 1991–1993

Kerry L. Miller was born in Portland, Oregon on 2 March 1944. He entered the Air Force in June 1962 following his graduation from high school. Chief Miller received basic training at Lackland AFB, Texas and was then assigned to Keesler AFB, Mississippi, for Morse Intercept Operator's Training School. Upon graduation in February 1963, Chief Miller was assigned to Onna Point, Okinawa, and in 1964 was assigned to Karamursel AS, Turkey. In April 1967, Chief Miller retrained into the legal career field and was assigned to his first legal office at Norton AFB, California. His following assignments were to: Nakhom Phanom Royal Thai Air Base, Thailand; Richards-Gebaur AFB, Missouri; and Incirlik AB, Turkey. He graduated from the Headquarters Command NCO Academy in 1974. He was then assigned to the 3rd Circuit, Randolph AFB, Texas; Incirlik, Turkey; Ramstein AB, Germany; and 17th Air Force, Sembach AB, Germany. In July 1986 Chief Miller became the Senior Paralegal Advisor to the Staff Judge Advocate, Strategic Air Command, Offutt AFB, Nebraska. Chief Miller was then appointed the Senior Paralegal Manager to The Judge Advocate General, a position he held until his retirement in 1993.

Chief Master Sergeant Dennis P. Spitz, 1993–1996

Dennis P. Spitz, was born in Jamestown, New York and began his military career with the U.S. Marine Corps in April 1968. He was a distinguished graduate from Naval Justice School. He served with the Marine Corps until April 1971, joined the Air Force in June 1971, and entered the JAG Department the same year. He served at MacDill AFB, Florida; Korat Royal Thai Air Forces Base, Thailand; McConnell AFB, Kansas; Hessich-Oldendorf AS, Germany; and Hancock Field, New York. While in New York, Chief Spitz completed the TAC East NCO Academy as a distinguished graduate in 1980. He also received an associate degree in general studies from Columbia College in 1981, as well as an associate degree in paralegal studies from the Community College of the Air Force. Chief Spitz then served at Homestead AF Base, Florida and Langley AFB, Virginia. He was a distinguished graduate from the USAF Senior NCO Academy in 1985. Chief Spitz then went to the Air Force Claims and Litigation Staff; Enlisted Training and Manpower; then served as Court Administrator; and then as the Command Paralegal Manager of the Air Force Legal Services Agency, all at Bolling AFB, Washington D.C. In September 1991, Chief Spitz became the Command Paralegal Manager at Tactical Air Command and Air Combat Command, Langley AFB, Virginia. Two years later, Chief Spitz was named the Senior Paralegal Manager to The Judge Advocate General. He held this position until his retirement in 1996.



Chief Master Sergeant Karen E. Yates-Popwell, 1996–1998

Karen E. Yates-Popwell was the first woman to hold the position of Senior Paralegal Manager to The Judge Advocate General. Chief Yates-Popwell is from Mesa, Washington. Upon graduation from high school in 1969, she attended Kennewick Business College. The Chief entered the Air Force in November 1972. Chief Yates-Popwell was stationed at Pease AFB, New Hampshire; Aviano AS, Italy; and Hill AFB, Utah. She then obtained her Associate Degree from Weber State College, Ogden, Utah. Chief Yates-Popwell was then assigned to HQ USAFE Ramstein AB, Germany; Ankara, Turkey; 17th AF, and Sembach AB, Germany. From December 1993 to October 1996 she was the Command Paralegal Manager, Headquarters, Air Mobility Command, Scott AFB, Illinois. Chief Yates-Popwell was then appointed as the Senior Paralegal Manager to The Judge Advocate General in 1996, a position she held until her retirement in 1998.



Chief Master Sergeant David A. Haskins, 1998– Present

David A. Haskins is the first African-American to hold this position. Chief Haskins is originally from Roanoke, Virginia. The Chief enlisted in the United States Air Force in August 1976, and began his military career as a Medical Administration Specialist, Wilford Hall USAF Medical Center, Lackland AFB Texas. He retrained into the Legal Services career field 1980. Chief Haskins' first paralegal assignment was at Seymour Johnson AFB, North Carolina. He was also stationed HQ TUSLOG, Ankara AS, Turkey and Homestead AFB, Florida. In 1987, Chief Haskins also obtained a Bachelor of Arts, Criminology, Saint Leo College (*Summa Cum Laude*), and Associate in Applied Science degree, Paralegal Studies, Community College of the Air Force. Chief Haskins then served at Shaw AFB, South Carolina; and Ramstein AB, Germany. While stationed at Ramstein AB, he obtained his Masters Degree, Public Administration, Troy State University. In June 1994, he became the Command Paralegal Manager, HQ Air Force Space Command, Peterson AFB, Colorado where he remained until July 1998 when he assumed his present duties as the Senior Paralegal Manager to The Judge Advocate General.





Typist to Technician

CHIEF MASTER SERGEANT FREDDY W. PAGE, RETIRED

I was born the day after Christmas, 26 December 1929, in Moultrie, Georgia. Immediately upon graduation from high school, I enlisted in the Army Air Corps on 19 June 1947, at Fort Benning, Georgia. I traveled from Ft. Benning by train (coal burner) to Indoctrination Division, Air Training Command, San Antonio, Texas. While in basic training at San Antonio, the Air Force came into its own and I became one of the charter members of the United States Air Force. After completing 13 weeks of basic training, I was assigned to technical

school at Lowry Field, Denver, Colorado, to complete a three month clerk-typist course. I believe the classification technician at San Antonio used my year of high school typing to place me at Lowry. After graduating from tech school I was sent to Japan Air Material Area (JAMA), Tachikawa, Japan, for a three year tour in occupied Japan. I served 26 months at JAMA and was returned stateside in April 1950, just a couple of months before the Korean conflict began. While in Japan, I worked as a clerk-typist and supply clerk; mostly typing requisitions for replacement of uniform items turned in by enlisted personnel due to wear and tear. That was back in the days when each enlisted man was issued his uniforms by the Quartermaster. Laundry was also free. After a year of working in the Quartermaster warehouse the issuing of uniforms was placed in each individual squadron. I was reassigned to a squadron supply room. After six months in the supply

room, the Squadron Commander assigned me to the Orderly Room as senior clerk-typist and Morning Report Clerk. That remained my duty until my return stateside in April 1950.

I was assigned to Turner AFB, Albany, Ga. (nearest Base to my home of record) for discharge at the expiration of my three years of service, 18 June 1950. Upon arrival at Turner AFB, I was assigned as a clerk-typist (Army MOS 405) to the Base Legal Office. Captain Vincent J. Del Beccaro was Senior Legal Officer.

This was my first experience with Legal and I found, to my great satisfaction, that I enjoyed working for Captain Beccaro and the responsibilities he gave to me. One of the first duties he assigned was to clean the restrooms. I had never seen such dirty commodes. After an attempt to clean what was impossible, I typed a work order for replacement and had the Captain sign it. Within three weeks both commodes

were replaced with new ones. That problem solved, I got down to learning the business of a legal office and by the time my discharge came around on 18 June 1950, I reenlisted for six years, because an authorized position was available for me in the Legal Office.

Not surprisingly, the base office was dramatically different than legal offices of today. It had no airconditioner. Heat was provided by a coal furnace that had to be banked at night and fed coal in the early morning and during the day. Labor was provided by the enlisted members of the office. There were no janitors and the enlisted personnel did the mopping, waxing, and dusting. We also cut the grass.

On July 16, 1950, the old Army MOS 405 was changed into the Air Force AFSC 70250, Senior clerk-typist. I was married (had to get the squadron commander's written permission first or no separate rations) in November 1950. My self-training into the business of

the legal office was such that by March 1951, Captain Beccaro recommended my promotion to Staff Sergeant, which came on April 6, 1951.

In 1952, Captain Holcombe (Legal Officer) and I were on the Mobility List for the Legal Office and were placed on TDY for three months to Misawa Air Base, Japan, supporting the Operation "Fox Peter One." The 31st Fighter Escort Wing, Turner AFB, during the period from 4 July 1952 through 16 July 1952, accomplished the first successful mass flight of jet fighter aircraft (F-84G, Thunderjets) from the U. S. to Japan, a total distance of 10,919 miles, utilizing the inflight refueling operation and island hopping. On 23 February 1954, the 31st Fighter Escort Wing received the first Air Force Outstanding Unit Award for that operation and Captain Holcombe and I, being part of that operation, received the first AFOU Award given to legal personnel.

I received orders on 14 October 1954 for assignment to 600th Air Base Group, FEAF Base, Tokyo. I was assigned to Base Intelligence Section as a 70250 clerk-typist. However, I visited the Base Legal Office and Major James R. Thorn, Staff Judge Advocate, believed my experience would best serve their office and requested my assignment to his office. The Group Commander concurred. In February 1955, working in an authorized slot, I was placed on OJT for 70270. On 25 May 1955, the personnel working in Legal were authorized their own Legal AFSC 70273. TSgt Robert H. Clausen, NCOIC [70273], SSgt Gerald E. McAteer [70253] and myself [70253] received AFSC in brackets. I was immediately placed in OJT for 70273 and was awarded AFSC 70273 on 18 July

1955 and promoted to TSgt on 1 December 1955. Back in those days an award of a 7 level was paramount for promotion, together with your OIC recommendation. However, finding an authorized slot, getting on OJT, and completing the training before a new assignee, with that AFSC, came in forcing your withdrawing from OJT was a challenge. For that reason those placed on OJT were encouraged to use all their spare time to study and complete the training in the shortest period of time. I returned to Turner AFB in April 1956, assigned to Base Legal Office.


I was then assigned to Headquarters 2nd Air Division, Tan Son Nhut Air Base, Vietnam, in July 1963. The office was authorized only one airman (legal technician), three officers (attorneys), a court reporter and an interpreter. At that time, this was the only Legal Office in Vietnam. MSgt Oliver F. Love was the first legal technician assigned to Vietnam and I was the second, as his replacement.

I returned to Turner AFB in July 1964 and was there when it was deactivated as an AF Base and given to the Navy in 1967. I then went to Homestead AFB and then to 13AF, Clark AB, Philippines from 1971 to 1972 (unaccompanied 15 months tour). From Clark, I was assigned to Chanute AFB, Illinois, and from there to Keesler AFB in 1973. I retired 1 July 1975.

My wife, Bonnie and I have three daughters, Teresa, Patti and Vicki. Talk about Air Force brats! Terri was commissioned a 2nd Lt., USAF, Nurse Corps, in Dec 1973 and is now a Colonel. She is currently the Deputy Com-

mander, Air Force Nurses,

Surgeon General Department, Bolling AFB. Patti married an Air Force enlisted man, who is now retired. Vickie also married an Air Force enlisted man, who started his Air Force career in the legal field, but crossed trained as an OSI investigator. He is also retired from the AF. Vicki is an Air Force civil service employee (20 years, so far).

The Legal AFSC was the best thing to happen to me and the Department. It provided the assurance that you would always be assigned to your next station in the Legal Career Field and qualified enlisted personnel would be able to aid in the production of quality work by a legal office. I served proudly in the Air Force in the legal career field. 

Turner AFB legal office activities.

(clockwise, starting immediately below) Capt Louis V. diDonato; 1st Lt William C. O'Kelley; Presenting military justice training certificate to 1st Sgt J.D. Paul, Capt Horton, the SJA is in the middle of the stage. MSgt Baker, NCOIC of legal is third from left on stage; 1st Lt Allen L. Zbar.



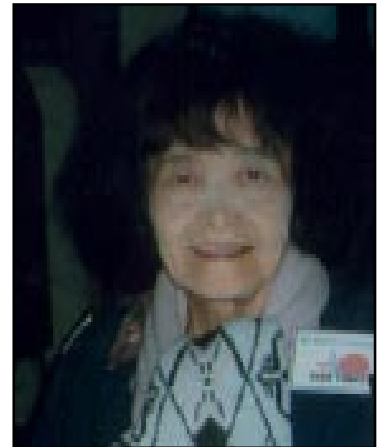
All photos courtesy of CMSgt Freddy Page

Service to Community: Ms. Eunice

Without a doubt, civilian employees play a vital role in the health and success of the Department. While there are, of course, many noteworthy civilian employees, one in particular stands out. The first winner of the Harold R. Vague Award, honorary Chief Master Sergeant and faithful employee for 52 years of service to the United States Armed Forces in Japan, Ms. “Eunice” was known and loved by all who came through the Yokota AB legal office. Ms. Eunice was the mainstay of Yokota’s claims office for many years.

Ms. Yasue “Eunice” Uemura was born and raised in Japan. She went to the Eiwa Mission School and is a graduate of St. Luke’s College of Nursing, Tokyo, Japan. When WWII ended in August 1945, she was working as St. Luke’s International Medical Center as a Nurse Supervisor. Three months later she went to work for the U.S. Army at the Tokyo Army Hospital and worked for U.S. Forces in Japan until her retirement 52 years later. In 1953, she became an interpreter and translator for the Provost Marshall at Kisarazu Air Base and also began processing SOFA claims. Throughout the 1950’s and 1960’s she was a claims examiner at Shiroy Air Base, Fuchu Air Station, and Tachikawa Air Base. From 1970 until her retirement, Ms. Eunice worked Hospital Recovery claims at Yokota Air Base and greeted, mentored, entertained, and charmed many hundreds of JA personnel, their families, and visiting TJAGs. In addition to normal pro-government Hospital Recovery claims, Ms. Eunice assisted personnel injured by Japanese drivers in making claims against Japanese insurance companies. That very complex process would be impossible for most service members without help.

Some of Ms. Eunice’s numerous awards and honors include the following: 20 Superior Performance Awards and citations, including a Suggestion Award, 1960; in 1977 an Achievement Certificate awarded by CINCPACAF; the first recipient of the Harold R. Vague Award, 1979; Japanese Employee of the Year at Yokota, 1987; Outstanding Civilian Employee of the Quarter Awards, 1989, 1990, and 1993. PACAF Outstanding Legal Services Civilian of the Year Award, 1990. In September 1997, she was inducted as an Honorary Chief Master Sergeant by Major General Hawley and Chief Master Sergeant Yates-Popwell. Although she passed away in 1998, Ms. Eunice will long be remembered in the hearts and minds of the members of the Department of The Judge Advocate General. 🏹



(Story and photo from AFJAGS files)

We Remember

These Judge Advocates and Paralegals of
The Air Force Judge Advocate General’s Department
Who Lost Their Lives
While in The Service of Their County

Lieutenant Colonel George Gray, 1954; Captain Ralph Moberly, 1955; Colonel Albert T. Hayes, 1956; Major James Goddard, 1957; Lieutenant Colonel Frank E. Callinan, 1958; Lieutenant Colonel Jerome C. Neveleff, 1964; Lieutenant Colonel Donald C. Helling, 1965; Colonel Thomas Taggart, 1965; Lieutenant Colonel James T. Bullard, 1967; Colonel Joseph F. Corrigan, 1967; Lieutenant Colonel John M. Kennedy, 1967; Lieutenant Colonel James E. Caulfield, 1968; Colonel Gust J. Yandala, 1968; Colonel Joseph Brady, 1969; Lieutenant Colonel Jerome S. Cohn, 1969; Lieutenant Colonel Walter I. Horlick, 1969; Captain Joseph R. Johnston, Jr., 1971; Lieutenant Colonel Albert S. Tomlinson, 1971; Lieutenant Colonel Joseph Morrow, 1972; Major James R. Mortell, 1972; Chief Master Sergeant Thomas W. O’Connor, 1972; Captain George M. Avery, 1973; Lieutenant Colonel Robert L. Bates, 1977; Major Theodore L. Ramirez, 1977; Lieutenant Colonel Guy C. Winks, 1978; Lieutenant Colonel William J. Cook, 1979; Technical Sergeant Albert L. Johnson, 1979; Major John W. Nelson, 1980; Colonel Mack E. Schwing, Jr., 1981; Colonel Robert A. Dunham, 1984; Major Kenneth J. Leeburg, 1984; Captain Lindsey Tyson Wagner, 1985; Lieutenant Colonel Roger T. Carlson, 1986; Lieutenant Colonel A. Bruce Debey, 1986; Major Lawrence R. Deiter, 1986; Staff Sergeant Mark T. Sessamen, 1986; Captain Robert Leonard, 1989; Captain Patrick M. Seaman, 1989; Major Clyde A. Smith, Jr., 1989; Captain Leonard J. Tomson, 1989; Captain Richard J. McMahan, 1991; Lieutenant Colonel David W. Woodring, 1992; Major Robert L. Lowry, 1993; Captain Kenneth J. Trigg, 1993; Senior Master Sergeant Peter W. Liedman, Sr., 1994; Captain Dean W. Mullis, 1994; Technical Sergeant Linda Williams, 1994; Staff Sergeant Deborah Casey, 1998.

“Great Peace Have They Who Love Your Law”

Psalm 119-165

THE JUDGE ADVOCATE GENERAL'S DEPARTMENT AWARDS

Outstanding Senior Attorney Award (Stuart R. Reichart Award) - This award honors Mr Stuart R. Reichart, a former General Counsel of the Air Force, and, presented annually by the Air Force Association, recognizes the outstanding legal achievements of a senior Air Force attorney. The award honors demonstrated excellence, initiative, leadership, management skills and professionalism in the practice of law. Eligible candidates are attorneys with at least 14 years of service with the Department of Defense, with the most recent seven years as a judge advocate or civilian attorney or both for the Air Force. Although the nominator should cite specific examples of outstanding service, the award is for continuous contributions throughout a career of federal service, not a single achievement. A plaque recognizing the winners is on display at the Air Force Judge Advocate General School, Maxwell AFB. The selected attorney receives an award certificate.

Col John J. Martinez, Jr., 1997; Mr Douglas J. Head, 1996; Col Ralph J. Capio, 1995; Col Jerald D. Stubbs, 1994; Col Richard A. McDonald, 1993; Col William A. Moorman, 1992; Col Dennis E. Kansala, 1991; Mr Grant C. Reynolds, 1990; Col James C. Roan, Jr., 1989; Col William R. Elliott, Jr., 1988; Mr Edward T. Constable, 1987; Lt Col Royle P. Carrington, III, 1986; Col William P. Rudland, 1985; Col Thomas G. Jeter, 1984; Mr Leroy C. Brown, 1983; Lt Col Fredolin W. Kuhn, 1982

Outstanding Judge Advocate of the Year Award (Albert M. Kuhfeld Award) - Then-Brigadier General (USAFR) and Mrs. Richard C. Hagan established this award in honor of the late Major General Albert M. Kuhfeld (USAF, Retired), a former The Judge Advocate General, USAF. The annual winner is an officer selected as the most outstanding young judge advocate of the year, based on demonstrated excellence, initiative and devotion to duty. Eligible candidates are active-duty judge advocates serving in the grades of captain or major. A plaque recognizing the winners is on display at the Air Force Judge Advocate General School, Maxwell AFB. The selected officer receives an award certificate.

Maj Ferdinando P. Cavese, 1998; Maj James B. Roan, 1997; Maj Thomas C. Jaster, 1996; Maj Martha J. Buxton, 1995; Maj Nancy S. Richards, 1994; Maj Steven J. Lepper, 1993; Maj Keith J. Klein, 1992; Maj Christopher Burne, 1991; Maj Douglas E. Acklin, 1990; Maj Patrick M. Rosenow, 1989; Capt Kathy A. Montgomery, 1988; Maj Stephen C. Donnelly, 1987; Maj David L. Thomas, 1986; Maj Jarrisse J. Sanborn, 1985; Maj Barton B. Davis, 1984; Capt Patricia L. VanDenBroeke, 1983; Maj Thomas J. Fiscus, 1982; Maj John J. Martinez, Jr., 1981; Capt Robert S. Schwartz, 1980; Capt Lake B. Holt, III, 1979; Capt William A. Moorman, 1978; Maj Scott L. Silliman, 1977; Maj Daniel J. Gallington, 1976; Capt Jimmy D. Puett, 1975; Capt Donald C. Rasher, 1974; Capt Jon S. Wheeler, 1973; Capt Carl A. Corrallo, Jr., 1972; Capt Jack G. Dranttel, 1971; Capt Russell D. Thompson, 1970; Maj Peter D. Newhouse, 1969; Maj Thomas P. Keenan, Jr., 1968; Maj C. Claude Teagarden, 1967; Maj Gordon A. Ginsburg, 1966; Capt Earl E. Hodgson, Jr., 1965; Maj George G. Dean, Jr., 1964

Outstanding Reserve Judge Advocate of the Year Award (Reginald C. Harmon Award) - This award honors Major General Reginald C. Harmon (USAF, Retired), a former The Judge Advocate General, USAF. The annual winner is an officer selected as the most outstanding Air Reserve Component judge advocate, based on training accomplishments or contribution to mission support; exhibition of leadership in contributing to civic, cultural, or professional activities in the military or civilian community; and enrollment in off-duty programs of professional self-improvement. Two plaques recognizing the winner are displayed, one at the Air Force Judge Advocate General School and one at the Air Reserve Personnel Center (ARPC), Lowry AFB. The selected officer receives an award certificate.

Maj Robert G. Kenny, 1998; Maj Pamela A. Dugger, 1997; Capt Julia D. Rivera, 1996; Lt Col Graydon V. Olive, III, 1995; Lt Col John N. Kulas, 1994; Lt Col Robert I. Gruber, 1993; Lt Col Lester W. Schiefelbein, 1992; Capt Kevin C. Ambler, 1991; Lt Col Herbert R. Schulze, 1990; Maj Stephen H. Rovak, 1989; Lt Col Bernard A. Dickson, 1988; Maj Michael B. Jennison, 1987; Maj Richard D. Roth, 1986; Lt Col Parker A. Denaco, 1985; Maj James M. Caulfield, 1984; Lt Col Alfred E.T. Rusch, 1983; Lt Col Lewis W. Shollenberger, Jr., 1982; Lt Col Clayton B. Burton, 1981; Lt Col Alfred L. Ruebell, II, 1980; Capt Jay A. Thompson, 1979; Maj Paul A. Geihs, 1978; Lt Col Peter O. Ehrenhaft, 1977; Maj Jerome Fleischman, 1976; Col Gerald Cabitt, 1975

Outstanding Civilian Attorney of the Year Award (James O. Wrightson, Jr. Award) - Mr. John A. Everhard established this award in memory of Mr. James O. Wrightson, Jr., former Chief, Military Affairs Division, Office of The Judge Advocate General, USAF. The annual winner is the civilian attorney employed by or serving with The Judge Advocate General's Department who has been selected as the most outstanding attorney of the year. The award honors demonstrated excellence, initiative and devotion to duty. A plaque recognizing the winner is displayed at the Air Force Judge Advocate General School. The selected attorney receives an award certificate.

Mr. Ricke D. Hamilton, 1998; Mr. Mark E. Landers, 1997; Mr Douglas P. Goetz, 1996; Mr Paul E. Cormier, 1995; Mr Wayne A. Warner, 1994; Mr Loren S. Perlstein, 1993; Mr Lyndon B. James, 1992; Mr Roger J. McAvoy, 1991; Mr Samuel

R. Hilker, 1990; Mr Daniel G. Jarlenski, Jr., 1989; Ms Sabine W. Kortendick, 1988; Mr Coleman E. Myers, 1987; Mr Richard L. Hanson, 1986; Mr Joseph A. Procaccino, 1985; Mr Donald J. Kinlin, 1984; Mr Wolfgang H. Motz, 1983; Mr Anthony J. Perfilio, 1982; Mr Paul C. Mitchell, 1981; Mr Donald P. Oulton, 1980; Mr Earl W. Carson, Jr., 1979; Mr Edward T. Constable, 1978; Mr Bernard O. Marcak, 1977; Mr Richard K. Jacoby, 1976; Mr John J. Powers, Jr., 1975

Outstanding Paralegal Airman of the Year Award (Steve Swigonski Award) - This award honors Chief Master Sergeant Steve Swigonski (USAF, Retired), the first Special Assistant for Legal Airman Affairs to The Judge Advocate General, USAF. The annual winner is the active-duty airman selected as the most outstanding paralegal of the year, based on demonstrated superior initiative, technical skill, leadership ability and devotion to duty. Eligible candidates are paralegals who are technical sergeants and below. A plaque recognizing the winner is displayed at the Air Force Judge Advocate General School. The selected paralegal receives an award certificate.

TSgt Robert J. Hudson, 1998; SSgt Rick R. Maki, 1997; TSgt Lisa K. Watson, 1996; SrA Christina F. Filipi-Alexander, 1995; TSgt Renee M. Loomis, 1994; SSgt Sherrie L. Rogers, 1993; SSgt Cherri A. Duval, 1992; TSgt Sandra Draper-Ellis, 1991; SSgt Delvin C. Whitlock, 1990; TSgt Ann D. Stocks, 1989; TSgt Carl W. Trout, Jr., 1988; TSgt Marsha A. Ptomey, 1987; MSgt Carole V. Langdon, 1986; TSgt Darrel K. Curtis, Jr., 1985; TSgt Charles L. O'Connors, 1984; TSgt Gary L. Yochum, 1983; TSgt Charles H. Leathers, Jr., 1982; MSgt Suzanna K. Beil, 1981; TSgt Lynn F. Bartunek, 1980; TSgt Thomas C. Downs, 1979; TSgt Dennis A. Kish, 1978; SSgt Peter W. Liedman, 1977; TSgt Eddie J. Kaiser, 1976; TSgt Dennis E. Hightower, 1975; SSgt David Archibald, 1974; SSgt Margaret K. Jackson, 1973; TSgt Harold J. Deshaw, 1972; TSgt Daniel L. Packard, 1971; SSgt Cecil White, 1970

Outstanding Reserve Paralegal of the Year Award (David Westbrook Award) - This award honors CMSgt David Westbrook (USAFR, Retired), a former Senior Individual Mobilization Augmentee. The award is presented annually to the member of the Air Reserve Component selected as the most outstanding paralegal of the year, based on demonstrated superior initiative; technical skill; training accomplishments or contribution to mission support; exhibition of leadership qualities in contributing to civic, cultural, or professional activities in the military or civilian community; and enrollment in off-duty programs of professional self-improvement. Two award plaques recognizing the winner are displayed, one at the Air Force Judge Advocate General School and the other at ARPC. The selected paralegal receives an award certificate.

SMSgt Renee A. Blancett, 1998; MSgt Monica J. Luke, 1997; SSgt Shannon D. Sanders, 1996; SSgt Max F. Scheck, 1995; MSgt Verscia V. Eason, 1994; SSgt Dawn M. Cheugh, 1993; TSgt Dorothy E. Bowman, 1992; TSgt Christine T. Brito, 1991; TSgt David A. Verrett, 1990; SSgt Sonia C. Sutherland, 1989; TSgt Mamie E. Havelka, 1988; TSgt Pamela S. Corrigan, 1987; SMSgt Grant Noble, 1986; TSgt Kathi I. Aurin, 1985; MSgt Oren R. Nollette, 1984; SSgt Brenda D. Smith, 1983

Outstanding Legal Service Civilian of the Year Award (Harold R. Vague Award) - This award honors Major General Harold R. Vague (USAF, Retired), a former The Judge Advocate General, USAF. The award is presented annually to the legal service civilian employed by or serving with The Judge Advocate General's Department who is selected as the most outstanding civilian. The award is based on demonstrated excellence, initiative and devotion to duty. Special consideration is given to individuals who develop or improve systems, programs, or procedures that improve management efficiency or cost-effectiveness for Air Force legal programs. A plaque recognizing the winner is displayed at the Air Force Judge Advocate General School. The selected legal service civilian receives an award certificate.

Ms. Patricia A. Leary, 1998; Ms. Roxanne M. Murek, 1997; Mr Kon Won Yi, 1996; Ms Rayma C. Pratt, 1995; Ms Maureen A. Nation, 1994; Ms Dorothy C. Karlsen, 1993; Mr Sentiff C. Busby, 1992; Mrs Elaine E. Morris, 1991; Ms Catherine C. Paige, 1990; Ms Ester A. Stubbs, 1989; Mrs Pamela A. Sitzes, 1988; Mrs Linda M. Lutman, 1987; Ms Jeanette D. Heslop, 1986; Mr Arthur L. Molina, 1985; Mrs Carol L. Moore, 1984; Mr Harry Ulrey, 1983; Ms Delores Coblens, 1982; Ms Charlotte M. Farkas, 1981; Ms Marion F. Parmley, 1980; Ms Yasue (Eunice) Uemura, 1979

The Judge Advocate General Special Service Award - This award was developed in 1984 to recognize exceptionally meritorious performance by Department members or outstanding contributions to The Judge Advocate General's Department. This award may be presented to a member of the Department, a military member or civilian government employee outside the Department, or a member of the civilian community. This award is not given annually. A plaque recognizing the winner is displayed at the Air Force Judge Avocate General School. The selected person receives an award certificate.

Col Michael B. Jennison, 1997; CMSgt (Ret.) Robert S. Slayton, 1994; Ms. Wenda C.M. Bast, 1992; Gen Russell E. Dougherty, 1989; Col Thomas Krauska, 1984

Direct Appointees Enter the JAG Department

I arrived at Maxwell AFB on Sunday, 31 October 1977 as one of about 10 in the direct appointee group. There were three other women (Maggie Schreier, recently retired Colonel, Gail Latimer (now Silverman), reserve Colonel, and Mariann Martin, at General Counsel's office for AAFES in Dallas) and at the time there were few other women on active duty as judge advocates.* My handsome husband (Jack "Jay" W. Grady, now a lieutenant colonel in the reserves) was also in the class. Then-Colonel Keith E. Nelson (later TJAG) was the new commandant: we were his first class. Deputy Commandant was Lieutenant Colonel Edward J. Murphy. Instructors included Colonels Geoff Mangin, Jim Heuple, Dick James and Scott Sillaman. After one week of how to salute and who to salute, the

first class of FLEPPers arrived - including Colonels Jim Swanson, Scott McLauthlin, Kip At Lee (retired) and Lieutenant Colonel, retired Don Nolte (of JASOC fame). At the end of JASOC I went to Holloman AFB and Jay went to Osan AB. He flew to Holloman in March (18 March 1978) and we were married. Then Major Bob Lang at JAX arranged a joint spouse tour the following year to Germany. Jay and I were the first JAG couple. (By Colonel Martha Levarnsen, USAFR) 🏆



YOUR AIR FORCE BLUES. (right top to bottom)

Capt Martha Levarnsen finds a uniform that almost fits as Capt Jan Williamson helps her get it ready for the alteration shop; Capt Jan Williamson (right) a faculty member at Academic Instructor



School, shows Capt Mariann Martin (left) and Capt Margaret Schreier one of several uniforms they will wear during their Air Force careers.

(The following article and accompanying photographs appeared on November 11, 1977 in *The Dispatch*, Vol. 30, Number 45, at 14, Maxwell/Gunter Base paper)

* Colonel (Ret.) Jean Simpson was the first female judge advocate to be promoted to Colonel. Colonel (Ret.) Mildred L. Raichle, who entered the Department in 1966, was the first female judge and second female to be promoted to Colonel. The first female African-American judge advocate was Capt Jackie Epps who went through JASOC as a member of class 74C. At least ten women preceded Colonel Levarnsen in the Department.

A very new way of life

Story by Ed Medal, USAF Photos by Dick Byrd

Nine lawyers were sworn into the Air Force recently and received their first taste of military life at Maxwell. The nine received direct appointments as captains and reported immediately to the Judge Advocate General School for a weeklong orientation course. During the week, the new Air Force lawyers were completely processed into the military and received a rapid-fire overview of military life. Uniforms were issued, personnel folders were begun and finance records were put in order. Additionally, the group learned as much as possible in a week about such things as drill and ceremony, officer and NCO relationships and customs and courtesies. The direct appointment program for lawyers entering the JAG field is relatively new to Maxwell. The program began in 1972 with training being given at Sheppard AFB, Texas. In 1975, a trial program was initiated at Maxwell, and in May of this year, it became an official function of the JAG School. Following the orientation course, the direct appointees join other new Air Force lawyers for the six week long Judge Advocate Staff Officer Course. 🏆



PRESENT ARMS - Capt Gail Latimer (right front) and three other newly appointed Air Force officers "present arms" as Capt Robert Jaegers and his fellow lawyers observe.

A Quarter Century of FLEP

COLONEL JAMES W. SWANSON

The Funded Legal Education Program was the product and brainchild of a very different JAG Department and, indeed, a very different Air Force. Now, as the program rapidly approaches its 25th birthday – almost exactly half the age of the Department it was created to serve – a retrospective look at FLEP seems in order. As one of FLEP’s first participants and one who later administered the program during a tour as chief of JAX, I have a point of view that is admittedly both objective and subjective.

The Judge Advocate General’s Department of the early 1970s was unlike today’s Department in many ways, not the

time were captains – there was simply no one more senior available. At the bottom line, this staggering field grade shortage posed the very real danger of a death spiral for the JAG force model; unless it was corrected, the Department correctly assessed that it could soon be so short of experienced attorneys as to make accomplishment of the JAG mission a literal impossibility.

That, then, was the context that spawned the Goldwater Bill¹ creating the Funded Legal Education Program. The logic behind the program was straightforward – offer commissioned officers with between two and six years service the chance to

“The kids got to keep eating and get their new clothes while I studied pretty hard, got my law degree, passed the bar exam...”

least of which was its composition. For starters, the large majority of JAG captains of that era were products of a much larger and more robust national AFROTC program than is the case in 1999. The draft and the seemingly endless Vietnam War were, of course, key variables in the equation. Many thousands of male college students of the 1960s and early 70s, who reasoned that service as an Air Force officer was preferable to conscripted service as an Army enlisted “grunt,” swelled the cadet rolls of AFROTC detachments around the country. Upon completion of their undergraduate studies, many who aspired to be attorneys sought and obtained “educational deferments” which allowed them to attend law school prior to coming on active duty to serve out their four-year ROTC commitments.

Given their collective mindset and motivation, it’s probably not surprising that the vast majority of AFROTC-commissioned JAGs served only four years and then took off the uniform (in fairness, many did stay in the reserves) in favor of the civilian practices that had always been their intended final destination. As a result, by the early 1970s, TJAG’s Department was awash in new captains who could be reliably counted on to depart at first opportunity.

Their stampede to civilian life meant that for several years there hadn’t been enough captains around when it was time to compete for promotion to major, and as a result the Department found itself woefully short of field-graders. Indeed, at one point in 1972, there were over 300 unfilled major and lieutenant colonel billets. That gaping hole in the side of the JAG pyramid accounted for the fact that many base SJAs of that

attend law school at full pay in exchange for a six year commitment (in addition to any remaining unserved commitment). Upon graduation, the Department would acquire the guaranteed services of a cadre of judge advocates who were committed to active duty well past the midway point of a twenty-year career. At that point, it was correctly reasoned, most would opt to stay at least until retirement eligibility. The Goldwater Bill authorized each of the services to select 25 officers a year to participate in the program, and for the first several years the Air Force used the entire quota.

That the program generated significant interest among company grade Air Force officers is indisputable. The first selection board to screen officers for participation in the full three-year program² was held in the spring of 1974 – over 200 officers applied to be among the 25 who would begin law school at Air Force expense in the fall of the same year. I was one of those selected.

My FLEP story is probably typical. I had entered the Air Force three years earlier upon my graduation from Purdue with a degree in journalism and an AFROTC commission as a second lieutenant. Assigned to the “administration” career field, my first duty station was Sheppard AFB, Texas, where I had been given several good jobs in relatively quick succession, including a one year stint as commander of the Technical School Headquarters Squadron (JAG was not the only career field that was short of experienced officers) followed by a great assignment as *aide-de-camp* to the general officer who commanded Sheppard. Although I had occasionally thought that going to law school was something I might like to do, it was frankly a goal that seemed far out of my reach financially – I had married during my sophomore year of college, and already had two young daughters who

Colonel Swanson (B.A., Purdue University; J.D., University of Illinois) is the Commander of Air Force Legal Services Agency. He is a member of the State Bar of Illinois.

had developed a real affinity to eating regularly and seemed to need new clothes on almost a weekly basis. Further, although I wasn't at all excited about the career prospects and promotion opportunities of the admin career field, I had discovered that I liked the Air Force lifestyle much more than I ever expected I would. For me, then, FLEP was literal and unexpected "manna from heaven." It is no exaggeration to say that my selection for the program was the singular and most defining professional event in my entire life. Said another way, I'm not sure where circumstances would have led me if it hadn't been for the Goldwater Bill, but I'm pretty sure it wouldn't have involved either an Air Force career or the practice of law.

"What if?" musings aside, I gratefully accepted my selection and ward-of-the-state status for the next three years. The kids got to keep eating and get their new clothes while I studied pretty hard, got my law degree, passed the bar exam, and was admitted to the Illinois bar. In 1977, I was appointed as a judge advocate. Since then I've been the beneficiary of more than twenty years worth of terrific JAG assignments and experiences that have been incredibly challenging, rewarding, and enjoyable – I simply can't imagine any other career path, in or out of uniform, I would have rather followed.

That's what FLEP gave me. But what did FLEP give to the Air Force and TJAG's Department, and was it worth the significant financial cost implicit in a program of fully subsidized law school attendance?³

For starters, FLEP helped deliver what it originally promised – a long-term solution to what had been a chronic field grade shortage. Within just a few years, due in large part to the infusion of willingly indentured mid-career JAGs that FLEP provided, massive vacancies in the grade of major and lieutenant colonel became a thing of the past. By the early 80s, for example, most 0-4 and 0-5 staff judge advocate billets were filled by JAGs of the appropriate rank, and the Department has been "healthy" in terms of field grade manning ever since. That's primarily because most FLEP graduates did what JAG planners had hoped and expected they would do – stay at least until 20 years service.⁴

In at least two other ways, however, it can be argued that FLEP has actually delivered *much more* than it promised.

The first has been FLEP's enormous impact upon the Department's cadre of senior leadership – colonels and lieutenant colonels with more than 20 years service. Such an impact was not expected. In fact, the initial working assumption was that virtually all FLEPers would depart at first retirement eligibility (when most would be in their early 40s) before they were even eligible for primary zone promotion to colonel. The reality has been very different - a sizable number of FLEP grads have not only stayed around to compete for 0-6, but many have remained well beyond that point and been afforded the opportunity to serve in virtually every variety of senior JAG assignment.⁵

The second unexpected impact has been the terrifically useful cross-pollination the program has generated. FLEP has over the course of its existence infused the Department with an undeniably healthy dose of experience and expertise from

virtually all AF career fields – FLEP grads wear wings and missile badges, have flown over Iraq during Desert Storm, have worked in AFOSI and security police, understand the intricacies of the personnel and comptroller functions, etc., etc., etc. Thanks to FLEP, TJAG's Department has collectively "been there, done that" with regard to almost everything the Air Force does - the improved contextual and operational awareness on the part of the Department and resultant enhanced credibility with its Air Force client may not be easy to measure, but they are nevertheless real.

FLEP has, of course, been modified and significantly slimmed down since its heyday of the 1970s and early 1980s. Fiscal considerations and the easing of the field-grade shortage that was the program's principal mission have prompted a series of decisions over the years to gradually reduce participation to the present level of seven officers a year. Yet like the Energizer bunny, FLEP keeps on going and going and going, offering its special brass ring of life-changing opportunity to young USAF officers in other career fields, and providing the Department a steady flow of career JAGs with uniquely useful backgrounds and perspectives.

Thus, as we celebrate the golden anniversary of the Air Force Judge Advocate General's Department, it's also appropriate to offer a toast to FLEP on the occasion of its own silver anniversary. Those of us who were lucky enough to be its individual beneficiaries obviously have our own compelling reasons to celebrate FLEP's existence. Beyond that, however, it's indisputable that the Funded Legal Education Program has made a vital contribution to the health and success of TJAG's Department over the past 25 years – everyone who wears a JAG badge has reason to celebrate the program and its success.

Happy birthday, FLEP . . . and thanks! 🦋

¹ Pub. L. 93-155, Defense Appropriations Act, 1974, codified at 10 U.S.C. 2004, then entitled "Detail of Commissioned Officers of the Military Departments as Students at Law School," now entitled "Detail of Commissioned Officers as Students at Law Schools," See also DODD 1322.12, Funded Legal Education, April 12, 1974 and AFI 51-101, Judge Advocate Accession Program, Chapter 2, Funded Legal Education Program (FLEP), 25 August 1994, replacing AFR 36-7.

² Given the timing of the Goldwater Bill's enactment, the AF was actually able to conduct a board a few months earlier that conferred FLEP status on some active duty officers currently attending law school at their own expense. The spring 1974 board, however, was the first to select officers to *begin* law school under FLEP.

³ FLEP is not cheap. In today's dollars, a 1st Lt selected for FLEP has won a "scholarship" – salary, tuition, and a book allowance – worth somewhere between \$150,000 to \$200,000 over the three years of law school.

⁴ Historically, a full 80% of all FLEP participants have stayed on active duty until at least retirement eligibility.

⁵ As of November 1998, over a quarter (34 of 130) of the Department's colonels and colonel selects are FLEP graduates.



The Great Big School House

MAJOR R. SCOTT HOWARD

The First School

The Air Force Judge Advocate General School (the School) was first organized in 1950 at the direction of the first Judge Advocate General (TJAG), Major General Reginald T. Harmon. Major General Harmon perceived the Air Force needed a judge advocate school to deal with the training requirements associated with the adoption of the Uniform Code of Military Justice and the increase in military personnel resulting from the Korean War.¹

An early version of the School commenced at Tyndall Air Force Base (AFB) around 1949² with Lieutenant Colonel James E. Driver as the first commandant.³ Colonel Driver made the move to Maxwell AFB when the School was first formally established as the Judge Advocate General Division under the Air Command and Staff School.⁴ The School had basically three functions at the time: 1) teach The Judge Advocate General Staff Officer Course; 2) develop and maintain legal correspondence courses for the newly developed Extension Course Institute; and 3) provide legal instruction to the other

divisions and schools within the Air Command and Staff School.⁵

Lieutenant Colonel James E. Driver served as the commandant until Colonel John E. Blackstone was assigned as the commandant in mid-1953. To accomplish the original teaching requirements there were sixteen officers, two administrative personnel, and six civilians assigned to the School.⁶ Five officers were assigned to instruct in the Military Justice Division, five were assigned to instruct in the Military Affairs Division, and three officers were assigned to teach extension and associate courses at the school.⁷ The other three officers were assigned to the administration and evaluation division.⁸

The main course taught from 1950-1954 was The Judge Advocate General Staff Officer Course. The course length

Major Howard (B.A., Austin College; J. D., University of Arkansas) is an Instructor, Military Justice Division, Air Force Judge Advocate General School. He is a member of the Arkansas State Bar.

We lost a few members of our faculty in October 1952, when JAGs were taken off flying status. Quite a number of us were on flying status at the time, but most elected to remain with the JAG.

**~ Colonel Ernest R. Mattoon,
Instructor Air Force JAG School in 1950s**



1965 JAG School lecture on the operation of a legal office.

ranged from 10 to 14 weeks. There were three 12-week courses offered in 1951; four 10-week courses in 1952; two 10-week courses and one 14-week course in 1953; and three 14-week courses conducted in 1954. Each course was comprised of approximately 60–70 judge advocates. The Judge Advocate General Staff Officer Course was organized into four areas. Military Justice and Military Management were taught during the first part of the course, usually lasting around five weeks. The remainder of the course was split between Military Affairs and integrated problem solving, combining the above areas whenever possible. In addition, guest lecturers from outside of the Department as well as members of the Department were also invited to teach the class.⁹

It is of particular interest that during the first year of the School's existence, future TJAG Major General Harold Vague attended the first class, graduating on 30 March 1950.¹⁰ According to Major General Vague, this first course was designed to teach the Uniform Code of Military Justice and the Manual for Courts-Martial, which were both new at the time.¹¹ Then-Captain Vague noted "the manual had not been printed and we used a, I would call it a Ditto reproduction, of the pages of the regular manual. That was the only one we had."¹²

A basic military training program was instituted at the School in mid-1952 with Class 52-C. The curriculum expansion was aimed at orienting the recent law school graduates to military customs, courtesies, and discipline. Major General James Taylor, Jr. (then-First Lieutenant and later Deputy Judge Advocate General) was among the first students to receive training under the expanded curriculum.¹³

In 1954, the number of JAG officers needing formalized training diminished to the point that Major General Harmon decided the School was no longer needed. Major General Harmon believed the JAG Department needed to establish the same training policy as other large law firms throughout the United States.¹⁴ The General thought the Department did not need a formalized training school for newly hired lawyers, as no other major law firm had one.¹⁵ It was decided training could be effectively done on the job at the various base offices throughout the Air Force.¹⁶ As a result, the School was dismantled in 1955, two years after the cessation of hostilities in Korea.

The Department did not again have a formalized training school until 1968.

The Reestablished School

The re-establishment of the School in 1968 was the product of then-TJAG Major General Robert Manss. According to an old memorandum, in 1968 a school for training new judge advocates was again considered essential.¹⁷ Until the School was reestablished in 1968, the Department's primary training tools consisted of on the job training (OJT) and a correspondence course dealing solely with military justice. The OJT and correspondence course that had been used for the previous 14 years had not proven to be consistently satisfactory. A memorandum from Colonel Robert O. Rollman, then the Executive Officer to TJAG evidenced this. According to Colonel Rollman's memorandum:

The comprehensive and complex nature of military law today, coupled with the unsatisfactory performance of some of our young officers, makes it imperative that they be uniformly trained at the beginning of their military career (and before reporting to their first duty station). Moreover, many of our young judge advocates have decried the lack of a formalized training program at an early stage in their military career.¹⁸

As further justification for the course, Colonel Rollman observed:

Military law today is much broader in scope and depth than it was ten or twelve years ago. . . . Supreme Court decisions now require the participation of an attorney from the earliest investigative stages onward. . . . The Hospital Recovery Act, effective January 1963, opened up an entirely new area for our claims personnel. Sonic booms have increased. Amendments to [the] Federal Tort Claims Act now require filing of claims prior to instituting suit. The Federal Collections Act of 1966 imposes responsibilities and involved procedures in the area of claims in favor of the government hitherto exercised by the Attorney General. The recently enacted Administrative Procedure Act (with the Freedom of Information Amendment) has the potential for considerable judge advocate involvement. The judge advocate is active in areas of civil rights and labor law. He is deeply involved in administrative law and the myriad personnel actions and/or litigation connected therewith. The trend in civil litigation involving the Air Force is upward. Activity in the procurement law field has become [increasingly] extensive and involved.¹⁹

The School that re-opened in 1968 was originally designed to offer one course: the Judge Advocate General Indoctrination Course. The curriculum consisted of 88 lectures and was

taught over a 6-week period. The course was offered six times a year to approximately 210 students. The original mission of the course was:

To provide junior judge advocates with a foundation in the principles and concepts of military law and Air Force procedures which will increase their professional qualifications as legal officers and as members of the commander's staff.²⁰

Colonel Quincy Tucker was the commandant in 1968 where he remained until 1970. Colonel Neil Kadsan was then assigned as commandant and served in that position until 1974. Colonel Lew D. Brundage was the commandant from 1974-1977.

Throughout the 1970s, courses were continually added to the School's curriculum. By the mid-1970s the School was teaching the following courses in addition to JASOC: Reserve Forces Judge Advocate Course; Staff Judge Advocate Course; Legal Specialist Advanced Course; Interservice Military Judges Seminar; and the Judge Advocate Officer Orientation Course.²¹ In addition, the School's faculty members were also active participants in other courses taught throughout Air University. Faculty members lectured at Air War College, Air Command and Staff College, Squadron Officer School, the Base Commanders' Management Course, the Senior NCO Academy, the Air Force Professional Personnel Management School, and the Air Force Chaplain School.

In 1977, future TJAG then-Colonel Keith E. Nelson became commandant of the School. By then, The Judge Advocate General Indoctrination Course had been renamed the now familiar Judge Advocate Staff Officer Course (JASOC). JASOC was six-weeks in length and was offered four times a year. The mission of the course had been changed to the following:

To provide judge advocates with a foundation in principles and concepts of military law and Air Force procedures, organization, and doctrine which will adapt their professional qualifications to the military sys-

tem and increase their potential as members of the commander's staff. To prepare graduates for certification as trial and defense counsel in accordance with the UCMJ.²²

The same year, the direct appointee training program became an official function of the School. As in the 1950s, new judge advocates were indoctrinated in military life with a week-long introduction to customs, courtesies and a general overview of the military.²³ Additionally, the first group of Funded Legal Education Program (FLEP) participants became judge advocates and attended JASOC.²⁴

Major General Nelson served as the School's commandant until he was reassigned in 1981. In 1981 Colonel Charles E. Edwards was assigned as the commandant of the School and remained until 1986. Colonel Donald C. Rasher followed Colonel Edwards and was the commandant from 1986-1991.

During the 1980s, the mission of the School continued to expand. By 1984, the faculty assigned to the School were responsible for teaching eleven resident courses.²⁵ Over 800 Air



Force judge advocates, civilian attorneys, and paralegals attended these courses.²⁶ Two new advocacy courses, the Trial and Defense Advocacy course and the Advanced Trial Advocacy Course, were added to the curriculum in 1984.²⁷ The Trial and Defense Advocacy Course was offered three times in 1984 to a total of 96 students.²⁸ The Advanced Trial Advocacy Course was offered one time in 1984 and was attended

by 32 students.²⁹ The School's faculty also continued to remain in demand to teach at other schools throughout Air University. Throughout the 1980s, the AIR FORCE LAW REVIEW and THE REPORTER also received greater emphasis. The LAW REVIEW was published approximately four times a year throughout much of the 1980s and the responsibility

for editing THE REPORTER was transferred to the School beginning in December 1986.

A New Building

In the early 1980s, several senior leaders of the Department began to look at the possibility of the School and the Department having an actual JAG school learning center facility. Then TJAG Major General Thomas B. Bruton commissioned a study in 1985 on the needs of the Department for a JAG school facility. Brigadier General Norman R. Thorpe was in charge of the study group and signed a report outlining their recommendations on 4 November 1985. While Major General Norris was TJAG (1985 to 1988) law schools across the nation were invited to bid on building a 100 person dormitory and law facility.³⁰

The School was in need of a facility with the capacity and equipment to enable the School to conduct multiple courses at one time and provide a location to conduct Department meetings. The Department also wanted a complex large enough for the JAS personnel, who were then located in Denver, Colorado. It was also determined through a TJAG School Study Group that the role of the JAG School should be expanded to include responsibility for: long-term JAG concept planning and development; acting as the computerized clearinghouse for legal assistance (and possibly other areas of law); managing, monitoring and coordinating all legal education and training of judge advocate and non-JAG lawyers within the Air Force.³¹

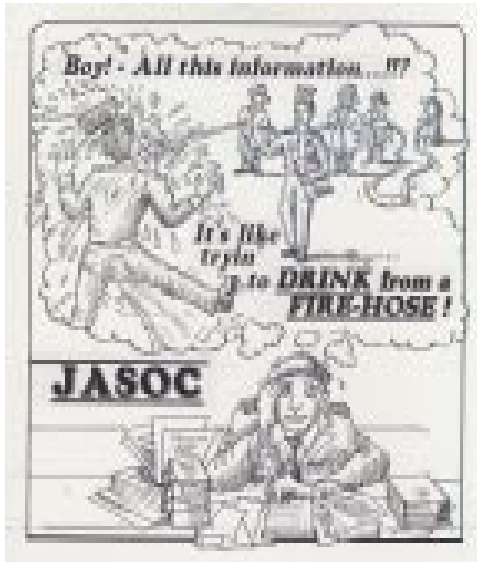
When now retired Colonel Donald C. Rasher became commandant of the School in 1986, one of the many things he did was help develop the idea and plans for the current Air Force

Judge Advocate General School. Colonel Rasher, together with several members of the faculty and staff assigned to the School at the time, designed a building with the above initial concepts in mind. The School, as we know it today, was initially known as The Judge Advocate General's Department Center for Education, Research, Plans and Information. Originally, the facility consisted of two levels and was designed to be approximately 50,000 square feet. This original size was later modified to three levels and 75,000 square feet to incorporate billeting rooms for students attending courses at the school.³²

There were two ideas for the location of the School. The School could be located on an Air Force installation or at a law school. Ultimately, the two universities that expressed the most interest and offered proposals to co-locate the School at their university were the University of Denver and the University of Alabama. Of the two proposals offered, the University of Alabama's proposal was the best.³³ A bid for building the facility at Maxwell AFB was also obtained, but was not as cost effective as the University of Alabama proposal.³⁴

The University of Alabama offered to build a 55,000 square foot facility plus a 100-room dormitory to house students attending the courses.³⁵ However, moving the Judge Advocate General School from Air University was not as easy as accepting the offer from the University of Alabama. During the latter 1980s an Air Force Council had been established to make recommendations to the Chief of Staff (CSAF) concerning the future of the School. Now TJAG (then Colonel) Major General William A. Moorman briefed the Council on the University of Alabama proposal.³⁶ During the briefing, the Vice Chief of Staff praised the concept of training Air Force judge advocates at an Air Force base.³⁷ In 1988, the Air Force Council recommended: 1) the School remain at Maxwell AFB; 2) the JAS Directorate be consolidated with the School; 3) the building of a new 56,600 square foot law center; and 4) the building of a 48,000 square foot dormitory facility to house 100 students.³⁸ The CSAF concurred with the recommendations of the Air Force Council that same year.³⁹

The construction of the School began three years later in



Groundbreaking for the new School. Maj Gen Morehouse and Congressman Dickinson

Larceny At The School

I was assigned as an instructor in law at the AFJAG School. I felt honored to be on the faculty with folks who were already legends (in their own, if not others', minds) such as (current ranks), Col Tom Becker, Col Al Passey, Col (ret.) Bill Lockwood, Col (ret.) Jeff Owens, Col (ret.) Maggie Schreier, Lt Col (ret.) Mike Powell, Lt Col (ret.) Mark Magness, Mr. (SES) Gordon Wilder, and Maj (ret.) Darrell Phillips, among many other "greats." Col (ret.) Don Rasher was the Commandant. The faculty, then (as now, I'm sure) was short on neither creativity nor ego. We were always trying to "out cute" each other by coming up with good jokes and various other attention-steps during our lectures.

Problem was, no one ever laughed at Al Passey's jokes, and it was beginning to get under his skin. One day, early in the morning, he told a great joke to all us faculty members that made us laugh so hard it brought tears to our eyes. Al said he was going to tell it during his claims lecture at 1000 hours that day, and he was totally confident the students would (finally) laugh at one of his jokes.

I had a 0900 lecture, so I told the joke to the students at that time. Needless to say, when Al got on the stage at 1000 and told the joke, nobody laughed. He was totally deflated, and asked the students why they didn't laugh. Of course, they ratted me out.

At 1150, just before the lunch break, I was summoned into the JASOC lecture hall to stand in front of the student body, where Tom Becker formally preferred charges (on a DD Form 458) against me under Article 134, for "larceny of a joke (being of some value)", with (then) Major Al Passey signing as accuser. I was tried and convicted on the spot by the JASOC students. I never appealed, although the jury was obviously tainted.

(By Lt Col David Hoard, USAFR)

August 1991. Congressman William L. Dickinson, Lieutenant General Charles G. Boyd, AU/CC, and then-TJAG Major General David C. Morehouse attended the groundbreaking ceremony. Less than two years later, on May 21, 1993, the School was officially inaugurated.⁴⁰ Congressman Dickinson addressed the crowd at the inauguration ceremony of the William L. Dickinson Law Center and the Russell E. Dougherty Hall.⁴¹ Retired General Russell E. Dougherty, Lieutenant General Jay Kelley, AU/CC, and Major General Morehouse attended the inauguration.⁴² The Dickinson Law Center has two auditoriums, a 40,000 volume capacity library, two moot courtrooms, thirteen seminar rooms, four computer education training classrooms, a conference facility, faculty offices, lounges, a state-of-the-art audio-visual system, and the Department's heritage display room.⁴³

Paralegals Training at Maxwell

The first paralegal course taught in the new Dickinson Law Center was the Paralegal Apprentice Course (PAC). It was taught soon after the Dickinson Law Center opened in 1993.

Previously, PAC was known as the Paralegal Specialist Course and was taught at Keesler AFB. Prior to 1993, only a limited number of courses were offered to paralegals at the School. The first paralegal course taught at the School was in 1974. That course was the Legal Services Advanced Course (LSAC), renamed the Legal Services NCOIC Course, now referred to as the Law Office Managers Course (LOMC). LSAC was offered one time a year to a total of 40-50 paralegals. In 1980, the Claims and Tort Litigation Course (CTLC) was added to the paralegal curriculum. Originally, CTLC was a four-week paralegal course offered once a year to about 40-50 paralegals. CTLC was later reduced to two weeks. In 1992, the Paralegal Advanced Law Course (PALC) was first offered. PALC was taught until the Paralegal Craftsman Course was added to the curriculum in 1995.⁴⁴

Conclusion

Since the inauguration of the new building, the School has had three commandants. Colonel Robert E. Sutemeier served as the commandant from 1991-1995, Colonel Jack L. Rives was the commandant from 1995-1998, and Colonel David G. Ehrhart is the present commandant. Today, the School is in session 50 weeks a year teaching over 30 different resident courses to approximately 3600 students annually.⁴⁵ One of the primary courses still taught at the School is JASOC. Three JASOC classes are taught each year and lawyers from foreign countries periodically attend one of these now nine-week courses. With outside teaching responsibilities throughout other Air University schools and colleges teaching approximately 12,000 students annually, what originally began as a small school to orient new Air Force lawyers has developed into a dynamic educational institution serving the Air Force Judge Advocate General's Department and the future leaders of the United States Air Force.⁴⁶

¹ Gary D. Null, *The JAG School*, THE REPORTER, Vol. 22, No. 2 (1995), at 31-32.

² Letters from Colonel Earnest R. Mattoon (USAF ret.), instructor at the School 1952-1955, to the Commandant and Captain Bruce Smith (20 September 1990 and 8 June 1992) (on file at the School).

Moving into the new school. (left to right) SMSgt J. Whitaker, MSgt D. Harmon, and MSgt J. Such



³ Null, *supra* note 1, at 31-32.

⁴ Colonel James E. Heupel, (USAF ret.), *The Air Force Judge Advocate General School*, THE REPORTER, Vol. 7, December 1978, at 13; Mattoon letters, *supra* note 2.

⁵ Colonel Heupel, *supra*, note 4, at 13-14.

⁶ Master File Administration, undated memorandum (on file at the School).

⁷ *Id.*

⁸ *Id.*

⁹ Mattoon letter, *supra* note 2, 20 September 1990.

¹⁰ Null, *supra* note 1, at 31-32.

¹¹ *Id.* at 31.

¹² *Id.* at 31.

¹³ Colonel Heupel, *supra* note 4, at 14.

¹⁴ Null, *supra* note 1, at 31.

¹⁵ *Id.* at 31.

¹⁶ Colonel Heupel, *supra* note 4, at 14.

¹⁷ AF Form 19, Request to Establish/Continue Special Short Course Training submitted by Colonel Robert O. Rollman (USAF), Executive Officer to TJAG (undated) (on file at the School).

¹⁸ *Id.*

¹⁹ This quote was from a memorandum attached to Colonel Rollman's AF Form 19.

²⁰ Letter from Colonel Allen C. Durgin (USAF), Director of Manpower and Organization, Air University, to HQ USAF (AFJAG) (2 May 1968) (on file at the school).

²¹ Colonel Heupel, *supra* note 4, at 14.

²² *Id.* at 15.

²³ Ed Medal, *A Very New Way of Life*, Maxwell-Gunter Dispatch, v. 30, No 45, at 14 (reprinted in this edition of *The Reporter*).

²⁴ Colonel James W. Swanson, *A Quarter Century of FLEP*, this edition of THE REPORTER.

²⁵ History of the Air Force Judge Advocate General School CY

From Bataan to Montgomery

An inveterate fighter against oppression by an aggressor nation was graduated last week from the Air Command and Staff School's Judge Advocate General Staff Officer course here. The fighter is Maj Amado Q. Aleta, combat leader during WWII in the Philippines, prisoner of war, guerrilla, war crimes prosecutor and investigator for the Filipino government against the Hukbalahap (Huks) dissidents still roaming the hills of the Philippines.

The Major, who was graduated a lawyer from the University of Manila six days before Pearl Harbor, was appointed commander of a machine gun company in January of 1942 on Bataan and remained there until the surrender of the peninsula April 9, 1942.

Major Aleta endured the infamous Death March from Bataan to the Japanese concentration camp at Camp O'Donnell where he remained a prisoner of war for five months. The Japanese instigated their "co-operation" program during that period and most Filipino prisoners were released into the Filipino constabulary, sponsored and run by the Japanese.

Major Aleta was given the command of a company of the constabulary in central Luzon (the main island of the Philippines). After a two-month orientation period, the Major contacted the Guerrilla Force's local intelligence officer. Thereafter he furnished the guerrillas with information about Japanese movements. In November 1944, on orders from Maj Robert B. Lapham, head of the Luzon Guerrilla Armed Forces, the entire constabulary deserted to join the guerrillas. Major Aleta took the job of personnel officer of the Guerrilla Forces and continued in that capacity until the end of the war.

At the end of the War, the Major was assigned to the Amnesty Section of the Philippine Army Judge Advocate General. There, Major Aleta prepared, for consideration by the Amnesty Commission, cases involving guerrillas who had committed crimes during the war. In 1950, the Military Intelligence Legal Office was organized in the Armed Forces of the Philippines and Major Aleta joined it as the Executive Officer. After eight months as executive officer, the Major advanced to Chief of the Office. He was responsible for the studies of investigations of subversive activities and to supplement such investigations. This included preparation of the cases for trial by civil authorities. He was actively engaged in the documentation of the subversive cases against the Philippine Communist Politburo under which the "Huks" operated.

As a result of the prosecutions which followed, a number of communist leaders in the Philippines were convicted of rebellion.

For his work in connection with the cases, Major Aleta was awarded the Military Merit Medal of the Philippines. Subsequently, his office was instrumental in the prosecution of the four major Chinese Communist leaders in the Philippines. The four were deported.

Shortly after his arrival at the Air Command and Staff School, Major Aleta received a letter of recommendation from Ramon Magsaysay, Secretary of National Defense of the Philippines, for his work in the case.

Major Aleta was sent to the Judge Advocate General Staff Officer course at Maxwell in order to further his career in legal work, which he will resume upon his return to the Philippines. This is his first trip to the United States. [Sic.]

Of his course at Maxwell, the Major said, in connection with the group discussion method used, "I am impressed with their democratic atmosphere and I could see in these group discussions democracy in action." Major Aleta donated transcripts of decisions and case histories concerning Communist trials in the Philippines to the document collection of the Air University Library before his departure.

(This article appeared on 3 April 1953 in the Maxwell/Gunter AFB newspaper Dispatch)

The Annual Survey of the Law

MAJOR GENERAL ROBERT M. MARTIN, JR. (RET.)

When Major General Harold Vague succeeded Major General Cheney, he called me in the first time I was on duty at his office and advised me that he wanted me to concern myself with the readiness of all of the 975+ reserve Judge Advocate Officers to perform capably in the event of recall to active duty. My immediate response to his request for my opinion as to readiness was that those younger officers who had left active duty a few years ago were undoubtedly still fully qualified, but that many of the officers who hadn't been on active duty for a number of years might not be current on legal issues throughout the spectrum of legal problems handled by Air Force Judge Advocate Officers. He suggested that I find a way to bring all of the officers, including those who were assigned to reserve units and to National Guard units up to a reasonably current status educationally.

About that time, a reservist, Colonel Lawrence Miller, signed on for a four-year active duty tour as Reserve Advisor to TJAG. He was a reservist from New Hampshire and had been both a unit officer and an IMA. Most of his history was in the unit operations. Also, participating in the effort was Colonel James Heise, the legal advisor to the Chief of the National Guard. Finally, Colonel Mack E. Schwing, the active duty staff judge advocate at Air Reserve Personnel Center was involved in the effort.

The solution had to be some form of continuing legal education. Needless to say, CLE had become pretty universal by that time, and was a requirement to maintain a license to practice law in many of the states.

We discussed at great length the structure of the program, and decided that it would be an all-day Saturday and an all-day Sunday weekend operation, conducted at five air bases, geographically scattered around the United States and would consist of some 14 legal subjects with lectures by highly qualified individuals. Some of the instructors were reservists and some were active duty officers. We named the program "The Judge Advocate General's Annual Survey of the Law." The first one was held at McGuire Air Force Base in New Jersey. Written material was prepared by each lecturer, in the typical CLE format.

The requirement was laid on that each officer would have to attend every other year, and the requirement at that time for the reserve refresher course (2 weeks at Maxwell Air Force Base at the Judge Advocate General School) was every six years. This meant that a reserve officer would go to the Survey in year 1, and in year 3, and in year 5 would go to the Judge Advocate General School.

The geographical distribution was designed to keep travel costs at a minimum and to reduce the amount of time involved for the reserve officers traveling to and from the base where the particular CLE conference was held. We utilized McGuire, Andrews, Robins, Randolph, Wright Patterson, Travis, Norton, and perhaps others. The selection of the five bases resulted in about 100 reserve officers attending each Annual Survey, and the attempt was to locate the annual Survey to produce that result. We had slightly less than 1,000 reserve officers at the time and it worked out numerically pretty well.

The reserve and guard training program that began in 1978 continues today in an expanded and modified fashion.

Editor's note: AFJAGS hosts the Reserve Forces Judge Advocate Course (RFJAC) twice a year, the Reserve Forces Paralegal Course twice a year, the Deployed Air Reserve Components Operations and Law Course once a year, and the Annual Survey of the Law held in Denver once a year. Reservists are currently required to attend the Survey once in four years and RFJAC once in four years staggered on a two year rotation with the Survey.

1984, input to the Center for Professional Development Unit Historian (on file at the School).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ The facts in this paragraph are from an address given by Major General Keith E. Nelson (USAF ret.) to a JASOC graduation dinner on 10 December 1998.

³¹ The facts in this paragraph are from an interview with Colonel Donald C. Rasher (USAF ret.) (11 January 1999) and; Summary Report, TJAG School Study Group, 4 Nov. 1985.

³² *Id.*

³³ *Id.*

³⁴ Nelson address, *supra* note 30.

³⁵ Rasher interview, *supra* note 35.

³⁶ Nelson address, *supra* note 30.

³⁷ *Id.*

³⁸ AU Form 31, Item of Interest submitted by Colonel Charles G. Colvin (USAF) (13 February 1989) (on file at the School).

³⁹ *Id.*

⁴⁰ *JAG complex inaugurated*, Maxwell-Gunter Dispatch, v. 47, No 21, at 7.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Dickinson Law Center Annual Bulletin, 1997-98, page 5-6.

⁴⁴ The facts in this paragraph are from an interview with Senior Master Sergeant James R. Whitaker (USAF ret.) Director of Administration, Air Force Judge Advocate General School (23 January 1999); See *Paralegal History in a Nutshell* by Captain Denise Burke and Technical Sergeant Sherrie Rogers in this edition of THE REPORTER for more detailed information of the paralegal courses.

⁴⁵ Annual Bulletin, *supra* note 43, at 4.

⁴⁶ *Id.* at 5.

A Proud Tradition

MAJOR CHRISTOPHER C. VANNATTA

It is often said that history is the best teacher. Since the adage surely is true, the best teacher at the Air Force Judge Advocate General School is not a major, captain, or even a colonel. The best teacher is not a person at all. It is, rather, a room — a room that holds the lessons,

wisdom, and guidance of time. It is a room that has meaning for every member of the Judge Advocate General's Department. It is a room that displays the history of the Department. It is the Heritage Room.

The Heritage Room has been part of the Judge Advocate General School since the School was built in 1993. After taking the opportunity to visit this room and learn about the past, one certainly understands there is much more to being a judge advocate or paralegal than simply practicing law in a blue uniform.

When walking into the Heritage Room, one is not struck by the size of the room—it is actually quite small—or the quality and color of the impressive woodwork and carpet. The room's life comes not from its physical structure. Rather, the spirit of the Heritage Room is in the books, pictures, and artifacts gracing its walls and occupying its shelves. If a picture is worth a thousand words, then the books, pictures, uniforms, medals, and other items on display in the Heritage Room must surely be worth millions.

The room is anchored by two corner display cases containing uniforms and personal items of two firsts in the Department — the first Judge Advocate General of the Air Force, Major General

Reginald C. Harmon, and the first Senior Paralegal Manager to the Judge Advocate General (at that time entitled Special Assistant to the Judge Advocate General), Chief Master Sergeant Steve Swigonski. Whether it is the first pair of stars to sit on the shoulders of a Judge Advocate General or the first Chief Master Sergeant stripes of the Senior Paralegal Manager, both of which are displayed in the Heritage Room, the stories behind the items provide insight into the origins of the best legal department in the armed services. Indeed, the document authorizing the formation of our Department hangs next to President Harry S. Truman's appointment of General Harmon to the rank of Major General. Before we can understand where we are going and what the next millenium holds for our Department, we absolutely must understand our origins. Spending time in the Heritage Room brings about awareness in a way that perhaps nothing else can.

Some of the Department's guiding principles given to us by the second The Judge Advocate General, Major General *Major van Natta (B.S. and J.D., Indiana University) is an Instructor, Civil Law Division, Air Force Judge Advocate General School. He is a member of the Minnesota State Bar.*

Maj Gen Harmon's uniform and memorabilia.



~ Upon Our Heritage of Justice Soar the Wings of Victory

Albert M. Kuhfeld are also displayed in the room. Along with a photograph of him with General LeMay and mementos demonstrating the deep admiration and respect members of the Department and Air Force had for Major General Kuhfeld, are a few pages of correspondence with a young judge advocate. In those letters, Major General Kuhfeld sets forth his view of our Department's position in the Air Force. He noted, "there is but one Air Force with but one set of objectives [and] [o]ur department is an indivisible part of that effort . . . we perform our main role as part of management of the Air Force." It is historical lessons of this importance that, today, hold the key to our Department's future.

The Heritage Room also documents our participation in the conflicts fought by our country in the last five decades. Whether it is the uniforms from those conflicts, the legal materials, or the medals earned by judge advocates in defense of their country, the lessons are clear. When our country went to war to protect our national ideals and principles, judge advocates and paralegals were there sacrificing and making indispensable contributions. And, for judge advocates and paralegals who will face the challenges of future deployments, comfort and confidence resides in the knowledge that

others have gone before, confronted their fears and responsibilities, and have succeeded.

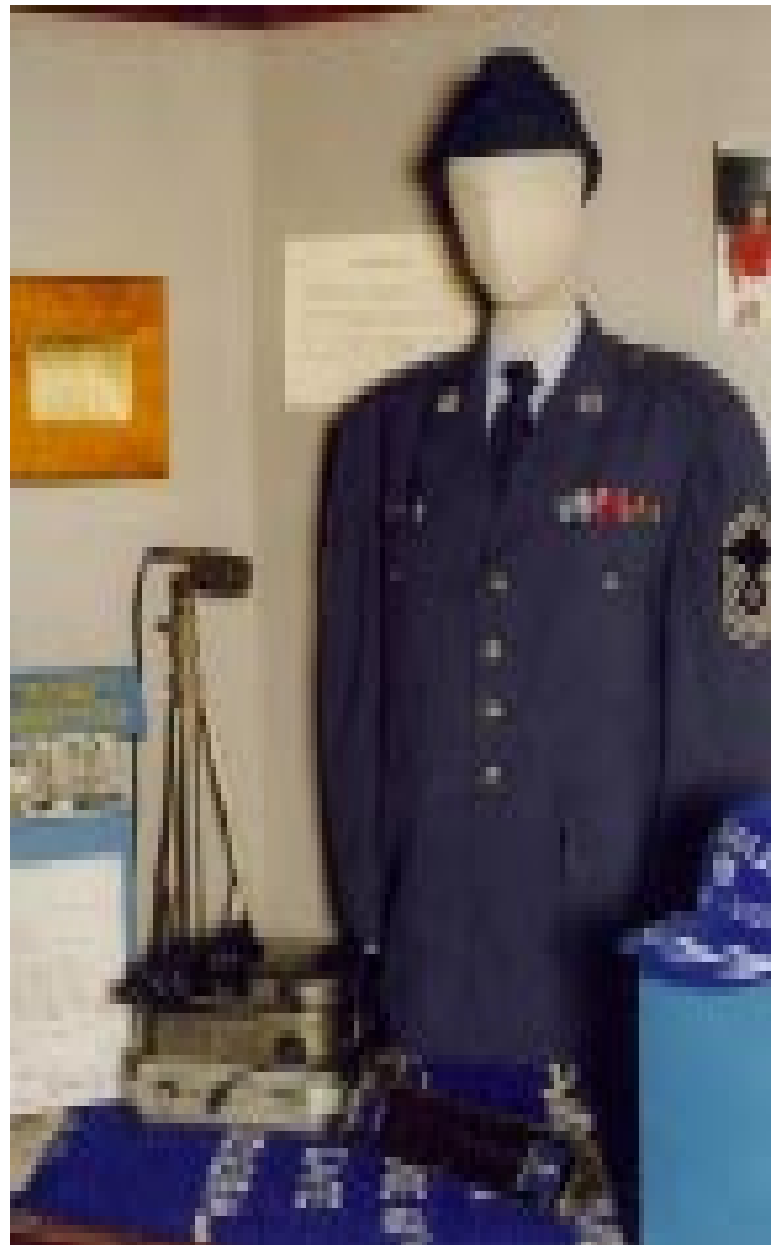
Then there is the law. The evolution of the Uniform Code of Military Justice, the Manual for Courts-Martial, and the practice of military criminal law is well documented within the walls of the Heritage Room. Changing as it did from a simple tool of discipline to a well respected system of criminal justice, the Military Justice system has gone through many modifications. The ability to sift through the legal history contained in the publications in the Heritage Room and to review the changes in our law from as far back as the 1917 Manual, would be an opportunity no student of military justice could long ignore. In fact, the handwritten notes in the legal texts of some of our most well known judge advocates can provide unparalleled insight into the operation and development of our system of criminal law.

In just a few descriptive paragraphs the tremendous value of the Heritage Room begins to emerge. But, to truly comprehend the importance of the Heritage Room requires a visit – an extended visit. Taking a walk around the Heritage Room is like taking a journey through the history of our Department. The longer one stays in the Heritage Room the more one will

learn. Nothing else in the Department can offer the opportunity to get this close to our origins and our purpose. For all members of our Department, there could be no better way to learn about the Air Force Judge Advocate General's Department.



CMSGt Swigonski's uniform and memorabilia.



Building on a Firm Foundation

BRIGADIER GENERAL EDWARD F. RODRIGUEZ, JR.

MAJOR GUILLERMO R. CARRANZA

The JAG School Foundation stands as a proud partner in the tradition of excellence of The Judge Advocate General School. Originally founded in 1989, through the efforts of Major Generals Robert Norris and Ira DeMent, the Foundation matured into its present form in August 1991. Contemporaneous with the groundbreaking for the new JAG School, there was broad-based support among active, reserve component and retired judge advocates for the idea that establishing a private tax-exempt foundation that could accept tax deductible donations could significantly enhance and enrich the legal education of the Department's judge advocates, civilian attorneys and paralegals. Beginning with less than \$2,000 in

By far the biggest support from the Foundation comes in the form of financial support for numerous symposia and in the form of honoraria paid to nationally recognized speakers enabling them to lecture at JAG School courses. Included among the yearly symposia topics were civil rights, environmental issues in armed conflict, the role of the military in American society, the military justice system under media scrutiny and current issues in federal sector healthcare law. Support to JAG School courses has run the gamut from bringing an expert on testimony of children to address the Interservice Military Judges' Seminar to funding nationally recognized speakers for the Advanced Labor and Employment Law Course, the Advanced Trial Advocacy Course and the Legal Aspects of

~ Man's Flight Through Life is Sustained By The Power Of His Knowledge


the bank in 1992, the JAG School Foundation now manages an endowment of over \$100,000. In January 1998, the Foundation President Brig Gen (Ret) Roger Jones inaugurated the "Millenium Campaign," the stated goal of which is to increase the endowment to \$200,000 by the end of the year 2000.

In its short but vibrant history, the JAG School Foundation has sponsored or provided financial support to a myriad of activities focused on curriculum enhancement and faculty enrichment. Beginning in 1994, the Foundation began paying for JAG School faculty to attend the prestigious National Institute of Trial Advocacy Teacher Training Course ensuring that advocacy training provided at the JAG School is second to none. Furthering paralegal education, the Foundation funded memberships for a limited number of paralegals in several national paralegal associations. As a direct result of this effort the National Federation of Paralegal Associations and American Association of Paralegal Education have begun collaborating with the JAG School on curriculum and accreditation issues.

Brig General Edward F. Rodriguez, Jr. (B.S., Georgetown University; J.D., University of Texas at Austin) is Vice President and General Counsel of Mitretek Systems, Inc. and serves as the Mobilization Augmentee to the Deputy Judge Advocate General. He is a member of the Virginia Bar.

Major Guillermo R. Carranza (B.A. and J.D., Tulane University) is an instructor in the Civil Law Division of the Air Force Judge Advocate General School and serves as the liaison to The JAG School Foundation, Inc. He is a member of the Florida Bar.

Information Warfare Symposium. In addition, the Foundation has always been ready to support special events like hosting Media Day for noted journalists, including Peter Jennings of ABC News; speaking engagements by the British and Australian TJAGs; and outreach programs of the Air Force Court of Criminal Appeals and the United States Court of Appeals for the Armed Services.

At its heart, the Foundation is much more than just a source of financial support for legal education. Rather, it embodies the unique connection shared between past, present and future members of The Judge Advocate General's Department. Participation of retired judge advocates, civilian attorneys and paralegals in the financial and administrative support of the Foundation reflects a continuing dedication to the Department and provides active duty members with a sense of family. Nurturing this special relationship, the Foundation provides all new judge advocate and paralegal graduates occupational badges formally welcoming them to the Department. Recently, the Foundation hosted a reception for a JASOC class after the Honorable Ira DeMent, U.S. District Judge for the Middle District of Alabama and a founding member of the JAG School Foundation, swore in several members of the class to the bars of several states. The Foundation also strongly supports preservation of our Department's history by providing financial support to the JAG Heritage Room and to this fiftieth anniversary edition of THE REPORTER. Perhaps Major General Norris said it best when he paraphrased the oft-quoted Marine Corps adage "once a JAG, always a JAG." 

JAG-NA-NA: THE LEGEND LIVES

COLONEL THOMAS G. BECKER

It seems only yesterday that I was looking at a bunch of great-looking guys in poplin jackets, rolled up polyester pants, white socks, and black oxfords—the group known to their tens of fans everywhere as JAG-Na-Na. In fact, it was yesterday.¹

I've been asked to describe the history of this legendary group of crooners. How can one catch a shooting star? One can only try.

Like most of the superstar groups of the Rock-and-Roll era, JAG-Na-Na started out modestly and under another name.² The year is 1984. The place is the Air Force Judge Advocate General School at Maxwell AFB. The call goes out for a special program on seat belt safety for Leadership, Management and

Development Center (LMDC) Commander's Call. The JAG School faculty responded, under the creative hand of then-Major (now Lt Colonel retired) Mark Magness, forming the JAG School All Jug Band (or was it the Jug School

Colonel Becker (B.A. and J.D., Washburn University; LL.M., George Washington) is the Staff Judge Advocate at Tinker AFB, Oklahoma, OC-ALC. He is a member of the Kansas State Bar.

**The Riveting
Story of the
Meteoric Rise of
the Group that
Brought Back the
Golden Glorious
Sounds of the
Fifties and Sixties**

Shooting Stars?!!! (left to right) Dave Pearson, Tom Becker, Mark Magness, Mike Powell, Bill Lockwood, Al Passey, Dave Hoard, G-rd-n Wi-d-r

Photo courtesy of Colonel Thomas Becker



All JAG Band? I forget). Doing numbers inspired by no less than the likes of Boxcar Willy and Slim Whitman,³ we were a big hit. In fact, we were invited for a special performance at the Air University commander's staff meeting.⁴ As artists, however, we soon became disenchanted with trying to come up with one cutting-edge hit after another, so we returned to our Rock-and-Roll roots. Thus came JAG-Na-Na, which debuted at another LMDC Commander's Call devoted to seat belt safety. We ran onstage to the sounds of "Dead Man's Curve," immediately following a first-person narrative about the loss of loved ones because they didn't wear seat belts. Talk about a rollicking good time.

Again under the leadership of Mark Magness, JAG-Na-Na explored the worlds of Rock-and-Roll and Air Force JAG, pushing the artistic envelope and merging our music with our professional lives as lawyers and Air Force officers.⁵ This creative process produced such hits as our tribute to Air Force defenders "The ADC's Back,"⁶ our ode to the JAX assignment process "In the Still of Late December,"⁷ and our signature best seller "The Ballad of Runaround Johans."⁸ Other crowd pleasers included our special tribute to a retiring Air University commander "Get a Job" and the sentimental favorite of many a graduation dinner "Good-bye JASOC."⁹ And, of course, our repertoire retained our original seat belt safety medley of "My Belt"¹⁰ and "Seat Belt."¹¹ The lyrics for all of these soon-to-be standards came from Mark Magness.

"But first, let me introduce the group. . . ." These words opened nearly every JAG-Na-Na performance and, after we introduced ourselves to one another, we sang. So, it's appropriate here to tell you about the artists that graced the stage as members of JAG-Na-Na. Besides Mark Magness and me, the full-time members were Major (now Colonel) Al Passey, Lt Colonel (now retired) Mike Powell, Lt Colonel (now Colonel retired) Bill Lockwood, Captain Dave Pearson (also now retired), Captain (now

Lt Colonel, USAFR) Dave Hoard, and one other member, now a senior civilian member of TJAG's Department who has asked me to disguise his identity and present position.¹²

When a permanent member was unavailable,¹³ we sometimes pressed other JAGs into service, to include Major John Heinz (also a retired JAG) and Major (now Colonel) Scott McLauthlin. In the storied history of JAG-Na-Na, only one aspirant was rejected after an audition—Major Darrell Phillips (now Mr. Darrell Phillips, still of the JAG School faculty). After a memorable display of choreographic skill,¹⁴ Darrell was told "don't call us . . . ever."

As with any of the legendary groups, JAG-Na-Na couldn't have reached the heights of musical stardom without the

The JAG School Commandant, always made sure our audience was supplied with fresh vegetables

little people behind the scenes. Major (now Colonel retired) Maggie Schreier did our audio technical support and often got it right. Lt Colonel (now Colonel retired) Pete Rogers handled our publicity until he started booking entertainment packages for river cruises.¹⁵ Finally, the JAG School Commandant, Colonel Charles Edwards, always made sure our audience was supplied with fresh vegetables.

JAG-Na-Na's farewell performance was at Air Command and Staff College in the spring of 1987. From there, the group disbanded and went on to other creative pursuits. A reunion tour of northern tier Air Force bases was considered in the mid-nineties but, for some reason, never got off the ground.¹⁶ But to all who witnessed the phenomenon that was JAG-Na-Na, the legend lives on. And to all our fans, we say one more time . . .

Thank You, Music Lovers!!!! 

¹ I still have my picture of JAG-Na-Na posed on Colonel (Retired) Pete Rogers' white '57 Ford T-bird outside what used be called the LMDC Building, then home of the AFJAG School at Maxwell AFB, Alabama.

² Toward the end, we were all using assumed names, but we won't burden you with that story.

³ Of course, we didn't know it at the time, but we created what is now known as the "L.A. (Lower Alabama) Sound."

⁴ We weren't ever invited back. He was not a patron of the arts.

⁵ We also tried our hand at invention, but the best thing we came up with was the JAG School Air Bag Tie. It didn't catch on.

⁶ Sung to the tune of "My Boyfriend's Back."

⁷ "In the Still of the Night."

⁸ "Runaround Sue." See *United States v. Johans*, 17 M.J. 862 (A.F.C.M.R. 1983), *affirmed* 20 M.J. 155 (C.M.A. 1985).

⁹ "Good Night, Sweetheart." This last number was especially known for the moving mid-song narration by Major Magness, in which the members of JAG-Na-Na wished the departing students well by a vote of five to four.

¹⁰ "My Girl."

¹¹ "Blue Moon."

¹² H. G-rd-n Wi-d-r, Chief of HQ USAF/J-G.

¹³ Leave, TDY, or under investigation.

¹⁴ Recall Steve Martin in the opening scene of "The Jerk." Enough said.

Editor's note: Mr. Phillips disputes this alleged fact. He recalls that not only was he accepted into the hallowed ranks of JAG-Na-Na, but he and the unnamed "senior civilian member" were routinely relied upon for unintended comic relief.

¹⁵ This is a very inside joke. Those who get it know who they are. Everyone else, just forget I said anything.

¹⁶ Our planned tour included Loring AFB, Pease AFB, Griffiss AFB, Wurtsmith AFB, and K.I. Sawyer AFB. We never heard anything back from these bases and received no response from SAC Headquarters, so we dropped the plans from lack of interest.

Though the past may inspire us, it is the challenge of the future that must motivate us. And a tremendous challenge does exist ... Our military justice system must be preserved, for no military organization can survive without such a system. That is not to say that all change in the system must be resisted. On the contrary, we must constantly seek to improve it and to achieve changes that will make it responsive to the needs of the military service.

Sharpening the Sword of Justice

MAJOR KEITH R. ALICH

Since its official designation on 25 January 1949, the Air Force Judge Advocate General's Department has been responsible for the administration of military justice in the United States Air Force. This article will focus on significant changes that occurred over the past fifty years that enhanced the fairness and efficiency of our military justice system and impacted how we, as a Department, administer that system.

When the Air Force Judge Advocate General's Department came into existence, each service had its own system of justice. The Army operated under the Articles of War and the Navy and Marines operated under the Articles for the Government of the Navy.¹ On 25 June 1948, Congress passed an Act that made Air Force personnel subject to the Articles of War. The Air Force subsequently adapted the Manual for Courts-Martial (MCM), U.S. Army, 1949, for use in courts-martial involving its personnel.²

Under the Articles of War and the 1949 MCM, a judge did not preside over Air Force courts-martial. Instead, the senior member or President of the court, who usually was not a lawyer, ran the court. Another officer who was assigned to the Judge Advocate General's Department or who was a lawyer would be detailed to the court as a voting law member with the additional responsibilities of rendering advice on questions of law and procedure. On a few courts, the law member would become the senior member or President and fulfill both roles.³ On these early Air Force courts, counsel appointed to the prosecution and defense, and the President presiding over the court, did not have to be lawyers.⁴ Additionally, appeals were not made to appellate courts but to a Board of Review in the Office of the Judge Advocate General.⁵

Uniform Justice.

While the Air Force began trying cases and administering its own justice system, there was a movement afoot to develop a uniform system of discipline for all members of the Armed Forces. This push for uniformity stemmed from the unification of the services in 1947 and from public criticisms of military justice citing abuses during World War

II, including harsh punishments and due process violations. The public debate on military justice included complaints from private citizens and veterans groups as well as the American Bar Association which advocated inclusion of enlisted members on court-martial panels and removing the power to convene courts from the province of the commander. This climate eventually resulted in Secretary of Defense James Forrestal creating a committee to study the integration of the military justice systems of the different services and to create a system to promote public confidence and protect the rights of service members without impeding the military function. After months of study, the committee introduced proposed legislation to Congress that resulted in the enactment of the Uniform Code of Military Justice (UCMJ), 10 United States Code, Sections 801 to 940, on 5 May 1950.⁶ The Manual for Courts-Martial, which consists of rules promulgated by the President to implement the UCMJ, became effective on 31 May 1951.

The newly enacted UCMJ and MCM applied to all branches of the Armed Services. The UCMJ contained a number of far-reaching changes from past practices that enhanced the fairness of the military justice system for all Services. While the UCMJ still permitted commanders to convene courts, Article 37, UCMJ, prohibited the convening authority from influencing the court and Article 98, UCMJ, made unlawful influence of a court-martial a crime. Article 25, UCMJ, further enhanced fairness by authorizing an enlisted accused to request a court-martial panel of at least one-third enlisted members. Other Articles in the UCMJ added new requirements for lawyers in courts-martial. For example, Article 27, UCMJ, provided that trial counsel and appointed defense counsel on all general courts-martial must be qualified lawyers. Articles 26 and 51, UCMJ, replaced the "law member" with a non-voting "law officer" that no longer accompanied the voting members in

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closed sessions. Instead, the law officer acted as a judge in making final rulings on motions and instructing members on the elements of offenses, burden of proof, and the presumption of innocence.

The newly enacted UCMJ also enhanced the fairness of the military justice system above the trial level by establishing a Board of Review for each Service⁷ and by creating a Court of Military Appeals, with appointed civilian judges with 15 year terms.⁸ By creating the Court of Military Appeals, Congress established a degree of civilian control over the military and a check on command control that did not previously exist. In addition, by giving the civilian judges lengthy terms, Congress enabled the judges to gain over time a fully developed understanding of the distinctive problems and legal traditions of the Armed Forces.⁹

Subsequent changes.

After adoption of the UCMJ and the Manual for Courts-Martial, public criticism of the military justice system declined. The next significant development that impacted how we conducted military justice occurred in 1968. Article 26, UCMJ, was amended to eliminate the law officer and to establish a military judge to preside over open sessions of courts-martial. In addition, Article 16, UCMJ, was amended to give the accused the option of requesting trial by military judge alone. Judge alone trials increased the involvement of lawyers in courts-martial and such trials typically re-

sulted in more expeditious cases since voir dire, instructions and other member-related matters were not required. Lawyer involvement was also increased in another area. The importance of having qualified counsel for an accused on more than general courts-martial was reflected in a 1968 amendment to Article 27, UCMJ. This amendment required qualified defense counsel on special courts-martial unless this could not be accomplished due to physical conditions or military exigencies.

While considerable strides were made to ensure fairness in the military justice system, concerns remained over the military's separate system of justice, as evidenced by the Supreme Court's decision in *O'Callahan v. Parker*.¹⁰ The Court stated "the justification for such a system rests on the special needs of the military, and history teaches that expansion of military discipline beyond its proper domain carries with it a threat to liberty."¹¹ The Court held that unless an offense is clearly service-connected the military has no authority to try the case.¹² The Court set aside the general court-martial conviction of a soldier for raping a woman while he was off-base and off-duty in Hawaii. While *O'Callahan* limited the military's jurisdiction, subsequent decisions by the Supreme Court and the Court of Military Appeals, found disciplinary interests in a broad range of civilian offenses, thereby limiting the application of *O'Callahan*.¹³

The military justice system continued to evolve in the 1970s. A significant milestone for the Air Force was the creation

A Deadly Footnote to the UCMJ

In 1953, Article II of the UCMJ provided for court-martial jurisdiction over military dependents overseas. It was then that Mrs. Clarice Covert, dependent wife of Air Force Warrant Officer Edward Covert (*Note: The AF had Warrant Officers then*) was tried before a general court-martial for the premeditated murder of her husband. The Coverts lived in British military housing on RAF Station Upper Heyford, England, and the trial was held at RAF Station Brize Norton. It lasted five days. The accused was found guilty.

Briefly, the facts were that Mrs. Covert killed her husband as he slept. She used a hatchet issued to occupants of British military housing for chopping kindling wood to start a fire in the kitchen stove. Mrs. Covert attacked her husband about the face and head as he slept. She then placed a pillow over his head and made up the bed with her dead victim in it.

The next morning at an appointment with her doctor who said to her, "Good morning Mrs. Covert. How are you today?" she responded, "Not so good. I killed Eddie last night."

The Court of Military Appeals (COMA) review upholding the finding is reported in the red volumes of COMA decisions (19 C.M.R. 174 (1955); 16 C.M.R. 465 (1953)). It was appealed to the Supreme Court which on or about 1955/6 at its spring term did not overturn the findings. However, because Justice Frankfurter at that time had reserded his opinion, the Court subsequently in its October term of that year, reconsidered the case and reversed its prior decision. In doing so the Court held that the portion of Article II, UCMJ, giving the military court-martial jurisdiction over dependent civilians overseas was unconstitutional—at least in peacetime.

Until the Court's decision set her free, Mrs. Covert was confined in the Women's Federal Reformatory, Allentown, Pennsylvania. The Assistant Trial Counsel was First Lieutenant James Haught, now deceased and Colonel (retired) of Springfield, VA. The Trial Counsel was First Lieutenant Everett Hopson, now Colonel (retired), of Fairfax, VA, and a Trustee of the AF JAG School Foundation. Defense Counsel was former Major George Switzer of Columbus, Mississippi. The Law Officer was former Captain Charles Denham from southern Illinois.

A Post Script: When the Trial Counsel delivered the accused's copy of the record of trial to her in confinement, she stated to him, "Why Lieutenant Hopson, aren't you afraid to come near to me? You know I am perfectly capable of killing you. The court just said I am."

(By Colonel Everett G. Hopson, Ret.)


of the Area Defense Counsel Program. It was initiated as a test program throughout the First Circuit on 1 January 1974 and implemented worldwide on 1 July 1974. Under this program, judge advocates performing duties as defense counsel were reassigned from their present field command (Office of the Staff Judge Advocate) to the Appellate Defense Division of the Office of the Judge Advocate General, with a duty location, in most cases, at their present base of assignment. The Chief of the Appellate Defense Division had overall professional supervisory responsibility and was the indorsing officer. This program, by separating the defense counsel from the traditional staff judge advocate function, enhanced the actual and apparent stature of defense counsel and judicial functions throughout the Air Force. It enabled judge advocates performing defense duties to gain the confidence of their clients by virtue of their position as independent defense counsel.¹⁴

The 1980s brought changes in how we conduct courts-martial and administer the cases. In 1980, the MCM was amended to include new Military Rules of Evidence. The new rules were for the most part adoptions of the Federal Rules of Evidence with variations to accommodate specialized military practices and terms. Adoption of these evidentiary rules brought the military justice system more in alliance with the federal criminal justice system.¹⁵ Additional change came in the 1983 Military Justice Act. It modified the selection process for counsel and judges and abbreviated the contents for pretrial advice and post-trial recommendation.¹⁶ The following year, the 1984 edition of the Manual for Courts-Martial was published. The 1984 edition included a substantial reorganization of the manual from the prior editions. It was formatted to include five parts (Preamble, Rules for Courts-Martial, Military Rules of Evidence, Punitive Articles, and Nonjudicial Punishment) followed by appendices that included drafter analysis and forms.

Media Spotlight.

The next milestone occurred in 1987 when the U.S. Supreme Court re-examined court-martial jurisdiction over military members. The Court, in *Solorio v. United States*,¹⁷ overruled *O'Callahan's* service-connection requirement and permitted jurisdiction based on military status. The Court held that if a person is on active duty when committing

an offense, the military has jurisdiction over that person. Despite the broadened jurisdiction, the military justice system remained relatively free from public criticism and scrutiny until the high visibility media cases of the past few years involving adultery and other sexual misconduct. While attention has again been drawn toward military justice, it appears unlikely that significant changes in the system will occur as a result of these cases.

As we move into our next fifty years of existence, the Air Force Judge Advocate General's Department will continue to participate in making and implementing changes that will enhance fairness and efficiency of our military justice system. Proposals are currently being examined for an independent judiciary, the court member selection process, and increasing the maximum confinement authorized in special courts-martial to one year. Action on these and other proposals may very much shape how we, as a Department, handle courts-martial in the future. 

¹ Walter T. Cox, III, *The Army, the Courts, and the Constitution: The Evolution of Military Justice*, Military Law Review, Vol. 118 (1987).

² Manual for Courts-Martial, U.S. Air Forces, 1949, Preface, page ix.

³ Id., Secs 4, 39, and 40.

⁴ Id., Secs 41 and 43.

⁵ Id., Secs 95 and 96; See also, Hodgson, *History of Air Force Appellate Courts*, this edition of *The Reporter*.

⁶ Cox, *Supra* note 1.

⁷ Article 66, UCMJ. Boards of Review were substituted by Courts of Military Review as the reviewing authority in the 1968 amendment to Article 66 and were renamed Courts of Military Appeals in the 1996 amendment.

⁸ Article 67, UCMJ.

⁹ *Noyd v. Bond*, 395 U.S. 738, 758 (1975).

¹⁰ 395 U.S. 258 (1969).

¹¹ Id., 395 U.S. at 265.

¹² Id., 395 U.S. at 272.

¹³ See *Relford v. Commandant*, 401 U.S. 355 (1971) (on-post offenses) and *United States v. Beeker*, 40 C.M.R. 275 (1969) (off-post drug offenses).

¹⁴ AFJAG Reporter 1973/8; See also, Norton, *History of the Area Defense Counsel Program*, this edition of *The Reporter*.

¹⁵ David A. Schlueter, *Military Criminal Justice*, (1987), Sec 15.21.

¹⁶ Articles 7, 26, 27, and 60, UCMJ.

¹⁷ 483 U.S. 435(1987).

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You Are Known By The Company You Keep

Military Justice Joins The Mainstream

COLONEL PATRICK B. O'BRIEN, RETIRED

Not only was I not enthralled by the old Board of Review opinions and digest, with their inadequate indices, but I did a lot of complaining about it to senior officers of the legal Department of the Army, not dreaming that I would ever be in a position to do anything about it.

However, ... the day came when I was in such a position and realizing the importance of preserving for the edification of future generations the gems of wisdom we were dispensing at that time, I decided to develop a reporting system similar to those familiar to lawyers in the civilian community.

~ Major General Reginald C. Harmon

During 1991, there was a quiet change in military law which has turned into one of the more significant developments in military justice since the enactment of the Uniform Code of Military Justice (UCMJ) on May 5, 1950.

From 1978, when the Military Justice Reporter (MJ) first appeared, until 1991, our research disclosed only one reported Supreme Court decision (not counting memorandums) of a military case.¹ Since 1991, the High Court has issued six more decisions in military cases. Until the Court's 1994 decision in *Davis v. United States*,² the only cases reported in the MJ that ever made it to the Supreme Court dealt with capital punishment or with the jurisdiction or composition of military tribunals.³ In two recent instances, however, the Supreme Court has picked cases out of the military justice system to address issues of general interest to aficionados of criminal law.⁴ In 1991, a WESTLAW search disclosed only nine cases in the Federal Circuit Courts of Appeal that cited the Military Justice Reporter.⁵ There are now more than fifty.

The 1983 change to the UCMJ providing for a writ of certiorari to the United States Court of Appeals for the Armed

Colonel O'Brien (B.A., Holy Cross College; LL.B. Fordham University School of Law) has served as the Senior Staff Attorney of the United States Court of Appeals for Veterans Claims (formerly, the United States Court of Veterans Appeals), since his retirement as the Chief Judge of the Air Force Court of Military Review in 1992.

Forces from the Supreme Court⁶ is clearly responsible for some of the increased attention military cases have received from our highest court. It does not, however, explain the significant increase in the numbers of military cases now cited authoritatively in the other courts.

Much of this increase, I believe, results from the July 1991 decision by both the West Publishing Company and Meade Data Corporation, publishers of WESTLAW and LEXIS respectively, to put all military cases into their ALLFEDS and GENFED databases. Previously, accessing military cases required that you not only knew they existed but also knew where to look for them. In WESTLAW, for instance, you had to select the "military law" database, then "case law," then "MJ Military Justice Cases." A WESTLAW ALLFEDS search of cases interpreting the Supreme Court's opinion in *Coy v. Iowa*,⁷ (and the limitations that could be placed on a defendant father's right to confront his allegedly abused daughter during her testimony), would have found ten cases in the District and Circuit Courts. It would, however, not have found *United States v. Thompson*,⁸ an Air Force case that explored this subject in detail.

Since that 1991 decision by West and Meade Data, any search of their ALLFEDS or GENFED will capture the military court cases as well as those from the civilian courts. As a result, we now see the United States Court of Appeals for the Sixth Circuit, in a case having absolutely nothing to do with the military, citing an Air Force Court of Criminal Appeals decision as an authoritative interpretation of a federal statute⁹

This is a far cry from earlier times when our decisions went largely unnoticed by the civilian bench and bar, or were, at best, regarded as a juristic “side show” not worthy of serious consideration. The inclusion of our military cases into the same databases which contain the decisions of the Article III establishment recognizes the legitimacy and importance of our jurisprudence. It also ensures that our precedents will be included in the results of any serious research of Federal case law dealing with criminal law and procedure.

The first steps toward this integration of military case law into the legal mainstream occurred in January of 1991, when Chief Judge Eugene R. Sullivan of the U.S. Court of Appeals for the Armed Forces led an expedition¹⁰ to the West Publishing Company headquarters. He attempted to persuade West not only to include our decisions in their ALLFEDS database but also to integrate our headnotes into its overall key number system rather than into the segregated (and largely useless) Military Justice numbers. West’s publisher promised to study these proposals. These issues were repeatedly raised with West by correspondence and at association events and conferences. Then, in July of 1991, LEXIS agreed to include military cases in their GENFED database. Immediately thereafter West followed suit. (The following year West agreed to a dual classification of headnotes on limited bases in both the

military and constitutional law keynotes.)

Any reflection on the five most significant milestones during the fifty years that have elapsed since the enactment of the UCMJ and the creation of the United States Court of Appeals for the Armed Forces would have to include: (1) The creation of the service Courts of Criminal Appeals in 1968; (2) The arrival of the military judge, also in 1968; (3) Adoption of the Military Rules of Evidence in 1979; (4) Direct appeal to the Supreme Court in 1983; and (5) Inclusion of military cases into the same databases as the other federal cases in 1991. While the first four significantly improved the quality of the military justice system, the fifth went a long way to “lift the bushel”¹¹ and expose our light to the rest of the profession. 🏹

1. *Solorio v. United States*, 483 U.S. 435, 107 S.Ct. 2924 (1987). Before *Solorio*, there were, of course, numerous cases dealing with the jurisdiction of courts-martial, principally *O’Callahan v. Parker*, 395 U.S. 258, 89 S.Ct. 1683, 23 L.Ed.2d 291(1969), and the cases cited therein.

2. 512 U.S. 452, 114 S.Ct. 2350.

3. Such as *Solorio*, *supra* note 1, and the cases cited therein, as well as *Edmond v. United States*, 520 U.S. 651, 117 S.Ct. 1573, 137 L.Ed.2d 917 (1997); *Loving v. United States*, 517 U.S. 748, 116 S.Ct. 1737, 135 L.Ed.2d 36 (1996); *Ryder v. United States*, 515 U.S. 177, 115

S.Ct. 2031, 132 L.Ed.2d 136(1995); *Weiss v. United States*, 510 U.S. 163, 114 S.Ct. 752, 127 L.Ed.2d 1 (1994).

4. *United States v. Scheffer*, 118 S.Ct. 1261 (1998) (admissibility of polygraph evidence); *Davis v. United States*, 512 U.S. 452, 114 S.Ct. 2350 (1994) (right to counsel during custodial interrogation).

5. Decisions of the United States Court of Appeals for the Armed Forces, (formerly the United States Court of Military Appeals) and the Service Courts of Criminal Appeals (formerly the Courts of Military Review) have been published in West’s Military Justice Reporter (MJ) since 1978. Before that they were published by Lawyers Co-Op in the Court Martial Reports (CMR). This article refers only to the Military Justice Reporter.

6. 28 U.S.C. 1259.

7. 487 U.S. 1012, 110 S.Ct. 2798, 101 L.Ed.2d 857 (1988).

8. 29 M.J. 541 (AFCMR, 1989).

9. *United States v. Thomas*, 74 F3d 701, 708,709 (6th Cir. 1995).

10. Judge Sullivan was accompanied by his then-associate judge, now-Chief Judge Walter T. Cox, III and Colonel Patrick B. O’Brien who was then-Chief Judge of the Air Force Court of Criminal Appeals (then the Air Force Court of Military Review).

11. “No man, when he hath lighted a candle, putteth it in a secret place, neither under a bushel, but on a candlestick, that they which come in may see the light.” Luke 11:33.

During those times [1948 serving as a Judicial Council member], all of us in the office knew we were faced with a challenge. There were many who just knew that The Judge Advocate General’s Department of the Air Force would fall flat on its face; there were too few officers with too little experience to get the job done. As I remember there were only forty-six judge advocate officers on the original list of transfers from the Army, and none had served on a Board of Review. All of us working in the Pentagon Office carried home two briefcases full of work every night....we worked Saturdays, and we accomplished what many knew just couldn’t be done.

~ Major General Albert M. Kuhfeld

The Start of the Trial Judiciary

COLONEL CARL ABRAMS, RETIRED

But first let us return to those days of yesteryear when military judges were law officers and they normally worked directly for the command that convened the court. As a base staff judge advocate (SJA) in 15th and then 8th AF, I was constantly going TDY to other bases within the command to sit as law officer. My work apparently endeared me to the general court-martial convening authority SJA, but did little to help my relationship with my rating officer, the base commander, as I was usually unavailable when he needed me.

In practice, however, the system worked well. I never felt pressured by the convening authority and never encountered another law officer who felt differently. In perception, however, the system needed to be changed. It was very difficult to convince the accused, the media and the public that an accused could get a fair trial when the judge and defense counsel worked for the commander who convened the court.

In 1968, we were excited by the thought that this would soon change. By this time I was a member of the then-Air Force Board of Review. (We were located on

Bolling above the commissary in the building that now houses the OSI.) I had the privilege of being able to give input to the group writing the new Manual for Courts-Martial.

Then, in April 1969, Colonel William Kenney and I were appointed as the first members of the new Trial Judiciary. Although the new code was not to take effect until August 1st, commands in the eastern United States were instructed that only one of the two trial judiciary officers (TJOs) would be appointed by them as law officers on general courts-martial (GCMs). This did not sit well with many senior SJAs who felt that we were usurping their authority to name whom they pleased on their courts.

Our next step was to determine how many judges we would need to handle the GCMs and where to put them. We divided the world into four major circuits; some further sub-divided into regions. Analyzing the GCMs that were convened in 1967 and 1968, we estimated that 14 judges would be sufficient. It turned out that we weren't totally accurate; in 1971 when the two judges in Europe were ready to rotate stateside, I was the sole replacement for both of them,

thanks to the happy circumstance of fewer trials than we had predicted. Unfortunately, cases picked up after my arrival and in 1973 I was gone 278 days either traveling or presiding on courts! My wife was less than thrilled and referred to our quarters as "Carl's Laundry Stop."

The next step was selecting the officers to fill these positions. The first military judges, in addition to the two of us, were Colonels William Gobrecht, Roy Adcock, and

James Thorn; Lieutenant Colonels Karl Stephens, Russell Stanley, Thomas Connolly, Edgar McHugh, Cornell Degrothy, Francis Murray, Allan Smith, Harold Gardner, and Joe Peck.

I recall my pleasure in learning that on 1 August 1969 I would try the first case under the new manual and revised code. As it was to be held at Hanscom Field, Massachusetts, during school vacation, I took my family along. My three children sat in as spectators so

Colonel Abrams (B.A. and J.D., University of West Virginia) retired from the Air Force in 1980 and currently enjoys bicycling, traveling, and snorkeling. He is a member of the West Virginia and District of Columbia Bars.

Job one. (center) Law officer conferring with counsel in 1965 general court-martial; (top right) Moot court JASOC 75-B participants: Lt Col Arrowood (judge), Capt M. Jointer (ct. reporter), Capt J. Oxley (accused), Capt T. O'Brien (DC), Capt L. Mead (TC), Capt B. Jaynes (witness), and (members left to right) Capts F. Pedrotty, J. Sprink, D. Fulton, and T. Hargrove, III.



they could witness the historic event. Being the blowhard I am, I could not resist addressing the panel before the beginning of the trial so they would be aware of this momentous occasion. As I spoke, the swivel chair I occupied slid backwards. There was no lip at the end of the platform. Together with the chair, I tumbled down three steps, landing splat on the floor in front of the panel. As I tried to recover my lost dignity, I ordered three hysterical children out of the courtroom. To this day they won't let me forget my moment of ignominy.

Colonel Kenney decided we needed a newsletter to keep the widely scattered TJOs informed of developments. Naturally, he delegated the project to his only subordinate; me. I decided to call it "The TJO Dicta" and designed a masthead. I felt

we needed a motto, "Have gavel; will travel" came to mind, but it was not dignified enough for a judicial rag. With the help of the Army Heraldic Division our motto had more *gravitas*: "*Habeo Malleum, Profisicar.*"¹

The most memorable trial on which I presided was *U.S. v Captain Thomas Culver*,² which was not only memorable, but also strange! Captain Culver, a judge advocate, while wearing his uniform, lead a demonstration

through Hyde Park to the U.S. Embassy in London to deliver a petition calling for the end of the war in Vietnam. He was tried at RAF Lakenheath in 1971. It was covered by most major networks, newspapers and a



Air Force Military Judges

The United States Air Force Trial Judiciary was established in 1968 when the 1968 Manual for Courts-Martial was promulgated. In the 31 years since then, the Trial Judiciary has evolved to its current form. The Air Force Chief Trial Judge and his Deputy are assigned to the Trial Judiciary Division of the Air Force Legal Services Agency, Bolling Air Force Base, Washington D.C. There are 19 full-time active duty military judges stationed at the five Judiciary Circuits. There are three Circuits in the continental United States, headquartered at Bolling AFB, Randolph AFB, TX, and Travis AFB, CA, each with five judges assigned. Designated as the Eastern, Central, and Western Circuits respectively, these Circuits provide military judges along geographical lines. The Eastern Circuit is comprised of bases east of the Mississippi and those in Panama, the Western Circuit is comprised of bases west of the Rockies and those in Alaska, the Central Circuit is comprised of bases between the Eastern and Western Circuits. The European Circuit has two military judges assigned and is headquartered at Ramstein AB, Germany; it is comprised of the bases in Europe, Turkey, Southwest Asia, Iceland, and the Azores. The Pacific Circuit has two military judges assigned and is headquartered at Yokota AB, Japan; it is comprised of the bases in Asia and Hawaii. In addition to the active duty military judges, there are five Reserve military judges who try Air Force courts-martial. These "citizen-soldiers" are either state trial judges or federal administrative law judges in their civilian capacities. Each of these Reserve military judges will try about ten cases per year. For the past several years, Air Force courts-martial have numbered approximately 900-1000. Historically, the accused person elects trial by military judge alone in half of the cases.

(By Colonel Michael B. McShane)



large, distinctly unfriendly gallery of spectators in white T-shirts decorated with black, upraised fists. My favorite memory is of Captain Culver, having taken the stand in his own behalf, telling the court of his near-death experience when he was hiding under his girlfriend's bed during the Tet offensive. He told how, after several days, he was rescued by his best friend who risked his life to come look for him. Culver paused dramatically, looked at the court panel, and said, "And do you know who it was who saved my life? It is that son-of-a-@###** Frank Luna who is prosecuting this case!" Culver was convicted and cashiered.³ He stayed on in England and appeared frequently before me as individual defense counsel.

I served as a Military Trial Judge for five years. They were the most challenging and rewarding years of my career. From the bench I went back to being a staff judge advocate, this time for 9th Air Force. Then, in July 1977 I was sworn in by Major General Vague as the Chief Judge of The Court of Military Review. If you wander the corridors of that court, you will find group pictures of the judges over the years. Look closely at the picture for 1977.... No Judge Abrams. Why? Ah, but that is another story. 🏹

¹ Translated as Have gavel; will travel.

² *U.S. v. Culver*, 559 F.2d 622 (D.C.Cir. 1977). More recent judge advocate court-martial are reported at; *U.S. v. Trimper*, 28 M.J. 460 (CMA 1989); *U.S. v. Nichols*, 42 M.J. 715 (AFCCA 1995); *U.S. v. Cox* (AFCCA 1996); *U.S. v. Alis*, 47 M.J. 817 (AFCCA 1998).

³ Dismissed.

Photo courtesy of Captain Denise Burke



(left to right from top) Sheppard AFB ADC office, 1995: Capts T. Uselt and D. Burke and SrA C. Robinson; AFJAGS courtroom; S. Ct. admission: Capts F. Majewski, J. Marcus, G. Smith, H. K. Smith, W. Garrick, Col M. Biddle, 1Lt J. Friel, Maj S. Kava, and 1Lt A. Rifkin.



Photo courtesy of Colonel Kirby Smith

Humor in Blue Uniform

Submitted by judge advocates worldwide (*Names have been removed to protect the innocent...or is that guilty?*)



During my first assignment at Cannon “Cow Patch” (AFB), NM, in the early 80s, we had an aspiring robber on the base. The airman, wearing a ski mask, robbed a place during his lunch break. Within minutes he was arrested at his workplace and couldn’t figure out how the police had solved his crime so quickly. Needless to say he was wearing his “fatigues” when he committed his robbery (with his name tag above the pocket).



I was doing legal assistance at Spangdahlem AB when an Army troop came in and said his First Sergeant had told him he needed some paperwork filled out from legal. I asked him what kind of paperwork. He said he couldn’t remember exactly but it was either a “Before David” or an “After David.” I told him he probably needed an “After David” and then we completed the affidavit.”



As a CTC, I prosecuted a guy at the late, unlamented Blytheville AFB, AR, for robbing Billeting at knifepoint. He wore a ski mask and an AF field jacket with a name on it. It wasn’t his jacket, but the guy he borrowed it from didn’t hesitate to reveal to whom he had loaned it.



Ellsworth AFB had a courtroom in an old building slightly larger than a broom closet. The witness stand was located between the judge’s bench and the seating for the members. Right behind the witness stand was an old door with a window that led to an old metal landing and fire escape. During a hotly litigated court-martial on a cold South Dakota day, while a witness was being examined on the stand, the court-martial members, judge, and counsel were distracted by a banging on the door right behind the witness, and a face being pressed up against the window. It was a pizza delivery guy who didn’t care what was going on in the room - it was cold outside, someone ordered a pizza, and he needed in. The witness had to wait while the pizza dude was convinced that he couldn’t come in through that particular door and needed to find another way into the building.



After a long litigated trial on very serious charges, the case (unfortunately from my perspective as a Circuit Defense Counsel representing the accused) entered the sentencing phase. The defendant was potentially facing more than 20 years confinement and the stakes were high. The defendant’s mother suffered from narcolepsy. During my sentencing argument in front of a packed courtroom, mom, who was sitting in the front row, fell asleep and began to snore loudly. Her daughter frantically tried to wake her up, with only limited success. Unfortunately, the members didn’t know that the mother was narcoleptic, so it was a rather uncomfortable moment.



It’s 1992, and I’m defending an alleged shaken baby manslaughter case. My client steadfastly denies all. The key issue is time: how much had to pass between when the injuries were inflicted and when the baby started showing respiratory distress. A short time meant it had to be my client. Longer time brought in his wife as a possible perp, longer still brought

in the babysitter and members of her family.

Long case, “knock-down-dragout litigation,” starting at the Article 32 and continuing over the months and into a week’s worth of trial, pitting experts against one another and, more particularly, me against the prime government expert, a pediatric neurologist (Dr. B). The tail end of my trial cross-examination of Dr. B went like this:

Q: Dr. B, there’s never been any medical research on the time between a child suffers head injuries and when the child starts showing distress, has there?

A: No, there hasn’t, to my knowledge.

Q: And you intend to conduct such a study yourself, don’t you, Doctor?

A: Yes, I do.

Q: When it’s done, you hope to have your research published, isn’t that correct?

A: That’s right.

Q: And, if that study is published, it will be the very first one that addresses the question of time between a child’s head injuries and when the child starts showing symptoms, correct, Sir?

A: That’s true.

Q: Dr. B, isn’t it true that the reason you feel the need to do this study is because of this case, the death of Baby X?

A: Actually, Colonel Y, it’s because of you.

The client was found Not Guilty, which is, of course, the only reason I’m relating this story. I usually don’t talk about the cases I’ve lost.



In the late 70s there was a “drug bust” at Whiteman (allegedly the biggest “drug bust” in AF history) in which about 5% of the base military population (250 or so out of about 5,000 on base) was implicated, resulting in dozens of courts and boards. As might be expected, some immunities were granted to obtain testimony. Toward the end of the string of courts and boards in 1981, I (then a Captain we will call X) was involved in this interchange at a court:

Defense counsel (cross-examining a drug using airman who had been given immunity): “Did anyone try to coerce you into testifying here today?”

Witness: “Yes, Captain X did. He said he’d throw me in jail if I didn’t talk.”



Defense counsel: “Do you have an opinion about Airman S’s reputation for telling the truth?”

Witness: “Do you mean, can I testify about his truth and velocity? Yeah, I can do that.”



Long, drawn out, boring, judge alone trial, in which an enlisted man was accused of assaulting a lieutenant who had “fingered” him in the drug bust. The Accused had broken into the officer’s off-base apartment in the middle of the night and beat the stuffings out of him. Witness for the prosecution was a female college student who lived just below the lieutenant, and whose apartment was configured the same.

Thus, her bedroom was just below the lieutenant's, and she heard the ruckus. Judge is (allegedly) having trouble staying awake on the bench . . .

Trial counsel: "What brought all this to your attention?"

Witness: "I heard the Lieutenant shout [raising her voice], 'Why the f—k are you here!'"

Military Judge (suddenly waking up): "What did you say!?"

Witness: (Looking directly at the Military Judge, and repeating slowly and deliberately) "Why . . . the f—k . . . are you here?"



In a trial of a Whiteman AFB, MO, airman accused of killing a local farmer's prize hunting dog in the middle of the night with an M-60 machine gun, one of only two eyewitnesses told me in pre-trial interviews he had been about 10 feet from the accused when he pulled the trigger, and that he was looking straight at the accused when he did so. I was Trial Counsel.

(This, in a rural county in which there is a statue of a hunting dog ("Old Drum") on the courthouse lawn, where the entire closing argument (only two paragraphs long) of a plaintiff's attorney is memorialized on a bronze plaque. It was given in a civil action about 100 years ago, and is considered to be a masterful use of the English language in describing the value of "man's best friend"). . .

Trial Counsel: "Where were you in relation to the accused when the shot was fired?"

Witness: "I was about 100 yards away, on the other side of the Peacekeeper."

TC: (Thinking "Oh, Oh!", but continuing with direct examination): "In which direction were you looking?"

Witness: "I was looking in the complete opposite direction of the accused."

TC: (Now thinking, "You lying @##**!", but nevertheless relentlessly, and idiotically, pressing on in violation of everything I had ever been taught in law school and JASOC.) . . . "How, then, did you know it was the accused who pulled the trigger?"

Witness: "I was meditating, and it came to me in a vision!"

TC: "No further questions, your Honor." (I swear I actually heard a trombone in the distance . . . "wah, wah, wah, wah.")



In a special court-martial at Nellis AFB in the early '70s—after pleading guilty to wrongful use of various contraband substances—an airman made an unsworn statement in which he proudly claimed recognition of his Vietnam service by receipt of an "Air Force Accommodation Medal."



Once in a case before Judge Weir (Colonel Donald E.), my tongue got tied as I was trying to argue the lack of any criminal intent in a larceny case. I was trying to use the term "surreptitious," saying something to the effect that the airman "was not surresticious, I mean surreptious, I mean" At that point, Judge Weir graciously (as only Judge Weir could do) bailed me out and said, "Exxxcuuse me counsel do you mean your client did not 'hide' the items?" I nodded, the members laughed, and . . . my client was subsequently acquitted.



Base X - In a bad check case accused had testified that he had tried to borrow money from his mother to cover the checks, but she would not loan it to him because the week before he had been trying to borrow money from her to buy a car, and she thought he was really just claiming to be in trouble to get the money for the car.

TC's cross was, "You asked your mother for the money right? She wouldn't give it to you, right? Because she didn't believe

you when you told her why you needed the money right?"

Needless to say this set up a cross where TC argued that on one hand we have the government's witnesses and evidence, and on the other hand we have the accused, whose own mother wouldn't believe him!



When I was at Pope AFB, we (JAG office) had assisted in suspending an Airman's on-base driving privileges. A short while later, he showed up in the legal office trying to file a claim because a deer ran into his car on the perimeter road!



In April 1986, while at RAF Bentwaters, I was assistant trial counsel at a GCM of a Security Policeman who had broken into some AFFES concessionaire shops and stolen various items. His "beat" was to walk a foot patrol on the domestic side of the base near the BX, base gas station, and commissary. After breaking into the shops, he then secreted his ill-gotten loot around the base until he got off duty, after which he intended to retrieve the merchandise.

During the *Care* inquiry, the military judge, went through the specifications one-by-one with the accused, accounting for every stolen item except for a missing sheepskin rug. When queried, the young airman admitted having taking the missing rug in question, but denied still possessing it. He claimed that after removing it from the shop, he hid it in the tire rack at the base gas station.

He then went on to explain what happened after he had gotten off duty and returned to retrieve the rug: "Your Honor, I went to the tire rack to get that sheepskin rug. But do you know what had happened, sir? Somebody had stolen it!"

The judge, the trial counsel, the ADC, the court reporter, and I could hardly keep from laughing out loud. The accused was the only one who didn't get the joke. Judge L called an immediate recess so we could all vent our need to laugh.



A young JAG, prosecuting one of his very first cases with the help of a more experienced prosecutor, was excited because he was going to do voir dire. Young Capt X received some pointers from more experienced Capt Y, and Capt X asked lots of questions. As voir dire approached, young Capt X became more and more excited. After the members were seated and the judge explained the purpose of voir dire to the members, Capt X got up and said, "Good morning members of the court-martial, I am Capt Y, and sitting at the table with me is Capt X...NO, WAIT - I'm Capt X, and he's Capt Y!" The young prosecutor quickly recovered, and showing his true colors went on to do an outstanding job in court.



On November 25, 1994, appellant and another airman, while at a restaurant, noticed a woman's bag which had been left on the back of a chair. They took the bag and rummaged through its contents. Appellant found and removed a book of blank starter checks for a new account.

The two airmen then proceeded to a local mall where appellant purchased items at two stores using two of the starter checks. On those starter checks, appellant wrote his name and address in the left-hand corner, signed his name, and provided his driver's license to store clerks for identification purposes. *U.S. v. Guess*, 48 M.J. 69, 70.



At Keesler AFB in 1979 I was Legal Advisor on an administrative discharge board for an E-5 or E-6 (call him Sgt X) who couldn't get to work on time in the PMEL shop. He was a great worker, his boss wanted to retain him, and he

often stayed late for “hot” projects, but after he divorced he just couldn’t get up in the morning. The ADC was doing an excellent job representing him on day one of the hearing and it looked sure he would be retained. We adjourned at 1700 hours with closing arguments scheduled for 0830. Sure enough, at 0830 the Board Members and counsel were milling around in the reception area, but no Sgt X. I pulled the ADC to the side and asked if he was ready. Exasperated, the ADC said he’d called the First Sergeant to go get Sgt X. Forty-five minutes later, Sgt X came hurrying in to the JAG office. He’d overslept. Needless to say, he wasn’t retained.



In front of my JASOC classmates, I must have had a subconscious override: I was prosecuting my moot court, trying to define “beyond a reasonable doubt” in a sexual assault case. I began to explain that proof beyond a reasonable doubt was not to a mathematical certainty, but rather to a moral certainty. Instead however, I indicated that proof beyond a reasonable doubt was to an “immoral” certainty. Needless to say, the defense counsel, and the JASOC instructor, were a little concerned. Fortunately, the “members” did eventually convict and my grade didn’t suffer.

The Case of the Shackled Trial Counsel

While it is sometimes difficult to keep a sense of humor during a trial, a Chief Circuit Trial Counsel (Maj P. Michael Cunningham, now Lieutenant Colonel Cunningham) unintentionally provided needed humor just prior to the start of an otherwise very serious trial in August of 1988 at Soesterberg AB in The Netherlands.

Trial was scheduled to begin at 0800 hours. About 30 minutes before the scheduled start, Major Cunningham and the assistant trial counsel, then-Captain Andrea Andersen, were examining the Government’s evidence in the case which included a pair of handcuffs used by the accused in the commission of his offenses. All of a sudden we heard a click* and looked toward the sound to find that Major Cunningham had locked one side of the handcuffs around his right wrist. No problem, he thought, I’ll just have the Air Force Office of Special Investigations (OSI) evidence custodian unlock the handcuffs. Much to his chagrin however, the OSI special agent did not have a key. Since OSI was not located near the legal office, we called Security Police (SP). Unfortunately, the SP explained that these handcuffs were not standard and his key would not unlock them. It was clear we would have to call the OSI to see if they had a key that fit.

It was 5 minutes prior to the start of trial and Major Cunningham and a piece of key government evidence had become inseparable! In spite of our attempts to show Major Cunningham the humorous side to this situation, he was understandably tense and not at all in a laughing mood. The laughter we could hear through the phone by the OSI when he called them also did not improve his disposition.

While we waited for the OSI to arrive, I felt obliged, as a fairly new SJA, to help out and attempted to “pick” the handcuff lock. This effort only caused the cuff to become that much more secure! Major Cunningham was now not only in a tight spot, he was also in pain.

And as if matters could be worse, it was now 0800 hours. What was a trial counsel to do? Major Cunningham walked down to the Judge’s office and with his handcuffed hand held behind his back, requested a 30 minute delay. We couldn’t hear the details of the request but it had something to do with problems with the government’s evidence!!

In the end the OSI was able to get the handcuffs off and Major Cunningham, as always, did an absolutely outstanding job prosecuting the case and secured a conviction and sentence which the accused will continue to serve for many more years to come.
(By Colonel David G. Ehrhart)

Editor’s note: On a serious note and as an excellent learning point, Lieutenant Colonel Cunningham (USAF, Retired) reports he tried the cuffs on because: “I had never been handcuffed. The very young boys in this molestation case were cuffed by the defendant. I wanted to feel what it was like to be partially cuffed. Even this minor, insignificant event enlightened me to the stark terror they must have felt.” Undoubtedly, this seemingly humorous experience allowed then-Major Cunningham to more effectively explain to the members why the accused should be locked up for a very long time. 🦋



Photo courtesy of Colonel David Ehrhart

How do I get these things off?!
Major P. Michael Cunningham

After the Conviction

COLONEL EARL E. HODGSON, JR., RETIRED



I attended an interservice military judges seminar where the keynote speaker, a Federal District Judge, referred to appellate judges as “individuals who come down from the hills after the battle and shoot the wounded.” This remark was met with immediate and enthusiastic applause by the attending trial judges.

In defending my brethren, past, present and future, it should be remembered that in any decision, 50 percent of the lawyers involved think the author judge is a blathering idiot and the concurring judges are approaching senility. Further, on a bad day both sides will consider the decision wrong — but for different reasons.

Having said that, the following is an abbreviated informal history of the Air Force’s Appellate Judiciary based on the recollections of myself and others. It’s all true — give or take a lie or two.¹

EARLIER APPELLATE FORUMS

The present Air Force Court of Criminal Appeals had its beginnings with Article 50 1/2 of the 1920 Articles of War. Article 50 1/2 was drafted after World War I and required a mandatory review in cases involving death sentences and dismissals of officers. The 1920 Articles of War and the 1928 Manual for Courts-Martial provided the basis for criminal trials of America’s soldiers and airmen during World War II. Boards of Review were established in the various war

zones. There was one in the European Theater of Operations (BR/ETO), China-Burma-India Theater (BR/CBI) and the North Africa Theater (BR/NATO). They were kept busy as there were about 80,000 general courts-martial during World War II, an average of close to 60 a day. Boards of Review decisions could be appealed to the Judicial Council under Article of War 50 (d)(2). Boards of Review and Judicial Council members were senior military lawyers and were identified as “judge advocates” in the written opinions. The second Judge Advocate General of the Air Force,

Major General Albert M. Kuhfeld, was a Judicial Council member.

After the Air Force became a separate service in 1947, the decisions of the Judicial Council from that date until 1950 were compiled in a four volume set of books entitled “Court-Martial Reports of The Judge Advocate General of the Air Force.” Those of us who remember them called them the “Blue Books” — so named because of their dark blue almost black bindings. Those Judicial Council decisions were also useful to new judge advocates as each decision began with a recitation of the charges



Colonel Hodgson (B.A. and J.D., Washburn University) is a member of the Bars of Kansas and Texas. He was the second winner of the Albert M. Kuhfeld award, 1965. He retired in 1990, was called back to active duty by SecAF and served as a Senior Judge on the Air Force Court of Military Review from Jan 91 to Jun 92 when he retired for the last time.

involved. They were great for writing Article 134 specifications.

The decisions in these volumes give a fleeting and sometimes whimsical view of military justice just after World War II. For example, officers were tried for the unauthorized wearing of Royal Air Force wings, obtaining flight pay having never been a rated officer, and my favorite which involved a civilian pilot who claimed that General Douglas MacArthur had commissioned him in the Army Air Corps. He spent the war in the Pacific in uniform and was I believe, a “major” when he was tried.

A NEW MILITARY CODE ARRIVES

The Military Justice Act of 1950 enacted the Uniform Code of Military Justice which established the Court of Military Appeals, a three judge civilian tribunal, that replaced the Judicial Council that had previously been the final review body. The Military Justice Act



also established Boards of Review for the separate services.

These Boards of Review sat as an intermediary appellate body. Their decisions were heard by the Court of Military Appeals on grants of review. The Boards of Review sat in panels of three with the senior officer assigned to the Board as its Chairman. Its members were senior judge advocates. The published decisions are found in wine-colored books called the “Courts-Martial Reports.” For years the Air Force Board of Review had its courtroom above the commissary on Bolling Air Force Base in Washington D.C.

In 1969, the Air Force Board of Review became the Air Force Court of Military Review by virtue of the Military Justice Act of 1968. Board of Review members became “appellate military judges” and wore robes. By statute The Judge Advocate General of each service branch appointed the Chief Judge. Also, by statute the Chief Judge was prohibited from writing effectiveness reports on any judge. In the summer of 1969, the Air Force Court of Military Review moved from “above the commissary” at Bolling Air Force Base to the seventh floor of the Forehall Building in downtown Washington D.C. There were eleven Chief Judges from 1969 until 1992. Their terms of service varied from a short 21 days to almost nine years.

US Court of Military Appeals, 1954. Maj Gen Harmon sponsoring a group of AF JAGs for admission to the Bar in front of judges Lattimer and Brosman (left to right)

In the fall of 1973, I was appointed an appellate judge on the Air Force Court of Military Review. I was fortunate to have two outstanding lawyers, Don Brewer and Chet Halicki, who is no longer alive, as mentors. The day I was sworn in, Chet took me into his office and said, “Earl, there are going to be days when you just can’t write. Nothing flows. When that happens, sit down, put your feet on the desk and look out the window. If anyone asks you what you are doing, tell them you are thinking.” I sometimes think that was the best advice anyone could give a new judge.

A short time later while I was robing for my first oral argument, Don took me aside and said, “If we ask counsel questions they can’t answer, you are not to answer for them.” Don was the Senior Judge on my panel, and to this day he has not told me why he thought that advice was necessary.

THE BOMB SHELL

Prior to 2 June 1969, the questions of court-martial jurisdiction depended almost totally upon the status of the accused. The rule was clear: If the accused was in the military, and the offense was one set out in the Code, the court-martial had jurisdiction. The Supreme Court changed all that with its ruling in *O’Callahan v. Parker*. Over a hundred years of military precedents were set aside, and now jurisdiction of



Offutt AFB courtroom.

a court-martial would be limited to those offenses that were “service-connected.” It would seem that all the service courts had fallen victim to the curse of “May you live in interesting times.” And interesting they were. Less than a month after the *O’Callahan* decision, the Air Force Court held in *Burkhart* that bigamy was service-connected. This decision was the first of many by the Air Force Court that espoused the view that the military should, whenever possible, retain jurisdiction. This conservative view caused one writer to question whether the Air Force Court of Military Review recognized the Court of Military Appeals as “the Supreme Court of the military judicial system.” Adhering to the maxim that there are only two kinds of appellate judges; those who have been reversed and

those who are going to be reversed, the Air Force Court continued to find a “service-connection” where the facts warranted it. History has shown those Air Force appellate judges writing in the early days of *O’Callahan* to be right. In 1987, the Supreme Court in *Solorio* allowed military courts to exercise jurisdiction as they did prior to *O’Callahan*.

ON THE ROAD AGAIN

In the late 1970s the Air Force Court of Military Review moved from the Forrestal Building to the fourth floor of a non-descript building in a seedy section of Washington D.C. called “Buz-zard Point,” so named because during the Civil War carcasses of horses and mules were left there to be disposed of by buzzards.² However, within a few years the Air Force Court of Military

Review again relocated, this time to a new modern building on Bolling Air Force Base that was shared with the Air Force Chief of Chaplains. There is a story that goes with this also:

John Howell, who was the Chief Trial Judge, and I would meet before the duty day started, to discuss events of vital national importance, i.e., the ball scores, the latest British imports on PBS, and on occasion, the latest decision from the Court of Military Appeals. In conversation with others we would refer to our building, which had no official name, as “Thoad Hall.” The reference being to the residence of “Mr. Toad” in the “Wind in the Willows.” Someone asked, I don’t recall who, for whom the building was named. Tongue in cheek we suggested that it was named after “Theophilus Thoad” an early 19th century military chaplain. Neither one of us thought anything about it until we started getting correspondence with the correct street address but directed to “Thoad Hall, Bolling Air Force Base, D.C.” Thereafter, it was suggested that the correct address without the fictitious history would allow the mail to be promptly delivered.

ON MY WATCH

I suppose that every Chief Judge has a decision that lends itself as a landmark of his time on the court. During my tenure there were many, but *United States v. Gay*, 16 M.J. 586 (AFCMR 1983) has to be at the top of the list or close to

Chief Judges

Air Force Court of Military Review Air Force Court of Criminal Appeals

- Colonel Chester W. Wilson, 1 Aug 69 - 31 Dec 69
- Colonel Carl Goldschalager, 1 Jan 70 - 17 Jun 70
- Colonel Donald A. Williams, 18 Jun 70 - 2 Aug 70
- Colonel Quincey W. Tucker, 3 Aug 70 - 22 Jun 71
- Colonel Robert S. Amery, 23 Jun 71 - 8 Sep 74
- Colonel Grosvenor H. LeTarte, 9 Sep 74 - 31 Dec 76
- Colonel Paul W. Buehler, 1 Jan 77 - 8 Sep 77
- Colonel Carl R. Abrams, 9 Sep 77 - 30 Sep 77
- Colonel William N. Early, 1 Oct 77 - 14 Sep 81
- Colonel Earl E. Hodgson, Jr., 15 Sep 81 - 31 May 90
- Colonel Patrick B. O’Brien 1 Jun 90 - 28 Feb 92

- Colonel Richard D. S. Dixon, II, 1 Mar 92 - 30 Mar 97
- Colonel Richard F. Rothenburg, 1 Apr 97 - 1 April 99
- Colonel William T. Snyder, 2 April 99 - Present

-A Day in the Life of a "Circuit-Rider"



it. The decision, written by Wayne Kastel, found the current Manual for Court-Martial provision permitting the imposition of the death penalty to be unconstitutional. For any young lawyer who hopes to be a judge the reading of this decision is a must. It is scholarly, thoughtful and the way an appellate decision should be written. Bing Miller's dissent is also worthy of close reading. The decision was appealed to the Court of Military Appeals and affirmed. It was reported in the New York Times and the Washington Post. The struck-down Manual provisions were later re-written to meet the required constitutional standards. Finally, I had the

honor in the fall of 1981 to swear in Millie Raichle as the first woman appellate judge on the Air Force Court of Military Review.

THE AIR FORCE COURT TODAY

On 5 October 1994, the Air Force Court of Military Review was renamed the "Air Force Court of Criminal Appeals." That same date the Court of Military Appeals became the "United States Court of Appeals for the Armed Forces."

As I said earlier, this was to be an informal history based on my memories and those of others. I read somewhere that many good stories are ruined by

attempts at verification, so bear with me if the reader's memory of some events I have related differ from mine. I can only repeat that it is all true — give or take a lie or two. 🏹

¹ Editor's Note: However, the editors have found most of Colonel Hodgson's asserted facts verifiable. See also, Will H. Carrol, *A Short Account Of The Early Years of The Office Of The Judge Advocate General*, THE REPORTER, Vol. 8, No 1, Feb 97.

² See Mahoney, *Me and Mr B*, this edition of THE REPORTER.

US Court of Military Appeals.



Air Force Leads Way:

Pioneering the Defense Program

MAJOR LYNN G. NORTON

We have seen the armed forces, with the Air Force usually in the fore, not only adjust to but, in most instances, take the lead in protecting the rights of an accused in criminal proceedings.

~ Major General Robert W. Manss

In April 1972, Mr. Melvin R. Laird¹, a Secretary of Defense for the Nixon Administration, commissioned the Task Force on the Administration of Military Justice in the Armed Forces to examine the military justice process and, among other things, “to recommend ways to strengthen the military justice system and to enhance the opportunity for equal justice for every serviceman and woman.”² This committee was co-chaired by Mr. Nathaniel Jones, General Counsel for the National Association for the Advancement of Colored People (NAACP) and Lieutenant General C.E. Hutchin, Jr., Commander, First Army.³ The Task Force made recommendations to Mr. Laird who chose, as one of his last acts while in office, to immediately implement one suggestion: require each service to prepare a plan to provide that all defense counsel for courts-martial, Article 15s, and administrative boards be under the direction of TJAG.⁴ By memorandum dated 11 January 1973, Mr. Laird directed each military department to submit plans for the restructure.⁵ Within seven months, the Air Force prepared and began implementing the plan.

The Air Force, under the direction of then-TJAG Major General James S.

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Cheney, established a committee to prepare the plan.⁶ The committee acted in response to servicemembers’ perceptions that a system in which both prosecution and defense worked from the same office created conflicts of interest impeding equal and zealous access to the military justice system.⁷ The original Air Force plan assigned defense counsel to the Trial Judiciary Division and envisioned one or more defense counsel assigned at approximately 72 percent of Air Force bases.⁸ It called for an increase in the Trial Judiciary Division of approximately 135 judge advocates and 120 administrative personnel to support the new positions, with the majority of the authorizations being drawn from the existing base legal offices.⁹ The Task Force recommended that the establishment of an “independent” defense counsel “required as an absolute minimum that they be physically separated from both the Office of the Staff Judge Advocate and the trial counsel.”¹⁰ Therefore, General Cheney decided to press ahead with the implementation of the program during fiscal year 1974.¹¹ General Cheney retired in September 1973¹² so Major General Harold R. Vague was TJAG when the program was formally implemented.¹³

Colonel William M. Burch, II, was the Director, USAF Judiciary, at the time the program was implemented.¹⁴ The test program, called the Area Defense Counsel (ADC) Program, was officially¹⁵ implemented throughout the First Cir-

cuit, Northeastern United States Judiciary Region,¹⁶ on 1 January 1974.¹⁷ Defense counsel were reassigned to the Appellate Defense Division although, in most cases, they continued to be stationed at the same base of assignment.¹⁸ Colonel Burch recalls the program being established to address *perceptions*, and not actual reports of unlawful command influence.¹⁹ For that reason, he was initially cautious believing commanders might resist the program and not want to work with the ADCs. However, he recalls that once the ADCs were in place, the commanders were very enthusiastic about the program and would never have permitted it to be dismantled.²⁰ Colonel Burch also recalls insisting the ADC be located outside the Staff Judge Advocate’s Office. “If we left the ADC in that office, it wouldn’t have helped the perception problem that we were trying to address.”²¹ General Russell Dougherty, the Commander in Chief of Strategic Air Command from 1974 to 1977 recalled that when the system was being created, there was some apprehension from commanders that those detailed as ADCs would lose identity with the Air Force, feel separated, and get out of the service as a result.²² However, on the twentieth anniversary of the program, General Dougherty was very impressed with the program and the quality of the counsel, and did not feel those fears had come to fruition.²³

From the frontier. Then-Captain Joseph A. Wilhelm, III, one of the very first ADCs in the initial phase of the program, recalls setting up the new office. “The SJA called all of us [in the base legal office] together and asked if anyone would like to go over to this new office they were creating...and I volunteered,” he relates. “I went over and then said, ‘What do we do?’ [The SJA] found us an office in the old hospital and moved us over there...and then asked what we wanted for a supply budget. I didn’t know so they told us to buy what we needed and that they would use that as a baseline for future budgets. They even created a secretary slot and we interviewed and hired one.... The SJA agreed wholeheartedly with the program so there was never any backlash.... It was a great job. I didn’t have a boss for a while because it was going to be someone in Washington but there wasn’t anyone in Washington in the beginning, which was great with me because I wasn’t too interested in talking to my boss anyway,” Wilhelm recalls.²⁴ There wasn’t any training provided initially because the new area defense counsel had served as defense counsel while assigned to the Office of the Staff Judge Advocate.²⁵

Since the placement of ADCs was based upon courts-martial conducted at each base during 1972 before the end of the American involvement in the Vietnam War,²⁶ “We’d done about 15 courts at Wright-Patterson the year before I moved over to defense counsel. However, as I recall about 80 percent of those cases had been for AWOL. When the war ended, no one went AWOL anymore and we only had about five cases the first year I was ADC and there were two ADCs assigned to our office. So I got to travel to a few other bases to do cases and I had a lot of fun,” Wilhelm

remembered.²⁷ He recalls the move as “very liberating,” because it was just like being a SJA, in a more narrow sense. He said he enjoyed the job speculating then that he couldn’t get a better job—



Photo courtesy of Colonel Kirby Smith

7th Judiciary Circuit, Clark AB, Philippines, 1981. (left to right) CMSgt H. Steward, SSgt R. Booth, Capt C. Morgan, Maj P. Kendall, Capt R. Schmidt, Capt H. J. Shearer, Maj D. Hawkley, MSgt D. North, Col H. K. Smith

his career could only get worse because it was the best job in the Air Force.²⁸ The program was implemented worldwide on 1 July 1974.²⁹

Then-Captain Thomas S. Markiewicz was the first Area Defense Counsel assigned to Edwards Air Force Base, California.³⁰ “Being an ADC then wasn’t like it is now with Circuit conferences and everything,” he describes. “Everything we did was very individual to the base, and I don’t even recall any document that had [all of the ADCs’] names on it.”³¹ He describes setting up his first office as “not plush, but certainly very adequate,”³² consisting of an office on the second floor of a condemned commissary building with a World War

II vintage typewriter, a library including an incomplete Manual for Courts-Martial and red books faded to orange, and a desk that was surplus from the confinement facility.³³ He recalls that there was a tremendous amount of excitement about the program among those selected to be ADCs, and that he was treated extremely well by the command that recognized the value of an independent defense counsel.³⁴ Mr. Markiewicz cites the ADC Program as “the greatest success story in the Department’s history. It gives military justice the respect it deserves, clients the confidence they need, judge advocates the independence and support to become the best corps of trial lawyers in the nation.”³⁵

Resounding success. The Area Defense Counsel Program was made a permanent program on 22 July 1975 by General David C. Jones, Air Force Chief of Staff.³⁶ The recommendation that the program be made permanent came after an Evaluation Board composed of line and JAG officers considered “individual evaluations from 593 commanders, staff judge advocates, military judges and defense counsel...[and a] survey from Lowry Air Force Base...and testimony from witnesses....”³⁷ The board unanimously found that the Area Defense Counsel Program “met its goal of increasing the overall actual and apparent stature of defense counsel and judicial functions throughout the Air Force.... The Program has gained the almost universal respect and acceptance of commanders at all levels, and has become a valuable tool in front-end rehabilitation which can be accomplished only by a judge advocate who has gained the confidence of an airman by virtue of his position as independent defense counsel.”³⁸

A friend a few years back...a federal district court judge...said that he could always tell in his court anyone who had been a judge advocate. He said it was not just because of trial experience, but because he or she was more disciplined, more courteous, more respectful, more understanding of the role of the court.

~ Major General James Taylor, Jr.

Other services follow suit.

The present-day Area Defense Counsel program is a slight modification of the original program set up by Generals Cheney and Vague.³⁹ The U.S. Army implemented an independent defense counsel program, Trial Defense Services, on a test basis in 1978 and a permanent basis in 1980.⁴⁰ The Navy took a different approach, implementing an independent prosecution and command service representative program between 1983 and 1985 which was terminated for insufficient personnel and funding resources. The Navy currently has an independent trial program called the Trial Services Office that began as a pilot program in 1994.⁴¹

Upon the Area Defense Counsel Program's tenth anniversary, Major General James Taylor, Jr. (Retired DJAG), recounts the creation of an independent defense counsel system as the Department's hallmark. In 1984 he noted, "There are about 24 items as I recall that are listed by the Air Force as significant Air Force developments in its history, and only one of those belong to JAG, and I think it is the right one. If we're entitled to only one... then I think the right one was chosen, one in which I played no part but take much pride in: It was the establishment of an independent defense counsel system, in 1974, the Area Defense Counsel System."⁴² He states, "One of the things that I say to the commanders around the country and to the public at large about that system, whatever its benefits and flaws, is that we were not required to do it; not by statute. Neither did [the Office of the Secretary of Defense] require us to do it. The Air Force did that because we believed it was right, and I have no hesitancy in saying that that was one of our best decisions in the Air Force."⁴³

¹ Melvin R. Laird, 10th Secretary of Defense, Nixon Administration, 22 January 1969-29 January 1973; http://www.defenselink.mil/specials/secdef_histories/bios/laird.htm.

² Colonel W. M. Burch, II, *From Military Justice Branch to Directorate, USAF Judiciary*, XV, No. 1 JAG L. REV. 45, 48 (1973).

³ History Office of The Air Force Judge Advocate General, Oral History of Colonel

William M. Burch, II, USAF Retired: A New Era in Military Justice; The Independent Defense Counsel (June 1996) (unpublished oral history) (on file with Mr. Eugene O. Solimine at AFMC LO/JA, Wright-Patterson AFB, OH), at 95 (hereinafter *Burch Oral History*).

⁴ Burch, *supra* note 2, at 48 (citing Letter submitting the Report of the Task Force to the Secretary of Defense (Nov. 30, 1972).

⁵ *The Area Defense Counsel Program*, AFJAG REPORTER 1973/12, at 2.

⁶ Burch, *supra* note 2, at 49. After independent consideration, each of the services responded to the Secretary of Defense with their plans. "It is interesting to note that one of the services forwarded its plan with a recommendation by its Secretary that it *not* be adopted because of the impact on its already short supply of legally trained personnel." *Id.*, n. 14.

⁷ *Id.* at 49.

⁸ *Id.* Interestingly the original announcement of the plan was to begin in fiscal year 1974 which seemingly did occur. See *infra* note 15. However, the official announcement of the program to the field cited an implementation date of 1 January 1974. See Burch, *supra* note 2, at 49. The original plan based the number of ADCs on a survey of the number of courts conducted at each base the year prior to implementation of the program. Telephone interview with Col (Ret.) William M. Burch, II (Jan. 29, 1999) (hereinafter *Burch Telephone Interview*). After the survey, "we came up with a map and here, here and here.... We sat down and decided, 'Okay, where can we cluster?' By that I mean, if you had...two or three bases not too far apart and there weren't many courts-martial, okay we'd pick one and put in an Area Defense Counsel. Let's face it, if you had a base that had two special courts a year, you're not going to give them an Area Defense Counsel. You had to do that type of clustering.... We'd call them an Area Defense Counsel and he or she would have a certain area." This was the origin of the name of the program. *Burch Oral History, supra* note 3, at 97-98 (emphasis added).

⁹ Burch, *supra* note 2, at 49. To get volunteers for the new positions, the committee "went to the bases and said, 'Who do you recommend for these slots? Who has been doing the most defense work or trial work?' That's the way we did it initially." *Burch Oral History, supra* note 3, at 99.

¹⁰ Burch, *supra* note 2, at 49.

¹¹ *Id.*

¹² Biography of Major General James S. Cheney, <http://www.ja.hq.af.mil/Cheney.htm>.

¹³ Major General Harold R. Vague, *In Closing*, AFJAG REPORTER 1977/3, at 1.

¹⁴ Burch, *supra* note 2, at 45.

¹⁵ Unofficially, the Area Defense Counsel

officers were being set up as early as the beginning of fiscal year 1974, which began on 1 July 1973. Telephone interview with Colonel Joseph A. Wilhelm, III, Senior Individual Mobilization Augmentee (IMA) to Electronic System Center Staff Judge Advocate at Hanscom Air Force Base, Massachusetts (Jan. 27, 1999) (hereinafter *Wilhelm Telephone Interview*).

¹⁶ Presently the Eastern Circuit. Counsel assigned to the First Circuit included Major Steven R. Bloss as Chief, Circuit Defense Counsel; Captains William Cook and Michael D. Wims as Circuit Defense Counsel; and as Area Defense Counsel, Captain John D. Alton at Lockbourne AFB, OH; Captains Thomas J. Baynham and Hernan Rios, Jr., at McGuire AFB, NJ; Captains Allen S. Brown and Joseph A. Wilhelm III at Wright-Patterson AFB, OH; Captain Nordahl L. Brue at Plattsburgh AFB, NY; Captains Malcolm L. Burdine and Peter J. O'Loughlin at L.G. Hanscom Field, MA; Captain James P. Czajkowski at Wurtsmith AFB, MI; Captain Joseph H. Duff at Griffis AFB, NY; Captain James R. Harris at Kincheloe AFB, MI; Captains Michael P. King and Wendell K. Smith at Langley AFB, VA; Captain George R. Krouse, Jr., at Loring AFB, ME; Captain Robert L. Leonard at Hancock Field, NY; Captain John E. Maziarz at Dover AFB, DE; Captains Thomas Pillari and Doyle D. Sanders at Chanute AFB, IL; Captain James M. Ronk at Scott AFB, IL; Captain John L. Tison at Grissom AFB, IN; and Captain Bryant L. Van Brakle at Andrews AFB, MD. Memorandum from Robert W. Norris, Lt Colonel, USAF, Chief, Career Management Division, Office of The Judge Advocate General, for All Judge Advocates, Area Defense Counsel Program, (Apr. 26, 1974) (on file with the author).

¹⁷ *The Area Defense Counsel Program, supra* note 5.

¹⁸ *Id.*

¹⁹ "[I]n my thirty-some odd years [even before the independent defense counsel], I never knew of a case where a Commander or anybody else tried to influence a defense counsel. As you well know, most of our defense counsels were youngsters. A lot of them were in for four years and they were as independent as a hog on ice. There wasn't any SJA or any Commander that was going to tell that Defense Counsel, 'You lay off.'" *Burch Oral History, supra* note 3, at 99.

²⁰ *Burch Telephone Interview, supra* note 8.

²¹ *Id.*

²² Videotape: *Area Defense Counsel 20th Anniversary* (HQ USAF TV Center, 11th Communications Squadron, Rm. 5c-1045, Pentagon, (703)695-7317, Aug. 22, 1994) (on file with Trial Defense Division, Air Force Legal Services Agency) (hereinafter *Videotape*).

²³ *Id.*

²⁴ *Wilhelm Telephone Interview, supra* note

15.
²⁵ *Id.* However, the initial Circuit Defense Counsel were sent to the “Short Course for Defense Lawyers in Criminal Cases” at Northwestern University School of Law in Chicago in July 1973, the only course available at that time for defense counsel. Memorandum from Michael B. McShane, Colonel, USAF, Chief Trial Judge, for Major Lynn G. Norton, A Bit of History (Jan. 29, 1999) (on file with author).

²⁶ *Burch Telephone Interview, supra* note 8.

²⁷ *Wilhelm Telephone Interview, supra* note 15.

²⁸ *Id.*

²⁹ *The Area Defense Counsel Program, supra* note 5. Other than the First Circuit counsel listed in footnote 16, the first Chief, Circuit Defense Counsel, were Maj Major C. Roberts, Jr., Lt Col Edward L. True, Maj James A. Mitchell, Maj Guido J. Casari, Jr., Maj William M. McKenna, III, and Lt Col Robert E. Moore. The first Circuit Defense Counsel were Captains Richard R. James, Elisha B. Hurd, Jr., Michael B. McShane, Byron D. Baur, James R. Crassweller, Edgar W. Ennis, Jr., Dennis R. Triggs, and Joseph P. Conran. The Area Defense Counsel were Second Circuit: Captains Raymond G. Chadwick, Mikel L. Purcell, William A. Brannon, James P. Bodenheimer, Luke J. Coussan, Mark G. Farrell, Barry A. Cook, Robert S. Stallings, Daniel J. Walker, John A. DeFrancisco, Lee C. Schmachtenberg, Lee B. Saylor, Francis Garger, Donald T. Robinson, James J. Gonzales, Joseph V. Manders, Jr., Roger W. Giles, Roland F. Berlingo, David A. Bloomer, Robert C. Irwin, Jr., and James G. Armstrong; Third Circuit: Captains Joseph D. Matlock, Joseph L. Brownlee, William O. Traynor, Derrick R. Franck, William S. Herbert, Jr., G. Kethro, Robert A. Johnson, Rush M. Hoag, III, Larry G. Shockley, Freeman G. Duncan, Larry T. Thraikill, Larry J. Molinari, John M. Abbott, Donald L. Schwendiman, James L. Swift, Roland G. Couch, Joseph S. Spitzer, Douglas W. Lyons, Jr., Harvey L. Court, Frank E. Marek, and William J. Denton; Fourth Circuit: Captains William P. Moore, Robert G. Gibson, Jr., Herbert A. Farbes, Jr., Damon L. Gannett, Philip W. Eglsaer, Jerry J. Miller, Carlos E. Torres, Todd E. Norton, Douglas M. Deibert, Robert P. Hailey, Robert C. Lahmann, Gerald A. Stimmel, Glenn J. Gamboa, Howard L. Rubenfield, and Glenn E. Bradford; Fifth Circuit: Captains Johns R. Marks, III, Herbert R. Schulze, David A. Bateman, Daniel E. McKelvey, John C. Stewart, Jr., Joe E. Alford, Homer S. Mullins, Andrew F. Reish, Warrant T. Conrad, Richard K. Frampton, Thomas S. Markiewicz, James H. Vestal, Carl J. Debevec, Robert D. Reinhard, Patrick J. Kearney, Richard D. Beeson, James S. Magoffin, Jr., Robert C. Nowak, Richard E. Dick, and Patrick W. Border; Sixth Circuit:

Captains Bruce S. Bailey, Thomas J. Brown, Peter P. Dawson, III, Gerald C. Shea, Gary C. Smallridge, Harry B. Flanagan, Jeffrey M. Denson, Robert C. Kidd, Lewis G. Brewer, Gerald F. Bennett, James R. Cook, William T. Snyder, Allen W. Rigsby, Jr., Michael S. Lawyer, Alex P. Poulicos, Thomas J. Thompson, Larry E. Oakes, Ernest J. Romero, and James C. Fetterman; Seventh Circuit: Captains Thomas P. McMahon, Anthony W. Walluk, Jr., Julian V. Buenger, Patrick A. Tucker, Richard L. Farr, and Len B. Cason; Eighth Circuit: Captains Don E. Cavett, Dan M. Scheuermann, John M. Coyle, James N. Potuk, Charles M. Teague, and Dwight H. Ellis, III. Memorandum from Robert W. Norris, Lt Colonel, USAF, Chief, Career Management Division, Office of The Judge Advocate General, for All Judge Advocates, Area Defense Counsel Program, (Apr. 26, 1974) (on file with the author).

³⁰ *Videotape, supra* note 22.

³¹ Telephone interview with Mr. Thomas S. Markiewicz, Chief, Clemency, Corrections and Officer Review Division, Air Force Legal Services Agency, Washington D.C., (Jan. 26, 1999) (hereinafter *Markiewicz Telephone Interview*).

³² *Id.* The ADC offices were frequently referred to in similar terms. Then Captain Michael B. McShane, one of the first Circuit Defense Counsel, wrote in his 1975 evaluation of the program, “Command support for the program has been good. I have found the facilities provided for the Area Defense Counsel to be generally adequate. The best looking offices are the result of a great deal of self-help.” Memorandum from Michael B. McShane, Captain, USAF, Circuit Defense Counsel, for USAF Trial Judiciary, Evaluation of Pilot ADC Program (May 12, 1975).

³³ *Videotape, supra* note 22.

³⁴ *Markiewicz Telephone Interview, supra* note 31.

³⁵ *Videotape, supra* note 22.

³⁶ *Area Defense Counsel Program Made Permanent*, AFJAG REPORTER 1975/6&7, at 11.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Videotape supra* note 22.

⁴⁰ John R. Howell, *TDS: The Establishment of the U.S. Army Trial Defense Service*, 100 MIL. L. REV. 4 (1983).

⁴¹ Memorandum from U.S. Navy Office of the Judge Advocate General and Headquarters, Naval Legal Service Command, for All Judge Advocates, Establishment of Prototype Trial Services Command (May 3, 1994).

⁴² Major General James Taylor, Jr. (Ret.), *Taking Stock: Thoughts on 35 Years*, 3 THE REPORTER 1, 4 (Spring 1984).

⁴³ *Id.* at 5.

THE ADC’S BACK

Words by Lt Col Mark Magness

Sung to the tune of “My Boyfriend’s Back”

He went away, and you searched my car
And busted me for pot.
I told you I didn’t do it,
But you said things on that charge sheet
That weren’t very nice....

Oh, the ADC’s back, and
We’re gonna go to trial.

Hey-la, hey-la, the ADC.
He’s promised me
We’re gonna wipe off your smile.

Hey-la, hey-la, the ADC.
The ADC tells me
Your search was a mess.

Hey-la, hey-la, the ADC.
I never consented.
I only acquiesced.
Hey-la, hey-la, the ADC.

Yeah, he’s the very best
At the motion to suppress.

The ADC’s our friend,
We trust him more than just a little.
Wah-oo, Wah-oo.

He comes from California,
Parts his hair in the middle.
Wah-oo...just like me!

The ADC tells me
Things will be fine.

Hey-la, hey-la, the ADC.
We’re gonna prove that
The pot wasn’t mine.

Hey-la, hey-la, the ADC.
You know I loan my car
To friends who get in a lurch.

Hey-la, hey-la, the ADC
In fact, the ADC borrowed it
The night before the search.



A Vital Piece of the Air Force Package

MAJOR JEFFERY K. WALKER

These days, everyone wants to do operations law, but how clear are we on just what exactly operations law is? With the post-Cold War form and substance of the Air Force finally emerging in the guise of the Expeditionary Air Force (EAF), JAGs may be called upon to perform legal work just about anywhere in the world, possibly on very short notice. Operations lawyering is fast becoming business as usual throughout the JAG although it wasn't always that way in the Department.

How did we get involved with this thing called operations law? Officially, on 14 June 1991 — just months after the end of the Gulf War — the International Law Division of the Air Staff became the International *and Operations* Law Division. Initially, the new division was divided into three branches: international law, air and space law, and operations law. But why was there a perceived need to officially recognize a new legal subspecialty within the Department? The answer lies in a chain of events running from Vietnam to Operation DESERT STORM.

Vietnam was the first highly politicized modern conflict with which the US was involved. Although *any* war is — at least according to Clausewitz — a political statement, Vietnam was the first conflict literally brought nightly into our living rooms. This revolution in combat reporting, coupled with the direct control over combat operations exercised by civilian leaders and the simmering U.S. public opposition to the conflict resulted in a sharply heightened sense among military commanders at all levels that they were under the microscope. The trials resulting from the My Lai massacre underscored the sense that U.S. troops in Vietnam were constantly in peril of slipping into lawlessness. (The article that follows by Captain Burke demonstrates the peculiar environment of the Vietnam conflict.) Air Force judge advocates gave legal assistance, paid

claims and did courts-martial, but for the most part did not play an operational advisory role.¹ Meanwhile, there was another more expensive war being fought simultaneously: the Cold War.

Although Vietnam had a lasting impact on the American

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military and society in general, the Cold War was the defining conflict in the 45 years between World War II and the fall of the Berlin Wall. The very nature of the US military — and hence the work of military lawyers — was defined by the vision of an enormously large and destructive set-piece battle with the Soviet Union across the plains of central Europe. This vision drove in turn a huge forward-based force, intended to deter the Soviets and, failing that, fight the great struggle from these permanently manned forward locations. The Cold War Air Force was a garrisoned force — something near the antithesis of a lean and agile expeditionary force. To conceive of “operations law” in this context was a little ludicrous; the operation — should it come — would be all-out, and quickly escalate to chemical and tactical nuclear war. It would not require much legal thought or justification.

This is not to say that there were not operations around the edges of the Cold War that required some kind of expeditionary force — peacekeeping missions in Lebanon and the Sinai or humanitarian relief operations around the world are good examples — but these were miniscule concerns in comparison to the mission of deterring and beating the Soviets. However, the events of the late 1980s, culminating in the reunification of Germany, the end of the Warsaw Pact, and the waning of Russia's superpower status radically changed the way the US military did business.

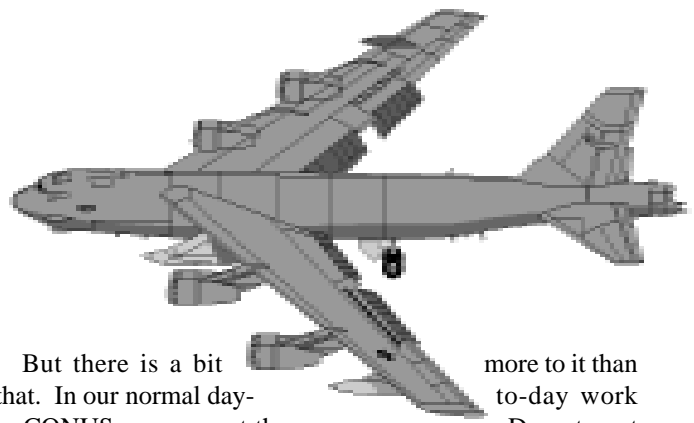
There were three major lasting effects on US military structure and strategy that resulted from the end of the Cold War, all of interest to the development of operations law as a military legal discipline. First and most obvious, the end of the Cold War resulted in the rapid shrinkage of US military forces in general and the US overseas military presence in particular. Second, the fading of the superpower standoff lifted the lid on dozens of transnational, international, internal, or interethnic conflicts that had been simmering on the geopolitical back burner for decades. These conflicts tend to be highly legalistic — based on UN resolutions or enforcement of international human rights treaties for example — and particularly difficult to manage, hence putting a premium on strict legal compliance. Finally, the end of the near-certain US and USSR offsetting vetoes led to a stunning reinvigoration of the United Nations Security Council as an important international entity, which in turn opened new avenues of influence for other intergovernmental and non-governmental organizations spanning the spectrum from NATO to Save the Children, from the OSCE to Doctors Without Borders. This too increased the demand for near-constant lawyering in most operations.

But what does all this mean for military lawyers? The *realpolitik* (a fancy term for ‘might makes right’) of the Cold

War era has yielded to a more principled international system based on the rule of law. The US and other nations, prodded by a sense of obligation or conscience to end the more egregious violations of fundamental human rights around the world, have shown themselves more willing to take on new and diverse roles in peacekeeping, peacemaking, nation building, humanitarian relief — in short, nontraditional missions that military establishments have generally shunned in the past. These military missions are extremely complex both legally and politically: Colonel Dunlap’s discussion of operations in Somalia in the following pages is an instructive example. Rules of engagement (ROE) for example — hitherto a concern only to naval vessels operating in international waters and hardly of much interest to troops training for the grand conflict with the Soviets — emerged as a complex and important component of planning for these new types of missions.² The international mandates — generally Security Council resolutions — authorizing operations normally require measured and limited force for self-protection only. Even in instances where the UN has authorized “all necessary means,” the often tentative political support for many operations requires restrictive ROE to minimize both friendly force and civilian casualties. The laws of armed conflict, originally designed for general war between regular military forces, do not easily fit these new operations. Again, the demand for operations lawyers is high in these situations.

Just as importantly as the nature of the new operations undertaken by US forces is their location. In just a few short years, the US military has moved from a fight-from-garrison force to a fight-anywhere force. Major Broseker’s article on the Gulf War demonstrates how a military lawyer’s job has been exponentially complicated by the new expeditionary nature of military operations. In DESERT SHIELD/DESERT STORM, a huge portion of the Air Force was transplanted in a fairly short time into a forward area of operations where we had had no permanent and little temporary presence. In the same vein, the US traditionally has maintained status of forces agreements (SOFAs) with only a handful of countries where we had permanently assigned forces — Japan, Korea, the NATO nations, Panama, the Philippines. With the very real possibility of operations or exercises virtually anywhere in the world, the US now maintains SOFAs with over 100 nations — including every former Warsaw Pact member nation. As a result of this rapidly increasing body of international law, the need for operational lawyering has grown apace.

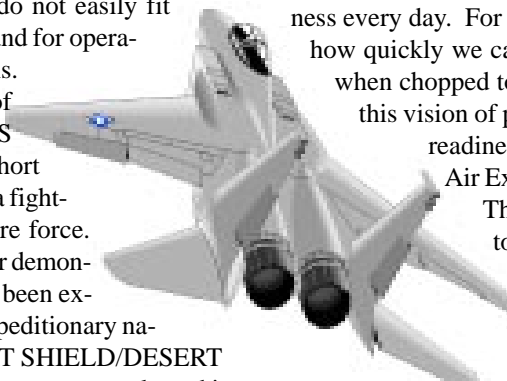
So what then does operations law really mean? It’s a bit like a medical doctor saying he’s a general practitioner — you have to be able to do a respectable job in just about any specialty with very little notice as to who and what will come through the door next. Operations law entails international law, procurement law, fiscal law, military justice, labor law, environmental law, US civil law — all done in fast-forward. To be a great operations lawyer is to be a competent journeyman JAG who can think independently and quickly.



But there is a bit more to it than that. In our normal day-in CONUS, we support the Department of the Air Force’s mission to organize, train, and equip air forces. However, when Air Force units — with their JAGs in tow — are chopped to a theater commander-in-chief or one of his task forces, we move into the execution business. As Colonel Steve Lepper has pointed out, the “paradigm operations lawyer” is the staff judge advocate of each unified and specified command — the legal advisors at EUCOM, PACOM, and SOUTHCOM for example — who focus daily on execution of US military policy within their geographic theater. The military departments’ primary responsibilities are to provide trained and equipped forces — including JAGs — to these CINCs. Some JAGs are permanently assigned to these CINCs and are in the operations law business every day. For those of us in CONUS, readiness means

how quickly we can assume duties as operational lawyers when chopped to a CINC or one of his task forces. It is this vision of presenting forces in a state of continuous readiness to the theater CINCs that underlies the Air Expeditionary Force concept.

There is much to be learned from the historical reflections on military operations contained in the following pages. But be assured the importance of operational lawyering is on the rise as we move forward into the next century as an Expeditionary Aerospace Force. ▼



¹ Judge advocates occasionally became involved in “cleaning up” after an operation. For example Air Force judge advocate Colonel Donald Brewer was legal counsel for Lieutenant General Lavelle who was relieved of command in 1972 for allegedly violating the ROEs in Vietnam. Colonel Brewer represented General Lavelle in congressional hearings on the matter.

² In my own experience as a Cold War-era B-52 navigator from 1983-1987, I never once read, was briefed on, or even heard the term rules of engagement—and we were vaguely informed in passing once a year that we should comply with the law of war while dropping nukes.



FIRST MAJOR CONFLICT

The origins of the Korean War predate Japan's official surrender in September 1945, ending the Second World War. When a cease-fire was declared on 15 August 1945, the United States and the Soviet Union established the 38th parallel across the Korean Peninsula for the purpose of assigning responsibility for accepting the surrender of Japanese forces.¹ This resulted in the establishment of a *de facto* international boundary and, after the Soviet Union balked at UN efforts to establish an independent Korean state based upon free elections, the creation of two separate Korean nations: the Republic of Korea (ROK) in the south and the Democratic People's Republic (DPR) in the north.²

During the year before the beginning of hostilities, the ROK endured communist harassment and an insurgency designed to bring down its government.³ Then on 25 June 1950, under the pretext of responding to a ROK invasion of the north, the DPR invaded the south.⁴ Hostilities, in what has been euphemistically called a "police action," would last until 27 July 1953 when the armistice was signed.⁵ The Air Force, having been established in 1947, was now engaged in its first major conflict. As the following article illustrates, Air Force legal officers were there. The Korean War has been referred to as "The Forgotten War" because of the inconclusive way in which hostilities ceased.⁶ There are few remaining Air Force judge advocate documents available to fill in the

details of JAG involvement during this "Police Action." However, we will never forget the sacrifices made by those who served our Nation. ✎

¹ R. Ernest Dupuy and Trevor N. Dupuy, *The Harper Encyclopedia of Military History: From 3500 B.C. to the Present*, 4th Ed (1993), pp. 1309, 1354.

² *Id.*, p. 1354.

³ *Id.*; See, also, *The Korean War, 1950 – 1953*, American Military History, Army Historical Series, Office of the Chief of Military History, United States Army, pp. 546.

⁴ Dupuy, *Supra* note 1, at 1355.

⁵ *Id.*, p. 1365. UN casualties were 118,515 men killed, 264,591 wounded, and 92,987 captured. American casualties were 33,629 killed, 103,284 wounded, and 10,218 captured (only 3,746 returned home). American non-battle deaths were 20,617. (*Id.*, pp. 1365, 1366). Fourteen UN member nations participated in addition to the US: the UK, Turkey, Canada, Australia, Thailand, France, Greece, New Zealand, the Netherlands, Columbia, Belgium, Ethiopia, Luxembourg, and South Africa. Denmark, India, Italy, Norway and Sweden contributed medical units. (*Id.*, p. 1366); See, also, *The Korean War, 1950 – 1953*, *Supra* note 3, at 556.

⁶ See, e.g., Clay Blair, *The Forgotten War*, Times Books [1987].

The Korean countryside was devastated by war, the people poor, the economy at a low ebb.

Editor's note: If you have more information on JAGs during the Korean War, please contact the editor at the Air Force Judge Advocate General School, (334) 953-2802, or 150 Chennault Circle, Maxwell AFB AL 36112-6418.

A JAG and Jeep in Korea during the war.



In the Korean War

COLONEL WALTER L. LEWIS

Photo courtesy of Colonel Walter Layer

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The events of the summer of 1950 are now more than 33 years behind. At that time I was a Reserve Judge Advocate on duty for training at Langley Air Force Base, Virginia. On a Monday morning at the end of June 1950, I entered the Fourth Fighter Wing Headquarters to find everyone and everything in turmoil as the

organization prepared to move within three days to New Castle County Airport (Wilmington) Delaware. The invasion of South Korea had begun. Scarcely three months later I was at New Castle when the entire wing departed en route to Korea with only 18 hours notice.

Soon thereafter, I was called to active duty as a Judge Advocate and in January 1951 became a member of the first class in the newly-opened Judge Advocate General School at Maxwell. The curriculum was heavily weighted with the new procedures and other changes required by the Uniform Code of Military Justice which would take effect May 31, 1951.

Colonel Walter L. Lewis, USAF (Ret.) (B.A. 1947, University of Virginia; J.D. 1950, University of Virginia School of Law; LL.M. 1969, George Washington University) was commissioned upon graduation from the Army Air Force's Navigator School in 1944. He served with the 8th Air Force during World War II, flying B-25s. Among Colonel Lewis' combat experiences was a crash landing in an English field following an attack by a German ME 262 jet fighter over Berlin. In the Air Force, Colonel Lewis' assignments included Director of the Judiciary 1977 to 1979 and Vice Commander of the Air Force Legal Services Center 1979 to 1980.

“Cram Courses” in claims, fiscal law, personnel law, and legal assistance were also included. While fighting a war at the far edge of the Pacific basin and absorbing a large increase in the size of the active force, the Air Force legal department had to prepare for significant changes in a major part of its workload—Military Justice—at a time when the number of cases was several orders of magnitude greater than those reflected in statistics for the 1970s and 1980s.

My fellow students included balding or gray-haired reserve officers called from civilian practice, young lieutenant lawyers appointed directly from civilian life and a number of majors and senior captains (many still on active flying status) who seemed to a young judge advocate to be hard-eyed monitors sent by the major commands to evaluate the effectiveness of the training as much as to gain new knowledge.

Personnel stability for Air Force members was not an established policy or even a dream in the 1950s. I was reassigned eight times between December 1950 and December 1954 not including the 90 day temporary duty in the Judge Advocate General School and two other extended TDYs. Meeting the Korea force requirement was a constant drain on “experienced” lawyers (those on active duty for at least a year). The one year rotation policy in Korea meant even Staff Judge Advocates with more than 18 months in place were scarce.

For the Judge Advocate who went to Korea, living conditions did not improve. There was no family housing and no dependents were permitted. Quarters were often tents, sometimes metal Quonset huts or other temporary buildings. The six-day work week was standard. Two rest and recuperation leaves of 10 days each—usually to Japan—were the only break in the 12 month Korean tour. The Korean countryside was devastated by war, the people poor, the economy at a low ebb. The “interstate highway” that now stretches from Seoul to Pusan was a two-lane sand and gravel road wide enough for two Army trucks to pass without slowing down below the 30 mile an hour speed limit.

Legal work loads were heavy. An exception was foreign criminal jurisdiction over U.S. personnel, which the Korean government did not exercise. However, foreign claims from vehicle accidents, jettisoned ordnance and drop tanks that lived up to their name kept claims officers busy. Military justice under the new Uniform Code of Military Justice increased the workload over the procedures formerly followed and becoming familiar with new procedures took time, especially with the rapid turnover of personnel.

Usually a base legal office in Korea had only two or three Judge Advocate Officers and two enlisted personnel. Court reporters for most general courts-martial cases were provided from a small central pool of NCOs and civilian employees in the Headquarters Fifth Air Force Judge Advocate’s Office. “Experienced legal officers” (two or three years out of law school) soon found themselves in demand as law officers (the precursor of the military judge) for the general courts-martial and junior officers traveled frequently to be counsel, especially defense counsel, for trials at some of the eight bases the Air Force operated in Korea.

Short notice transfers, lack of adequate counseling services, concern about personal affairs heightened in the “shooting war” environment and the inevitable stresses and incidents of long term family separation created a large legal assistance workload. Wills, powers of attorney, and financial problems of dependents remaining in the U.S. kept both Judge Advocates and a limited clerical staff busy.

One benefit of the Korean assignment was that a Judge Advocate met more of his fellow Air Force lawyers during his year in Korea than he would in a much longer time elsewhere. Even 20 years after the conflict, a fellow “Korean alumnus” was nearly always found at a nearby base or in the same general court-martial jurisdiction. Air Force Judge Advocates were no longer authorized to serve as air crew members about the midpoint of the Korean Conflict. This assured their continued performance of legal functions and contributed to a more cohesive legal service within the Air Force. Despite the strains and disruptions imposed by short tours of overseas duty and frequent transfers, the increased use of lawyers in courts-martial following the adoption of the Uniform Code of Military Justice and the growing demand for legal service outside the military justice area contributed importantly to developing a high degree of expertise and a sense of organizational loyalty within the Judge Advocate General’s Department which I believe has served the Department of the Air Force well in succeeding years.

The Korean Conflict showed that the Judge Advocate General’s Department could accept as substantial a change as was represented by the Uniform Code of Military Justice, make it operate successfully in a wartime environment, and accomplish the workload that was imposed upon them under conditions of active combat and with a large number of attorneys whose active military service was less than two years.

The Air Force and the Judge Advocate General’s Department have never again been as small as they were in 1950. The experience of the Korean Conflict provided experience which helped the JAG Department continuously improve its support of the Air Force and its members and greatly increase the legal services provided to its world-wide client. 🇺🇸

Marines on Siberia Hill. Three exhausted Marines sleep during a lull in the battle somewhere along the First Marine Division front in Korea.



Photo courtesy of Colonel Walter Lyster

"In SAC, Everything § Predictable"

One JAG's Perspective of the Strategic Air Command

BRIGADIER GENERAL ROGER A. JONES, RETIRED

The United States Air Force has been a part of U.S. military history a relatively short period of time. Strategic Air Command (SAC) occupied an even lesser period. Both, however, have had a dramatic impact on military history far beyond their years of existence.

SAC's beginning actually predates the establishment of the Air Force. On 21 March 1946, SAC became one of three major combat commands of the United States Army Air Forces. In the beginning, 37,092 personnel and 279 aircraft comprised the Command with forces strategically placed among eighteen bases within the continental United States. Headquarters SAC was at Andrews Air Force Base, Maryland.

General Curtis E. LeMay, generally considered the "Father of SAC," was not the Command's first commander as many believe. General George C. Kenney had that honor, but served as

General Jones (B.A. and J.D., University of Illinois; LL.M., George Washington University) became the staff judge advocate of Strategic Air Command on 1 July 1988. He is a member of the Illinois State Bar, the President of the Board of Trustees for The Judge Advocate General School Foundation, Inc.; President of the Board of Directors of Make-A-Wish Foundation® of Southern Nevada, and a lifetime member of the Eagle Scout Association. The author extends his special thanks to Mr. Brian T. York, Curatorial Assistant, SAC Museum, for his invaluable assistance in furnishing SAC statistics and information.

Commander in Chief of Strategic Air Command (CINCSAC) for only approximately two years. (General Kenney's stepson, Bill Kenney, was a career judge advocate in the Department and retired as a colonel. During my first assignment at Elmendorf Air Force Base, Alaska (1963-1967), Colonel Kenney became the Staff Judge Advocate of Alaskan Air Command. He had many wonderful "war stories" about General Kenney and SAC.)

General LeMay became CINCSAC in 1948, just before the Command moved to Offutt Air Force Base, Nebraska—Offutt Field, as it was called at the time, was a Nineteenth Century Calvary station originally named Fort Crook. SAC had grown to nearly 52,000 personnel and 837 aircraft spread over 21 active bases. The United States had become very fearful of the Soviet Union after World War II, and President Harry S. Truman felt the Soviets were the major threat to world peace. General LeMay realized he had to create a deterrent to any attack from what the United States considered its major enemy. The Cold War had begun.

General LeMay worked diligently to build U.S. defenses and prepare for pre-emptive offensive action, if necessary. He served as CINCSAC for nine years, until he became Vice Chief of Staff of the Air Force in 1957.* When he left SAC, it was a force of 224,014 personnel, 2,711 aircraft, and the first U.S. nuclear missile—the SNARK. Some years later, General Thomas D. White,

* General LeMay was appointed Chief of Staff in July 1961, where he served until his retirement on 1 February 1965.

General Curtis E. LeMay and General Jones at a Strategic Air Command dinner honoring General LeMay.

You never let us down, you were always prepared, you did your job well.



Photo courtesy of Brigadier General Roger Jones

who had become Chief of Staff in 1957 and had named General LeMay to be his Vice Chief, said:

[General LeMay] was the architect of Strategic Air Command. He never swerved from the profound conviction that the freedom of the USA (and the rest of the Western World) depended primarily, and almost solely, on SAC. In my opinion, he was, at that time, absolutely correct. It is still true in 1964 to a great degree.

Though designed as a nuclear deterrent by General LeMay, SAC also performed well in a conventional role during the Korean and Vietnam conflicts and the Gulf War. During Desert Storm, KC-135 Stratotankers and KC-10 Extenders flew 300 missions a day during the peak of the build-up and B-52s were used in the initial air assault against Baghdad.

I was very young when I first became familiar with General LeMay; my brother, Donald, was a tail gunner in B-29s during World War II, and participated in thirty bombing raids over Japan. He was assigned to the 20th Bomber Command, commanded by General LeMay. When my brother returned home after the War, the name “LeMay” was not hallowed in our household. Donald felt General LeMay had no regard for the lives of the bomber crews because of the dangers they encountered in accomplishing the missions he directed—low-level incendiary raids, often at night.

Many years later I had the opportunity to visit with General LeMay and relate that my brother had served under his command in B-29’s. The General, notorious for being a person of few words, simply said, “He had a tough job.”

As a reservist, Donald was recalled to active duty in 1951 and assigned to Castle Air Force Base, California, which resulted in my initial experience with SAC—at the age of twelve. I visited

him and his family that summer and remember how impressed I was with everything about the Air Force. There is no doubt that my brother’s military service was a major impetus in my choosing a career in the Air Force, though, ironically, he never understood why I did so.

I had little association with SAC until I had been on active duty for 21 years. In 1984 I was assigned to the Headquarters at Offutt Air Force Base as the Deputy to Brigadier General Keith E. Nelson, Command Staff Judge Advocate. I had been there only two months when the untimely death of an active duty JAG gave me the opportunity to become the Staff Judge Advocate of Eighth Air Force, a SAC numbered Air Force. Although I had served as SJA at base and center levels for nine years, being an SJA in SAC was decidedly different, and for me a wonderful experience. It was a no-nonsense command and discipline was tight. If rules were violated, appropriate punishment was assured—no excuses, no exceptions. It made discharging discipline much more straight-forward than I had ever known.

As an example of how SAC commanders enforced discipline, I remember vividly that while I was at Eighth Air Force, the crew of a KC-135 on temporary duty in Alaska refused to obey the orders of their aircraft commander to fly a mission. The crew felt the weather made flying the mission unreasonable, and they simply walked away from the aircraft and back to base operations. When the Eighth Air Force Commander learned of the incident he was furious. He called me to his office and told me in very direct terms that the crew must be punished. He knew weather conditions were bad, but he felt the aircraft commander had made the right decision considering the mission and the surrounding circumstances. The crew had refused to obey a lawful order. The crew members received non-judicial punishment—that is the way it was done in SAC.

I was again assigned to the Command

in 1988, when I became the Staff Judge Advocate. I replaced Major General David C. Morehouse, who had been appointed The Judge Advocate General. He told me then that I was getting “the best JAG job in the Air Force.” He was right. I filled the position until the Command was ordered to stand down on 1 June 1992. To serve as SJA of SAC for four years was the most rewarding, fulfilling period in my career. There was a certain awe that surrounded the Command, even when assigned to it. Standards were higher; General LeMay had made them so, on the premise that there can be no mistakes when nuclear weapons are involved. I recall that when I left Nellis Air Force Base for my first assignment to Headquarters SAC, my two-star commander presented me with starched underwear. He said, “You’ll be wearing these a lot in SAC.” His gesture was symbolic of the attitude held by many Air Force personnel regarding the Command; but no one ever doubted the dedication and professionalism of SAC’s people.

While engaged in conversation at a SAC Commanders’ Conference, I tried to explain how impressed I was with the precision of discipline in SAC. A field-grade commander knew exactly what I was trying to describe. He simply said, “In SAC, everything is predictable.” It was a perfect summation of the Command.

Judge advocates were always major participants in SAC’s mission. I think our role was best summarized during a Public Affairs campaign in 1988 to emphasize each agency’s support of the command:

The key to an effective deterrent is a well-disciplined alert force. As General LeMay built this Command, he envisioned a fighting force of warriors so strong, so resolute, so disciplined and responsive, that no aggressor would dare attack us. That’s why things are a

Judge Advocates are proud of the **key role** they played in maintaining SAC's high **standards**.

little tighter, a little tougher in SAC. The American people and perhaps, more importantly, our adversaries have respected SAC's capabilities for the past 40 years—capabilities built upon the highest caliber, best disciplined fighting men and women in the United States Air Force. Judge Advocates are proud of the key role they play in maintaining SAC's high standards.

At its peak, SAC had 283,000 personnel and 3,400 aircraft for the security of the country. By 1978, the height of the missile age, the Command also had 1180 Minuteman missiles. In 1989, however, the USSR began to crumble and the Cold War faded. In November of that year, the Berlin Wall came down and the free world breathed a huge sigh of relief. For me, and so many thousand others in uniform, there was a strong sense of accomplishment. That feeling was especially true in SAC. On 24 July 1991, Looking Glass, the airborne command post that had been in the air 24 hours a day, 365 days a year for 30 years, finally landed. In September, President Bush took the nuclear missiles off alert.

General LeMay died on 1 October 1990. All general officers on the SAC staff attended his funeral at the Air Force Academy chapel. Seated in front of us was the Chief of Staff and many former Chiefs. The guests of honor—

members of General LeMay's staff—were escorted to their seats in front of the Chief. I was honored to be in the presence of so much Air Force history. The CINCSAC, General John T. Chain, gave a very moving eulogy, and talked of General LeMay's dedication and brilliance—"a patriot, who, without really working at it, became a legend in his own time." He said, "General LeMay's methodical construction of the Strategic Air Command is a colossal monument to his foresight, determination—his leadership." The service was the most emotional experience of my career.

Twenty months later, on 1 June 1992, Strategic Air Command stood down, 46 years after its formation. It was a sad day for many of us who strongly believed the Command had "set the standard"—in the Air Force and throughout the Department of Defense. At the same time, we realized that SAC had accomplished its mission. We had won the Cold War without ever having to use a nuclear weapon. Deterrence worked.

At the stand-down ceremony on 1 June 1992, General Colin L. Powell, Chairman of the Joint Chiefs of Staff, summed up the career of SAC when he said: "...You never let us down, you were always prepared, you did your job well." I felt especially proud to be wearing the SAC badge on my breast pocket that day.



We realized that SAC had accomplished its mission. We had won the Cold War without ever having to use a nuclear weapon.

Deterrence worked.

Do You Know?

1. Who was the first Judge Advocate General?
2. What day is the JAG Department's birthday?
3. Who was the first Air Force TJAG?
4. What year were paralegals recognized as such with an AFSC?
5. Who was the first Air Force Senior Paralegal?
6. What year did JAGs have to choose between flight or JAG status?
7. When was the JAG badge approved for wear?
8. When was the ADC program first implemented worldwide?
9. When was the paralegal badge approved for wear?
10. When was the current Air Force Judge Advocate General School building opened?

1. William Tudor, appointed as Judge Advocate of the Army in July 1775.
2. 25 January 1949.
3. Major General Reginald C. Harmon, who served as TJAG from 1948 to 1960.
4. 1955.
5. Chief Master Sergeant Steve Swignski, who served from 1970-1972.
6. 1952.
7. 11 December 1967.
8. 1 July 1974.
9. June 1994.
10. The School was officially inaugurated on 21 May 1993.

Answers:

Flying "The Glass"

MAJOR GENERAL WILLIAM A. MOORMAN



Photos courtesy of Major General William Moorman

General Moorman as AEAO in charge of LOOKING GLASS.

When I became the Staff Judge Advocate for Air Combat Command, I never anticipated that it was a "flying job." But, in a unique mission held over from the darkest days of the Cold War, I found myself frequently flying as the Airborne Emergency Actions Officer (AEAO) in charge of the unique LOOKING GLASS mission.

The LOOKING GLASS, so named because its mission was a mirror image of the ground-based command, control, and communications governing strategic nuclear forces, was first used on a trial basis in 1960. Then called simply the Airborne Command Post (ABNCP), it began continuous operations on 3 February 1961. From that date, a LOOKING GLASS platform remained continuously in the air in the vicinity of Offutt AFB 24 hours a

Major General Moorman (B.A. and J.D., University of Illinois) is The Judge Advocate General of the United States Air Force. He is a member of the Illinois State Bar.

day, 365 days a year. And, during all of that time, a general officer was aboard as AEAO.

On 24 July 1990, after 29 years, 171 days of continuous airborne operation, the LOOKING GLASS recorded its last continuous airborne alert sortie. That change reflected the changes in the world, and it signaled the recognition of the changing realities of superpower relations. From that date forward, the LOOKING GLASS ceased continuous airborne alert operations and transitioned to a regime of combined ground and airborne alert operations.

When Strategic Air Command (SAC) was deactivated in June 1992, LOOKING GLASS became a part of the new U.S. Strategic Command (USSTRATCOM). AEAO duties since then have been carried out by general and flag officers from USSTRATCOM, U.S. Transportation Command, ACC, Air Force Space Command and the Navy's Submarine Groups NINE and TEN. Coincidentally, I was the first Staff Judge Advocate for

USSTRATCOM.

The USSTRATCOM legal office immediately became involved with the operational aspects of this new unified command. Our staff reviewed the single integrated operations plan and other planning documents. We were involved in command post operations, had a seat at the battle staff, and otherwise prepared for the possibility of strategic conflict. But, I never dreamed the day would come when I would step aboard the ABNCP in a flight suit. That opportunity came with my selection for promotion to brigadier general and assignment to Headquarters, Air Combat Command.

Upon my arrival at ACC, I became aware that many of my fellow flag officers were pulling duty as the LOOKING GLASS AEAO. So, I threw my hat in the ring as well. Initially, there was some hesitancy at the action officer level to accept the possibility of a JAG flying as the AEAO. Many of these action officers were under the mistaken impression that judge advocates were not line of the Air

Force officers, and that we were disqualified from performing duties which involved command. Of course, the truth is that while judge advocates are a separate promotion category for force management reasons, in all other respects we retain the status of line officers. As the discussion was elevated within ACC and USSTRATCOM, the consensus was that it was perfectly appropriate for a JAG to fulfill this role.

When I went to Offutt for my first LOOKING GLASS flight, I had a note from commander in chief, USSTRATCOM, General Eugene Habiger, waiting for me in my room. It said simply: "Great day. First JAG to fly on Looking Glass as AEO. Don't screw it up!" And, with those words of encouragement, I began my flying days.

From my first flight, I found myself looking at the Single Integrated Operational Plan (SIOP) from a totally new perspective—that of one who might be charged with advising the President on its execution. Of course, that required lots of training in its specifics and the LOOKING GLASS operation. USSTRATCOM had a complete training program established to teach future AEOs all about the SIOP and the processes that governed its potential execution. Fortunately for me, my prior tours at Headquarters SAC and USSTRATCOM had taken much of the mystery out of the plan. I found myself fairly comfortable with the emergency actions decision-making process. In this respect, my service as a judge advocate was particularly useful. Not only was I familiar with the plan because of my prior assignments, but my skills in analysis of information, weighing evidence, and even advocacy were useful. The training also required supervised orientation flights to ensure that I was prepared to execute the mission if required. Those flights provided me the opportunity to become comfortable with the communications, life support, and other equipment aboard LOOKING GLASS. And, it was an opportunity to work on crew coordination before actually being placed in charge. In all, USSTRATCOM provided a superb

training process for each AEO, and my experience was no exception.

The composition of the battle staff on board the EC-135 which we flew was standard for all flights. In addition to a robust communications staff, there was a mission crew commander, operations controller, communications officer, a SIOP advisor, plans and intelligence officer, logistics officer, a force status expert, and weather officer. Just like the underground command center, the staff was subject to the same stringent guidelines regarding the execution of the SIOP and the launching of the strategic forces (which included bombers, Intercontinental Ballistic Missiles and Submarine Launched Ballistic Missiles). Conceptually, once the LOOKING GLASS assumed control of US SIOP forces, the Glass could launch strategic forces only after an elaborate validation process that assured complete security and operational integrity.



During each of my subsequent airborne alert tours, we exercised a variety of scenarios in order to hone our skills. Again, I found my skills as a judge advocate useful. As the AEO, it was frequently important that I digest large

amounts of information quickly and then ask appropriate questions and direct appropriate follow-on actions. These were tasks for which my staff judge advocate experiences perfectly prepared me.

The Airborne Command Post mission was transferred from the EC-135 to the Navy E-6B "Take Charge and Move Out" (TACAMO) on 28 September 1998. I was privileged to fly aboard that platform as well. The TACAMO enjoyed a number of advantages over the EC-135, including a marked improvement in climate control—each flight was far more comfortable. In the EC-135, it was frequently advisable to wear long underwear under your flight suit in order to make sure that your legs didn't freeze during the routine eight-hour flights.

While the airborne alerts were long, they were seldom dull. On the typical flight, we would work through a couple of different scenarios during which members of the crew role played a variety of parts in a well-orchestrated rehearsal of what we might be expected to do in times of real crisis. Not surprisingly, even simulated conversations with the President will give you sweaty palms. During periods when we were not exercising, there was opportunity for good dialog and just plain conversation. Many crewmembers asked me about life as a JAG, and I was happy to tell them some JAG war stories. Their reactions to some of the issues I had worked over the years reinforced my satisfaction in being a JAG. Every time I put on my flight suit at Offutt, I made sure that the patch on my left sleeve was that of the unit I had commanded—the Air Force Legal Services Agency. I was proud to say that the AFLSA was with me every time I flew.

Marking the end of an era and the transfer of the mission from the EC-135 to the E-6B on 25 September 1998, Lt Col Laddy F. Bovey piloted the first of seven EC-135 aircraft into retirement at Davis-Monthan AFB. On that occasion, he said, "This is one of the big factors that we can attribute winning the Cold War to." And, he was right. ⚡

Changing Times And New Challenges:

The Vietnam War



CAPTAIN DENISE M. BURKE

In the summer of 1945, America celebrated the end of World War II, but, in the midst of victory, new challenges lurked on the horizon. On 19 August 1945, Vietnam was divided into two nations, the communist North and the democratic South.¹ Soon, this small, Southeast Asian country that many Americans had never even heard of would become the site of America's longest and most controversial war. The 1960s saw

an escalation of America's involvement in Vietnam, characterized by ever-increasing numbers of service members deployed; bloody, guerrilla-style warfare with an enemy that often could not be readily identified and unrest inside and outside the military.

During this period, tumultuous changes were taking place in American society and those changes were being reflected in the culture of the United States military. Air Force judge advocates and paralegals (then known as "legal services spe-

cialists" or "legal services technicians") serving in Vietnam, Thailand and locations throughout the Pacific were called upon to respond to unique challenges and circumstances. Many of these challenges were attributable to the political and logistical complexities of the war and to the evolving social climate both inside and outside the Air Force.

The first judge advocate arrived in Vietnam in 1962 and the final one left in the spring of 1973.² For many veterans, their first impressions of Vietnam still linger. Learning the "secrets" to living and working in a war zone was a clear priority. A judge advocate or paralegal serving in Vietnam had an unsurpassed opportunity for intensive on-the-job training. Military justice, claims and legal assistance filled the average duty-day. "Top-billing" in the military justice arena went to illicit

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drugs, “white-collar” crimes including black-marketing and currency violations; and disciplinary problems that were sometimes exaggerated by tensions between racial groups and between some young airmen and their superiors. Vietnam was a unique, memorable and rewarding experience for those judge advocates and paralegals that served.

“First Impressions”

[We] stopped at Anchorage, Alaska, for a cool hour, and then a long hop to Tokyo before landing at Saigon’s airport: Tan Son Nhut. The first thing you notice going down the ramp is a heavy, lousy, sweet smell that floods your nose, along with a somewhat dirty feeling all around. Inside the makeshift customs building, the heat you didn’t notice before begins to flush you and as the sweat starts to flow. Answer a few questions, surrender any guns, knives and drugs and be quiet, we are told. Ants scramble up dirty white pill boxes as we wait.³

Among the most vivid memories of many Vietnam veterans are those of the living and working conditions they endured during their tours of duty. Debilitating heat, suffocating humidity, stinging dust and torrential rains were experienced by personnel stationed in Saigon, Da Nang, the Central Highlands, the Mekong Delta and throughout South Vietnam.

Living and sleeping areas were called “hooches” and this term was used to describe almost every imaginable combination of tent, Quonset hut or wooden structure. Outside these “hooches” were sandbags and bunkers offering protection against inevitable late-night mortar or rocket attacks. One area of Tan Son Nhut Air Base housing Air Force personnel was called “Splinter City.” It was believed that if a rocket hit the area all that would remain of the wooden buildings would be “splinters.”⁴ Force protection was a 24-hour a day concern. Judge advocates and paralegals were issued weapons and became part of the “second-line” of defense for many bases.⁵ This “second-line” of defense became very important if there was a threat of the base being “overrun.” When he arrived at Pleiku Air Base in December 1969, SMSgt (Ret.) Steve Stevens’ M-16 was issued but kept locked up in the armory and only returned to him during exercises.⁶

Service members experienced varying degrees of difficulty adapting to Vietnam and the hardest times were often the first thirty days in country and the last thirty days before returning home. Off-duty time could be particularly troublesome. Many of the bases in Vietnam were “closed,” meaning that personnel were not permitted to leave the base even when off-duty. This restriction made finding ways to spend off-duty time extremely difficult. At Phan Rang Air Base, near the South China Sea, airmen made sporadic visits to the beach in armored military personnel carriers.⁷ Even personnel stationed at “open bases” like Tan Son Nhut Air Base, near Saigon, faced the dilemma of what to do when they were not at work. Unlike many other places in Vietnam, Saigon offered some of the amenities of home. The Army ran an Officers’ Club affec-

tionately known as “BOQ One,” where military officers could be served a steak dinner at a table set with fine linen and china.⁸ However like many cities and towns in South Vietnam, Saigon was chaotic, dirty, noisy, crowded and often dangerous, making it uninviting to some. Work was a welcomed refuge from the boredom and loneliness.

Duty days were long. A normal duty week entailed working 12 or more hours a day for 6 or 7 days per week. Such grueling hours were actually a blessing in disguise because “it made the time go faster.” The first legal office in Vietnam was attached to Headquarters 2d Air Division at Tan Son Nhut Air Base. As the war progressed, legal offices could be found in tents, Quonset huts, colonial-style wooden buildings or even out in the open. It was not uncommon for legal personnel based at Da Nang, Pleiku or Cam Ranh to take their “show on the road,” visiting accident sites, smaller outposts and troops in the field.

“The Touring Claims and Legal Assistance Show”

*The legal office was very sought after. JAGs and paralegals took helicopters, jeeps or whatever they could find and went out in the country side wearing flak jackets and taking weapons to investigate claims and compensate local villagers. They also took care of the troops, doing a lot of legal assistance.*⁹

Claims work in Vietnam rarely involved the requisite household goods claims; rather it encompassed a hybrid of programs designed to compensate Vietnamese nationals for war-related damage. It included payments for damage to farms and villages caused by military personnel and aircraft, the investigation of an unforgettable claim from a Cambodian prince, “rewards” for the return of U.S. property and solatium payments.

Judge advocates and paralegals were intimately involved in the U.S. military’s efforts to compensate local nationals for damages caused by war-fighting operations. Payments were made for bombs dropped on rice paddies, for unexploded ordnance that was jettisoned from aircraft returning to base from missions over North Vietnam and for pieces of aircraft that fell into villages. Payments were frequently made directly

Time for a Smoke Break.

Photo courtesy of Lieutenant Colonel Robert Layer





Capt Eric C. Michaux advises Col George A. Robinson, 366th Combat Support Group Commander, Da Nang Air Field, Vietnam (1970).

simply went to them.

Despite the demands of long hours and a significant workload, many judge advocates and paralegals found the time to participate in the humanitarian efforts being coordinated by the U.S. military throughout South Vietnam. They helped to distribute food and other supplies to local nationals. They also went out with teams providing medical and dental care. These efforts gave participants a much-needed break from work including the diverse and demanding military justice workload.

Military Justice in the “Wild, Wild East”

As in the legal world of today’s Air Force, military justice was “job one” in Vietnam. In the late 1960s and early 1970s, 7th Air Force administered the largest Article 15 jurisdiction in the Air Force.¹⁴ Article 15s were given to airmen using marijuana, to airmen who were late for work and to security policemen who were caught sleeping on post. Courts-martial were convened to try airmen accused of murder, rape, distributing drugs, black-marketing and currency violations. Tensions between races and between superiors and subordinates added a new and troubling dimension to the administration of military justice.

In 1968, a new version of the Manual for Courts-Martial was promulgated. Among the changes was a requirement that military judges preside over special courts-martial. In Vietnam, many young captains, some with less than two years of experience, were certified as judges for special courts-martial. When not acting as military judges, these same captains would travel throughout the country, prosecuting and defending

other courts-martial. The jail at Long Binh that housed prisoners awaiting trial or transportation back to stateside confinement facilities was a frequent destination for many judge advocates. Military judges for general courts-martial traveled from the Philippines to hear cases. Pre-trial processing, court reporting and some post-trial work was done by paralegals, giving them new and invaluable experience. In Vietnam, the military justice workload alone was enough to keep many judge advocates and paralegals busy. Drug use, black-marketing and currency violations were prevalent.

“The Drug Culture”

The guys in the barracks have their rations all day long, whether they are in court. They’re fooling around with a tape recorder now. Some are high on marijuana – it is

to the village chief or elder. These efforts did not entail a formal claims investigation and payment process; rather, they took the form of “quasi-solatum” payments.¹⁰

In the early 1970s, claims were being paid for damage caused by “Agent Orange,” a defoliant used by the U.S. military to expose infiltration and escape routes used by the North Vietnamese and Viet Cong, including the infamous “Ho Chi Minh Trail.” Possibly the most memorable “Agent Orange” claimant was a Cambodian prince who alleged that Agent Orange had destroyed his rubber tree plantation in Cambodia. The claim was coordinated through 7th Air Force in Saigon, thoroughly investigated and eventually denied.¹¹

To ensure the safe return of U.S. military property and to avoid military supplies ending up in the hands of the enemy, a comprehensive “rewards system” was initiated. Under this system, Vietnamese nationals who returned military ordinance, pieces of aircraft and other supplies were compensated. Paralegals would sometimes go out into the field to retrieve the property and make payment.¹² Payments were made for human injuries as well as property damage. Solatium payments were commonplace in Vietnam. These payments were an expression of remorse for accidents or incidents that injured Vietnamese nationals and involved the U.S. military in some respect. Solatium payments were routinely made without regard to fault. For example, a Vietnamese national on a bicycle would recklessly cut in front of an American military jeep, causing an accident. However, if the bicyclist was injured, the U.S. military would make a solatium payment to him or his family.

The legal assistance work in Vietnam was robust. The two most common areas of assistance were domestic trouble and financial problems. The number of airmen seeking advice for domestic problems was exacerbated by the presence of so-called “phantom writers” who would write explicit letters to wives and girlfriends back in the U.S., detailing the “in-country antics and romances” of fellow airmen.¹³ Judge advocates and paralegals drafted documents and provided advice to airmen stationed throughout Vietnam. If the airmen could not come to the legal office at Tan Son Nhut, Cam Rahn, Da Nang or other larger Air Force installations, the legal office



Legal Services Specialist A1C Steve Stevens at Phan Rang Air Base, RVN (1970)

Photo courtesy of SMSgt Steve Stevens

widespread here. I haven't touched it and don't consider it essential for a bat.¹⁵

Drug use and distribution was a significant problem in Vietnam. The drugs of choice were marijuana and heroin. Both were locally grown, inexpensive and readily available, often sold by small children on the street. Some airmen used drugs off base, patronizing opium “dens” and “red-light” districts in the local community. Others were brasher, bringing drugs and drug paraphernalia onto Air Force installations. In response, units conducted periodic barracks inspections searching for evidence of drug use or other contraband. Drug use permeated all ranks and positions. In 1970, a squadron commander at Tan Son Nhut Air Base was prosecuted for purchasing, providing and using marijuana with his subordinates. Arguably signaling how “acceptable” drugs had become, the commander, a colonel, did not receive a dismissal following his conviction.¹⁶

Major drug trafficking and distribution rings were also prevalent. Opium and marijuana were flown into Vietnam from Thailand and other places by aircrews who were compensated by drug dealers for their services. Local nationals, Air Force members and others set up profitable distribution operations in the military clubs and barracks. While drug use was the preferred diversion of some, black-marketing and illegal currency transactions were another favorite and profitable “pastime.”

The Emergence of “White Collar” Crime

Remember the Germans in Paris [in World War II]? We are doing the same thing here. ... During Tet, when most of the people were starving and clean water was scarce, the GIs were driving up to their girlfriends' houses with trucks [of] food and clothes. ... The goods sold on the black market don't come from the Vietnamese, but from the Americans. We buy a Coke for 10 cents, sell it for 25 cents and it is turned sold for 50 cents. The black marketers have to be supplied and the GI loves to supply him.¹⁷

Black-marketing operations existed and thrived outside American installations all over South Vietnam. Military regulations prohibiting service members from running their own businesses in Vietnam were no deterrent. Items ranging from alcohol and food to air conditioners and spare parts could be found on the black-market. Many service members “went into business” with each other and local nationals, funneling American goods onto the black-market. A cargo plane would arrive in the morning with pallets full of toiletries, food and other items and by the end of the day those same items could be found on the streets outside the base at a “healthy” markup. Many saw the potential financial rewards as worth the risk of being discovered. Some succeeded in operating virtually undetected. Others, however, were investigated by the OSI and court-martialed.

Just as pervasive and innovative as the black-marketing schemes were the “currency violations.” The Military Assistance Command/Vietnam (MACV) had extensive and intricate regulations governing currency transactions. They covered what type of currency could be used, how much a service

Photo courtesy of Lieutenant Colonel Robert Layer



Work was a welcome refuge from the boredom and loneliness.

member could withdraw from the bank at any one time and even required specific documentation as to the origin of currency and a commander’s approval (via a “commander’s certificate”) before currency could be deposited into a bank account. When service members first arrived in Vietnam, they were immediately taken into a customs area that resembled a large cage. They were required to surrender all U.S. currency. Possession of U.S. currency was illegal in Vietnam. The U.S. currency was replaced by “military pay certificates” (MPC), colorful scrip in small denominations. The scrip was changed periodically in an attempt to prevent black-marketing. A service member could use MPC to purchase items on base and sometimes in the local community. MPC could be exchanged on base for piastre, the Vietnamese currency.

All transactions at the base bank were closely monitored. Anyone checking the bank’s logbooks would know who was exchanging or depositing MPC or piastre and how much was involved. Bank officials and the OSI periodically checked the logbooks, looking for hints of black-marketing or currency violations. Suspicious transactions and individuals were investigated. Many service members were court-martialed for forging commander’s certificates, possessing U.S. currency and attempting to deposit the “fruits” of black-marketing by falsifying documentation that accompanied bank deposits.¹⁸ Black-marketing and currency violations were symptomatic of a disrespect for and disregard of military standards and culture by some airmen in Vietnam.

Disrespect for Military Standards and Racial Tensions

Have been having the usual (former) sour and aggravating exchanges with senior officers at MACV. It is surpris-

ing, even to me how little Army discipline and decorum have influenced me. ... In the past six weeks, I've told two majors that if they didn't like my attitude that was too bad. 'I'm paid to work, not to say 'Yes, sir,' 'No, sir,' 'I tell them.'"¹⁹


Not surprisingly, there were service members in Vietnam who did not want to be there. Most completed their tour of duty without incident. Some, however, rebelled and lashed out at the military and its command structure. It was common for airmen to be ordered to get haircuts, to wear the uniform properly and to salute superior officers. Others were more brazen in their disrespect. An airman was court-martialed at Tan Son Nhut Air Base for confronting and using a cane to threaten a captain who was conducting a routine barracks search for contraband. This airman had marijuana in his room for which he was also court-martialed.²⁰ Occasionally, the threats and harassment toward superiors were potentially lethal. A security police sergeant was court-martialed in 1972 for writing a letter promising to kill the wing commander and later rigging a concussion grenade to explode when the wing commander opened the door to his office.²¹ Luckily, the grenade was discovered and safely disarmed.

Disrespect for superiors was not the only morale issue in Vietnam. Distrust and misunderstanding between racial groups were problems that threatened unit cohesion and mission effectiveness. At times, racial unrest collided head-on with the military justice system. Airmen of all races were offered Article 15s and even court-martialed for offenses that had undertones of racial intolerance and ignorance. Events such as the on-going struggle for civil rights, the assassination of Dr Martin Luther King and the Travis Air Force Base race riots of 1971 influenced the behavior and attitudes of some service members in Vietnam.

From 1970 to 1971, Captain Eric Michaux was based in Da Nang, but traveled throughout Vietnam defending courts-martial. He was the only African-American judge advocate to serve with the Air Force in Vietnam and was a recipient of the Bronze Star. Many African-American service members facing court-martial requested that Captain Michaux represent them. These requests were driven both by Captain Michaux's court-

room abilities and a distrust that many African-American service members had of the military and its justice system.²² Commanders who were willing to "occasionally sit down with their men, both black and white, let their hair down, get to know them and understand them in their environment" did much to reduce the level of racial mistrust and misunderstanding.²³

Air Force commanders along with judge advocates worked to reduce the level of racial tension and mistrust in Vietnam by ensuring that the justice system was fair and that punishment was meted out without a hint of prejudice. In the early 1970s, Air Force officials in Vietnam began collecting and comparing data on Article 15 recipients and service members who were court-martialed. Statistics on race, numbers of actions and ranges of punishment were scrutinized in an effort to make sure that the system worked as it should, free of racial bias or influence.²⁴ These efforts protected the rights of service members and helped to ensure the integrity of the military justice system. Many of the racial issues that troubled the Air Force in Vietnam would continue to demand attention at U.S. bases worldwide as the war in Southeast Asia drew to a close.

In the early 1970s, the U.S. military began a program of "Vietnamization" intended to turn the majority of the war fighting responsibility over to South Vietnamese troops and to incrementally withdraw American troops and influence. The Paris cease-fire agreement signed on 27 January 1973 officially ended U.S. involvement in South Vietnam. A complete pullout of U.S. forces was accomplished in April 1973. Judge advocates and paralegals served in Vietnam advising commanders and providing legal services until the final pullout. The war in Vietnam has had profound effects on American society and the U.S. military. Despite challenging living conditions and a formidable workload, Air Force judge advocates and paralegals serving in Southeast Asia performed admirably, setting a standard for future judge advocates and paralegals to follow. 

¹ Political division in Vietnam dates back to the end of World War I with the Vietnamese nationalist movement aimed at ending French colonial rule. The government of France resisted all Vietnamese efforts to achieve their independence, but following Nazi Germany's conquest of France in 1940, Japan moved in on Indochina intending to incorporate that territory into its empire. After the defeat of Germany in 1945, the French were determined to reassert their colonial rule. However, President Franklin D. Roosevelt in 1943 had urged the freeing of all colonial peoples, including those of Indochina, in the postwar period.

During the last months of the war, U.S. agents had been parachuted into the hills of Annam where they joined up with insurgent forces led by Ho Chi Minh. These local forces, known as the Viet Minh, included both Communist and non-Communist elements, all united in their desire for independence. The Americans brought with them a small supply of rifles, mortars, machineguns, grenades, and bazookas and began training Ho's troops to use them against Japanese occupation troops. On 15 August 1945, following Japan's surrender,

Is the L.Z. hot? Vietnam, 1967



Photo courtesy of Lieutenant Colonel Robert Layer

President Harry S. Truman issued General Order No. 1 governing procedures for disarming Japanese forces in the Far East. In the case of Indochina, he designated the 16th parallel as the line north of which Chinese Nationalist troops would disarm the Japanese. South of that line British forces were to accept the Japanese surrender.

On 9 September 1945, when advance elements of about 200,000 Chinese troops arrived in Hanoi, they found that Ho Chi Minh's forces had already taken control of the northern region, replaced all French street signs with Vietnamese ones, and issued a Declaration of Independence on 2 September establishing the Democratic Republic of Vietnam. On 12 September British Commonwealth forces landed at Tan Son Nhut airfield outside Saigon accompanied by a detachment of 150 French troops. Three weeks earlier British authorities in London had determined to restore France's administration of Indochina. By 23 September the French, with the help of the British, reassumed control of Saigon. The French subsequently began negotiations with the Chinese to permit French military forces to move into the northern part of Vietnam. An agreement was reached and, in March 1946, a French military force arrived at Haiphong to relieve the Chinese Army of its responsibilities under General Order No. 1. The

French commander, Gen. Jacques Leclerc, began negotiations with Ho and, on 6 March, an accord was reached. Under its provisions, the French agreed to recognize the Democratic Republic of Vietnam "as a free state, having its Government, its Parliament, its army, and its finances, and forming a part of the Indochinese Federation and the French Union."

Further negotiations spelling out details of Vietnamese independence got under way in the spring of 1946 at Dalat, at a time when Vietnamese guerrilla warfare was under way in southern Vietnam (Cochinchina). But the discussions foundered on the issue of Vietnamese autonomy, whereupon the French announced the establishment of an "independent" Cochinchina within the French Union. This act only exacerbated the situation and stimulated guerrilla warfare in the south. Another attempt to reach an agreement came during the summer of 1946, when Ho and a Viet Minh delegation traveled to France for 2 more months of discussion of the issue. Once again, the talks failed over the issue of Vietnamese independence. The Viet Minh delegation returned home and, shortly after, forces commanded by Gen. Vo Nguyen Giap launched a series of attacks on French posts and truck convoys, inflicting heavy casualties and provoking general hostilities.

² Interview with Brigadier General Edward F. Rodriguez, Jr., USAFR, Mobilization Assistant to the Deputy Judge Advocate General, in Montgomery, Alabama (7 January 1999).

³ Letter from Specialist Richard Loffler, United States Army, 36th Signal Battalion, 2d Signal Group, stationed at Long Binh and Bear Cat, Republic of Vietnam (5 December 1966), as published in W.W. NORTON & COMPANY, DEAR AMERICA: LETTERS HOME FROM VIETNAM 36 (1985).

⁴ Telephone interview with Colonel Richard Rothenburg, Chief Appellate Military Judge, Air Force Court of Criminal Appeals (27 January 1999).

⁵ The "first-line" of defense were Security Police and other combat troops. The "second-line" of defense was often composed of support personnel including judge advocates and paralegals.

⁶ Interview with SMSgt (Ret) Graham E. (Steve) Stevens, Air Force Judge Advocate General School staff, in Montgomery, Alabama (14 January 1999).

⁷ *Id.*

⁸ Interview with Colonel Michael Emerson, Professor of Law, United States Air Force Academy at Montgomery, Alabama (27 January 1999).

⁹ Interview with SMSgt (Ret.) Chuck Busby, AFLSA/JAS, in Montgomery, Alabama (19 January 1999). See also, "Travelin' Judge" in this edition of *The Reporter*.

¹⁰ Busby, *supra* note 9.

¹¹ Rothenburg, *supra* note 4.

¹² Busby, *supra* note 9.

¹³ *Id.*

¹⁴ Emerson, *supra* note 8.

¹⁵ Letter from Specialist Richard Loffler, United States Army, 36th Signal Battalion, 2d Signal Group, stationed at Long Binh and Bear Cat, Republic of Vietnam (8 February 1967), as published in W.W. NORTON & COMPANY, DEAR AMERICA: LETTERS

HOME FROM VIETNAM 153 (1985).

¹⁶ Interview with Colonel Michael Emerson, Professor of Law, United States Air Force Academy at Montgomery, Alabama (27 January 1999). The case was *United States v. Kehrly*.

¹⁷ Letter from Sergeant Edward Murphy, United States Army, 4th Military Intelligence Detachment, 4th Infantry Division, stationed at Pleiku, Republic of Vietnam (5 June 1968), as published in W.W. NORTON & COMPANY, DEAR AMERICA: LETTERS HOME FROM VIETNAM 149 (1985). "Tet" refers to the Tet Offensive launched in January 1968 during a declared "cease-fire" for the Vietnamese New Year. The North Vietnamese and Viet Cong simultaneously attacked virtually every military installation, town and hamlet in South Vietnam. Although US forces won a military victory, many believe they suffered a "morale" defeat. "Tet" marked the end of any significant public support for the war in Vietnam.

¹⁸ Rodriguez, Jr., *supra* note 2.

¹⁹ Letter from Captain James Gabbe, United States Army, Historian for Military Assistance Command/Vietnam (MACV), stationed at Long Binh, Republic of Vietnam (3 January 1971), as published in W.W. NORTON & COMPANY, DEAR AMERICA: LETTERS HOME FROM VIETNAM 151 (1985).

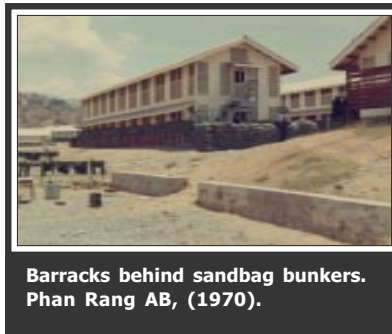
²⁰ Staff Judge Advocate's Review of Court-Martial, *United States v. AIC Oscar Woodward*, dated 12 June 1972.

²¹ Staff Judge Advocate's Review of Court-Martial, *United States v. Sgt Miguel Starr*, dated 26 May 1972.

²² Telephone interview with Eric C. Michaux, Michaux and Michaux, P.A., Durham, N.C., (29 January 1999).

²³ Seventh Air Force News, 18 November 1970 at 10. This article was a profile of Capt Eric Michaux and a frank discussion of racial tensions in Vietnam.

²⁴ Emerson, *supra* note 8.



**Barracks behind sandbag bunkers.
Phan Rang AB, (1970).**

Photo courtesy of SMSgt Steve Stevens



Photo courtesy of Major General David Morehouse

(left to right) MSgt Sizemore, Capt Teter, Maj Morehouse, Capt Thompson, Ms. Qui, Sgt Laskis, SMSgt Edwards

A Year in Vietnam

MAJOR GENERAL DAVID C. MOREHOUSE, RET.

Thirty years ago I was assigned to Bien Hoa Air Base (AB), Republic of Vietnam, as Staff Judge Advocate (SJA), 3d Tactical Fighter Wing (3TFW). It was my first SJA assignment. I'd been on active duty 8 years, was on the promotion list to major, was a volunteer to go to Vietnam, and was anxious to finally get the chance to run my own office, after three prior assignments as an assistant SJA.

Looking back, I believe this was a defining assignment for me. It was to become my only combat tour in thirty-three years of active service. It was the most clear and compelling case for the proper education, training and assigning of judge advocates and enlisted paralegals. Personally, I made friends there who are among the best of a lifetime. Professionally, I came away convinced that a very visible, just, and efficient military justice program is a key factor in the fighting commander's ability to assure unit cohesion, good order, morale and discipline - absolutely essential to maintaining combat capability.

Major General Morehouse (B.S., University of Nebraska; J.D., Creighton University; LL.M., George Washington University) served as The Judge Advocate General from May 1991 until July 1993. He is a member of the State Bars of Nebraska and Texas.

I arrived at Bien Hoa Air Base on 2 March 1968, approximately one month after the launching of the 1968 Tet Offensive. Bien Hoa AB, situated approximately 20 miles north of Saigon, on the river Dong Nai, was home to the 3TFW, Three Corps Headquarters (ARVN); most of the Republic of Vietnam Air Force (VNAF), a U.S. Army aviation battalion, and the rear headquarters of the U.S. 101st Airborne Infantry Division. During the first days of the Tet Offensive, it had been partially overrun by Viet Cong (VC) regulars and had finally been successfully defended by USAF Security Police forces, who repulsed the V.C. The installation had suffered considerable damage. Viet Cong units stationed in War Zone D, located north of Bien Hoa, and within rocket range, regularly shelled the base. This shelling continued long after the Tet offensive, lasting throughout my tour of duty there and punctuating our day to day routine with regular "reality" checks.

Our offices, located in the west cantonment area along with the 3d Combat Support Group (3CSG) activities, consisted of two large rooms in a single story

concrete-walled corrugated roofed building of French colonial origins. Using bookshelves, we divided one of the rooms into three offices for JAGs. Three enlisted paralegals and our Vietnamese civilian secretary occupied the outer office. We were equipped with a law library consisting of U.S. Code Annotated, OpJagAFs, the ubiquitous Martindale-Hubbell, a Compendium of Laws, a set of Court Martial Reports, several 1951 Manuals for Courts-Martial, standard steel furniture, IBM Selectric typewriters, the old gray recorders for stenomask court-reporting, and an issue of various weapons, mostly M-16 rifles.

I was blessed with an excellent staff: Captains Will Denton and Russ Thompson, who were replaced with Captains Harry Teter, and Pat Elder. Only Russ Thompson made a military career of the Air Force, remaining on active duty, until the mid-70s and later serving in the reserves until retirement. Pat Elder serves today as an Air Force civilian attorney. They all performed superbly; trying and defending cases all over the Republic of Vietnam, as well as managing a full caseload at Bien Hoa.

Our paralegals, all of them 705XX enlisted were equally outstanding: SMSgt (CMSgt ret.) Billy Edwards was NCOIC; SSgt. (CMSgt. ret.) Bill Sutton was claims NCO; MSgt. Joe Sizemore (deceased) was Military Justice NCO; Sgt. John Laskis, and later Sgt (SMSgt. ret) Dick Longuil were court reporters. Our Vietnamese secretary was Nguyen Ngoc Qui. Miss Qui was a tiny, pretty, and demure lady who was tough as nails when required to be. She commuted daily by bus from Saigon and rarely missed a day, even during the worst of the Tet Offensives. She was an asset, admired and cherished by all. Now living in southern California, she remains in regular contact with all of us.

I was also very fortunate in my immediate supervisor, Colonel Lester Arasmith, and in my supervising MAJCOM SJA, Brig Gen. Jim Cheney (Maj. Gen. ret., deceased). Colonel Arasmith was a fighter pilot, scholar, disciplinarian, and teacher. He was a person of impeccable integrity, courage, and loyalty, who when I needed his support (a not infrequent occurrence) never failed me. He retired to teach school. General

Cheney had been a combat tested B-17 aircrew member in World War II. He was a fine lawyer, a loyal and inspirational leader, who later served as The Judge Advocate General of the Air Force. He remained a mentor for me in later assignments, especially when I served as TJAG. He died last April. He was truly a wonderful man, missed by all of us who knew and served with him.

Mmilitary justice was “job one” at 3CSG/JA. During my yearlong tour, we tried 52 courts-martial, most of them Non-BCD Specials. We prepared Article 15s by the hundreds. The military justice typewriters were seldom silent. This was to be expected at the biggest and busiest operational air base in-country. (Actually, Bien Hoa AB was the busiest airport in the world, including Chicago O’Hare, measured by takeoffs and landings). Enlisted paralegal court reporters took all cases, including GCMs. The records were not things of beauty. I stressed timeliness and accuracy over errorless typing. We got the cases tried, reviewed, and approved quickly as possible. Workdays began at 0700 and typically lasted into evening hours. The workweek was six and one-half days. Those were not hard and fast hours. When the workload slackened, so did we.

We received lots of TDY help with our military justice workload. Captains Ken Joyce (Col. USAF, ret.) and Bob Gales (Col. USAFR, ret.) were frequently called in to help. We traveled as well. I served as Law Officer on several GCMs tried at Tan Son Nhut (Saigon), and Capt Russ Thompson and Capt Will Denton were on the road nearly as much as they were at Bien Hoa. Will served as Acting SJA

at Binh Tuy for nearly a month during his tour.

Very little of our military justice workload was drug related. That scourge had not yet hit the Air Force. Lots of theft, black marketing, assault, and desertion; and for awhile, at least, we tried security policemen for sleeping on post, a one year offense in a war zone. The court members, in their wisdom, doomed that process, giving Article 15 punishments and basically telling us to “cool it.” We did.

My greatest frustration in the military justice practice was assembling court panels. Officers flat did not want to sit on courts while there was a war going on...they were at least as busy as we were. We were still operating under the old code, and trial by Military Judge alone was not available. In fact, there were no judges presiding at Special Courts-Martial. The lay president of the panel was the presiding officer, and made rulings subject to the objection of any other member. If a member objected, the court closed to vote, with a majority deciding usually with the president. Experience on the panels was a must and was tough to come by. Fortunately, we got some help later in my tour from the fighter squadrons, who had many more pilots than cockpits, and were willing to provide junior members. But court member duties were not exactly what those fighter pilots had in mind, either.

Job two was claims. Not the usual pots and pans household goods claims, but battle damage claims were the dominant workload, and often with frustrating results. A few nights before my arrival, the Ranch Hand area of hooches

was hit by 122 mm rocket fire leveling several of them and destroying the contents of lockers, many of them containing furs and jewelry bought on Hong Kong R & Rs and intended to make up at home for extended absences. I received explicit instructions from the 3TFW commander, Brig Gen George W. McLaughlin (Maj. Gen. ret. deceased) to give these claims top priority. The Ranch Hand was a squadron of C-123K herbicide (Agent Orange) spraying aircraft, whose mission in the war was one of the most dangerous and most important. The pilots were older officers, mostly field grade, who had been pulled from desk job assignments and sent to fight. General McLaughlin didn’t want their morale to suffer and easily enlisted my support by ordering me to “make it right.” We (SMSgt Billy Edwards and SSgt Bill Sutton, primarily) processed and forwarded all 48 claims within a two day period. They sat, unprocessed at 7AF for weeks. Therein lies my earliest acquaintance with Captain (Brig Gen, ret.) Roger Jones. The Wing CC regularly called me, and I regularly called Roger, to inquire on the status of those claims. Roger tried, but couldn’t budge the 7AF/JA, to accept the fact that pilots could typically possess furs and expensive jewelry in the combat zone, but in any case to process the claims one way or the other. 7AF/JA finally came up to Bien Hoa and met with the crews to adjudicate, and finally deny the claims. The story ended happily at PACAF/JA, because General Jim Cheney understood the problem immediately, and approved them all.

Battle damage the USAF caused posed a different claims issue. We didn’t have an OPS Law mission then. I had no voice in the frag orders. Our crews, flying F-100s (three large squadrons) and A-37s (one squadron) were engaged in close air support of troops engaged with the enemy. These missions were flown all over III and IV Corps (basically the southern half of RVN). It was when our aircraft dropped a short round, or otherwise struck a friendly target that we got involved. While actual damages were paid in only the rarest occasions, and then only after Congress had amended the law to permit it, solatium payments were always made when friendly civilian



Photo courtesy of Major General David Morehouse

Major Morehouse Relaxes In His Rack



SMSgt Edwards, Ms Qui, and Maj Morehouse

casualties resulted. Solatium is a customary payment of regret, and intended to be symbolic only; but was considered to be of great importance. When the incidents occurred, the wing command post immediately called legal, and we arranged airlift to the site with the on base Army aviation unit.

On one occasion, a 3TFW F-100 crashed into a village in IV Corps, killing, among others, the village elder. We were called that night, and Russ Thompson and I were launched early the next morning along with an AF EOD team to take care of munitions and recover the .50 caliber machine guns propelled from the aircraft on impact. We left equipped with M-16s, full protective gear, and a suitcase full of Vietnamese piastres. We had been on the ground for four hours, negotiating and expressing regret, when a US Army mechanized company pulled up in their tracks and asked us what we were doing there. They had come in to sweep and secure the village. I told the commander they were about half a day late. We had been advised the village had been secured before we landed. He then advised us to stop payment because he believed this was an unfriendly village...we let him know it almost certainly would be if we stopped payment. We got payment approved, and cleared out of there, fast.

An additional duty of mine was as AF liaison to Long Binh Jail (affectionately known as LBJ). Long Binh was the larg-

est military post in Vietnam, the major US Army logistics center, site of Headquarters US Army, Vietnam (USARV) and Headquarters II Field Forces, which basically ran the war in III and IV Corps. LBJ was run by the Army, and was the confinement facility the Air Force used for all in-country sentenced prisoners. It was the roughest environment for prisoners I've ever seen. On one of his staff visits, I took General Cheney to visit LBJ. He told me afterward he had to see it to believe it. Photographs were not permitted, even of the outside. Halfway through my tour, the prisoners rioted, and burned every building, except the mess hall, to the ground. The commandant, nearly killed in the riot, had to be air evacuated to Japan. His replacement brought in connex's, painted them black, and used them to house prisoners until the buildings destroyed could be replaced. To add further insult to the injury of being incarcerated there, time spent at LBJ did not count toward completion of the one year tour of duty. I mentioned this fact with telling effect every week at newcomers' briefing.

Transportation was always an issue. In addition to having to travel to Long Binh every week, just getting around Bien Hoa was a chore. Our issue vehicle was a Dodge pickup that was in the shop the entire year of my tour, and I doubt any successor, or for that matter, any predecessor, ever drove it. We had bicycles issued, but to get to the east cantonment area on a bike was both dangerous and time consuming. We finally obtained an Army jeep on hand receipt from the OSI, who possessed it as evidence in a vehicle larceny case we eventually prosecuted. We kept the jeep. What may at first appear callous and cynically hypocritical, was in fact accepting reality. When the Army lost a jeep, regardless of how, it was a combat loss; and written off. We couldn't return the jeep, because it didn't exist, having been "destroyed" in combat. There were several "mustang" jeeps driven by AF on Bien Hoa, and for that matter, probably all over Vietnam. The primary reason was that the Army was smart enough to use M-series vehicles while the Air Force used commercial models which frequently

broke down, and for which there was no commonality of parts. We were finally dispossessed of the jeep, and received a used Ford Falcon in its place. It was, in fact, severely used and should have been junked, but it ran and we drove it.

We were quartered in hooches. These were huts built on concrete slabs with wooden frames, corrugated roofs, and screened sides with louvered walls that could be swung out from the screens in hot weather. Hooches typically housed eight persons. We JAGs quartered in Hut 135, along with a Catholic Chaplain, Army and Air Force intelligence officers, and at various times maintenance officers, and helicopter pilots. Hut. 135 was well equipped with bar and bar stools, refrigerator, potable water cooler, television set, dart board and card table. Behind—right behind—each hooch was a sandbag and PSP (perforated steel planking) bunker. Each occupant had his own "private" area, consisting of a bed and locker, and separated from others by very little else. The latter out of necessity, as circulation inside was of utmost importance. To reduce heat in 135, we insulated the ceiling with used cardboard shipping boxes. It worked, and it was not an unpleasant living environment...certainly not when compared with what the troops in the field had to put up with.

Hut 135 was within easy walking distance of everything inside the west cantonment area, about halfway between our office and the squash court. The officers mess was a few steps away, and the common latrine/shower area was right out the front door.

Bien Hoa AB was situated on the north side of Bien Hoa City. Bien Hoa City was off-limits following Tet, and we went in only with the OSI. North of Bien Hoa AB, the river Dong Nai, or Song Dong Nai, cut a series of loops which formed the southern boundary of War Zone D, and which was known as the "catcher's mitt." Enemy forces controlled Zone D, on the ground, at least and certainly at night on the ground, and it was from "catchers mitt" that Viet Cong forces fired 122mm rockets at Bien Hoa. They invested considerable effort into this work, for very good reason: they endured lots

of punishment from combat sorties flown from there. They were able to support this effort logistically from sanctuaries located in Cambodia, which were within relatively easy reach of Zone D. Because rocket attacks could be most successfully launched at night, Air Force forward air controllers (FACs) flying O-2s, flew all-night missions watching for launches out of Zone D. Launched rockets, trailing behind them a fiery rooster tail, were easily spotted. The alarm was promptly sounded; and we typically had twenty seconds to get from poker game, dart board, bar, latrine, shower, or bed to bunker. Counter-battery fire from friendly forces was almost immediate, but by then the V.C. were gone. Unless the warhead hit or near-missed a bunker, occupants were safe. The shrapnel was vicious, but bunkers usually were well enough made to protect all but the most unfortunate. So, getting to bunker was important; and we became very proficient. The V.C. were proficient at their work, also, and on one attack landed a round in the VNAF bomb dump. The ensuing explosions and concussion broke windows as far away as Long Binh. Fortunately for us, we didn't have any windows to begin with.

B-52 missions were frequently flown

over Zone D. Although miles away, concussions from the attacks would walk you and your bed across the concrete hooch floor.

We often wondered why enemy forces were permitted to resupply so readily. After President Richard Nixon was sworn into office in early 1969, he approved strikes into Cambodia to attack and destroy enemy logistics capabilities. The reaction at home was immediate. Students and others rioted; President Nixon, the Establishment, and the armed forces were vilified; and Jane Fonda was featured posing in Hanoi with an NVA anti-aircraft battery. We could always win on the field of battle, but the field of public opinion was another matter.

On return, and after reading and reflection, it was not hard to see why we failed in Vietnam. There was no will in the political leadership, especially the Commander-in-Chief and Secretary of Defense to win the conflict. They only wanted it contained — winning required too great a political effort and cost.¹

I was lucky. I came out unscathed as did most of us serving in a support role. But those in direct combat paid a terrible

price for what was essentially dereliction of duty on the part of their senior political leadership. For me, it was a great assignment; a career definer. Friendships made there persist strongly today. Harry Teter and his wife, Kathie, are dear friends, and I am godfather for their wonderful daughter. Hut 135 celebrated our 30th anniversary together in Vietnam at a reunion in Biloxi, Mississippi, hosted by Will and Lucy Denton and Russ and Lucy Thompson. Sally and I attended, as did Don Sheehan, the former Chaplain, now laicized, and a retired federal probation officer; Jay Ballentine and John Osterlund, O-2 Sleepytime FACs, both senior airline pilots; Jon Long (Lt.Col., USAF, ret.), an HH-43 rescue helicopter pilot, now airport manager for Sacramento, California; Russ, Will, Will's brother, Pete Denton (Colonel, USA, ret., then stationed at Long Binh), Ken Joyce, Bob Gales and families. Miss Qui and others were there in spirit. We cherish one another, and our year in Vietnam. 🇺🇸

¹ See H.R. McMaster, *Dereliction of Duty: Lyndon Johnson, Robert McNamara, the Joint Chiefs of Staff and the lies that led to Vietnam* (Harper Collins 1997).



PURPLE HEART RECIPIENTS

At least three Purple Hearts were awarded to judge advocates serving in Vietnam. George R. Stevens received the Purple Heart in 1972 while serving with the 483d Combat Support Group at Cam Ranh Bay. With less than 48 hours left in Vietnam, he was injured in a rocket attack. In August 1971, Charles L. Wiest, Jr. was injured in a grenade attack in Saigon. At the time, he was assigned to the 377th Combat Support Group at Tan Son Nhut Air Base.

Colonel Otto Kratochvil (now retired) received the Purple Heart while assigned as the Staff Judge Advocate for the 2d Air Division (AD), then headquartered at Tan Son Nhut Air Base in Saigon. He arrived in Vietnam in June 1964. At the time, U.S. military personnel were officially functioning as advisors to the South Vietnamese armed forces. However, the U.S. involvement in Vietnam quickly escalated following the Gulf of Tonkin incident in August 1964 when a U.S. Navy ship steaming in international waters off the coast of South Vietnam was targeted by North Vietnamese forces. Immediately following the Gulf of Tonkin incident, Viet Cong snipers, booby traps and bombings became common in Saigon. Orders directing the return of all U.S. civilian employees including 2d AD's female court reporter were issued. After escorting her to the civilian air terminal at Tan Son Nhut, Colonel Kratochvil and members of his staff were leaving the terminal when a large suitcase full of explosives detonated, throwing them to the floor and showering them with glass and debris. Colonel Kratochvil was later treated for cuts to his head, neck and right hand. He argued with the treating physician who wanted to record his name, rank and serial number. Colonel Kratochvil did not want to appear on "any list." But, his name did later appear on a list: a list of Purple Heart recipients.

(By Captain Denise Burke)

Travelin' Judge

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There are no deserts or cactus in South Vietnam's north central highlands, nor are there gold rush towns or cattle towns or cattle drives, and yet there is one 28 year old Air Force captain who has brought a touch of the Old West to the area around Pleiku Air Base.

Dressed in fatigues, combat boots, and helmet rather than chaps, cowboy boots, and ten gallon hat, Capt. John F. Rudy II is out riding the trails of South Vietnam, bringing legal aid to those who desire it with the same spirit and dedication as the Old West's fabled circuit riding judges.

Although Captain Rudy's services may never match the legendary exploits of Judge Roy Bean, grand-daddy of all circuit riding judges, who brought the law to the people west of the Pecos River, the young Air Force officer nonetheless has earned the name of the "traveling judge of Pleiku" from the officers and men manning the outposts he serves in the Pleiku area.

Captain Rudy, a 1963 graduate of [American University's] Washington College of Law, has added a modern twist to the old profession of circuit riding. He make[s] his rounds by motorcycle. Accompanying him along the trails is Air Force SSgt. William D. Rice, [age] 33, of Kingston, N.Y., who rides shotgun, armed with an M-16 rifle, a portable typewriter, and an envelope full of legal forms.

When Captain Rudy left his home in Washington, D.C., it is highly unlikely that he ever dreamed of bouncing around South Vietnam's north central highlands at the controls of a Honda 90 motorcycle with a sergeant hanging on behind, and yet luck and necessity guided him into probably one of the stranger missions in the Vietnam War.

Captain Rudy was not always in the circuit riding business, however. When he was ordered to the Pleiku Air Base to open its legal office in April of 1966, his introduction there was less than heartening. There was no housing for a legal office and no office supplies, save a few legal forms he'd wisely brought along from his former post at Cam Rahn Air Base. But by the end of the month, the base's first legal office opened for business in one-third of a "tent/hootch," furnished with two rough hewn tables and a single chair. Legal documents were either hand printed or typed during off duty hours with a borrowed typewriter. In June, the legal office found a more permanent home, sharing quarters with the base finance office. The following month a bonanza of office furniture arrived—two desks, four chairs, and a bookcase.

By this time, Captain Rudy had also acquired his assistant and traveling companion, [SSgt] Rice. Together they put the office on an operational basis, serving the legal needs of the officers and men of the base. Transportation problems, however, restricted them to the base area and kept them out of the field.

Lady Luck, however, was to change all of this and set up Captain Rudy and [SSgt] Rice in the circuit riding business. Captain Rudy had bought a ticket in a charity raffle sponsored by the 62nd Aviation Battalion at a neighboring air base, and when the winner was announced the surprised captain found himself the owner of a Honda motorcycle.

A less enterprising man than Captain Rudy would have probably been dismayed at his miserable luck of winning a motorcycle in an area where there was only one road, South Vietnam's Highway 1. The young officer, however, looked upon his prize as an answer to the problem of reaching the troops in the outposts surrounding Pleiku—troops which because of their own lack of transportation, or location, or duty assignment found it impossible to make the trip into Pleiku.

As one member of a Marine reconnaissance team who recently returned from Vietnam pointed out, the going would be extremely rough because the area has no roads except for Highway 1, and its terrain is a tangle of dense undergrowth, vines, and swamps. Not bothered by the fact that they might have to blaze their own trail and do so in temperatures which sometimes ranged as high as 140 degrees and in torrential downpours which mark the rainy season, Captain Rudy and



[SSgt] Rice fired up their cycle and headed out into the boon-docks, taking the legal office to the troops.

Because of the lack of legal officers in the field, the team has expanded its assistance to include Army as well as Air Force units stationed in the Pleiku area. The greatest demand for its assistance is in the drawing up of powers of attorney, bills of sale, and wills along with acting as notary public and occasional counseling for men facing courts-martial or Article 1 5s ...

In the field, Captain Rudy and [SSgt] Rice set up shop wherever they can, often as not operating out in the open when a tent, hootch, or building is not available. Their area of responsibility has increased as they sometimes respond to calls for legal assistance from units stationed in outlying provinces such as Kontum, Darlac, Binh Dinh, Phu Bon. On some of its longer jaunts into the bush, the team abandons the Honda temporarily and flies into the area instead.

In August of 1966, the team met one of its severest tests as the Army and Air Force began building up their troop strength for "Operation Paul Revere II," a search and destroy mission carried out near Pleiku Air Base. Overnight, as the units poured in, tent cities sprang up in previously bare fields, and Captain Rudy and his assistant found themselves faced with an increasing number of calls for legal assistance. Again they packed up the legal office and headed for the field.

During August and the duration of "Operation Paul Revere II," the two-wheeled legal office logged more than 200 back-breaking miles over the tortuous terrain of the north central highlands, assisting almost 100 men with their legal problems.



And as they bounced along from unit to unit, it was not unusual for them to stop along the way to respond to unofficial requests for legal aid.

While putting in as many as 12 hours a day on board their motorcycle or in the legal office at the base, Captain Rudy and [SSgt] Rice still find time to set up and operate a civic action program among the Montagnard people in the village of Plei Bre, just north of Pleiku.

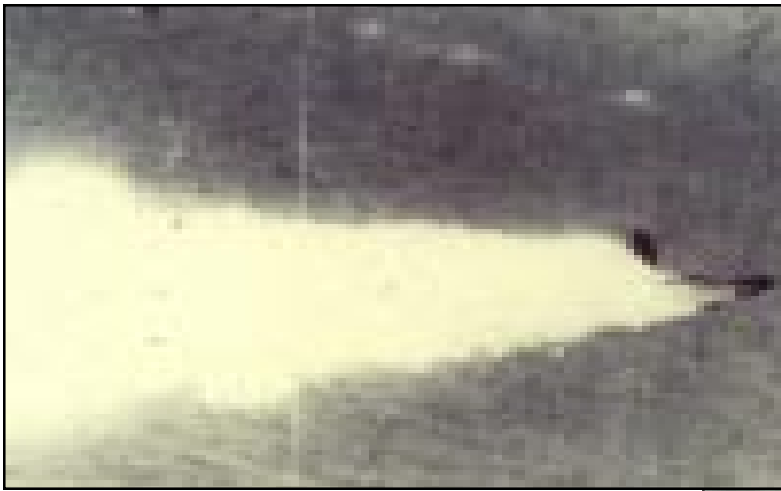
Their most pressing problem is to provide the villagers with a source of fresh, pure water, which has involved building a dam and spillway and a cistern to collect and hold the water. Along with this project, they are also making businessmen out of some of the villagers. Captain Rudy and [SSgt] Rice purchase hand carved crossbows from the villagers, which they resell at cost to Air Force personnel. The two men also hand out small bars of soap to the women of the village, and of course, as typical U.S. servicemen, they always keep a supply of a chewing gum on hand for the village children.

The work of the captain and his sergeant has not gone unnoticed or unrewarded by the villagers of Plei Bre. In August, Captain Rudy and Sergeant Rice became tribal blood brothers of the village chief. In the traditional rice wine ceremony of Montagnards, the two men were presented with bronze bracelets by the chief. The chief's clasping of the bracelets around the right wrist of each man signified he had been accepted as a tribal blood brother of the village. Following the chief's presentation of the bracelets, other villagers have since invited the two men to take part in similar ceremonies.

Captain Rudy also helped the Montagnard chief fulfill a wish. The chief wanted a picture of President Johnson to hang in his hut and asked the captain if he could obtain one for him. Captain Rudy wrote to the President, explaining the civic action program in the village and informing him of the chief's request. On August 30, President Johnson... [responded with the requested photograph and praise for the Civic Action Program.]

Perhaps the "traveling judge of Pleiku" and his assistant will never attain the legendary fame of their predecessor Judge Roy Bean, but for the servicemen they aid and for the villagers of Plei Bre, Captain John F. Rudy II and SSgt William D. Rice are writing their own brief but lasting bit of history as they cycle through the north central highlands of South Vietnam. (Editor's Note: John F. Rudy, II, retired as a Colonel from USAFR) 🦅

Motorcycle Riding judge advocate Capt John Rudy, II asks the Montagnard Chief of the village of Plei Bre whether there were any Viet Cong in the village. The Montagnard Chief is pointing in the direction of the Viet Cong force and advising Capt Rudy that they were "over there." The next picture, reports Colonel Rudy, if taken, would have shown the incredulity on his face.



Prisoner of War

COLONEL HENRY P. FOWLER,
RETIRED



Editor's Introduction. In our wildest imaginations and worst nightmares, few of us can imagine the heroism, patriotism and sheer desire to survive displayed by our prisoners of war. Our hearts fill with pride and our eyes with tears when we hear of the torture that they endured, the camaraderie they shared with fellow prisoners and the extraordinary sacrifices they made. During their captivity, they suffered the unimaginable and some lived to tell their story. Colonel Henry Fowler served his country for three years in the Navy as an enlisted sailor, then again as an Air Force pilot and then a judge advocate for a total of 26 years. He was a prisoner of war in Vietnam for 5 years, 10 months, and 23 days of that time. The following extract was adapted from remarks Colonel Fowler shared with JASOC Class 99-A, the last JASOC class in the Department's 49th year of existence. This is the first time Colonel Fowler's experiences have been put into writing. We are very grateful to him for allowing the Air Force Judge Advocate General School to record, transcribe, and publish his remarks. Here is a fraction of his story:

Colonel Fowler. After entering the Air Force in 1964, completing Officer Training School at Lackland Air Force Base in Texas, and flight school at Williams Air Force Base in Phoenix, Arizona, I got my first choice of airplane and picked the F-4 Phantom. I understand the F-4 is not great compared to what you have today, but thirty years ago this was the cream of the crop. I carried four heat-seeking missiles and four radar controlled missiles. My top speed was Mach 2.1, about 1400 miles per hour. After getting checked

Colonel Fowler (B.A., George Washington University; J.D., Cumberland; National University in Washington D.C.) retired from active duty in August 1991. He lives with his wife, whom he met on the airplane home from his POW experience in Vietnam, in Alabama. He speaks about his experience at the AF Judge Advocate General School, among other places. He is a member of the Alabama State Bar.

The editor gratefully thanks Technical Sergeant Elizabeth A. Smith for transcribing Colonel Fowler's remarks.

I'm hit!! Col Fowler's F-4 Phantom goes down.

out at Davis-Monthan Air Force Base in Tucson, I was assigned to Uban Royal Thai Air Base in Thailand.

The Shoot Down. Around November of 1966, I arrived at Uban Royal Thai Air Base, from whence I started flying missions over Vietnam. On March 26, 1967, four Phantoms were scrambled out of Uban. I, a brand new lieutenant with less than six months in service, had the privilege and honor of flying the lead airplane. Our mission wasn't to hit anything but to guard 90 F-105s coming out of two other bases in Thailand. Their mission was to strike a barracks and storage area deep within Hanoi, the capital city of North Vietnam.

We joined up with the 105s, headed north, traveled a distance and refueled. We hit North Vietnam with a normal profile of 10,000 feet at 600 miles per hour. The flight in was rather uneventful, except, that they had radar and knew we were coming. The firepower directed against us was always absolutely horrendous. The only way I can describe how it looked is to tell you that it appeared as though a thunder storm was building in front of your nose every inch of the way as you're moving along at 10 miles a minute. We got to the target without incident. The 105s dropped their bombs and started out and, since our job was to guard them, we did too. Soon after leaving the target we received a radio call that I'm sure all of you have heard in old war movies, "Bandits 9 O'clock low," which meant bad guys below. Looking over the left side of the airplane, I saw what I thought were four Russian-made MIG 21 fighter interceptors. Since our job was to guard the 105s, and since all fighter pilots like to shoot at anything that moves and

a few things that don't, we jettisoned our external fuel tanks and dove on the MIGs. We dropped in behind them, right off the ground, at speeds that make lines of telephone poles look like picket fences. For some reason, the MIGs didn't want to fight and ran for home. Immediately we recognized following the MIGs east would cause a problem because all of our KC-135s were several hundred miles west and a jet fighter is not the epitome of fuel efficiency. With this in mind, we decided that discretion was the better part of valor and headed for home.

I began to pick up an awful racket and sight picture indicating the enemy was sending me a "present." Looking out the right side of my airplane, I saw two SA-2 missiles coming at me, one in trail of the other. While you can't outrun one of these — they travel much faster than the speed of sound — the missile can't turn well because of their small flight control surfaces - wing, tails, etc. So, if you know one is coming, and you have a lot of speed built up in your airplane, you can hopefully avoid these. However, since I was climbing and had slowed down, I couldn't get out of the way. They both hit my airplane and over the next few minutes I went from a nice air-conditioned cockpit, "king of the road" type thing, to disaster.

Fire was everywhere after the initial hit. The fire warning lights of both engines were on as smoke and fire filled the cockpit; all three hydraulic systems were drained (which means that one now has no control over his airplane) and I had a decision to make. I could sit there and burn to death, a thought not particularly appealing. I could ride the airplane to the ground, if it got that far, and hit something at 600 miles per hour, or I could get out. It should be obvious which one I chose.

I left my airplane at a high rate of speed. I received a compression fracture of the lowest vertebrae of my back, for which I didn't see a doctor for the next six years. I landed 24 miles from Hanoi, not the best place to go that day. They had dogs and, of course, found me in about ten minutes. I was stripped of everything I had except undershorts. I was tied with some very coarse ropes and walked for the next eight hours with a fractured back. Of course, every time we came to a village, they wanted to show off their prize, so I was hanged and stoned. Then I was driven for four more hours. It took 12 hours to go the 24 miles to the prison. Anyway, at about three thirty in the morning, we arrived at everybody's favorite resort of the Far East, the home I was to have for the next six years that we affectionately called the "Hanoi Hilton."

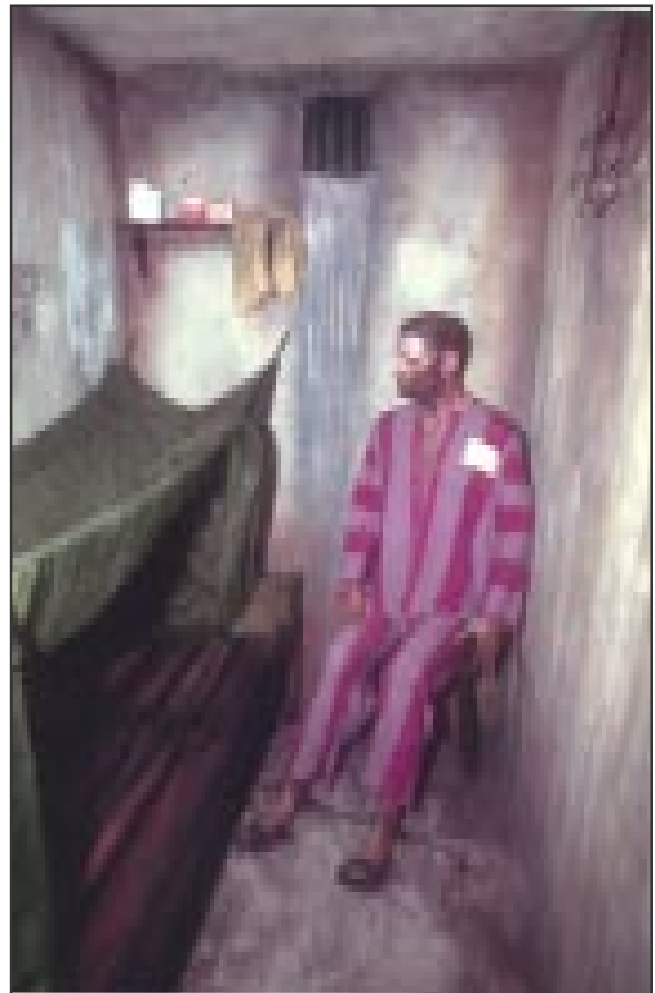
Life in the Hanoi Hilton. Let me tell you a little about the cells in the Hanoi Hilton. They were solid concrete; usually either without any windows or with a window boarded up, and measured exactly seven feet wide, by nine feet long, by approximately 20 feet high. A 40 watt bulb hung from the ceiling and burned 24 hours a day. For the six years of my imprisonment, there were many items we take for granted in this country that I never saw. I never saw a toilet — we had a small bucket in the corner of each room. For six years we didn't see a bed — we slept either on wooden boards or cement pallets. As it turns out, that was probably the best thing

I could have done for my fractured back. For six years we didn't see shoes — we were finally given "Ho Chi Min slippers," old tire treads with straps. For six years, we didn't see hot water.

We were given rudimentary supplies such as a mosquito net. Mosquito nets are very important in that part of the world. Without one, we would never have gotten any rest because of the multitude of mosquitoes. We got a straw mat to put between us and on which to sleep. We had one horse blanket. Our only clothes were two lovely pair of pajamas decorated in beautiful vertical stripes of pink and purple. I think Charles of Leavenworth made them for us.

Once every sixty days, we were given a very small bar of pure lye soap about the size of personal-size Ivory. We could use that on anything we wanted. The important point was that it had to last 60 days. Once every ninety days, if the guards felt that we deserved it, we received a small toothbrush and a very small tube of toothpaste. It was some of the worst stuff that I have ever placed in my mouth. Interesting, it was obviously made in Hanoi for export because on it's label in English it said: "Much Bubble, Nice Taste."

Daily life there went something as follows: At about 5:00 to 5:30 in the morning, they would beat on a gong and we would



Horrors of POW cell life are recreated at Heritage Hall, SNCO Academy, Gunter Annex.

Lt Fowler is transported to the Hanoi Hilton.



have to get up. For the next one and one half-hours, each of us would exercise, trying to keep ourselves in the best condition we could. We would end the exercise period by running a mile in place (since you can't run very far in a 7 x 9 room). At about 7:00 to 7:30, the guards would begin to work their way around the prison, opening each door individually and letting the occupant(s) out to empty the bucket of human waste. If there was any cold water, we were allowed a short cold-water bath and after about 15 minutes the guards would place us back in the cell. When I first went in, I spent three months in solitary confinement until I got a roommate. I was fortunate because I was a brand new first lieutenant — less than 6 months in grade. The majority of senior officers spent four years in solitary confinement. After the brief time outside the cell, barring some form of interrogation, we sat on the edge of our bunks with nothing to do until the first of our two daily meals came. We were never given anything to occupy our minds.

"Home" for almost six years. The Hanoi Hilton.

All photos courtesy of Colonel Henry Fowler



Everybody thinks that for six years I enjoyed fish heads and rice. The reality of the situation was far from that. If you ever need a good diet, ladies and gentlemen, come see me, because I have an excellent one: Take away your food and beat you up night and day. I went from 190 to what was estimated at 87 pounds in 60 days, and kept the weight off for six years. It went off so fast that I had stretch marks. The simple rule is: You can eat or you can die. All the worms, parasites and everything else, you can get rid of. Once your life is gone, it's gone forever.

For two meals a day, twelve months of the year, we ate the exact same food; soup and sometimes bread. We enjoyed pumpkin soup in summer, cabbage soup in the fall, and turnip soup in the winter. In the spring, it was exceedingly difficult for me to tell you exactly what we did eat, but I think if you were to mow your lawn and boil it, that wouldn't be too far off. Occasionally, we were given rice. On very rare occasions, maybe three times a year, we received a strand of meat. In July 1967, I received my first strand of meat. It smelled terrible, tasted worse and was wrapped around a very tiny little jagged bone that I couldn't recognize. My first thought, being a typical American, was to throw it away. However, survival school had engrained in my head that you never, never, never refuse food. On that day, I ate that piece of meat. It didn't make me sick and probably did me a lot of good. After all, it was the first piece of protein I'd seen in four months. A day or two later, I found an English-speaking interrogator and asked him what the meat was. Without hesitation he told me it was rat. On those exceedingly rare occasions we did get meat, it was rat, cat, dog, water buffalo, horse meat, monkey or fishhead. Horsemeat by far was the best, fishhead was by far the worst, even worse than rat. Fishhead was terrible.

Probably one of the most important issues there was communication. We were not allowed to communicate with anyone. If a guard came to our door, put his ear to it, listened, and heard any noise inside, the prisoners in that room were severely beaten. I got caught once and as a result, I will carry scar tissue on my brain for the rest of my life. The purpose of denying communication was to divide and conquer us. However, we wouldn't let them do that.

As I mentioned, our main food was soup and bread, but on rare occasion we got rice. The rice had a lot of rock, gravel, and pieces of F-4s in it, along with other things. We had to be careful so we wouldn't break out our good teeth while eating the rice. In July 1967, I received my first bowl of rice and as I was meandering through it trying to avoid all the trash and garbage, I came upon something in my mouth that I could



chew but it wouldn't break up — it just kind of sat back there and went squish, squish, squish. I reached in my mouth and pulled out a piece of paper on which was written in English and in pencil the following words; "God Bless America. Keep faith Yank. Learn this code." Signed 007.

The code is really very simple and has been previously explained in publications such as *Reader's Digest*. We divided the alphabet into five equal rows and five equal columns with numbers down the side and across the top. The letter K was excluded. I don't know why K was left out. However, the table had 25 spots and the alphabet is 26 letters so we had to leave something out.

We sent messages letter by letter. You isolate a square, in other words each letter takes two sets of taps. The first set always goes down, the second goes across. For example, if I were to send "A" as in "Albert," that would be one and one. "C" is one down and three across. "H" is two down and three across.

If we were locked in solitary, the tap code did not help much because there was usually no one on either side, although a vein of cement on the ground did a marvelous job of carrying sound. Although we could brush the code using a broom, or flash the code with hand signals, those methods were also usually not available in solitary. If we beat on something, we would have been beaten on. So the problem here was: what sound could be made that would not be too foreign to this environment. Since most of us were sick most of the time, "The Cough and Spit Code" (as I called it) was developed. If we wanted to get out the letter "A," that's one cough down and one across. Once again though when you get down to the later letters, it would have become a tad suspicious had we coughed twenty or thirty times. So we modified this. We kept the number one as one cough, we kept the number two as two coughs. We changed the number three into a hack. "N" as in "November" now becomes two hacks, rather than six coughs. Number four was a spit. So "T" was two spits, rather than eight coughs. Five was a sneeze.

We used the tap code for recreation, as well as transferring important messages. Each day, we were each given a piece of toilet paper about nine inches by nine inches. At best, it resembled sandpaper. We would save a portion, sometimes at

the highest sacrifice, for academic and enjoyable purposes. Our mosquito net was made up of little squares and could be folded the size of a chess or checkerboard, so we would take toilet paper and make figures. My roommate and I played chess and checkers. With the tap code, we had building-wide chess matches. With the tap code and hand code, we had camp-wide chess matches. For example, tap on the wall "move queens, pawn two."

My second roommate had a masters degree in German, so I learned my German in the school of Hanoi. We learned that white wash scraped off the wall and water made excellent ink. Brick dust off the floor and water make good ink. Iodine and rice make excellent ink. Pencils were easy to steal. We kept dictionaries in German. Everything I learned in German, I learned from him. Later I spent three years in Germany and was able to do everything off base in, I won't say fluent, but good enough German to get by.

The tap codes were used in even more important ways. They always wanted something from us. At the end of 1967, they took each and every one of us to interrogation rooms and ordered us to write a war crimes confession. We had to write a confession admitting criminal acts and stating our country was a war criminal. The truth of the matter was not relevant, they simply wanted the piece of paper with our signature. I think I lost ten of my friends during that time — ten were murdered. Article V of the Code of Conduct today says words to effect that — I'm required to give my name, rank, service number, date of birth and will resist answering further questions to the best of my ability. When I went in, it didn't say that. It said I am bound to give *only* my name, rank, service number and date of birth — the big four and nothing more. That was taken right out of the Geneva Prisoner of War Convention. However, it is my considered opinion, and I speak only for myself, that if you stuck to the old code, you're going to end up one of three ways: dead, maimed for life, or driven insane, which long periods of excruciating pain will do. In fact, our guidance there was: When you go to interrogation and you're asked or told to do something you can't do, start with a primary line of defense: name, rank, service number, date of birth. You stayed with that as long as you could until you think you're about to lose your mental skills due to long periods of excruciating pain.

| | | | | | |
|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 |
| 1 | A | B | C | D | E |
| 2 | F | G | H | I | J |
| 3 | L | M | N | O | P |
| 4 | Q | R | S | T | U |
| 5 | V | W | X | Y | Z |

The Tap Code.

Most of us feigned illness or forgetfulness.

One interrogator told me, "You're just a first lieutenant - you're not worth much." I said "Roger that." Every time I went to interrogation I said, "Hey, I'm a first lieutenant. I don't know anything." One fellow, toward the end, went to interrogations and, after suffering far more than I ever could have, and thinking his mental skills were about to go, said "Okay, I will write for you." He sat down with pencil and paper and wrote a classic piece, starting out with some beautiful, communist propaganda. Basically his confession said as follows: "I have



Repatriation at last! Lt Fowler comes home.

been accused of committing heinous crimes against the Vietnamese people by bombing their cities, towns and villages and killing their old people, women and children. But on that particular day, I could not have done that of which I am accused because on that particular day I was shot down before I dropped my bombs. But, I know who the scoundrels were who killed those people and did that damage, they were my two wingmen — Paul Bunyon and Clark Kent.”

You know who these characters were, but the Vietnamese didn't. However, they were always very suspicious of us, as they had a right to be (we tried awful hard, we really did). So, they lifted those names off that paper, put them on a blank piece of paper so all you saw were “Paul Bunyon and Clark Kent” and then brought most of us in during the following weeks and asked us who these people are. If any one of us had said, “Yes, he's mythological character and he's a comic strip character” it would not have been good for the young man that wrote that.

But it never came to that because, by means of that code, I tapped to those on either side of him what he had done and the rest of us stayed up all night, clandestinely getting the information throughout the whole prison. During the following weeks, no one knew who Paul Bunyon and Clark Kent were. At the end of this process, another prisoner looked at the names and armed with the information said; “I can honestly tell you that I've never had the pleasure of meeting, or for that fact knowing, this person Paul Bunyon. But if I remember when I was home in the free world, (we always got that in) I used to see this guy Clark Kent's name in the newspaper almost every day. In fact, if I'm not mistaken, this guy Clark Kent used to fly a lot.” The Vietnamese took that confession as written to one of their propaganda extravaganzas where they read it intact to the entire tribunal.

Editor's Conclusion. Colonel Fowler was repatriated on 18 February 1973. He continued to serve the Air Force as a member of the Air Force Judge Advocate General's Department, retiring in August 1991. 🏠

Take Cover!

In March, 1973, I was assigned as a young assistant Staff Judge Advocate to Zweibruecken AFB, Germany. The day I arrived, the base was preparing for a NATO Tactical Evaluation. Everyone was running around in combat fatigues pretending we were at war. Because I was the claims officer, I was assigned to be the legal adviser to the On Scene Commander for all disaster exercises. Three weeks later, we had another exercise. I responded to a “broken arrow” on base. It was April, and we had had a fair amount of rain and there was water in the drains along the runways. The scenario progressed to the point where we simulated the aircraft exploding or the “bomb” (experiencing a non nuclear explosion.) Red smoke was usually used to indicate non nuclear explosions. The base commander saw red smoke starting to rise and he yelled “Take cover!” Approximately twenty individuals all took cover behind cars, and some jumped into the ditches (with water in it). The base commander, who obviously was into the exercise, dove into the runoff drain, causing a rather large splash. I stood there, with my claims NCO looking at him all covered with mud. The NCO (a wise T/Sgt) quickly excused himself saying he needed to get something he had forgotten. The commander turned around, propped himself up on his elbows, looked at me, and said, “ Judge, when you see red smoke, take cover.” I knew exactly what he meant. I did the closest thing to a swan dive that I could starting from the ground.

(By James C. Fetterman, Colonel, USAFR, Ret.)



Photo courtesy of Colonel Thomas Tudor and Mr. Darrell Phillips

Colonel Thomas Tudor

What do LOAC Training and


Noriega's Desk Have in Common?

I was stationed at the US Southern Command, Quarry Heights, Panama, as the Deputy Staff Judge Advocate during Operation JUST CAUSE in December 1989. After military operations were concluded, I worked with DOJ representatives assigned to collect supporting evidence for Federal charges pending in Miami against Panamanian dictator, General Manuel Noriega. The examination of Noriega's holdings took me, DOJ personnel, and Panamanian National Archives representatives to one of Noriega's Panama City homes. Later, an exhaustive inventory of the contents of this house was taken in preparation for transfer to the new Panamanian government. During this time, we were told that CBS's Mike Wallace of "60 Minutes" fame, arrived at the front gate with a TV crew who professed to have a pass from the CINC himself to enter. Being a careful man and perhaps one not overly awed by the TV program's reputation for accuracy, the US troop commander kept Mr. Wallace and crew waiting while he checked with the CINC's office. Sure enough, we were later told that Mr. Wallace had no pass and went away, denied a view of one of the more

interesting places I saw during Operation JUST CAUSE.

Not surprisingly, Manuel Noriega's home contained many valuable items. Our troops captured it so fast that even the steaks in the refrigerator were marinating in preparation for the meal that never was. A brand new BMW with 15 miles on its odometer was still sitting in the front yard with a Christmas note on it indicating it had been intended as a gift for one of the Noriega daughters. The place where the photo was taken was General Noriega's study. It was obvious to even the casual observer that General Noriega enjoyed collecting books and magazines of all types. There were volumes of books on the world's religions, reams of pornographic magazines, and what appeared to be a complete set of *The National Geographic*. Upstairs in the entrance to the master bedroom was a table laden with 50 brand new Rolex watches, each in a little box with a card made out to military members of General Noriega's staff. In the basement was an amazing sight to behold. Wall to wall, the dimly lit room was crammed with priceless, pre-Colombian artifacts, many of which still had museum labels on them, suggesting they had probably been stolen

from Panamanian museums. The representatives from the National Archives were rendered speechless. Back upstairs under the Christmas tree were presents still wrapped, and in a room bigger than the servants' quarters were hundreds of bottles of the finest wines and hard spirits. Drawers of costly silverware were in place in the dining room, and in one of the sitting rooms two huge, solid silver Ibis stood majestically staring out over a most eclectic looking collection of furniture that included everything from rosewood pieces to Persian carpets. In the courtyard was a little Voodoo altar. Appropriately enough, a well fed rat scurried off the dais as I approached it.

What impressed me the most about the scenes I describe is that every piece of furniture, every piece of jewelry, every bit of cash, even the shiny new BMW lay untouched. I realized then that our LOAC training was most definitely intact and a program to be proud of. That day, I also realized the JAG Department has given me undreamed opportunities, opportunities not even Mike Wallace has the privilege of experiencing! 

Sword in the Sand

Operations DESERT SHIELD and DESERT STORM¹

MAJOR LEONARD L. BROSEKER





But what good came of it at last?"

Quoth little Peterkin.

"Why that I cannot tell," said he,

"But 'twas a famous victory."

~ The Battle of Blenheim by Robert Southey, 1774 – 1843

On 2 August 1990, Iraq

invaded and occupied Kuwait after failing to gain satisfaction from Kuwait and other oil-producing countries about economic issues it wished to have addressed in its favor.² The United Nations (UN)

Security Council passed Resolution 660 condemning the invasion and demanding Iraq's immediate withdrawal from Kuwait, and Resolution 661, which imposed economic sanctions on Iraq.³ The first American forces

arrived in the area of responsibility (AOR) on 8 August 1990 in the form of elements from the 82nd Airborne Division and FB-111s in Saudi Arabia, and B-52s at Diego Garcia.⁴ By November 1990, approximately 225,000 service members had arrived in the AOR with more scheduled to deploy to provide for "an adequate offensive military operation."⁵ During the course of the crisis, the Air Force deployed almost half of its CONUS-based combat strength to the AOR and airlifted over 480,000 people and 513,000 tons of cargo to the theater.⁶ America's total manpower contribution to the effort would eventually total approximately 550,000 service personnel.⁷

It was against this backdrop that Air Force judge advocates and paralegals deployed to the Middle East.⁸ The Air Force sent forty-nine judge advocates (JAGs) and forty-six paralegals including three Area Defense Counsel and one Area Defense Administrator.⁹ The legal issues JAGs and paralegals faced in the AOR ran the gamut from wills and powers of attorney to the real-time application of law of armed conflict (LOAC) principles, rules of engagement (ROE), and targeting issues. In short, deployed Air Force JAGs found themselves functioning in an unusual environment and addressing issues not seen in decades.¹⁰

Preparing For War

The Central Command Air Forces legal office (CENTAF/JA) realized the need to provide guidance to the field in view of the increasing regional tension.¹¹ Colonel Dennis E. Kansala, CENTAF Staff Judge Advocate, emphasized the need to communicate and work through issues as a team, realizing that "[t]here will be many things that cannot be fixed or that

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Photo courtesy of SMSgt Carole Langdon



Combat JAG. (left to right) SMSgt C. Langdon and Capt Irwin in front of their new office.

will take time. Meanwhile the job needs to get done — use your best judgment and continue to work hard.”¹² Since hostilities were on the horizon, LOAC principles and the ROE assumed greater significance and became an important priority. In this respect, Colonel Kansala observed: “It would be tragic to go through this tremendous operational effort and have it tarnished through ignorance or ill-conceived advice.”¹³

CENTAF/JA’s initial guidance to the field addressed those areas of Air Force practice typically seen at CONUS bases, e.g., wills, claims, military justice, legal assistance, etc.¹⁴ It also contained guidance on topics normally addressed at base legal offices in overseas locations, e.g., foreign criminal jurisdiction, foreign claims, international agreements, etc.¹⁵ Addressing issues outside of the typical experience of a legal office and in anticipation of hostilities, CENTAF/JA provided guidance on LOAC, specifically emphasizing the reporting of violations, war trophies, enemy prisoners of war (EPW), interacting with the International Committee of the Red Cross (ICRC), and the ROE.¹⁶

The bulk of personnel deployed to Saudi Arabia. Judge advocates and paralegals eventually deployed to twenty-two locations in the Middle East and Indian Ocean. Judge advocates and paralegals deployed to the following countries: Saudi Arabia, twenty-three judge advocates and twenty-four paralegals at nine locations; Oman, three judge advocates and three paralegals at three locations; United Arab Emirates, eight judge advocates and seven paralegals at six locations; and one judge advocate and one paralegal in Bahrain, Qatar, Egypt and Diego Garcia.¹⁷

CENTAF/JA educated judge advocates and paralegals on Saudi customs, culture and law so they could make intelligent decisions when dealing with the Saudis.¹⁸ Because Saudi Arabia is a conservative Moslem society, there was concern about Saudi sensitivities to American conduct. The western presence in the Kingdom raised the possibility of a clash of cultures adversely affecting successful execution of the mission. CENTAF sent memoranda to its field commanders emphasizing the need for American servicemembers not to offend Saudi religious sensitivities.¹⁹

The concern about host nation sensitivities led General H. Norman Schwarzkopf, Commander-in-Chief, Central Command (CENTCOM), to issue General Order #1 on 30 August 1990. The General Order prohibited, among other things, entrance into mosques, consumption or possession of alcoholic beverages, introduction and possession of pornography, introduction and possession of “sexually explicit” material, gambling, and removing or defacing archeological artifacts.²⁰ “Sexually explicit” material was defined broadly enough to include “muscle” magazines, swimsuit editions of magazines, and catalogs displaying lingerie and underwear. The General Order also required servicemembers to “become familiar with and respect the laws, regulations, and customs of their host nation.”²¹

The General Order forced commanders and judge advocates to view seriously conduct that otherwise would not raise a concern “back home,” e.g., drinking a beer, while at the same time minimizing conduct that could antagonize host-nation sensitivities.²² As a result, a public debate followed in the American media concerning the military necessity of these prohibitions. However, General Order # 1 worked so well that similar General Orders were and continue to be used in subsequent contingency operations.²³

Military Justice in the AOR

Another important issue for commanders and judge advocates in the AOR was identifying who could take disciplinary action for Uniform Code of Military Justice (UCMJ) violations. Until the establishment of provisional units and the designation of Special Courts-Martial Convening Authorities in December 1990, judge advocates had a difficult time determining who was the “commander” for the particular servicemember involved in alleged misconduct.²⁴ The situation presented a “Tower of Babel-like” challenge for judge advocates, since some personnel deployed as individuals and others deployed with their home base commander.²⁵

For example, one AOR location had approximately 2,850 personnel representing over 60 bases throughout the Air Force.²⁶ At another location, over 4,000 personnel came from over 100 bases and 9 MAJCOMs.²⁷ In such cases, the commander having the most people from his unit at that location would “assume command” without having a base-wide unit to command.²⁸ Until the AOR command structure was settled, CENTAF/CC was the first commander in the chain of command with the requisite UCMJ authority to act.²⁹ Operation Desert Shield was an interesting time, from the military justice perspective, for deployed judge advocates.

In October 1990, the Trial Judiciary established a two-phase plan to support courts-martial in theater.³⁰ Phase one envisioned sending a military judge, circuit trial counsel, and court reporter on a case-by-case basis. Defense counsel would be appointed from defense resources already in the AOR. The plan also addressed transportation requirements, court administration, docketing, legal support issues, funding and equipment requirements. Phase two envisioned the establishment of a separate circuit in the event it was justified by the workload. Phase two required the assignment of person-

nel to the newly established circuit to manage the workload. The first phase was implemented for two of the three AOR courts-martial.³¹ The second phase was never implemented because hostilities ended before the court-martial workload increased to the point requiring the establishment of an additional circuit.

Despite the logistical difficulties in supporting AOR courts-martial, Air Force legal offices tried three courts-martial in January 1991 before the start of the air offensive.³² Two of the courts-martial required a military judge and a paralegal to travel to the AOR.³³ Colonel James A. Young, III (then Lieutenant Colonel) and Master Sergeant Carrie Carson (then-TSgt Carrie Holcomb) were assigned and traveled from Maxwell AFB, Alabama to try the courts-martial.³⁴ The third was a summary court-martial over which a deployed judge advocate presided.³⁵

Colonel Young reported to HQ USAF/JAJT: "Supporting bases in Saudi Arabia from the CONUS will not be easy, especially when working on a tight time schedule."³⁶ The imminent hostilities made travel within the AOR difficult. Space on aircraft was valuable and subject to availability on short notice, requiring the military judge and accompanying paralegal to be flexible.³⁷ Real world events demanded the courts-martial be tried as expeditiously as possible — while ensuring each accused's rights were honored. Traveling to the AOR and "hitting the ground running" highlighted another factor: fatigue. Both Colonel Young and Master Sergeant Carson reported finding it initially difficult to concentrate due to the effects of jet lag.³⁸

The Saudis were very sensitive about certain types of crimes, e.g. illicit drugs. Since both courts-martial requiring the presence of a military judge were tried in Saudi Arabia, awareness of host country sensitivities affected the public manner of

trial. The general court-martial involved the theft and possession of drugs and was conducted discreetly in an office barely sufficient to hold all the necessary parties and three spectators.³⁹ In contrast, the special court-martial on larceny charges was conducted in a lavishly decorated conference room used by the Saudis for briefings.⁴⁰ The summary court-martial did not require a military judge and so was necessarily more discreet.⁴¹

In addition to courts-martial, JAGs regularly processed Article 15s. By 4 January 1991, 94 Article 15s had been processed with another 57 pending.⁴² However, with only three Area Defense Counsel in the AOR, uncertain transportation and unreliable telephone service, processing Article 15s did not go as quickly as legal offices had expected.

The Law of Armed Conflict

During the Vietnam War, there was a general mistrust among commanders concerning any restrictions placed upon their freedom of action, specifically the application of LOAC and the ROE.⁴³ Commanders believed that artificial restrictions had been placed in their way.⁴⁴ "Relations were often marked by suspicion and a belief—on the commander's part—that lawyers, together with politicians, were an obstacle to winning the war."⁴⁵ In reality, JAGs played almost no part in the operational environment of Vietnam.⁴⁶

America's experience with LOAC in Vietnam — spurred in large part by My Lai — prompted the Department of Defense (DoD) to institute LOAC training for the troops to heighten awareness of international legal requirements which, in turn, helped develop an appreciation by commanders for application of LOAC principles in operational planning.⁴⁷

Sand on the porch "at home."

Photo courtesy of SMSgt Carole Langdon



The mistrust of the Vietnam era was replaced by a growing respect and understanding of JAGs and the field of law now known as “operational law.”⁴⁸ On the eve of Operation DESERT STORM, American leaders emphasized that the upcoming air campaign “would avoid civilian objects and religious centers.”⁴⁹ American attitudes about the role of LOAC and the ROE now emphasized the need to integrate these principles into operational planning.⁵⁰ For example, judge advocates were closely involved in the targeting process during Operation DESERT STORM.⁵¹ Judge advocates sat in targeting meetings where lists of targets to be attacked by Coalition forces were developed.⁵² Included with the lists were legal annexes highlighting potential LOAC violations for consideration by the chain of command when selecting targets.⁵³

It was essential the “shooters” understood and applied these principles. CENTAF/JA emphasized the need “to ensure that your commander, war planners, aircrews, and security police not only understand the ROE and basic LOAC principles, but also what you can do for them and how you can be contacted if a real-time contingency occurs.”⁵⁴ Base Staff Judge Advocates (SJAs) were tasked with training personnel at their locations on LOAC principles. Training for aircrews and security police — who had a greater likelihood of engaging hostile forces — was emphasized.⁵⁵ SJAs provided the necessary manning and resources in support of this priority objective.⁵⁶ In view of the fact that most locations only had one judge advocate assigned, this requirement became a high priority item for each judge advocate to accomplish.⁵⁷

Judge advocate advice “in the field” on LOAC and ROE went beyond classroom-style training. CENTAF/JA urged that a reliable means of communication between the commander/operational forces and judge advocates be maintained to facilitate coordination between them.⁵⁸ Operators were able to contact their JAG in the event of a real-time emergency.

These initiatives made operation DESERT STORM “the most legalistic war we’ve ever fought.”⁵⁹ The war greatly enhanced and altered the role that judge advocates play during operational planning.⁶⁰ As a result, any mistrust commanders had concerning their lawyers faded away as they came to appreciate what judge advocates had to offer them as advisors. Judge advocates were no longer viewed as obstacles.⁶¹ The JAG contribution to the war effort was highlighted in DoD’s final report to Congress.⁶²

The Stateside Experience⁶³

While deployed judge advocates and paralegals can point to unique experiences during their time in the AOR, stateside legal offices can likewise point to unique experiences. Almost overnight, base legal of-

fices experienced a massive increase in legal assistance in support of the deployment, e.g., wills, powers of attorney and notary service. Base legal offices easily saw a doubling or a tripling of their workload during the early stages of the deployment. Despite Air Force members having the opportunity to obtain these important documents under calmer circumstances, the crisis served as a wake up call that they had to obtain these documents for their families. The increased workload was due in significant part to this last minute preparation by Air Force members before they deployed.⁶⁴

Base legal offices responded to the increased workload by providing briefings about wills and powers of attorney to large groups of Air Force personnel in order to make efficient use of the limited time they had to assist their clients.⁶⁵ Air Force family members were also briefed to ensure they had the requisite information.⁶⁶

In some instances, Area Defense Counsel assisted the base legal office with wills and powers of attorney, closing their offices for a portion of the day.⁶⁷ In at least one instance, a major command legal office likewise shut down to assist the base legal office.⁶⁸ Compounding their difficulties, base legal offices were also losing personnel to deployment.⁶⁹ The Judge Advocate General Department made use of reservists to backfill positions vacated by deployed, active duty judge advocates.⁷⁰

Conclusion

This article only hints at the multitude of ways JAGs fulfilled their vital role in the Air Force mission accomplishment. Much more could be said about legal assistance, claims, relationships with various host countries, contracting within the AOR, and so forth. Even after the expulsion of Iraq from Kuwait, JAGs did not “stand down” in their legal work. Operations DESERT SHIELD and STORM revealed deficiencies in the way the legal matters were normally addressed.⁷¹ These deficiencies were identified and corrective action taken. The best example concerned the Soldiers’ and Sailors’ Civil Relief Act (SSCRA). Congress quickly revised the SSCRA when service members experienced difficulties exercising their rights under the Act.⁷²

Operation DESERT STORM has been called the “lawyer’s war.”⁷³ Judge advocates were deployed throughout the AOR.⁷⁴ Their contributions were acknowledged by then-Chairman, Joint Chiefs of Staff, General Colin Powell when he observed that: “Decisions were impacted by legal considerations at every level, [the law of




Photo courtesy of SMSgt Carole Langdon

SMSgt Carole Langdon.

war] proved invaluable in the decision-making process.”⁷⁵ In contrast to the American experience in Vietnam, commanders willingly sought out legal advice concerning the law of armed conflict (LOAC).⁷⁶

Operations DESERT SHIELD/STORM forced reconsideration of the role of judge advocates and paralegals in supporting contingency operations. Since Operations DESERT SHIELD/STORM, judge advocates and paralegals have deployed in support of a growing number of contingencies around the world at a pace not previously experienced. As a result, that body of law we call “operations law” has become more important to judge advocates and their commanders. Due to its success during Operations DESERT SHIELD/STORM, CENTCOM’s General Order #1 has served as the model for subsequent US deployments for other contingencies.

While the Air Force refines the Expeditionary Aerospace Force concept in response to the post-Cold War world, judge advocates and paralegals will continue to deploy in support of contingencies into the 21st Century. 

¹ Americans refer to the war as the “Gulf War,” however in our enthusiasm to discuss “our” war, we forget that the Iraqis and Iranians fought for eight years from 1980 to 1988. See R. Ernest Dupuy and Trevor N. Dupuy, *The Harper Encyclopedia of Military History: From 3500 B.C. to the Present*, 4th Ed (1993), pp. 1469, 1477 [hereinafter Dupuy].

² Dupuy, *supra* note 1, at pp. 1477-78. Five factors motivated Iraq: (1) Iraq could not repay the \$80 billion borrowed from Kuwait and the Kuwaitis were not willing to forgive the loans; (2) Kuwait presented a rich, tempting target; (3) Iraq alleged Kuwaiti oil drilling in a disputed oil field; (4) Kuwaiti overproduction of oil which played a major role in depressing oil prices (thus having an indirect effect on Iraq’s ability to repay its loans); and (5) the Kuwaiti Emir declined to engage in face-to-face talks with Saddam Hussein which was viewed as a personal insult. See Bruce W. Watson, *et al.*, *Military Lessons of the Gulf War*, Presidio Press (1991), p. 17 [hereinafter Watson].

³ Dupuy, *supra* note 1, at p. 1478.

⁴ *Id.*

⁵ *Id.*

⁶ Watson, Appendix E, *supra* note 2, at p. 61. In addition, half of the Strategic Air Command’s 600 tanker fleet supported the deployments. *Id.* at p.79, note 3. During this time frame, over 55,000 Air Force personnel deployed to the AOR. See *Airpower in Operation Desert Storm*, USAF Factsheet 91-03, Special Edition. The Air Force Reserve recalled 34,634 reservists to active duty with approximately 15,000 deploying. See, Stephen M. Duncan, *War Confirms Total Force Policy*, *The Officer*, July 1991. In addition, 12,404 Air Guardsmen entered federal service during the crisis with 5,240 deploying to the AOR. See *Air National Guard Heritage* (visited January 27, 1999) <<http://www.ang.af.mil/ngb/paih/heritage.htm>>.

⁷ Watson, Appendix E, *supra* note 2, at p. 241. A significant percentage of the force deployed to the Gulf came from the Reserve Components. As of 10 March 1991, 227,657 reservists had been recalled to active duty with approximately 189,000 reservists deployed to the AOR. *Id.*

⁸ Each of the services deployed judge advocates to the AOR. See Steven Keeva, *Lawyers in the War Room*, *ABA Journal*, December 1991, p. 52 [hereinafter Keeva].

⁹ The Army, Navy and Marine Corps sent 228, 31, and 46 judge advocates, respectively, for a total of 354 judge advocates in theater (including Air Force attorneys). In addition to the Middle East, Air Force judge advocates and paralegals were sent to Europe and other locations in support of Operations Desert Shield/Storm. See *Operation Desert Shield/Desert Storm After Action Workshop*, 10 –



“Blitzkrieg!” A paralegal reads the *Gulf News*.

14 June 1991, Maxwell AFB, Alabama [hereinafter After Action Workshop]; See also HQ TAC/JA document, Operation Desert Shield JAG Personnel Listing/Location, 15 January 1991.

¹⁰ For an excellent overview of a judge advocate’s responsibilities during contingency operations, see *Lawyers’ Role in Combat*, *Federal Bar News and Journal*, Vol. 30, No. 3, (March 1983).

¹¹ The Judge Advocate General’s Department also realized that it was necessary to provide guidance to the field. The Department published five Issues Committee Reports on 17 August 1990, 24 August 1990, 30 August 1990, 13 September 1990, and 19 November 1990 setting out policy guidance for numerous issues that could arise in the AOR. A host of issues were addressed within the reports to include claims, legal assistance, contracting, customs, UCMJ actions and military justice issues, veteran’s re-employment rights, and, of course, LOAC. The Issues Committee Reports provided the starting point to begin analysis and discussion about a specific issue for deployed legal personnel. The reports were timely and very helpful.

¹² CENTAF/JA memorandum, Operation Desert Shield – Policy Letter, 31 August 1990.

¹³ *Id.*

¹⁴ CENTAF/JA, CENTAF Staff Judge Advocate Guidance to Field Judge Advocates: Operation Desert Shield, 29 August 1990 [hereinafter CENTAF Guidance].

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See HQ TAC/JA document, Operation Desert Shield JAG Personnel Listing/Location, 15 January 1991.

¹⁸ CENTAF Guidance, Attachment 1, *supra* note 14 (special emphasis placed upon what to do in the event a traffic accident occurred involving an American). A country study of the Kingdom of Saudi Arabia was also provided to the field describing the country’s political, social and legal systems.

¹⁹ CENTAF/CC Memorandum, Awareness of Host-Nation Sensitivities, 15 August 1990 and CENTAF/CD Memorandum, Saudi Sensitivity to American’s [sic] Conduct, 4 September 1990.

²⁰ General Order #1, General Order for All U.S. Personnel Participating in or Supporting Operation Desert Shield, 30 August 1990, para. 3 [hereinafter General Order #1]. Paragraph 3 violations were punishable pursuant to the Uniform Code of Military Justice (UCMJ). *Id.*, para. 4.

²¹ General Order #1, para. 5, *supra* note 20. The paragraph imposed a duty requirement upon servicemembers to respect host-nation law. “Flagrant” paragraph 5 violations were punishable pursuant to the UCMJ. *Id.*

²² Which is not to say violations did not occur, just that they were kept to a minimum. As of June 1991, there were 2 potential GCMs and 3 potential SPCMs being processed in CONUS for matters arising in the AOR, but not completed by the conclusion of hostilities in March 1991. Statistical comparisons between the AOR actions and the “rest of the USAF” revealed lower rates per 1,000 in the AOR for both courts and Article 15s when compared to the rest of the Air Force. The rate in the AOR for courts-martial was .005 per thousand; outside the AOR it was 1.28 per thousand. The Article 15 rate in the AOR was 6.1 per thousand compared to 13.52 per thousand outside the AOR. An added bonus accruing to the Air Force was a drop in overall military justice activity outside of the AOR when compared to the same period the previous year. See *supra* note 9, After Action Workshop. The statistics are revealing and indicate the value of both the General Order and the heightened operational tempo for Air Force members from August 1990 to March 1991.

²³ Also a strong consideration, with respect to the prohibitions concerning alcoholic beverages and gambling, was that good order and discipline be maintained among deployed forces.

²⁴ Provisional units were established during the September–October 1990 time frame. SPMCA were designated on 26 December 1990 by CENTAF. After Action Workshop, *supra* note 9.

²⁵ The inherent authority of the senior officer to take or exercise command was deemed to have limited value since the “unit” to be commanded was, at best, not capable of being defined without dispute. See *supra* note 9, After Action Workshop.

²⁶ *Id.*

²⁷ Author’s notes reflecting personnel data outlined at a February 1991 staff meeting at the AOR location.

²⁸ After Action Workshop, *supra* note 9, and Author’s notes.

Inside 35 TFWD/JA legal office.

Photo courtesy of SMSgt Carole Langdon



²⁹ After Action Workshop, *supra* note 9.

³⁰ HQ USAF/JAJT Staff Summary Sheet, Trial Judiciary Plan for Operation “Desert Shield,” 3 October 1990 (with plan attached). The information that follows in the paragraph is contained in this document unless otherwise noted.

³¹ The summary court-martial conducted in theater did not require the presence of a military judge, circuit trial counsel, or a court reporter. Legal personnel at the deployed location handled administrative processing of the matter.

³² *U.S. v. Braswell* (GCM), *U.S. v. Perry* (SPCM), and *U.S. v. McClain* (SCM).

³³ *U.S. v. Braswell* and *U.S. v. Perry*. *Braswell* was tried on 11 January 1991 and *Perry* was tried on 12-13 January 1991. See Lt Col James A. Young, III, Trip Report, 17 January 1991 [hereinafter Trip Report].

³⁴ Trip Report, *supra* note 33, and comments provided by MSgt Carson (E-mail copy on file with AFJAGS). MSgt Carson was tasked with the responsibility of developing and safeguarding the records of trial. *Id.*

³⁵ *U.S. v. McClain*. Major Jack Else was designated the summary court-martial officer and had been deployed to the AOR since August 1990. The summary court-martial was conducted on 14 January 1991.

³⁶ Trip Report, *supra* note 33.

³⁷ Trip Report, *supra* note 33. A problem that also could have arisen was the lack of research material or Military Justice Reporters, if a complicated motion or issue came up during the course of these courts-martial. *Id.*

³⁸ Trip Report, *supra* note 33, and comments provided by MSgt Carson. (E-mail copy on file with AFJAGS).

³⁹ Trip Report, *supra* note 33, and comments provided by MSgt Carson (E-mail copy on file with AFJAGS). The accused had waived his right to an Article 32 hearing and plead guilty at trial. The proceedings went judge alone to the sentencing phase. *Id.*

⁴⁰ Trip Report, *supra* note 33, and comments provided by MSgt Carson (E-mail copy on file with AFJAGS). The accused pleaded guilty in this case. He elected to go with panel members for the sentencing phase. *Id.*

⁴¹ The biggest problem was retrieving the judge advocate designated as the summary court-martial from his deployed location. SSgt Kenneth Madero, who had deployed with me in August 1990, and I had to get Major Else for our court-martial. Without complete faith in our land navigation skills across what is possibly the bleakest terrain on earth, we weren’t thrilled about traveling that far from what had been our “home” for about four months. In addition to making sure we did not get lost in the middle of an unforgiving desert, we had to be careful not to venture into one of Islam’s holiest sites. We would have to skirt the “suburbs” of the city to get to Major Else’s location. At some point near the city we saw big signs with warnings displayed in seven languages that non-Moslems were not to go to the downtown area and were to turn back. The language was sufficient to convince us that we did not want to go downtown. In any event, due to the notorious lack of detail in the map we had, we got lost and were heading downtown; to a place no Christian man had gone (at least since 622 AD). We stopped to get directions from two Saudi National Guardsmen when the language on the signs got even more threatening. I half expected that at least one of the Guardsmen knew enough English to help us. Unfortunately, neither one did. After a lot of gesturing and pointing, SSgt Madero and I figured out we had missed a turn about two miles back. We were able to try the court-martial, completing it on 14 January 1991, shortly before the air offensive began. The accused had previously turned down an Article 15 and demanded a trial by court-martial. He subsequently waived objections to the summary court-martial, plead not guilty to one charge of indecent assault, and was acquitted. After the court-martial was completed, we were able to get Major Else back to his location without any difficulty before the air offensive began.

⁴² See HQ CENTAF/JA Report to HQ USAF, Judge Advocate



Weekly Report, 4 January 1991. 54 of the pending matters involved enlisted personnel with another 3 concerning officer misconduct. *Id.* Five officer Article 15s had been completed up to this time. *Id.*

⁴³ Keeva, *supra* note 8, at p.55.

⁴⁴ *Id.*

⁴⁵ *Id.* at p. 56

⁴⁶ See Vietnam articles in this edition of The Reporter.

⁴⁷ Keeva, *supra* note 8, at p. 55.

⁴⁸ *Id.*

⁴⁹ Adam Roberts, The Laws of War in the 1990-91 Gulf Conflict, International Security, Vol. 18, No. 3, Winter 1993/94, p. 150 [hereinafter Roberts].

⁵⁰ Final Report to Congress, Conduct of the Persian Gulf War (April 1992), Appendix O, p. 607 [hereinafter Final Report]; *Also see*, Roberts, *supra* note 50, at p. 135 and Keeva, *supra* note 8, at p. 59 (lawyers absolutely indispensable to military operations); *Also see generally* Lt Col James G. Zumwalt, II, The “Law of War” – Bringing Civility to the Battlefield, Marine Corps Gazette, February 1995, pp. 45 – 47.

⁵¹ Keeva, *supra* note 8, at p. 54.

⁵² *Id.* at p. 57.

⁵³ *Id.* at pp. 57-58.

⁵⁴ CENTAF/JA Memorandum, Operation Desert Shield – Policy Letter, 31 August 1990.

⁵⁵ CENTAF Guidance, *supra* note 14.

⁵⁶ *Id.*

⁵⁷ *See supra* note 17.

⁵⁸ CENTAF Guidance, *supra* note 14.

⁵⁹ Keeva, *supra* note 8, at p. 52 (quoting Colonel Raymond Ruppert, Staff Judge Advocate for CENTCOM during the war).

⁶⁰ *Id.* at p. 59.

⁶¹ *Id.*

⁶² Final Report, *supra* note 51, at p. 607.

⁶³ *See generally supra* note 9, After Action Workshop unless otherwise noted.

⁶⁴ Demand for wills, powers of attorney, notary service and the like by Air Force members continued after their arrival in the AOR. Through 4 January 1991, the various legal offices in the AOR saw 11,867 legal assistance clients. *See* HQ CENTAF/JA Report to HQ USAF, Judge Advocate Weekly Report, 4 January 1991. In short, base legal offices throughout the Air Force saw an incredible increase in their workloads. *See supra* note 9, After Action Workshop.

⁶⁵ The facts in this paragraph are from interviews with Major Michael Guillory, USAFR, Adjunct Instructor, AFJAGS; Major Lisa L.

F15s and F16s over burning oil fields.

Turner, Instructor, Operations Law Division, AFJAGS; and Major Guillermo R. Carranza, Instructor, Civil Law Division, AFJAGS (February 1999).

⁶⁶ Before the author deployed to the AOR in August 1990, he participated in such briefings for Air Force family members.

⁶⁷ Conversation with Major Mike Guillory, USAFR, Adjunct Instructor, AFJAGS.

⁶⁸ *Id.* (The Air Force major command that did so was the Air Force Special Operations Command.)

⁶⁹ The loss of office personnel could come quite suddenly. The author was on the mobility processing line assisting Air Force members with their legal questions when a telephone call came from the legal office notifying him to “get in the mobility line” for deployment to the AOR shortly after the deployment began in August 1990. When the author left, three of six attorneys originally assigned to the office remained behind (the SJA had PCSed that summer and another retired before the crisis began).

⁷⁰ *See supra* note 9, After Action Workshop. The author’s position was filled by a series of Reserve judge advocates who assumed responsibility for his duties during his deployment.

⁷¹ *See generally supra* note 9, After Action Workshop. The suggestions submitted in response to the Department’s request for proposals to improve the way it addressed various legal matters covered a myriad of areas, to include mobilization and deployment issues, MAJCOM support, mobility legal assistance, Guard and Reserve issues, voting, computer and legal research support, military justice issues, procurement issues, international and operations law topics, and base legal operations in wartime, both in CONUS and in the AOR. *Id.*

⁷² *See* PL 102-12 amending 50 U.S.C. App. Sections 501 – 593.

⁷³ Keeva, *supra* note 8, at p. 52.

⁷⁴ *See supra* notes 8 and 9.

⁷⁵ *See supra* note 51, Final Report, Appendix O, p. 605.

⁷⁶ *Id.* at p. 632; *Also see generally*, Lt Col John G. Humphries, Operations Law and the Rules of Engagement in Operations Desert Shield and Desert Storm, Airpower Journal (Fall 1992) and Keeva, *supra* note 8, at p. 56.

Fighting the Storm

LIEUTENANT COLONEL RONALD M. REED

I won't presume to try and tell the story or describe the experiences for all judge advocates (JAGs) deployed during Operation DESERT STORM. Each location had its own personality and challenges for the deployed JAG. I will try and describe my unique experience from the time I boarded a KC-135 on a cold Michigan morning for the 17-hour flight to Jeddah, Saudi Arabia, until I returned to the sounds of Lee Greenwood singing "Proud to be an American!"

I was a volunteer to go to Desert Storm. It was a difficult decision for my family and me as we were expecting our third child sometime in early 1991. I was the Deputy Staff Judge Advocate (SJA) at Wurtsmith Air Force Base (AFB), an old Strategic Air Command (SAC) base now closed, that had B-52 bombers and KC-135 tankers. Our wing did not fully deploy in Desert Shield so we waited and watched as the situation in the Gulf developed.

This was a defining assignment for me. I had been in mobility positions at various SAC bases for three assignments. Mobility for me had been packing a bag, processing through a mobility line and maybe getting on a bus to sit and wait until the exercise was over. Desert Storm brought a whole new sense of urgency and importance to what mobility was all about. Before, chemical warfare training was a hassle – now, it could mean life or death.

I was notified of my selection to deploy the day before Christmas 1990. I, as opposed to many less fortunate JAGs who deployed, was able to spend Christmas with my family. Two days later, I kissed my wife and boarded a KC-135 for a non-stop flight to Jeddah.

Jeddah, a city of 1.2 million people on the Red Sea coast of Saudi Arabia, was an interesting location. We operated out of the gigantic Jeddah International Airport known to most Muslims as the Gateway to Mecca because of the close proximity of Jeddah to that holy city. We were billeted in compounds spread throughout the city and transported in buses to the base every day. By all accounts, the living conditions were very tolerable. Most personnel were billeted in air-conditioned rooms or hooches and some even had cable TV!

Press coverage of our operation was kept to a minimum because many of the B-52s flying out of Jeddah had been sitting nuclear alert before deploying to Jeddah. We had no CNN coverage and media attention was focused on B-52s stationed outside of Saudi Arabia. Having that type of aircraft so close to the holy city of Mecca could have given Iraq

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Photo courtesy of Lieutenant Colonel Ronald Reed

Maj Reed and TSgt Taft in the legal office at Jeddah

some political rhetoric to try and divide the coalition. We didn't mind the lack of coverage in Jeddah. We realized the higher you stick your head up, the bigger a target you become.

I was selected to deploy because the operations out of Jeddah, which had been primarily National Guard tanker operations, were about to change. Jeddah was to become the base for B-52s deploying to Saudi Arabia at the start of Desert Storm. Prior to my arrival, one active duty Captain (now-Major Leonard Broseker) was the only JAG who had deployed to Jeddah and remained since August of 1990. Prior to my arrival, a series of ANG JAGs deployed to be the SJA and rotated out at 30-day intervals. Because SAC wanted a "permanent" SJA at Jeddah, I deployed with one paralegal (now-TSgt Robert Taft) to augment the paralegal who had been working in the legal office since August (SSgt Kenneth Madero).

One of the most unusual aspects of the deployment was the command relationships that I faced as SJA. I worked directly for the 1701st Strategic Wing commander (an Air National Guard (ANG) Colonel from the Kansas Guard) who was atop of a triangular command structure with two wings reporting to him, each commanded by an active duty Colonel. One Colonel (the 1708th Bombardment Wing) was my Wing Commander from Wurtsmith AFB and the other (the 1709th Air Refueling Wing) was a KC-10 Wing Commander from Seymour Johnson AFB. Prior to my deployment, I had not met the ANG Colonel for whom I worked. Nor had I met or worked with most of the staff of the 1701st Strategic Wing. The lack of an existing relationship with that organization added a chal-

lenge to an already demanding deployment. Trying to establish one's credibility and trustworthiness is difficult even when not in a wartime environment – these things can only develop through time.

Upon my arrival in December 1990, the base population was 1,800. During DESERT STORM it increased to more than 4,100. The base population was comprised of personnel from 378 different units from 105 different active duty, reserve and ANG bases. Very few personnel had ever worked or exercised with each other before we were amalgamated at Jeddah. While the mission was accomplished, the need for something like the Expeditionary Aerospace Force concept (units that will fight together train together) was evident.

At the peak of the war, we had more than 100 aircraft on the ramp (86 tankers (KC-135 A/Es and KC-10s) and 16 B-52s. The B-52s flying out of Jeddah flew more than 4,000 hours during 846 sorties and dropped one-third of the entire tonnage delivered on Iraq during the war (25,718,000 pounds of bombs). The tankers delivered more than 120,000,000 gallons of fuel to more than 25,000 receivers! Some of the most impressive sights I've ever seen were fully loaded B-52s taking off in cell to bomb their assigned targets and returning to base where they released their chutes to be loaded up and go again.

From a professional perspective, operating in a deployed environment was both challenging and rewarding. We operated the legal office 24 hours a day during the entire Desert Storm operation (no small feat considering we only had a four-person team). During the reception phase, we developed comprehensive handouts and briefings on Law of Armed Conflict, Prisoner of War Standards of Conduct, and Rules of Engagement. Our efforts, and the efforts of JAGs across the theater, helped to ensure collateral damage was minimized during the air campaign.

One of the skills they can't teach you at the JAG School is how to operate as a liaison between the local host nation authorities and military personnel. During one instance, I had to personally negotiate with the local Saudi prince to obtain the release of an Army enlisted driver who was involved in a fatal vehicle accident while driving his Humvee.

As was common throughout the theater, we briefed all Air Force personnel on host nation and religious sensitivities. These briefings were critical given the strict Islamic society in which we found ourselves. Our hard work was rewarded with no significant problems involving our 4,100 troops in a city of 1.2 million.

If military justice was "job one" during Vietnam, you could say that "job one" for us was anything that would help accomplish the mission by getting bombs on target and fuel in the aircraft. Whether it was legal assistance, claims, or military justice, the legal office at Jeddah did everything it could to support the mission.

To facilitate better legal assistance, I took the heretical step of making house calls at the seven deployed housing compounds located around the city. Many of the security personnel did not commute to the main base and the only way to meet their needs was to go to them. We accomplished wills, powers of attorney (POAs), affidavits, and helped personnel

with their taxes. If you ever start to wonder whether granting a General POA is really such a big deal, consider an ANG SSgt client of mine. Her 20-year-old son cleaned out her checking account, opened and charged up new charge accounts, neglected to pay her bills, sold her furniture, and defaulted on her apartment lease, all with a General POA. Needless to say, her ability to focus on the mission was severely impaired.

We processed several thousand dollars worth of personnel (P) claims (primarily due to lost clothing) and two Foreign Claims Act claims for more than \$5,000 (one for a fuel truck which collapsed on itself when the enlisted fuels person forgot to open the venting valve).

Military justice was not a significant problem (only four Article 15s in the four months of my tenure). The lack of alcohol combined with 16-18 hour workdays made everyone too sober and tired to get into trouble. We did conduct one of the three courts-martial tried in Saudi Arabia during Desert Storm. Ours was a Summary Court held in a smoking lounge at the base with the SJA from the nearby base at Taif coming over to be the Summary Court Officer.

The one thing you can expect during a deployment is the unexpected. In February of 1991, I served as the legal advisor to an AFR 110-14 aircraft accident investigation conducted at Jeddah. A KC-135 tanker encountered turbulence on its way to a refueling mission and entered a 180-degree "Dutch Roll." The pilot was able to recover the aircraft, but in doing so, the force sheared the inboard engine from the left wing. The inboard engine then struck the outboard engine which also sheared off. The pilot, an ANG pilot who had flown a similarly configured aircraft in a simulator for the civilian airlines, was able to bring the plane back to base and land with two engines on the right wing, blowing four tires. The damage was estimated at \$2.5 to \$3 million. The Vice Wing Commander from Grissom AFB, IN, deployed to Jeddah to be the Investigating Officer. Our office provided administrative support and transcription for the 18 witnesses interviewed as well as legal support for the investigation. Ultimately, the pilot was cleared and he received a Distinguished Flying Cross for his courageous efforts in recovering the aircraft. An interesting final note in that saga was the fact that the single shear bolts which affix the engines to the wings (about the size of a roll of life-savers) were nearly cracked all the way through on both engines on the right wing. The KC-135 nearly had become a glider!

The war ended on 28 February 1991. Capt Broseker and SSgt Madero returned to Castle AFB in California. The local Saudi prince threw a huge party for the base on the 11th of March, carpeting an entire parking lot with Persian rugs! It was nearing time for everyone to return. The Saudis were anxious to get us out of Jeddah before the Haj (the annual Muslim pilgrimage to Mecca) started. SSgt Taft and I left Jeddah on Tuesday, 19 March 1991, to return to Wurtsmith AFB. Bob returned to his family and I returned to my family to meet and hold a daughter that was born on the 16th of February. Those few months in 1990 and 1991 are forever etched in my mind. As Lee Greenwood said, "God Bless the U.S.A."



Courts Before the Storm

MASTER SERGEANT CARRIE CARSON

I remember feeling a mixture of emotions upon being selected (by name) to be the paralegal to deploy to Saudi as a court reporter for the first three courts-martial to be held in-country. I was flattered and proud that my command thought so highly of me, but I was also a little scared as the deadline set by the United Nations for the withdrawal of Iraqi forces from Kuwait was rapidly approaching, and I'd never been in a combat environment. I was concerned about my personal safety and, more importantly, the well-being of my son because I was a single parent at the time. Despite how hard the military tries to ready us for contingencies and war-time, there is no preparation for the anxiety you feel when it becomes a reality. All sorts of conflicting emotions are present: fear, duty, selfishness, and selflessness to name a few.

My purpose in going was twofold. I was to secure the record and transport the court reporter equipment the Department had purchased specifically for deployment. In early January 1990, I met up with the military judge, Lieutenant Colonel James A. Young, at Langley AFB where we were briefed on our "mission," and I became familiar with the equipment. After a couple of days, the Lieutenant Colonel and I flew on military aircraft from Langley to Zaragoza AB, Spain. When we arrived in Spain, I was awestruck by the number of people staged there. So many people...so many lives. I wondered if they harbored the same fears that I did.

From Spain we went to Riyadh, Saudi Arabia. After further briefings on mission expectations, we were dispatched to Tabuk, the site of our first court. This was a general court-martial of an NCO charged with theft of the flight surgeon's trauma medication and possessing/using LSD. Because of the strict Islamic laws concerning drugs, the case was handled expeditiously and discretely. The trial took place in the office of the Deputy Commander for Maintenance, which was large enough only for Judge Young, opposing counsel, the accused and his Security Police escorts, and myself. The case was a judge alone guilty plea, and moved very quickly. As soon as it was over, we trundled our many bags (professional gear, personal gear, chemical gear, and court reporting equipment) to the flightline and we returned to Riyadh on a British military aircraft.


Master Sergeant Carrie Carson is the Defense Paralegal Superintendent for the Air Force Legal Services Agency, Randolph Air Force base, Texas. She has attended the NCO Preparatory Course, NCO Leadership School (Levitow and Communicative Skills Award recipient), NCO Academy (Distinguished Graduate), and has completed the Senior NCO Academy Course by correspondence. She has received her CCAF Degree in Paralegal Studies.

As we were coming in for a landing at Riyadh, the crew invited me into the cockpit and asked if I could pick out the runway from among all the lights. I had to admit that I could not. After pointing it out to me, they took their hands off the instruments and said, "Okay, Air Force gal, they never taught us how to land the thing. It's up to you." The aircraft pitched and rolled a bit, and afterwards, Judge Young asked me what I was doing up there!! It was a little bit of levity in an otherwise arduous schedule.

After returning to Riyadh, we slept for a few hours, and then flew to Dhahran where we were taken to King Fahd International Airport. The second court-martial involved an NCO charged with theft of funds from the field exchange he operated. Unlike the court at Tabuk, this trial was held in the huge, King Fahd conference room, lavishly decorated with Turkish rugs and mahogany furniture. This accused also pled guilty but requested court members for sentencing. Routine voir dire questions changed in significance when posed to this group of members... "Is there anything that is more pressing that could prevent you from focusing your full attention to this matter?" Well, of course, there was! War was imminent. The impending hostilities brought a new perspective to the proceedings.

After completing the court, Judge Young and I returned to Riyadh to await transportation back to the States. By now the deadline set by the United Nations had passed, and we could sense the anxiety in the troops around us. They were in various stages of readiness, but all had their weapons and chemical gear at the ready. There was also a sense of urgency from those trying to get us back to the States...they seemed to know something that we didn't.

By the time we returned to the United States, DESERT STORM had begun. We had just made it back, as the bombs began to drop. I felt lucky and grateful to be home, but I also felt very guilty and selfish for feeling that way. The soldiers and airmen deployed in Saudi were no longer faceless statistics, and I wondered why it was fair that I could return to safety after just two short weeks when they had been there so much longer. I had a really good cry during my layover at the Atlanta airport, and said a prayer for my comrades in Saudi.

I will never forget that deployment. In our daily routines we often take for granted that we are first and foremost military members who could be placed in harm's way at any moment. Now, every time I feel the urge to complain about having to work late or perform tedious duties, I remember my two weeks in the desert and realize how insignificant my troubles really are. 

The three loud cracks startled me — well, *scared* me, really. Of all things I never expected to be doing after graduating from St. Joe’s in 1972, dodging gunfire on the grounds of the US Embassy in Somalia was probably as close to the top of the list as anything. Yet

there I was in December of 1992, nervously walking onto what once had been the Embassy lawn and hoping that the sniper we heard earlier didn’t have me in his sights. This was one of those times in life when you really wonder how you got yourself to where you are. And *why*.

Actually, I never expected to even be in the military in the 1990s, let alone in Somalia. Despite my draft-induced ROTC commission my desire for a military career was, uh, “restrained” might be the word. I was delighted when my active duty service was delayed to attend law school at, yes, *Villanova*. Finishing there in 1975 and thinking I would serve only my four-year commitment, I volunteered for duty in Korea and England — to “see the world.” I thoroughly enjoyed both assignments and, as the years passed, the military became my home. So twenty summers after graduating from St. Joe’s, and fresh from a year at National War College, my wife and I headed for Tampa, Florida, the host to U.S. Central Command.

Central Command — General Schwarzkopf’s old outfit — is responsible for overseeing U.S. military interests in the Middle East and the Horn of Africa. Shortly after my arrival, news reports of starvation in Somalia were beginning to capture the nation’s attention. By August a U.S. military airlift of food from Mombasa, Kenya, to various relief centers in Somalia had begun.

Called “Joint Task Force PROVIDE RELIEF,” the airlift effort was a relatively small affair that never numbered more than 1,000 troops. Nevertheless, it eventually managed to deliver over 24,000 tons of supplies. (Not a bad record considering that the gigantic follow-on effort begun that December — Operation RESTORE HOPE — required 24,000 U.S. troops to deliver only four times as much tonnage.)

I arrived in Kenya in early November of 1992. As the Task Force legal officer, my job included interpreting treaties and international law, advising on contracts, and helping troops with their legal affairs. I also served as the plans and policy officer. In this capacity I gave press briefings, liaised with the State Department and relief organizations, escorted the media and VIPs, met with Kenyan authorities, and coordinated with our British and German allies.

The *real* work — the scary stuff — was not done by me; it was done by the aircrews who flew into the isolated and primitive Somali airstrips. In the months before the battle-ready U.S. combat troops of Operation RESTORE HOPE crept warily into places like Baidoa, Belet Uen, and Oddur, Air Force aircrews made daily flights to the same locations

Colonel Dunlap (B.A., St. Joseph’s University; J.D., Villanova) is the Staff Judge Advocate of 9th Air Force at Shaw Air Force Base. He is a member of the State Bar of Pennsylvania.

At the

Tip of

the Spear

COLONEL CHARLES J. DUNLAP, JR.



The SJA/ J-5 desk at Ops Center, JTF PROVIDE RELIEF, Moi International Airport, Mombasa, Kenya.

armed with little more than Swiss Army knives on their belts and the American flag painted on the tail of their big C-130 cargo planes.

That's not to say I wasn't obliged to go to Somalia. I was and did. Indeed, Operations PROVIDE RELIEF/RESTORE HOPE graphically reminded me that being an Air Force attorney is truly being a *military* lawyer. I also learned that lawyering is sometimes the easiest part of the job.

My first trip to Somalia — weeks before Operation RESTORE HOPE began — was to escort a congressional 'fact-finding' delegation. Towards the end of the flight, the visitors sheathed themselves in the bulletproof vests that the Embassy in Nairobi provided. Evidently, the Embassy — in an obvious attempt to cover all the bases should something happen — had scared the dickens out of some of these people.

One of the young congressional staffers asked why the military escorts didn't have the protective vests as well. At that time hostile fire was so rare that we just didn't use the vests and, in fact, they hadn't been issued. But worried that their absence might reflect badly on our Task Force, I explained as honestly as I could that the vests would not, in any event, stop the heavy caliber munitions that the Somali clans often used. Gloom began to creep over his face. To try to make him feel better, I hurriedly added that he'd be glad he had the vest if we hit a mine as we landed. (I had heard that a relief organization aircraft had once struck a mine.)

Hearing that, he stood up, ripped his vest off, plunked it on his seat, sat himself down, and smiled - satisfied that a key part of his anatomy was well protected. About then his plan started looking pretty darn good to me. I was truly relieved when we uneventfully landed. Needless to say, I got myself a

flak vest for the next trip. They make wonderful seat covers.

Another pre-RESTORE HOPE visit was to Oddur where the Task Force commander was to negotiate an agreement with the local elders to allow the repair of the town's dirt runway. Our engineer, a driver, a spare radioman, and I went along "in case we were needed." However, our general instructed us to stay at the airfield while he headed into town with a couple of escorts.

A short time later the C-130 that brought us suddenly — and completely unexpectedly — took off, leaving the four of us surrounded by hundreds of Somalis. I guessed that the general had run into some kind of a problem and had radioed the aircraft to take off as soon as it could. At least the crew and the plane could be saved. Recalling anti-terrorist training (from thirteen years before!), I began talking to the Somali gunmen at the airstrip in order to "humanize" our tiny band to our potential captors. I even made a show of having my picture taken with the "security" forces. It was a regular love-fest. *Not!*

When I got the photo developed, I saw one of my new-found friends standing behind me with a rifle seemingly aimed at my back. So much for my budding career as an escape and evasion expert. As it turns out, we really weren't in any danger; the general had merely arranged for another aircraft to pick us up. As tactfully as the circumstances permitted, I thanked him for keeping us so well informed.

After RESTORE HOPE began in December, several of our people, myself included, were ordered to Mogadishu to in-brief the newly arrived U.S. combat forces. Approaching the nearly roofless "city" in a pint-sized Army C-12 airplane, the destruction was as appalling as it was complete. After receiving clearance to land, we were directed to a long-abandoned taxiway. Bouncing along the broken pavement towards the parking apron we anxiously watched as our plane's wings sheared off overgrown bushes and saplings. We finally parked near a half-destroyed hanger filled with rusting MIG 17s and 19s — the remnants of the Somali Air Force.

We climbed out into the kind of broiling sun that reminded me of my days as a Wildwood Crest lifeguard. But South Jersey doesn't have the sullen, glaring Somali men who "greeted" us that day in Mogadishu. They kept their distance, but the kids — like curious children everywhere — cautiously approached and smiled shyly. There weren't any other Americans in sight. All I could think of was "we're not in Kansas anymore, Toto!"

Eventually we linked up with some Pakistani UN troops, and made our way via a careening helicopter ride to the ruined US Embassy where the Marines had set up their headquarters. Finding that my contact was still en route from the States, I happily accepted the command sergeant major's offer to show me around the compound. As we entered the yard, three *loud* gunshots sounded. *That can't be what I think it is!* raced through my mind. They sounded so close, I thought it must have been *our* troops firing.

A young Marine yelled, "Don't go out there, we're getting more sniper fire!" *Sniper fire? Yikes!* Struggling to maintain a semblance of composure, I thought, *Isn't this the part where we're all supposed to "dive for cover?"* The sergeant major looked at my drained expression with the kind of bored and practiced condescension that only a tobacco-chewing Marine Corps sergeant major could muster. "Sir, they're at least 400 meters away — they'll never hit us from there." Unconvinced, I thought *oh sure, famous last words!* But he was right. Never doubt a Marine Corps sergeant major.

The final stop on the Embassy tour was the sergeant major's pride and joy, the new flagpole. Atop the jury-rigged staff was a *huge* American flag. The Stars and Stripes, clean and radiant above all the destruction and squalor, was quite a sight. "Some people tell me it's too big, but I don't think so. I think it sort of lets everyone know we're here." He then hesitated and asked, with a bit more concern in his voice than he probably intended, "What do *you* think, sir?"

Pausing for just a moment I said, "I think you're right, sergeant major, I think

Colonel Dunlap and his “friend” with bow and poison arrows at Oddur, Somalia, (1992). Note the young man behind him and the gun position.

you got it *exactly* right.” His face brightened. “There you go, sir, there you go.” Satisfied, he smiled and turned away to go back to the endless task of looking after his troops. Like I say, *never* doubt a Marine Corps sergeant major.

The following day, armed U.S. helicopters destroyed several “technical” manned by Somali gunmen. (“Technical” were pickup trucks converted to carry heavy machine guns or recoilless rifles on their beds.) I heard the fire and saw the helicopters, but I was too far away to see the actual attack. Knowing what I know now, I think that this was the beginning of Somalia’s descent back into chaos that so many people tried so hard to prevent.

I made a few more trips to Somalia, the last being one to Baidoa, a devastated town inland from Mogadishu. We were to coordinate some airlift matters and to check on the progress that had been made since RESTORE HOPE started. While we found that most of the really shocking starvation had been abated, there clearly was still a lot of work to be done.

One of the places we visited was the town’s crowded hospital — really just a collection of somewhat cleaner low-roofed structures. Just as we entered the courtyard, an American doctor, who apparently heard us speaking English, burst out of one of the rooms. Masked and bedecked in full surgical regalia, he held his blood-splattered hands aloft as he hopefully — and hurriedly — asked: “Are any of you guys *doctors*?” Obviously disappointed and frustrated with our negative response (I didn’t have the heart to tell him I was a lawyer, let alone a *Philadelphia* lawyer!) he muttered an expletive and raced back inside. I never did learn what happened, but given the misery in that place it could have been any one of hundreds of medical crises.

I left the crowded hospital grounds somewhat dazed. Stepping over a mud puddle I was startled when it *moved*. Looking down I realized that the “puddle” was a horribly emaciated half-naked elderly woman who had curled herself up so tightly she was nearly level



All photos courtesy of Colonel Charles Dunlap

with the ground. Her strength gone, she evidently was hoping to receive some help at the infirmary. But the glaze in her eyes made it clear it was too late to make a difference. Everyone said (and it’s sadly true): Somalia may not be hell, but you can sure see it from there.

I saw little in Somalia, nor have I learned anything since I left, that suggests any near-term solutions to the grinding problems of that suffering nation. The country is devoid of resources and racked by frequent droughts. In addition, entire generations of young people not only are virtually uneducated, they will also suffer the lifelong mental and physical disabilities of prolonged malnutrition. Most problematic is the nature of Somali culture itself. Medieval and pre-political, it’s a society where allegiance to clan is indisputably the strongest social impulse. Western-conceived political solutions are simply unworkable among such people, especially given the ingrained xenophobia of most Somalis. Their contentious attitude, their often cruel treatment of women, and their openly anti-Christian and anti-Semitic views have combined to antagonize those who would seek to help them.


Forty-four Americans paid the ultimate price trying to help. Scores more have been crippled and disfigured for life. I suspect that there will be no “Wall” in Washington for these soldiers and airmen, and their sacrifice in Somalia will soon be all but forgotten. But I can’t forget.

Sometimes in Africa I thought of a discussion years ago in a philosophy class at St. Joe’s. The issue was whether

it was moral to feed starving people knowing that they would just produce yet another, even larger generation of starving people. To ask the question illustrates the difference between academia and reality: when you’re there, in the real world, there is no question - *where there is life there is hope!* As Americans we can always be proud that at least we tried to give the Somalis hope. The only true failure is the failure to try.

Before leaving Baidoa during that last trip we also visited a children’s feeding center. This particular center specialized in the most desperate hunger cases and was manned by young Irish nurses — saints, actually. These magnificent women labored tirelessly to save the sickest of the sick. Not only did the listless children bear the terrifying effects of long-term starvation, they also suffered from a variety of equally fatal communicable diseases.

Did I say the ladies were saints? Well they are, but they are very down-to-earth saints. And thoroughly *Irish* saints at that: they slyly told me how much they were looking forward to getting a beer during their next trip to Mombasa. Not having any beer, we gave them some candy packets that we had left from our Meal-Ready-to-Eat field rations — the nurses literally *squealed* with delight. I confess, these were the *only* squeals of delight associated with MREs that I heard during the whole deployment!

By the way, if you’re ever in East Africa and you hear some ladies just in from the bush speaking with an Irish brogue, buy them a beer. Consider that a direct order. 

"Congratulations on Your Selection To Visit the Desert"

MAJOR LEONARD L. BROSEKER

These words introduced me to Ali Al Jaber Air Base, Kuwait the summer of 1996 after I volunteered to go to the Middle East. My predecessor at Al Jaber wanted to put a positive spin on his welcome letter, but the words somehow put me on notice that I was about to embark on an experience I was not going to forget. Since I would be in Kuwait from July to October of 1996, he also felt it necessary to warn me "it is very hot here in the summer."

Despite my memories of the hot weather experienced during my time in Saudi Arabia while deployed in support of Operations DESERT SHIELD/STORM, I was eager to "go back to the world's biggest sandbox." The operational aspect the "real Air Force" provides is unique and is one that every JAG needs to experience.

My position at Al Jaber would be a multi-purpose one. Not only would I be the base Staff Judge Advocate, but the protocol officer, public affairs officer, and the host nation liaison officer. As it turned out, I also became the executive officer for Colonel William Holland, the new 4406th Air Support Operations Group commander, when he arrived in July, as well as his "staff," until his administrative personnel arrived (which they did just before I left in October).¹ It quickly became apparent that I would be busy, though not necessarily in my legal role.

Notwithstanding this observation, operational law issues were vital as illustrated in the next article written by a successor at Al Jaber. Operational law issues can quickly come to the forefront and become a matter of concern. For

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example, in September 1996, towards the end of my tour at Al Jaber, operational law issues consumed a great deal of my time when the Iraqi government attacked Kurds in northern Iraq and Coalition forces prepared to respond. Fortunately, the Iraqi government backed down before Coalition forces executed their missions.

I arrived at Al Jaber on 14 July 1996 where 122-degree heat greeted me along with my predecessor. He gave me a tour of the base, including a short tour of the Kuwaiti base headquarters building, and briefed me on the status of several matters, and the nature of the relationship with the Kuwaitis with whom I had to work. Unfortunately, my Kuwaiti counterpart had just left for professional military education and his replacement had not been identified. My predecessor left the next day and there I was at Al Jaber Air Base, ready to go to work, with only a rudimentary idea of what was expected of me. Needless to say, being able to go with the flow and being a quick learner was something I would have to fall back on to do my job.

I arrived in Kuwait about a month after the Khobar Tower bombing and, as a result, the theater was a magnet for high-level visits. Al Jaber played host to the Secretary of Defense, CENTCOM/CC, JTF-SWA/CC, ARCENT-K/CC, CENTAF/CC, and, of

course, the Downing Commission. CENTCOM/JA visited Al Jaber as well. The atmosphere at Al Jaber had dramatically changed after the bombing. Personnel were restricted to the base, unless they had official business requiring them to travel off base. Security measures increased dramatically in response to the bombing, the Downing Commission visit, and a CENTCOM security team visit. Where before, travel to Kuwait City was allowed for sightseeing purposes, we now found ourselves locked down and restricted to base. However, due to the nature of the mission, everybody was busy enough to avoid dwelling on this state of affairs (for the most part).

Although one of my major roles was that of the Staff Judge Advocate, legal work would not occupy the majority of my time at Al Jaber. Luckily, Air Force members at Al Jaber were working too hard and focusing upon the mission to get into trouble, thus the military justice workload was non-existent during my time there. I did some legal assistance, but averaged no more than one visit a day. Since the November 1996 elections were on the horizon during my stay there, I obtained the necessary materials for Air Force members to register to vote by absentee ballot from the Federal Voting Assistance Program personnel at the Pentagon. I processed





Tent City. (both photos) Ali Al Jaber Air Base, Kuwait (1996)

All photo courtesy of Major Leonard Broseker

one foreign claim at Al Jaber, but, since the Army had claims responsibility for Kuwait, my role was limited to gathering information about the claim and forwarding it to the Army JAGs at Camp Doha for adjudication. The legal work at Al Jaber definitely wasn't L.A. Law.

Rules of engagement were an important and significant aspect of the SJA's role at Al Jaber to ensure our pilots understood what was expected of them while in Kuwait. I paid special attention to the ROE and any changes to them, since they could have been called into play at any time. A pilot from the squadron in place at the time joined in teaching our ROE briefings. Thus, the pilots were briefed by a pilot who understood the ROE and could apply them to their situation, as well by the JAG who could provide a technical interpretation of what the ROE meant. It was an approach that worked well.

Once the Kuwaiti base commander identified my Kuwaiti counterpart, liaison between the two Air Forces went smoothly. Indeed, working with the Kuwaitis became my number one priority since our presence at Al Jaber was dependent upon a good working relationship with our hosts. Ensuring US Forces had access to water, fuel, food, and other assistance-in-kind items was critical and working with my Kuwaiti counterpart assumed special significance. Liaison with our hosts involved the mundane (getting the air conditioning fixed) to the mission-essential (access to water, force protection, etc.).

I found the Kuwaiti Air Force to be a good host, although I had to adjust to the "way they do things." (Believe it or not, Kuwaitis do not approach problems the same way we do.) I quickly realized that I could not approach an issue at Al Jaber the same way I would approach it in the United States. I learned finesse worked much better than the direct approach. As a result, though I had to invest more time in a problem than I normally would, I learned to be patient and understand the mission could still be accomplished at the Kuwaiti pace of doing things. Regardless of the issue, it was necessary to coordinate with our Kuwaiti hosts to ensure issues were addressed and problems generally avoided. In the process, I also got to know several Kuwaiti Air Force officers well.

I also interacted with third country nationals at the installation. You couldn't avoid third country nationals at Al Jaber, because they were extensively involved with running the base and implementing Kuwaiti decisions. I dealt extensively with Egyptian civil engineers concerning the planned development of the "Coalition Village" housing for our folks. A Pakistani enlisted member was responsible for giving us gasoline for our vehicles. The security personnel at several locations were Pakistanis. Indians and several African nationalities made up the general labor pool at the base. It was the United Nations in action.

In retrospect, my tour at Al Jaber was

a challenging adventure I could not experience at a CONUS duty station. Although the legal issues were not demanding, the challenges of interacting with our Kuwaiti hosts provided an opportunity to exercise diplomatic and negotiating skills. But, after spending a summer in the Kuwaiti desert, I was ready to go home. My welcome letter to my replacement began "Congratulations on your selection to visit the desert." (P.S.: I also warned him that it gets hot too.)

¹ Colonel Holland used this aspect of my role at Al Jaber with humorous effect at a US Embassy staff meeting after his arrival. He requested that I accompany him to the staff meeting for the purpose of letting them know who I was, since he might be asking me to fill in for him, if he was unable to attend a future meeting and the deputy group commander was not on station at the time. When Colonel Holland's turn to speak came, he began with a lengthy introduction explaining he was assembling a "staff" to assist him and outlining the various roles they would play in the 4406th. It became apparent to people in the crowded room that Colonel Holland was, indeed, assembling a large staff until he turned to me, asked me to stand, and introduced me to everyone there as his "staff." This prompted Ambassador Ryan to comment, "Dutch, you empire builder you," when everyone in the room realized Colonel Holland had pulled their collective legs. 🏹



Operations Lawyering

MAJOR DAVID WESLEY

Air Force judge advocates and paralegals have provided assistance and advice to operational commanders since the birth of our Department. The current pace of operations provides a constant reminder of our duty to remain prepared to advise *and act* based on the principles we seek to convey when we teach topics such as the law of armed conflict, targeting and weapon-eering, and force protection. I've met judge advocates who think they will never need to master these topics. Hopefully, the experience I relate below will convince the reader otherwise, for I believe the consequences of a legal error in the operational arena are as serious as any we face. I am also convinced our ability as officers is tested by such experiences in a unique and challenging way. As I came to understand in Kuwait, we

can (and, on occasion, must) do more than just understand the ROE and brief them to the pilots.

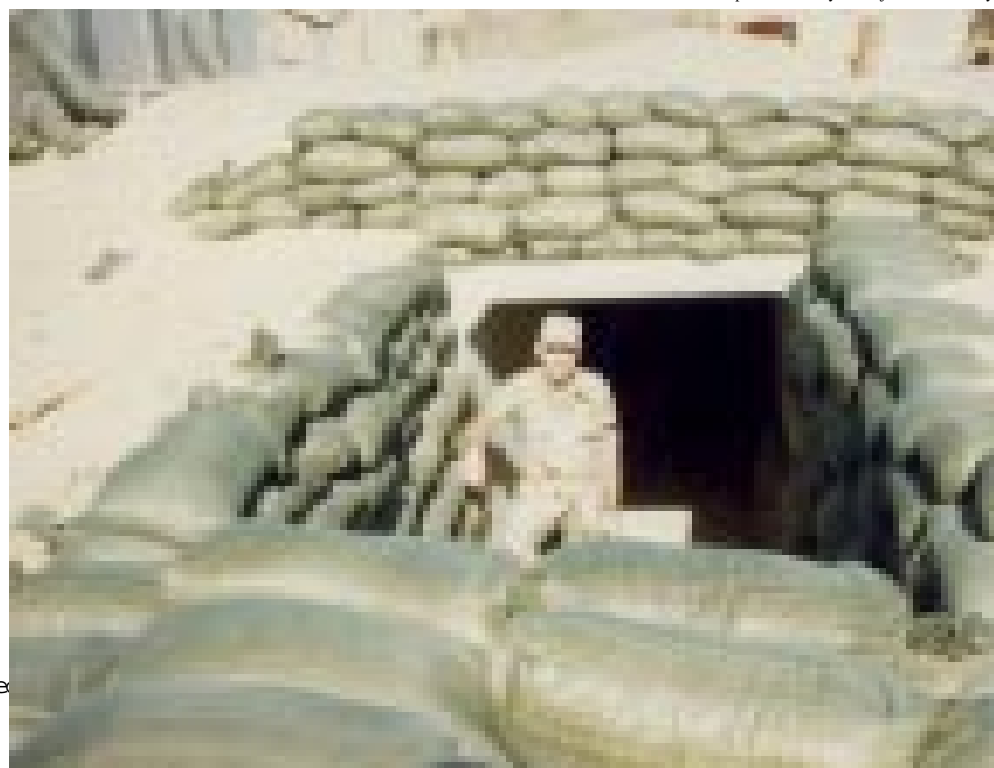
Take, for instance, a single event on an average day during my deployment to Kuwait in 1997. As the SJA for the 4406th Operations Group (Provisional) at Al Jaber Air Base, I served with about 1400 U.S. personnel less than 50 miles from the Iraqi border. We performed a host of missions in support of Operation

SOUTHERN WATCH including patrol of the southern "no-fly zone," defensive counter-air, and combat search and rescue. Our A-10s, F-16s, HH-60s, and F-117s prowled the skies day and night. Our radar controllers scanned the region for hostile activity and our Avenger teams (Army HUMMVEEs with Stinger pods) provided point air defense for the runways and infrastructure we used on this Kuwaiti F-18 base.

These operations and others were conducted in the tightest of security in the days following the bombing at Khobar Towers. When I arrived on station, the Group had been in THREATCON Charlie for over six months. In 11 years of active duty at stations around the globe, no THREATCON I have ever experienced (actual or exercise) approximated the blanket of coverage and protection afforded our tiny installation by the 4406th Security

Maj Wesley, SJA for 4406th Operations Group (Provisional) (1997).

All photos courtesy of Major David Wesley



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Forces Squadron. To learn their operations and be readily accessible to them, I kept my radio set to the SF channel and constantly monitored their operations. That orientation was to pay off in an important way.

On a warm day about half way through my tour, I was startled to hear a call on my radio announcing the discovery of an explosive device in a vehicle stopped at the secondary entry control point (ECP) of our compound. While we frequently exercised such scenarios, this was a call to “clear the net and clear the area” so that the explosive ordinance troops could approach a suspected explosive device — this was a real emergency. When the call came in, I was outside the compound. Realizing our Security Forces were closing streets surrounding the secondary gate, I set out on foot toward the only remaining ECP. As I got within about 100 yards of the guard shack, another member of our unit directed my attention to a car out in the desert about a half-mile away. The vehicle was literally bounding over the sand dunes toward the berm that formed the perimeter of our compound. I have no com-

bat training or experience with such matters, but it was immediately apparent that the bulk of our Security Forces had just been pulled to the opposite side of our perimeter and this vehicle was an immediate threat to what was now a lightly patrolled area.

I broke into a run toward the guard shack at the ECP. I had to slow down and raise my hands as the two young cops began training their M-16s in my general direction. Recognizing me, they relaxed a bit and I pointed to the car which was now less than a quarter of a mile from the berm. A call to the Security Forces Control by one of the young cops was met with a curt, “Stand by and clear the net!” because of the pre-existing problem with the bomb at our secondary gate. Given the car’s rate of closure with the berm, it was clear that these two cops were going to have to address the situation until backup was available. One of the cops and I climbed up on a jersey barrier in an attempt to get a better view as the car closed within a hundred yards of the berm. The car stopped suddenly, apparently stuck. The driver hopped out and began run-

ning toward the berm. The cop standing next to me said, “Sir.. is that a...?” I replied, “It looks like a rifle to me, Airman.” I recommended the cop call control again. This time, we were able to request a fire team for support and one was pulled from the bomb scene to assist us. The team was still a couple of minutes away when the rifle bearer slowed to a walk as he neared the berm. His decreased speed gave us a few more moments to consider whether to shoot.

To our great good fortune, the “Hummer” arrived with the fire team and our gunman was apprehended before he reached the berm. His weapon, an M-16, was confiscated along with two clips of ammunition, which he’d left on the front seat of his car. The man turned out to be an enlisted Kuwaiti Air Force troop who had been at marksmanship training that morning and had simply “gone for a drive” near our compound.

I’ve tried to relate these events as dispassionately as I can, but I still remember how afraid I was. These two young cops faced a difficult situation and they were clearly looking to me for

guidance. Their reliance on me resulted from their training and the gravity of the issue. If they did not shoot and this guy got over the berm, he could have done serious harm to our people and equipment. If they did shoot and he turned out to be non-threatening, relations with our Kuwaiti hosts could have been seriously damaged. Both the cops and I had been trained on use of force and the unit did flight level exercises on the subject routinely. Still, making the decision to shoot or not shoot in real time is never as clear as PowerPoint slides seem to make it. Such tests come without warning and one passes or fails them in an instant.

This experience and several others I had while at Al Jaber have thoroughly convinced me that judge advocates must continually prepare for the opportunity to advise a commander (or individuals) in the field. This is our highest calling and absolutely the most gratifying work I have ever done. 🏆

This is our highest calling and the most gratifying work I have ever done.

JAGs Around the Globe

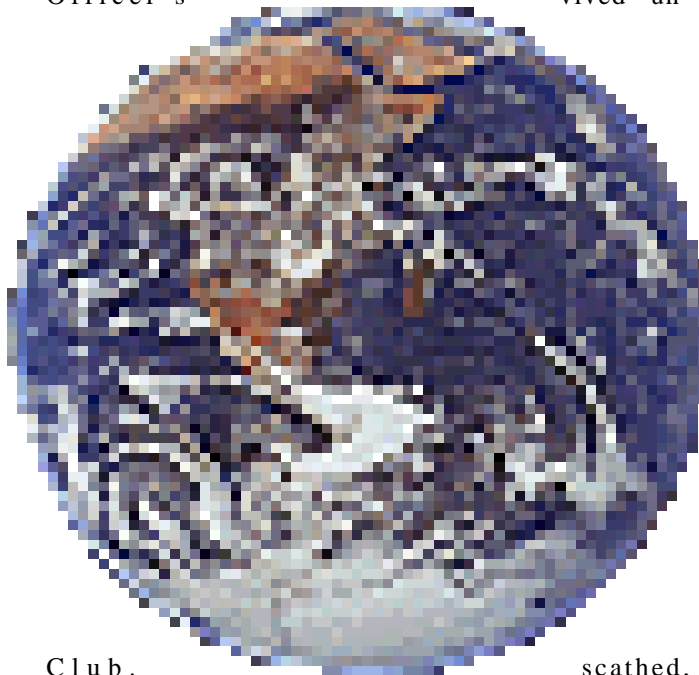
Judge Advocates have traveled the globe to such far-flung countries as Rwanda, South Africa, Honduras, Belarus, Estonia, Senegal, Sierra Leone, Bolivia, Ghana, Lebanon, Macedonia, Albania, and Australia, to name just a few. Often they are working in accordance with the Expanded International Military Education and Training (E-IMET) Program, or a military-to-military training program. They represent our nation in the finest manner as they aid in the implementation of significant U.S. foreign policy and promote universal respect for human rights. They lecture on a range of topics from law of armed conflict, civilian control of the military, peace operations, standards of ethical conduct, to the United States military justice system. They do an outstanding job of carrying our flag and the principles of democracy and freedom around the world. They return to the U.S. with a greater appreciation of our world community, our own freedoms, and occasionally with a good story. Here are a couple:

In January 1997, Defense Institute of International Legal Studies had completed its first-ever training in Ethiopia. The subject had been Disciplined Military Operations and the partici-

pants represented all service branches and the Ministry of Defense. At the conclusion of the seminar we, the US instructors, were the guests of honor at a banquet held at the Addis Ababa Officer's

get. Rejection was not an option in this social context, so after some mumbling about "service before self" (and generous helpings of the local libations), we partook of the feast, survived un-

"cogera" (taking) for arrest. Unfortunately, this particular Spanish phrase has a sexual connotation in Latin America. Needless to say there was an immediate peal of laughter. Interestingly, the incident put everyone at ease and helped open up communications between the participants.



Club. Our hosts really went "all out" for the event. They had a live band, traditional dancers and an elaborate buffet prepared. At the commencement of dinner, we approached the buffet enthusiastically. To our surprise, the main entree was a freshly slaughtered cow, chopped in big chunks, completely uncooked and wading in a pool of blood. This was not a marinated beef that you took over to the grill to be cooked - no, it was as "prepared" as it was going to

scathed, and had an otherwise unforgettable evening.

On another occasion, a JAG was briefing a room full of foreign officers on war crimes and had a slight translation problem during a briefing. When discussing the issues surrounding the arrest of suspected war criminals, the JAG could not remember the Spanish word for the word "arrest." Thinking quickly, albeit a little too quickly, he substituted

Another time, a team arrived in-country to give a weeklong set of briefings. Upon their arrival, one of the team members excused himself to use the facilities. As many of you know, conditions in other countries, even some European ones, are not always as good as in the US. The JAG walked into the restroom, shut the door behind and proceeded to take care of matters. When done, the JAG walked to the door to leave the restroom. Alas, there was no longer a door-knob! A careful examination of the room revealed no window from which an escape could be made. There was a tantalizing crack under the door, but our JAG was not quite thin enough to squeeze under. All that was left to do was pound on the door and hope for rescue. The JAG pounded, the host country officers came running and all was well that ended well. The JAG was no worse for the wear, and reportedly recovered nicely.

Disaster Strikes!

When disaster strikes, the General Claims Division of Air Force Legal Services Agency (JACC) has been here to help. Working hand-in-hand with judge advocates and paralegals in the field, they paid millions of dollars in claims over the years. During the 1990s alone, the General Claims Division oversaw payment of over \$55 million to nearly 15,000 victims of disaster.

In the summer of 1991, Mount Pinatubo near Clark Air Base in the Philippines exploded, bringing death and destruction with the molten lava. In July, judge advocates and paralegals, active duty and reserve, from other PACAF and stateside bases began arriving to help adjudicate and pay claims. What they found was the shocking havoc of dead animals abandoned inside base housing during the panic, rotting food in refrigerators, and layers of ash solidifying into rock everywhere. JACC provided

guidance and assistance to base claims offices around the world who were helping the evacuees.

When Hurricane Andrew devastated Homestead AFB, Florida in September 1992, JACC again provided guidance and assistance to the various bases where the evacuees found shelter. Following these disasters, JACC was instrumental in getting the Military Personnel and Civilian Employees' Claims Act (MPCECA), 31 USC 3721, amended to increase the maximum payment from \$40,000 to \$100,000.

JACC drew on its experiences with these disasters after a "500-year flood" hit the area around Grand Forks AFB, ND. JACC was instrumental in getting Congress to pass special legislation allowing the services to pay claims for loss and damage to personal property suffered by members of the armed forces residing in the area affected by the flood. The FY 98 Defense Appropriations Act authorized DoD to spend up to \$4.5 million of its funds for payment of personal property

claims to military members who were victims of the flood. Armed with this legislation, and with the help of a TDY team, the claims personnel of Grand Forks Air Force Base adjudicated and paid 199 claims totaling over \$1.5 million dollars.

JACC was heavily involved in providing assistance to the victims of Super typhoon Paka, which hit Guam on 16 December 1997. The eye of the storm passed directly over Guam, with the wind velocity of at least 236 mph. The wind may have been even more intense, but the instruments measuring the force of the storm broke when hit by the gale. The island was defoliated while Anderson AFB lost power and suffered structural damage to buildings. Additionally, the wind forced water into base quarters, even in those units which did not suffer structural damage. Legal personnel at Andersen AFB, with the assistance of personnel from 13 AF/JA and a 5-person TDY team from HQ PACAF/JA, processed 816 claims, paying out \$533,714.44. Back in Washington, DC, JACC had a representative in the Disaster Response Cell established by AF/XOOO to respond to the disaster.

(By Major Regina E. Quinn)



Destruction rained down by Mount Pinatubo.

Courtesy of TSgt Dionna H. Smith



Courtesy of TSgt Dionna H. Smith

Mount Pinatubo Explodes

Military Affairs

The General Law Division and an Interview with Mr. Everett G. Hopson

LIEUTENANT COLONEL JAMES E. MOODY

The General Law Division was established in 1949 as the Military Affairs Division under the Directorate of Civil Law. Over the course of the intervening years the Division's name changed—to Administrative Law (AF/JACM) in 1970 and to General Law (AF/JACM) in 1978. Finally, in 1991, it became a separate “three-letter” Division (AF/JAG), reporting directly to TJAG and physically located in the Pentagon.

A civilian has always headed the Division. The first, Mr. James Wrightson, served until his death in the mid-1960s and was succeeded by Mr. John Everhard. Mr. Everett Hopson took over after Mr. Everhard retired in 1975. Mr. Hopson's 19 year tenure as Division Chief has been longest. In 1994 Mr. Hopson retired. Between his departure and the 1995 arrival of his replacement — Mr. Harlan G. Wilder (the current Chief) — Mr. Richard Peterson led the Division. Mr. Peterson has been Deputy Chief since 1975. The Division Chief was originally a “supergrade” position. In 1979 it was converted to the Senior Executive Service (SES).

In 1969 the General Law Division moved to the Forrestal building in Washington, consolidating the entire TJAG Department under one roof. In 1977 it moved to Buzzard Point and two years later relocated again, this time to the Pentagon, room 5E409. It recently moved to 5E279 (Pentagon) as part of the Pentagon renovation project.

The General Law Division provides legal advice and guidance to the Air Staff, TJAG, staff judge advocates, and elements of the Secretariat, relating to

the organization, operation, personnel and functions of the Air Force. It reviews proposed personnel actions concerning officers. It also administers and has primary responsibility for the Air Force standards of conduct program, including financial disclosure reports, and renders opinions, reviews, and interpretations of laws, regulations and directives. Further, the Division provides legal and policy advice on a variety of matters, including the Freedom of Information Act; fraud, waste, and abuse; political activities; command and doctrine; Reserve and National Guard; general officer matters; drug testing; civilian personnel; equal opportunity, including sexual harassment; professional relationships and fraternization; cooperation with civilian law enforcement officials; medical-legal problems, including AIDS; spouse and child abuse matters; personnel issues, including separation, enlistment, promotions, and retirements; and IG and GAO investigations.

The General Law Division reviews and takes final Secretarial action on complaints under Article 138, UCMJ. It reviews all Air Staff legislative initiatives; comments on DoD legislative proposals; reviews enrolled bills, veto messages, and private relief bills; and provides legislative drafting services. The Division is also responsible for two policy directives and nine instructions. The Division originally served as the legal advisor to the Military Personnel Center and had a field extension office at Randolph AFB. Those duties are now performed by AFPC/JA.

The General Law Division is well-known for its publication of the *Civil Law Opinions of The Judge Advocate General of the Air Force* (OpJAGAF). These opinions, selected because of Air Force wide interest in their subject matter, are edited and sent to all legal of-

fices on a quarterly and annual basis. In addition, the General Law Division regularly publishes several years worth of opinions in the famous bound bluebook editions. The first of this series of “bluebooks” was released in 1978, covering the years 1961 through 1977. The books were intended to fill the need originally served by the Lawyer's Cooperative Publishing Co, which had discontinued its *Digest of Opinions of the Judge Advocates General of the Armed Forces*. Colonel Cecil W. Williams edited the first bluebook, which overlapped with the Digest. The 1961 through 1970 opinions were originally published in THE REPORTER; though beginning in 1971 they were edited and sent to the field directly from the Division just as they are today. Since then, there have been four editions of the bluebook; Volume 2 covering 1978 through 1983; Volume 3, 1984 through 1987; Volume 4, 1988 through 1991; and the recently published fifth edition containing opinions from 1992 through 1996. In addition to the quarterly, annual, and bluebook editions, the OpJAGAFs can be accessed electronically through FLITE.

For a clearer understanding of the issues that the General Law Division has encountered over the years, we sought the impressions of Mr. Everett Hopson:

Q: Can you tell us a little bit about the origin of the General Law Division?

Mr. Hopson: The General Law Division, under one name or another, is as old as the TJAG Department itself. It originally began as the Military Affairs Division and served as a catchall for whatever the specialist Divisions didn't do. Over the course of the years the list of areas which we dealt with expanded. When I took over the Division in 1975 we had no Freedom of Information Act,

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no operations law, no environmental law, though these came later. Environmental law eventually became a division of its own, but at one time it was a one-attorney branch in the General Law (then Administrative Law) Division.

Q: Why was General Law made a separate three-letter Division in 1991?

Mr. Hopson: It used to be part of Civil Law (JAC). It was decided to make JAC a litigation directorate and JAG would handle policy type issues. The name of the Division had been changed earlier to General Law because that term best describes its functions, whereas most people did not understand what Administrative Law did.

the regulation, with a lot of personal input from the Chief of Staff. He'd send back drafts with his handwriting in the margins with suggested precise wording and policy.

Another area we were involved in concerned the admission of women to the Air Force Academy, especially in the event a cadet should become pregnant. Because you can't be a cadet if you have dependents, the determination was made that a pregnant cadet could not remain at the Academy.

The Division was heavily involved in developing and implementing the policy on homosexual conduct in the military. In earlier years homosexual conduct raised security issues. We had

Twenty years or so ago, when longer hair was stylish, we had male reservists who would put their hair up and cover it with a wig. They were permitted to do that, so long as they had a good military appearance.

Q: You were a member of the TJAG Department for about 43 years. What changes have you noticed over time?

Mr. Hopson: I think the proliferation of specialists is the most noticeable. Of course, every specialist ultimately works for a generalist, and this had an impact on the duties of JAG, increasing our workload and responsibilities.

Thanks in no small part to Mr. Hopson's leadership, as well as to the

The General Law Division, under one name or another, is as old as the Department itself

Q: You mentioned that JAG areas of responsibility have expanded over the years. Are there any others in addition to the ones you have mentioned above?

Mr. Hopson: We early on became prime for standards of conduct and ethics issues. One thing we added was legal input into senior officer IG investigations. When I was in the Division we would, from time to time, be called to come to the IG office and discuss a case. When the Air Force began to crack down hard on fraud, waste, and abuse it was decided that JAG should review IG reports on general officers, general officer selects, and Senior Executive Service employees. We began doing so on a routine basis in 1989.

Q: What are some of the more interesting issues you saw come through the office during your tenure?

Mr. Hopson: We did a considerable amount of work in developing the policy on fraternization. For a long time the Air Force had no written policy on it. This became a matter of concern to the field. The General Law Division drafted

a lot to do with how the "Don't ask/Don't tell" policy was implemented in the Air Force.

AIDS became a high-visibility issue. Starting in the early 1980s the Air Force realized it had members who were HIV positive. Questions naturally arose from this fact; whether they could be discharged and, if so, at what point. The Air Force position became that members would not be discharged until they were unable to perform their duties. We also had input into questions of disciplining members who violate safe-sex orders.

Q: Any "off beat" issues?

Mr. Hopson: A while back we had an officer on active duty who wanted out and adopted a religion in which he shaved his head and wore robes. His commander finally got him back in uniform. The individual then alleged unsuccessfully that he had been appointed to a civilian position as a building inspector which, he urged, violated the Dual Civil Office Act prohibition and required termination of his commission.

We were involved in hair issues.

contributions of numerous others, the General Law Division is well placed to address whatever legal challenges the new millennium poses for the Air Force.



¹ Mr. Everett Hopson interview with author (11 January 1999). Mr. Hopson entered active duty as a judge advocate in 1951 and served for 20 years until his retirement as a colonel. While on active duty Mr. Hopson became the first member of the TJAG Department assigned to the DoD General Counsel's office. In addition, early on in his career he served as trial counsel in the case of *U.S. v. Covert*, which formed the basis for a landmark *Reed v. Covert*, 354 U.S. 1 (1957) decision concerning court-martial jurisdiction over civilian dependents overseas. (See Mr. Hopson's article *A Deadly Footnote to the UCMJ*, in this edition of THE REPORTER.) After retiring from active duty, Mr. Hopson worked as senior attorney for the U.S. Postal Service until he returned to the Air Force in 1973 as Deputy Division Chief of the General Law Division and Chief in 1975.

The Lawyer Is In

Thirty Years of the Air Force Medical Law Program

MAJOR RICK A. BECKER



The First Decade - The Forensic Medicine Program. Founded in 1969 as the Forensic Medicine Consultant-Advisor (FMCA) program,¹ the Medical Law program has been providing the Air Force Medical Service and legal offices specialized litigation support, health law counsel and training for nearly thirty years. Currently, the Medical Law program is set up in two parts: the Medical Law Branch of the Tort Claims and Litigation Division under the Air Force Legal Services Agency and Medical Law Consultants (MLCs) located at each Air Force medical center, the School of Health Care Sciences and the USAFE Office of the Surgeon General. The Health Affairs Branch that is collocated with the Medical Law Branch in Arlington, Virginia provides direct support to the USAF

an intensive seven-week medical law training course covering medicine, surgery, medical law, bio-ethics, hospital administration and risk management. The first FMCA course started on 4 August 1969 at Malcolm Grow USAF Medical Center, Andrews AFB, Maryland.⁶

On 1 December 1969, the first group of FMCAs reported to each of the Air Force's medical centers and to the School of the Health Care Sciences. They were tasked with providing specialized medical law advice, support and training to their assigned medical centers and the hospitals and clinics in their geographic region. As a new specialty, some questions arose about their role. This led to a Memorandum of Understanding (MOU) being signed on 8 November 1971 between TSG and

We have been able to furnish counsel to regarding all of their legal problems with

Surgeon General (TSG).

The need for a separate group of lawyers specially trained and concentrating on health law issues was first identified by TSG in a letter to the Office of the Judge Advocate General (TJAG) in 1965.² During the early sixties, TSG noted the dramatic expansion in liability for medical practitioners, both civilian and military. This expansion brought about not only greater numbers of medical malpractice claims³ but also new and increasingly complex medical legal issues.⁴ Recognizing early the need for a new group of specialized medical lawyers, TJAG authorized the creation of a new specialty with the title of Forensic Medicine Consultant-Advisor, now called MLCs.⁵ The Judge Advocate General also authorized the creation of

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TJAG containing more complete guidance on the role and duties of the FMCAs. That MOU also formally established the medical law course as well as the number and locations of the FMCAs. This information was subsumed into AFR 110-30, The Air Force Medical Law Program published in 1975. AFR 110-30 further delineated the organization, functions, responsibilities and activities of the program.⁷

In 1976, the Tort Claims and Litigation Division released the first issue of *The Handbook for Judge Advocates (Procedures for Use By AF Judge Advocates Investigating Medical Malpractice Claims Against the U.S.)*.⁸ The Handbook became the single most important tool for new FMCAs and base claims officers dealing with medical malpractice claims. An unofficial handbook, written by Captain Jeffrey L. Grundtisch, a FMCA at Keesler AFB, also gained a wide following. His book, *The Medical Law Quick Reference Guide*, contained an alphabetical listing of medical law topics with references on issues ranging from abandonment to x-rays.

The Tort Claims and Litigation Division was reorganized in 1977 in recognition of the growing amount and complexity of the claims and lawsuits. A larger staff with greater responsi-

bilities took the lead in every aspect of claims processing and litigation.⁹ One such responsibility was the revision of AFR 160-12, Medical Service Professional Policies and Procedures, which included guidance on such medical-legal issues as informed consent, abortions, patient rights and biological specimens for use in judicial proceedings.¹⁰

At the end of the Medical Law program's first decade in 1979, medical malpractice claims neared 300 claims, with \$5.2 million paid out. Also, with nearly 200 open lawsuits litigation became an increasingly important issue.¹¹ In the summer of 1979, *The Reporter* published a special medical law edition covering a wide range of emerging issues. Included in that edition were articles on liability in genetic counseling and testing, abortion law, sexual sterilization of minors and mental incompetents, legal determinations of life and death and release of information from Air Force medical records.¹²

One new challenging issue of immense interest to the military medical community which occurred in 1979 was the release of directives covering the implementation of 10 U.S.C. §1089, The Medical Malpractice Immunity Act. This Act, generally referred to as the Gonzales Act, had been passed in late 1976 to protect medical personnel from personal liability while acting within the scope of their official duties.¹³ This protection was of obvious interest to military medical providers who were reading nearly daily media accounts of the malpractice "explosion" in the U.S. with claims in the private sector increasing by over 50 percent from 1972 to 1978 alone.¹⁴ The existence of a dedicated cadre of medical law attorneys trained

ment comprehensive training on patient rights, special considerations of the terminally ill and refusal of care issues. A new AFR 160-41, Credential Review of Health Care Providers, was released with guidance on credentials revocation hearings.¹⁹

Of great interest to Air Force medical lawyers was the release in 1980 of comprehensive Department of Justice regulations for settling Federal Tort Claims Act²⁰ (FTCA) claims. These regulations, published at 28 C.F.R. §§14.1-14.11, provided new ammunition in claims officers' attempts to get claimants and their attorneys to adequately substantiate their claims. Also of interest to those in the medical law field was the successful litigation of the first medical malpractice suits falling under 28 U.S.C. §2680(h) exclusions for intentional torts.²¹

The scope of the Medical Law program continued to expand into particularly demanding areas such as bio-ethics and patient rights.²² Another growth area was the new emphasis on risk management (RM) and quality assurance in medical care delivery. A new RM program, designed to improve medical care at Air Force medical facilities and decrease malpractice claims began in 1980 under AFR 168-13, Risk Management in Medical Care Delivery (6 Apr 1981).²³ This new program required all Air Force medical facilities to meet national medical facility accreditation standards. It also created numerous new legal issues for medical lawyers such as the confidentiality and release of medical records and RM documents.²⁴

Finally, 1980 holds the dubious historical distinction of be-

commanders at all levels re- h the consequent acquisition of a repu-

in medical malpractice issues was seen as extremely valuable by the Air Force medical community and was a highly visible reminder of TJAG's support of the importance of the medical mission.

The Second Decade - The Medical Law Program Expands.

The first two years of the Medical Law program's second decade of service were extremely busy. An updated version of AFR 110-30, released in 1980, changed the titles of the FMCAs to MLC. A new MLC position at USAF Hospital Wiesbaden, Germany was added.¹⁵ Over 200 medical malpractice lawsuits were in litigation and administrative claims continued to grow.¹⁶ The implications of the statute of limitations case *United States v. Kubrick*¹⁷ were being explored. *Kubrick's* finding that a claimant must file their claim within two years from the time they knew, or should have known, the claimed injury occurred was to become one of the defining cases in medical malpractice claims. A demanding joint study was undertaken by the Office of the Surgeon General and Air Force medical lawyers on treatment of the terminally ill in Air Force medical facilities.¹⁸ As a result, the Air Force was among the first to imple-

ing the first time the unofficial MLC symbol, a JAG badge with a superimposed caduceus, was used in conjunction with a new column in *The Reporter* dedicated to medical law. That column, entitled Medical Law and Risk Management, was to remain a staple of *The Reporter* until 1986 when it was changed back to a general claims section.²⁵

The next two years, 1982 and 1983, also saw numerous medical legal changes and challenges. Large medical malpractice claims continued to demand attention with settlements reaching the million-dollar mark and beyond. In fact, the largest administrative settlement to date, \$1.7 million was paid to the family of a child severely injured during birth.²⁶ This large amount, however, was negotiated using a structured settlement device that greatly decreased the up-front cost to the government.²⁷ Litigation also continued apace, with 188 medical malpractice lawsuits in 1982 demanding over \$400 million in damages.²⁸ The program continued to expand to better serve the growing military presence worldwide. A new MLC position was added at USAF Regional Hospital, Clark AB, the Philippines.²⁹ AFR 112-1, Ch. 19, and *The Handbook for Judge Advocates Investigating Medical Malpractice Claims* were

[T]here has been dynamic development in all of the other fields of law in become increasingly complex, and so has international law. Our claims patent law are constantly changing; the complexity of our modern world is

both completely revised in 1983 to clarify the investigative process and evaluation of claims, particularly damages assessment.³⁰ AFR 160-12, Medical Services Professional Policies and Procedures was also revised with expanded guidance on abortions, informed consent and other medical law issues. Finally, a new Department of Defense Directive 6000.7 (29 July 1982) was released giving long anticipated guidance on dissemination of adverse information on medical practitioners.³¹

1984 saw a major change in the previously constant growth in medical malpractice claims. That year the numbers of claims received actually decreased. However, while the number of claims dropped, the amounts claimed and the complexity of the issues raised continued to grow. From mid-1983 to mid-1984, claims received dropped by a third, but pay out for administrative settlements substantially increased to an all time high of \$570,383,273.³² 1984 was also to become significant because of a change to AFR 112-1 concerning tracking of claims data. A four-part form, AF Form 2811, 2812, 2813, and 2814, was introduced to track quality of care information on each claim. The change required a standard of care determination be made on each claim. The gathering and control of this sensitive information was of obvious concern to Air Force medical professionals.³³ The Medical Law program and the TSG office on professional standards, working closely together, were able to use the credibility each had built up over the previous years to put the majority of providers' concerns to rest.³⁴

As a reflection of medical law's growing importance, in 1985 THE REPORTER published several medical law articles including medical malpractice in the aeromedical evacuation system,³⁵ valuation of medical malpractice cases and claims exposure for failure to report child abuse.³⁶ Due to impetus by Major General Morehouse for Judge Advocates to have more medical law background, Mr. Joseph A. Procaccino, Jr. (now the Legal Advisor to TSG and Chief of the Health Affairs Branch) formulated a new one week intensive mini-medical malpractice law course to be held at David Grant USAF Medical Center, Travis AFB, California.³⁷ Also, following Mr. Ben Chappell's tenure at Brooks AFB, Texas as legal advisor for TSG, Mr. Neil Richman at HQ USAF/JACC was assigned as the first special counsel and liaison with the Office of the Surgeon General.³⁸ A major new law designed to protect the confidentiality of RM and quality assurance information, 10 U.S.C. §1102, was passed.³⁹ More medical law articles were published, including two articles by Mr. Procaccino, one of which being the now well-known examination of the special x-factors that often drive damages evaluations in medical malpractice cases.⁴⁰

At the end of the second decade of the Medical Law program, the AF Form 2811 was completely revised in 1988 to better track quality assurance information. Information was provided to the field on implementation of protections available under the new 10 U.S.C. §1102.⁴¹ Also of interest to medical lawyers in 1988 was the passage of The Federal Employees Liability Reform and Tort Compensation Act.⁴² Generally referred to as the Westfall Legislation, the Act amended the FTCA to make it the exclusive remedy for common law torts arising from actions taken by federal employees while in the scope of their employment.⁴³ This change to the law was mostly of interest to military medical providers who had heard rumors that the Gonzales Act had been abolished. Many of the issues which had been around at the beginning of the first decade continued to be of interest, including questions on the possible overturn of the *Feres*⁴⁴ decision, failure to diagnose cancer cases,⁴⁵ contributory negligence,⁴⁶ and informed consent issues.⁴⁷

The big news of 1989 was the new Health Care Quality Improvement Act,⁴⁸ which created the National Practitioner Data Bank that was to become effective by the end of the year. The Data Bank, a compilation of reported paid claims data and serious credential actions against providers, caused an understandable stir in the medical and legal communities.⁴⁹ The other big issue in 1989 was the growing interest in patient rights, especially in the area of disability legal planning⁵⁰ and refusal of medical care.⁵¹ Propelled by the extensive action in State court cases concerning patient rights, the Joint Commission on Accreditation of Healthcare Organizations picked up on the issue and began mandating new standards in the area. This emphasis on patient rights continued as the big issue into the most recent decade of the medical law program.⁵²

The Third Decade - Continuing Challenges. In the beginning of the third decade of the Medical Law program, it became obvious that the new medical law specialty was evolving at an even greater and unanticipated pace than in previous years. The acceleration of change in the legal, scientific and medical components of the specialty was not slowing at all. The new challenges included cutting-edge issues dealing with computerization of medical records,⁵³ downsizing traditional pay-for-fee medical care reimbursement and the phenomenal growth of managed care,⁵⁴ and telemedicine.⁵⁵

In 1990, the Air Force Law Review published one of its "specialty issues." In the past, these had covered traditional areas such as Legal Assistance, International and Operations Law and Military Justice. This time it covered Claims and Tort Litigation, with over half of the articles dealing with medical legal matters.⁵⁶ The Law Review also published that same

which we operate. Administrative procedures and administrative law have operations have expanded into many new areas; procurement law and reflected in the complexity of the litigation we now handle.

~ Major General James S. Cheney on the Department's 25th anniversary

year a major article on AIDS issues in the military.⁵⁷ These and other shorter articles which continued to appear regularly in *The Reporter* made it clear that medical law was coming of age as an area needing expert guidance. Indeed, from 1991 to 1994, a huge number of articles on a wide range of medical legal issues were published in *The Reporter* reflecting the continuing challenges faced by the Medical Law program. These issues included: product liability and the Safe Medical Devices Act,⁵⁸ the 15-year anniversary of the *Kubrick* decision,⁵⁹ and physician licensing issues.⁶⁰

Following a patient rights trend started nearly ten years earlier, Congress in 1992 passed the Patient Self-Determination Act (PSDA).⁶¹ The PSDA came after Congressional hearings revealed large numbers of Americans felt medical facilities were not responsive enough to their needs and rights regarding withdrawal or continuation of care when terminally ill. The PSDA was created to spur medical facilities into providing information on advance directives and medical facility policies on this issue.⁶² Air Force MLCs led the way in ensuring base legal offices were trained to support their medical facilities as regards the PSDA.

The Handbook for Judge Advocates Investigating Medical Malpractice was completely revised in 1993 by Ms. Hilde Conte Pearlstein, senior medical law attorney at HQ USAF/JACT. Also, that year the need for greater expertise in health law policy, bio-ethics concerns and quality assurance initiatives led to the creation of a new Health Affairs Branch. Mr. Joseph Procaccino assumed the position of Chief of the Branch and consolidated his JACT function with that of becoming the Legal Advisor to the Air Force Surgeon General. One of the first challenges for Health Affairs was obtaining greater awareness and expertise in the new evolving managed care initiatives that later became TRICARE in DoD. The following year, 1994 saw the creation of two TRICARE attorney positions at Keesler AFB, Mississippi and Wright-Patterson AFB, Ohio. These attorneys were tasked to provide expert legal advice on the new and nebulous areas of managed care procurement and liability.


A new revision of AFI 44-119, Air Force Quality Assurance and Risk Management was issued in 1995. It contained an updated version of the claims and quality data tracking form, AF Form 2526 (which had replaced the earlier four-part AF Form 2811, 12, 13, and 14).⁶³ While not new, questions continued on medical policy issues such as informed consent⁶⁴ and do not resuscitate orders.⁶⁵ In 1996 *The Reporter* published a major two-part article on clinical privileging actions.⁶⁶ The following year, the Air Force Law Review published an article on the split between circuits on the issue of *Feres* applicability to military members temporarily medically retired.⁶⁷ In re-

sponse to the need for greater depth in medical legal training, the first LL.M. in Health Law was approved in 1997. Major Eric Israel, a former MLC and presently Chief, Medical Law Branch, was chosen for the program.

In 1998, in addition to the usual work on medical malpractice claims and litigation, there was a complete change in guidance for the investigation of medical malpractice claims with the introduction of AFM 51-504, Tort Claims and Litigation. This Manual superceded the previous guidance provided by *The Handbook for Judge Advocates Investigating Medical Malpractice*.⁶⁸ In the Spring of 1998, the first Federal Sector Health Law Symposium was held in Bethesda, Maryland. It was sponsored by the JAG School and the Uniformed School of the Health Sciences with additional financial support from the JAG School Foundation. The Symposium covered a wide range of medical law topics with a concentration on managed care challenges. Finally, 1998 saw the passage of a Portable Licensure law as part of a change to 10 U.S.C. §1094.⁶⁹ The law allows military medical physicians to practice in any state on official business regardless of the state where the physician is licensed.

Parvus Jocus Jurisprudentiae Medicae⁷⁰. Throughout the Medical Law program's almost thirty years, the Air Force has led the way in providing dedicated in-house counsel to Air Force medical providers. In that time, MLCs have proven themselves dedicated professionals but perhaps have left some with the impression that they have no sense of humor. To dispel that notion I enlisted the help of one of the first MLCs, Colonel Scott McLauthlin, now Staff Judge Advocate at Air University, Maxwell AFB, Alabama. As the senior MLC at Wilford Hall, Colonel McLauthlin worked with the legendary medical law assistant, Ms. Mary Blood, who retired in 1996, after 27 years. It seems Ms. Blood complained to then Captain McLauthlin about a burned out light bulb in the MLC office. The gallant young Captain decided to fix the problem right away and proceeded to stack a trash can and a box on a chair to replace the bulb. Unexpectedly (to him) the chair moved and Captain McLauthlin crashed to the floor. The following staff meeting, the medical commander asked if anyone knew how many MLCs it took to change a light bulb and then promptly answered his own question with, "Only one, but it also takes a full ER, a radiologist, and a physical therapist."⁷¹

Final Thoughts - The Unsung Heroes. No history of the Medical Law program would be complete without mention of those individuals who form the backbone of the program - the medical law assistants and paralegals who work for the MLCs

and headquarters. These individuals are located at each MLC office and provide a wide range of legal support services, including: research, typing support, law librarian, scheduling, and notary services. Whether active duty or civilian, they are a combination of paralegal and corporate legal administrative assistant. They remind attorneys about meetings and deadlines, act as gatekeeper, and are often the repository of years of corporate knowledge.⁷² Without their dedication and hard work the medical law program simply would not have been the success it has been these thirty years and the final word should go to them. 

¹ For an excellent review of the early medical law years, see Lt Col Robert G. Douglass, *Medical Malpractice is of Serious Concern to the Air Force*, THE REPORTER, no. 10., pp. 28-36 (June 1975). See also Major Walter Phillips, *The Forensic Medicine Program*, THE REPORTER, no. 5. (Aug 1978) at 23. [hereinafter Phillips]

² Phillips *supra* note 1, at 23.

³ Before the 1960's, the Air Force had negligible medical malpractice claims with only four filed in 1963 for a total of \$15,276.00. By 1965 the Air Force was handling approximately 50 claims a year and that number tripled from 1970 to 1976 and tripled again from 1976 to 1979. Robert N. Spencer, *The Hospital Incident Report: Asset or Liability?*, 22 A.F.L. Rev. 148 (1980-81). See also Charles W. Freeman, *Air Force Regulation 168-113: Risk Management or Malpractice Suit Support?*, 22 A.F.L. Rev. 418.419 (1980-81).

⁴ The explosion of medical legal issues was not anticipated by the legal or medical professions. Medical law as a distinct specialty has occurred only in the past 30 years and is most often attributed to the huge expansion in Federal and State regulation of the burgeoning medical industry, similar to the way the environmental laws of the 1970's created the need for environmental lawyers.

⁵ The Judge Advocate assigned to the School of Health Care Sciences at Sheppard AFB, TX was given the unique title of Forensic Medicine Instructor Advisor to reflect the job's emphasis on teaching. Phillips *supra* note 1, at 23. In April 1994, the School's MLC position was expanded from strictly teaching to also servicing it's own region of Air Force medical facilities similar to the other MLC positions. *Interview with Major Bill Carranza, Instructor, USAF JAG School* (3 February 1999). Major Carranza was the Sheppard MLC at the time of the changes.

⁶ Phillips *supra* note 1, at 23. The MLC course has been held every year since 1969. It provides medical law training not only to prospective MLCs, but also to other Air Force lawyers involved in medical legal issues as well as medical lawyers from other military services and departments.

⁷ *Id.* An updated version released in 1980 changed the titles of the FMCAs to MLC. THE REPORTER, vol. 9, no. 1 (Feb 1980) at 25.

⁸ *Id.* The Handbook was updated and expanded in 1980 and 1982 with a shortened title, *The Handbook for Judge Advocates Investigating Medical Malpractice Claims*. See also, THE REPORTER, vol. 11, no. 5 (Oct 1982) at 158.

⁹ See Joseph A. Procaccino, Jr., *Medical Malpractice Claims and Lawsuits*, THE REPORTER, vol. 8, no. 6, pp. 202-203 (Dec 1979).

¹⁰ THE REPORTER, vol. 1, pp. 7-11 (Aug 1977).

¹¹ THE REPORTER, vol. 9, no. 2, pp. 79-80 (Apr 1980).

¹² THE REPORTER, vol. 8, no.4, pp. 107-132 (Aug 1979). The previous year, Capt Douglas W. Lyon, Jr. published *The Patient as Human Test Subject*, in THE REPORTER, vol. 6 (Oct 1978) at 4-9.

¹³ The Act was also interpreted as covering Red Cross volunteers and providers in training. See Maj Walter D. Phillips, *The Medical Malpractice Immunity Act*, THE REPORTER, vol 8, no. 6., pp. 204-206 (Dec 1979). For more on physicians in training, see Maj Sherri W. Johnson and Neil S. Richman, *The Borrowed Servant Defense and the Federal Tort Claims Act: Defending Physicians in Training*, 33 A.F.L.Rev. 171 (1990).

¹⁴ John F. McCue, Jr., *The Discretionary Function Exception and Military Hospital Administration*, 22 A.F.L. Rev. 59 (1980-81).

¹⁵ When Weisbaden was closed in 1992, the MLC position was moved to the Office of the USAFE Surgeon General at Ramstein, AB, Germany.

¹⁶ THE REPORTER, vol.10, no. 2 (Apr 1981) at 70 and vol. 9, no. 6 (Dec 1980) at 211.

¹⁷ 444 U.S. 111 (1979).

¹⁸ THE REPORTER, vol. 9, no. 2 (Apr 1980) at 80 and vol. 9, no. 4 Aug 1980) at 150.

¹⁹ THE REPORTER, vol. 9, no. 1 (Feb 1980) at 25.

²⁰ 28 U.S.C. §§ 1346(b), 2671-80. See Lt Col Hervey A. Hotchkiss, *An Overview of the Federal Tort Claims Act*, 33 A.F.L. Rev. 51 (1990).

²¹ THE REPORTER, vol. 9, no. 4, pp. 151-152 (Aug 1980).

²² See e.g., Capt Jeffrey L. Grundtisch, *Involuntary Hospitalization and Involuntary Medication of Mental Health Patients*, THE REPORTER, vol. 9, no. 3, pp. 170-175 (June 1980).

²³ THE REPORTER, vol. 10, no. 1 (Feb 1981) at 22 and vol. 9, no. 1 (Feb 1980) at 23.

²⁴ See Capt Robert N. Spencer, *The Hospital Incident Report: Asset or Liability*, 22 A.F.L. Rev. 148 (1980-81).

²⁵ While no one interviewed for this article would state exactly how the symbol and new section came about, it should be noted that it occurred at exactly the same time the infamous Mr. Walter Phillips became Chief of the Medical Law, Claims and Tort Litigation Staff, Office of The Judge Advocate General. Medical law as a separate section is again a part of THE REPORTER, published when medical law subjects are provided to the publication.

²⁶ THE REPORTER, vol. 11, no. 2, pp. 65-68 (Apr 1982).

²⁷ The use of structured settlements became commonplace in the 1980's in reaction to the ever-increasing size of claim payments. Their usefulness in negotiations was highlighted and championed early on by the Claims and Tort Litigation Staff in D.C. THE REPORTER, vol. 12, no. 3 (June 1982) p. 92.

²⁸ THE REPORTER, vol. 11, no. 3 (June 1982) at 92.

²⁹ *Id.* The new MLC's region encompassed Korea, Japan, Guam and Hawaii. While the Philippines MLC position was short

lived, ending with the closure of Clark AB in 1991, it had a busy history with the largest to date settlement under the Military Claims Act of \$1.3 million for a birth injury being negotiated in 1987. *Interview with Lt Col Al Hickey, reserve MLC attached to Keesler Medical Center* (2 February 1999). Lt Col Hickey holds the distinction of being the longest serving MLC, having served four years, three months as MLC at Clark AB.

³⁰ THE REPORTER, vol. 12, no. 2 (Apr 1983) at 158.

³¹ THE REPORTER, vol. 11, no. 6 (Dec 1982) at 188.

³² THE REPORTER, no. 4 (summer 1984) at 24 and no. 2 (winter 1985) at 24.

³³ THE REPORTER, no. 2, pp. 29-30 (winter 1984).

³⁴ The major concern of providers was who was to determine the standard of care in a case. It was made clear from the beginning that such determinations would be made by the medical community, not the lawyers. Also, concerns about control of and release of the compiled information were answered with assurances that release would only be done after due process reviews.

³⁵ Maj Jack W. Smith, *Medical Malpractice, the Federal Tort Claims Act, and Aeromedical Evacuation*, *The Reporter*, no. 3, pp. 12-16 (Spring 1985).

³⁶ Capt Scott D. Stubblebine, *Dollars for Injuries - The Personal Injury Valuation Trauma*, *The Reporter*, no. 2, pp. 8-13 (Winter 1985); *Failure to Report Child Abuse*, *Id.* at 24-25.

³⁷ THE REPORTER, vol 13, no 1 (Mar 1986) at 24. This medical law short course has continued each year since 1985 and covers most of the medical and legal issues addressed in the MLC course, but in abbreviated format. It is intended for claims officers and others requiring in-depth medical law training.

³⁸ *Id.*

³⁹ THE REPORTER, vol. 13, no. 4 (Dec 1986) at 30.

⁴⁰ *Id.* at 29. These x-factors include: sympathy, bias, degree of negligence and defendant-witness character. Joseph A. Procaccino, Jr., *Pre-Natal and Post-Natal Malpractice Considerations*, *Id.* at 4-10. Mr. Procaccino also became the editor of the Claims section in *The Reporter* in 1986 and started his now famous use of Latin phrases for his section breaks. Translations of these phrases were provided during the 1987 and part of the 1988 publications of *The Reporter*, but were then discontinued presumably because every reader is aware of their meaning. For those who are not, they are: *res gestae* (General Matters); *arbitria et iudicia* (Settlements & Judgments); and *verba sapienti* (Words to the Wise).

⁴¹ THE REPORTER, vol. 15, no. 3, pp. 30-31 (Sept 1988).

⁴² Pub. Law. No. 100-694, codified at 28 U.S.C. §§ 1346(b), 2671-80 (FTCA).

⁴³ Lt Col R. Craig Anderson and Lt Col John M. Pellett, *Personal Civil Liability for Federal Employees and Their Representation by the Department of Justice in the Aftermath of the Westfall Legislation - An Introduction for the Base Judge Advocate*, 33 A.F.L.Rev. 19, 25 (1990). See also, Maj Michael P. Frederick, *Scope of Employment Under the Federal Tort Claims Act and Attempts to Expand the Limits*, 33 A.F.L.Rev. 69 (1990)

⁴⁴ *Feres v. United States*, 340 U.S. 135 (1950). See *The Reporter*,

vol. 14, no. 2 (June 1987) at 22. See also, Col Edwin F. Hornbrook and Capt Eugene J. Kirschbaum, *The Feres Doctrine: Here Today - Gone Tomorrow?*, 33 A.F.L.Rev. 1 (1990).

⁴⁵ *Id.* See also Lt Col Michael J. Fox, *The Loss of Chance Doctrine in Medical Malpractice*, 33 A.F.L.Rev. 97 (1990).

⁴⁶ THE REPORTER, vol 14, no. 3 (Sept 1987) at 26-28.

⁴⁷ THE REPORTER, vol. 14, no. 4 (Dec 1987) at 27. See also, Joseph A. Procaccino, Jr., *Autonomy, Consent, and the Conflict of Rights in Health Care*, 33 A.F.L.Rev. 183 (1990).

⁴⁸ 42 U.S.C. §11101 *et seq.* (1989).

⁴⁹ THE REPORTER, vol. 16, no. 3 (Sept 1989) at 21.

⁵⁰ THE REPORTER, vol. 16, no. 4, pp. 2-8 (Dec 1989).

⁵¹ *Id.* at 27.

⁵² See Capt Steven A. Hatfield, *Planning for Disability: The Durable Power of Attorney*, *The Reporter*, vol 17, no. 3, pp.2-6 (Sep 1990).

⁵³ THE REPORTER, vol. 17, no. 4 (Dec 1990) at 23.

⁵⁴ THE REPORTER, vol. 19, no. 2 (June 1992) at 25-26.

⁵⁵ THE REPORTER, vol. 22, no. 2 (June 1995) at 25.

⁵⁶ Vol. 33, A.F.L.Rev., *The Master Claims and Tort Litigation Lawyer's Edition* (1990). Most of the medical law articles from this issue have been previously cited in this article.

⁵⁷ Col John A. Anderson et. al., *AIDS Issues in the Military*, 32 A.F.L.Rev. 353 (1990).

⁵⁸ 21 U.S.C. §360. See THE REPORTER, vol. 18, no. 3 (Sep 1991) at 27-28.

⁵⁹ *Supra* note 16 and accompanying text. See also, THE REPORTER, vol. 21, no. 2 (June 1994) at 26.

⁶⁰ THE REPORTER, vol. 21, no. 4 (Dec 1994) at 23.

⁶¹ 42 C.F.R. 417 *et seq.*

⁶² THE REPORTER, vol. 19, no. 2 (June 1992) at 26. While the PSDA did not specifically apply to the military, the Air Force Surgeon General and Judge Advocate General decided that as a matter of policy the Air Force should apply the majority of the directives in our facilities to ensure Air Force patients continued to receive the same high standard of care as provided at our civilian counterparts.

⁶³ THE REPORTER, vol. 22, no. 1 (Mar 1995) at 22-23.

⁶⁴ *Id.*, no. 3 (Sep 1995) at 26-27.

⁶⁵ *Id.*, no. 4 (Dec 1995) at 30.

⁶⁶ Maj Kenneth J. Kramer and Capt Guillermo R. Carranza, *Clinical Privileging Actions in the US Air Force Medical Service*, THE REPORTER, vol. 23, no. 2 [part one] (June 1996) & no. 3 [part two](Sep 1996).

⁶⁷ Hilde Conte-Pearlstein *TDRL and the Feres Doctrine*, 43 A.F.L.Rev. 259 (1997).

⁶⁸ *Interview with Ms. Conte Pearlstein* (3 February 1999).

⁶⁹ THE REPORTER, vol. 25, no.1 (Mar 1998) at 22.

⁷⁰ This nod to Mr. Procaccino's use of Latin in his quarterly THE REPORTER column means "A little Jurisprudence humor."

⁷¹ The author would like to thank Colonel McLauthlin for his gracious permission to include this story.

⁷² As a personal note, I can safely say that my two medical law assistants, Ms. Janet Sellers (still at Keesler) and Mr. Eric Mitre (whereabouts unknown), were truly the ones who kept me from making a complete fool of myself. I know from conversations with other MLCs that they feel exactly the same about their staffs, both past and present.

Four Decades of Information Technology Excellence

Leading
the



Revolution

MR. JOHN PAUL DAVIS

The Air Force Legal Information Services (AFLSA/JAS), like the Air Force itself, was born of a new technology—the electronic computer. Its story however, begins not within the Judge Advocate General’s (TJAG) Department, but rather with the Air Force Accounting and Finance Center (AFAFC) in 1961.¹ In June 1961, the curiosity of Colonel Calvin M. Vos, Staff Judge Advocate (SJA) at AFAFC, as to the use of a computer to store and retrieve legal information, would be the shot that would begin the Legal Information Technology Revolution for the Department of Defense.² This was in the days when the name

“West(Law)” was merely associated with dusty old regional reporters in law libraries and “Lexis,” was neither a car nor a company, just another word for a lexicon. But the American Bar Association had formed a Special Committee on Electronic Data Retrieval and in August of 1961, this committee demonstrated the retrieval of legal information with a computer.³ Col *John Paul Davis (B.S.E.E., Purdue University; J.D. Regent University) is an Attorney-Advisor with AFLSA/JAS. He is a member of the District of Columbia, Illinois, and Minnesota Bars. He is also an Assistant Staff Judge Advocate in the Air Force Reserves.*

Vos, a witness, had his vision confirmed. When he returned to the Finance Center, he organized a team of pioneers to turn his dream into a reality.⁴ These Founding Fathers included, Edward G. Duckworth,⁵ Jack Sieburg,⁶ Jim Hoover, Ken Western, and Donald C. Dietemann.⁷ As with any new birth, a name was needed. This endeavor would henceforward be known as: **LITE** — Legal Information Thru Electronics.⁸

The LITE Years

Under the careful nurture of Col Vos, LITE began its life, and on 17 July of 1963, received its official christening authori-

zation from Air Force Headquarters.⁹ Col Vos’ vision, and the work of the LITE committee, was about to come to fruition. But it would again be an unlikely source that would launch this cyber odyssey.

In the early 1960s, the Health Law Center of the Graduate School of Public Health at the University of Pittsburgh had also been experimenting with the storing and retrieval of textual information.¹⁰ Accordingly, a contract was signed and testing began in June 1964 using an IBM 1410 computer, and Volumes 19 - 41 of the United States Code and a portion of the published Comptroller General Decisions.¹¹ That same year would be Col

Vos' last year in the Air Force, but as a civilian, he would continue to provide counsel and support from his new position in Washington, D.C.

LITE, while conceived in the Air Force, quickly attracted interest from its sister Services, as well as a broader interest from others in the Federal government. On December second and third of 1964, the first LITE conference was attended by the General Counsels of Bureau of the Budget and the Government Accounting Office, fiscal counsel of the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force, and the Chief Staff Member of the House Defense Appropriations Subcommittee.¹² With the blessings of this LITE Continental Congress and the leadership of Col Vos' successor, Col Charles A. Kelley, LITE would enter into a three-year string of contracts with the University of Pittsburgh.¹³ LITE now began to mature with the inclusion of the 1964 edition of the United States Code, the first 44 volumes of the published Decisions of the Comptroller General, the decisions of the Court of Military Appeals, the decisions of the Boards of Review as embodied in the Courts-Martial Reports, and certain regulations and manuals.¹⁴ The true maturation of LITE, however, came on 10 August 1965, when the Office of the Secretary of Defense appointed the Air Force as the Executive Agent for the management and operation of LITE.¹⁵

The next major milestone for LITE came on 12 March 1969, when the Assistant Secretary of the Air Force for Financial Management transferred management responsibility for LITE from AFAFC to the United States Air Force Judge Advocate General (AFJAG).¹⁶ This adoption of LITE was effective 1 July 1969 and for the next decade and a half (through December of 1984), LITE would operate as a Field Extension Branch of the Special Activities Group, under the AFJAG (TJAG).¹⁷

While LITE's first computer contract was with the University of Pittsburgh, LITE's data would see many migrations. The first came in the spring of 1967 when DELCOS, Inc., a subsidiary of the McDonnell Douglas Corp., won the contract and would host the LITE system for the next three years.¹⁸ For fiscal year

The founders:
*(clockwise starting
in top right corner)*
**Mr. Edward
Duckworth,
Mr Donald
Dietemann,
Col Charles
Kelly, and
Mr. Jack
Sieburg**



1970 however, Computer Management and Services Corporation of Washington, D.C. received the contract.¹⁹ This however, would have near dire consequences for LITE.

Just months after receiving the contract, the Computer Management Services Corporation defaulted on its rental payment to the Radio Corporation of America (RCA) for the use of its Spectra 70/45

computer, the computer hosting LITE.²⁰ Since RCA had received no money, on 27 February 1970, Black Friday, it pulled the plug, and the LITE data became inaccessible.²¹

However this would be but one of many near death experiences for LITE.



It may be that some Federal Agency other than the Air Force should run LITE...Until another agency steps forward the Air Force is willing and proud to continue as the executive agent for LITE
~ Colonel Charles A. Kelly

Its history is replete with tales of forces, some technological, some political, some civilian, military, or from the private sector, which threatened LITE's demise. Yet it always, somehow survived. Why? Because of LITE's determination to stay at the forefront of the Information Technology Revolution!

Like resilient freedom fighters, LITE regrouped at the Finance Center where an IBM 360/65 computer was used to reconstitute the system.²² LITE's staff, unwilling to entrust their dream solely to contractors, began taking IBM courses that enabled them to convert from the RCA system to the IBM platform.²³ It was a daunting task, one that those lacking vision would have easily dismissed. But after only five months, on 20 August 1970, LITE returned to full operation.²⁴ It was a hard lesson to learn and one that almost killed the dream, but one that LITE would remember: LITE must remain its own master as an in-house, Air Force controlled activity.

However, only weeks after returning to full operation, the control of LITE would again become an issue.²⁵ LITE received not one, but two unsolicited proposals from civilian contractors to assume the operation of LITE.²⁶ Mindful of its recent brush with extinction

through a contractor, LITE anxiously awaited the results of a study conducted by the Directorate of Automatic Data Processing Division at Hanscom Field, Massachusetts.²⁷ When the verdict was returned, it was found that the continued operation of LITE by the government would be 66% cheaper than using a contractor.²⁸ LITE lived on!

This interest by private companies was not surprising since word of LITE was spreading around the globe. LITE was regularly entertaining a host of international visitors. By the end of 1970, Canada, England, France, Germany, Italy, Japan, and Sweden, had all visited the mile high city to inspect LITE.²⁹ The LITE phenomenon was also attracting interest in the halls of Justice. The ownership of LITE was again placed on the table, but this time it would be a potential intra-governmental transfer.

In February 1971, the Assistant Sec-

retary of Defense, Mr. Robert C. Moot, proposed that LITE be transferred from the Air Force to the Department of Justice (DoJ).³⁰ Transfer negotiations were started, but when an impasse was reached, specifically regarding budgets and personnel, the issue went to Congress.³¹ The future of LITE now rested with those on Capital Hill.

The House Committee on Appropriations established a committee to determine a clear mission statement for LITE, to determine if adequate resources would be applied to accomplish this mission, and to see which government agency would accomplish the mission most effectively.³² It was an exciting time at LITE. Would LITE become a DoJ asset? Would Congress establish LITE as the legal research system for the entire Federal Government? But amid this expectation, the shadow of a less glorious outcome hung: Congress could determine that the LITE

Computer Dinosaurs: The computers borrowed at nighttime from the Air Force Accounting and Finance Center to run LITE in the mid-1980s.

program should simply be terminated.³³ By 1973, Congress had reached a verdict.³⁴ The Committee determined that LITE was a valuable addition to the legal field and should be continued under Air Force control.³⁵ Once again the shadow of death had passed over LITE.



A New Name

For over a decade, data had been laboriously added to LITE, one key stroke at a time. The 1968 contract with Delcos, Inc., for example, required them to provide data at a rate of 1,250,000 words per month.³⁶ But on 9 October 1974, just one character was added to LITE, the letter **F**. By DoD Directive 5160.64, LITE became **FLITE** — **F**ederal **L**egal **I**nformation **T**hrough **E**lectronics.³⁷ A new era had begun!

The growth of FLITE would continue through the 1970s. By April 1978, FLITE's searchable databases included:³⁸ U.S. Constitution & Amendments; United States Code; U.S. Reports/Supreme Court Reporter; Federal Reported 2nd Series; Federal Supplement; Federal Digest; U.S. Court of Claims Decisions; Armed Services Procurement

Regulations; Board of Contract Appeals Decisions; Comptroller General Decisions; Court-Martial Reporter/Military Justice Reporter; Air Force Regulations; Code of Federal Regulations; Manual for Courts-Martial; Treaties & International Agreements.

In addition to this respectable collection, FLITE had also scheduled the inclusion of the following databases:³⁹ Opinions of the U.S. Attorney General; Digest of the Opinions of the Judge Advocate Generals; Federal Reporter 1st Series; Statutes at Large; Legislative Histories and Executive Orders contained in the *U.S. Code, Congressional and Administrative News*; Regulatory material of the Department of Defense and other Military Services; Uniform Code of Military Justice Legislative History.

But FLITE was now, by no means the only show in town. The 1970s saw an increased growth of the application of the electronic computer in the practice of law. The Department of Justice had developed their own system called JURIS - Justice Retrieval and Inquiry System. In a rare form of inter-governmental agency cooperation, in 1978, FLITE entered into an agreement with the DoJ to share data. Now a FLITE attorney had access to two sources of computerized legal information.

In 1982, the Judge Advocate General convened a Blue Ribbon Panel on Data Automation.⁴⁰ The January 1983 final report recommended that FLITE assume additional missions including software development, centralized procurement of JAG computer equipment, and the development of an on-line database search sys-

tem.⁴¹ To perform these additional missions, seventeen additional positions were recommended to be added to FLITE for a total authorized strength of seventy-seven. This would be a bitter-sweet victory for FLITE since while it would never see the seventeen new positions, it would see the assumption of new missions, and the gradual erosion of its personnel strength.



In December 1984, FLITE again saw a migration. FLITE became a Directorate under HQ USAF. The Legal Information Services Directorate (JAS) would assume the responsibilities outlined by the Blue Ribbon panel. That year, 1984, would also be the zenith year for FLITE's personnel strength. FLITE had grown from an idea in a colonel's mind, to an organization of sixty-three. But the next decade would see FLITE's manning cut by over seventy percent, first as these new programs took people away from FLITE, and then as FLITE became an easy target during the military downsizing. But adversity was nothing new to the FLITE team, and even with a reduction in manning, FLITE accepted the challenge, and in October 1988, FLITE deployed an on-line computer assisted research system.⁴² FLITE had empowered the people and for the first time an attorney in the field could do their own computerized legal research on FLITE.



FLITE of the new Millennium: A room full of 1980s computers has been replaced by this single terminal, keyboard and computer.

The Other Programs

In 1985 JAS developed a comprehensive plan to define the requirements and centrally acquire software and hardware for Air Force legal offices worldwide. This effort would become the Resource Management Division (JASR) and has been supplying the department with state-of-the-art equipment for the last decade and a half.

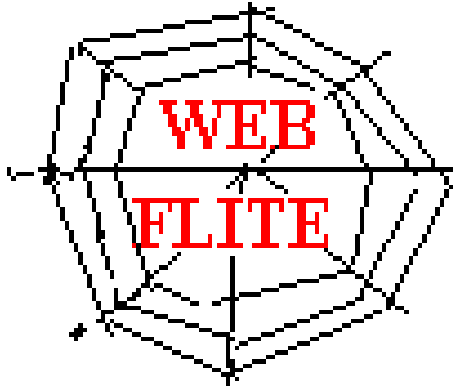
The second program JAS adopted was called the Claims Administrative Management Program (CAMP).⁴³ This program was replaced by another one entitled, Air Force Claims Information Management System (AFCIMS).⁴⁴ The Alpha version of the program was tested by six Air Force Bases in June of 1989.⁴⁵ Beta testing began in 1990, and AFCIMS 1 was released in 1993.

In 1993 JAS adopted the Automated Military Justice Analysis and Management System (AMJAMS). The history of AMJAMS however stretches back to the early 1970s.⁴⁶ On 25 April 1972, the implementation of AMJAMS was authorized by the Director of Data Automation for the Air Force.⁴⁷ The system was designed to enable the Judge Advocate General's Department to collect and analyze data pertaining to courts-martial and nonjudicial punishments.⁴⁸ AMJAMS was released as a functional system in July 1974.⁴⁹ This program would continue to be modified for the next two and a half decades.⁵⁰

The Move to Maxwell

For more than three decades, LITE, FLITE, and then JAS called Denver, Colorado home. However, that was about to change. JAS was moving to Maxwell Air Force Base, Montgomery, Alabama and would be collocated with the Air Force Judge Advocate General's School in a new building, the Dickinson Law Center.⁵¹ It was hoped that the collocation would create a mutually beneficial synergism and maximize scarce resources.⁵² In addition to the human migration, the FLITE data was also on the move. FLITE moved from an IBM mainframe computer controlled by the Air Force Computer Services Center in San Antonio, Texas, to a Sun Systems mini-computer **owned by, controlled by, and located at JAS!**⁵³ It only took three decades, but FLITE fi-

nally had its very own home. No longer would FLITE be "turned off" because the funds to pay for time on the mainframe computer had run out.⁵⁴ In addition, FLITE could now be accessed from not just the CONUS but worldwide.⁵⁵ Finally, FLITE converted to a more user-friendly research software system, and system use began to rise. FLITE had received a new lease on life.



In January 1996, FLITE became the first computer assisted legal research system to be accessible via the World Wide Web. WebFLITE was born. While an on-line connection to FLITE had been available for seven years, and worldwide access for over two years, the Internet finally brought FLITE home to every desktop. Everyone could now easily access the electronic law library, conduct research, visit legal web sites, or send an electronic mail message.

FLITE has seen rapid change in the last years. FLITE now hosts web sites for many organizations, including the Air Force Court of Criminal Appeals and the Court of Appeals for the Armed Forces. FLITE is developing an electronic filing system for the Air Force court to allow pleadings to be submitted over the Internet. To support operations, FLITE is establishing a presence on the secure Internet, the SIPRNET. But what still remains is a committed staff of legal/technical professionals who like Col Vos in 1961, dream of new ways to apply the electronic computer to the practice of law.

The Future is IT

So what does the future hold? If the past tells us anything, it is that IT—Information Technology—is the right train to be on. Gone are so many of the battles of the past. Yes, a computer is a good

thing. Yes, an attorney needs a computer. Yes, computerized legal research works. Yes, . . . the list goes on and on, but the verdict is simple: The Information Technology Revolution won, and JAS was a leader in the battle!

But what about the future of JAS? Will the manning continue to shrink, especially for the FLITE division? Or will the resources needed to lead the revolution into the next millennium be supplied? Will litigation support become a new mission at JAS?⁵⁶ What programs will finally be completed and/or new ones added? Will FLITE truly become the legal IT system for the Department of Defense? Or as those who decades ago testified to Congress, does FLITE's destiny lie even beyond the narrow confines of one Federal department?⁵⁷ Is FLITE truly to become *the* Federal Legal Information [Technology] Through Electronics system? If the past four decades have taught us anything, it is that the train ride that will bring us the answers to these and others questions will certainly be an exciting one. All aboard, the Revolution continues! 🚀

¹ Richard P. Davis, *The LITE System*, U.S. AIR FORCE JAG L. REV., Nov.-Dec. 1966, at 6. See Thomas B. Wilkins, *History of LITE*, 14 U.S. AIR FORCE JAG L. REV. 7 (1972).

² Gary D. Null, *Development of the FLITE Program*, THE REPORTER, June 1997, at 30.

³ *Before the Subcomm. on Military Operations of the Comm. on Gov't Operations*, House of Representative, at 2 (Aug. 1, 1967) (statement of Colonel Charles A. Kelly, Staff Judge Advocate, Air Force Accounting and Finance Center, Denver, Colorado)

⁴ Null, *supra* note 2, at 30.

⁵ In 1970, Edward G. Duckworth was serving as an Attorney-Advisor for the LITE activity. He received an LL.B. Degree from the Denver University College of Law and was a member of the Colorado and Wyoming Bars. He was a member of the American Association for the Advancement of Science, and was an instructor in law at Metropolitan State College in Denver, Colorado.

⁶ Jack Sieburg officially joined the LITE staff as a system research analyst in 1964. In 1966, he was responsible for LITE research and development activities involving Electronic Data Processing (EDP) applications. In 1972, he was Chief

of the LITE EDP Section, but remained actively involved in the system design and programming activities, particularly those involving photocomposition and special product requirements. Prior to entering the computer field in 1958, he had approximately fifteen years experience in accounting and finance operations as a member of the United States Air Force. In addition to his work in the area of information retrieval, he was also involved in major EDP Systems design covering payroll, monetary and supply accounting, and personnel management. Majoring in mathematics, he has attended the University of Omaha, the College of William and Mary, and the University of Denver.

⁷ In 1966, Donald C. Dietemann was an Attorney-Advisor with the Office of the Staff Judge Advocate, Air Force Accounting and Finance Center. He received a LL.B. degree from the University of Illinois and was a member of the Colorado, Illinois, and Federal Bars. As a member of the American and Inter-American Bar associations, he received formal training in Basic Computer Systems and Computer Programming. He served as a Consultant in Electronic Retrieval of Legal Information for the University of Denver and began full time work in LITE operations in February of 1964.

⁸ Davis, *supra* note 1, at 6. "While the recognized title is *Legal Information Thru Electronics*, it has become much broader. It might better be called *Library Information Thru Electronics*."

⁹ Kelly, *supra* note 3, at 4.

¹⁰ Davis, *supra* note 1, at 6.

¹¹ Kelly, *supra* note 3, at 5.

¹² *Id.* at 6. (Mr. John Horthy of the University of Pittsburgh was also in attendance.); *see* Wilkins, *supra* note 1, at 7.

¹³ *Id.* at 7-8.

¹⁴ Wilkins, *supra* note 1, at 8.

¹⁵ Kelly, *supra* note 3, at 7.

¹⁶ Wilkins, *supra* note 1, at 8.

¹⁷ *Id.*

¹⁸ Kelly, *supra* note 3, at 8; Wilkins, *supra* note 1, at 8.

¹⁹ Wilkins, *supra* note 1, at 8.

²⁰ Null, *supra* note 2, at 31.

²¹ *Id.*

²² Wilkins, *supra* note 1, at 8.

²³ Null, *supra* note 2, at 31.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* (Norway had also made inquires, but did not come for a visit.)

³⁰ *Id.*

³¹ *Id.* at 32. (This was not the first time LITE had gone to Washington, D.C. See Kelly, *supra* note 3.)

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Kelly, *supra* note 3, at 8.

³⁷ "Thru" was also changed to "Through."

³⁸ Michael E. Murphy, *FLITE's Use in Management of a Legal Office*, THE REPORTER, Apr. 1978, at 43. See Michael E. Murphy, *Computer-Assisted Legal Research—A Look at FLITE*, 8 THE REPORTER 33 (1979).

³⁹ *Id.*

⁴⁰ *Legal Information Services: Air Force Legal Office Automation Program*, THE REPORTER, Dec. 1986, at 22. The 1982 Judge Advocates General's Blue Ribbon Panel members include: BGen Gordon A. Ginsburg, Col Robert F. Dunham, Lt Col Donald C. Rasher, Lt Col Carl E. Edwards, Jr., Maj Richard A. Ranker, Maj Eric L. Winborn, Capt Thomas M. Sullivan, and SSgt Michael W. Rynning. Blue Ribbon Panels would also meet in 1992 and 1998.

⁴¹ *Id.*

⁴² *Legal Information Services*, THE REPORTER, Sept. 1988, at 24.

⁴³ *Legal Information Services: Air Force Legal Office Automation Program*, *supra* note 40, at 22. See Alex J. Ranciglio, *CAMP as a Management Tool*, THE REPORTER, Apr. 1978, at 37.

⁴⁴ *Legal Information Services*, *supra* note 42, at 25.

⁴⁵ *Legal Information Services*, THE REPORTER, Sept. 1989, at 24.

⁴⁶ Michael G. McCormack, *The Automated Military Justice Analysis and Management System (AMJAMS)—an update*, 8 THE REPORTER 151, 152 (1979).

⁴⁷ *Id.*

⁴⁸ Donald P. Gilmore, *The Use of AMJAMS in the Management of Military Justice*, THE REPORTER, Apr. 1978, at 20.

⁴⁹ McCormack, *supra* note 42, at 152.

⁵⁰ For example, in July 1988, Version 2.20 of AMJAMS bridge program was completed and distribution was authorized by TJAG. *Legal Information Services*, *supra* note 43, at 24.

⁵¹ *Legal Information Services*, THE REPORTER, Mar. 1991, at 28.

⁵² *Id.*

⁵³ *Legal Information Services*, THE REPORTER, June 1993, at 29.

⁵⁴ *Legal Information Services*, THE REPORTER, Dec. 1991, at 29.

⁵⁵ *Legal Information Services*, *supra* note 52, at 30.

⁵⁶ See *Litigation Support in the Air Force: Evaluations of Alternative Approaches*, AFLSA/JAC Process Action Team Report (9 Jan 1998) (on file at AFLSA/JASL) ("The PAT determined that the best litigation support model for the Air Force is an AFLSA/JAS Litigation Support Division.")

⁵⁷ Kelly, *supra* note 3, at 1 ("We believe we have a system that can be of value to just about every attorney in the Federal Government, and to many others in the Government.")



A CLUE FROM THE GRAVE: A Mesmerizing True Story of Madness and Murder

Irene Pence

Chapter Twenty-Four

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Real Excerpts From Air Force JAG Efficiency Reports (no kidding, we saw copies)

- “What little he doesn’t already know about a legal office he can find out fast.”
- “I’d trust him to run my office or drive my car.”
- “Is the Solomon the commanders consult when the decisions get hard.”
- “He’s my headlights and rear view mirror.”
- “He is breathe to the alchemist; created gold from base metal.”
- “This man could give close order drill to a flock of chickens.”
- “Has always been an ocean going tug in a force 10 gale. Plows over, through, and under the waves. Always rescues the sinking ship.”
- “I’m willing to close my eye and sign anything he has written.”
- “A good soldier. He’d volunteer for KP if he thought it would help the mission.”
- “If I had to start my own Air Force, this man would be in the initial cadre.”

They Put That In Writing?!

(Actual entries from various official Air Force Documents)

- *From a hand-written request for a “hardship” assignment (date unknown):*

“I am trying to get a passionate reassignment back to the States or hardship transfer.”

- *From a military member’s 25 Nov 82 statement in response to a notification that he was being recommended for discharge by his commander:*

“I was so shocked when I was told by my commander that I was going to be discharged from the Air Force. I know that I was in a motorcycle accident, got a D.W.I. in this accident, failed a urinalysis test for marijuana, and was jailed for indecent exposure, but I did not think that I would be discharged from the Air Force.”

- *From an airman’s statement on “My reasons for being apprehended with a controlled substance (marijuana) (date unknown):*

“On the day of said infraction I was possessed by the Holy Spirit. I was fulfilling my duty to God. I was exercising my freedom of speech and freedom of religion. I was studying the Bible where it is stated in Genesis Chapter 9 verse 3 where God is talking to Noah and his sons and He said, “Every creature that is alive shall be yours to eat; I give them all to you as I did the green plants.” He is saying that we can have everything that is given by God. Did man make the herb? No, God made it . . .”

- *From an appeal of an Article 15, 31 May 1983:*

“In regards to the proposal to impose Judicial Punishment by means of an Article 15 for failure to go, Article 86 of the UCMJ to wit I am guilty of not complying with. . . . I wish at this time to try to inopose restrainable effort towards the part which exclaims Reduction to Airman. . . . My only hope is to an oblique motion towards a suspension in rank rather than lose my rank altogether. . . . I induced this proposal by means of gaining solicitious attitude toward my performance and behavior as an Airman also this would better intensify my efforts toward development as being career minded. . . . It would attempt to apply a more perceptible feeling from you towards my achieving my tasks in a respective and responsible manner that I’m sure of developing and proceeding through the ranks at a normal pace. . . . I respectfully ask that full incentive be given on my recursion in view of my current proposal to make contributing efforts in adjusting and producing myself more favorable as a member of the _____ Squadron and the U.S. Air Force to what I am proud of serving them both.”

(Submitted by Lt Col David Hoard, USAFR)

As Much as Things Change; They Remain the Same

The following article was published in *THE REPORTER*, Vol. I, No. 5, at 33, November 1959, following its initial publication in *JAG NOTES*, Number 1, 6 February 1959, published by the Tactical Air Command at Langley Air Force Base, Virginia.

A GOOD JUDGE ADVOCATE IS NOT BORN—HE IS MADE

COLONEL BRYAN L. RAKESTRAW

The Office of the Staff Judge Advocate is now more active than ever before in all the history of the Armed Forces. It has expanded in scope, in function and in purpose. The services rendered by it have become more comprehensive and important. While the responsibility for legal and related services is that of the Staff Judge Advocate, the primary objective of the legal office is to render service to the commander, his staff and the personnel assigned to his command. The service performed must always contribute to the accomplishment of the mission of the command served. The value of a legal office is measured by the character and type of service rendered to its clients — the commander, his staff and the personnel of his command.

The Office of the Staff Judge Advocate is a recommending agency and not an action agency. A judge advocate has no command authority. He must be careful not to usurp the prerogatives of the commander or of any other staff agency. Each judge advocate should avoid any tendency to butt in on the business of other staff officers by giving advice when it isn't requested. There is nothing more likely to arouse the antagonism of the head of a staff section than the belief that the judge advocate is infringing upon his responsibility and function. This always results in disrupting the harmony of the staff, arousing the jealousy of fellow officers and thereby diminishing the judge advocates value to his commander.

To a marked degree a judge advocate's duties involve a human relations function. In his capacity as a judge advocate he deals primarily with people, not only with those who personally seek his counsel but with those for whom he prepares opinions, comments and recommendations. The name on each piece of paper represents an individual with human traits and personal characteristics. If the judge advocate knows the people with whom he corresponds, it will help him immeasur-

The author is the Staff Judge Advocate of Tactical Air Command and is a graduate of University of Oklahoma (LL.B.) and Georgetown University (LL.M.) Law Schools and a member of the Oklahoma Bar.

ably in the discharge of his duties. While all commanders and their staff are entitled to legal service, many subordinate commanders on a base are hesitant to seek timely legal advice. To overcome this, periodic visits by the judge advocate to the unit commanders on the base have proved valuable. Such personal contacts build up confidence and foster a mutual understanding which works to the benefit of both. Under such a relationship the unit commander will be more inclined to seek the advice and counsel of his friend, "the Judge," before he takes any action in military justice or other legal matters. Furthermore, personal acquaintance and professional association with the members of the local bar, the judges, the sheriff, the chief of police, the county attorney, and other law enforcement agencies are very important. Such association will not only enhance the base-community relations but will prove valuable to a judge advocate in the performance of his functions. Moreover, it is important for a judge advocate to maintain close personal relationship with his fellow staff members. By doing so, a mutual understanding of the problems confronting each staff agency is created.

It is important that all judge advocates remember that they along with other staff officers are members of the commander's team. As staff officers it is important that you work in harmony with the members of other staff sections. In doing so, you must avoid embarrassing your fellow staff officers. There are occasions when a staff section requests coordination on a matter and you discover a regulation specifically prohibiting the proposed action. Instead of citing the error in a written memorandum, which infers that the author did not know what he was doing, it is much better to call the director of the staff section concerned and give him an opportunity of withdrawing his proposal. Any staff officer would much rather have his oversight brought to his personal attention by a judge advocate than to suffer the embarrassment of having it first reach the commander or even the chief of staff.

An important attribute of a good judge advocate is that of modesty — the ability to avoid giving the impression of being

a “know-it-all.” Although a judge advocate, because of his experience, education and training may believe himself better equipped to analyze or to make a staff study of a problem, he must recognize that there are other experts on the commander’s staff beside himself.

Unfortunately, there is a common misconception that judge advocates are specialists in the field of law and know little about other subjects. Although all judge advocates are professionally trained as lawyers, they must know something about everybody’s work. They must be familiar with the mission of their command and know enough about all the functions in their headquarters to intelligently understand the problems of each staff section. This is necessary in order to render well-reasoned opinions with respect to questions concerning the work of other staff agencies.

To be a good judge advocate an officer must be willing to contribute his talents on non-legal subjects as well as legal questions. Where no legal aspects are involved in a problem, it is a simple matter to return the communication with a terse comment “no legal question involved.” Such a comment is of little or no help to the person or office seeking assistance. If one of your clients has a problem and thinks it important enough to ask your advice or opinion, he deserves an answer. There are times, of course, when a judge advocate is not equipped to provide the answer. In that event — say so. But at the same time advise your client that you will get the answer for him. If you make a practice of preparing sound, logical and well-reasoned opinions, they will be of value to your commander and staff and should be rendered whenever requested, even though no legal question is involved.

A judge advocate should utilize his skill to assist the commander in making a decision. You do not serve a commander or his staff by telling them that their proposal is contrary to law or military directives. If there is no legal solution, of course, the commander must be so informed, but only after every means have been fully and thoroughly explored. It is most important to advise how to avoid illegal and undesirable actions and yet achieve the desired end. If you stop your thinking after enumerating valid objections to a proposed course of action, you have failed to serve your commander. But once a final decision has been made — though it is different from your own recommendation — the commander has the right to expect your full support and cooperation in carrying out the decision.

Many of you have found that a commonly accepted doctrine is that of “substantial compliance” or “substantial justice.” Loosely interpreted these phrases mean that if the end result is desirable and justified, there is no objection to the violation of the few regulations to achieve that end. This belief is not at all uncommon with some staff offices. However, we should be the last one to adopt it. When called upon for advice, point out any prohibition involved and the consequent seriousness of it. Only in this way can your commander make his decision based on a knowledge as completely as

you, his judge advocate, can make it. Of course, if you determine that the action proposed is illegal or undesirable this should be pointed out and the reasons enumerated, but more important should be an effort on your part to discover a legal and proper way of securing the desired results.

You have undoubtedly found out by this time that on many occasions your personal feelings with respect to a particular problem or case are quite definite. Regardless of the way you feel about any particular case you are handling, you must at all times maintain a judicial temperament and complete objectivity in formulating your opinions and recommendations. You should evaluate every situation presented to you in a completely objective manner. Once you start taking sides from a personal standpoint you become an advocate -- not a judge advocate. It is difficult, of course, to maintain this objective attitude, but you should never act otherwise.

An important asset of a good judge advocate is an intellectual curiosity. A good judge advocate is never satisfied with his opinion until he has completely researched every facet and ramification of the problem at hand. Once you start taking things for granted and think you know the answer to the problem presented to you, that’s the time you really get into trouble. Don’t hesitate to ask for the advice and opinion of others. The most learned individual cannot possibly have all the answers. Your colleagues on the staff have their own specialized knowledge in their own respective professional field. When you learn about the functions and responsibilities of other staff sections, their problems and the tools they have available to solve them, you will do much to gain their confidence.

To achieve professional attainment it is necessary to be firm in your opinion. Don’t hedge or be wishy-washy. For the purposes of argument only there are two sides to every question — the right and the wrong side. But as far as you are concerned, when expressing an opinion, to your commander, after consideration of all phases of the problem, there is only one side and that is the correct one. Don’t leave your commander to make a decision between two points. That’s the reason you’re on his staff. If your recommendation is not acted upon, you still have given the person responsible for making a decision the benefit of your advice. You should always have the courage of your convictions. However, don’t confuse courage of convictions with hard-headedness or stubbornness. None of us is infallible; if you are shown to be wrong, have the good graces to accept your error. Other members of your staff and the commander will have much more respect for you.

An important attribute of a good judge advocate is accuracy. Curbstone, off-the-cuff, or horseback opinions, can be and have been the downfall of many a judge advocate — and rightly so. If someone believes a problem to be of sufficient importance to request your opinion and if you are professionally and intellectually honest, you will not abuse your profession or office by rendering them a curbstone opinion. You are not supposed to be an encyclopedia of the law;

the tools of your trade are your books — use them! Form a habit of being thorough in your research of all legal questions. A legal opinion directly contrary to an existing law or directive reflects adversely on a judge advocate. Do not rely on memory — check statutory provisions or the regulation involved or determine if there is such a statute or directive. And by all means, re-read your work — revise it and correct it, if necessary, before you send it out. Your associates will have more respect for you if they are convinced that their problems are being answered after mature reflection, deliberation and thorough research on your part.

In addition to accuracy and good judgment, sentence structure and grammatical correctness are important. A written comment or document is a fairly accurate reflection of the individual responsible for its preparation. If your legal opinion is not readily understood by the person or agency to whom it is addressed, you've wasted your time and theirs. If it is confusing because of sentence structure, incorrect grammar, or vague, one can only assume that the responsible individual does not know any better or does not care. In either case, the logical conclusion may be that the individual is not qualified to perform the duty to which he is assigned. Say exactly what you mean — no more, no less. Answer only the questions presented. Do not generalize. Remember that, except in military justice, you are writing for laymen, not lawyers. Avoid legal phraseology — use simple language that anyone can understand. A good means of testing the clarity of your opinion is to let a lay member of your office read it before it is dispatched. If you generalize an opinion you will find it will come back to haunt you. Persons not trained in the law will

attempt to apply it to situations or facts which are not exactly as they were initially represented to you. If the problem presents a question which you do not discuss or answer, point it out. For instance, if the problem requires information on a question which should be properly answered by another staff agency, put a statement in your opinion that it does not include an answer to that question. But recommend that it be referred to the agency concerned for expert advice. Or better still, try to obtain the answer yourself and include it in your opinion. But state the source and authority for it.

A judge advocate should be proud of his work. If you can be proud of a legal opinion, it means that it is legally sound, it is mechanically accurate, it is thorough and completely answers the questions asked, it is grammatically correct, it is logical, it is not subject to more than one logical interpretation, it is not confusing to persons without a legal education, and, lastly, it not only sounds convincing and authoritative, but it is convincing and authoritative.

Finally, as judge advocates each of us must strive for professional attainment both as an officer and as a lawyer. With the interest of the Air Force prominently in mind we must endeavor to possess greater responsibility to our commander, professional competence, thoroughness in advice and counsel and a more solicitous and considerate attitude toward all seeking legal or related service. 🦅

