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THE JAGS AMONG US: AUTHENTIC GENERAL PRACTITIONERS(1). DOES CONFINEMENT FURTHER DISCIPLINE?(2)

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14 February 1973

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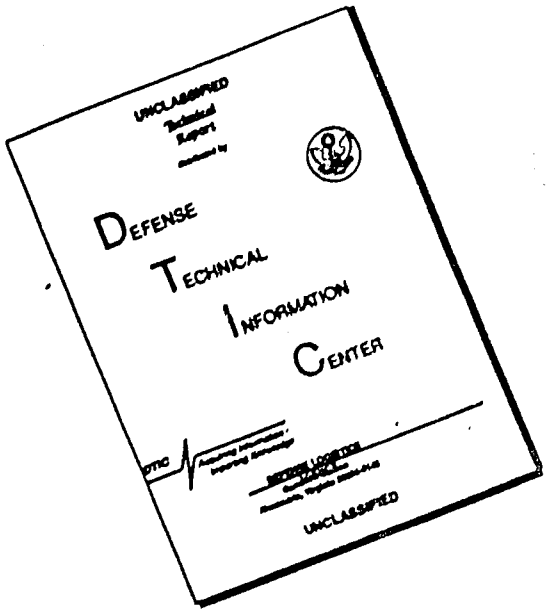

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USAWC RESEARCH PAPER

THE JAGs AMONG US:
Authentic General Practitioners

A MONOGRAPH

by

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14 February 1973

ABSTRACT

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For the reasons stated in the preface, the monograph is a montage of the total legal services available in the military services. Data was gathered through interviews with division chiefs and others in the Office of The Judge Advocate General of the Army and a literature search and also reflects the author's experience. Military Justice, claims, and legal assistance are acknowledged as being the "big three," but international law, patents, realty, labor law, civil litigation, procurement, utility regulation, and other fields are accorded their proper due.

PREFACE

This monograph was written for a specific publication and audience and for specific purposes. The "Texas Bar Journal" is the publication; members of the Texas Bar Association the audience. The purposes are to stimulate interest in The Judge Advocate Generals' Corps as possible career fields for young lawyers and to form a reference base for the current attempts to get authority for judge advocates to appear in the courts of Texas in legal assistance cases.

Most judge advocates enter the service with direct appointments in the Reserves. The pressure of the draft kept the supply lines full of young civilian lawyers trying to avoid service as enlisted men. Reduced pressure with the demise of the draft is already apparent. Applications for JAGC appointments are down drastically and the services have difficult recruitment problems in the legal community. In addition to a general antipathy toward military service, lawyers, young and old, without prior military service have no conception of the opportunities in military law. (It may be added, also, that few military officers appreciate the full spectrum of legal services within the armed forces.) Hopefully, this monograph will stimulate some thought on the possibilities of a second career for some lawyers.

The Secretary of Defense has directed the military departments to establish programs in each of the 50

states to allow JAG officers to appear in civil court for servicemen who cannot afford a lawyer. The program is underway in New Jersey with some success and acceptance. The Navy is charged with establishing the program in Texas. The Bar Association of that state has some objections. The resistance seems to be partly a fear on the part of the civilian lawyers of possible loss of income to the military lawyers and partly some skepticism whether military lawyers are qualified to practice in civilian courts. This monograph, therefore, attempts to eliminate any ground for a belief that JAGs cease to practice law when they don the uniform.

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THE JAGs AMONG US:

AUTHENTIC GENERAL PRACTITIONERS

More than 200 uniformed judge advocates (JAGs) and civilian attorneys of the Army, Air Force, and Navy furnish legal services for the Department of Defense in Texas. There are 29 military activities within the state boundaries that are large enough or important enough to require house counsel. These include military reservations of thousands of acres in rural settings, sprawling complexes in cities, and the headquarters in Dallas of the largest department store in the world, the Army and Air Force Exchange Service.

Notwithstanding the magnitude of military legal activities in Texas, the breadth and scope of judge advocate activities is little appreciated by the Bar. The JAGs among us are simply not known. Even those attorneys living in the vicinity of military installations frequently have a limited view of military law. Their perception of this field tends to be limited to social contacts with judge advocates, possibly a few trials before courts-martial, and maybe some claims activities. In short, the general tendency is to regard military lawyers as confined to prosecuting and

defending courts-martial, processing military claims for and against the Federal Government, and giving advice and assistance in the office on marital and indebtedness problems.[1]

Military criminal law, or Military Justice, claims, and legal assistance do require most of the JAGs' time. These are also the most visible JAG efforts and cannot be ignored because of their sheer magnitude. Each year, for example, the U.S. Army Claims Service, acting primarily through local Staff Judge Advocates, settles approximately 99,000 claims against the Government for about 25-30 million dollars and collects several million dollars on Government claims.[2]

In the criminal law area, thousands of felony-type cases are tried in courts-martial each year. During the fiscal year that ended on 30 June 1972, 3,319 verbatim records of trial were received by the U.S. Army Court of Military Review for appeal.[3] These represent only the tip of the floating iceberg. Not only are these cases from just one service, they are also only those cases for which appellate review is mandatory.[4] Many others are tried before courts-martial without jurisdiction to adjudge a sentence requiring the automatic review; i.e.,

they are not tried as felonies, or they are tried as felonies but do not result in a reviewable sentence.

Of the 250 Army Legal Assistance Offices, 11 are in Texas. The offices in Texas reported that during the period 1 July 1971 and 30 June 1972, 98,000 transactions were completed. The transactions included personal and telephonic interviews and consultations with individuals on their private legal matters, drafting legal documents such as bills of sale, wills, and powers of attorney, and preparation of correspondence for individuals on matters of personal indebtedness, consumer disputes, etc.[5]

The three activities just mentioned capture the JAG spot light. They are, however, only a minority of the myriad legal activities vying for JAG time. Actually, a military lawyer has as wide a practice of law as some civilian lawyers and a wider practice than most.

LOCAL GOVERNMENT AND BIG BUSINESS

One way to illustrate the full spectrum of military law is to take a close look at a military installation. Post commanders have the same problems as city mayors.

Traffic flow and control, utility regulation, crime prevention, fire protection, garbage collection, union organization and bargaining, construction and use of facilities, and operating within a budget imposed by external sources are some of the activities common to both city and post management. The legal problems attendant to each and every one of these activities, be they military or civilian, are obvious. The mayor relies on the City Attorney for his legal advice; the post commander has a Staff Judge Advocate for a similar role.

Another analogy is to compare the military establishment with a large corporation, because the Department of Defense is just that -- big business. The millions of military and civilian personnel working for the military departments in many countries and the billions of dollars spent each year for military supplies, equipment, construction, and research generate problems that make the JAG plate runneth over.

Every judge advocate has a chance at the action. The big, weighty cases do not necessarily gravitate to

or concentrate in Washington. Not too long ago, for example, the Staff Judge Advocate at Fort Hood handled a claim for six million dollars. The fact that the claimant was an inmate in a mental institution and was claiming damages for false imprisonment in the psychiatric ward of the Fort Hood hospital simply added interest to "just another claim."

TRIAL ADVOCACY

Judge advocates are no strangers to civil court. Servicemen take a back seat to no one when it comes to petitioning courts for relief. Inmates of installation stockades and servicemen claiming to be conscientious objectors who should not be in the military service discovered a wondrous new thing called habeas corpus about 1965. At approximately the same time, suits for injunction proliferated to prohibit the transfer of individuals to Vietnam, to prohibit planes from flying too low over pregnant cows, or to require the dismissal of court-martial charges. During one period, a U.S. Marshal was serving process at one Texas installation so frequently

that the commander remarked that if he was not sued at least three times a week, he began to worry that he was losing touch with his personnel.

In each suit against a base commander, the officer is represented by the U.S. Attorney or a judge advocate. If the U.S. Attorney appears for the defendant or respondent, a judge advocate frequently is of counsel to assist on the military aspects of the case.

Administrative courts, boards, and agencies are also on the JAG itinerary. Public utility rates and regulations are of significant interest to the military. In some areas, a military installation is the largest single user of electricity, gas, water, telecommunications, and sewage systems. A proposed rate increase or regulatory change for any of these utilities, therefore, will attract military interest; an interest frequently represented by the appearance of a judge advocate at the rate or regulatory hearing.[6]

Since defense is big business, there are substantial patents, trademark, and copyright activities in JAG circles. Military lawyers have filed as many as 300 patent appli-

cations for the Army with the U.S. Patent Office in the Department of Commerce in a single year. Generally, however, they prosecute only 150-200 new patent applications annually. Their expertize in this field also takes them before the U.S. Court of Claims, either individually or as associate counsel with a U.S. Attorney, to defend patent infringement actions against the Army.[7]

Because of the location of the Patent and Copyright offices and the Court of Claims, practice in this specialty tends to be restricted to the environs of the nation's capital. The District of Columbia, however, does not have an exclusive franchise on the subject matter. There is, in fact, a considerable international practice for military lawyers in this endeavor which appears so mysterious and exotic to most of us. The United States' representative to the NATO Working Group on Industrial Property and to each of the Technical Property Committees established under bilateral Patent Interchange Agreements with 13 countries is a JAG officer. Additionally, JAGs play a major role in negotiating and drafting memoranda of cooperation and understanding in international co-

operative research, development, and production programs.[8]

Another big business activity is procurement. Contracts for billions of dollars worth of military equipment, supplies, services, research, and construction are signed each year. Military lawyers prepare or assist in preparing each of these and then assist in managing each contract throughout its life.[9]

Since there are at least two parties to each contract, disputes inevitably arise. When these disputes get to either the Uniformed Services Board of Contract Appeals or a court, the Government will be represented by a judge advocate.[10]

INTERNATIONAL PRACTICE

Because of global commitments, international law and relations play an important role in any judge advocate's service.[11] In addition to the international patent, trademark, and copyright activities already mentioned, the Status of Forces Agreements and other treaties with our allies require international law sections in every JAG office overseas. Practice of that specialty, however, is not confined to the far sides of our bordering

oceans. The Status of Forces Agreements apply in the United States also. If, for example, a member of the British navy on duty at Corpus Christi commits a criminal offense off base, the Status of Forces Agreement between Great Britain and the United States controls the question whether he could be tried in the courts of Nueces County.[12] Also, as the mission of the military forces is to protect and defend the U.S. from foreign aggression, judge advocates are required to be versed in the international rules and laws of war. Thus, operational plans of the fighter wings in Texas and of the armored divisions at Fort Hood receive periodic legal reviews for compliance with the international treaties concerning warfare and the treatment of prisoners and wounded.

BREAD AND BUTTER TOO

By now someone is asking, "But what about the lawyer's bread and butter -- real estate?" Be assured, the military lawyer is no stranger to realty law. The Army holds about 23.9 million acres of land.[13] Some of the legal problems attendant to such vastness are apparent. Others

may not be so obvious to the average contract of sale and deed drafter. Characteristic of the less obvious is a problem that recurs regularly at Fort Hood. Someone periodically appears there with a map to a long lost Spanish gold treasure on the reservation. Allowing him to search for his rainbow obligates the Staff Judge Advocate to prepare and process a licensing agreement to the Treasury Department.[14] There are also problems of attempted annexation of parts of military reservations by adjoining communities, questions of federal vs. state jurisdiction over the lands, and continual negotiations over the release and use of what may appear to some to be excess lands.

Labor law is also practiced by military lawyers. Government employees have begun to form and join unions in increasing numbers. When a military service is "management" in a labor dispute, a judge advocate is usually of counsel. Similarly, when an on-post contractor is being struck by a union, the judge advocate is the first officer called to the installation commander's office to insure that the military does not become unnecessarily or illegally

involved.

Another type of labor law of significance to military lawyers is that considerable body of laws and regulations concerning military and civilian employees of the Government. In grievance procedures under Civil Service Regulations involving a civilian employee of a military department, management is represented by a judge advocate. A much more active field, however, is the less formal body of rules and regulations governing military personnel. A judge advocate at an installation of any size can expect at least one problem a day on the pay, promotion, reduction, discharge, or status of some serviceman. His decision, whether right or wrong, could easily be the first step toward one of the civil suits mentioned earlier.

A broad brush was used on the foregoing picture. There is enough detail, however, to portray the JAGs among us.[15] None of them ceased practicing law when he donned the uniform of a judge advocate. If anything, he renounced the trend toward specialization and broadened his horizons to the whole spectrum of legal activities.[16]

His practice is aptly summarized in an Army Regulation, which refers to even more fields than those already covered, as follows:

> "The primary function of the Judge Advocate General's Corps officers is to provide total legal service to the Department of the Army and its members. To accomplish this function, it is essential that all judge advocates be thoroughly proficient in general principles of military and civil law, and one or more of the special areas of Military Criminal and Disciplinary Law, Tort and Claims Liability, Litigation, Patents, Labor Law, Realty, Contracts and Procurement, International Affairs, Legal Assistance, Civil Affairs, Taxation, War Crimes, Space Law, Congressional Liaison and Legislation, Admiralty, Foreign Law and Legal Systems, Trial and Appellate Adversary Proceedings, and Administrative Law. They must be familiar with military organization and operations and functions of command. ..."[17]

William H. Neinast
WILLIAM H. NEINAST
Colonel, JAGC

FOOTNOTES

1. The Military Law Section of the Bar Association and the Federal Bar Association are the only organizational bridges between the civilian and military bars. The Military Law Section, however, tends to attract only those members of the Bar with prior or current JAG experience and the Federal Bar Association is composed primarily of lawyers on the Government pay roll. Thus neither affords too much exposure for the JAGs among us.

2. Telephone interview with Colonel Germain Boyle, Chief, U.S. Army Claims Service, Fort George G. Meade, Maryland; US Department of the Army, The Judge Advocate General, Mission Statement (Not Published), "US Army Claims Service" (Hereafter referred to as "Mission Statement (activity)").

3. Telephone interview with Mr. Abraham Nemrow, Clerk of Court, U.S. Army Judiciary.

4. Any court-martial resulting in a sentence to a dishonorable or bad conduct discharge or to confinement for one year or more must be reviewed by a court of military review (Article 66b, Uniform Code of Military Justice (hereafter referred to as "UCMJ"); US Law, Statutes, etc., United States Code, 1964, Supplement IV (Titles 1-21), 1965-68, Title 10, sec. 866b, pp. 502-503 (hereafter referred to as "U.S.C."). Each of the military services and the Coast Guard has a court of a military review in Washington. The judges are either judge advocates or civilian employees of the service concerned. Cases before the courts are handled in a regular appellate adversary procedure with judge advocates representing both the Government and the appellant. The latter may also be represented by civilian counsel at his own expense. Decisions of these courts may be reviewed by the U.S. Court of Military Appeals composed of three justices appointed to terms of 15 years by the President. Certain sentences, such as those involving a general or admiral or sentences to death, may not be executed until reviewed by the Court of Military Appeals (Article 67b, UCMJ: 10 U.S.C. 867b). Other cases may be appealed by the defendant or certified for review by The Judge Advocate General of the service concerned.

5. Telephone interview with Colonel John Zalonis, Chief, Legal Assistance Division, Office of The Judge Advocate General of the Army.

6. Mission Statement (Regulatory Law Office).

7. U.S.C., Title 28, sec. 1498, p. 5987.

8. Mission Statement (Patents Division).

9. Most procurement money is spent on a relatively small number of contracts--those for research and development and for purchases of expensive equipment such as aircraft. Generally, these contracts are handled in Washington or at specialized activities. The largest number of contracts, however, including some with dollar amounts in six figures, are found at individual military installations. These are the contracts for local supplies and services--painting of barracks, garbage pickup, commissary supplies, etc.

10. Cases before the USBCA are argued on an appellate adversary basis with judge advocates entering the arena with some of the better civilian law firms of the country on cases of substantial value. At any one time, for example, the Army cases alone before the Board will reflect more than 100 million dollars in dispute (Mission Statement (Contract Appeals Division)). Although these cases are argued in Washington, local judge advocates are not left out. Many of the cases will have started at a military installation where the SJA was instrumental in preparing the Government's side of the case. Thereafter, he will provide factual material, statements of witnesses, etc., to the appellate attorneys.

11. The author, for example, has performed legal services for the Army in Pakistan, Greece, Turkey, Germany, Vietnam, Thailand, and Japan, and has studied at the Hague Academy of International Law in Holland.

12. Service courts of friendly foreign forces have been authorized in the U.S. since 1944. Federal District Courts may issue orders requiring the attendance of witnesses before foreign service courts or officers designated to take depositions for use before the service courts (Act of 30 June 1944 (58 Stat. 645); U.S.C., Title 22, chap. 12, pp. 4499-4500).

13. Twenty-two billion dollars is quoted as the value of the property with its improvements. Title documents for the holdings require about 800 file cabinets in the Pentagon (Mission Statement (Lands Office)).

14. The license invariably includes a formula for dividing the treasure between Uncle Sam and the prospector. Someone in Washington apparently is concerned that some day one of the maps will be for real.

15. Army statistics were emphasized solely because

of the author's ready access to and familiarity with the data source. The activities discussed, however, are illustrative of JAG activity in all of the military services.

16. His horizons of life are also vastly expanded. In addition to the travels mentioned in note 11, above, the author's overseas service facilitated visits to 13 other foreign lands, including the Scandinavian countries, England, Lebanon, and Hong Kong.

17. US Department of the Army, Army Regulation 10-6, p. 2-19.

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USAWC RESEARCH PAPER

DOES CONFINEMENT FURTHER DISCIPLINE?

A MONOGRAPH

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ABSTRACT

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The basic question is stated in the title. Data was gathered from a literature search and the author's 20 years of personal experience in the field of military confinement. Four popular theories offered in support of confinement--vindictiveness, or punishment for phunisment's sake, protection of society, deterrence of both the criminal and others, and rehabilitation--are examined in the Army environment. It is concluded that vindictiveness has no redeeming qualities, that there is only limited applicability of the deterrence and protection theories in the military society, and that rehabilitation is practically nonexistant in installation confinement facilities. The best approach for Army discipline is to consider the actual effects of confinement more rationally and strive for quick, sure convictions, visible punishment of those convicted, and rapid discharge of petty trouble makers.

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DOES CONFINEMENT FURTHER DISCIPLINE?

"Only three months confinement! He should have gotten the max!" So goes the lament of many officers and NCO's bemoaning the demise of the almost automatic six months confinement adjudged by special courts-martial. Today, if a soldier is convicted by a court-martial and receives no confinement or even less confinement than the maximum authorized, some consider the case a complete loss. Press the believers of this concept for an explanation and you usually hear a variation of "It's not good for discipline." But does discipline really hinge on the amount of confinement meted out by courts-martial? I am convinced it does not.

A CHANGED VIEW

The foregoing conclusion and the comments that follow reflect a radical change in my views. As a fledgling Staff Judge Advocate of the 2d Armored Division I was a "hang-em-high SJA" who sought the maximum amount of confinement in every case in the belief that "being soft" or "coddling criminals" was incompatible with good discipline. My two years of wrestling with justice problems in that active court-martial jurisdiction were followed by assignments as Chief of the Criminal Law Division, Office of the Judge Advocate, Headquarters, US Army Europe, and then as the Staff Judge Advocate of V Corps, another very active court-

martial jurisdiction. These assignments kept me in close association with commanders and NCO's at all levels on their disciplinary problems and allowed me to observe the effects of confinement and other punishments on accused, their superiors, and other soldiers. The obvious problems of confinement prompted many hours of study and contemplation of the various theories of punishment and eventually led me to a new perspective. I now view the fact of conviction, some punishment appropriate to the offender and the offense, and, possibly, a quick discharge as providing all the clout that is needed in the criminal justice forum of the Army.

LEADERSHIP THE KEY

Discipline is still a function of leadership. When the positive aspects of leadership fail and punishment is required, confinement is not the only tool. Reduction in grade, forfeitures, correctional custody, hard labor without confinement, reprimand, restriction, etc., are still available and very effective measures in most cases.[1] Unfortunately, these punishments are all too frequently regarded as too lenient. The dominant belief remains that some confinement is necessary for "justice" in practically every case.

EYE-FOR-AN-EYE SYNDROME

The first conclusion reached in my march to an about

face concerning confinement was that vindictiveness underlies the views on punishment of most members of the Army--the old "eye-for-an-eye syndrome." Reduced to its simplest terms, this view is that "Joe went AWOL, so he must be confined." But why? Few address that question. They are content when Joe is behind bars, regardless of what happens to him there, what long-range effect it has on him, or the effect on others. It just makes them feel good to see the "guilty so-and-so getting his just due in jail."

Some go a bit further and say that Joe's confinement is necessary to prevent others from going AWOL. But, really, does confinement deter. Consider several examples. Recently, a battalion commander and his whole chain of command became concerned when a soldier was found not guilty of an unauthorized absence of just under 30 days. No doubt about it, the acquittal was a fluke--a result contrary to the evidence. There were dire predictions of what would happen to discipline and the AWOL rate of that unit. Several months after the ill-fated trial, however, the battalion commander once again broached the subject to me, his SJA. My question to him, "Well how many AWOL's have you had since the trial?" was followed by a pause and slightly embarrassed, "None." That ended any future references by personnel of that unit to the deleterious effect of acquittals and light sentences on discipline. On the other hand, the situation at the opposite pole or extreme should be closer to home for most readers. The Army has

been continually plagued with unauthorized absences. No amount of convictions, prolonged confinement, or the threat of confinement stemmed the tide. The most effective deterrent has proved to be taking care of the men before they "go over the hill," not confining them after they come back.

SOME MUST BE JAILED

Two of the more prominent theories offered to justify confinement--vindictiveness and deterrence--were brushed in the foregoing. Other prominent theories are protection of society and rehabilitation. Without question, there are some individuals who must be jailed to protect society. These people are generally easily identified, but too frequently not until after they have committed one or more serious crimes. Fortunately, this category is small; an infinitesimal percentage of the military community. These are the individuals for whom the maximum confinement or even life sentences should be reserved.

THE MYTH OF REHABILITATION

What about rehabilitation? Within Army stockades, rehabilitation is a myth. Generally, prisoners are not in post jails long enough to be rehabilitated even if there were effective rehabilitation programs. But a soldier in confinement removed from the tanks, artillery tubes, and rifles that are the stock of his trade cannot be taught or trained in much except mess kit repair, KP, and wall

locker painting. None of these is in much demand in today's Army with the moves to get the soldier back to soldiering with civilians hired to peel the potatoes. Confinement in a post stockade, therefore, is nothing but a holding action.[2] We merely pay the man his regular benefits and get nothing productive in return. True, the Army would not get much more production out of some prisoners back at the unit. But at least the chances of training him, of leading him, and of applying effective peer pressure in the right direction are much better in units. In the unit barracks, 90% of the men are good soldiers but in the stockade all of his comrades would be "bad." For this reason, correctional custody imposed under Article 15 of the Uniform Code of Military Justice[3] or hard labor without confinement adjudged by a court-martial[4] are much more rehabilitative punishments. Compare these types of punishment where the miscreant is training with his unit to the "desirable" features of confinement for some who would rather be in a warm building in a stockade than engaging in rigorous field duty in the rain, mud, and snow. Could it be that we do not see much of this "in unit punishment" because administering it requires some commissioned and non-commissioned leaders to be present after duty hours for the required close supervision?

Rehabilitation is available at the United States Disciplinary Barracks at Fort Leavenworth, Kansas, and the Correctional Training Facility, Fort Riley, Kansas.

The inmates at Fort Leavenworth are under sentences to long periods of confinement and, in most cases, to punitive discharges.[5] For that reason, emphasis is on preparing the prisoners in skills with a market in the civilian community. Radio and TV repair, tailoring, and furniture upholstering are among the available training programs.[6] The Correctional Training Facility, on the other hand, was established for prisoners convicted of military offenses and sentenced to relatively short periods of confinement. Retraining these men in basic military skills is the goal.[7] In order to remain operational, the criteria for acceptance at Fort Riley was gradually changed so that prisoners with suspended punitive discharges and with shorter and shorter sentences were accepted. Another change in the criteria is that characterizing the offense involved as either "civilian" or "military" is no longer material.[8] Whether the Facility has been effective in its mission is debatable. Some availalbe statistics indicate that it is doing a good job. Those statistics are easily questioned, however, and, in any event, are a poor measure of the success of an operation such as rehabilitation.

Without regard to the relative merits or effectiveness of the Disciplinary Barracks or the Correctional Training Facility, neither is too important to this topic. Both institutions rely on the results of general courts-martial or of special courts-martial involving either relatively serious crimes or repeat offenders. Not too many courts-

martial fall into either category. Thus rehabilitation is not a practical argument to support confinement in the Army's criminal justice system.

Of the four justifications of confinement discussed, vindictiveness, or punishment for punishment's sake, is the most appealing to most who are not serious students of this human institution. At least it is the one that consciously or subconsciously underlies their arguments and beliefs. As a social value, however, it is without a redeeming quality. It accomplishes nothing but a transitory feeling of euphoria in the hard lining disciplinarians. Rehabilitation, as mentioned above, is a mere fiction in local Army stockades. Protecting society, or safety, has an extremely limited application. That leaves deterrence.

DETERRING WHOM?

Deterrence has two faces. One application is to deter the individual prisoner from repeating his unlawful conduct. But the most popular belief about deterrence is that it keeps others from entering a life of crime. Everyone knows at least one soldier who literally commits another crime between the stockade from which he was just released and his unit. As to such individuals, confinement obviously was neither rehabilitation nor deterrence. For others, however, once in confinement is enough. An unanswerable question as to this category is whether some lesser punishment might have had the same effect. For some, nothing but a taste of

confinement will suffice. Then the question becomes, "How much is enough?" For most, that taste need not be longer than 30 days; as little as two weeks or less in the jug will make believers of most of these men. Unfortunately, widespread abuses of confinement--pretrial confinement when it is not justified or necessary, failure of commanders to follow the course of their men in confinement, and failure on the part of commanders to release a prisoner after he has had the maximum effect of being locked up but before he has served the last possible day of his sentence--have resulted in so many strictures on confinement that an excellent option for all commanders has been lost. It just is no longer possible to whip the border line soldier who is heading for serious trouble into confinement for a week or so following some minor infraction to show him where he is heading. The only thing left is to take him for a guided tour of the stockade--a very poor alternative.

Does confinement deter others from committing offenses? Possibly. This justification of confinement impacts differently on three different groups. In the first group, and fortunately the largest number, are those who will not commit an offense, regardless of what happens to malefactors, because they were taught from childhood to obey the law. These are the people who stop at a red light on a deserted street at two in the morning because that's the way they were reared. Deterrence as to them is meaningless. The group at the opposite end consists of those who are going to get into trouble regardless

of what is done to them or others; the ones already mentioned who commit crimes on the way home from jail. Fortunately, there are not too many of these around. Deterrence is meaningless to them too. In between is a group of unknown size. Here are the people who can be influenced to good or to evil, depending on the price. For them, evidence that wrongdoers will be punished, regardless of the amount or type of punishment, will usually deter them from offenses. The most effective deterrence for them, therefore, is the visible punishment of others. Here again, correctional custody or hard labor without confinement performed in the unit area where it can be seen by all has a dramatic impact. Of almost equal value are short periods of confinement with the accused returned to their old units to tell about the undesirable features of confinement. Compare this to cases of longer sentences. Under current regulations, a soldier confined under sentence for more than thirty days cannot be returned to his old unit.[9] Ostensibly, this is to give him a chance to prove himself in a new environment removed from the problems, temptations, and possible harrassment of his former associates and superiors. But if such a soldier is not returned to his former barracks, the effects of his confinement are, to a great extent, lost on the impressionable men in the unit.

THE WASTE OF CONFINEMENT

One matter not yet discussed is the type of soldier

found in confinement. Many Army prisoners, if not most of them, are from the lowest mental category. Individuals from this strata of society normally do no plot or weigh the advantages and disadvantages of crime or the possibility of confinement. Their motivation is to satisfy some immediate desire, need, or frustration without regard for the consequences to themselves or others. In short, they just do their thing! For them, confinement is not too different from their normal world of three meals a day and routine. This type of person, of course, is not a productive soldier before confinement, in confinement, or after confinement.

The conclusion to be drawn from the foregoing analysis is that the length of confinement has little impact on offenders or others. Rather than shooting for maximum confinement, our aim should be for quick, sure convictions; visible punishment of those convicted; and rapid discharges for those who, by their very presence, poison a unit. Prolonged confinement of most soldiers, particularly of the type discussed in the preceding paragraph, simply eats up Army funds and occupies a space on the Army rolls that could be filled by a productive soldier.

William H. Neinast
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FOOTNOTES

1. US Department of Defense, Manual for Courts-Martial, 1969 (Revised Edition), p. 26-2; US Department of the Army, Army Regulation 27-10, p. 3-3.

2. US Department of the Army, Army Regulation 190-2, p. 2-3.

3. US Laws, Statutes, etc., United States Code, 1964, Vol. 2, Title 10, sec 815, pp. 1158-1159.

4. Ibid., secs 819 & 820; p. 1161.

5. US Department of the Army, Army Regulation 190-4, p. 1-3 (hereafter referred to as "AR 190-4").

6. US Department of the Army, Army Regulation 190-37, p. 3-5.

7. US Department of the Army, Army Regulation 190-19, p. 1.

8. AR 190-4, p. 1-2.

9. US Department of the Army, Army Regulation 190-23, p. 2.

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1. US Department of the Army. Army Regulation 27-10: Legal Services: Military Justice. Washington: 26 November 1968.

2. US Department of the Army. Army Regulation 190-2: Military Police: Installation Confinement Facilities. Washington: 9 October 1967.

3. US Department of the Army. Army Regulation 190-4: Military Police: Uniform Treatment of Military Prisoners. Washington: 12 June 1969.

4. US Department of the Army. Army Regulation 190-19: Military Police: Correctional Training Facilities. Washington: 7 October 1971.

5. US Department of the Army. Army Regulation 190-23: Military Police: U.S. Army Correctional Holding Detachments. Washington: 4 December 1970.

6. US Department of the Army. Army Regulation 190-37: Military Police: Disciplinary Barracks. Washington: 2 June 1972.

7. US Department of Defense. Manual for Courts-Martial, 1969 (Revised Edition). Washington: 1969.

8. US Laws, Statutes, etc., United States Code, 1964 ed., Washington: US Government Printing Office, 1964. Vol. 2, Title 10, Chap. 47. (Ref K A19 1964 v. 2).