THE GENERAL BOARD

United States Forces, European Theater

LEGAL QUESTIONS ARISING IN THE THEATER OF OPERATIONS

MISSION: Prepare Report and Recommendation on Legal Questions Arising in The Theater of Operations.

The General Board was established by General Orders 128, Headquarters European Theater of Operations, U. S. Army, dated 17 June 1945, as amended by General Orders 182, dated 7 August 1945 and General Orders 312 dated 20 November 1945, Headquarters United States Forces, European Theater, to prepare a factual analysis of the strategy, tactics, and administration employed by the United States forces in the European Theater.

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LEGAL QUESTIONS ARISING IN THE THEATER OF OPERATIONS

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LEGAL QUESTIONS ARISING IN THE THEATER OF OPERATIONS

CHAPTER 1

INTRODUCTION

1. Military Affairs has been used to refer to "a general field of work or to a group of unrelated legal subjects not otherwise denominated. The term 'Miscellaneous Affairs' would perhaps be more descriptive."[1]

2. Since the topic of this study is so broad and generic in its nature, being used to include all of the principal legal questions that confronted the judge advocate in the European Theater of Operations, it must, perforce, be disconnected to some extent in its general scope.

3. Whenever an army moves from its homeland to a foreign soil, be the new location within the confines of a friendly or hostile country, as the first soldier sets foot on shore, disputes occur, questions arise as to his local relations, claims are filed for his alleged depredations, his own legal problems present themselves and the soldier's lawyer, the judge advocate of his unit, is called upon to give an opinion and aid in the settlement of these matters.

4. During this campaign in the European Theater, the judge advocate was required daily to consider and to give a prompt decision upon questions that ranged from the status of an American soldier, who was not an American citizen but actually a German national fighting against his native country, to such an inquiry as: "Should partisan political campaign literature be allowed on dayroom reading tables?"

5. He sought the answer to the question presented by using the limited facilities at his disposal in the field or in his office located, perhaps, in some isolated base area. In certain instances manuals had been prepared on the subject or precedents established to which he had recourse. Often, his own source material being inadequate, he would call his corresponding number at higher headquarters to check his opinion or confirm his ruling.

6. Unfortunately, enough prior study had not been given to many of the topics and he was compelled to rely more upon his legally-trained mind, his diplomacy and his common sense than upon book-and-page reference. That he came through with no greater difficulty than he did was a tribute to the training he had received in The Judge Advocate General's School at Ann Arbor, Michigan, or in the various judge advocate offices in the United States where he had served.

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1. JAG School Text No. 3, "Military Affairs".

CHAPTER 2

LEGAL STATUS OF UNITED STATES FORCES IN THE EUROPEAN THEATER

SECTION 1

CITIZENSHIP AND NATURALIZATION

7. Problems posed by aliens in the United States Army. Under so vast and extensive system as the Selective Service Act and considering the indifference with which the naturalization of foreigners in the United States is regarded, it was only natural that many long-resident aliens were inducted into the military service along with citizens.[1] Many volunteered, some of them in the category of enemy aliens or citizens of countries with whom the United States was at war.

8. If those men were sent overseas and captured in the American uniform by the forces of the country of their citizenship, they were legally punishable by the imposition and execution of the death penalty. Nevertheless, many of these found their way into the overseas forces and in some instances, were actually captured by the enemy.

9. In a notable instance, the First United States Army had occasion to try on 7 April 1945, Captain Curt Bruns, 2d Battalion, 293d Regiment, 18 Volksgrenadier Division, whose battalion captured two Jewish soldiers of German birth, who had fled to New York and later found themselves in the American Army, in Germany, interrogating prisoners of war because of their knowledge of the language.[2] In the Battle of the Bulge during December 1944, the prisoners they were interrogating were recaptured along with these two Jewish soldiers of the 106th Infantry Division. Captain Bruns, upon learning that they were what he considered renegades and traitors, promptly ordered them shot. For this, he was tried by a military commission at Duren, Germany, duly convicted, and given the death sentence. The question was raised at the trial as to whether these two deceased were ever naturalized citizens of the United States, whether they could be considered stateless, as Hitler had declared all Jews to be, or if by their service in the United States Army, they could be considered, under International Law, as a part of the force with which they were operating. It presented a rather complex legal question and in the absence of actual proof as to their United States citizenship, there was considerable research and speculation on the part of the judge advocate and his staff prior to the trial as to the status of these men. Evidence was introduced at the trial to show that they were graduates of a CIC school, one of the prerequisites of which was that a person should be a naturalized citizen.

10. Waiving eligibility requirements for men of the United States armed forces. To circumvent the rather long and laborious processes prescribed by the statute for the granting of United States citizenship,[3] Congress passed the Second War Powers Act of 1942 (Public Law 507, 77th Congress), whereby persons who served honorably in the military or naval service of the United States during World War II, legally admitted into the United States, its territories or possessions, and who were residents at time of induction,

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1. Selective Service and Training Act of 1940; 50 U. S. Code; 302, 303; as amended by Public Law 772, 77th Congress, Bull. 57, 1945.
2. 12th Army Group Mil. Comm. files.
3. The Nationality Act of 1940; 54 Stat 1737; U. S. Code 1940 Ed, Title 8, Sec. 501-907.

were eligible for citizenship if they possessed good moral character, were attached to the principles of the United States and well disposed to its good order and happiness.

11. Procedures for processing applications. The applicant would complete Form N 403 of the United States Department of Justice Immigration and Naturalization Service and obtain a certificate from his commanding officer. At a hearing before a representative of the Immigration and Naturalization Service, he would produce two witnesses, members of the armed forces of the grade of non-commissioned officer or higher, to prove honorable service, good moral character and adherence to the Constitution of the United States.

12. This act also empowered a designated representative of the Immigration and Naturalization Service to receive and file the formal petition for naturalization, to conduct hearings, take testimony, call witnesses, administer oaths and grant naturalization by the issuance of a certificate of citizenship to the applicant. A provision denying these privileges to dishonorably discharged soldiers, conscientious objectors or those subsequently receiving a dishonorable discharge was included.

13. The processes, however, were so intricate, unfamiliar and technical that comparatively few aliens learned of them or took the time to pursue them. The United States Department of Justice appointed members of the consular service, located in the European Theater, as the special "representative" mentioned in the statute to process the application. If a soldier was aggressive and interested enough to fill out Form N 403, secure the proper certificates and forward them, through channels, in due course the consular representative appeared at the designated place and performed the functions of naturalization. The original certificate was placed with the applicant's service record and a duplicate copy sent to his local United States District Court.

14. While an estimated 3500 persons were granted United States citizenship in the United Kingdom prior to V-E Day, it is estimated that it took from one to three months to process such applications and by that time, the average soldier had very likely moved from his station of application several times.[4]

15. To obviate this situation, the 78th Congress in Public Law 531, 22 December 1944, eliminated the required procedure as to proof of a lawful entry as to persons entering prior to 1 September 1943 and who were unable to establish lawful admission. It also exempted the military applicant from the requirements as to age, race, nationality, admission to the United States for permanent residence, continuous residence in the United States and several other requirements applicable to others.

16. The system of utilizing vice-consuls at base sections was found to be impracticable due to the limited number of such officers, and in the months prior to V-E Day, mobile naturalization teams were employed; composed of one of the vice-consuls of the American Embassy at Paris, assisted by three enlisted men on detached service with the Embassy. This team, operating through various army headquarters, traveled approximately 26,000 miles in the field, both in forward and rear areas and up to V-E Day, had naturalized 849 applicants, many of whom had been called from their foxholes and frontline positions and made citizens within sound of battle.[5] In the 94th Infantry Division,

4. Naturalization records, UK Base Section.
5. Naturalization records, USFET.

30 aliens were naturalized at a single ceremony.

17. While the mobile team was a step in a simplifying direction, it was manifestly inadequate as it could not cover the entire field as well as agencies more closely identified with the military establishment.

18. Education and encouragement of personnel. There was established in many units a definite program, headed by the unit judge advocate, or by an officer who was in close touch with him, whereby a search was made for all non-citizens within the unit, an assembly of them was held for explanation of the rights of naturalization open to them, and of the processes by which citizenship could be secured and encouragement given them to pursue the final certificate. In most cases, each and every one of these aliens immediately evidenced a desire and application to become United States citizens.

19. Status of foreign nationals married to United States citizens. Many troublesome questions arose in the European Theater which came to the desk of the unit judge advocate as to the citizenship status of foreign nationals who, in their native countries, married citizens of the United States. Likewise, the status of children born of these unions, as well as those born out of wedlock, came into question. While the alien did not automatically become a citizen by virtue of such marriage, he or she was advised that entry into the United States and subsequent naturalization would be possible and simple. Such married alien became eligible for citizenship upon completion of three years' continued residence in the United States (instead of the usual five) or by two years' continued residence therein if one year was spent in marital union with the citizen spouse immediately prior to the filing of the petition for naturalization.[7]

20. Children born out of the United States, one of whose parents at the time of birth is an alien and the other a citizen, are deemed citizens of the United States if the alien parent is naturalized when the naturalization takes place while the child is under 18 years of age and, at the time of naturalization or thereafter, begins to reside permanently in the United States while under the age of 18. If born outside the United States, the child, while under 18 years of age, may also be naturalized upon application of the citizen parent, if permanently residing in the United States with such parent.[8]

21. One of the judge advocates interviewed on the subject stated, "In a few instances, difficulty arose among foreign nationals who were married to United States Army personnel. In these instances, the soldier was moved on to the Continent or returned to the Zone of the Interior leaving his wife and child, in some cases, inadequately provided for. There seems to be no agency set up to give the wife any information or to assist her. Army Relief acts only in continental United States and the American Red Cross was unable to provide assistance because of non-citizenship of the distressed."

SECTION 2

OATHS AND ACKNOWLEDGEMENTS

22. There arose in the European Theater a volume of personal business affairs, deals and transactions affecting members of the armed forces as would be expected from the inclusion of the vast number of

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6. Judge Advocate, 94th Inf. Div.
7. 8 U. S. Code, 710, 711.
8. U. S. Code, 713, 715.

persons drawn into a citizen-soldier army. There were deeds to be signed, affidavits to be acknowledged, powers of attorney to be executed, depositions to be taken and business papers of all kind transmitted to the soldier. Naturally, he turned to his available legal sources for advice, explanation and assistance in the way of notarial acknowledgements.

23. Unfortunately, the judge advocate was not always equipped to pass upon the niceties of certain legal matters connected with the case because he was not familiar with the law applicable in a particular state. However, by the use of the limited library at his disposal and, particularly, with the compendium of state laws found in Martindale-Hubbell's Law Digest, he was able to render an opinion.

24. Where one state would require acknowledgements authorized only by officers designated under Article of War 114, others permitted any commissioned officer of the United States on active duty to perform notarial acts. Some granted the authority only to the commanding officer of the affiant, while Delaware was content with an officer of the grade of first lieutenant or higher. Vermont and North Carolina required a captain or above, while Oklahoma accepted a sergeant or any rank or grade superior to him. There were a few states that demanded two attesting witnesses in addition to the notarization of the instrument. While some had geographical limits, others applied their regulations to instruments involving only the transfer of real or personal property and others prescribed as to any document to be filed or registered within the state. Invariably, the statutes were drafted hastily and passed as temporary measures, effective to a specified date, cessation of hostilities, or during the present war and for six months thereafter.

25. There is no doubt that many of these instruments, executed in the European Theater under the supervision of judge advocate officers who sought, as lawyers, to render the best service they could, will be the subject of law suits and discrepancies in title to property for years to come.

SECTION 3

DECEASED PERSONS - EFFECTS

26. While the handling of the effects of deceased military personnel is laid by law, under Article of War 112, upon the summary court officer and not primarily upon the judge advocate of the command, and was by directive in the European Theater vested in the Quartermaster Department, yet the problem presented was a legal one in most instances and often came to the judge advocate of the unit for his interpretation, administration and comment.

27. Few of such problems arose on the continent of Europe, either in France, Belgium, Holland, Germany or Austria. The situation there was such that practically no deposits were made in local banks, there was seldom local constituted authorities who could exercise objection to the deceased's commander carrying out Army rule and regulation and serious problems were averted. This, however, did not apply in the United Kingdom where officers made deposits in British banking institutions and where British legal processes were encountered in the freeing of effects of deceased American military personnel.

28. It was the policy in effect in the European Theater that American troops sent into a friendly foreign country by invitation should be allowed to perform their duties and functions with absolutely no interference by the local government, and without being subjected to the jurisdiction of its courts. Based upon the invitation to enter, and under International Law, it was believed that no surrender of rights,

privileges or immunities should be required. Concessions were to be made only when absolutely necessary in order to avoid any precedent for interference by foreign governments and their courts with the internal administration of our military affairs.[9]

29. However, in the United Kingdom there arose a comparatively large number of instances where the question of jurisdiction of British courts over the effects and property of deceased United States personnel occurred. Early in the history, the old rule of delivery to summary court of deceased person's effects (paragraph 29, AR 600-550) was suspended for the emergency and it was provided that the effects would be secured by the commanding officer and sent to the Effects Quartermaster, Kansas City Quartermaster Depot, Kansas City, Missouri, with inventory, where necessary action under Article of War 112 would be effected.[10]

30. When bank accounts of deceased United States personnel were located in British banking institutions, difficulty was encountered in releasing such accounts without proper administration on the estate of the deceased and the meeting of legal requirements. A surprising number of American military personnel accumulated rather substantial sums in British depositories. On the other hand, there were a number of relatively small accounts where the costs of administration were prohibitive. Proceedings in such cases would involve expense, delay, inconvenience and place a burden upon the United States military forces, as well as being violative of the rights, privileges and immunities of the visiting United States forces under International Law.

31. As a result of negotiations with the British authorities in June 1942,[11] a plan was worked out whereby any officer appointed in accordance with the laws of the United States to discharge duties, in the United Kingdom, with respect to a deceased member of the United States forces, including the duty of securing his effects, collecting debts due him and paying his creditors or any other officers concerned with the effects of such a deceased member, would not be required to obtain a grant of representation of the estate of the deceased in order to enable him to discharge any duties required of him by the laws of the United States in respect to such estate.[12] All required of the officer was to have a certificate of his appointment and this authorized any person in the United Kingdom to pay or deliver to that officer, any money or property belonging to the deceased to the same extent that the authority of the British Probate Courts would empower him.

32. No action or other proceeding against the estate of a deceased member of the United States forces could be brought against the representing officer by any person other than the personal representative of the deceased, who must first present to such officer the grant to him of his letters of administration of the estate together with a request in writing for the delivery to him of the personal effects and property of the deceased in the hands of the officer at that time. Such suit could not be instituted until one month had expired after the request or such other period as the court or a judge might fix on application of appropriate United States authority.

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9. Ltr, WD AGO to CG, ETO, AG 332.321 (1-11-43) OB-P-SPGAL, subj: "Arrangements with the British Government respecting estates of deceased members of U. S. Forces," 25 Feb 43.
10. Ltr, WD AGO 210.86 (9-8-42) MO-E, subj: "Effects of deceased personnel," 11 Sep 42; WD Memorandum W30-10-42, subj: "Deceased civilian personnel overseas," 23 Nov 42.
11. Ltr, Brig Gen Ed. C. Betts, Theater JA to Sir S. Findlater Stewart, G.C.B., G.C.I.E., K.C.B., K.C.I.E., 22 Jun 42.
12. British Statutory Rules and Orders, 1942, No. 2562, The Defense (U. S. Forces - Administration of Estates) Regulations, 1942.

33. It was further agreed by informal exchange of letters between United States and British authorities as a supplement to these Defense Regulations that:

(1) In all cases exceeding 500 pounds net, appropriate steps to permit administration in British courts would be taken.

(2) All personal effects would be retained by United States authorities for a period of six months after death or presumption of death, for the purpose of protecting British creditors and allowing them sufficient time within which to file their claims.

(3) United States authorities would deliver on demand to the personal representative of the deceased, upon presenting of proper British probate papers, the personal effects in accordance with The Defense Regulations.

(4) United States authorities would furnish the duly-empowered British administrator any information in their possession as to the assets of the deceased in the United Kingdom which had not already been collected.[13]

34. Later, the War Department extended its original directives to permit the appointment of a local summary court officer under Article of War 112 in cases of death of United States military personnel in foreign countries for the specific purpose of collecting and receiving any local debts due the decedent and settling accounts whenever feasible and the situation permitted. After settlement of the accounts in question, the remaining effects were to be forwarded to the Effects Quartermaster, Kansas City Quartermaster Depot, or paid to local creditors for final disposition in conformity with Article of War 112.[14]

35. On 28 July 1943, by War Department Memorandum W-600-61-43, subject: "Instructions covering disposition of effects of 'deceased, missing and missing in action' personnel," AG 332.3 (20 May 1943) OB-P-SFQEI-MB-E, complete instructions were issued which embraced the full authority for future procedure in the European Theater. This was qualified by the wide latitude and discretion allowed the Supreme Commander to meet the exigencies of the local situation in carrying out his mission.

36. There was a general tendency to relieve the immediate commanding officer of the deceased of the minutiae of detail under Article of War 112 with so many persons under his command becoming deceased or missing in action, and the desire was to centralize such functions in the Effects Quartermaster, who functioned under the Commanding General, Services of Supply, ETOUSA.[15] The working rule was

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13. Ltr, Brig Gen Ed C. Betts, Theater JA to Sir Claud Schuster, G.C.B., K.C.B., C.V.O., K.C., Permanent Secretary to The Lord Chancellor, House of Lords, S.W.I., 10 Dec 42.
14. Ltr, WD AGO 210.86 (11-27-42) OB-P-E, subj: "Amendment of Policy with Respect to Disposition of Effects of Deceased Personnel," 18 Dec 42; Ltr, WD AGO AG 210.86 (10-23-42) OB-P-E, subj: "Further Amendment of Policy with Respect to Disposition of Effects of Deceased Personnel," 9 Mar 43.
15. Ltr, Hq ETOUSA to CG, SOS, ETOUSA, AG 332.3 NJA, subj: "Disposition of Effects of Persons Reported KIA or MIA," 4 Jan 43; Sec I, Cir 2, Hq ETOUSA, 7 Jan 43; Sec I, Cir 30, Hq ETOUSA, 15 Mar 43.

for the immediate commanding officer to secure all available effects of personnel killed or missing in action, inventory the same, list debtors and creditors, furnish name and address of designated beneficiary and forward all these to Effects Quartermaster, Quartermaster Depot 110, APO 887, U. S. Army. Currency and coin were to be converted into United States postal money orders.

37. An attempt was made to discourage the accumulation of assets in the United Kingdom or in the banking institutions on the Continent, of amounts in excess of 500 pounds net, thereby eliminating expense, delay and inconvenience of administration.[16]

38. Later, provisions were made for segregation of personal effects from government property, disposing of items not of strictly sentimental value, preservation of deeds, traveler's checks, negotiable instruments and other valuable papers.[17] Under combat conditions, the responsibility for the collection, inventory, disposition and protection of effects was prescribed as follows:

(1) In case of battlefield or other hasty burials, the officer in charge of burial detail was responsible for the effects found on the body.

(2) If remains were taken to a cemetery, then on the officer in charge of the cemetery.

(3) In other cases and for effects located in bivouac areas, billets, rest areas, and similar localities, on the deceased's individual commanding officer.

(4) For effects at hospitals, on the commanding officer of the hospital.[18]

39. The Effects Quartermaster, both in the United Kingdom and on the Continent, had a fixed procedure for processing the assets upon receipt, both as to Class I and Class II, the latter being retained in the European Theater for a period of six months from date of death or presumptive death, after which the remaining effects were forwarded to the Kansas City Effects Quartermaster.[19]

40. The judge advocate of the command was constantly called upon to interpret these directives and answer questions arising out of debts, obligations and claims by or against the deceased's estate. In some instances, the deceased had married since coming overseas and the British, French or Belgian spouse presented problems that had to be worked out along legal lines. At times, there were negotiable instruments, checks, drafts, letters of credit or notes signed by members of the deceased's organization in his favor, collection of which could be accomplished only by indorsement. In order to eliminate delays, the Commanding General, Services of Supply, ETOUSA, authorized the Effects Quartermaster, ETOUSA, to indorse such instruments for col-

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16. See I, Cir 30, Hq ETOUSA, 15 Mar 43; See II, Administrative Cir. 80, Hq SOS, ETOUSA, 25 Oct 43.
17. Hq ETOUSA SOP No. 26, "Burials and Effects," 9 Jun 44; Ltr, Hq ETOUSA to all unit COs in UK, AG 332.3 PubGA, subj: "Disposition of Effects in UK," 15 Nov 44.
18. Hq ETOUSA SOP No. 26, "Burials and Effects," 9 Jun 44.
19. Ltr, WD ASF to Chief QM ETO, SPOEI 332.3 ETO, subj: "Disposition of Effects of Persons reported Dead, KIA or MIA in ETOUSA," 2 Aug 43.

lection,[20] which ruling was contested by various concerns, such as the American Railway Express Company,[21] on the grounds that the Effects Quartermaster had no authority to make such indorsement. Thereupon, the War Department promptly ordered such negotiable instruments to be transmitted directly to the Kansas City Effects Quartermaster, without indorsement or other action, except in cases where a negotiable instrument was evidence of a debt due from a local debtor or could be collected by summary court officer under the limited power granted by Article of War 112, or if a debt due a missing person (prior to presumption of death) could be collected by request only and without indorsement.[22]

41. Upon contention by the Theater Judge Advocate that the summary court officer was clothed with the same authority insofar as British law was concerned that the probate court administrator appointed to indorse negotiable instruments had, the War Department made limited exceptions to its former directive. It authorized indorsements in cases in which a negotiable instrument, including traveler's checks, payable to a deceased person subject to military law, which was evidence of a debt due such decedent by a local debtor and which could be collected locally by summary court officers under Article of War 112. Indorsements, however, were prohibited in similar cases involving missing persons except upon express written authorization from such person. If collection could be accomplished without indorsement, such was authorized.[23]

42. The delay occasioned by the retention of Class II effects for six months after death and an additional six months after the six months required in presumption of death cases brought about unsatisfactory results, which led to negotiations resulting in the reduction of the period to 60 days.[24] In perplexing cases where importing of personal effects was forbidden by law into the United States, especially in the case of bulky and perishable articles, automobiles, live animals, electric equipment and appliances which were adapted to use in British or Continental countries, and where under Article of War 112 there was no authority to dispose of such effects, the War Department authorized the Theater Commander, or his duly appointed representative, to sell items contained in the effects of deceased, interned or captured personnel, if such items fell within the class of:

(1) Bulky items, the shipment of which was contrary to existing regulations or policies.

(2) Items which, because of their nature, size or weight, could not be included with other effects when shipped to the Kansas City Quartermaster.

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20. Item 31, File "Decedent's Effects - Policy," Office of Theater JA.
21. Ltr, WD ASF to QM ETO, SPOEI, 332.3 ETO, subj: "Disposition of Effects of Persons Reported Dead, KIA, MIA, ETOUSA," 2 Aug 43.
22. Ltr, WD AGO (4 Aug 43) OB-S-E, subj: "Negotiable Instruments of Deceased or Missing Personnel, ETOUSA," 29 Aug 43.
23. Ltr, WD AGO to CG, ETOUSA, AG 332.3 (5 Dec 43) OB-S-E, subj: "Negotiable Instruments of Deceased or Missing Personnel, ETOUSA, 25 Feb 43.
24. Ltr, WD AGO to CG, ETOUSA, AG 332.321 (1-11-43) OB-P-SPGAL, subj: "Arrangements with the British Government respecting the estates of deceased members of U. S. forces," 25 Feb 43; Ltr, Brig Gen Ed C. Betts, Theater JA to Sir Claud Schuster, House of Lords, 20 Oct 43, and reply thereto, 28 Oct 43; Ltr, Hq ETOUSA, same file number and subject as above, 15 Nov 43.

(3) Items, the disposition of which, if accomplished in the European Theater, would serve to the best interests of the eventual owners concerned.

43. Provision was made, however, for the sale only upon request of summary court officer to the Theater Commander, setting forth full details as to proposed sale, whereupon request for authority was made to the Effects Quartermaster, Kansas City Quartermaster Depot, who would try to locate relatives of the deceased and secure from them their approval. After this rather tedious and laborious process, the effects could be disposed of by the Theater Commander at either public or private sale and the funds transmitted to the person entitled to receive them, through the Kansas City Effects Quartermaster (Section VI, War Department Circular 85, 1945).

44. Likewise, there were many problems of lost or abandoned property, together with claims arising thereunder, both by and against military personnel, that came to the desk of the unit judge advocate for his decision or comment. As the advance into conquered countries progressed, the question of "liberated" articles, especially small and portable items such as jewels, objects-of-art and currency, constantly presented themselves and the age-old law of human service and desire-to-possess raised further problems and difficulties, which the judge advocate officer was compelled to treat under the head of pillaging, looting, black market and similar categories.

45. In the air forces, there arose the constant problem of the effects of a flier killed or missing in action, where members of his organization or others in his barracks would distribute certain of his effects among themselves upon the report of his being lost. This was obviated by having each member of the flying personnel, before going on a mission, leave an inventory of property with the adjutant or other headquarters officer of his unit or command and an immediate check being made upon word of his failure to return.

46. It was not infrequent for effects of deceased persons, property taken from the enemy, exhibits in court-martial cases, impounded property, assets deserted by parties other than the owners for fear of trouble arising out of the possession of same, to wind up in the custody of judge advocate sections. Where they were government ordnance or quartermaster property, they were, of course, turned over immediately to the proper authority and receipt taken. Trophies, small articles such as wrist watches, jewelry, keepsakes and similar items, in many instances were absorbed in the handling and having served their purpose, went to long oblivion in files or were treated as "souvenirs". Some provision might be considered for the orderly disposition of such miscellaneous items by army regulations in order to clear responsibility and remove the temptation of appropriation.

CHAPTER 3

REVIEW OF INVESTIGATION REPORTS

SECTION 4

BOARD REPORTS

47. The judge advocate function with respect to board reports such as line of duty, survey and other administrative matters, was largely determined by the policies of the individual headquarters in the European Theater and were limited or enlarged in consonance with the views and practices of the immediate commander. In some jurisdictions, the judge advocate section made an administrative check and review and then handled the matter to a conclusion with the appointing or reviewing authority. In other commands, the judge advocate only checked such reports as to legal sufficiency, while in still others, they only came to the judge advocate when there were disciplinary questions or matters of a strictly legal nature to be decided. In still others, the judge advocate never saw the board report. While in most cases line of duty reports involved legal interpretation and adherence to previously announced precedent or decision, most of the board reports were administrative in nature and involved only compliance with the regulations setting them up and the decision in connection with the facts developed.

SECTION 5

RECLASSIFICATION PROCEEDINGS

48. Interviews with various judge advocates operating in the European Theater during the campaign revealed that there were likewise varied systems on reclassification proceedings. Some of them passed over the desk of the unit judge advocate who checked compliance with the regulations and existing European Theater directives, added his comment as to the absence of disciplinary questions in the case and even went so far as to give an opinion upon the merits of the recommendation. Other headquarters did not route the proceedings through the judge advocate section at all. In the First and Fifteenth Armies, it was expressly provided that, in all reclassification proceedings, there would be included a written statement from the unit judge advocate that he had reviewed the recommendation and accompanying papers and that no disciplinary action was indicated or that there was not sufficient evidence to justify trial.[1] This was found to facilitate the handling of such proceedings and to answer, in most cases, the question of why disciplinary action had not been employed. The judge advocate would set forth a digest of the pertinent evidence, a clear presentation of the issues involved and a summary of the officer's civilian and military record. Usually, the G-1 section processed the proceedings on through to final conclusion with the approving or reviewing authority. Small inconsequential errors or omissions were waived, although noted.

49. Considerable discussion arose at many headquarters in connection with the ordering of the subject officer to army headquarters upon the institution of the proceedings, having him bring his own papers and holding his transportation until it was decided to accept him. The wisdom of this was seriously debated since it necessitated a move to army headquarters, thence to a reclassification center; it allowed the officer to have custody of valuable original papers, sometimes of a damaging nature to him which might be difficult of replacement if lost, and it allowed a unit to unload an officer on army headquarters before

1. Cir. No. 30, Hq Fifteenth Army, 28 Apr 45.

it had been decided that reclassification was desirable. The final procedure followed by most jurisdictions was to submit the papers with the recommendations and await the orders of higher headquarters for the subject officer to proceed to the reclassification center or to reassignment.

SECTION 6

INSPECTOR GENERAL INVESTIGATIONS

50. The inspector general and the judge advocate worked in close harmony in most jurisdictions in the European Theater during the campaign, and the reports of the inspector general were usually routed through the judge advocate section on their way to the chief of staff for comment as to legal or disciplinary action to be taken. This did not include those reports that were made exclusively for the personal information of the commander.

51. In those cases where the investigation was made at the instigation of the commanding officer and the reports were filed away without being made available to the judge advocate, regimental commander, staff section chief, investigating officer, surveying officer, line of duty board, etc., much valuable information was lost and the work was duplicated. Many thought that even though the matter was confidential in its nature, it was not so confidential that staff officers and other interested persons should not have been given the opportunity to examine the report prior to its being filed.

SECTION 7

ARTICLE OF WAR 121 INVESTIGATIONS

52. There were comparatively few proceedings under Article of War 121 noted in the European Theater during the campaign, indicating that the average soldier was either ignorant of his rights or that he rarely employed this method of complaint. It was found to be to some extent cumbersome and unusable.

53. Often the aggrieved soldier entertained fear that the action would result in greater future disadvantage and shrank from employing it, contenting himself with an anonymous communication, either to the "B Bag" of "The Stars and Stripes" newspaper, to "Yank" or by barracks-room complaints to his fellow soldiers.

54. When they did employ this method, many questions arose: Was the complaint properly laid under Article of War 121? Was it in proper form? Did the commanding officer have to forward it? Had the complainant been refused redress as contemplated by Article of War 121? Was the wrong capable of being redressed? Was it a wrong?

CLAIMS AGAINST THE UNITED STATES

SECTION 8

EARLY STAFF STUDY

55. During the early stages of the American staff study of British operations, preparatory to planning for and sending large shipments of its forces into the United Kingdom, it was apparent that claims by British nationals arising out of acts and omissions of our military and civilian personnel individually, and activities of our armed forces as a whole, would present a major problem. The British were already handling thousands of claims per month arising out of military operations through an elaborate claims organization developed through prior experience. During the first two years of the war, their system placed responsibility for investigation and report respecting claims on unit, area, camp, force or comparable commander, who forwarded to the British Claims Commission for approval, disapproval or other appropriate action. This was basically the system employed in the United States during peacetime.

56. However, experience proved the plan unsatisfactory under combat conditions, and the claims organization was accordingly expanded so as to relieve tactical commanders, who had little time for such administrative work, and who were subject to frequent moves, of any responsibility with processing claims except to make a prompt, accurate and preliminary report thereof. In each area command (comparable to District and Base Section Command), a permanent claims office and organization was established with the primary duty of investigating and reporting claims to the British Claims Commission for disposition.

57. Such a system had the advantages of central control, uniform operation, standard procedures, exclusive use of trained experts who devoted their full time to the assigned mission without other distracting duties. It constituted a static agency equipped to handle all claims arising within the assigned area, even though the unit or individual which gave rise to them was merely passing through or temporarily stationed there. Matters of local practice, customs, rules of law, measurement of damages, standards of justice, procedures and attitudes were learned by the semi-permanent claims personnel and added immeasurably to their efficiency of operation. The local key civil authorities became known and their invaluable aid was solicited and obtained. Individual claimants became acquainted with claims personnel and the location of the claims offices which expedited settlements. Reputations for fair dealings prompted witnesses to talk more freely and local authorities to make available information obtained in their official capacity, such as proceedings at an inquest in a death case. Tactical commanders were freed of a task which they and their subordinate officers were ill-equipped to handle, even at the cost of neglect in training programs or lowered combat efficiency.

58. The British Claims Commission had also worked out time-saving devices. Experience disclosed that from eighty to ninety per cent of all potential claims arose out of motor vehicle accidents. Under the British law, public liability insurance coverage was mandatory for every privately operated vehicle. In order to avoid the needless expense of investigation, individual settlements and costly litigation, the insurance companies had, among themselves, entered into loss-sharing agreements of various sorts. Among them were what was commonly called the "Knock-for-Knock" agreements by which there was a mutual waiver of

claims and each insurance carrier absorbed the damage suffered by its own insured, without regard to the question of liability. Another was the "Halving" agreement, by which the insurance carriers equally shared the loss of an accident, regardless of which insured was at fault in producing it. This type of agreement was particularly applicable in the situation where heavy equipment, such as an army vehicle, insured by one company, was likely to inflict the greater amount of damage when involved in an accident with a light civilian vehicle, covered by another carrier. It was also operative in cases where the damages were abnormally large. This particular type of agreement was designed to, and did, effect a more equitable distribution of losses in such anticipated situations based upon prior experience. The British law particularly favored such agreements as contributory negligence did not bar a recovery in a tort action. In determining the question of liability under the English law, negligence on the part of the claimant was either not considered, or the principle of comparative negligence was applied. Claims by British nationals against their government were disposed of by application of the same rules of law.

59. The British Government in undertaking to settle claims arising out of the operation of the vehicles of its armed forces thus virtually became an insurer. It, therefore, availed itself of the advantages and economies of the loss-sharing agreements of the commercial insurance carriers by becoming a party thereto.

60. The American authorities who made a study of the British system, in anticipation of the passage of a foreign claims act by Congress, were quick to perceive its advantages and merits. During this study, the British Claims Commission and authorities were most cooperative and offered the joint use, by the United States Government, of the whole of its claims organization, facilities and personnel, including full participation in the loss-sharing agreements with the British insurance carriers, and contract advantages accruing from previously negotiated contracts with United Kingdom public utilities, county councils and public authorities, so as to be of the greatest aid in helping to establish our own claims organization and place it in full operation.[1]

SECTION 9

BASIC LAW

61. The anticipated American legislation was passed by Congress and approved on 2 January 1942.[2] The statute was enacted for the express purpose of "promoting goodwill and maintaining friendly relations by the prompt settlement of meritorious claims," not in excess of $1,000 of the "persons or inhabitants of. . .foreign countries." Final jurisdiction to consider, adjust, determine and pay the claims was vested in a claims commission or commissions to be appointed by the Secretary of War or Secretary of Navy. Claims for damage to property, private or public, or to the person, if presented within one year of the date of accrual, were within the scope of the act, when caused by Army, Navy and Marine Corps forces, or any individual member thereof.

SECTION 10

EARLY OPERATIONS

62. The Secretary of War, pursuant to the authority of the act, appointed a claims commission for the European Theater of Operations in

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1. Historical Account, Claims Service, ETOUSA, undated, by Col. C. E. Brand, JAGD.
2. Public Law 393, 77th Congress; Sec IV, Bull 2, War Dept, 1942 .

March of 1942 (War Department Cable No. 3, 24 March 1942, Circular 19, Hq ETOUSA, 27 July 1942). The president or chairman of the commission, upon completion of a staff study participated in by G-1 and the Judge Advocate for the European Theater of Operations, with their concurrence and the personal approval of the Theater Commander, consummated an agreement with the British Government through its Claims Commission, Treasury Solicitor, and other appropriate authorities, by which the United States was to accept the offer of the British to make joint use of its established claims organization, facilities and personnel; become a participant in the loss-sharing agreements with the British insurance companies; and receive benefit of the service contracts previously negotiated by the British Claims Commission.[3]

63. The first operating United States claims office in the European Theater of Operations was established at Belfast, Northern Ireland, in May of 1942, with a very meager staff and no field personnel.[4]

64. Early operations were greatly hampered by inexperience, lack of personnel, the limitations of the act itself, and the even more limiting regulations and directives implementing it. The objectionable limitation in the act was the maximum amount of $1,000, which could be paid under it. Otherwise, it was fairly broad in terminology and scope and would have allowed rather wide discretion on the part of the Secretary of War in administering it. However, the War Department apparently felt that, in the absence of convincing self-experience indicating its desirability, drastic changes and revolutionary departures from the fundamental principles, policies and practices of the peacetime operations within the United States were unwarranted. Consequently, such limitations, procedures and policies developed in the processing of claims in the states were basically incorporated into regulations implementing the foreign claims act. Accordingly, the Theater Commander felt constrained to follow these policies as far as possible in promulgating his original directives, establishing an organization and procedures for operations under the act.

65. War Department regulations and directives defined an inhabitant, within the meaning of the act, to be only a person who dwells or resides permanently in the country or possession in which the claim arose. Expressly excluded were Army, Navy and Marine Corps personnel, nationals or citizens of foreign countries at war with the United States, and United States citizens not permanent residents of the foreign countries involved. Claims for damages caused in whole or in part by contributory negligence on the part of the claimant or his agent were expressly barred.

66. The old idea of "unit investigation" was brought forward and made effective. The claimant was required to submit his claim in writing to the commanding officer of the nearest Army post, camp, station or force who would, in the usual manner, promptly refer it to an investigating officer or board of officers for investigation, report and recommendation. The report then had to be submitted to the commanding officer, who was the appointing authority, for his approval, disapproval and forwarding to the claims commission having jurisdiction. After directing additional investigation, if needed, and making its award in the case, the commission notified the claimant thereof "through official channels", which meant command channels. The Chief of Finance was the permanent custodian of files and, generally, responsible for overall supervision on behalf of the War Department.

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3. Historical Account, Claims Service, ETOUSA, undated, by Col. C. E. Brand.
4. Historical Account, Claims Service, ETOUSA, undated, by Col. C. E. Brand.

67. The president of the claims commission, under the direction and supervision of the Theater Commander, was made responsible for the investigation, processing, settlement or other appropriate disposition for all claims within the European Theater of Operations. The theater directive stipulated that the claims organization would include, in addition to the claims commission, itself, United States claims officers and their staffs for liaison, investigations and other field work. It was directed that in the processing of claims against the United States, the fullest advantage was to be taken of the facilities, services and aid of the British Claims Commission and its organization. A United States claims officer was to be appointed for each British command area in which United States forces were stationed in sufficient numbers to require it. The United States claims offices for each command area were to be housed with or adjacent to the British claims headquarters for that area.

68. The senior United States forces commander of each such command area, or other officers so designated, would act as the "commanding officer" who was, under the regulations, responsible for the appointment of an investigating officer and the approval or disapproval of the subsequent report. In such capacity, he was to designate a United States claims officer for his area.

69. The usual requirement that the driver of any United States vehicle involved in an accident was to prepare a driver's report (Form 26A) immediately and before leaving the scene of the accident was adopted. His immediate commanding officer was to verify the driver's report by signing his name thereto and assist the driver in preparing a supplemental signed statement. The report was to be forwarded to the United States claims officer for the area within 24 hours, with a supplemental statement of the driver, statements of any other witnesses available, and any further details known to the reporting officer. In case personal injuries were involved, report was to be made by telephone to the United States claims officer and supplemented by a written report within 24 hours.

70. Having in mind the stated purpose of the act, and the fact that it contained no limitation prohibiting it, provision was made that damages could be paid when caused by United States personnel of the armed forces, notwithstanding the fact that the person causing it may have been acting outside the scope of his employment. Since the basic statute contained no limitation as to the character of the act or omission producing the damage, it was further provided in keeping with this underlying purpose that, all claims including those arising from pillage, theft, depredation and wantonness, even though warranting disciplinary action or within the purview of Article of War 105, were to be received, investigated and processed to final settlement or other appropriate disposition.[5]

71. It thus appears that the plan of operation conceived and developed for the European Theater of Operations was closely patterned after the British system and partially engrafted thereon. It was not entirely in harmony with the domestic peacetime policies and operations respecting claims as a whole or the War Department regulations implementing the act itself. The plan was, however, responsive to existing conditions and the result of sincere effort on the part of those responsible to give effect to the stated purpose of the act.

72. In the first place, regulations prohibited the allowance of a claim against the United States where the damage was proximately caused, in whole or in part, by the contributory negligence of the

5. AR 35-7090, 10 Feb 42; Cir 30, Hq USAFBI, 8 Jun 42.

claimant or his agent. Claims paid under the British loss-sharing agreements, in which negligence on the part of the claimant or his agent was a proximate cause in producing his damage, was therefore apparently unauthorized by law as limited by the implementing regulations. Moreover, the payment under such loss-sharing agreements was made to the insurance carrier, which under the terms of the policy or by express grant was the subrogee of the original claimant. Under the basic policies relative to domestic claims of all types, subrogees were not favored in the United States law and many of the claims regulations expressly prohibited direct settlement with them.

73. Moreover, under the claims practices theretofore in force, responsibility for investigating, reporting and approving or disapproving claims was vested in the local "commanding officer", following the theory of "unit investigation" through command channels by the unit or command primarily responsible for the act or incident giving rise to the claim. Such practice was entirely inconsistent with the appointment of a permanent United States claims officer, to service a particular area, responsible to and under the supervision of the president or chairman of the claims commission. As a matter of fact, under the regulations and directives then in force, there was no express authority for the appointment or detailing of such an officer.

74. The processing of the claims through command channels was not adaptable to conditions existing in the European Theater and was inconsistent with the British system of transmission direct from the field investigating office to the commission for appropriate action without the intervening approval or disapproval.

SECTION 11

REVISION, REORGANIZATION AND OPERATION

75. To overcome this difficulty, an order was promulgated directing that the Commanding General, Services of Supply, or any other officer designated by him, would act as the "commanding officer" within contemplation of paragraph 3, AR 35-7090. He was also given authority to designate United States claims officers for each British command area to receive and investigate claims and function in the sense of the normally appointed investigating officer.[6]

76. By later directive, unit commanders were ordered to report any damage to property or injury to person of civilians caused by members of the armed forces direct to the local United States claims officer, or appropriate base section claims officer, and through channels to the military superior responsible for disciplinary action. It was provided, however, that investigations made by United States claims officers did not affect the responsibility of the commanding officer as to reports of survey or other appropriate administrative action. He was also required to perform the usual preliminary investigation as a basis of his report to the United States claims officer.[7]

77. This action was supported by request from the Theater Commander to the War Department for authority to vary and depart from the administrative procedures prescribed in AR 35-7090 as circumstances may require, together with a later specific request for authority to utilize a special group of officers, under theater headquarters control, to receive and investigate claims and report thereon to the claims commission, in lieu of leaving the responsibility therefor upon unit com-

6. Cir 11, Hq ETOUSA, 8 Jul 42.
7. Cir 11, Hq ETOUSA, 8 Jul 42.

manders as contemplated by paragraphs 3 and 4 of AR 35-7090, as that practice within the European Theater, as shown by experience, was unfeasible.[8]

78. To justify participation in the British loss-sharing agreements, under which claims despite the existence of contributory negligence on the part of the claimant or his agent, were handled, resort was made to the unrepealed Foreign Claims Act of 1919 which was re-vitalized by publication and on which was engrafted provisions of the current law and machinery. This act provided that claims without limitations as to amount, of inhabitants of France or any other European country, not an enemy or ally of an enemy, for damages caused by American military forces might be presented to any officer designed by the President and, when approved by such officer, should be paid under regulations made by the Secretary of War. Claims under the statute were not to be approved unless they would be payable according to the law or practice governing the military forces of the country in which they occurred. By theater directive, it was provided that the President had designated a claims commission of the European Theater of Operations to approve claims under the act subject to regulations prescribed by the Secretary of War; that claims in excess of $2,500 must be approved by the Theater Commander before payment; and that awards upon claims in excess of $5,000 must be forwarded, with a full report of the claims commission and recommendations of the Theater Commander, to The Judge Advocate General for approval by the Secretary of War. However, settlement of claims, upon which the claims commission had made award of $1,000 or less, would be processed under the Act of January 2, 1942, the current Foreign Claims Act when applicable. Claims to be settled under the old act were to be processed under current procedures and directives, except when in conflict therewith.[9]

79. Operations under this plan were short-lived, however, as the original foreign claims act of 2 January 1942 was amended by the Act of 22 April 1943.[10] Basically, the original act was unchanged. However, some of the new provisions are worthy of note. The new act was expanded so as to cover acts, not only of members of the United States armed forces but civilian employees thereof as well. Claims of subrogees were expressly excluded. The amount which could be paid under the act was increased from $1,000 to $5,000. Where the amount claimed exceeded $2,500, but did not exceed $5,000, approval of the Theater Commander or someone designated by him was a requisite. Claims in excess of $5,000 were to be certified to Congress through The Judge Advocate General's Department with recommendations as to approval or disapproval, with the amount thereof.

80. The period of limitation was expanded, requiring new claims to be asserted within the usual one year period from the date of accrual, but making provision for the filing and entertaining of claims arising out of accidents or incidents occurring after 6 December 1941, but prior to 1 May 1943, if presented at any time prior to 1 May 1944.

81. The new act further provided that no claim of any national of any country at war with the United States, or of any ally of such enemy country could be allowed, except when the claims commission or the local military commander determined that the claimant was friendly to the

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8. Cablegrams: Eisenhower to AGWAR, 23 Sep 44, No. 2671; AGWAR to Eisenhower, 15 Oct 42, No. 1951; Eisenhower to AGWAR, 16 Oct 41, No. 3657; AGWAR to Eisenhower, 5 Nov 42, No. R-2791.
9. Act of 18 Apr 1918, Sec 717A, Mil Law, 1939; Cir 3, Hq ETOUSA, 9 Jan 43.
10. Public Law 39, 78th Congress.

United States. It is also significant to note that the mandatory act repealed the old claims act of 18 April 1918,[11] which the claims commission had three months before attempted to revitalize, by publication in a theater directive, as a basis of authority for the agreement with the British Government for participation in the loss-sharing agreements of the insurance carrier.

82. The act was also expanded by the amendment so as to embrace damages arising out of the activities of the Coast Guard forces and its civilian employees. The amendment further expressly provided that no claim resulting from action by the enemy, or resulting directly or indirectly from any act of the armed forces of the United States engaged in combat, would be allowed.

83. Army regulations of the War Department (AR 25-90, 3 July 1943; AR 25-90, 22 April 1943) were in harmony both as to content and principle, with the implementing regulations of the original act (Act of 2 January 1942; AR 35-7090, 10 February 1942) except as noted hereafter. These regulations provided that claims otherwise within the act could be allowed even though the result of criminal acts, wanton misconduct, or acts of depredation which but for the war, would be payable under the provisions of Article of War 105. Damages to real property incident to use and occupancy under lease or otherwise could be paid under the act even though enforceable against the government as a contract claim.

84. Damages allowable for personal injury and death could include reasonable medical and hospital expenses, compensation for physical pain and suffering, loss of earning capacity, burial expenses and loss of prospective support, all computed upon local standards.

85. Claims expressly excluded embraced those based solely on compassionate grounds, private contractual obligations of individual military personnel or civilian employees, bastardy claims and workmen's compensation claims as such. As to the latter type, however, if the claim was not within the scope of the Workmen's Compensation laws of the United States and if no other specific remedy was available for relief, it could be asserted under the claims act.

86. Where claims were for damages proximately caused, in whole or part, by the negligence or wrongful act of the claimant or his agent, they were not to be allowed under the act; unless, under the law or custom of the place where the claim arose, such contributory negligence or wrongful act was not recognized generally as a bar to recovery on tort claims, in which case local law or custom was to be applied as far as practicable.

87. Claims were not to be allowed in favor of a subrogee, but could be allowed in the name of the insured, if authority was established by power of attorney, by insurance policy provision, or by other documentary evidence. The new regulations also expressly stated that claims by subrogees, in their own right, were not within the provisions of the original Act of 2 January 1942.

88. A new procedure for the exercise of the statutory function of approving claims was permitted by the establishment of the claims commission composed of one officer with jurisdiction in an amount not in excess of $500. Claims in excess of that amount could be approved only by a commission of more than one in number. Sufficient number of commissions could be appointed to accomplish a prompt processing of the claims within any particular theater.

89. The responsibility for investigating and reporting of claims was vested in the theater, base or comparable commanders. The Commanding General, Army Service Forces, was designated as a responsible

11. 40 U. S. Stat. 532.

officer for the administration of the act of the War Department. He in turn delegated such responsibility to The Judge Advocate General, in lieu of The Chief of Finance.

90. Each responsible field commander was authorized to establish a theater investigation service to function through a central headquarters. Immediate responsibility for investigation still rested upon the commanding officer of the regiment, comparable unit, post, camp, or station which was most involved and responsible for the accident or incident resulting in damage. However, upon completion of such a preliminary investigation, as was practicable under the circumstances, he was authorized to accomplish the transfer of the responsibility by reporting the same, and transmitting all information at hand, to the United States claims officer in charge of an office of the Claims Service, whereupon the Chief of Claims Service would become responsible for subsequent investigation and processing. The unit commander was not required to approve or disapprove the claim prior to forwarding to the Claims Service.

91. The right of the government of the countries, in which our armed forces were operating, to assume the payment of claims against the United States within the provisions of the amended foreign claims act and the army regulations relating thereto and take credit for such payments, as an item of reciprocal aid, under the provisions of the Lend Lease Act, was expressly recognized.[12]

92. The Foreign Claims Commission for the European Theater of Operations, pursuant to the cabled authority from the War Department to establish a separate claims and investigating service, and the authority of the amended claims act with implementing regulations accomplished a reorganization, the framework of which is set forth in Circular 44, Headquarters European Theater of Operations, United States Army, 12 May 1943. No good purpose would be served in detailing its provisions here. Suffice it to say that it accomplished with express authorization what it had previously attempted to do by adaptation. A separate field investigative service was created to investigate and report claims to be submitted to the commission which, in turn, would independently exercise its statutory semi-judicial function as to allowance, disallowance, or other appropriate action. The claims commission had final jurisdiction to settle claims not exceeding $2,500. Claims in excess of that amount, but not exceeding $5,000, could be allowed by the commission only with the approval of the European Theater Commander, and later as designated by him, the Commanding General, Services of Supply, European Theater of Operations.[13]

93. From the time of its creation up until September 1943, the claims administration for the European Theater had dealt with approximately 11,000 cases (other than training and maneuver claims handled by the British since October 1942 as an item of reciprocal aid). Approximately 9,000 cases were disposed of at a cost of $175,000, an average of slightly less than $20 per case. As a comparison, it is noted that the British, as of August 1943, during the preceding 32 months had disposed of 400,000 cases at a cost of $12,000,000, an average of about $30 per case. Experience up to that time disclosed that one United States claims officer per 10,000 troop strength, and 1½ clerks per officer were needed.[14]

95. In September of 1943, another date important in the development of the claims service, the War Department issued orders prohibiting further participation in the loss-sharing agreements with the British insurance carriers and Government, except the one providing for mutual waiver of the property damage claims, which was authorized only with

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12. AR 25-90, 3 Jul 43.
13. Cir 60, Hq ETOUSA, 43.
14. Historical Account, Claims Service ETOUSA, undated, by Col. C. E. Brand, JAGD.

respect to the British and Canadian Governments, and directing the processing of all claims in the European Theater of Operations to be in strict accordance with existing army regulations, except as otherwise expressly authorized by the War Department.[15] As a matter of fact, such agreements were expressly prohibited by the revised regulations implementing the amended claims act except in the situations where settlement was consummated in the name of the insured. These orders temporarily ruptured the friendly relationships with the British Claims Commission, the Treasury Solicitor and other interested authorities.

96. Many claims, within the scope of the United States act, had already been settled by the British insurance companies with their insured in anticipation of reimbursement by the Commission under the loss-sharing agreements. As a matter of fact, payments had been approved in favor of the insurance carriers making such settlements, but not actually paid. A complete impasse resulted. Since the real claimant had already made settlement with his insurance carrier, he no longer had an assertable claim against the United States Government. The insurance carrier, on the other hand, as a subrogee was barred from directly receiving the payment by the War Department order and mentioned regulations. However, these claims were later paid upon authorization of the War Department from contingent funds in the hands of the European Theater Commander.[16] As the British Claims Commission utilized to the fullest extent the loss-sharing agreements in the disposition of the greater percentage of its cases, without detailed investigation as to the facts concerning vehicle accidents, negotiations for settlement with the individuals involved and without prohibition as to payment direct to a subrogee, the British Government was greatly concerned with the then present attitude of the American Government and its method of future operations and processing of claims.

97. During this same month of September 1943, the War Department designated a new president of the claims commission for the European Theater of Operations,[17] who upon completion of his study of the situation, made many far-reaching changes, both in organization and operation of the United States Claims Service.

98. Under the reorganized plan, the service was created as a separate staff section on the staff of the Commanding General, Services of Supply, European Theater of Operations, United States Army. It was headed by a Chief of Claims, who was not a member of a claims commission and who was solely charged with the entire supervision and responsibility of its proper functioning. The component parts of the newly-organized Claims Service consisted of:

(1) A three-man Theater Claims Commission,

(2) One-man base section claims commissions in the number needed,

(3) A Theater Director of Investigation Service, together with as many Base Section Directors of Investigation Service as needed, supplemented by investigating officers as needed, and

(4) Unit claims officers appointed under paragraph 7c, AR 25-20, 3 July 1943.

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15. Cable: AGWAR to Eisenhower, No. 2989, 12 Sep 43.
16. Cable: AGWAR to ETOUSA, R-781, 8 Jan 45.
17. Historical Accounts, Claims Service, ETOUSA, undated, by Col. C. E. Brand, JAGD.

99. A complete divorcement was effected between the fact-finding investigation service and the claims commissions. The latter were to perform purely statutory semi-judicial functions of allowing or disallowing the claims presented; or other indicated appropriate action. The European Theater Claims Commission was given jurisdiction over all claims up to $5,000. However, all claims over $2,500, but not in excess of $5,000, were subject to approval of the Commanding General, Services of Supply, European Theater of Operations, United States Army.

100. The one man base section commissions were given jurisdiction to pass upon claims not in excess of $250 (later extended to $500) arising within their respective base section areas. All commissioners were to be appointed by the Secretary of War.

101. The Director of Investigation Service was charged with the responsibility for the promulgation of rules, regulations, procedures and forms, investigation of all claims through the investigation officers under his supervision, the prompt and proper compilation and transmission of claims records to the Chief of Claims or the appropriate claims commission for action, and the handling of all administrative details.

102. The Base Section Directors of Investigation Service were charged with the same duties and responsibilities within their respective areas. Unit claims officers were to perform their normal duties, as heretofore detailed, in conformity with AR 25-20. Unit commanders retained their normal responsibilities for preliminary investigations and prompt reports to the appropriate base section or United States claims officer, to the same extent under the former method of operation.

103. This organization closely paralleled that adopted by the British as a result of their early experience. Greater efficiency resulted from the decentralization and flexibility of operation. With the claims personnel under the direct control of the Chief of Claims, reassignment could be promptly effected to meet the requirements of any particular locality.[18]

104. The claims personnel attached to each Base Section headquarters constituted a claims staff which was under the command of the Base Section commander for administrative purposes, but actually under the supervision of the Director of Investigation Service, insofar as the fact-finding was concerned and, at a later date, under the Base Section Director of Commissions as to the performance of the statutory commissioner's duties.

105. Staff planning for D-Day anticipated the need of a claims service to function immediately behind the assault troops. To postpone claims operations on the Continent until the arrival of communication zone installations would result in the accumulation of an insurmountable backlog of claims, the loss of valuable and essential evidence and creation of a task extremely difficult to handle. To fill the need for this advance service, the claims team was created to operate as an independent unit. It was composed of eight officers and 12 enlisted men and made completely mobile and self-sufficient. Many of such teams were landed on the beaches of Normandy immediately behind the assault troops, fully prepared to function promptly. As the troops advanced, other teams were sent in so as to afford complete coverage. The creation of such teams made the claims service even more flexible in that any given number of them could be dispatched to any base section area or tactical command area on short notice, to take care of fluctuating needs and then be reassigned to other areas as circumstances required. The mobility and flexibility achieved by the organization and utilization

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18. Cir. 87, Hq ETOUSA, 2 Nov 43.

of these small unit claims teams accounted in large measure for the highly efficient operative procedure under the reorganized plan.

106. In the United Kingdom, between the time of reorganization in October of 1943 and D-Day, the claims service allowed 5,933 claims for a total amount of $670,883 and disallowed 1,177 claims totaling $606,694, which included the reduced amounts of the allowed claims. The fact that there was a pronounced increase in claims activity following D-Day is evidenced by the reports which show that from July 1944 through May of 1945, in the United Kingdom and on the Continent, a total of 15,441 claims were allowed for a total amount of $2,377,726. Disallowed were 5,905 claims, aggregating $3,901,354, which likewise included the disallowed portion of approved claims.

107. To handle this work-load, the claims service as of V-E Day had assigned personnel of 508 enlisted men and 337 officers with 28 functioning claims teams.

108. As previously noted, the new regulations supplementing the amended Claims Act expressly gave recognition to the payment by foreign governments of claims against the United States under reciprocal aid agreements. Early in the year of 1944, negotiations were begun with the British to consummate such an agreement with them, with the view of urging them to assume to the greatest extent possible the processing and payment of claims of their nationals against our Government. However, certain impediments and fundamental difficulties existed. British nationals had free access to their courts in certain claims in which they were unable to obtain satisfaction from the British Claims Commission. Hence, one of the questions arising was whether the United States nationals, whose acts caused the damage, were to be subjected to the jurisdiction of British courts in those cases handled by the British under the proposed agreement. Moreover, the United States Claims Service, in passing on claims presented to it, was more inclined to place greater emphasis on contributory negligence than were the British. Many claims had been previously denied by United States Government and conversely allowed by the British in analogous fact situation. If the British were to handle our claims, their policy must be applied for the sake of consistency and fair treatment alike to all its nationals. The old question of payment direct to the subrogee, under the loss-sharing agreement participated in by the British, was also present. Lastly, since our claims service was unauthorized to approve claims in excess of $5,000, the question was posed as to whether or not the British should likewise be so limited in processing claims against our Government.

109. It was with great reluctance that the War Department conceded court jurisdiction and authorized the furnishing of British counsel, through the Department of Justice in the United Kingdom, for individual members of our armed forces whose acts, while engaged in the performance of official duties, caused damages for which suit was to be brought.[19] The government, however, assured us as to liability for any resulting judgment and promised to make no effort to compel payment by the individual, if the claim was within the scope of the claims act. Similarly, the War Department made concessions on the other points of issue and after lengthy negotiations, the agreement was culminated.

110. Claims to be processed by the British were those arising out of traffic accidents, accidental shootings and explosions, damages incident to occupancy of property, and similar causes occuring on or after 20 March 1944. The British reserved the right to refuse to accept any claim when, in their opinion, existing political reasons or policies

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19. Cable: AGWAR to ETOUSA, No. R7881, 8 Jan 44; AGWAR to ETOUSA No. R9535, 18 Feb 44.

indicated that it should not do so. The British Government was to have complete discretion and liberty of action in disposing of all claims referred to it by way of payment, compromise, settlement, legal proceedings or otherwise. The United States Government was bound to accept as final the result reached by the British Claims Commission and any sum payable as a result of the action by the British would be treated as reciprocal aid under the Lend-Lease Act.

111. In the event that a claim was contested in the courts, the United States was to cooperate to the fullest extent in furnishing of witnesses and information. Close liaison was to be obtained between the two services. There was also a mutual waiver of enumerated claims by each government against the other with the provision that this policy would apply to any claims then outstanding. The cost of settling claims made by a third party, as a result of an accident involving personnel of both governments, would be borne in equal shares when the claim came within the purview of the respective claims acts of both governments.

112. As to claims arising out of acts or incidents occuring before 20 March 1944, and unpaid on the 19th of March 1944, the United States Claims Commission was to perform the investigation service, assess the amount of damages and forward to the British for payment. For the purposes of this provisions, the loss-sharing agreements negotiated on behalf of the United States with the British, and which were suspended by the War Department order of September 1943, would be, so far as practicable, retroactively reinstated. Also, claims which had been previously disallowed by the United States Government could be reopened and reconsidered by the British. This provision was designed to make for equality of treatment in those claims which had been disallowed by the United States Government where negligence on the part of the claimant or his agent was a contributory cause of the damage, or cases where payment to a subrogee with a deserving claim was prohibited. All claims in excess of $5,000 would be automatically transferred to the British for investigation, assessments, allowance and payment.

113. Operations under the agreement were highly successful. The British were free to dispose of the claims uniformly in conformity with their own policies, customs and laws, with resulting greater satisfaction to its own nationals. The United States forces, on the other hand, were freed of a large portion of the claims burden in the United Kingdom. As a result of this experience, similar agreements were negotiated with the French, Dutch, Belgian, Norwegian and Luxembourg Governments. Operations thereunder have produced like results. As a matter of fact, in those latter countries operations were even more successful because of language barriers, local customs, diverse laws, standards of justice and measurement of damages, with which our claims personnel were not acquainted, and which would have made operations therein even more difficult.

114. The organization of the Claims Service of the European Theater of Operations was such that, as the need arose, it could expand its personnel and functions to meet almost any given situation. For each type of claim provided for in separate regulations and laws, personnel and procedure adequate to process them were assigned and developed. In addition to claims arising under AR 25-90, the Claims Service in the European Theater was also charged with the responsibility of investigating, processing and disposing of claims arising under AR 25-25, 25-80, 25-100 and 55-100. To discharge these responsibilities, it was necessary to train experts to investigate particular types of claims, designate them as investigating or United States claims officers within that particular field and to create com-

sions to pass upon their merits.[20]

SECTION 12

ARTICLE OF WAR 105

115. As to claims within the scope of Article of War 105, consisting of damages arising out of riotous, violent or disorderly conduct or acts of depredation by persons subject to military law, it was the policy in the European Theater to process and pay them under the provisions of AR 25-25, 25-90, or 25-100, when applicable. No stoppage of pay was made to reimburse the Government for such payments. This policy was considered sound for the reason that adequate provision had been made under the Foreign Claims Act for relief of the person damaged. Whatever disciplinary action was warranted as a result of the act producing the damage, action was taken independently and adequate punishment assessed without regard to any claims for monetary damages. Payment of damages as a form of punishment was felt to be ineffectual and unsatisfactory from the viewpoint of command responsibility and inadequate for relief of the injured party.

SECTION 13

CLAIMS BY MILITARY PERSONNEL

116. Special effort was made by the Claims Service to set up within the European Theater machinery and procedures adequate for the expeditious handling of claims by military personnel for personal property lost, damaged, destroyed, captured or abandoned as an incident to their service, under the provisions of AR 25-100. Results were highly gratifying for those whose claims came within the purview of this law and regulations, and contributed greatly to the morale of the troops in the European Theater.

117. With the employment of vast numbers of civilians by United States forces in the United Kingdom, liberated and friendly countries, the volume of workmen's compensation claims correspondingly increased. To process them, special workmen's compensation commissions were appointed and had delegated to them such of the powers under the United States Employees Compensation Act of 7 September 1916, as amended, as was necessary.

SECTION 14

GOODWILL

118. Opinion was divided as to whether the underlying purpose of the act to promote and maintain friendly relations by the prompt settlement of meritorious claims has been achieved. In some of the liberated countries, the cost of replacement or repair of damaged or destroyed property at official scheduled prices, some of which antedated the war or were designed as a curb on inflation, was only a small fraction of the actual cost of repair or replacement where goods, materials and labor were practically non-existent. A complainant who was paid $50, the approved official price for the property which actually cost $300 to replace or repair at unofficial prices and from unofficial sources usually did not feel that he had been made whole. In France, the distorted official exchange rate aggravated this situation. Others whose claims were disapproved or materially reduced felt mistreated and dissatisfied. Still others, who did not understand the basic principles

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20. Cir 118, Hq ETOUSA, 8 Dec 44.

upon which claims are considered and determined, were disappointed to find that their claims were not allowed.

119. On the other hand, it is becoming of any nation to respect property rights of other nationals in their own countries, and to do so in time of war on the high plane and elaborate scale as was here displayed, greatly facilitated military operations and promoted cooperation on the part of local nationals. The policy of the United States with respect to claims, carried into execution in the European Theater, created a wholesome respect for our Government and had a pronounced stablizing effect in a situation where virtually all rights of all the people of the nations under the domination of or at war with our enemy were totally disregarded and trampled upon. It can hardly be doubted that in the vast majority of cases, goodwill has been created to the extent of more than justifying the expenditures made under the act. The relief afforded not only pleased the individual directly involved but made him an agent of goodwill for the United States among his neighbors. Basically, the underlying purposes of the act have been achieved.

CHAPTER 5

LEGAL ASSISTANCE

120. Out of this war arose a very definite duty of the judge advocate officer to serve as counsel and legal adviser to members of the military forces. It had grown to such proportions in the Zone of the Interior as to call for the appointment of special officers to be assigned to this duty and for considerable study and preparation to be given this work. Matters pertaining to every form of soldier problems arose and, sooner or later, were brought to the desk of the judge advocate for his assistance and advice. It became incumbent upon the judge advocate of a unit to prepare himself upon the various phases of legal assistance, provide himself with necessary books and source material and, in many cases, to prescribe a course of action for the soldier to follow.

SECTION 15

DEPENDENCY BENEFIT MATTERS

121. Naturally, the chief concern of the soldier was the provision that he must make for his dependents and loved ones back at home. Out of his meager allowance, he joined with his government in attempting to see that his dependents were provided for while he was away. Under the Dependency Act, which was necessarily intricate, involved and complex, there was worked out a system whereby the soldier's relatives, who were dependent upon him, could be cared for and provided for against want. There arose, however, many situations brought about by divorce, death, estrangement, change in relationships, birth and marriage, which required study and explanation in order to adjust the soldier to the changed situation and leave his mind free to pursue his military duties. Suits were brought against him for alimony, child support and custody, divorce and upon other grounds which caused him to seek out the judge advocate with the perplexing question, "What shall I do?"

122. Dependency benefit matters were primarily administered in the European Theater by personnel officers. However, there was a woeful lack of available source material, changes in rules and digests of decisions of the Director of the Office of Dependency Benefits, such as were issued in the United States, were seldom available here, and many of the questions involving unusual situations came to the judge advocate of the unit for original decision, even though they had been ruled upon by the highest authority back home.

123. One of the earliest questions arising in the European Theater was that pertaining to mandatory allotments for the support of illegitimate children born of female nationals and American soldiers in the United Kingdom. This is treated fully under the head of "Claims by civilians against Military Personnel" later in this study.

124. Due to the distance between the soldier and his spouse to whom he often was recently married, many occasions arose where the one or the other tired of the relationship and, either because of unfaithfulness or varied interests, a breach occurred. There was the recurrent question of retaining the benefits of the allotment, refusing to institute suit for divorce, religious antipathy to divorce and the desire of the serviceman to accomplish termination of his mandatory contribution towards support of his estranged wife. Many cases arose of the admittedly unfaithful wife who wrote her overseas husband that she was living with another man and was pregnant by him.

125. While the situation in the United States in connection with dependency benefit matters was complex, even where there was ready re-

course to directives and digests of decisions or to the Director and his staff if necessary, in the theater of operations it was largely a matter of educated guess-work on the part of personnel officers and judge advocates who had no way of knowing what the recent rulings were or the conditions that actually existed back home.

126. It is believed worthwhile to indicate one of the many complexities that arose because of prolonged overseas service of soldiers. There were occasions when the wife or some other dependent of the overseas soldier filed an application for benefits without knowledge on the part of the husband and for a long period of time he failed to receive notice of the fact that a levy against his pay had been made. He found himself indebted to the Government in the sum of hundreds of dollars when it was brought to his attention and, in many instances, he might possibly have offered some contest to the allotment. Out of his small pay and allowances, he suffered a loss that worked a hardship upon him and one that the Government could have borne with greater ease.

SECTION 16

MARRIAGES

127. Proxy - In the course of human relationships attendant upon leaving home and going overseas, many instances arose where soldier-and-girl decided, after it was too late, that they should have been married. Sometimes, it was romance and at other times, it was pregnancy. Immediately, the question of proxy marriages arose and the judge advocate, as well as the authorities in the United States, were beset by frantic requests to establish processes by which such a marriage could be consummated.

128. In the United States, there was little statutory law and rare instances of case law making this possible. Five states of the Union - Florida, Idaho, Kansas, Missouri, New Mexico - look with favor upon proxy marriages. In Colorado, Oklahoma and Texas where cohabitation is required for a common law marriage to be consummated, proxy marriages would likely be recognized if followed by living together of the parties. Other states were vague or doubtful as to the validity of such unions and some even expressly prohibited it as did Louisiana. The final decision was arrived at and advice given to the applicants that they could proceed with such a marriage if it pleased their desires and consciences but that they would have to take chances with regard to the validity of such unions, both under state law, national law and in the opinion of the various governmental departments where the question might be raised.

129. The Office of Dependency Benefits, The Comptroller General and The Veterans Administration did not come together to establish any fixed policy with reference to proxy marriages that would be uniform or acceptable in their respective estimations. It became a matter of individual proof and decision in each case as to the sufficiency of the marital tie to bring about the desired result, which often was to legitimatize a child, form basis for an allotment or to settle property rights.

130. The War Department attempted to discourage proxy marriages by permitting them only where circumstances were compelling and the policy, as announced in the European Theater, was that serviceman should be discouraged from attempting them and that they proceeded with such ventures at their own risk with doubtful legality as to the proceedings.[1]

1. WD JAGO Memo to Legal Assistance Officers, SPJGU 1944/1517, 17 Jan 44.

131. The Comptroller General ruled that in the absence of a statute or decision of a court of competent jurisdiction giving validity to such marriages performed within that jurisdiction, they would not be recognized by his office.[2]

132. To cover the matter of pregnancy or birth of illegitimate children, the War Department finally met the situation by announcing a policy that if the prospective or actual soldier-father, even if serving overseas, desired to marry the woman involved, he should be granted a leave or furlough for the purpose of contracting the marriage, if there was no military reason to the contrary.[3] Many soldiers returned to the United States, the United Kingdom and other countries within the European Theater, under this rule, and marriages were consummated.

133. Much correspondence was conducted between chairmen of the committees on war work of the bar associations of various states, local lawyers listed in Martindale-Hubbell's Law Directory and private individuals back home on the one hand, and judge advocate officers seeking relief of mind for the soldier who was troubled about his marital affairs.

134. International. As to international marriages or the inevitable consorting of members of military personnel with the women of the countries in which they serve and which often results in marriage, the War Department forbade such marriages unless the approval of the soldier's commanding officer was secured.[4] Commissioned, warrant and flight officers were required to secure the permission of general officers, and regimental and corresponding commanders passed upon enlisted men's applications. This presented complex problems as varied as human relations could make them.

135. Due to the WAC and Army Nurse situation in the European Theater, it was prescribed that immediate reassignment would be made of contracting parties to a service marriage to remote stations from each other. Even in such cases, approval of the marriage was not to be granted until the expiration of two months after submitting the application except in the event of pregnancy. No special privileges or living arrangements, different from those of unmarried members of the command, were permitted and no special dispensations were granted to service personnel who desired to inter-marry.

136. There then arose the question of the marriage laws within the foreign countries in which members of the military establishment found themselves. The contracting parties were required to comply with the laws of the jurisdictions where the marriage was consummated,[5] which in some instances proved to be onerous and burdensome.

137. The many problems that confronted the judge advocate in connection with these questions extended even to the matter of admission of certain aliens ineligible to citizenship in the United States, such as those of Asiatic or East Indian decent, the question of citizenship and naturalization of the alien wife, the possibility of the alien wife becoming a public charge and the refusal of certain states to recognize the validity of marriage between persons of the white and negro, yellow or other races even though the unions were valid in England or other places where they were consummated.

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2. Decision of The Comptroller General, B-46242, 7 Feb 45.
3. Ltr, WD AGPE-A-4291.1 (5 May 44) subj: "Policy governing Certain Marital Status of Officers, WO or EM," 29 Jun 44.
4. See II, Cir 305, WD 1942.
5. See I, Cir 66, ETOUSA, 22 Oct 42; Cir 88, ETOUSA, 3 Nov 43; See II, Cir 94, ETOUSA, 1 Dec 43; Cir 41, ETOUSA, 17 Apr 44.

138. Some cases of disciplinary action arose where marriages were proceeded with after applications were disapproved. It was decided that the order not to marry was a valid exercise of constitutional power and of congressional delegation of authority to the President to make and publish regulations for the government of the Army.[6]

139. A question arose in the Fifteenth United States Army at one time as to the marriage between displaced persons in displaced persons camps, faced with the possibility of being separated and sent back to their respective countries, pregnancy being a factor, and no provision having been made by military government law in occupied Germany for marriages to be consummated from a civil standpoint. It was necessary to rule that these persons could not be legally married by the chaplain of the United States forces alone, who requested permission to do so in order to legitimatize children, nor was there any machinery available whereby the wishes of these people could be carried out.[7]

140. Members of military personnel desiring to marry WACS or Nurses in occupied Germany before provision was made by occupational law were advised to go back to France or Belgium and comply with the local regulations there. As the campaign proceeded and progressed, directives were promulgated bearing upon this topic.[8]

SECTION 17

CIVIL CASES AND PERSONAL CLAIMS BY FOREIGN NATIONALS AGAINST UNITED STATES MILITARY PERSONNEL

141. The bulk of all claims by foreign nationals against United States military personnel, particularly those arising out of acts of negligence, were handled and processed under the Foreign Claims Act by the United States Government without regard to the personal liability of the individual causing it. A notable exception, however, and the one which was the greatest source of individual claims based on personal liability, were the bastardy proceedings against United States citizens serving in the United Kingdom.

142. In consonance with the view of the United States Government, the Supreme Commander consistently adopted the attitude that members of our armed forces, and United States citizens serving therewith, were not subject to the jurisdiction of the courts of the friendly countries of the European Theater in which they were stationed and serving. This principle in general has been recognized, without resentment or question, by all the friendly nations whose boundaries we have transcended.

143. However, certain fundamental local English laws, and the social complications arising from a failure to enforce them, could not be ignored. The number of bastard children, begotten by fathers who were United States citizens and born of mothers who were citizens of the United Kingdom, compelled a frank recognition of a growing problem and a prompt adoption of adequate relief measures mutually agreeable to the two governments involved.

144. Section 120 of the Servicemen's Dependency Allowance Act of 1942 provided that the term "child" included "an illegitimate child but only if the man had been judicially ordered or decreed to contribute to the child's support; has been judicially decreed to be the father of such

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6. CM ETO 567, Radloff 1943, Dig Op ETO, Sec 454 (67h).
7. Fifteenth Army JA files.
8. Administrative Memo No. 59, SHAEF, 28 Jun 45.

child; or has acknowledged under oath in writing that he is the father of such child."

145. To afford financial relief to the mother and her illegitimate off-spring, and ease the growing burden on the British (United Kingdom) Government in providing at public expense for their care and maintenance, the two governments agreed that the British courts could exercise jurisdiction over United States citizens serving in the United Kingdom with the armed forces, in bastardy proceedings but with specified safeguards for the protection of the rights of all parties concerned.

146. Under the agreement, the British courts would attempt no exercise of control over the person of the respondent in the proceedings and render no judgment against him when he was prevented by official duties from defending the action. Process in affiliation and maintenance cases were to be served by the British police with a delivery in duplicate to the regimental or comparable unit commander of the defendant, one copy of which was to be retained by such officer and the other to be served through him on the defendant. In all other cases, service was to be made by delivery of one copy of the process to the defendant personally at such place as the regimental or comparable unit commander might direct.

147. Upon completion of service of a summons, subpoena or any other writ requiring attendance of a member of the United States armed forces at a proceedings in a court of the United Kingdom, the specified unit commander was to arrange for the attendance of the defendant at the time and place designated by the summons unless the performance of official duties prevented it. If this latter situation existed, such commander was to certify in writing to the appropriate court that the defendant was prevented by his official duties from attending, and state in such certificate the time when the defendant would be available or give reasons why such attendance was impossible at any time. The designated commanders were admonished to exercise this power in the strictest good faith to insure that the purposes of the agreement would be made effective. His personal signature to his certificate was required.

148. In the event that, pursuant to this agreement, any judgment or decree was rendered by a court of competent jurisdiction against any member of the United States armed forces requiring payment of any indebtedness, and was served upon him, the regimental or comparable unit commander of the defendant was to make known to him that the refusal or failure to pay such judgment or decree would be proper grounds for disciplinary action when, in so refusing or failing, he had violated Army standards of honor by fraud, deceit, evasion, other dishonorable conduct or neglect which justified such action. Such a judgment or decree was not to be considered as a disputed indebtedness and a failure or refusal to make payment was prima facie a violation of Article of War 96. (Digest of Opinions, JAGD, 1912-40, Section 454, Subsection 46). In this connection, the mere inability to pay the judgment did not warrant disciplinary action but did warrant such action in cases of willful refusal or failure to pay under circumstances constituting dishonorable indifference, accompanied by the ability to pay.

149. When the judgment or decree required payment of alimony, wife or child maintenance, the designated unit commander was to make known to the defendant his right to apply for a Class E or a Class X allotment, payable monthly in the amount specified by the decree, or in lieu thereof, his right to apply for a monthly family allowance, a part of which was to be supplied by a Class F deduction from his pay. The excess, if any, would come by Government contribution for the satisfaction of the judgment or decree in accordance with the provisions of the Servicemen's Dependency Allowance Act of 1942, as amended by Act approved

26 October 1943. He was also to be advised that if he failed to apply for a monthly family allowance, the wife or child or someone on their behalf might apply for and obtain such allowance.[9] In the event that the soldier did not voluntarily apply for the allotment, the English authorities, the mother or other person acting on behalf of the child was to be advised of their rights under the law, furnished appropriate forms and information, and given detailed instructions as to how the application could be filed by them. In the event the defendant was a commissioned, warrant or flight officer, he was to be advised of his right to make a Class E or Class X allotment of his pay for the satisfaction of the judgment under AR 35-5520.

150. If the judgment or decree required payment of sums or expenses incidental to the birth of the child, accrued alimony or maintenance, court costs or other liabilities, the defendant was to be advised that his failure to discharge such obligations would make him liable to disciplinary action under the rules heretofore stated, and that he could not make allotments of his pay for the payment of such items.[10]

151. Jurisdiction as to bastardy proceedings in England was vested in a Court of Summary Jurisdiction of the Petty Sessional Divisions of designated districts. Under the law, the maximum amount which these courts could decree for child maintenance was one pound a week until the child became 13 years of age, and then at the discretion of the court until the age of 16 years was reached. Because of lower standards and past practices of long duration, the amount so awarded ranged from five to twenty shillings per week ($4.73 to $17.48 per month).

152. Under Section 106 (c) of the original Servicemen's Dependency Allowance Act, the allowance payable to an illegitimate child, living separate and apart from the father, was limited to the amount ordered to be paid by the court. However, the Act was amended by Section 6 (c), Public Law 174, approved 27 October 1943, without such limitation and, in effect, disregarded the amount of installments which were judicially ordered to be paid by the enlisted men to a child of which he was judged to be or admitted to be the punitive father, and required payment of the full statutory amount ($22 mandatory contribution by the soldier and $20 contribution by the Government).

153. Thus, there was a striking contrast between the maximum allowance payable under the British law and the mandatory amount paid under the dependency act. Moreover, payments under the United States law in most instances would be comparatively short-lived in that they would terminate upon discharge of the soldier or when he ceased, for any reason, to be eligible to draw his pay, or in any event, upon the expiration of six months after the emergency of the war. The affiliation order was a personal one and ceased to have any legal effect upon the death of the father. It was also anticipated that once the soldier separated from the service, enforcement of the order would be difficult, if not impossible, through the United States courts.

154. The total amounts paid on the higher American scale during the estimated average period of payment, would just about equal the amount paid on the English scale over the longer period of 13 or 16 years. However, it was found in many instances that English mothers of illegitimate children were dissipating promptly the whole of the amounts paid under the American scale and not always for the benefit of the illegitimate child.

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9. Bull 29, WD 1942; Cirs 225, 228, WD, 1942; Bull 21, WD, 1943; Cir 310, WD, 1943.
10. Cir 47, HQ ETOUSA, 26 Apr 44.

155. In order to preserve the funds and to prevent their early and useless dissipation, with the consequence of support and maintenance falling upon the English Government, appropriate representatives of the two governments, after numerous conferences, agreed upon a plan whereby monthly payments under the Servicemen's Dependency Allowance Act would be paid to the Accountant General of the Supreme Court to be administered under direction of The Lord Chancellor. He, in turn, would make monthly payments for the benefit of the child, in amounts equivalent to the English scale, until the whole fund received from the United States in larger monthly payments was completely dissipated in each individual case, and thus extend the benefits over a much longer period. (All of the foregoing information was taken from the files of the European Theater Judge Advocate's Office labeled "Bastardy proceedings, allowances, etc," a list of which may be found in accumulated data incidental to this report.)

156. So long as the serviceman or officer was within the United Kingdom, the Army extended every cooperation in accomplishing service of process by English civil courts. A judge advocate officer serving in the United Kingdom, upon being interviewed, stated, "Bastardy proceedings were always referred to civil counsel in England and invariably resulted in a decree for the plaintiff." However, once he was transferred beyond its territorial limits, the Army would not return him solely for the purpose of subjecting him to the jurisdiction of civil courts. It was considered that the fullfilment of his assigned military mission outweighed any moral obligation to accommodate the British civil authorities or its citizens when no legal obligation required his return. Neither would the Army attempt to serve him with process outside the continental limits of the United Kingdom, as it had no authorization or sanction in law or legal obligation to do so. However, once the court had acquired jurisdiction of the defendant and adjudged a legal affiliation order, similar judgment or decree on the merits of the case, by which the person subject to military law was ordered to pay certain sums such as expenses incident to birth of the illegitimate child, court costs, monthly support and similar proper legal items, and where the defendant had departed from the United Kingdom by transfer before such affiliation order or court judgment was served upon him, service by mail could be legally accomplished by transmission through the Judge Advocate Section, Headquarters ETOUSA.

157. One judge advocate officer interviewed said, "The jurisdiction of English courts over soldiers on the Continent and the Army policy of not returning soldiers to England during combat for the purpose of accepting summons arose on several occasions. In one case, we prepared a proposal to the injured husband, who was suing in England for a divorce and damages against the soldier correspondent, that the soldier would accept service by mail and enter an appearance in the event the husband would agree not to petition for or accept damages."

158. The Pay Readjustment Act of 1942 did not expressly make provisions for an illegitimate child begotten by the soldier.[11] Hardships also accrued in the case of illegitimate children whose fathers were killed in action or died in the service, as allotments ceased to be paid and the illegitimate child was not entitled to payment of six months' gratuity under Section I of the Act of December 1919 and Section V of the Act of 3 April 1939, as amended by paragraphs 1 a and f, AR 35-1540, 19 December 1942, since "child" as used in such law has been held by The Judge Advocate General to be restricted to legitimate children (Dig

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11. Sec IV, Pay Readjustment Act of 1942, Mil Law 1939; Sup II, Sec 1371, C 4.

of Opinions, JAG, 1912-40, Section 862 (3)).[12]

159. Although many illegitimate children of United States military personnel have been born to French nationals, the question did not assume the proportion within that country that it did in England. Apparently, the French authorities did not ask for relief, either for the children or their mothers. If the question had been presented, it would have been difficult of solution. The English Government and its nationals should be accorded no greater privileges or rights than should be accorded the French, Belgian or Holland Governments and its nationals under the same circumstances. However, court procedures in Continental countries very greatly from those in England. The language barrier is also a very difficult one.

SECTION 18

DOMESTIC RELATIONS

160. The most frequent questions in the field of legal assistance came under the general heading of domestic relations and embraced the whole body of law relating to marriage, divorce, child custody and support, property rights, equitable relief, alimony, annulment, bigamy and jurisdiction of the proper courts. History, ancient and present, has shown that marriage ties are strained, in many cases beyond the breaking point, by protracted separation. The long periods of service in the European Theater, when added to the enforced separation of spouses in the states, have contributed to the tragedy of war. Nerves were taut. Both husband and wife were unhappy. Family and "in-law" troubles were frequent. Rumor or hearsay was in many cases readily accepted as fact.

161. Great was the number of sad-eyed soldiers and young officers who have come to their judge advocates to relate tales of infidelity, or change of affection, of a once-adored wife, gross neglect of their children and the squandering of allotment money intended for their maintenance. These and other fact situations were heard attentively by the judge advocate officer who, from the information at hand and with little chance of confirmation, attempted an appraisal to determine whether they had basis in real fact or resulted from suspicion, distrust or rumor. He had as much responsibility to encourage a preservation of family relations as he did in offering advice as to how they could be severed. To dissipate misunderstanding, to dispel rumor or to disprove misrepresentations, he often solicited the aid of the chaplain or Red Cross representative to obtain investigations and reports. If, however, the facts apparently warranted legal action, the judge advocate, in advising the serviceman of his rights under the law, had no easy task.

162. Grounds for divorce vary from 11 in the State of Washington to one (adultery) in the State of New York and to none in the State of South Carolina, the only state in the union which does not permit the dissolution of the tie. Residence requirements range from six weeks in Nevada to three years in Massachusetts (five years if parties were nonresidents at time of marriage). These questions are merely typical on the issue of divorce alone. The variations between the laws of the 48

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12. According to the files in the ETO JA Office, the question was raised as to whether a soldier who has been decreed by an affiliation order to pay monthly support for an illegitimate child in an amount less than $42 per month could voluntarily make a Class F allotment for his proportionate share of the amount so decreed, or whether the amount would have to be in the full maximum of $42 per month. The file does not disclose whether the War Dept has given an authoritative ruling.

states and the District of Columbia on the other mentioned subjects within the general field of domestic relations are just as numerous and produced their share of the work-load in ascertaining the rights and procedures of the individuals involved.

163. Judge advocate officers made conscientious efforts to ascertain the applicable law and advise each individual who came for counsel. The legal procedures involved were laid before the serviceman or women and they were told of probable difficulties. If they desired to initiate action, they were informed as to what information would be needed at home, and advised to employ the services of an attorney in their home town or state, or to seek the help of any Army legal assistance office under the joint sponsorship of the War Department, State and American Bar Associations. The name and address of the appropriate state director or the address of the proper legal aid organization was given them if they desired to avail themselves of its services. Waivers of citation, service of petitions, voluntary appearances in court, powers of attorney, agreements, form of judgment and similar papers in connection with divorce and domestic relations suits were examined in behalf of the recipients and, if in proper form, executed, acknowledgements being taken when needed.

SECTION 19

WILLS AND POWERS OF ATTORNEY

164. The War Department urged, and subordinate commanders encouraged, all military personnel to prepare wills and powers of attorney prior to their departure for overseas duty. An excellent response practically eliminated the need for this service in the European Theater. Here wills and powers of attorney were prepared primarily for those who, prior to movement overseas, did not anticipate the need of either instrument, those who desired amendments or codicils to wills because of change of conditions at home, those who needed powers of attorney for a specific business transaction. The personnel of small units often did not have within the organization persons competent to assist them and because of the press of time failed to avail themselves of such a service at the port of embarkation.

165. One unit judge advocate offered the following: "Numerous wills and powers of attorney have been drafted. It is estimated that less than 1% of the personnel prepared or amended powers after their arrival in the European Theater. One particular matter which is worthy of attention and severe censure is the practice which prevailed in the Zone of the Interior of advising soldiers indiscriminately to prepare general powers of attorney. Such powers have resulted in a number of cases of severe financial loss and so seldom result in benefit to the soldier that soldiers should be advised never to execute such powers without consultation with personal counsel. The unfortunate thing in some of the cases which have been noted is that effectual revocation was impossible. It is suggested that if soldiers must execute such powers, they should be advised to execute only one original and thereafter to have it recorded and returned to their possession so that a revocation thereafter executed and similarly recorded would be effectual notice to persons dealing in reliance on any such power."

166. These two items were recognized as susceptible of being attended prior to shipment overseas when clerical help, ample time, notaries, materials and facilities were more readily available. Because such a program was successful in the states, this service for troops in the European Theater posed no great problem. The percentage of those needing or requesting help was gratifyingly small. However, one service force judge advocate interviewed stated that he had personally prepared

about 1,000 wills and powers of attorney since he has been in the European Theater of Operations.

167. Here again, however, arose the matter of the sufficiency of the instrument, the form of acknowledgement and the attestation by the proper number of witnesses. Save for Martindale-Hubbell's Law Digest, the judge advocate followed what he knew from his legal training and experience, usually confined to one state of the union, to draw as defect-proof an instrument as he could under the circumstances.

168. In many cases, a will was prepared by the judge advocate, copied by the testator, to make it holographic, then attested by three or four witnesses in order to meet every requirement that could be imagined in any state of the union. Unfortunately, this was not followed by every judge advocate officer and there is no doubt but that the probate courts in the United States will be untangling complicated matters of this sort for years to come.

169. To insure a uniform practice, a compendium of state requirements was made the subject of a War Department circular that was available to all judge advocate officers working in overseas theaters.[13] It was found to be of considerable assistance.

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13. War Dept Cir 419, 26 Oct 44.

CHAPTER 6

MISCELLANEOUS MILITARY AFFAIRS

SECTION 20

OPINIONS

170. Opinions covering a wide diversity of subjects were continually being requested of all staff judge advocates. With the exception of the more important and complex matters involving high level, international or inter-allied policy, the range of questions presented was typical and varied little whether the queries emanated from an organization of the ground, service or air forces. Some of them more often presented were, for example: The effect of a court-martial sentence on a soldier's right to receive the extra pay incident to some combat award or flying status; whether such pay was subject to forfeiture; Federal voting by military personnel; questions covering income tax matters; awards and decorations; rights of military personnel and their dependents under the Federal Dependency Act; rights of an estranged wife living apart from her soldier-husband for a number of years to Class F allotment benefits; procedure for and the legality of marriage between members of our armed forces and foreign nationals; the rights of a member of the armed forces and a party in the United States to marry by proxy; legality of source and disposition of unit funds; the regulation under which officers and enlisted men's clubs could be formed and as to how the profits must be disposed of; citizenship status; jurisdiction of military courts over foreign nationals; reduction in grade of non-commissioned officers; the rights of ranking non-commissioned officers to decline to be employed on certain work details; rights under the Soldiers and Sailors Relief Act; service of legal documents on military personnel; administration of oaths and acknowledgements; legality of the source of privately-held funds; rights of reenlistment in the Regular Army; the jurisdiction of foreign courts over military personnel in divorce and paternity matters, and various types of legal aid matters.

171. These questions and many others came to the staff judge advocate of almost every unit with more or less daily frequency. Where they involved precedent or were easily available within the scope of local research, they were answered. Where they required a decision as to higher headquarters policy, they were taken up through technical channels in many instances by telephone, letter or personal visit on the part of the judge advocate to his corresponding number in the next higher echelon and an answer given.

172. Many a judge advocate, however, experienced the situation where he would be told that the matter was under discussion at Theater Headquarters and something would be issued on it shortly. Many of such questions were never answered or were answered too late to be of aid to the inquirer.

173. Usually in theater, army group or army headquarters and corresponding units in the air and service forces, a Military Affairs Branch was maintained in the judge advocate section where these complex questions of law were studied and opinions rendered. There was a very definite lack of competent research facilities in the lower unit levels, especially where the headquarters was mobile and it was impossible to transport many texts and sources of authority.

174. While many inquiries were of a legal nature, there were others that involved mere expediency, choice of administrative alternative or a matter of diplomacy in which the judge advocate was of

considerable help to his commanding officer and other staff sections in giving his professional views on the matter. These matters extended to personal situations where the judge advocate was more of an audience than adviser.

175. At times, however, there were complex questions of law involving matters of international relations or serious determination of foreign policy which were necessarily resolved at the highest levels. Some of these questions concerned the establishment of a system of handling large claims involving foreign nations, the settlement of considerable estates of deceased army personnel and acquiring property in foreign countries prior to death and the adjustment of situations arising in lend-lease matters. It was obvious that smaller units should not have concerned themselves with such cases.

176. The judge advocate in the rendering of opinions in the foreign theater, many times came upon questions without precedent and requiring diplomacy and original decision. For example, a case is cited where the staff judge advocate of a small unit was called upon to settle a dispute which had arisen between the authorities of a small seaport town on an island occupied by United States troops and the captain of a foreign freighter which had docked at the port. The ship in question was manned by nationals neither American nor of the occupied island. Some of these sailors obtained shore leaves, indulged freely in liquor and then proceeded to do considerable damage to the village. As a consequence, they were arrested by American military police and upon demand made by the island authorities, were turned over to the local constabulary, who refused to release them without reparation for the damages done, demanding either to be paid by the United States or the ship's captain of the docked freighter. When the Americans disclaimed responsibility and the ship's captain became obstinate, the local authorities sought a settlement. The staff judge advocate of the area was called upon for advice and counsel. While there were undoubtedly legal questions involved, the case was wholly without precedent on the island. However, the judge advocate succeeded in getting the authorities and the ship's captain to agree upon certain terms to cover the damage done. When the amount was paid by the captain, his sailors were released and the ship left the port.

177. The judge advocate was required to specialize in various new and hitherto unknown fields. In the United Kingdom, cases of poaching arose which presented problems of tactful rather than legal approach. It was also not uncommon for keepers of public houses and places of recreation and amusement in England to complain about American military personnel not being willing to regard the rules and customs of their establishment, all of which required diplomatic handling rather than attempting to follow some rule or precedent. Many times when these matters came to the appropriate judge advocate and it happened that he was wise in diplomacy and counsel, he was able to dispose of them amicably. A unit directive was usually issued covering the situation to discourage its recurrence.

178. In the air forces, the constant "buzzing" or very low flying over towns and air fields eventually required correction of some kind. There had been little or no precedent in this connection to begin with, but later almost every type of "buzzing" found its way into a directive and there came to be so much variety of regulations in this field that a decisive set of rules was formulated by the higher command.

SECTION 21

DIRECTIVES AND CORRESPONDENCE

179. In addition to the large number of army regulations, field manuals, War Department circulars and other printed orders that the Army looked to for its direction, there were issued in the European Theater a great many directives from Headquarters, ETOUSA, and from all intermediate headquarters down to the most subordinate unit.

180. These came in the form of letters, standard orders of procedures and mandatory directives receiving distribution throughout the components of the individual commands. While many held the private belief that a plethora of such directives was indulged in, that many times there was a lack of coordination resulting in confusion and, in some cases, direct conflict, the subordinate commander arranged all of those directives in his files, reconciled them as best he could and guided his activities accordingly.

181. In the preparation of these directives, there were usually references to earlier published letters or similar instruments which were rarely available at the time the instant directive was being read and which contributed to the confusion. There were instances where amplifications and legal interpretations were attempted or the construing of some law was essayed in the directive. Too frequently, these instruments were prepared by those who had not given enough thought to what the issuing authority desired to express, had not employed skillful language in expressing his meaning, or had not talked with those who were to carry out the mission as to the feasibility or possibility of the procedure which they were seeking to prescribe.

182. One judge advocate with an air force service command stated, upon being interviewed, "It is suggested that if the innumerable conflicting and redundant directives issued by various sections and headquarters had been submitted to examination and criticism by judge advocates, not only would much paper have been saved but endless duplication, inconsistencies and ambiguities in such directives would have been avoided, with material benefits to the service." It was found that in the case of directives regarding disciplinary control and certain other subjects involving legal phases, reference to the judge advocate prior to issuance was both helpful and advisable.

183. Most instances of where the issuance of directives was accomplished too quickly and before a full study had been made of the topic arose in connection with such matters as censorship, fraternization, black market, illegal possession of funds, handling of displaced persons. The directives on these subjects were numerous, some of them were in conflict and many headquarters along the chain of command took occasion to issue what was considered an amplifying directive, letter, or indorsement to clear up the cryptic language of the original directive.

184. In the air forces, many directives were published by all units covering the topics of careless flying, landing and take-off. They came from various headquarters and commands, some of them comprehensive and definite, others not always quite understandable. In defining "carelessness", different unit commanders had various views which resulted in confusion of interpretation in many cases. Eventually, the paramount headquarters of the air forces made a thorough study of the situation and adequate directives were published to cover it.

185. Glider pay was to be paid to those ordered to engage in such duty by competent authority. The question as to who competent authority was caused many a weighty argument. The use of Army vehicles and other modes of transportation, together with their operation, presented another problem which was attacked from many angles dependent upon the viewpoint of the issuing authority.

186. Military Correspondence. The judge advocate of a unit was often called upon to prepare letters to persons outside of the armed forces, both back in the United States and in the European Theater, where civilians wrote to the commanding officer and a reply was necessary. He was required to counsel his commander in the proper phrasing of such correspondence and in the diplomatic handling of situations that might otherwise have resulted in Congressional inquiries, embarrassing newspaper publicity or possible claims against the Government.

187. He was also called upon in connection with communications from higher or lower levels involving legal phases. In the average command, they were sent to the judge advocate for his comment and opinion. He usually prepared the indorsement in the form that he deemed desirable and submitted it to the staff section chief or to the chief of staff for approval.

188. Reprimands - Complaints. In the preparing of reprimands and other forms of written disciplinary action, the judge advocate was called upon to express the will of his commanding officer and prepare for him the necessary action indicated and decided upon. These instruments were usually in approved War Department form.

189. Complaints or criticism leveled at the unit or its commanding officer, or complaints that were raised by some individual within the command, other than under Article of War 121, were brought to the immediate attention of the judge advocate and it usually fell to his lot to conduct the investigation and attendant correspondence. Even where there were those at the headquarters who could express themselves with more acceptable facility than the judge advocate of the unit, it was usually his province to make the final check in order to determine whether the instrument should be forwarded.

190. Publications. There was issued during the campaign in the European Theater, much written material by almost every headquarters that possessed the authority, which has come to be known colloquially as "poop". This usually undertook to clarify or amplify existing directives and was in the nature of an explanatory dissertation or attempt at emphasis by the issuing headquarters.

191. It was found to be of advantage by one of the armies whose duty it was to receive divisions directly from the Zone of the Interior to prepare a short orienting pamphlet dwelling primarily upon the physical setup of the judge advocate headquarters in the European Theater, the sources of reference, prisoners and what to do with them, naturalization, claims, war criminals, pre-trial examination, reclassification of officers, G-5, security, records, military commissions, concurrent jurisdiction, GCM suggestions, venereal disease, sodomy, black market, civilian matters and fraternization and present this brief compendium of information to the newly-arrived judge advocate officer.[1] He was acquainted immediately with the salient facts as to European Theater conditions, could revise his Zone of Interior

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1. Appendix #1, Memo, Fifteenth US Army, 250.4 - GMJA, Military Justice, 20 Mar 45.

opinions and knew where to go for further information when the time and occasion permitted or when necessity arose.

192. Instances of technical material published for judge advocate officers in the European Theater which were helpful were: The military justice circulars issued at frequent intervals by the Theater Branch Office of The Judge Advocate General, the information bulletins of 12th Army Group, those issued by the Judge Advocate Office, 8th Air Force. These contained suggestions, pointed out usual errors and often gave opinions and decisions that were eagerly welcomed by the judge advocate in the field. The only criticism was that they were not issued often enough nor were at great enough length to satisfy the needs of the unit judge advocate who was far from the sources of original information.

193. It was also found profitable to keep a "Policy Book" in every judge advocate section. In it, the basic policies of the War Department, the Theater Commander, the immediate unit commander and the general rules laid down at The Judge Advocate General's Office, Theater Judge Advocate General's Office, higher headquarters judge advocate offices and the local section were kept. As the campaign progressed, there were many precedents established and announced which were applicable to the immediate headquarters or to the higher controlling echelons of the unit concerned. These were kept in the "Policy Book" and made the subject of ready reference. If a new judge advocate came to the section, he could be immediately oriented on the policies in force and the work of the office was greatly facilitated thereby.

194. Interviews with judge advocate officers serving in the European Theater elicited various views on this topic. Said one infantry division judge advocate, "We published no 'poop'. Some of that forwarded us was of great help; the military justice circulars published by BOJAG with ETOUSA were especially helpful." Another, in a different vein, said, "We would get 'poop' from USSTAF, the 9th Air Force sent out similar 'poop'; sometimes there would be some on the same subject from ETOUSA. In some instances, original 'poop' originated at the War Department and came down in more or less modified form through all levels. Speaking mildly, this could be improved on. The staggering multiplicity results in lower commands becoming 'poop-happy' and confused. If the 'poop' starts out as a War Department document, it should continue as such and intermediate commands should forego the pride of apparent authorship. The lower commands would then have one authority." A service force judge advocate said, "I was greatly aided by the theater directives and the old SOS directives on military justice. The military justice circulars published by the Branch Office have been valuable." A base section judge advocate major aired his views as follows, "Some 'poop' was forwarded and was valuable, but 80% is believed to have been a waste of paper, ink and time in its preparation. There seems to have been too great a tendency to put out reams of material in general distribution which could have been taken care of by a one minute phone call to one individual or by the use of a simple memo."

SECTION 22

PAY AND ALLOWANCES

195. Questions involving forfeitures, stoppages, deduction and detention. While matters involving pay and allowances are primarily the concern of the Finance Officer of the Fiscal Director, many occasions arose in the European Theater when the judge advocate was asked to construe some directive issued from theater headquarters

or reconcile some pay question brought about by the application of military justice in a particular case. Invariably, he concluded his opinion with a remark that it was a question involving finance which would be ultimately resolved by The Comptroller General or The Chief of Finance and the opinion rendered should be considered with that in mind

196. The average judge advocate officer in the European Theater of Operations, considering the large amount of personnel on duty therein, had comparatively few questions involving pay and allowances. Among these questions was the one in connection with illegal court-martial sentences, especially those of inferior courts, where the accused had completed all or part of his sentence and the appropriate amount of his forfeiture had been collected from his pay. While these questions were of primary importance to the Finance Officer for ultimate ruling, based upon The Comptroller's Decisions, yet the judge advocate was called upon repeatedly to give his opinion on these matters.

197. Often derelictions arose on the part of unit commanders in not causing the necessary entries to be made so that the collection of legal forfeitures could commence at once. If transfer had been made of the soldier involved to another organization, with no mention of the court-martial forfeiture, months might pass before steps would be taken to effect collection. The practice was followed to advantage of attaching a certified copy of the court-martial order to the service record of the accused and dropping it after date of the final payment.

198. In the air forces, frequently there arose a question as to the proper procedure concerning an uncollected forfeiture under Article of War 104 assessed against flying officers who had been determined "missing in action" after they had displayed heroic efforts in combat. Two views were entertained. First, it was considered that the flier had fully redeemed himself by his acts of courage and patriotism and, second, that no good could result from punishing a man who was possibly dead, particularly since the burden would fall upon his relatives. This applied in many cases to ground forces combat personnel who were taken prisoner or reported missing in action while a court-martial forfeiture still stood against them. The usual procedure was for forfeitures to be remitted or similar steps taken to relieve the record and the estate of the missing or deceased soldier from the burden and shame involved. Many air judge advocates interviewed were of the opinion that this should be established as a rule since it is invariably done in practice.

199. Few instances were encountered in the European Theater in connection with stoppages under Article of War 105 covering payment of damages or losses occasioned by depredation on the part of military personnel. Judge advocates of units were called upon to advise with commanding officers in matters of this kind. They were also called upon for advice in connection with deductions covering government insurance and allotments for the benefit of dependents. The retention of pay for the benefit of the officer or enlisted man in order that he might not waste it or dispose of it carelessly was practically unknown as a procedure in the European Theater.

200. Duty to pay debts and support dependents. There were instances reported by judge advocate officers where strenuous objections were made by military personnel in their units against mandatory allotments against their pay being made by alleged dependents in the United States. Some contended that they had been divorced and that their pay was being withheld or charged with the allotment unjustly.

This resulted in correspondence with the attorney involved or with the Office of Dependency Benefits in order to attempt to reconcile the situation in line with the soldier's contention.

201. Debts. The well-established War Department policy of compelling members of the military personnel to meet honest debts and support those who are dependent upon them for a livelihood was pursued in the European Theater during the campaign. While the policy was followed generally that the case must be a liquidated demand or based upon a judgment duly rendered by a court of competent jurisdiction, it was not always carried to that length.

202. Many officers and enlisted men were called upon by their wives back in the states to contribute more money to their support or to make additional provisions with reference to property matters. Upon failing to secure an amicable understanding and agreement in such matters, appeal would be made to the War Department to compel the soldier to comply with his spouse's request. This involved considerable correspondence back and forth with limited results.

203. The other class of debt cases was in connection with obligations that personnel coming overseas had left owing in the United States and concerning which the War Department received letters. These were forwarded to the Theater Commander and found their way down through channels to the debtor.

SECTION 23

SOLDIER VOTING

204. In order to facilitate the exercising of the prerogative of suffrage by persons in the armed forces, steps were taken during the campaign in the European Theater to make possible the casting of ballots for candidates of their choice by members of the military personnel away from home. A federal law was passed permitting members of the armed forces to vote for Presidential candidates. However, this did not provide for voting in Congressional or State elections.

205. Public Law Number 277, 78th Congress, amended by Public Law 712, 77th Congress, was published by the War Department as Bulletin 5, 1 April 1944, and recommended that states pass appropriate legislation to permit persons away from home, in service, to exercise the right of voting in any primary, special or general election held in time of war.

206. The Act required the United States War Ballot Commission to provide postcards for each prospective soldier voter to use in order that he might show his eligibility to vote in his own particular state. It indicated his desire to vote in his respective district or precinct and gave evidence of his qualifications. When filled out, signed and mailed to the appropriate secretary of state and, in turn, by the latter to the absentee voter's own county and precinct, he was provided, if his state law permitted, with an absentee ballot which he secretly marked and returned to the proper official back at his home.

207. The United States War Ballot Commission composed of the Secretary of War, Secretary of the Navy and The Administrator of War Shipping Administration was to serve for the duration of the War; was to provide ballots to all eligible absentee voters to vote for Presidential and appropriate Congressional candidates; was coordinated with the Secretary of State's Office through whom the completed ballot was passed on to the voter's precinct or district.

208. Lacking a method of polling the absentee military personnel, War Department Circular 128, 3 April 1944, was published giving the commanding officer the responsibility of appointing a suitable officer to supervise the execution of the commander's responsibilities in connection with absentee soldier voting. Circular 238, 13 June 1944, was issued by the War Department directing that the commanders of each service command and theater appoint an officer to supervise soldier voting.

209. It is difficult to determine the full scope of the activity, the thoroughness of the system and the proportion of military personnel availing themselves of the privilege. Since it was intended as a service of convenience to the individual soldier, it is not believed that either the number availing themselves of the privilege or the ultimate effect of the soldier vote cast would pertain to the scope of this study. It is sufficient that his army service did not deprive the member of the military personnel of his right of suffrage or the opportunity to exercise it.

210. In many instances, the commanding officer of a unit appointed the judge advocate or one of his staff to handle the problem of advising and instructing the individual soldier and in seeing that he was given the privilege of voting, if he desired. There was a prevailing opinion in the European Theater that any attempt at pressing the campaign of "getting-out-the-vote" might be construed as partisan politics instead of an effort at civic betterment and the exercise of the citizenship privilege by the soldier. In many units, there was a wholesale indifference on the part of the soldiers to the entire matter.

211. As a result of the 1944 elections, War Department Circular 487, 30 December 1944, was published to guide the policies of 1945. Previous circulars and directives were rescinded, provision was made that no coercion would be used, but directed that every reasonable means be taken to explain the voting privilege to the personnel with a view that a better understanding would result.

212. There was considerable controversy concerning Title V of the basic law regarding political broadcasts, newspapers, circulars, magazines, and books which might influence the election of national officers. Section 22 of Title V apparently made it the duty of the Secretaries of War and Navy to determine what political literature should be made available to overseas forces, looking to the limitation of political argument or propaganda that might affect the result of the elections. This resulted in a combing of overseas reading rooms and libraries for strictly partisan political literature with a certain amount of resentment and controversy as to the justice and the necessity for this monitoring and suppression of free speech and press.

213. Later, Title V was amended by Public Law 418 and published to the armed forces in War Department Circular 348, 26 August 1944. This provided that no legal restriction of books, magazines, newspapers, motion pictures, films, radio broadcasts, plays or entertainment material as generally presented to the public in the United States were to be made insofar as the armed forces were concerned. It made clear that there would be no restriction on sales of any material through army post exchanges or the purchase of any such material by non-appropriated funds such as company funds. Subscriptions to publications by or for members of the armed forces, including subscriptions through army exchanges, were permitted and individuals or political organizations were permitted to send letters or other literature to the soldiers. However, it was felt by some of those

interviewed that this circular came too late to cure some of the misunderstanding that had arisen.

SECTION 24

SERVICE OF PROCESS

214. The laws of various states provide that service of process may be made upon members of the military personnel serving in foreign lands through normal diplomatic channels. Due to communication and transportation difficulties, the lack of coordinating effort between the military and diplomatic agencies, confusion and hardship resulted in attempting to follow the prescribed procedure in many cases.

215. Often the soldier could not be released for attendance at a place where normal diplomatic channels could take care of the case. The Soldiers and Sailors Relief Act was apparently intended to be sufficient safeguard for the rights of the soldier sued in his absence from home in the service. In connection with divorce suits where waivers were employed and where the soldier to some extent acquiesced in the proceeding, no harm resulted from the matter being handled by correspondence. The occasions were comparatively few in the European Theater, as reported by the judge advocate officers questioned in the course of this study, and it is believed that no genuine problems arose other than those suggested here.

216. Depositions. There was little or no difficulty experienced in connection with the taking of depositions, both for use in military tribunals and in civil courts back in the United States, where the deponent was a member of the military establishment. These depositions, usually taken upon agreement of parties, were sent to the soldier's commanding officer and found their way into the hands of the judge advocate of the unit who was usually qualified and willing to lend his assistance to the proper preparation, authentication and attestation of the instrument.

CHAPTER 7

CONCLUSIONS AND RECOMMENDATIONS

217. Processes for naturalization of military personnel should be revised.

a. Entirely too little significance was placed upon the question of naturalization of aliens in the armed forces. It is a repugnant thought that a man can serve one country, wearing its uniform and offering his life for it, while still the citizen of another and, in some instances, of the country against which he is fighting. If the question of citizenship is presented to him at the time of his induction and he has not availed himself of the naturalization privilege nor been given the opportunity to do so by the time he starts overseas, his leaving should be postponed until he becomes an actual citizen of the United States.

b. It is believed that authority could well have been given to certain agencies at higher military headquarters whereby certain officers could have been delegated the duties of "representative" of the Department of Justice for the carrying out of the act of naturalization quickly and expeditiously in the field. A Federal statute to that effect would be beneficial.

c. It is recommended that legislation be enacted expressly authorizing a designated class of military personnel to do and perform every act necessary to confer citizenship in time of war upon members of the armed forces and civilians serving therewith beyond the geographical limits of the United States, its territories and possessions.

218. Uniform laws applicable to legal processes should be sought.

a. There was considerable confusion brought about through the varied requirements of the several states in connection with the administering of oaths, the taking of acknowledgements and other processes applicable to servicemen and women and to civilians in overseas theaters serving with the armed forces. This confusion resulted in the improper execution of instruments, in many cases, detrimental to the vital interest of the soldier involved, did not carry out his desires and will likely result in future law-suits and serious curtailment of property rights. It is believed that effort should be made to secure legislation in Congress and State Legislatures in connection with uniform procedure.

b. It was believed by many judge advocates interviewed that a happier solution to the problem of service of process upon military personnel in foreign countries would have been, either by the adoption within the several states or by national enactment of legislation that would have prescribed and permitted service of process where necessary through an accredited officer of The Judge Advocate General's Department, or through the adjutant or adjutant general of the command to which the soldier belonged. They were of the opinion that it would do much to eradicate the time element, the delay and the difficulty of access that existed under the present system in the European Theater.

c. It is recommended that endeavor be made to procure the passage by all states of the union and the Federal Government of a uniform law for the preparation and attestation of wills, the

service of process and taking of depositions through military channels, applicable only to members of the armed forces and civilians serving therewith beyond the geographical limits of the United States, its territories and possessions.

219. Enlarge policy on handling of claims.

a. A review of a substantial number of claims files, conferences and discussions with claims personnel, inspection of activities and records, and conversations with people who have felt the effect of the claims act, leads to the conclusion that operations of the claims service and the administration of the claims act have been highly successful. The legislative framework was generally adequate. The care used in the selection and training of personnel has produced competent workers. Control has been centralized, procedures standardized, and constant prior planning has kept the service abreast of developments. Decentralization and flexibility made for a prompt and appropriate disposition of claims throughout the entire European Theater. The records disclose, however, that administrative costs have been high.

b. It is the uniform view of virtually all persons who had any experience with claims in the European Theater that the investigators or similar field-workers should be granted authority to make on-the-spot settlements of smaller claims not exceeding fifty to one hundred dollars. Under the practices that now exist, it is necessary to make a complete formal investigation of the claim and submit it to a commission for approval. Often, the expense incident to such a procedure equals or exceeds the amount of the claim allowed and results in unnecessary delay.

c. Experience also discloses that some of the field commanders would not permit the claims teams to operate in forward areas under their control. Such a refusal was in all probability based upon a lack of understanding by the commander concerned of the services to be performed. It is obvious that the goodwill accruing from a prompt investigation and settlement of property rights would enhance the spirit of cooperation on the part of the civilian populations within the areas.

d. Although apparently of minor importance in comparison with operations as a whole, it seems to be the consensus of opinion that the claims organization could have furnished even a greater service had it been provided with more transportation so as to give it greater mobility.

e. As circumstances and situations in a foreign theater of operations cannot always be anticipated with any degree of accuracy, the Theater Commander should be given the greatest discretion for adopting and carrying into execution those means which appear to be best to accomplish his mission. This is equally true with respect to operations under the claims act. In most instances, authorization with respect thereto, which had been requested from the War Department, was granted. Much valuable time could have been saved had the Theater Commander been vested with final authority as to all matters respecting operations under the claims act.

f. Experience in this war has unquestionably established that each country is more competent to process the claims of its nationals than representatives of another nation. Under such arrangement, language barriers do not exist, local habits, customs, procedures and rules of law are better understood, and more confidence is placed in a fellow citizen than a foreign national. Operations

under reciprocal aid agreements have unquestionably established the truth of this thesis. It would, perhaps, therefore be better for each nation to process its own claims against the nationals of other countries under previously arranged agreements embodying the controlling policies and arrangements for reimbursement.

c. It is recommended:

(1) That consideration be given to the amendment of the Foreign Claims Act and implementing regulations so as to:

(a) Authorize one man foreign claims commissions, investigators or comparable field workers to make on-the-spot settlements of claims not exceeding $100 without formal investigation.

(b) Grant the Theater Commander final discretion in promulgating policies, procedures and agreements for the administration of the act in the areas under his command.

(2) That consideration be given to the proposal that the United States enter into agreements with foreign countries, during early stages of operations, for the processing and payment by such foreign countries of claims against the United States, with suitable arrangements for reimbursement and credit for the sum thus expended.

220. The dependency benefit program should be revised and improved.

a. Legal aid associations in the various states were helpful to the soldiers and officers in the European Theater. Many patriotic civilian lawyers gave considerable time and effort both individually and through their local bar associations to make a real contribution to the overseas soldier, often without any charge or a small one in cases of court appearance. These efforts, together with the conscientious attempts on the part of the judge advocate officers to render legal assistance to the worried soldier, many times spelled the difference between an effective and non-effective fighting man.

b. The suggestion was made by several judge advocate officers interviewed that there should be an attempt made to secure a Federal divorce statute applicable to personnel in the military and naval service; that federal procedures might be prescribed whereby a member of the military establishment might have an unfaithful spouse hailed into a federal court to show cause why a mandatory allotment should not be stopped because of his or her misconduct.

c. If a branch of the Office of Dependency Benefits had been maintained in the European Theater, even in abbreviated form, for the purpose of advising judge advocates and unit commanders as to the rights of individual soldiers, keeping them in touch with the changes which took place from time to time in the head office rulings, much assistance would have been rendered. A monthly loose-leaf digest service would have helped the judge advocate or the personnel officer seeking to advise the soldier as to the current changes and amendments in the law. More constructive dependency benefits' service

could have followed the soldier overseas.

d. It is recommended that consideration be given to the amending of Servicemen's Dependency Allowance Act of 1942, as amended by Act approved 26 October 1943 so as to make provision for the termination of allowance in favor of an unfaithful or undeserving spouse upon application by the soldier-husband and waiver by the government of accrued deductions in excess of $100 from his pay in the absence of actual notice to him of the approval of an application by any dependent.

221. More consideration should be given to handling of military legal matters in the theater of operations.

a. While it was impossible to foresee in advance the situations which arose in the European Theater, in the several countries in which the campaign proceeded, with reference to deceased military personnel, it was evident that proper provision had not been made prior to entry into such countries to anticipate the problems that arose. This resulted in some confusion and considerable complications of estates, bank accounts and disposal of personal property of deceased military personnel. It is believed that a comprehensive peace-time study of this subject should be pursued, processes planned and preliminary arrangements made prior to entry into foreign countries by our military forces.

b. As practically all investigations and board reports involve questions of disciplinary action, violations of regulations or misconduct of some kind, it is believed that the judge advocate officer should be schooled in handling them and that he should be available for consultation, if desired, before final action is taken.

c. Since reclassification proceedings invariably present the question of whether they are in lieu of disciplinary action or whether there is evidence to support the same, it is believed advisable to require the staff judge advocate of the originating authority to include his written opinion as to the disciplinary phase of the subject-officer's conduct in the reclassification papers when they are forwarded.

d. There appeared to be too strong a tendency on the part of many judge advocate officers to issue their own directives in the form of "poop" on how to draw inferior court-martial charges, what procedure to take in certain disciplinary matters and on almost every other subject having to do with military justice or military affairs. This might have been obviated by written material emanating from theater level.

e. There were some criticisms of the laws and processes of soldier-voting expressed by the judge advocate officers interviewed in connection with this study. They felt that sufficient thought had not been given to it nor preparation made for it in time of peace, that the results were hastily-considered laws with attendant confusion and lack of satisfactory results. One lieutenant colonel who served as judge advocate of a combat infantry division, throughout the operations in the European Theater, when interviewed said, "The assistant judge advocate was appointed division voting officer and had complete supervision of that activity in the entire division. He worked hard, set up a very workable plan of distribution, education and instructions of unit voting officers and after it was all over, the results were disappointing as only about 15% of the command voted the Federal ballot. In my opinion, the Federal ballot served little purpose. Those interested in vot-

ing were also interested enough to send for their home state ballots. Many men complained of the inability to vote for other than candidates for national office. It would save considerable expense and achieve better results if the War Department could work out a plan in cooperation with the various states that would enable the soldier to vote his state and county "ballot". Conscientious attempts were made by soldier-voting officers to comply with directives, but they were hampered by a lack of proper instructions or definitions of policy. Diversity of opinion and lack of precedent were serious hindrances to the accomplishment of the mission.

f. In the case of forwarding letters through channels to soldier-debtors from creditors in the United States, there usually ensued considerable embarrassment to the soldier, the necessity of an interview with the commanding officer, the offering of excuses, alibis or justifications, and the preparation of a reply through channels. Many judge advocate officers, when interviewed on this subject, expressed themselves as being of the opinion that, while a member of the military personnel is in foreign lands serving his country and exposing himself to the rigors and dangers of the campaign, these "damning" letters might well be reserved in the United States or at the War Department until the completion of hostilities or until the subject-soldier has returned to the Zone of the Interior, at which time they could be pursued. This suggestion was made both for the benefit to the soldier's peace of mind and to prevent endless correspondence in the matter that was burdensome to company officers.

g. There was a tendency to have mimeographed forms for general powers of attorney and for simple wills. While it was an easy way of handling, quickly, many requests, there were disadvantages and the practice is not considered a desirable one. The instrument is customarily one that applies to a particular case and the soldier who gave a blanket power of attorney to some one back home to perform any act for him found the authority difficult to revoke and too frequently rued the giving of it.

h. The United States Government should hesitate to concede jurisdiction to the French and other national courts over members of the armed forces in bastardy or support cases without providing safeguards adequate to afford them the same protection in such courts as is present in the English courts. The view was expressed that these matters of original decision might just as well have been incorporated in the preliminary negotiations between friendly governments anticipating use of the facilities of one country by the armed forces of the other and should be the subject of peace-time study.

i. It is believed that Article of War 121 did not furnish the proper forum in which the members of the military personnel having complaints could be heard. It was ambiguous to a certain extent, left doubt as to its scope and was rarely employed by the soldier. Instead, he adopted the method of writing home, addressing his complaints to army periodicals or saving them for rehearsal to civilian audiences when he was discharged. If Article of War 121, which provides for the appeal by members of the military personnel for injustices they believe they have received, were more fully explained and the member of the military personnel encouraged by his commander to bring his complaints to his company officers for a fuller understanding between the individual soldier and his commanding officer, a better relationship would undoubtedly follow.

j. It is recommended that more consideration be given to military legal matters in the theater of operations; that a mili-

tary affairs section comparable to the military justice section be maintained in the Office of the Theater Judge Advocate to which the unit judge advocate may go, through technical channels, for assistance and guidance; that a manual on military affairs similar to the one issued by The Judge Advocate General's School and applicable to questions arising in a theater of operations be issued to each judge advocate officer upon arrival in the theater; that such manual be annotated monthly with such changes or improvements as the current experience justifies.

APPENDIX 1

HEADQUARTERS FIFTEENTH U. S. ARMY
Office of the Army Judge Advocate
APO 408

250.4 - GBMJA 20 March 1945

MEMORANDUM: Military Justice.

Your unit has now arrived in ETOUSA and for a time at least, it will be under this Army for certain purposes. Those on duty in the Office of the Army Judge Advocate are desirous of being as helpful to you as it is possible for them to be. You are invited and urged to make a visit to this office at any time, use its facilities and confer with the staff on your various problems of military justice. In the event that it is impossible or impracticable to make such a visit, upon telephone call, we will endeavor to be of assistance to you.

In the hope that they may be helpful to you, the following statements of certain army and theater policies and other suggestions are made:

I. Judge Advocate Offices.

1. Brigadier General Edward C. Betts, JAGD, Majestic Hotel, Paris (address: Judge Advocate, Hq European Theater of Operations, APO 887, U. S. Army) is the Staff Judge Advocate, European Theater of Operations (to which office all cases arising under AW 48 will be forwarded). Brigadier General E. C. McNeil, JAGD, 125 Champs Elysees (address: Branch Office of The Judge Advocate General, European Theater of Operations, APO 887, U. S. Army) is Assistant Judge Advocate General in charge of the Branch Office of The Judge Advocate General with the European Theater of Operations (to his office go all other records from original GCM jurisdictions for approval).

2. This Army is under the Twelfth Army Group, Colonel C. B. Mickelwait, JAGD, is the Staff Judge Advocate (address: APO 655, U. S. Army).

3. You are located in a Base Section (which corresponds to a service command in the U. S.), or near a designated Port. The Staff Judge Advocate there may be of considerable help to you in your immediate problems.

II. References.

4. An orientation file has likely been received at your headquarters from this headquarters and/or ETOUSA and you should consult it (perhaps in the office of your AG) to see what pertinent parts affect your unit and become generally familiar with it. If an SOP, Fifteenth Army, has been received at your headquarters you should, likewise, study it. This office will forward you copies of certain directives from time to time for your files. The JAG Office, ETOUSA, and JA Office, 12th Army Group issue digests, circulars and bulletins that are helpful. Your study might well include them. At any time that you need to refer to a cited memorandum or circular, a telephone call or visit to this office will place our library and other facilities at your disposal.

III. Prisoners.

5. Garrison prisoners will be confined within their own units,

both prior to and after trial. Spec CM sentences of confinement are usually suspended or mitigated with consideration being given to substitution of "restriction" for "confinement". Remember, while in actual confinement, soldier does not draw overseas pay increase. If sentence provides for forfeiture of an amount that is in excess of two-thirds of base pay, it must be corrected (See III, WD Cir 484, 29 Dec 44). It is suggested that in imposing forfeitures no attempt be made to involve special pay increases.

6. Prisoners awaiting trial by GCM will be confined with their own units or in division stockade or guardhouse. After trial and upon conviction and sentence to dishonorable discharge and confinement, the general prisoner may be sent to the Oise Base Section stockade for confinement until sentence is approved. Upon approval, he will be transferred by the Oise Base Section to the Loire Disciplinary Training Center, Lellans, France, which is the only disciplinary training center on the continent where sentences of confinement are served or prisoners are held pending return to U. S. Upon such transfer, the records of the general prisoner are forwarded directly to Loire Disciplinary Training Center by his organization. Prisoners will not be dropped from the rolls of their organizations until receipt of GCMO or letter from reviewing authority stating that sentence has been approved and action is awaited under AW 50½.

7. Officers under sentence of dismissal only will be sent to the 10th Replacement Depot, UK, and those under sentence of dismissal and confinement will, upon approval, be treated as any other general prisoner and sent to the Loire Disciplinary Training Center, Lellans, France, for serving of sentence or return to U. S. Records to accompany prisoner to Lellans are provided for in Cir 73, ETOUSA, 22 Jun 44, and property to accompany him is set out in Cir 3, ETOUSA, 11 Jan 45. For list of federal penal or correctional institutions available for confinement in U. S., see Military Justice Cir 7, BOJAG ETO, 1 Dec 43 (or WD Cir 29, 10 Nov 43). These references are on file in this office, but copies of them will likely be sent to you from here or from one of the Paris offices.

8. The Army Stockade is for the accommodation of non-divisional or non-corps units under this Headquarters. However, both the Army Provost Marshal and the Army Judge Advocate will gladly assist divisions and other units under this Headquarters if unusual or extraordinary situations arise in connection with the confinement of prisoners. Any refusal by Base Section authorities to receive prisoners awaiting approval of sentence should be reported to this office.

IV. Naturalization.

9. Facilities can be arranged for the naturalization of aliens, where all papers have been completed, by a visiting team provided for that purpose. Requests should be made to this office, well in advance, for assistance in this connection. Information Circular 4, Hq Twelfth Army Group, 13 March 1945, Cir 14, ETOUSA, 15 February 1945, and Cir 382, WD 21 September 1944 contain directives on this subject.

V. Claims.

10. Claims Directors are located at all Base Sections for the receiving and processing of claims. Regional claims teams operate in the Advance Section, Com Z for relief of combat organizations and the use of them is encouraged. Their addresses are set out in Infor-

mation Circular 4, Hq 12th Army Group, 13 March 1945. ETOUSA Cir 118 (8 Dec 44) is the latest directive in this theater. All claims under AR 25-100 (under which combat losses of personal property fall) after being processed are forwarded direct from unit commanders to Chief of Claims, Hq ETOUSA, APO 887, U. S. Army. These under AR 25-25, 25-90 and 25-220 are forwarded by unit commanders to nearest Base Section Claims Director. AR 25-20 must be complied with in all cases. For replacement in kind when possible, see par 8, AR 25-100. The Army Judge Advocate will render such assistance to unit claims officers as may be requested.

VI. War Criminals.

11. Matters involving investigation of war crimes (violations of Geneva Convention) and the punishment of war criminals are under the supervision of the Army Judge Advocate. All Judge Advocates or unit commanders will promptly communicate to this headquarters any cases arising in the areas of their respective units at any time or any information in the unit commander's possession as to pending or new cases of war crimes or violations of the Geneva Convention. The ETOUSA directive with reference to collection of evidence and handling of war criminals is published in Letter, ETOUSA, 24 Feb 45, subject: "Establishment of War Crimes Branches."

VII. Pre-Trial Examination.

12. It is the policy in this theater for the unit judge advocate to personally interview or inspect the accused prior to trial by GCM. A psychiatrist's examination will be made prior to each GCM trial and report will accompany record of trial. The review should contain the result and impressions of an interview with the accused, giving his background, previous civilian and military experience, criminal record, and anything else which would be of value in considering later clemency or restoration.

VIII. Reclassification of Officers.

13. Upon completion of request and accompanying papers for reclassification of an officer, they will be forwarded, through channels, to Army Headquarters where subject officer will be reassigned or the papers forwarded to ETOUSA. He will thereupon be reassigned or ordered to a reclassification center. Only in cases where the unit is in actual combat will the officer together with the necessary reclassification papers be sent to Army Headquarters. An officer will accompany him and permission will be secured from Army before he leaves his station. Attention is directed to Change 4, par 7d (2) (b), AR 605-230 when resignation in lieu of reclassification is submitted.

IX. G-5.

14. Until the G-5 Section is activated in your unit, the Judge Advocate will be expected to serve in that capacity. G-5 at Army Headquarters will be glad to cooperate with you in such problems as arise in this connection.

X. Security.

15. All charge sheets and accompanying papers will be classified at least "CONFIDENTIAL". Where mutiny or evidence of mutinous or seditious conduct is alleged, the classification will be "SECRET".

On accused's copy, after he and defense counsel have approved the undeleted record, all places are deleted by knife or razor blade (Cir 72, ETOUSA, 1943).

XI. Records.

16. Use both sides of paper for conservation. Sum GM records will be made with one original and two copies. The original will be retained in the unit file and one undeleted copy will be forwarded to the headquarters exercising GCM jurisdiction classified as "CONFIDENTIAL", while one deleted copy will be sent to the Adjutant General, Washington, D. C. marked "RESTRICTED". SCM records and orders will be classified at least as "CONFIDENTIAL" (no copies of SCM records are required). One copy of SCMO will accompany record and three copies deleted and marked "RESTRICTED" will be sent to The Adjutant General, Washington, D. C. (Attention: Enl Branch). Other distribution will be made in accordance with AR 310-50 and classified matter will be deleted and orders marked "RESTRICTED" (Cir 72, ETOUSA, 9 Sep 43).

XII. Military Commissions.

17. Any case in which trial (principally of spies) by military commission is proposed will be reported promptly to this Headquarters and an immediate conference arranged with the Army Judge Advocate as to the disposition of same (See Cir 14, Hq Twelfth Army Group (2 Oct 44) "Military Commission Regulations").

XIII. Jurisdiction.

18. Seine Base Section (Paris) has been given concurrent command and court-martial jurisdiction over all military personnel apprehended committing offenses while in that Section's area. The Commanding General there may impose punishment under AW 104 or by trial irrespective of organization of offender. Trials in other than accused's station area where witnesses are more readily available can be arranged by mutual understanding of commanding officers involved.

XIV. GCM Suggestions.

19. In misbehavior before the enemy cases (AW 75), allegations and proof must support the fact that tactical relationship of accused and enemy existed and is not a question solely of definite distance. Same specification may contain allegations of "avoiding hazardous duty" and "shirking important service" under AW 58 and 28, allowing proof of either or both of the specific intents. Do not allege alternatively, however. The record should contain evidence from some person who actually saw the accused and knows what he did. It is not sufficient in a 58-28 case to merely prove absence and that the unit was in combat during the absence; the intent of accused to avoid hazardous duty must be shown by direct or circumstantial evidence. In all instances where value is alleged, show in U. S. currency as well as foreign. In considering the value of French property, careful consideration should be given to its actual value. Its value in francs converted to dollars in accordance with the official rate of exchange is not proof of its real value. Trouble will be avoided if staff judge advocates are liberal in determining the actual value. In all cases where the death sentence is authorized, record the vote on the findings as, "All members present at the time the vote was taken concurring," if such is the fact. The commanding

officer of the reporting unit, the unit personnel officer and the Adjutant General are each the official custodian of the original morning report in a command, unit or branch of the Army and as such authorized to duly authenticate an extract copy thereof. It is the duty of the staff judge advocate to determine before trial the morning reports are in proper form. Misbehavior cases, which actually involve desertion, may be charged under AW 58 rather than 75. The ETO directive of October 5, 1944 does not require that all misbehavior cases be alleged under 58-28. There is ample discretion in the directive and it should not be extended beyond its obvious meaning. Three signed copies of review and ten unexpurgated copies of GCMO should be in each record of trial by GCM sent to BOJAG. Where vital items have been stolen, you may charge under AW 96 alleging that the theft impeded the war effort but making such allegation should be carefully considered. BOJAG has so far not held that an offense so alleged is without limited punishment. Let review show where accused is then in confinement. In cases under AW's carrying death penalty, court should be qualified on conscientious scruples against imposing it. Allow five days between serving charges and trial unless accused agrees in open court to lesser time. GCMO must show amending orders and whether previous convictions were considered (Negative statement should be included). If civilian involved, your Commanding General may desire you to prepare letter for his signature expressing regret and advising them of punishment imposed on soldier offender. Letters of regret to civilians are optional on the Continent. It is only mandatory in the United Kingdom. First copy of charges, etc. should be originals. Avoid making junior member of court law member unless no senior available. Indicate in review or by informal notation if accused is negro or white.

XV. Venereal Disease.

20. Contraction of venereal disease is not in itself sufficient reason to break a non-com to private unless his efficiency is impaired by the disease.

XVI. Sodomy Cases.

21. Follow Cir 3, WD, 1944. Where sentence includes dishonorable discharge and confinement exceeding one year, dishonorable discharge will not be suspended and U. S. Penitentiary or other Federal Penal or Correctional Institution will be designated.

XVII. Black Market.

22. No rationed foods will be purchased from civilians and no black market activities indulged in by the U. S. Forces. Offenders will be tried.

XVIII. Civilian Matters.

23. In any conflict with French or other local authorities over jurisdiction matters in France, see "Revised Directive for CA Operation in France," 25 Aug 44, SHAEF. Do not conduct any investigation of civilians without first clearing through Liaison Officer or local Gendarmerie, so that national representative will conduct examination or can at least be present and consent to procedure.

XIX. Fraternization.

24. Strict enforcement of non-fraternization regulations is required. See directives from Hq, 12th Army Group entitled "Special Orders for German-American Relations".

/s/ Julien C. Hyer,
/t/ JULIEN C. HYER,
Colonel, JAGD,
Army Judge Advocate.

APPENDIX 2

COMMENT OF THE CHIEF OF SECTION

The foregoing study on "Legal Questions Arising in The Theater of Operations," was prepared by the Judge Advocate Section, The General Board, United States Forces, European Theater of Operations. Research was made from the files of the Judge Advocate Section, European Theater of Operations, United States Army, later designated as United States Forces, European Theater; the Office of the Chief of Claims Service, European Theater, and by studying appropriate statutes, agreements, policies and legal decisions of higher level headquarters, and implementing War Department and theater regulations, directives and circulars. Source material was also gathered from the answers to questionnaires which were submitted to all judge advocates serving in the European Theater of Operations. Numerous persons who had a wealth of experience in the European Theater, in the various topics embraced within this study, were interviewed. Problems were discussed with all members of the Judge Advocate Section of The General Board, each of whom likewise served in the European Theater, and they have concurred in the conclusions and recommendations herein submitted.

In this particular study, Lieutenant Colonel Joseph W. Riley, JAGD, performed much of the research and original drafting. Prior to his assignment to this task, he served as Judge Advocate for the 66th Infantry Division, which arrived in the European Theater in December of 1944. After successful completion of the prescribed courses in The Judge Advocate General's School and the Command and General Staff School, he successively served as an Assistant Judge Advocate, 102d Infantry Division, and Headquarters Third United States Army.

Lieutenant Colonel Burton S. Hill, JAGD, formerly Staff Judge Advocate of VIII Fighter Command of the Eighth Air Force, serving in England and Belgium, aided in the preparation of this study, particularly as it affected the air forces.

Julien C. Hyer

JULIEN C. HYER,
Colonel, JAGD,
Chief, Judge Advocate Section.