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# HEARING

BEFORE THE

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SUBCOMMITTEE ON GENERAL LEGISLATION

OF THE

COMMITTEE ON ARMED SERVICES

UNITED STATES SENATE

NINETY-SECOND CONGRESS

SECOND SESSION

ON

## H.R. 4606

ACT TO AMEND TITLE 37, UNITED STATES CODE, TO  
PROVIDE FOR THE PROCUREMENT AND RETENTION OF  
JUDGE ADVOCATES AND LAW SPECIALIST OFFICERS FOR  
THE ARMED FORCES

SEPTEMBER 19, 1972

Printed for the use of the Committee on Armed Services

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(II)

# AUTHORIZATION FOR ADDITIONAL COMPENSATION FOR MEMBERS OF THE SERVICES WHO FUNCTION AS JUDGE ADVOCATES AND LAW SPECIALISTS

TUESDAY, SEPTEMBER 19, 1972

U.S. SENATE,  
SUBCOMMITTEE ON GENERAL LEGISLATION OF THE  
COMMITTEE ON ARMED SERVICES,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 9:56 a.m. in room 212, Old Senate Office Building, Senator Harry F. Byrd, Jr., of Virginia, chairman.

Present: Senator Byrd, presiding.

Also present: Charles J. Conneely, professional staff member.

Senator BYRD. The subcommittee will be in order. We will start a little earlier because of other pressing matters.

Unfortunately, we will need to make some change or changes in the procedure which we hope to follow. The plan was to consider H.R. 4606 this morning, which we will do, and then to follow that with a hearing on H.R. 15679.

The problem facing the chairman of this subcommittee today is that the Senate Finance Committee is meeting now on H.R. 1, which has twice been passed by the House of Representatives. It is considered must legislation by the administration and by the leadership. The Senate itself will be meeting in a few minutes on the land use legislation, a very complicated piece of legislation and which has a great deal of interest. So I am faced with a problem of not being able to be here for this complete hearing this morning.

I think if Congressman Pirnie agrees, it would probably be well to continue with the hearing as there will be other members of the subcommittee who will be coming in, and Mr. Conneely of the staff will have questions that he would want to ask the Defense Department witnesses. In that way we could proceed with the hearing and conclude the hearing on H.R. 4606 this morning.

If that is the case, it brings up a second bill, H.R. 15679, and I thought I might suggest to General Jannarone, dean of the U.S. Military Academy, who is here to testify, that possibly we could take H.R. 15679 up this afternoon at 2:30, and hopefully I would be through with some of the other legislation which I am involved with. General, would 2:30 this afternoon be satisfactory?

General JANNARONE. Yes, sir.

Senator BYRD. Suppose we set the hearing on H.R. 15679 for 2:30 this afternoon.

Today the subcommittee will hear testimony on H.R. 4606, the House-passed bill which provides special pay and certain bonus pay to judge advocates and law specialists. H.R. 4606 is also sometimes known as the Pirnie bill because Congressman Pirnie of New York originally introduced this type of legislation and has been an articulate spokesman for it.

I might say that it is because of Congressman Pirnie's interest in this matter that I was very anxious that this subcommittee hold an early hearing on this legislation.

H.R. 4606 authorizes additional compensation for members of the services who function as judge advocates and law specialists. Under the bill, these officers will receive additional pay, depending on rank, as follows: The sum of \$50 per month for second lieutenants (O-1) through captains (O-3); \$150 per month for majors (O-4) through lieutenant colonels (O-5); and \$200 per month for colonels (O-6) through major generals (O-8).

In addition to the special pay set forth above, H.R. 4606 also provides that each such officer will receive a continuation pay bonus of 2 months' basic pay for each year that he agrees to remain in active service beyond his period of service. He must agree to 3 additional years with a maximum of 6 years. This bonus applies only to those with not more than 10 years of active service. The amount of this bonus would also depend on rank. For example, a major with more than 4 years of active service, who agreed to serve for an additional 6 years, would receive a bonus of \$9,460.80.

The total cost of H.R. 4606 is estimated at \$7 million per year—\$4.2 million per year for the special pay provision and \$2.8 million per year for the continuation bonus.

The principal justification in support of enactment is based on Department of Defense study of military lawyer procurement, utilization, and retention, which was completed in 1958. It was determined at that time that the military service experience no major problems in the initial procurement of junior military lawyers, but it was found that the retention of experienced military lawyers beyond the period of their initial obligation was a serious problem. Generally, the initial tour for lawyers is 4 years and thus the career force is regarded as consisting of those lawyers who have voluntarily remained on active duty into their fifth year and beyond. The Department of Defense supports this legislation.

Our first witness today will be Congressman Alexander Pirnie of New York who, as I have stated, originally introduced legislation of this kind. Congressman Pirnie has had a keen interest in this matter for some time, and we are delighted to have him today.

Congressman Pirnie, you may proceed as you wish, sir.

#### **STATEMENT OF HON. ALEXANDER PIRNIE, U.S. REPRESENTATIVE FROM NEW YORK**

Representative PIRNIE. Thank you, Mr. Chairman. First, I would wish to express my appreciation for your courtesy and your kind comments with respect to this legislation and the scheduling of this hearing. It is true that my interest in this subject has been generated by

contact with the problem through years of service, active and Reserve in the Judge Advocate General's Corps, and my service on the Board of Visitors at the Judge Advocate General's School. So I have become acquainted with some of the personnel who are the lawyers in uniform and know a little of their problem and their thinking. Mr. Chairman, I will try and be brief with respect to my statement, but I would like to observe that it was on the 19th of July, 1971, that the House considered the legislation before us today and passed it unanimously. It was in exactly the same form as that which was approved in the 91st Congress.

Senator BYRD. If you will yield, may I say that you are quite a Congressman to get a bill like this passed unanimously.

Representative PIRNIE. Senator, I have a feeling that you will have the same capability. [Laughter.]

Briefly, the legislation is designed to solve a most critical problem facing the armed services of the Nation; namely, the serious shortage of senior military lawyers. Unfortunately, the Senate failed to act prior to the close of the 91st Congress, which makes it imperative that final action be concluded in this Congress.

The serious nature of the problem, recognized so long ago, has even greater criticality today as the testimony of the Judge Advocate General and the counsel for the Secretary of Defense will specify.

This measure will provide career incentives to our Judge Advocates, and I will omit further coverage of the content of the bill because you have so accurately described it.

I would point out that the Department of Defense had placed this bill on its priority list for the 91st Congress and urged its passage. Again, that Department, with the concurrence of all the services, rated it a real priority item in its legislative program for the 92d Congress.

Events of the past months have focused worldwide attention on our system of military justice and those charged with its administration. The added responsibility of the military lawyer resulting from intensified social problems places further demands on him as he is required to act on complex and sensitive matters. In addition to administering military justice, the officer has legal responsibility in areas such as drug abuse, civil rights, labor management problems, civilian personnel grievances, personal legal counsel, administrative discharge proceedings, and the very important Government procurement contracts which amount to billions of dollars annually. Clearly the need for experienced, seasoned military attorneys to man the largest law firm in the world is mandatory.

It is false economy to employ other than skilled and experienced lawyers in the drafting and construction of such complex agreements having such financial impact. The dedication of the lawyer in uniform has been such that we have received the services of very capable men who entered the service during World War II, but the impact of this influx has ended with the passage of time. And if we want professional skill, we must provide professional careers without unreasonable financial sacrifice.

A review of the personnel situation of all of our services reveals startling facts. The retention rate of career persons has persistently deteriorated, and although the figures vary with the several services, each faces a dire shortage of experienced lawyers.

Each rank is approximately 50 percent of needed strength. Projections indicate an even further decline unless immediate action is taken to remedy the situation.

The bill before us was reported out of the House Armed Services Committee unanimously, was passed by the House unanimously in both the 91st and 92d Congresses. Early enactment is in the interests of the Nation.

Further, Mr. Chairman, I thought it might be of some interest to you to call your attention to the fact that this problem plagued the country in the early days. Alexander Hamilton faced this situation as he was called to pass upon the financial treatment for lawyers in uniform. He said that he needed them and that he felt that it was unfair not to recognize a service which he was requiring, and I would like to, if I may, extend my remarks to include the extract.

Senator BYRD. They will be included in the record of the hearing.  
(The article follows:)

CAMPBELL SMITH, JUDGE ADVOCATE OF THE ARMY, 1797-1802

In 1784 the Army of the United States was reduced to less than one hundred officers and men and it was not until after the adoption of the Constitution in 1789 that any great interest was taken in military matters. Judge advocates were merely detailed from the line of the Army. In 1792 the Army was organized into the Legion of the United States and on 16 July 1794, pursuant to an order of Major General Anthony Wayne, Lieutenant Campbell Smith, IV Sublegion, who had entered the service as an ensign of Infantry in March 1792, was appointed "Judge Marshal and Advocate General to the Legion of the United States." He served more than two years as Judge Advocate and also performed the additional duties of aide-de-camp to Brigadier General Wilkinson. He relinquished his office of Judge Marshal and Advocate General on 13 July 1796. On 1 November 1796 the Army was reorganized and he became a lieutenant in the Fourth Infantry. As a result of the fact that special emoluments for his office were not provided by law, he applied for Congressional redress in 1798 for services rendered as a judge advocate from 1794 to 1796. Acting on his position, Alexander Hamilton, as Deputy to General Washington who had returned from retirement to head military preparations for a possible war with France, writing from New York on 25 October 1799 pertinently stated:

"I consider it to be a principle sanctioned by usage that when an officer is called to exercise in a permanent way an office of skill in the Army (such as that of Judge Advocate) for which provision is not made by law, he is to receive a quantum meruit by special discretion for the time he officiates, which in our present system would be paid out of the funds for the contingencies of the War Department."

Favorable action was taken on his petition and he received the equivalent of pay of The Judge Advocate of the Army as provided in the Act of 3 March 1797 (1 Stat. 507) for services rendered from 1794 to 1796. (Report of Committee of Claims, 21 February 1800, United States House of Representatives.)

This same act, which had been passed by the Congress to prepare the Army for a threatened war with France, provided:

"That there shall be one Judge Advocate, who shall be taken from the commissioned officers of the line, and shall be entitled to receive two rations extra per day, and twenty five dollars per month in addition to his pay in the line; and whatever forage shall not be furnished by the public, to ten dollars per month in lieu thereof."

Representative PIRNIE. I want to take this opportunity to express the pleasure that we have been able to have such complete focusing of the interested elements on this problem so that we reached agreement in the Department of Defense and all the services as attested by the Judge Advocates General seated behind me. I found

them to be very patient but persistent as they tried to achieve this standard of excellence on a continuous basis. It is not enough for us to be proud of the past. We have got to be assured that we meet these standards in the future. I certainly hope that action can be taken so this bill can be brought to the floor and made into law.

Senator BYRD. Thank you, Congressman Pirnie, and I want to say that I feel that the action of the House unanimously approving this legislation is a great tribute to you.

Representative PIRNIE. Thank you, Mr. Chairman. I think it is more of a tribute to the legislation because we might very well have had a conflict of ideas if they had not been convinced that we waited until we had completed our study so that we could get this agreement instead of going before them with legislation which they had to formalize. I was glad that we could present it, and while we are not in concrete, we believe that each of the proposals that we made has a direct bearing upon the result we seek.

Senator BYRD. Thank you very much, Congressman Pirnie.  
(The statement follows:)

#### REMARKS OF REPRESENTATIVE ALEXANDER PIRNIE

Mr. Chairman, on July 19, 1971, the House considered the legislation before us today and passed it unanimously. It was in exactly the same form as that which was approved in the 91st Congress. Briefly the legislation is designed to solve a most critical problem facing the Armed Services of the nation, namely, the serious shortage of senior military lawyers. Unfortunately, the Senate failed to act prior to the close of the 91st Congress. It is imperative that final action be concluded in this Congress. The serious nature of this problem recognized so long ago has even greater criticality today as the testimony of the Judge Advocates General will specify.

This measure will provide career incentives to our judge advocates and law specialists in the services through professional pay allowances ranging from \$50.00 to \$200.00 per month, graded by rank, with a continuation bonus payable to those who extend their service beyond their initial obligation. Since the critical career decision occurs between the 5th and 10th year of active service, eligibility for the continuation bonus would be limited to within this 10 year period. During this interval the JAG officer will be permitted to sign up for 3 to 6 additional years and receive two months' basic pay for each such year for which he contracts.

The Department of Defense placed this bill on its priority list for the 91st Congress and urged its passage. Again, that department—with the concurrence of all the services rated it a real priority item in its legislative program for the 92nd Congress.

Events of the past months have focused world-wide attention on our system of military justice and those charged with its administration. The added responsibility of the military lawyer, resulting from intensified social problems, places further demands on him as he is required to act on these complex and sensitive matters. In addition to administering military justice, the JAG officer has legal responsibilities in areas such as drug abuse, civil rights, labor-management problems, civilian personnel grievances, personal legal counseling, administrative discharge proceedings and important governmental procurement contracts amounting to billions of dollars annually. Clearly, the need for experienced, seasoned military attorneys to man the largest law firm in the world is mandatory.

It is a false economy to employ other than skilled and experienced lawyers in the drafting and construction of such complex agreements having such heavy financial impacts. The dedication of the lawyer in uniform has been such that we have received the services of capable men who entered the service during World War II but the impact of this influx has ended with the passage of time. If we want professional skill, we must provide professional careers without unreasonable financial sacrifice.

A review of the personnel situation of all of our services reveals startling facts. The retention rate of the career force has persistently deteriorated. Although the figures vary with the several services, each faces a dire shortage of experienced lawyers. Each rank is approximately 50% of needed strength. Projections indicate an even further decline unless immediate action is taken to remedy the situation. The bill before us was reported out of the Armed Services Committee unanimously, was passed by the House unanimously, in both the 91st and 92nd Congress. Early enactment is in the interest of the nation.

Senator BYRD. The next witness will be Hon. J. Fred Buzhardt, General Counsel of the Department of Defense accompanied by Lt. Gen. Leo Benade, Deputy Assistant Secretary of Defense for Military Personnel Policy.

Before calling on the next witness, I might say that also with Mr. Buzhardt are Maj. Gen. George S. Prugh, U.S. Army Judge Advocate General, Rear Adm. Merlin H. Staring, U.S. Navy Judge Advocate General, Maj. Gen. James S. Cheney, U.S. Air Force Judge Advocate General, Brig. Gen. Clyde R. Mann, Director of the Judge Advocate Division, U.S. Marine Corps, and Rear Adm. William L. Morrison, Chief Counsel, U.S. Coast Guard.

I understand that Mr. Buzhardt will read a summarized version of a detailed statement which he will submit for the record and that each of the service representatives will submit their statements for the record. All, of course, will be subject to questioning by the committee.

You may proceed, sir.

**STATEMENT OF HON. J. FRED BUZHARDT, GENERAL COUNSEL,  
DEPARTMENT OF DEFENSE; ACCOMPANIED BY LT. GEN. LEO E.  
BENADE, DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR  
MILITARY PERSONNEL POLICY; MAJ. GEN. GEORGE S. PRUGH,  
U.S. ARMY JUDGE ADVOCATE GENERAL; REAR ADM. MERLIN H.  
STARING, U.S. NAVY JUDGE ADVOCATE GENERAL; MAJ. GEN.  
JAMES S. CHENEY, U.S. AIR FORCE JUDGE ADVOCATE GENERAL;  
BRIG. GEN. CLYDE R. MANN, DIRECTOR OF THE JUDGE ADVOCATE  
DIVISION, U.S. MARINE CORPS; AND REAR ADM. WILLIAM  
L. MORRISON, CHIEF COUNSEL, U.S. COAST GUARD**

Mr. BUZHARDT. Thank you, Mr. Chairman.

I am Fred Buzhardt, General Counsel, Department of Defense. It is a pleasure for me to appear before this committee to present the views of the Department of Defense on H.R. 4606, which was passed by the House of Representatives in July of last year. H.R. 4606 is identical to S. 704, which was introduced by Senator Inouye and which has 34 cosponsors.

Both bills are intended to provide the Armed Forces with the means needed to attract and retain judge advocate and law specialist officers. I have a detailed statement, as you mentioned, and I will summarize it for the record.

Senator BYRD. Before you proceed, would you permit me to put in the record of this hearing a statement by Senator Mansfield dealing with the legislative program for the Senate which he made in the Senate on Friday, September 15. The purport of it is that except for matters of extraordinary importance there is some doubt as to whether

the Senate will consider legislation presented to the Senate after that date.

I will consult with Senator Stennis and also with Senator Mansfield but I believe this should be made a part of the record.

(The information follows:)

[From the Congressional Record, Friday, Sept. 15, 1972]

#### LEGISLATIVE PROGRAM

Mr. MANSFIELD. Mr. President, I want to reiterate a statement I made yesterday as it applies to future legislation being reported from committees.

For the information of the Senate, so that it will be in the Record again, I wish to announce that the Democratic Policy Committee—and I understand that the Republican Conference also, at lunch on Tuesday last—considered and unanimously agreed that, except for a matter of extraordinary importance, no legislative measure reported by a standing committee after September 15 will be scheduled for Senate action during this session, other than those items that can be disposed of by unanimous consent.

I want to emphasize that if there is legislation of extraordinary or significant importance, that fact will be taken into consideration by the joint leadership.

I also want to point out that private bills and other noncontroversial matters will be reported and acted on by the Senate on a Consent Calendar basis.

This is to serve notice of the joint action of the two parties on Tuesday last in this respect.

This was a Republican initiative in which the Democratic Policy Committee joined.

Mr. BUZHARDT. Mr. Chairman, before I proceed, I hope that after we have testified before this committee and give you our information that we will fit into the exception which Senator Mansfield noted of noncontroversial legislation to be passed on the calendar.

Senator BYRD. You may proceed, sir.

Mr. BUZHARDT. To understand the critical nature of the lawyer retention problem in the Department of Defense, it is first essential to delineate some of the important services that uniformed attorneys provide. Their duties are far ranging and impact directly on practically all aspects of management, operations, and readiness of the Department of Defense. They participate in legal actions which involve many billions of dollars annually and affect millions of people across the country and around the world. Some examples are worth noting.

During fiscal year 1972, Defense Department lawyers were directly involved in procurement transactions to the amount of about \$40 billion. Particularly in the Air Force and Army they are concerned with daily problems of very large magnitude that arise continuously in connection with these contracts. The lawyers' services are indeed vital.

In fiscal 1971, military lawyers successfully recovered over \$11 million in tort and admiralty claims and settled over \$52 million in serviceman claims against the Government.

Over \$90 million were saved in utility rate cases between 1967 and 1971.

Our uniformed attorneys were involved in over 5,000 separate cases which were litigated in the civilian courts. I might just mention here that the litigation section composed of military lawyers in each of the services prepare the cases, the trial briefs, and the appellate briefs for the Justice Department, who actually tries the cases. They do a splen-

did job. At any given time we have about 5,000 of these cases pending of every kind and nature, in every field of law. They are involved in protecting the Government's interest throughout, and it is very essential that we have qualified attorneys to do these jobs.

Navy Judge Advocates exercise legal responsibility for oil, gas, and shale reserves worth more than \$170 billion.

Military lawyers advise the Department on real estate transactions and patent matters with high dollar ramifications.

In fulfillment of national policy and treaty commitments, we are required to develop an expertise in public international law, comparative legal systems, and in the criminal, civil, and administrative law of over 50 foreign states. I might mention in addition, that the Congress has required us to avoid taxes of foreign nations where we have forces operating. So we have to have a complete understanding and familiarity with the tax structures of these foreign countries that we operate in. It is a very difficult task.

Our military commanders at home and overseas depend, on a daily basis, upon the advice and counsel of uniformed attorneys as to the legal implications of both peacetime and combat operations.

The military lawyer is also involved in a continually expanding preventive law effort, and legal instruction is being expanded in military service schools.

Military attorneys have long provided personal legal services and advice to military members, dependents, and retired personnel. During fiscal year 1971, 2.6 million legal assistance interviews were recorded. Under our expanded pilot legal assistance program, our attorneys assisted 1,830 clients, involving 586 civil court appearances. This was brought about by an act passed by the Congress which authorized the Office of Economic Opportunity to provide legal assistance to those Armed Forces personnel below certain income levels if the Secretary of Defense agreed. It was the opinion of the Department of Defense that we could do this internally more effectively with our own Judge Advocates and far more economically.

Senator BYRD. May I interrupt you at this point. How many attorneys do you have in the Department of Defense at the present time?

Mr. BUZHARDT. It is less than 5,000, civilian and military.

Senator BYRD. How does that compare with what you had, say, 3 or 4 years ago?

Mr. BUZHARDT. It is down. It is considerably less.

Senator BYRD. Your total personnel is down.

Mr. BUZHARDT. Our total personnel is down, yes sir. Unfortunately, the number of our military lawyers, particularly career lawyers, has declined faster than the reductions that have followed with the reduction in forces. While we have eliminated about 50 positions during the past year, we have lost about 113 from our career force who voluntarily left.

During fiscal year 1971, military attorneys conducted and participated in 76,792 trials by court martial, and were involved in many of the 419,439 cases of article 15 or nonjudicial punishment. As you are aware, the Supreme Court recently ruled that in any case where punishment by confinement might be a part of the sentence, it could not be imposed unless the defendant were represented by a lawyer. This

has severe implications for our summary courts-martial and possibly even our nonjudicial cases.

In summary, it is clear that the military lawyer bears a heavy responsibility which involves billions of dollars annually and which is inextricably interwoven with our military preparedness and ultimately, national security itself. It is imperative that we maintain a team of top quality lawyers.

I turn first to the issue of retention. The retention problem with respect to military lawyers has reached crisis proportions. Today, the career force is short 43 percent of its strength, and this shortage continues to grow. Failure to curb the constant outflow of experienced lawyers will, in the immediate future, drastically impair the ability of those remaining lawyers to provide necessary legal services within the Armed Forces.

Our senior military commanders are increasingly aware of the need to consult with legal experts on a regular basis. They do not willingly accept less than top-flight legal officers with substantial military legal experience and the rank and years of service that accompany such experience.

In recent years, the initial obligated tour for lawyers has been 4 years. Accordingly, the actual career force may generally be regarded as consisting of those lawyers who have voluntarily remained on active duty into their fifth year and beyond. Today, the total authorized JAG force DOD-wide, excluding 16 general officers, is 3,975. The number of career force lawyers needed for that total, that is, beyond 4 years, is 2,179—or 54.8 percent. The total number of career lawyers actually on board is 1,241—or 31.2 percent—938 short of the total needed. In the past 9 years, the actual career force has dropped from 53 percent to 31.2 percent.

The recent manpower reduction in the armed services has, of course, resulted in reducing both the total authorized JAG strength and the required career force strength. However, even though the required career force is smaller by some 50 than it was in July 1969, the actual number of career force lawyers has decreased during the same period by some 113, thereby enlarging the existing shortage.

The retention problem extends deep into the career force. Shortages exist in all grades of officers who have 5 through 24 years of service.

We presently exceed our optimum force level only in the category of officers with 25 and 30 years of service. These overages total 10 officers and are counterbalanced by a shortage of 16 officers in the 26 through 29 years.

The greatest number and percentage shortages of officer lawyers is in the 7-18 years of service category, that is, the middle management group which is made up of majors and lieutenant colonels. Departmentwide, the shortage in these two grades is 50 percent.

This is not a safe balance between experienced and inexperienced lawyers, and the trends show the imbalance to be getting worse.

At the end of the last fiscal year, every service JAG Corps was understrength in every grade except O-3 and below; that is, captain and lieutenant. Due to recent retirements and promotion slowdowns, we are now showing an appreciable shortage of 12.8 percent in the rank of O-6 (colonel/captain).

As the shortages in the career force have continued to grow, we have been required to place inexperienced officers in positions of greater responsibility. More than 58 percent of the positions which should be manned by lieutenant colonels are filled by officers of lesser rank and experience. Over 85 percent of the positions which should be held by majors with 6-14 years of experience are presently manned by captains, many with less than 3 years' experience as lawyers.

At the end of fiscal year 1972, the Department of Defense was operating with an overall lawyer shortage of 187 officers. This fall, we are presented with the very real possibility that all of our vacancies will not be filled.

There has been a direct correlation between the move to end the draft and the reduction in applicants for JAGC commissions. In 1963, the Army was receiving approximately 10 applicants for every JAG vacancy. In 1968, the applicant-to-vacancy ratio for the Army was 6 to 1. Today, the ratio is 1.3 to 1. In spite of substantial recruiting programs, we are not at all sanguine concerning our acquisition picture.

Given the requirement for quality legal service for the Armed Forces and recognizing the chronic, critical, and rapidly deteriorating situation with respect to lawyer retention, coupled with the recent and drastic decline in quality and quantity of applicants for commission, the nature of the problem that brings us to this hearing is all too obvious. We are convinced that an urgent remedy is absolutely imperative.

There have been a number of actions proposed which would individually and in combination help to relieve and perhaps ultimately remedy our uniformed lawyers crisis. After intensive study and review the Department of Defense, with the unanimous agreement and support of the military departments, concluded that the common denominator in the various remedies proposed for both acquisition and retention problems is increased financial incentives.

The legislation you are considering today is believed to be the single means most likely to have a favorable, immediate, and appreciable impact on the retention problem. It also has features which should assist markedly in meeting the recruitment problem.

Since we have proposed financial incentives as the answer, we would like to explain to you how we have reached that conclusion. Our career force people must be dedicated to the service of their country and satisfied that their service is a worthwhile contribution to the national security. A person with this motivation can be expected to forego certain of the amenities of civilian life and accept such burdens as family separation and frequent dislocations. Nevertheless, studies, surveys, and numerous in-depth interviews with resigning military attorneys establish incontrovertibly that the single common reason for leaving has been either immediate or very near term prospects for substantially greater financial rewards. I might just stop there, Mr. Chairman, and say I mentioned earlier our litigation section. These young lawyers as a rule work with the Justice Department in preparing cases. They make a great presentation and all too

often they are recruited by the people on the other side of the case or by Justice Department itself, and they can offer them salaries that we cannot match. That is really the heart of the problem.

Senator BYRD. What is a captain's salary? What is his total compensation?

General BENADE. It would depend on the years of service but on the average, Mr. Chairman, a captain with over 4 years for pay purposes would make a civilian equivalent salary of about \$15,800.

In reaching that total we have taken into account basic pay, the basic allowance for quarters, basic allowance for subsistence, the tax advantage, and an imputed 7 percent retirement contribution.

Senator BYRD. Say in round figures \$16,000.

General BENADE. Yes, sir; close to that.

Senator BYRD. Take a major.

General BENADE. A major, we assume with about 12 years for pay purposes would be about \$19,500, using the same definition.

Senator BYRD. Does that include fringe benefits, medical care?

General BENADE. It does not include the fringe benefits other than the imputed retirement contribution.

Senator BYRD. But all other fringe benefits are not included?

General BENADE. That is right.

Mr. BUZHARDT. It must be understood that the application of money to this problem is designed solely to permit the Department of Defense to compete, on a reasonable basis, with the civilian sector and other Government agencies for the services of quality professionals. Even considering the recent military pay increase, there will always be certain critical skills which are readily transferable to the civilian community and which command substantially greater compensation. The legal profession is clearly in this category.

We have been unable to acquire nationwide data relative to the earnings of private attorneys. There are just no statistics on those earnings. There are, of course, great variations in such earnings, but I am convinced from personal experience that the financial opportunities for the competent and industrious attorney are far greater in private practice. Although it is understood and accepted that the Government will not be able to compete for the top dollar private practitioner, our salaries must be comparable with other Government agencies and competitive with those of private industry employers. Comparison figures in those categories are included in my detailed statement.

Our studies show that there is a substantial disparity in annual compensation ranges from the very start of a service career.

Senator BYRD. Could I interrupt you a moment?

Mr. BUZHARDT. Yes.

Senator BYRD. Do you feel that the salaries of Supreme Court Justices are comparable to what they could earn in private life?

Mr. BUZHARDT. In most cases, no, sir.

Senator BYRD. In some cases you think they might be overpaid. [Laughter.]

Mr. BUZHARDT. I did not want to be too general. In most cases, Supreme Court Justices took a cut in their salaries. I hasten to say, however, that most of the men who go on the Supreme Court are appointed

in the latter years of their practice and the honor of that position is such that they will undergo financial sacrifices for the prestige or because their country calls. It is not, however, a lifetime career. Most of these lawyers who go on the Supreme Court, it has been my experience, have done very well in private practice, to the extent that income has most frequently ceased to be a primary incentive in their practice. They have made their pile, if you would, Mr. Chairman. That is not true of the military lawyers.

We will not, as I said, be able to reach full comparability in the salary ranges with Government competitors and with industry competitors, even if this bill is passed. In no case will the peak of the military lawyer pay range exceed that of the civil service lawyer. It will be roughly comparable to the average salary of private industry lawyers. We believe, however, that these incentives will place us in a competitive position.

It is also important to note that the comparison of positions held (i.e., GS-13 is equivalent to O-4, or a major), does not, in many cases, provide a completely accurate picture. Our actual experience indicates that our military lawyers are highly sought after by other Government agencies. Consequently, our people with 4 to 8 years of experience and service in the grades O-3 and O-4 are often hired into positions at the GS-14, and in some cases GS-15 level. This kind of competition is extremely difficult to meet.

Obviously all attorneys do not make large salaries in private practice, but all our young attorneys expect to, and because of the high quality of our acquisitions in recent years it is reasonable to believe that most of them will be very successful.

The proposed legislation has two separate but compatible and complementary features. It establishes a monthly special pay for military attorneys which will provide them with an income more nearly commensurate with that commanded by their civilian contemporaries in the Federal Government and in private industry. It also provides for payment of a variable continuation pay for uniformed lawyers who agree to extend their services beyond their initial obligated tour.

Senator BYRD. May I interrupt you there a moment?

Mr. BUZHARDT. Yes.

Senator BYRD. For second lieutenants, first lieutenants, and captains it provides for \$50 a month.

Mr. BUZHARDT. Yes, sir.

Senator BYRD. Here is a man making \$16,000 and you propose to give him \$600 per year. Is \$600 per year going to make the difference as to whether he stays in the service or does not stay in the service. Is that the way you feel?

Mr. BUZHARDT. No, sir. I do not think that the \$50 pay for the grades O-3 and below will make a big difference in retention, absolutely not, but it may help. We hope it will help somewhat with acquisition. And experience will tell us. But the \$50 is not for retention.

Senator BYRD. What does it go to?

Mr. BUZHARDT. It goes to acquisition. We hope it will help with acquisition.

Senator BYRD. Then, in the middle group you have those who earn somewhere around \$20,000 to \$22,000 per year.

Mr. BUZHARDT. Yes, sir.

Senator BYRD. And you have fringe benefits on that. You feel an additional \$1,800 will mean the difference as to whether he stays in the service or does not.

Mr. BUZHARDT. I think it will make a big difference, yes, sir. I think it will make us more competitive, particularly with civil service and with what industry pays these lawyers they hire now. It will certainly not give us any corner on the market. It is a small step. It is a reasonably good step.

Senator BYRD. A small step. You indicate this is one step. Congress will be asked for additional steps later on, then.

Mr. BUZHARDT. No, we have no intention of asking Congress—

Senator BYRD. You say it is a small step, which indicates it does not accomplish very much.

Mr. BUZHARDT. No, sir. It is a small step from the standpoint of the amount of money involved. A small increment would be a better description. But we hope it will provide enough incentive to retain a substantial number of lawyers that would leave the service otherwise. That is our hope.

Our interviews with people who are leaving the service and resigning, and those we try to attract back into the service, indicate that it would make a difference because these people do look to the finances of the situation in the last analysis. We are not going to be looking for people who just do not like the service and try to hire them in.

Senator BYRD. The point I am suggesting is that it is an increase in pay of only about 7 percent.

General BENADE. In the junior grades, Mr. Chairman, it is a combination of both continuation pay and the monthly pay that would be effective. We know from experience that the young officers and the young enlisted man has a great tendency to discount future benefits for present payments of cash. The effect of a bonus in the fifth through tenth years would probably be a greater device for retention than the monthly pay. But as Mr. Buzhardt indicated, it is the long-term prospect that the young officer will look to.

If you assume a case of a young officer who comes in and stays for a career of 20 years, the total of all of these payments would amount to about \$43,000 over his career, and that amount would, we hope, have the desired effect.

Senator BYRD. That is over how many years?

General BENADE. That is over the course of a career, sir, 20 years.

Representative PIRNIE. If you care to yield for one comment, I think it is in direct response to your very pertinent inquiry, Senator. I have talked with a great many of the wives of the officers that fall into this category. They are thinking in terms of their family needs. They have been giving me the very distinct impression that it would influence their decision, that they were perfectly willing to continue the career of their husband, give him support, if that is where he chose to practice. But they thought it was an unreasonable financial sacrifice and they have needs for their children which ought to be met. This graduated approach gave them the encouragement that they seemed to feel was necessary.

Senator BYRD. Thank you, sir.

Excuse me but the Senate has a vote at the present time. I will ask the witness if he will continue and I will ask the committee counsel, Mr. Charles J. Conneely, if he will query the witness on behalf of the committee.

Mr. BUZHARDT. The JAGC career pattern is based on 30 years of service. We already experience sufficient additional losses at the 20-year retirement point to preclude a top-heavy career force. A sufficient number of senior officers must be retained beyond the 20th year. To ask an officer to accept a substantial cut in pay by terminating the monthly pay at age 45 when his civilian contemporaries are at their peak earning power and his dependents are in or approaching college, is to encourage such officers to terminate at 20 years and begin a second civilian career.

Mr. CONNEELY. How transferable to the private sector are the skills of a JAG officer at age 45?

Mr. BUZHARDT. My experience on individual cases indicates they are quite transferable. A man who has worked in the litigation division is much in demand. A man who has participated in trial practice is much in demand. His trial experience will have been much greater than his civilian contemporaries because court-martials move along faster. He has a lot more experience than his contemporaries. He does more work in fact, than his contemporaries. He handles more cases across the board.

Mr. CONNEELY. What would you estimate the value of a JAG's retirement over his future lifetime at age 45 if he retires with 20 years of service?

Mr. BUZHARDT. I do not understand your question. In doing the comparability study we have imputed the 7 percent.

Mr. CONNEELY. I believe General Benade can answer that.

General BENADE. If you bear with me a moment I have a figure here.

Mr. CONNEELY. Do you grant constructive credit for years spent in law school for retirement purposes?

Mr. BUZHARDT. No, sir; not for retirement.

General BENADE. Constructive credit is not creditable for pay or for retirement.

Mr. CONNEELY. How old would the average JAG be at 20 years of service?

General BENADE. If he served 20 years—the average age for entry is 23. To that you have to add a minimum of 3 or 4 years for law school. You have an individual 26, 27, 28, in that range. If he were to serve 20 years his average age would be 46, 47, 48.

Mr. CONNEELY. What would be the future value of his retirement at age 47?

General BENADE. Again, you have to make an assumption on grade. If you assume such an individual to be an O-6, about that age, the lifetime value of the retired pay would be about \$296,000.

Mr. CONNEELY. Thank you.

Mr. BUZHARDT. Was that for 20 or 30 years?

General BENADE. That is for over 20 years of service.

Mr. BUZHARDT. The point is a man can have that at 20 years. So staying on the extra 10 years is not as great an incentive as the increased pay that he can get on the outside, plus the retirement.

Both features of this bill should be a substantial boost to the recruitment effort. The young law graduate is not so naive as to be bought by a competitive starting salary alone. He is well aware of the expectancies of a successful lawyer in civilian practice, and we must be able to show him that his pay, allowances, fringe benefits and retirement program are competitive over the long haul.

This legislation is in no way extravagant and is genuinely believed to be a realistic estimate of need. The costs of this legislation are quite modest in relation to the expected benefits and have been included in the fiscal 1973 budget estimate of the Department of Defense. Based on our current strengths, the first year cost would be approximately \$4.9 million. Future yearly costs were computed on the assumption that the authorized force level remains constant, and that the required career force rank structure is achieved. On this basis the maximum future yearly cost would not be expected to exceed \$6.9 million.

As you are aware, this proposal has been in process for a number of years. Each year the enormity of our problem has magnified and each year our proposed solution has gathered additional support. Our manpower and compensation experts in the Department of Defense and the separate services are in accord. The military chiefs and civilian secretaries of the military departments unanimously concur in the need for remedial action.

Both the American and Federal Bar Associations have studied the problem and the proposal at length and have unreservedly endorsed its adoption. This bill has administration support and is a critical item on the Department of Defense legislative program for this Congress. The Department of Defense urges its prompt enactment.

We will be glad to answer any questions you have.

Mr. CONNEELY. Thank you, Mr. Buzhardt. I have a number of questions here. I will give you and Congressman Pirnie a copy so we can go through these together.

I will read the question. You can either answer it now or for the record.

It has been estimated that the Army, for example, needs 47 percent of its total authorized lawyer force to be career force. How do the services determine their requirements for career force lawyers, that is, for those with more than 4 years of experience? Is there a procedure that the Department uses to determine these requirements?

Mr. BUZHARDT. I think it is similar in all services, not just the Army.

Mr. CONNEELY. I used the Army as an example.

Mr. BUZHARDT. And the procedure is this. You evaluate the positions to be filled, the jobs to be done, the level of the problem, if you will, and the experience required. You also look at the question of supervision and what is required from a supervisor's standpoint—how many lawyers are being supervised. In the evaluation of each individual position involved, there is a determination made of what is the appropriate level of experience, and from that, the rank required to fill that position.

Mr. CONNEELY. Is this subject to review within the individual services?

Mr. BUZHARDT. Yes; it is continuously reviewed. And there have been extensive studies on each of these in each of the services.

Mr. CONNEELY. In what pay grade do military lawyers enter the service?

Mr. BUZHARDT. Generally, in the O-3 grade. A small number enter as O-2's.

Mr. CONNEELY. Are these lawyers given constructive credit for pay purposes for their 3 years in law school?

Mr. BUZHARDT. That is what it amounts to by their getting an O-3 or O-2 grade. They are given constructive credit and they are paid at an O-3 or O-2 level.

For purposes of pay longevity, they are not. For purposes of retirement they are not. So it is limited.

Mr. CONNEELY. Thank you for clarifying that.

What can a young lawyer entering service today with no experience expect to earn in pay and allowances, including tax advantages? How much can be added for fringe benefits such as free medical care, post exchange, and commissary shopping privileges, et cetera?

General BENADE. If we assume his entry as a captain, Mr. Conneely, it is about \$14,600. I would like to emphasize that it includes basic pay, basic allowance for quarters, basic allowance for subsistence, the tax advantage, and a 7 percent imputed contribution to retirement. In other words, the actual cash being received is 7 percent less than I have indicated but we are assuming that if he were in civil service, 7 percent would have to come off the top as a retirement contribution.

There are no fringe benefits calculated in that figure because the benefit there is not so much, Mr. Conneely, particularly with the younger officer. Unless he has a family, the value of the post exchange and commissary and even the medical benefits is not going to be too great. They acquire a greater value as the individual progresses in service.

I would like to say a better way perhaps to look at it is that the fringe benefits for military personnel, that would include our JAG lawyers, run about 27 percent of payroll costs. From studies we have done, this compares very favorably with the fringe benefits expressed as a percentage of payroll available to civil service and to most employees in the private sector of the larger more modern progressive firms.

Mr. CONNEELY. So you might be talking in terms of a young lawyer receiving over \$18,000 including fringe benefits, given your figure on fringe benefits?

General BENADE. No. I think it would be safer to stand on the \$14,600 figure. The fringe benefits are mutually offsetting. The fringe benefit package available elsewhere in the Federal Government and private industry is about on a par nowadays with the military fringe benefit package. I am using as a yardstick of comparison, I would like to emphasize, the cost to the employer of the benefits as a percentage of payroll.

Mr. CONNEELY. How does the compensation you have cited compare to what a young lawyer might earn in civilian life, that is, one just out of law school?

Mr. BUZHARDT. We have no reliable data on what lawyers in private practice make. I have spent most of my life in private practice. For the young lawyers going to firms, the salary usually begins without any of the fringe benefits or other advantages. They enjoy tax advantages, from self-employment, investments and this type of thing. It is somewhere probably between \$16,000 and \$17,000 with large firms.

The first year I practiced law directly out of law school I netted \$18,000. I started as a private attorney on my own.

Mr. CONNEELY. Now, are you talking about the larger firms in the east? How about, let us say, in the south or in the west?

Mr. BUZHARDT. I practiced in the south, a small town. That is my example.

Mr. CONNEELY. Were you an exception, do you think?

Mr. BUZHARDT. No. I might have been lucky.

Mr. CONNEELY. It is true that the military services are suffering acute retention problems among other officer corps specialties, and do you anticipate any morale problems among these specialties if lawyers are granted bonus pay under certain conditions and special pay?

Mr. PIRNIE. I would like to answer that.

Mr. CONNEELY. Certainly.

Mr. PIRNIE. What has been done with respect to medical, even optometrists, has not resulted in any unsettlement in the relationship or even in problems of recruitment and retention in the other specialties. I would not want to say that there might not be situations in the future where special skills would have to receive some consideration. But I would say that there has been a pretty general acceptance that professional training has to be recognized because it has been obtained at the expense of the individual and he is required to have a certain level of competence when he goes into the Government service to fulfill his specialty. I do not think that this is going to have any unsettling effect. I think it has been anticipated that this was going to occur and should have occurred.

Mr. BUZHARDT. Let me add to that for emphasis that we have, as will be evident from the statements of the Judge Advocates General submitted for the record and from letters from the Chiefs of Staff of each service that I will present to the committee for inclusion in the record, the unqualified support of the Chiefs of Staff of each service speaking for their line officers. So there is certainly no morale factor as far as they are concerned.

(The information follows:)

DEPARTMENT OF THE ARMY,  
OFFICE OF THE CHIEF OF STAFF,  
Washington, D.C., September 18, 1972.

HON. HARRY F. BYRD, JR.,  
Chairman, Subcommittee on General Legislation, Committee on Armed Services,  
U.S. Senate.

DEAR SENATOR BYRD: The purpose of this letter is to emphasize the Army's support for enactment of S. 704, 92d Congress, a bill "To amend title 37, United States Code, to provide for the procurement and retention of judge advocates and law specialist officers for the Armed Forces."

Of all the branches of the Army, the Judge Advocate General's Corps faces the most critical shortages and retention problems affecting experienced officers. The Corps presently has only 49 percent of the field grade officers it is authorized.

A matter of even greater concern is the fact that there is presently a 59 percent shortage of lieutenant colonels and majors, officers who are normally depended upon for middle management and furnishing direction and guidance to junior officers. In addition, officers in these grades should reflect the professional experience so essential in conducting the Army's legal business, protecting the Government's interest, and providing quality legal advice and assistance to members of the Army. Accordingly, the Army indorses and supports legislation to provide for the procurement and retention of judge advocates, the most recent of which was H.R. 4606, passed on 18 February 1971.

There are many factors which led to the Judge Advocate General's Corps present situation. Among the most significant are the disparity in salary between the military lawyer and his civilian counterpart after the first few years of practice, the desire of the young lawyer in or out of the service to recoup as soon as practicable the high expense of his law school education, and the ready availability of attractive positions within the Government and the civilian sector at salaries in excess of those which the military service can offer. These factors place heavy pressure on the young military lawyer to leave the service as soon as his military obligation is satisfied, thus depriving the Army of the essential level of expertise desired in its lawyers.

Since increased compensation alone will not induce highly qualified personnel to remain in the military service, other measures and programs that could be initiated administratively to make service in the Judge Advocate General's Corps more attractive have been implemented. These include intensive recruiting, entry on active duty in the grade of captain, a highly personalized career management system, career patterns in specialty areas, minimization of nonlegal duties, increased educational opportunities, maximum stabilization of assignments where possible, and relief from involuntary manpower reductions. These measures have not, however, produced the requisite retention of qualified officers.

Although several theories may be advanced as to why we are unable to retain career military lawyers, it is clear that the primary factor is a lack of financial incentive. Therefore, the enactment of S. 704, in conjunction with the other existing programs to enhance the attractiveness of the military-legal career, should alleviate the critical retention situation and lead to better representation of the Government's legal interests. The budgetary aspects of this proposed legislation have been carefully considered, and it is felt that the costs associated with payment of retention bonuses and incentive pay for military lawyers would be more than amortized by the reduction in the expense of commissioning and training the many young lawyers who at present are leaving the service upon completion of their initial obligation and during their period of peak productivity.

It is hoped that your subcommittee will, after considering S. 704, find it worthy of support before the Armed Services Committee and the Senate.

Sincerely,

BRUCE PALMER, Jr.,  
General, U.S. Army,  
Acting Chief of Staff.

CHIEF OF NAVAL OPERATIONS,  
September 15, 1972.

HON. HARRY F. BYRD, Jr.,  
Chairman, Subcommittee on General Legislation, Senate Armed Services  
Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR BYRD: I am writing this letter in support of the enactment of S. 704, 92d Congress, a bill "To amend title 37, United States Code, to provide for the procurement and retention of judge advocates and law specialist officers for the armed forces."

Within the Navy, the retention of junior officers of the Judge Advocate General's Corps is one of our most critical and persistent officer manning problems. The maintenance of an adequate force of career officer-attorney is a key factor in carrying forward our modern, enlightened personnel policies as well as for the preservation of discipline and the administration of the military justice system in accordance with the intent of the Congress. I am convinced that

the passage of legislation providing increased monetary incentives substantially in accordance with S. 704 is crucial to attaining these objectives.

We have taken all of the internal measures that are within our power to improve the retention of junior judge advocates on active duty. I personally convened a retention study group of junior officer-lawyers in February 1971 to seek their views on means by which we might improve retention. This group made a number of recommendations, and we are implementing those that are within our power to accomplish administratively. The one recommendation which they believed was central to adequate retention was the enactment of the increased monetary incentives contained in S. 704. They asked me to lend my personal support to this legislation, and I heartily do so—not solely because they asked, but rather to solve one of the Navy's most critical personnel problems.

One question that is frequently asked is "Isn't it inconsistent to provide additional compensation to judge advocates—a supporting branch—when the line does not receive similar additional compensation?" I think the answer is "No"—for three principal reasons. The first is that the line officer has additional non-monetary compensations not available to the lawyer, such as the opportunity of command at sea and the opportunity for advancement to 3- and 4-star positions with the corresponding responsibility and challenge of occupying such positions. The second is that many line officers do in fact receive additional pay of various types—aviation and submarine incentive pay being the two most widely utilized categories. And finally, such pay is a matter of necessity if we are to maintain a career force of professional uniformed attorney sufficient to meet our genuine needs.

I urge that your Subcommittee give every consideration to S. 704, and I hope that you will be able to support it before the full Committee and on the floor of the Senate.

Warm regards,

E. R. ZUMWALT, Jr.,  
*Admiral, U.S. Navy.*

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DEPARTMENT OF THE AIR FORCE,  
OFFICE OF THE CHIEF OF STAFF,  
U.S. AIR FORCE,  
*Washington, D.C., September 18, 1972.*

HON. HARRY F. BYRD, JR.  
*Chairman, Subcommittee on General Legislation, Committee on Armed Services,  
U.S. Senate.*

DEAR MR. CHAIRMAN: I am writing this letter to express my personal support for enactment of H.R. 4606, presently pending before your subcommittee.

I have become increasingly concerned with the inability of the Air Force to attract and retain talented young lawyers for a military career. The shortage of experienced field grade judge advocates has increased from 14 to 275 during the past ten years. The trend is unmistakably down and will continue until some positive action is taken to correct the situation. This positive action, I am convinced, is the passage of this bill.

While the number of experienced judge advocates has been decreasing, the duties and responsibilities of the military lawyer has increased. The day is past when the military lawyer was concerned almost solely with the administration of military justice. The military lawyer today is involved in all facets of Air Force operations. He is intimately involved in the procurement of goods and services for the Air Force which includes, of course, major weapons systems. This alone involves billions of dollars annually. Our lawyers operate the Air Force claims system, processing claims both for and against the government on a world-wide basis. They are responsible for the administration of the military justice system under the Military Justice Act of 1968. Most importantly, they provide a wide range of counsel to Air Force commanders on a myriad of topics and problems involving international law, labor disputes, tax matters, protest and dissent, race relations, and community affairs.

These are valuable and necessary services which the Air Force sorely needs. I am convinced that the cost of this bill is money well spent and will be returned to the Air Force many fold. Accordingly, I urge its passage.

Sincerely

JOHN D. RYAN, *Chief of Staff.*

DEPARTMENT OF TRANSPORTATION,  
U.S. COAST GUARD,  
Washington, D.C., September 18, 1972.

HON. JOHN C. STENNIS,  
Chairman, Senate Armed Services Committee,  
U.S. Senate, Washington, D.C.

DEAR SENATOR STENNIS: I have learned that H.R. 4606, a bill to provide for the retention of judge advocates and law specialist officers for the armed forces, is to be the subject of hearings by the Subcommittee on General Legislation of the Armed Services Committee.

I am aware that the bill has administration support, and that the Department of Defense will provide the main witness making a statement on behalf of the bill at the hearings. The Chief Counsel of the Coast Guard will be present along with the Judge Advocate Generals of the other Armed Forces and the Director of the Judge Advocate Division of the Marine Corps to respond to any matters or questions concerning individual armed forces.

Because of my concern regarding the problem of procurement and retention of law specialists in the Coast Guard and my belief that enactment of the bill would be of significant and immediate help in attracting and retaining lawyers to a longer career, I wish to add my personal support to the recommendations that the bill be favorably considered and subsequently enacted. It is quite apparent from Coast Guard experience that the existing financial rewards from an Armed Forces legal career are simply not enough to enable effective competition with the immediate and prospective opportunities available in a civilian career.

Sincerely,

C. R. BENDER,  
Admiral, U.S. Coast Guard, Commandant.

Mr. CONNEELY. This question is in reference to Congressman Pirnie's comment. As of January 1970, it was estimated that there were over 3,200 health care disciplines in the various services that require a graduate degree or above for commissioning in active service. Do you anticipate these specialists who are presently not receiving special or bonus pay pressing for special and bonus pay if lawyers receive such pays?

Mr. BUZHARDT. It would depend upon the competition in the marketplace and whether the Defense Department makes such a request. If these people are essential and we cannot acquire them otherwise, undoubtedly consideration will be given to special incentives to get them. There are other bills pending, as you know, on other types of bonus pay.

What we are dealing with is a problem of competing in the marketplace for a given skill. We have no alternative but to compete for that skill if we are going to perform the statutory functions of the Department of Defense.

Mr. CONNEELY. The total authorized Judge Advocate General force in July of 1969 was 4,375; and in July 1971, it was 3,957. What is the present number of the authorized Judge Advocate General force? Do you have that number? I believe you gave it to us originally.

Major GREEN. The chart does not show it. It is about 3,975.

Mr. CONNEELY. Do you anticipate any reduction in this number in the All-Volunteer Force environment?

Mr. BUZHARDT. As you know, the Department has already reduced personnel by approximately a million in military ranks. We have already taken reductions in the career force as well as the JAG force. While we do not anticipate further substantial reductions, the requirements for legal services are greatly increasing. For instance, we have entirely new areas that require legal skills, such as economic environ-

mental problems and environmental impact statements. The whole new field of environmental law will require additional lawyers to do the additional legal work. That is one example.

The size of our total military force, while relevant to the size of the JAG force, is not totally determinative. The workload that is imposed has many independent factors which bear on it, and all these must be taken together to help us determine the JAG force we need. For instance, in the past, it has not been customary to have political annexation actions handled by the lawyers to any great degree. If I can prevail, I will have these handled in all of the services in every case by lawyers. We will get better results and save ourselves a lot of headaches down the road because they are complicated legal problems.

Mr. CONNEELY. I understand your comment on the relation of the number of lawyers to the size of the Active Force. How about the quality of the Active Force in an All-Volunteer Force environment—meaning that since you have volunteers you may have less courts-martial and maybe less disciplinary problems?

Mr. BUZHARDT. That may or may not be.

Mr. CONNEELY. Would you anticipate that in an All-Volunteer Force environment?

Mr. BUZHARDT. We would hope so. But at the same time, we have counteracting factors. Even if we have fewer disciplinary problems that require courts-martial, the Supreme Court has expanded the requirements for the use of lawyers in the lower courts. So even if we have a substantial reduction in the number of court-martials, the expanded requirements for lawyers' participation as a part of due process will probably more than offset the reduction in total number of court-martials.

Mr. CONNEELY. Is a man required now to be represented by a lawyer in a summary court-martial?

Mr. BUZHARDT. Some have placed that construction on it. There is presently pending litigation involving the Navy Department. The Federal district court in Hawaii has ruled that the Supreme Court decision is applicable to summary courts-martial and lawyers must defend if confinement may be imposed. This opinion is an appeal. What the outcome will be, I do not know.

Mr. CONNEELY. Does that also apply to nonjudicial punishment?

Mr. BUZHARDT. We have not met that problem yet. I would hope not, but we have to recognize the prospect.

Mr. CONNEELY. The military Justice Act of 1968 imposed new requirements on the court-martial system. What were these new requirements, and what impact did they have on the various service JAG Corps?

Mr. BUZHARDT. Before the Military Justice Act of 1968, the number of JA officers acting in special courts-martial was small. The 1968 act established new requirements that a qualified attorney be appointed to act as defense counsel in all special courts-martial and that a military judge be appointed to any special court-martial empowered to adjudge a bad conduct discharge. Additionally, an accused man has the right to refuse trial by summary court-martial and demand trial by a higher court.

In an attempt to insure justice in special courts-martial, it was determined that legally qualified counsel would also be appointed as trial counsel and that military judges would be detailed to all special court cases except in rare cases of unavailability or military exigency. At the present time, virtually all special courts-martial are conducted with three Judge Advocate officers: A military judge, a trial counsel, and a defense counsel.

Since 1969, the effective date of the act, the services have conducted 180,103 special courts-martial. This represents a new workload absorbed by the JAG Corps.

These new requirements demanded an increase in the number of JAG officers. The increase was accomplished in fiscal years 1969 and 1970. The services were permitted to increase their JAG authorizations, as follows:

Army	401
Navy	105
Air Force	136
USMC	0
USCG	16
Total	658

These authorizations were filled by newly commissioned law graduates. One result of this action was to aggravate the imbalance between experienced and inexperienced attorneys. The problem was made even more acute because the increased need for military judges required that more senior officers be detailed to the judiciary as military judges, thus reducing the number of experienced senior personnel available to operate JA offices and to supervise the newly commissioned lawyers.

Mr. CONNEELY. Did the decision in *O'Callahan v. Parker* result in a reduced requirement for military attorneys?

Mr. BUZHARDT. This Supreme Court case was decided in June 1969 and limited court-martial jurisdiction to "service-connected" offenses in cases where civilian State or Federal courts could exercise jurisdiction. Our experience has shown that the decision has not had any noticeable effect on military lawyer requirements. Since 1969, the number of trials by court-martial in the Army has decreased. This decrease is not considered directly attributable to the *O'Callahan* decision. Other events such as the withdrawal of forces from Vietnam, the overall reductions in troop strength, and the increasing emphasis on preventive law have all impacted on court-martial rates. The Navy estimated that only 2½ percent of its cases fall under the *O'Callahan* rule, and the Air Force estimates about 5 percent. These slight reductions in actual trials are more than offset by the civil court actions filed on the basis of the decision, and by the time-consuming study and pretrial investigation of every off-base offense to determine whether the case falls within the *O'Callahan* rule.

Mr. Conneely, I might also note that the expanded requirements for legal services in all fields of Judge Advocate work which are discussed in the prepared statements and in responses to other questions offset any possible personnel saving resulting from the *O'Callahan* decision.

Mr. CONNEELY. Is it possible to provide estimates as to the numbers of JAG officers who may leave the service in the immediate future if

H.R. 4606 is not enacted into law? I know that this would be highly speculative but I'm sure that there must be some JAG's who are "hanging fire" on this matter, so to speak.

Mr. BUZHARDT. Any estimates of this nature are, as you have said, highly speculative. It is our belief that a number of young attorneys have remained beyond their obligated tours in anticipation of the success of this legislation. Additionally, it is reasonable to assume that the prospect of passage has been a significant consideration in the delay of retirement by many officers who are eligible to retire. In both instances, there are a great number of other variables which might also militate toward separation from the service, but failure of this legislation would, in our opinion, provide the additional impetus which would result in an immediate decision to leave the service.

The following estimates indicate an extremely dark picture and presage an immediate, drastic additional depletion of the career force.

ESTIMATED DOD LOSSES IF H.R. 4606 IS NOT ENACTED

Years of service	Army	Navy	Air Force	Marine Corps	Total
4 to 10.....	48	24	64	18	154
10 to 20.....	13	0	27	0	40
20 to 30.....	28	8	38	0	74
Total.....	89	32	129	18	268

Mr. CONNEELY. What has been the retention experience with career military lawyers with between 10 and 15 years of service, or you can change this to 10 to 17 years of service, if you wish?

Mr. BUZHARDT. We can tell that from the chart, which shows what the actual and required career force is. This is in the record. It will give the actual levels. We have shortages at all levels.

Mr. CONNEELY. What has been your loss in JAG personnel with between 10 and 17 years service in the last 5 fiscal years?

Mr. BUZHARDT. I am not sure I can give you that precise loss in these years. We can get it from the Judge Advocate General of the Air Force.

General CHENEY. Major General Cheney, Judge Advocate General of the Air Force.

Our regular force, regular officers, has been reduced from 676 to 475 in the last 10 years.

Mr. CONNEELY. When you say regular officers, you are including some captains with less than 5 years of service?

Mr. BUZHARDT. Anyone who is a regular officer; that is correct.

Mr. CONNEELY. Let me phrase my question in this way. Is the retirement incentive a pull for keeping men with 10 to 15, or 10 to 17 years of service in service?

Mr. BUZHARDT. There is undoubtedly some retirement pull, but it is not adequate to hold the people during this period because the financial incentives on the outside overcome it in many cases. Even slight losses in this category of people who have reached 10 to 15 years has a severe impact because there are few officers serving in

those grades. When they do leave for better paying jobs, the impact is severe. Percentage-wise, we lose a good part of the force.

Mr. CONNEELY. Are your losses greater in the JAG force than in the regular military for personnel with 10 to 17 years of service?

Mr. BUZHARDT. Yes; I feel sure they are.

Mr. CONNEELY. If you can submit for the record the losses in JAG personnel with 10 through 17 years of service for the last 5 fiscal years, it would be helpful. Include what these losses represent as a percentage of the total JAG officers in this particular year group.

(The information follows:)

DOD JUDGE ADVOCATE CAREER FORCE LOSSES

Fiscal year—	5 to 9 years of service		10 to 17 years of service		Total	
	Number	Percent <sup>1</sup>	Number	Percent <sup>1</sup>	Number	Percent <sup>1</sup>
1968.....	28	(2)	7	(2)	35	(2)
1969.....	36	(2)	4	(2)	40	(2)
1970.....	47	(2)	9	(2)	56	(2)
1971.....	44	10	8	1.5	52	5.5
1972.....	74	16.4	12	2.3	86	8.9
Total.....	229		40		269	

<sup>1</sup> This figure represents the numerical loss as a percentage of the total number of JAGC officers serving in the year groups indicated.

<sup>2</sup> Information not available.

Mr. CONNEELY. The Secretary of Defense has recently directed a study group to devise an improved commissioned officer management personnel system with the objective of meeting the "probable future officer requirements of the Department of Defense as to quantity, quality and experience" for commissioned officers. How do you expect this study and possible legislative recommendations resulting from it might affect the Judge Advocate General force?

General BENADE. It would probably be premature to even speculate on it at this time because this particular study has just been initiated. I would hazard an opinion, however, that there will not be too great an effect. There is nothing in this study or in the charter that has been given to the study group by the Secretary of Defense that would affect the particular problem we are discussing. It is possible that the study group will examine the possibilities of different utilization and longer utilization of certain of the professional groups, but in terms of initial procurement standards, retention or promotion through the course of an active career, I do not think there will be any significant difference in treatment of the Judge Advocate officers. And there is nothing that would affect compensation in the other personnel management sections.

Mr. CONNEELY. Thank you, General. That is the point I was trying to get at, that maybe there might be special treatment of the Judge Advocate officers in this study and your estimate at this time is that there would not be.

General BENADE. That is correct, Mr. Conneely.

Mr. CONNEELY. How about Senate bill S. 3410, which is a special pay bill, and is sometimes called the Allott bill. How do you expect this might affect the JAG force if it were to be enacted into law?

Mr. BUZHARDT. It contains only a bonus provision. The bonus provisions of that bill are somewhat more generous than the bonus provi-

sions of this bill. It contains no special pay provisions. I would assume when this bill is passed, assuming it will be prior to that one, that military lawyers would be handled under this legislation, not under that legislation.

Mr. CONNEELY. You would intend that JAG's would be, as far as the bonus provisions are concerned, handled under this legislation before us today if it were enacted.

Mr. BUZHARDT. Right.

Mr. CONNEELY. And not S. 3410?

Mr. BUZHARDT. That is correct.

Mr. CONNEELY. How many Judge Advocate General officers serve in non-JAG positions? Include also in your answer JAG officers who serve outside the offices of the Judge Advocate General in the services, the Office of the Secretary of Defense and other Federal agencies, and similar JAG officers in the field, on the faculty at the service academies and in service schools. What is this number as a percentage of total JAG officers?

You can provide this for the record if you do not have it.

Mr. BUZHARDT. I will be glad to give you a precise breakdown in every slot. The answer to the first question—how many Judge Advocate General officers serve in non-JAG positions—the answer is "None." There is a great misconception about this. We have had the question raised, for instance, that some work in legislative liaison. That is not quite true. They do work in the Office of Legislative Liaison in the preparation of legislation and analysis of legislation—this type of work which is a purely legal function. They are not outside a legal job.

(The information follows:)

#### JAG'S IN SO-CALLED NON-JAG POSITIONS

	Army	Navy	Marine Corps	Air Force	Total
OSD.....	3	0	0	1	4
JAG Prs Ofc.....	6	5	0	3	14
Dept. L & L.....	4	7	0	7	18
Other <sup>2</sup> .....	4	0	0	3	7
Total.....	17	12	0	14	43

<sup>1</sup> AF L&L—6; JCS L&L—1.

<sup>2</sup> Drug Abuse Office; Voting Task Force.

#### BREAK-OUT OF JAG'S IN SO-CALLED NON-JAG POSITIONS

	Army	Navy	Marine Corps	Air Force
Office of the Secretary of Defense.	Briggs, Major: Procurement law; De Fiori, Colonel: Personnel legislation; Green, Major: Personnel legislation.	0	0	Dalferes, Colonel: L & L.
JAG personnel offices <sup>1</sup> .....	6.....	5	0	3.
Department L & L.....	4.....	7	0	7.
Other department positions.....	4—Brisendine, Captain: Conscientious Objector Board; Gammon, Captain: Voting Task Force; Naughton, Major: Military Support (Civil District); West, Captain: Mil. Prs. Pol. (E.O.).	0	0	3—Nicholson, Captain: Drug Abuse Team; Conner, Captain: Voting Task Force; Davidson, Captain: Drug Abuse Team.

<sup>1</sup> Title 10, United States Code, section 806(2) requires TJAG's to assign all JA officers.

Mr. BUZHARDT. One of the legal jobs that we do perform is the review of legislation, the preparation and review of departmental comments on the legislation, coordination of those comments, and in many cases, providing drafting services requested by the Congress. But these are not outside JAG positions. They are necessarily lawyers' jobs.

Mr. CONNEELY. Do you think a position in legislative liaison requires a law degree?

Mr. BUZHARDT. In the analysis function of legislation and its legal impact, yes. Not the people who deal back and forth with personal contacts with the Senate, and that is not what they are used for.

Mr. CONNEELY. A number of these people do have law degrees.

Mr. BUZHARDT. There are people outside the JAG force who are not in the JAG Corps who do have law degrees by choice. One sits here. General Benade has a law degree. He is not a JAG officer. He would not be included in the provisions of this bill.

Mr. CONNEELY. When you provide the number of officers who serve outside the offices of the JAG are you talking about all officers?

Mr. BUZHARDT. Yes, I am talking about all officers. I have already provided it to the committee man by man, and I can give it to you by name of those who serve outside the service JAG offices. In the Office of the Secretary of Defense there are four JAG officers—three Army, one Air Force. One of these officers works for me. Two work in the military personnel office and are responsible for military personnel legislation and policies. One works in the legislative liaison functions I described earlier.

In the personnel offices of the JAG's for the services, there are 14 JAG officers. They are required by statute to work on the personnel matters of JAG force. In the military departments, there are a total of 18 in all services who, as I said, work on legislative drafts, providing comments, analyses, and drafting for congressional legislation. There are a total of seven others departmentwide, some of whom work, for instance in the drug abuse office where we must have JAG officers because of the legal problems involved. We have lawyers working on the voting task force, where again you have legal problems involved. They must have lawyers. But we have none working outside of legal positions.

Mr. CONNEELY. You were describing the Office of the Secretary of Defense. I am familiar with a memorandum from Mr. Bartimo to you that stated the information you provided the committee did not include those JAG officers in the field, on the faculties of service academies or in service schools.

Mr. BUZHARDT. That is correct.

Mr. CONNEELY. How many were serving within the Office of the Secretary of Defense? What was that total?

Mr. BUZHARDT. Four. Let me tell you who they are. There is Major Briggs, who works for me in procurement law. There is Colonel De Fiori and Major Green, who work on military personnel legislation and policies. There is Colonel Dalferes, who is in the Office of the Assistant to the Secretary for Legislative Affairs, a lawyer. Those are the four in OSD.

Now, there are people assigned to schools. These are legal jobs. They teach at the JAG schools—you have to have a faculty—or they teach

at service schools—for instance, at the Naval War College. Lawyers teach there because the commanders on the sea must know something about the law of the sea and international law. It is very essential that they do.

These are expanding requirements. We will have more people in school and more demand for it as time goes on because there are more legal problems that the commander must face when he does not have a lawyer available. He is in an isolated post, so he must be given basic legal courses. Nobody can teach these but military lawyers.

We will be glad to give you a breakout of how many are on the faculties of our schools.

Mr. CONNEELY. Thank you. If you would do that for the record so the committee will know who is included and not included in the Judge Advocate force.

Mr. BUZHARDT. These do not work for the JAG's in the general sense that they are assigned to them but nevertheless they do perform JAG functions. But it is just a matter that their duty assignments do not permit them to be under the direct control of the JAG.

(The information follows:)

#### JAG STUDENTS AND FACULTY

	A	N	MC	AF	Total
Legal service school students: <sup>1</sup>					
Basic course (TDY 6-10 wks).....	60	0	26	40	126
Advanced course.....	34	1	4	0	39
Legal service school faculty.....	31	13	5	7	56
Other service school students <sup>2</sup> .....	16	3	2	6	27
Other service school faculty <sup>3</sup> .....	15	5	0	1	21
Service Academy faculty.....	19	2	0	17	38
Civilian graduate school <sup>4</sup> .....	6	11	1	11	29
Total.....	181	35	38	82	336

<sup>1</sup> JAG schools.

<sup>2</sup> War colleges; Command General Staff College; Armed Forces Staff College.

<sup>3</sup> War colleges; Command and General Staff College; Branch Schools.

<sup>4</sup> All are candidates for LLM's in criminal law, procurement law, international law, labor law, ocean law, or taxation.

Mr. CONNEELY. In 1969, the Congress enacted a bonus type provision for certain qualified nuclear submarine officers through the grade O-3 (lieutenant) because of the alarming resignation rates among these officers. Would a bonus provision for junior officers (below field grade) captain, lieutenant O-3's, accomplish the retention of JAG officers without the increased cost of the \$4.2 million per year special pay provision?

Mr. BUZHARDT. In our opinion, no. And this is based on our studies and interviews with the officers leaving.

General BENADE. Could I expand on that and also clarify it? There is a great difference, I think, between the nuclear submarine officer community and the JAG problem here, Mr. Conneely. In the case of the nuclear sub qualified officers, the critical area is with officers with less than 10 years service. In fact, the billets available for more senior officers are much more limited. It is the junior officer category that the submarine bonus is aimed at.

Here, quite the opposite is true. The need exists up and down the grade structure, including the more senior officers.

Mr. CONNEELY. What about expanded civilianization of the Judge Advocate General Corps? Have you looked into this and, if so, what are its prospects?

Mr. BUZHARDT. We have looked at it. I do not believe personally that it is a feasible approach.

In the first place, you certainly would not reduce the costs because the civil service grade structure for equivalent duties costs more and will continue to cost more than this bill. So in the first place, you are incurring greater costs.

But more important, these people in civil service cannot be moved. They will not tolerate the movement that is required of military officers who are stationed all over the world; you have to recruit a force of this kind.

Second, a military lawyer must have familiarity with military law. He is subject to military discipline himself, and we have many that serve on staffs of combat commanders. So the opportunities for civilianization are minimal. And in most cases more costly even if this bill were passed.

Mr. CONNEELY. To get back to the chairman's question, for the middle managers that you are talking about, majors through the lieutenant colonels, where you are offering \$150 per month special pay, equaling \$1,800 per year, that is a relatively small amount of money. If you are having difficulty retaining these people, it seems to me, as apparently it did to the chairman, that a 6- or 7-percent increase in compensation is not going to accomplish your end if opportunities for earnings are that much greater on the outside.

Mr. BUZHARDT. We have two things here for those people. We have both the special pay provision and the bonus provision. The bonus provision will provide an incentive up to the 10-year point. We are hopeful that these people will look at the entire career pattern and what they will receive. We believe that this will be an additional incentive to hold them.

This is based on the study of what it takes to compete in the marketplace. We are not saying we are going to be up to the levels of the others. We are going to depend on other factors.

Mr. CONNEELY. Such as what?

Mr. BUZHARDT. We are going to still look for people who have an interest in a military career.

Mr. CONNEELY. That is another matter.

Mr. BUZHARDT. That is one thing. People are willing to sacrifice only so much because of their preference for a military career. But their preference is not strong enough to overcome wide gaps in income.

Representative PIRNIE. Mr. Conneely, I think I understand exactly what you are trying to suggest, but the answer is found not just in monetary compensation. I made a response to the chairman earlier about the families. There are people who are dedicated to the service and who feel comfortable and happy in doing that work in an environment that they understand and that they respect. Consequently, if the penalty is not too great, they are willing to accept that. We feel that the approach of this bill takes this penalty away as a major consideration and, therefore, permits people who are willing to give their lives to the service and accept these inconveniences and the regimenta-

tion, if you want to call it that, to respond, so we will have the seniority progress in such a way as to have seasoned and experienced counsel when they are needed. We think from our conversations, and I have had a great many of them with people and their families, trying to review their needs, that they think this is a professional recognition which they would accept in the spirit in which it is offered and not with the idea that they are going to continue to have the competitive approach once they have made the decision to have a career.

Mr. CONNEELY. Thank you, Congressman Pirnie. In that regard, have there been any formal surveys done among the junior officers who may be considering continuing a career at the 4-year point besides just the informal discussions with numbers of these junior officers? Have you had any in-depth surveys with these people as to why they are not continuing?

Mr. BUZHARDT. We have no recent formal surveys. I have talked with a limited number of individuals. I am sure that the Judge Advocate General individually could respond to this. I myself have talked to a great number of them at various meetings at the JAG schools when they get together. There is no question in my mind from talking to them myself—not all of them by any means but I visited a number of places and talked to these people—that they just feel the financial opportunities on the outside are somewhat too large to penalize their families, as Congressman Pirnie said, even though they like the military career. It would make a difference to them, or so they tell us, in most cases.

I would be glad to have the individual JAG's respond to that because I am sure they can add something to this.

General PRUGH. I am General Prugh, JAG of the Army. There is no question about it. Like the other JAG's, I spend a lot of my time talking to the young fellows in the corps. It is essential to keep a finger on the pulse. There is just no question about it, that is the most important element that looms in their mind. As they think about the end of their time in the service, they think primarily of the great financial opportunities that exist right now outside. These opportunities have been fine, there just is no question about it.

I have an illustration I included in my statement. In this past year alone we have had nine majors in my office in the Pentagon decide that they would no longer stay with us. Now these fellows averaged 8 years of service, and were very valuable to us at this point, reaching their greatest value to date.

(The information follows:)

By attending law school at an approximate cost of \$15,000 and forgoing 3 years of active duty during which time an officer realizes a gross income of \$28,470, the total loss in expenses, pay, and allowances to the Judge Advocate officer is \$43,470. Under the provisions of H.R. 4606, a Judge Advocate would receive approximately \$43,710 by virtue of special pay and the bonus during a 20-year career, in addition to his regular pay and allowances. The amount which the Judge Advocate would realize, if H.R. 4606 is enacted, would only approximately set off the expense and unrealized income resulting from obtaining a legal education.

General PRUGH. All nine opted out. Five of them went to the Government in another capacity, grade 15 in one case, grade 14 in three cases, grade 13 in one. The other four went into private industry.

One is a general counsel for a supermarket. In each case they just about doubled their salary.

Of course, that word gets around and every captain that I have, and there are around 1,200 of them, knows this, and this is the big element that looms in his mind. He likes military service by and large. There are a few exceptions, but by and large they like it. They like the early responsibility. They like, I think, the hard professional work. It is very fine professional work. They get a chance to do real law work very early in their professional life. But monetary compensation is the big thing that looms in their mind.

Mr. CONNEELY. Do you think that if you continue to expose these men to the Washington area from the time they enter service up through the 8th year, they may find better opportunities here and continue to opt out of the service at an early point?

General PRUGH. No, sir; I do not think that is true. As a matter of fact, this is not the best area. It may be the best for Government attorney positions. I was solicited last week by the HEW folks, who were looking for hearing examiners, for any Judge Advocate officer who is retiring. They are looking for any officer. There is hardly a day that goes by in which I do not get a request for one of our people. But it is not just Washington that is looking for them. San Francisco, anywhere on the east or west coast, the center of the country, Chicago, Denver, Dallas, these are all very high-paying places. There is no longer a concentration of good-paying legal positions on the east coast.

Mr. CONNEELY. These men have valuable experience, so that makes them more attractive.

General PRUGH. They really do.

Representative PIRNIE. May I add one more observation? The reason that I had an opportunity for these conversations came about through the publicity, if you want to call it that, following the introduction of the bill. When I traveled to military installations around the world, if it were known in advance that I was coming, and my committee went, quite frequently groups of Judge Advocates' wives would ask to meet with me. They would put these questions to me which have made the basis of my feeling, asking if they could count on this, if they thought there was a reasonable chance, that if they continued in the service, that there would be some adjustment in compensation. The wives were saying that they felt their husbands were happy in their work. They did not want to convey any other impression, but they just did not feel that it was giving them the margin that they as wives of professional men ought to have in providing for the children and the home.

So while we talk about the relatively few hundred dollars, we are talking about its coming to them on a regular and short basis, on a timely basis that permits them to plan. That is why I would just like to emphasize that it is not so much the dollar as it is the professional standing which is encouragement to them, and they think they can live with it and are willing to.

Mr. CONNEELY. As I understand what you said, Congressman Pirnie, you think that the recognition of the special pay for their profession is almost as important as the actual monetary benefits.

Representative PIRNIE. To a certain extent. They talked that way, and said they do not feel they are being recognized for the work and the preparation that they have had.

Mr. CONNEELY. From previous other studies that have been done on why young officers leave the military service, compensation is not always mentioned as the main reason for leaving. I am sure General Benade can talk to this, but compensation is oftentimes less of a factor for a young regular or reserve officer making his career decision. Do you have a particular problem with JAG officers because of the opportunity earnings for the law profession on the outside?

Mr. BUZHARDT. Yes. It is a fact that we just are not close enough to being competitive. There is too wide a margin between the financial opportunities on the outside and the financial opportunities in a service career. What we are in essence asking is to narrow this margin so we do not ask them to accept as big a financial penalty for staying in the service, in something they like. It gives them an argument with their wives.

Mr. CONNEELY. With reference to these career studies, JAG officers are part of the same service, experience the same difficulties with service life in addition to compensation as their non-JAG counterparts. Maybe it is not as great for a young officer with a law degree, but he is suffering some of the same overall deprivations as he may interpret them. Do you think the amount of money in the bill is going to make a crucial difference in the case of JAG's?

Mr. BUZHARDT. It is a different construction. Any officer bears a great deal of responsibility at a young age, but this is particularly true with JAG officers. They really get more opportunities in the military to assume larger responsibilities at the beginning of their career than they would elsewhere. They are paid less for it than their civilian contemporary who has less responsibilities.

That is what it boils down to. The fact that they do have these responsibilities is an attraction because these young men are well trained, where we have the selectivity as we have had in the past. They want to apply their talents and they are given the opportunity to do so. So they have an offset, if you will, to the inconvenience of military life greater than the average line officer because of this added challenge. What we need is for them to have less of a financial burden to go along with the ability to enjoy these added responsibilities.

I would like to ask the JAG's to comment on that if they would.

General CHENEY. I see this entire plan as an integrated incentive career plan. The bonus feature of the bill would provide the incentive to the Judge Advocate at the point when he leaves service, to stay in it. The incentive pay will carry him to the point where he has an investment in a career. He can see the entire plan and the career attraction. He can see over the entire period of his career. He will not have to accept as great a sacrifice in order to stay in the service as he would under the present conditions. As an integrated plan, I think this bill carries it through. He gets a bonus with the pay as a captain, and as he advances to the other ranks he has additional pay and sees this as a fully integrated plan. That will attract and retain them.

Mr. CONNEELY. Thank you, General Cheney. As far as your selection of entering Judge Advocate officers, is there any attempt to get the

best graduates, for example, the top 10 percent of law school classes, or are you trying to get a man who may not rank as high in class who might have less motivation to leave the service after a certain point.

Mr. BUZHARDT. You are talking about an ideal world. Undoubtedly when the ratio of applicants to vacancies was 10 to 1 as it was in 1963, or 6 to 1 as it was just a few years ago, you had this choice to make, this hard choice. The Air Force acquires most of their young lawyers by taking ROTC graduates who have incurred an obligation for line service. They give them a deferment to go to law school, and then they are available for obligated service as JAG's.

For a short period the Air Force had more than its required needs coming out of law school. In those cases I think the Air Force did give primary emphasis to those who had a potential for service careers.

At the same time, the others were made available, for instance, to the Army, which was having difficulty meeting all its vacancies. So, many of the same people got in.

So, yes, where the opportunity is available. But this year the number of applications for deferment to go to law school has decreased. We are talking about people who would come into JAG in 1975. It is questionable whether there will be enough applicants for deferment to fill the requirements of the acquisitions in the Air Force JAG in 1975. As a consequence, they will not have a choice of which ones to take. They will have to estimate their potential for higher grade or their potential for a career.

Mr. CONNEELY. From what you said, then, it seems not only do you have a retention problem but in the foreseeable future you are going to have an acquisition problem.

Mr. BUZHARDT. In the foreseeable future we anticipate we will have a serious acquisition problem.

Mr. CONNEELY. What do you think would have to be done in that case?

Mr. BUZHARDT. We are hoping the career pattern, as General Cheney just explained it, which is contained in this bill, will not only serve the cause of retention but also of acquisition, that it will have a higher pull on these people who have been selected in the initial instance for a military career, because the financial incentives will be less disadvantageous than they have been without the bill.

Representative PIRNIE. Could I just comment on that; I think it is only fair to say that the training which is offered is becoming recognized as being a little superior in preparation for a career. I do not want to get into too much detail but just take the subject of evidence. Any lawyer who has gone through the Judge Advocate General's school is much more knowledgeable in the field of evidence than the average practitioner of some years standing. This skill that they are acquiring is somewhat thrilling to them and word is getting around. So I think from the acquisition standpoint that we are going to be able to offer good career opportunities because it is professionally attractive. And if the margin is not too great, I think people are going to be attracted to it.

Mr. CONNEELY. Thank you, Congressman Pirnie.

I do not have any more questions. On behalf of the committee and subcommittee and the chairman, I would like to thank you, Congressman Pirnie, and Mr. Buzhardt and General Benade and all the Judge

Advocate Generals of the Services for your testimony today. It will be very helpful to the committee and staff in analyzing this legislation.

Representative PIRNIE. We want to thank you. We hope that your courtesy here will result in expeditious consideration of the bill under the rules of the Senate.

Mr. CONNEELY. Thank you, sir.

(The following statements were received for inclusion in the record:)

STATEMENT OF HON. THOMAS J. MCINTYRE, U.S. SENATOR FROM  
NEW HAMPSHIRE

Mr. Chairman: I have generally not favored special pay for any class of personnel in the armed forces. Nevertheless, over the years, we have provided financial incentives for various specialists such as doctors, dentists, veterinarians, optometrists, submariners, pilots, and others. We have had to do this in order to retain the required number of these specialists in the armed force. I support H.R. 4606, which would provide incentive pay for military lawyers, for the same reason.

There are compelling reasons for supporting this legislation. According to the information which has been presented, the armed forces do not now have, and are unable to recruit and retain, enough military lawyers to provide the kind of legal services which the armed forces must have and to which the individual members of the armed forces are entitled. While there are enough judge advocates on duty at the present time to fill the authorized spaces, some 70% of them are non-career officers, less than four years out of law school, who, experience indicates, will leave the service as soon as they have completed their initial tours of duty. These inexperienced young men, for the most part, accepted active duty as judge advocates because of the pressure of the high draft calls (during the Vietnam conflict). With the modernization and stabilization of the armed forces, and the resultant decrease in draft quotas, the number of law graduates who are applying for active duty has fallen off sharply. Thus, in a very short time, it appears that the armed forces will not even be able to fill its authorized judge advocate spaces with inexperienced military lawyers.

The management of the armed forces creates many legal problems in such areas as government contracts, tort claims, international law, real estate, and many others, including, of course, military justice. Those who are responsible for managing the armed forces are entitled to top quality legal advice. I have serious doubts that a law firm, more than two-thirds of whose members have less than four years' experience and who intend to leave the firm as soon as possible, can provide the type of legal advice that the managers of the armed forces need.

A failure of the managers of the armed forces to get good legal advice can cost the taxpayer a great deal of money. We have seen some evidence of this in our review of some government contracts. I am deeply concerned about this unnecessary waste of funds, but I am even more concerned about the quality of legal advice that the individual serviceman gets when he becomes involved with the court-martial process.

I wholeheartedly supported the enactment of the Military Justice Act of 1968, which modernized the system of military criminal justice. By its terms, it is highly protective of the rights of a defendant. Just as in civilian life, however, a system of justice is only as good as the people who administer it. Under the Uniform Code of Military Justice, as amended by the Military Justice Act of 1968, military lawyers serve as trial and appellate judges, as prosecutors, and as trial and appellate counsel.

On several occasions during the Vietnam conflicts, I talked to Major General Hodson, then the Army Judge Advocate General, about some of my constituents who were serving in the Army and who had become involved in the court-martial process. He was most understanding of the problems of my constituents and made every effort to insure that they were provided with qualified defense counsel. I recall that he expressed great concern about the difficulty of trying to provide high quality legal services on a world-wide basis when such a high percentage of Army judge advocates were so inexperienced. After studying the data made available for this hearing, I share General Hodson's concern, particu-

larly with respect to the quality of legal counsel that will be available for the defendant before a court-martial. The United States cannot afford to furnish a defendant before a court-martial with second class legal counsel.

One other aspect of the military lawyer retention problem deserving mention is the cost resulting from the rapid turnover of non-career lawyers. When we consider the costs of commissioning, training, educating, and transporting the non-career officer, I am satisfied that it would cost less to provide experienced judge advocates by means of the incentive pay provided by this bill than it would to provide inexperienced judge advocates—assuming they were available—under the present program.

In summary, Mr. Chairman, I am convinced that the armed forces have a problem that needs solving. I believe that the incentive pay provided by this bill will result in better quality legal services for the armed forces at less cost.

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STATEMENT OF MR. FRED BUZHARDT, GENERAL  
COUNSEL, DEPARTMENT OF DEFENSE,  
BEFORE THE SUBCOMMITTEE ON GENERAL  
LEGISLATION, SENATE ARMED SERVICES  
COMMITTEE, SEPTEMBER 19, 1972

Mr. Chairman and Members of the Committee:

I am Fred Buzhardt, General Counsel, Department of Defense. It is a pleasure for me to appear before this Committee to present the views of the Department of Defense on H.R. 4606, which was passed by the House in July of last year. H.R. 4606 is identical to S. 704, which was introduced by Senator Inouye and which has 34 co-sponsors.

Both bills are intended to provide the Armed Forces with the means needed to attract and retain judge advocates and law specialist officers.

To understand the critical nature of the lawyer retention problem in the Department of Defense, it is first essential to delineate some of the important services that the uniformed attorney provides. Too often, he is erroneously viewed solely as a court-martial practitioner, when, in fact, his duties are more far ranging and impact directly on practically all aspects of management, operations, and readiness of the Department of Defense.

The military attorney force has been referred to as the world's largest law firm. Not only is it the largest, but its practice literally encircles the globe and demands an expertise in an enormous variety of legal specialties which is unmatched by any other government agency. Military attorneys participate in legal actions which involve many billions of dollars annually and affect millions of people across the country and around the world.

During Fiscal Year 1972 the Defense Department lawyer was directly involved in almost 40 billion dollars worth of contract transactions. The complexities of government procurement and contract law require seasoned, mature attorneys with technical know-how and sound judgment to be certain that the government is getting the most for the dollars expended for goods and services. These attorneys are also required to advise top level decision makers, administrative personnel and contracting officers on all phases of procurement law. These considerations range from initial R&D efforts through offers, bids, acceptance, and the follow-up administration and supervision of performance. It includes resolution of disputes, hearings and settling contract claims on appeal.

During Fiscal Year 1971, military lawyers successfully recovered over 11 million dollars in tort and admiralty claims and settled over 52 million dollars in serviceman claims against the government.

Over 90 million dollars was saved in utility rate cases between 1967 and 1971.

In 1971 alone, 210 of some 1450 proceedings before various administrative bodies were closed successfully. A potential adverse budget impact on the U. S. Government, estimated at 741 million dollars, was thereby avoided.

Literally thousands of administrative and personnel law actions are resolved annually which, if they had proceeded to administrative or judicial tribunals, would significantly increase costs to the government.

Our uniformed attorneys were involved in over 5000 separate cases which were litigated in the civilian courts.

In the field of oil and gas, the Navy Judge Advocates exercise legal responsibility for oil, gas, and shale reserves worth more than 170 billion dollars.

The legal implications of acquiring, holding, and disposing of the vast real estate requirements of the Department of Defense is another of the uniformed lawyer's areas of concern with high dollar ramifications.

Our patent law specialists are engaged in securing the government's rights to the numerous inventions and technical refinements that are developed by DoD employees in the course of their official duties or as a result of research projects undertaken by contractors, or which arise in the performance of a contract with the United States.

In fulfillment of national policy and treaty commitments, it is necessary to have military personnel stationed in foreign countries around the world. Consequently, we are required to develop an expertise in public international law, comparative legal systems, and in the criminal, civil, and administrative law of over 50 foreign states. The implementation of agreements governing the status of forces, base rights, stationing of personnel, military facilities, and military assistance involves continuing legal advice and experience that impacts directly upon international relations and upon national security. Many of these basic agreements were initially developed and drafted by military lawyers who subsequently participated with representatives of the State Department in their negotiation. In every overseas theatre our military lawyers handle day-to-day relations between our armed forces and the host countries where they are stationed.

Our military commanders at home and overseas depend, on a daily basis, upon the advice and counsel of uniformed attorneys as to the legal implications of both peacetime and combat operations.

As a part of the Departmental participation in interagency study groups, military attorneys take part in the preparation and review of policy option studies directed by the National Security Council.

The military lawyer is also involved in a continually expanding preventive law effort, and legal instruction is being expanded in

military service schools. In this connection, it is important to note the essential role which our attorneys must fulfill in providing adequate training in the law of Land, Naval, and Aerial Warfare and the provisions of the Geneva Conventions.

Military attorneys have long provided basic legal services and advice to military members, dependents, retired personnel, and certain other authorized individuals with respect to their personal affairs. During Fiscal Year 1971, 2.6 million legal assistance interviews were recorded. Historically, these legal assistance services have been limited and did not include the preparation or filing of civil lawsuits nor appearance in the civil courts. In a 1969 amendment to the Economic Opportunity Act, the Congress expressed its sense that the Office of Economic Opportunity might provide civilian court representation to Service members and their dependents who were financially unable to pay a civilian attorney fee. Such representation was to be reimbursable by the Department of Defense. It was our belief that we could expand our existing program and render full legal services to this limited class of Service member more effectively, efficiently, and at lower cost. Consequently, a Pilot Legal Assistance Program was undertaken, and results to date appear to bear out our basic assumption. Military lawyers provided this expanded service to qualified personnel in 1830 cases involving 586 appearances in civilian

courts. These cases included such matters as domestic relations, contracts, and consumer claims.

In addition to their expanding role in labor law and in civilian grievance complaints and hearings, certain new fields of law are placing additional demands on the skill of our attorneys. For example, our personnel are engaged in the preparation of environmental impact statements and numerous legal proceedings involving pollution and other environmental problems. Commanders consult military lawyers on a daily basis on matter arising out of race and human relations, protest, dissent, and conscientious objection.

The Military Justice Act of 1968 and court decisions requiring additional lawyers in the inferior courts-martial and in other aspects of the administration of justice have added substantially to the requirements placed upon our personnel.

Administrative discharge legislation passed by the House as H.R. 10422 and pending before this Committee with DoD support would, if enacted, further increase the demand for uniformed lawyers. Because of these trends, it has been Departmental policy to provide lawyer counsel to the respondents in adverse administrative actions, particularly discharge proceedings.

We believe that this trend is in keeping with American philosophy of fair play and equal justice. However, the demands upon our corps

of military attorneys are continually mounting, while their numbers and experience level are decreasing.

As you are aware, the statutes of the United States require that the military community maintain a separate judicial system to ensure the preservation of good order and discipline and to maintain an effective military force. The court-martial system is the equivalent of the criminal law system in the civilian community. Under the Uniform Code of Military Justice, the lowest type of punishment is under Article 15 and is known as Non-Judicial Punishment. In addition, the Uniform Code establishes courts called summary courts-martial and special courts-martial as well as the general courts-martial which handle the more serious offenses, including murder, rape, and other serious crimes.

During Fiscal Year 1971, military attorneys conducted and participated in 76,792 trials by court-martial. In addition, there were 419,439 Article 15 cases, many of which involved participation by military attorneys.

There is also a system of appellate military courts which, with the exception of the 3 civilian judges appointed by the President to the Court of Military Appeals, is fully staffed and operated by military lawyers.

We are intensely proud of our efforts in the military justice field and are happy to report that knowledgeable and experienced lawyers

in the civilian community have repeatedly acclaimed the fairness, efficiency, and effectiveness of the military court system. The stature of military trial and appellate judges is confirmed by the fact that special court-martial judges have been accepted as members of the National Conference of Special Court Judges, general court-martial judges as members of the National Conference of Federal Trial Judges, and military appellate judges as members of the Appellate Judges Conference. Military judges participate in all activities of the Section on Judicial Administration of the American Bar Association.

I have attempted in this brief outline form to provide a summary of the military law practice. As I mentioned at the outset, this basic understanding of the duties of military lawyers is essential to the considerations which follow.

In summary therefore, it is clear that the military lawyer bears a heavy responsibility which involves billions of dollars annually and which is inextricably interwoven with our military preparedness and, ultimately, national security itself. It is thus imperative that we maintain a team of top quality, seasoned attorneys with the necessary depth and breadth of experience, technical know-how, and mature judgment. To permit the Department of Defense to operate with less than top quality legal services is, I submit, unthinkable, and it is the U.S. taxpayer who would ultimately suffer the consequences of such folly.

The inability to procure and retain a career force is a problem of grave concern. A Department of Defense study of military lawyer procurement, utilization, and retention, completed in October, 1968, found that, at that time, the military services experienced no major problems in the initial procurement of junior military lawyers, since the pressure from the draft produced an adequate number of applicants to fill vacancies. Major problems were found with respect to retaining seasoned military lawyers beyond the period of their initial obligation.

What is more, the career force of experienced lawyers has deteriorated drastically since 1968. The reduced pressure from the draft has already been reflected in both the number and quality of applicants who seek commissions as military lawyers. It is now absolutely essential that the Congress considers the problems the Department is encountering in both initial procurement and our long-standing difficulty in retention.

I turn first to the issue of retention. The retention problem with respect to military lawyers has reached crisis proportions. Unacceptable losses have occurred and are continuing to occur. Failure to curb the constant outflow of experienced lawyers will, in the immediate future, drastically impair the ability of those remaining lawyers to provide necessary legal services within the Armed Forces.

The force structure of the Judge Advocate Corps of each of the Services is determined by the military departments based on the

peculiarities of the overall structure of that department. There are a great variety of factors which must be considered, and the structures are reviewed by manpower analysts on a regular basis.

I am fully satisfied that the authorized attorney force structure for each Service represents an honest evaluation of the requirements for a properly balanced and experienced force. The authorized strengths are not top heavy either in numbers or rank considering the quality of legal service we strive to provide. Our senior military commanders are increasingly aware of the need to consult with legal experts on a regular basis. They are not willing to accept less than top-flight legal officers with substantial military legal experience and the rank and years of service that accompanies such experience.

At the present time, the DoD authorized mix between career and non-career lawyers averages 54.8% career attorneys. The Army requires a mix of 47% career force, while the Navy, due to a high number of independent billets, requires 63% of its attorney force to be career personnel.

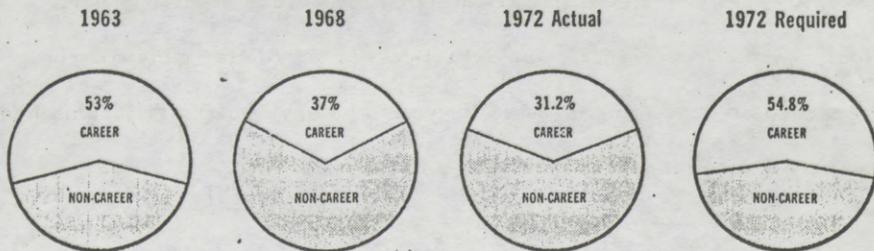
In recent years, the initial obligated tour for lawyers has been four years. Accordingly, the actual career force may generally be regarded as consisting of those lawyers who have voluntarily remained on active duty into their fifth year and beyond.

It should be noted, however, that some obligated tour officers who extend into their fifth year are motivated by opportunities for which they are required to extend their service, e. g., assignment to Europe, and are not really career officers.

To maintain a career force of the required level, an adequate number of junior officers must be first induced to remain beyond their obligated tour each year and then, retained. During Fiscal Years 1968, 1969, and 1970, the Department of Defense was able to attract into the career force only about 42% of the total number of junior officers considered necessary for retention. Today, the total authorized JAG force DoD-wide, excluding 16 general officers, is 3,975. The number of career force lawyers needed from that total is 2,179 (or 54.8%). The total number of career lawyers actually on board is 1,241 (or 31.2%), 938 short of the total needed. In the past 9 years, the actual career force has dropped from 53% to 31.2%.

### DOD JAGC CAREER FORCE

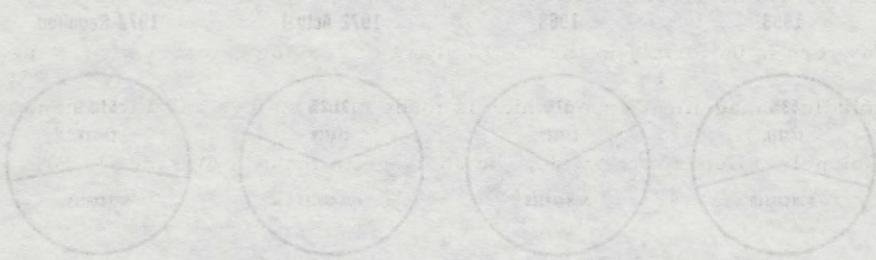
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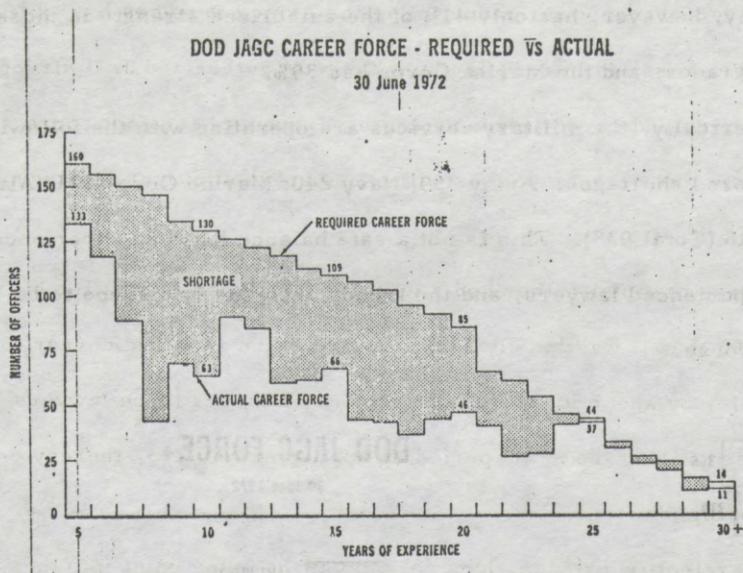


The recent manpower reduction in the Armed Services has, of course, resulted in reducing both the total authorized JAG strength and the required career force strength. However, it is not correct to assume that such reductions will eliminate the critical shortage problem.

Today, the total authorized JAG force DoD-wide is smaller by some 405 than it was in July 1969. Although the required career force is smaller by about 50, the actual number of career force lawyers has decreased during the same period by approximately 113, thereby enlarging the existing shortage.

The retention problem does not stop at the entry point into the career force. It extends deep into the career force itself. Shortages exist in all grades of officers who have five through 24 years of service.



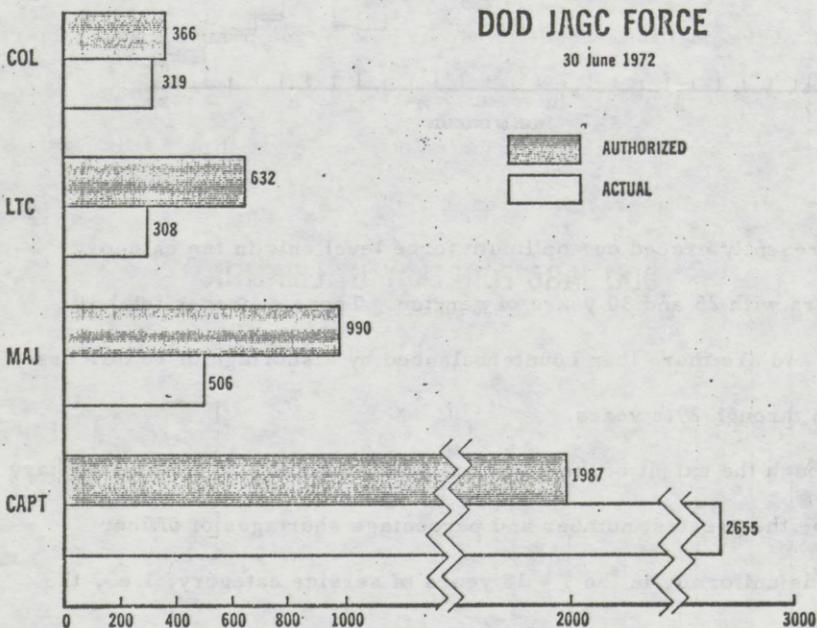


We presently exceed our optimum force level only in the category of officers with 25 and 30 years of service. These overages total 10 officers and are more than counterbalanced by a shortage of 16 officers in the 26 through 29th years.

Although the extent of the retention problem varies within the military services, the greatest number and percentage shortages of officer lawyers is uniformly in the 7 - 18 years of service category, i. e., the middle management group which is made up of Majors and Lieutenant Colonels. Department-wide, the shortage in these two grades is 50%.

The Army, however, has only 41% of the authorized strength in those critical grades, and the Marine Corps has 39%.

Numerically, the military services are operating with the following career force shortages: Army 359; Navy 240; Marine Corps 121; Air Force 218 (Total 938). This is not a safe balance between experienced and inexperienced lawyers, and the trends show the imbalance to be getting worse.



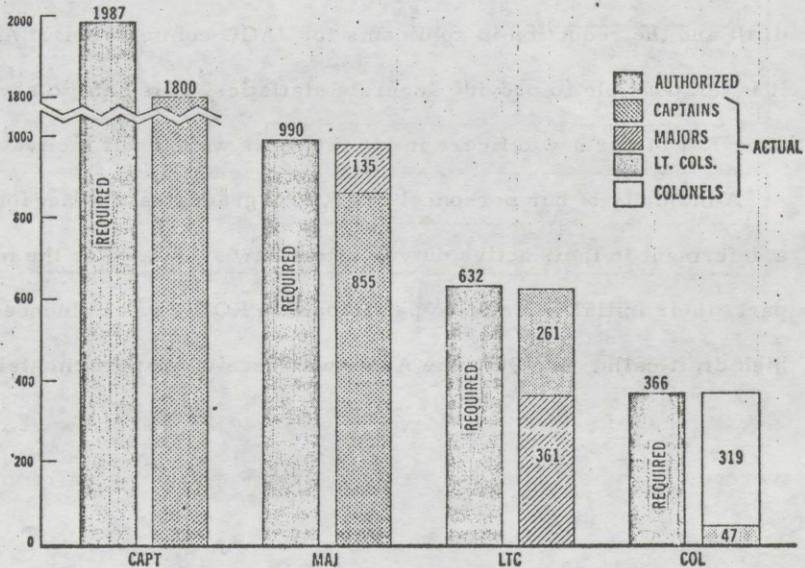
At the end of the last fiscal year, every Service JAG Corps was understrength in every grade except 0-3 (Cpt/Lt). There were no overages in any of the senior ranks, and, due to recent retirements

and promotion slowdowns, we are now showing an appreciable shortage of 12.8% in the rank of 0-6 (Col/Cpt). The serious shortages in the middle grades are now beginning to advance into the upper grades--as they will inexorably do with the passing years.

As the shortages in the career force have continued to grow, we have been required to place inexperienced officers in positions of greater responsibility. More than 58% of the positions which should be manned by lieutenant colonels are filled by officers of lesser rank and experience. Over 85% of the positions which should be held by majors with 6 - 14 years experience are presently manned by captains, many with less than 3 years experience. In some cases, very junior officers are filling positions that call for an officer two grades senior in rank.

### DOD JAGC FORCE BY UTILIZATION

30 JUNE 1972



Projecting our continuing losses into the years ahead indicates that there will be, in the very near term, an unacceptably small number of experienced attorneys to provide legal services and to supervise the work of young officers who have recently been admitted to practice.

Although the 1968 DoD lawyer study found no major problem with initial legal officer procurement, that finding is no longer valid. The Department of Defense was operating with an overall lawyer shortage of 187 officers at the end of fiscal 1972. In previous years, such shortages would have been made up by new acquisitions who are commissioned in the Fall after admission to the Bar. This Fall, we are presented with the very real possibility that not all of our vacancies will be filled.

There has been a direct correlation between the move to zero draft and the reduction in applicants for JAGC commissions. Although it is not possible to provide accurate statistics, it is safe to say that over 75% of our new officers in recent years were draft motivated.

A majority of our personnel are ROTC graduates who accepted a deferment in their active duty to attend law school. For the most part, their initial decision to participate in ROTC was influenced by high draft calls. In 1963, the Army was receiving approximately

10 applicants for every JAG vacancy. In 1968, the applicant to vacancy ratio for the Army was 6 to 1. Today, the ratio is 1.3 to 1. This situation greatly restricts selectivity and raises the possibility that not all of the vacancies will be filled, inasmuch as not all applicants ultimately accept the tender of a commission.

During the years when service as a military lawyer was a more attractive alternative, and more highly sought after, the initial obligated tour was raised to 4, and in some cases 5 years, and yet we were still able to attract top law graduates who either had already incurred an ROTC obligation or were facing induction as an enlisted man and preferred 4 years as an officer.

In the forthcoming zero draft climate, coupled with general unpopularity of military service in the eyes of many college students, it will be increasingly difficult to attract a sufficient number of legal officers, let alone acquire the exceptionally high quality graduate that has been available in recent years.

In spite of substantial recruiting programs, (which incidentally continued even during the years of high application rates) and special efforts to attract female and minority group attorneys, we are not at all sanguine concerning our acquisition picture. The Army is presently planning to reduce the initial obligated tour to 3 years in an effort to boost recruitment. Last year there was an aberration from which the

Army JAG Corps recruitment effort benefitted. <sup>the</sup> ~~That~~ Army had an added requirement for attorneys which it could not fill and the Air Force had deferred a number of ROTC graduates for law school attendance. In previous years the Air Force JAGC had been able to accept such deferred personnel routinely as legal officers and these officers expected to serve in legal billets although they had never been promised such assignment. The Air Force did not require all of these officers and many of those who could not be accepted as Air Force JAGs were given interservice transfers to the Army JAGC. This was an unusual case which will not be repeated. In fact, the Air Force required 213 ROTC graduates for entry into law school this fall and only had 154 applicants.

In view of the existing shortages in the career force which only the passage of time can fully correct, it is all the more essential that high quality personnel be recruited initially. Yet, a review of the files submitted by this year's applicants reflects far fewer candidates with academic distinction or law review experience.

Given the incontrovertible and uncontested requirement for quality legal services for the Armed Forces and recognizing the chronic, critical and rapidly deteriorating situation with respect to lawyer retention, coupled with the recent and drastic apparent decline in quality and quantity of applicants for commission, the nature of the problem that brings us to this hearing is all too obvious. We are convinced that an urgent remedy is absolutely imperative.

There have been a number of actions proposed which would individually and in combination help to relieve and perhaps ultimately remedy our uniformed lawyer crisis. The 1968 DoD study, consistent with its finding that initial recruitment was not then a major problem, concentrated on proposed remedies to the retention crisis. The study group made eleven specific recommendations. Five would require legislative action: (1) removal of the appropriations act rider which prohibits expenditure of funds for basic legal education; (2) establishment of a separate promotion system for all military attorneys; (3) authority to retain officers in grade O - 6 beyond mandatory retirement dates; (4) granting 3 years constructive credit for purposes of pay, promotion and retirement; and (5) the use of special incentive and retention pays.

The other recommendations, to the extent available resources permit, have already been implemented. These included such matters as improved assignment policies and career counselling, expanded efforts in continuing legal education and participation in professional activities and associations, relief from administrative non-legal duties and expansion of the range of services that legal assistance officers are authorized to perform.

I have already mentioned that the services have intensified the recruiting effort in anticipation of the effects of the termination of the

draft on our volunteer rate. Our other procurement programs which depend largely on attraction of in-service personnel into the legal branches (the Excess Leave Programs) have been expanded. Government financed legal education would, of course, be an aid to recruitment, but, even if such authority were granted today, it would be 3 - 5 years before these personnel would be on board in sufficient numbers to begin to alleviate our problems.

After intensive study and review the Department of Defense, with the unanimous agreement and support of the Military Departments, concluded that the common denominator in the various remedies proposed for both acquisition and retention problems is increased financial incentives.

The legislation you are considering today is believed to be the single means most likely to have a favorable, immediate, and appreciable impact on the retention problem. It also has features which should assist markedly in meeting the recruitment problem.

Since we have proposed financial incentives as the answer, we would like to explain to you how we have reached that conclusion. Financial incentive is not the only compensation from the practice of law either within the civilian community or in the military service. Our career force people must be dedicated to the service of their country and satisfied that their service is a worthwhile contribution

to the national security. A person with this motivation can be expected to forsake certain of the amenities of civilian life and accept such burdens as family separation and frequent dislocations. It would, however, be self-defeating to have available for important legal counseling only those lawyers who are unable to command in civilian life the level of salary necessary to support their families in a manner consistent with that of their professional peers.

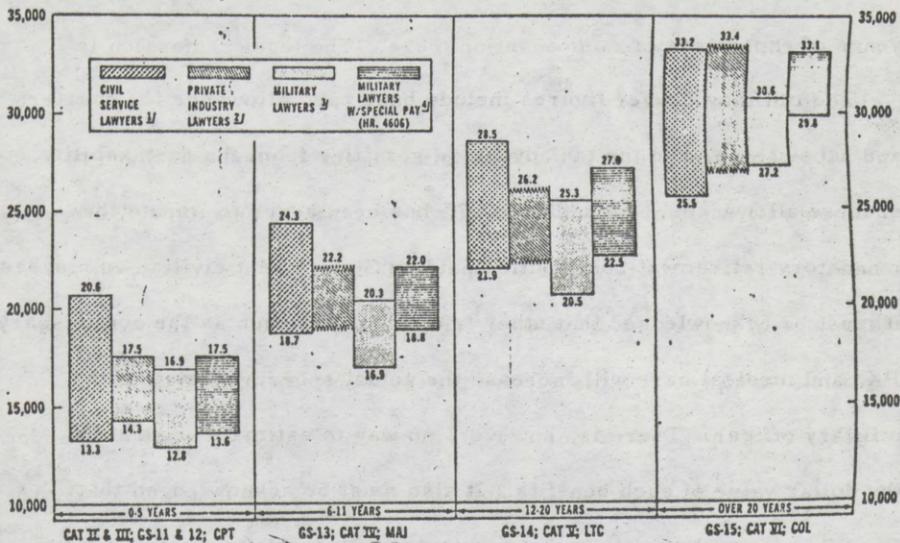
Study after study, survey after survey, and numerous in-depth interviews with resigning military attorneys establish incontrovertibly that the single common reason for leaving has been either immediate or very near term prospects for substantially greater financial rewards in the private practice, in civilian industry, or in other agencies of the Federal Government:

It must be understood that the application of money to this problem is not in the nature of a special gift to a limited class. It is designed solely to permit the Department of Defense to compete, on a reasonable basis, with the civilian sector and other Government agencies for the services of quality professionals. The drive toward pay comparability for the military services which resulted in substantial pay raises and a raise in Quarters Allowances in late 1971 has placed the services in general on a reasonably competitive footing with the civilian sector.

There will, however, always be certain critical skills which are readily transferable to the civilian community and which can command substantially greater compensation there. The legal profession is clearly in this category.

It is not possible to provide meaningful comparisons between the compensation of our attorneys and those in private practice. We have been unable to acquire data, applicable nationwide, relative to the earnings of private attorneys. There are, of course, great variations in such earnings depending upon the geographic location and the specialty of the practitioner, but I am convinced from personal experience that the financial opportunities for the competent and industrious attorney are far greater in private practice. Although it is understood and accepted that the Government will not be able to compete for the top-dollar private practitioner, our salaries must be comparable with other Government agencies and competitive with those of private industry employers. Comparison figures in those categories are available.

## COMPARATIVE ANNUAL SALARY RANGES



1. January 1972 pay scale. Most newly admitted lawyers enter civil service at GS-11 and are promoted to GS-12 after one year.
2. Average annual salaries, Bureau of Labor Statistics, Department of Labor, June 1971. NOTE: The peak of the private industry column is an average. There is no ceiling on the range.
3. January 1972 pay scales. Figures Equivalent Salary which includes base pay, quarters and subsistence allowances, tax advantage because allowances are non-taxable and an imputed retirement contribution of 7%.
4. Chart illustrates Equivalent Salary ranges with special pay added. H.R. 4606 and S. 704 would authorize monthly special pay of \$50.00 for captains, \$150.00 for majors and lieutenant colonels and \$200.00 for colonels and above.

**NOTE:** The chart does not illustrate bonus provisions of H.R. 4606 and S.704 because basic pays and terms of contract vary. Examples:

A. 0-3 with 4 years active service and 7 years for pay as result of ROTC participation accepting a 3 year extension would receive a bonus of \$1942.80 per year for 3 years. (Total \$5,828.40).

B. 0-4 with 9 years active service and 12 years for pay as result of ROTC participation accepting a 3 year extension would receive a bonus of \$2,352.60 per year for 3 years. (Total \$7,057.80).

The salary ranges represented on the graph compare attorneys holding positions which call for similar degrees of responsibility and years of experience.

The military lawyer figures include base pay, allowance for quarters and subsistence, and the tax advantage resulting from the nontaxability of these allowances. An additional 7% has been added to impute the mandatory retirement contribution paid by Government civilian employees. It must be acknowledged that other fringe benefits such as the commissary, PX, and medical care will increase the actual spending power of the military officer. There is, however, no way to estimate accurately the dollar value of such benefits. It also must be acknowledged that Civil Service and private industry attorneys also enjoy certain fringe benefits which are not exactly measurable.

Recognizing the omission of fringe benefits from the calculations, it is still clear that there is presently a substantial disparity in annual compensation ranges from the very start of a service career.

The present military attorney compensation range begins below and terminates substantially below the ranges for civil service lawyers and private industry lawyers. The only exception is that the civil service range begins below the military after 20 years.

We will discuss later, in some detail, the provisions of the proposed bill, but even with these proposed incentives we will not reach full comparability in salary ranges. In no case will the peak of the military

lawyer pay range exceed that of the civil service lawyer. It will be roughly comparable to the average salary of the private industry lawyers. We believe, however, that these incentives will place us in a more competitive position.

It is also important to note that the comparison of positions held (i. e., GS-13 as equivalent to O-4) does not, in many cases, provide a completely accurate picture. Our actual experience indicates that our military lawyers are highly sought after by other Government agencies, consequently our people with four to eight years of experience and serving in the grades O-3 and O-4 are often hired into positions at the GS-14, and in some cases GS-15 level. This kind of competition is extremely difficult to meet.

On the other hand our starting salaries, especially for those officers who have prior service as a result of their participation in ROTC, are believed to be competitive with starting salaries for new graduates who enter private practice with an established law firm. (There are exceptions, of course, for top graduates and top firms in major metropolitan centers). There are also cases where a young officer will actually take an initial cut in pay when he leaves the service for a private law firm. He does this in expectancy of greatly increased rewards (20 thousand plus) in the near term (3-5 years) which will more than compensate for a lean year or two while awaiting his rise from associate to junior and then senior partner in the firm.

Obviously all attorneys do not make large salaries in private practice, but all of our young attorneys expect to, and because of the high quality of our acquisitions in recent years it is reasonable to believe that most of them will be highly successful. Certainly they have not been clamoring to return to the military service.

Why do we believe that increased financial incentives will be successful in alleviating the lawyer crisis? There is no guarantee that any remedy will be fully successful, but we believe this legislation will be extremely persuasive in influencing large numbers of very good lawyers to make a career of the military service. The officers themselves have told us this, time and time again.

There are a number of young military attorneys who have postponed making a career decision in anticipation of the passage of this or similar legislation. There have also been a number of informal inquiries from recently released personnel who have indicated an interest in returning to active duty should this bill be enacted. By and large our military lawyers and their wives have thoroughly enjoyed most aspects of their service experience. The competent young officer, given the present pay disparities, feels that he is cheating himself and his family if he fails to make the grab for the brass ring. Increased financial incentive, together with the intangible satisfaction which will accompany acknowledgment that his services are essential

to the operation of the Department of Defense, will, in our judgment, make a significant impact on the quality and morale of our legal officer force.

The proposed legislation has two separate but compatible and complementary features. It establishes a monthly special pay for military attorneys which will provide them with a regular monthly income more nearly commensurate with that commanded by their civilian contemporaries in the Federal Government and in private industry. It also provides for payment of a variable continuation pay for uniformed lawyers who agree to extend their services beyond their initial obligated tour. Let us first analyze the continuation pay.

Under the bill the Department of Defense would promulgate regulations providing for a system of bonus payments to lawyers who agree to extend their active service for not less than three nor more than 6 years. The bonus is to be a one time application of cash at a critical decision point. The amount of the bonus would be the equivalent of two months base pay for the grade in which serving at the time of the agreement for each year of additional service. This bonus agreement may be entered into at any time between the completion of the initial obligated tour and the completion of the tenth year of commissioned service. The bonus payment would be made in annual or semiannual installments over the period of the service contract. The bill also has a repayment provision in case the officer fails to complete the

additional service. Although our present critical shortages in the 5 and 10 year range will necessitate the wide utilization of the bonus initially, it is not intended that it be used without consideration of quality control or sound management practices. Certainly some officers will not be accepted for continuation bonuses at all and others may not be accepted for the maximum period. Those accepted for the maximum bonus would realize the equivalent of a full years base pay spread over the following six years. For a Major with six years of service this would amount to approximately \$12,000 at the rate of \$2,000 per year.

The principal rationale for the bonus payment is, of course, to induce the young officer to make that critical initial decision to enter the career force. The termination of eligibility at the end of the tenth year is consistent with this rationale. Although we continue to lose some personnel by resignation even after the tenth year, we realize that their "investment" in the 20 year retirement option begins to act as a substantial counterweight once the midpoint is passed.

Nevertheless, it is obvious that for the initial career decision to endure, and even as an important factor in inducing it in the first instance, the financial incentives beyond the ten year point must be competitive and offer sufficient inducement if we are to retain the needed number of experienced officers in the middle and upper management groups. The special monthly pay is intended to provide this necessary incentive.

The special monthly pays established in the bill are in the amounts of \$50.00 per month for 0-3; \$150.00 per month for 0-4 and 0-5, and \$200.00 per month for 0-6 and above. The modest additional incentive in the rank of 0-3 may not, in the light of the acquisition problems which have magnified subsequent to the development of this legislation, be a substantial factor in recruitment. It does, however, provide for comparability with civil service lawyers pay. The increase to \$150.00 per month at the rank of 0-4 comes at approximately the time (presently about 6 years of service) that the compensation gap begins to widen between the military and civilian practitioner.

It has been suggested that the payment of special monthly pays to senior officers, especially those beyond their 20th year of service, will only serve to retain ineffective officers and result in a slowdown in promotions, and, that, at that point, a reverse incentive might be more desirable. This is simply not a valid consideration. The JAGC career pattern is based on 30 years of service. We already experience sufficient additional losses at the 20 year retirement point to preclude a top-heavy career force. A sufficient number of senior officers must be maintained beyond the twentieth year. To ask an officer to accept a substantial cut in pay by terminating the monthly pay roughly at the age of forty-five when his civilian contemporaries are at their peak earning power and his dependents are in or approaching college, is to encourage such officers to terminate their

service at 20 years and begin a second career in civilian life. Some will continue to do this even with the additional pay in order to commence a second career while they are still in their mid-forties. The Department previously considered seeking an additional continuation bonus at the 20 year point but concluded that the monthly pay should be a sufficient inducement when coupled with the prospects for promotion to top rank and challenging assignments to positions of very great responsibility.

Both features of this bill should be a substantial boost to the recruitment effort. As indicated earlier our initial salaries, especially with the monthly pay added, place us in a competitive position for the services of new law graduates. The additional incentives in terms of the bonus and the increased monthly pay at roughly the four and six year point will largely close that wide compensation gap that begins to appear after 5 or 6 years in practice. The young law graduate is not so naive as to be bought by a competitive starting salary alone. He is well aware of the expectancies of a successful lawyer in civilian practice, and we must be able to show him that his pay, allowances, fringe benefits and retirement program are competitive over the long haul. These proposals will permit the Department to compete.

This legislation is in no way extravagant and is genuinely believed to be a realistic estimate of needs. The costs of this legislation are quite modest in relation to the expected benefits and have been included

in the fiscal 73 budget estimate of the Department of Defense. The first year costs have been computed by applying current strength figures against the authorized monthly pays and by calculating the average yearly bonus amount for all officers in eligible year groups to whom the services expect to offer continuation agreements. Based on our current strengths the first year cost would be approximately 4.9 million. Future yearly costs were computed on the assumption that the authorized force level remains constant, and that the required career force rank structure will be achieved. On this basis, the maximum future yearly costs are not expected to exceed 6.9 million dollars. As was indicated earlier in my statement, the military lawyers save the Government many times more each year in direct expenses than the cost of this bill. The improvement in manning quality and experience level which this bill would provide can directly increase such savings. Should the caliber of legal services be permitted to decline, however, the savings attributable to high caliber legal counseling will also inevitably decline.

As you are aware, this proposal has been considered and discussed for a number of years. Each year the enormity of our problem has magnified and each year our proposed solution has gathered additional support. Our manpower and compensation experts in the Department

of Defense and the separate services are in accord. The military chiefs and the civilian Secretaries of the Military Departments unanimously concur in the need for remedial action.

Both the American and Federal Bar Associations have studied the problem and the proposal at length and have unreservedly endorsed its adoption. This bill has Administration support and is a critical item on the Department of Defense legislative program for this Congress. The Department of Defense urges its prompt enactment.

Gentlemen, this concludes my prepared statement. With me today are Lt General Leo E. Benade and the Judge Advocates General of the Armed Forces. We will be happy to respond to any questions you may have.

## STATEMENT OF GENERAL GEORGE S. PRUGH, JUDGE ADVOCATE OF THE ARMY

Mr. Chairman and Members of the Committee: I am Major General George S. Prugh, The Judge Advocate General of the Army. It is a pleasure to appear before this Committee to testify concerning this proposed legislation.

Gentlemen, the last several years have been extraordinarily busy ones for military lawyers. Our mission since World War II has resulted in steady growth of the military lawyer's responsibility and his value to the Armed Forces. As law itself in America has grown, become more complex, reached into new areas, and affected more persons, military law has had a corresponding experience. Today, in almost every facet of military life and environment, commanders and staff officers are compelled by practicality and common sense to rely heavily on the advice of military lawyers. The stakes are high in terms of what is and appears to be just, is legally correct, and are sound courses of action for the Army to take. Actions of military lawyers, and actions taken upon their advice, impact directly and indirectly on millions of citizens, on our services, on attitudes towards our institutions, and on the service budget. Much more than the civilian practitioner's, the military lawyer's advice receives close public scrutiny, and, because of the oftentimes adversarial nature of legal work, sentiments and feelings are often inordinately aroused concerning these matters. The heavy demands placed on the Army and resulting turbulence in the last few years have been fully shared by military lawyers. Litigation against the services is at an all time high; government procurement actions call for increased legal attention; environmental law is just beginning to get its deserved attention; and the Military Justice Act of 1968 has substantially increased our mission.

Although I had just previously been admitted to the bar, when I first became a Judge Advocate 24 years ago it was not necessarily to be a professionally qualified lawyer in order to serve as a Judge Advocate. That, of course, has long since been changed. Nevertheless, substantially all of the Corps' career force in my early days were lawyers who had had several years of practice before coming into the Army. In the field office where I first served after being admitted to the bar, the other Judge Advocates, about 10 officers, had been private practitioners. These men were teachers as well as polished lawyers. I was the only neophyte. I had plenty of guidance at each step of my development in the law and great pains were taken, as a matter of course, in teaching me the considerable skills required even then of a lawyer in the Army. The required skills are much more formidable today. Probably most people who think of Judge Advocates visualize a counsel in a military court. This remains generally true of our junior officers. It is not true of our career force, from whom we expect expertise in the legal intricacies of all stages of government procurement, including not only appropriated fund procurement but "club and mess" type nonappropriated fund procurement. We expect expertise in country-to-country negotiations involving our forces and bases abroad. We expect expertise in the law of armed conflicts, ranging from wars among many nations down to what the law should be to protect the innocent and the combatants in internal wars. We expect expertise in the legal complexities of taxation and utility rate-making, in the pleading and practice procedures of the Federal civilian courts, in labor law, in environmental law, in land law, in fiscal law, in patents, in contract disputes. And we believe the Government has a right to expect its legal officers to propose needed improvements and changes in the law to keep it fair, effective, and efficient. These burdens, these service opportunities for military lawyers, are far more than what a military lawyer faced just a few years ago.

With this general background. I would like to review the Army's Judge Advocate personnel situation.

The Judge Advocate General's Corps is experiencing a severe retention problem. We now have 1,623<sup>1</sup> officers stationed throughout the world. Of this total, approximately 1,200<sup>1</sup> are junior officers, serving four-year or other periods of ob-

<sup>1</sup> As of July 31, 1972. Source: JAGC Updated Personnel Roster.	
Total officers-----	1726
Excess leave-----	103
	-----
	1623
Over 4 years (less obligated tours)-----	440
	-----
Total junior officers-----	1183

gated service. Frankly, most of these young men joined our Corps because they prefer to practice their profession rather than to take their chances with the draft or serve in another branch. They do a fine job for the Army and the country, and I am proud to be associated with them. Unfortunately, almost all leave the Army upon completion of their service obligations.

In addition to our junior officers, the Army has 440 officer-lawyers who have completed their obligated service and have at least four years' experience. Although many of these lawyers will leave the service before they are eligible to retire, they are regarded as our "career force." It is the highly unfavorable ratio of past experienced attorneys to inexperienced junior officers, only 1 out of 4, which most concerns me.

The four charts provided to the committee show the present personnel situation. Chart A illustrates the decline of the career force during three different fiscal years. It shows how the experience level has deteriorated to a dangerous point.

In my judgment and having in mind the varying levels of responsibility at which Judge Advocates serve, half of the total JA force should have more than four years' professional experience. I base this upon close observation of the time it takes to develop expertise adequate to represent the United States' interests in the quantities needed by force of the size projected for the US Army now and in the foreseeable future. As you can see, we now fall far short of that requirement.

Chart B shows the adverse position of the Judge Advocate General's Corps compared with other branches of the Army. As of 31 May 1972, the Corps was 51 percent short of its authorized strength in field grade officers, and 58 percent short in the critical grades of lieutenant and colonel and major.<sup>2</sup> These figures represent increased shortages of 22 and 27 percent respectively since September 1969. I can assure you that it is an extraordinary experience to head a law firm of the size and responsibility of the Army's Judge Advocate General's Corps with so few experienced lawyers to advise, to teach, to lead, to plan, to manage, and to develop the eager young men who come to us fresh from law school and without much if any idea of the Army's problems, mission, customs, procedures, or its law.

Chart C depicts our actual career force compared with our requirements. The number of officers on active duty in each year group is projected against the number we believe to be required to carry out the Army's mission. To maintain the minimum acceptable career force, our experience shows that at least 55 captains per year must elect to remain on active duty after they complete obligated service. We come nowhere near that goal. In 1972, for example, 12 lawyers decided at that point in their service to stay with us.<sup>3</sup> You can see that a serious imbalance has developed in the experience level of the Corps, with most serious deficiencies in the valley representing the 8 to 23 years' service group. The chart also illustrates how our career force is ageing; over one-third of our field grade officers are now eligible for voluntary retirement. In fact, about 30 experienced military lawyers retire each year. Soon all of our officers with World War II experience will have left. As you can see from the chart, there is an insufficient number of officers coming up the ladder to replace these experienced attorneys. One of our senior staff judge advocates recently observed that "it is increasingly evident that our junior officers are hindered in their professional development because of insufficient supervision, guidance and assistance from experienced officers. As a result, the qualifications of our present young career officers may not measure up in the future to the qualifications possessed by our present senior officers."

This critical personnel situation is the result of many circumstances. Some have long-standing historical roots; others are of more recent origin.

One significant factor is the greatly increased cost of an education in law today. Whereas many of our senior officers today went through law school on the post World War II "GI Bill," with tuition costs totalling only a few hundred dollars and paid for almost completely by the Government, today's young lawyer has had to spend about \$15,000 out of his own or his family's income. A great many young lawyers today begin their law practice, in or out of the service, deeply in debt. The urge to wipe out this debt is a strong influence against retention in the service. The retention figures shown in Chart D indicate just how dismal our experience has been. We retain fewer than 7% of our young officers. Less than one in fifteen stay for 20 years.

<sup>2</sup> Source: OPD STAT 7, 31 May 72.

<sup>3</sup> Retention not tied to duty, school, et cetera.

You have heard about junior officer retention and senior officer retirement problems as they affect our experience level. Recently, a third area of concern has developed; this relates to career officers who, after serving on active duty for several years, leave to accept civilian employment. During the past three years we have had an alarming increase in resignations from Regular Army judge advocates in the grade of *major*. Only one such officer resigned in fiscal year 1967; eight resigned in 1968; 15 left in 1969; 24 left in 1970; 21 in FY 1971; and in FY 1972, 20 Regular Army officers serving in the grade of major submitted their resignations. When you consider that we have only 160 majors in the Corps, you can see how serious these losses are.

A few years ago we believed that Regular Army officers, usually majors, with over five years' service could be counted upon to serve for at least 20 years. This is no longer the case. More significantly, these losses include many of our finest judge advocates; officers between 30 and 35 years old with five to ten years' service. These experienced attorneys leave the service to accept attractive positions in Government, industry and private practice. They carry away with them invaluable training and know-how—they cannot be replaced in kind by beginning lawyers fresh out of law school. For example, nine of the Regular Army majors who recently resigned were assigned to the Washington area. As a group they averaged over eight years' service; each was an officer of demonstrated ability and great potential. Five took attorney positions in other Government agencies, one as a GS-15, three as GS-14s, and one as a GS-13. The remaining four officers, three of whom are contract specialists, left for private employment: three with leading Washington law firms, the other to become general counsel of a large supermarket chain. In terms of pay alone, these officers *almost doubled* their salary upon leaving the service. These few cases point up our difficult position in bidding for the professional services of quality people.

We lose experienced majors and other officers primarily because they are attracted by higher pay. With the possible exception of retirement rights, military "fringe benefits" are often equaled, and sometimes exceeded, in the civilian sector. The lawyers who leave the Army are not opposed to public service, as such; in fact, almost all report they have found the military practice of law satisfying and challenging. They say, however, that they can no longer accept the financial sacrifice inherent in a career in the Judge Advocate General's Corps.

The full-time practice of criminal law has become both profitable and highly respectable. Other areas of practice have likewise felt the talent squeeze. Hardly a day goes by that my personnel office is not contacted by representatives of Government, industry, private law firms, and law schools in their search for qualified attorneys and teachers.

Of course, our retention problems are not all of recent origin. We have recognized the problem for many years and have been doing all we can to remedy it. In 1958 we supported legislation to provide additional Compensation for military lawyers as a means of maintaining an adequate career force. Unfortunately, that legislation was never passed.

We then turned to other ways of making a career in our Corps attractive and challenging. These efforts continue today. We have an intensive recruiting program; representatives of the Corps visit over 130 law schools each year. A highly personalized career management system has been developed; we offer career patterns in specialty areas such as international law, military criminal law, patents and procurement; educational opportunities in military schools and civilian universities have been expanded; and stabilized assignments are arranged whenever possible. These are but a few examples of our sustained and concentrated efforts to attract career officers. In cognizance of our unique retention problems, the Department of the Army and Department of Defense have given their full support to our programs and policies.

Despite our best efforts, we have been unable to attract the number of career judge advocates we need to meet our minimum requirements. In the last ten years, the Corps has grown, in recognition of our expanding role, from 1000 officers to about 1700, yet we have fewer careerists today than we had 10 years ago. Our field grade strength has decreased from 497 in 1962 to 365 this year. Chart E depicts a utilization situation that should not be allowed to continue. Experienced officers are spread far too thin to provide the guidance our junior officers need and deserve. Our concern goes not only to the number of officers we retain, but to the quality as well. It is now apparent that we are losing some of

our best legal talent. The entire military establishment and the nation will certainly feel the effect of this failure to retain good lawyers.

We cannot expect to retain career attorneys until we become realistically competitive with private practice, industry, Government, and the academic world. The dual features of this bill now under your consideration have been carefully tailored to the specific problem areas we face. The continuation bonus would provide a positive incentive for young lawyers to stay with us. The additional monthly pay would give them long-range career attractions, to include professional recognition, which they now feel are lacking. This feature of the bill would also motivate more senior officers to remain on duty, rather than retire at the earliest possible opportunity.

The budgetary aspects of this legislation need to be a matter of concern. However, the costs of the retention bonus and incentive pay actually would be less than those associated with the present system. The existing process of commissioning and training large numbers of young attorneys, only to lose them when they become most valuable, is wasteful, inefficient and expensive.

The obligated tour officer spends his first year of duty in formal schooling and on-the-job training at an average cost of over \$15,000. This figure includes pay and allowances as well as the costs of the military schooling, travel, temporary duty, and permanent change of station. Spreading this \$15,000 first-year cost over the next three years of the officer's service—when, although inexperienced, he is actually practicing law—means that it is costing the Government approximately \$5,000 per year—above pay and allowances—for each obligated tour officer on active duty. To put it another way: It now costs approximately \$5,000 per year for an inexperienced lawyer; under the bill, it would cost no more than \$2,400 per year for an experienced military attorney.

Thank you for the opportunity to present these views. The Judge Advocate General's Corps' sole desire is to provide the men and women of the United States Army with the best possible legal services. Regardless of the outcome of this legislation, we will continue to do everything possible to achieve this end.

I will be happy to answer any questions you may have.

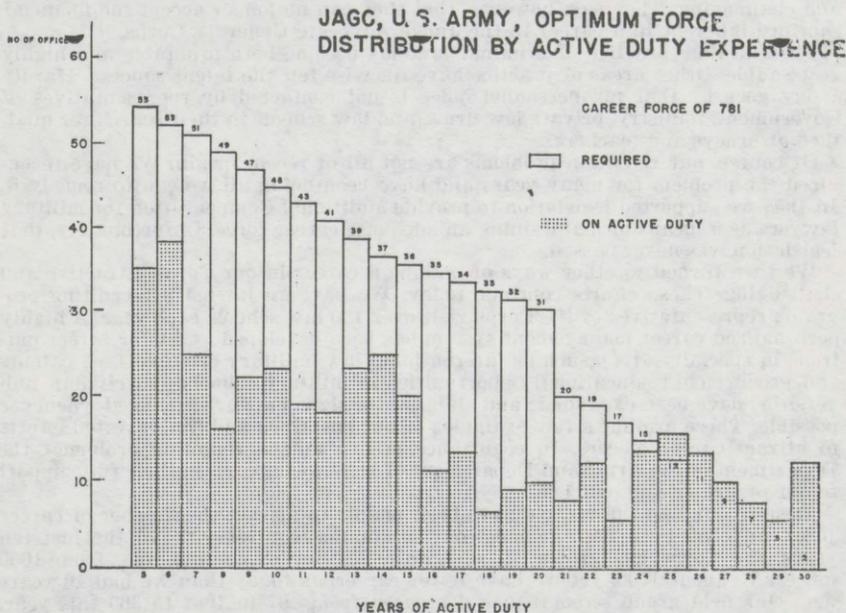


CHART C

# JAGC, U.S. ARMY, BASIC CLASSES-RETENTION

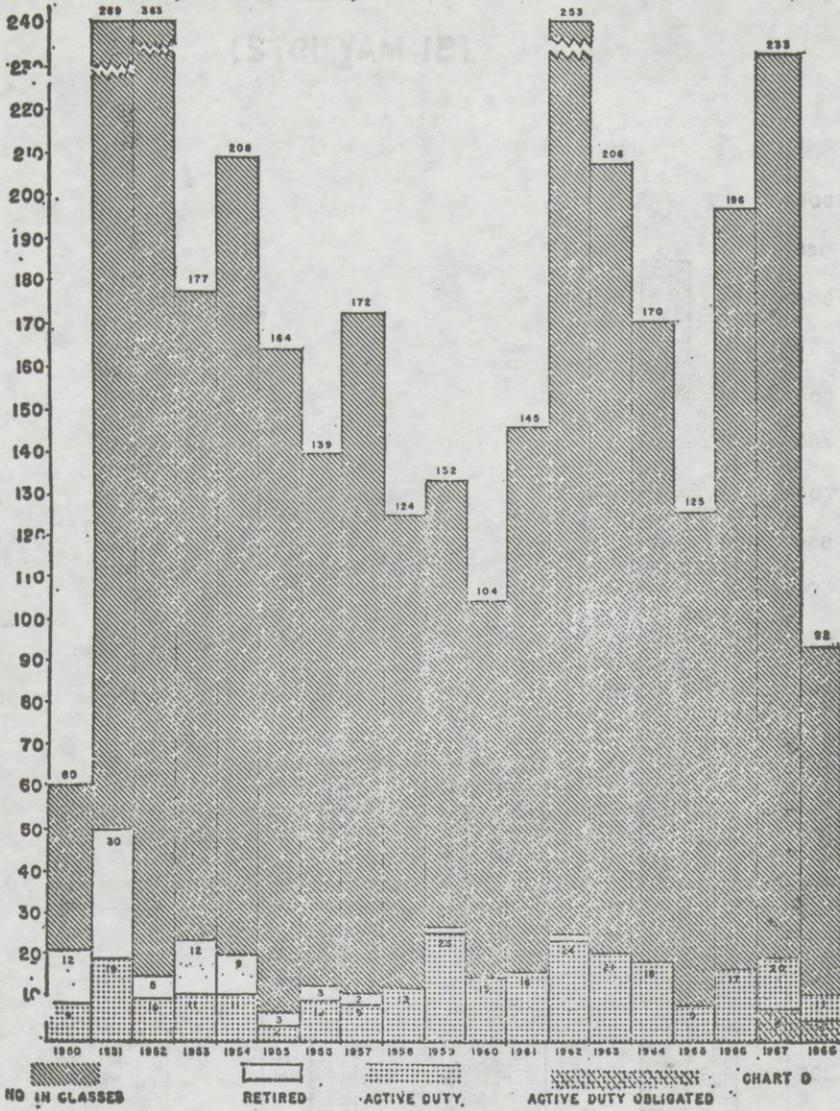
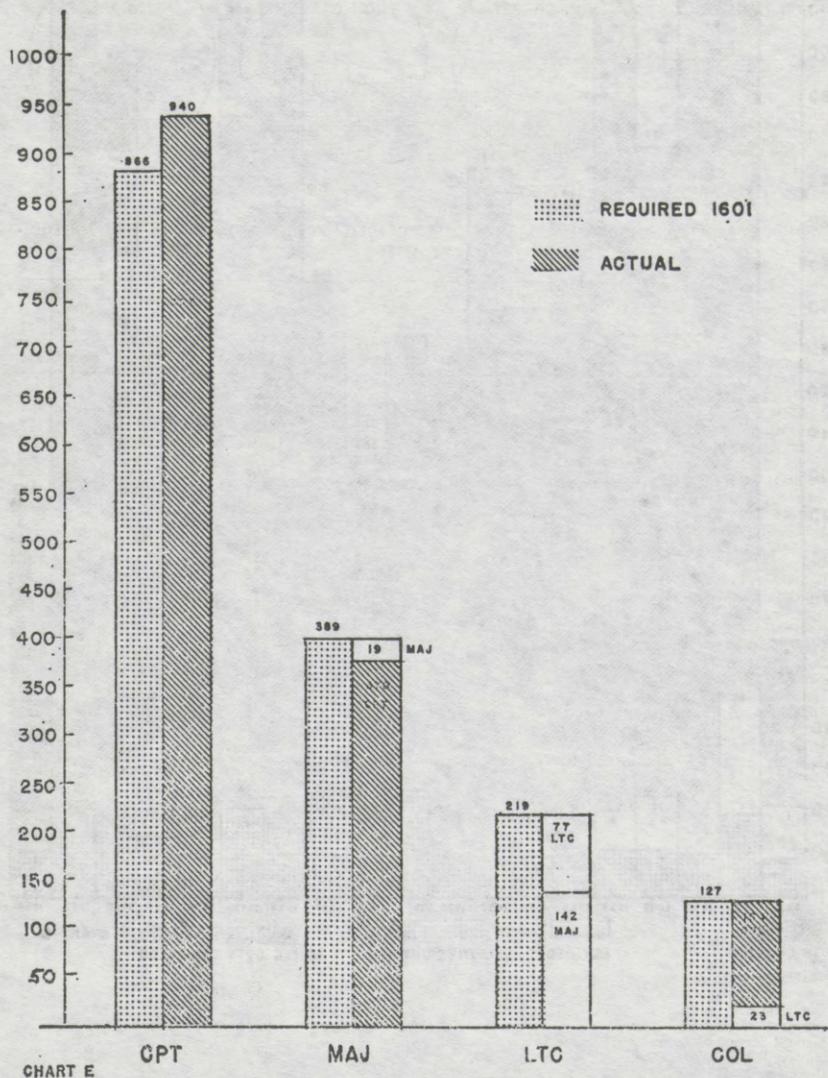
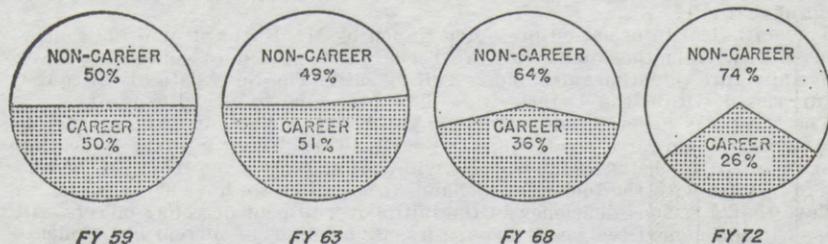


CHART D

# JAGC, U. S. ARMY, FORCES BY UTILIZATION (31 MAY 1972)



## ARMY JAGC CAREER FORCE



U.S. ARMY COMPARATIVE PERSONNEL SHORTAGES (FIELD GRADE OFFICERS)—FROM DCSPER STAT 7 REPORT (MAY 31, 1972)

Control branch	Currently authorized	Actual	Percent of shortage	Percent differences of shortage since March 1971
<b>Colonels, Lieutenant Colonels, and Majors:</b>				
JAGC	735	365	51	+7
Veterinary Corps	269	169	37	+4
Military Intelligence	2,885	1,881	35	+2
Signal Corps	3,112	2,027	35	-3
Adjutant General	1,664	1,097	34	+4
Quartermaster Corps	2,170	1,461	33	+1
Finance Corps	590	401	32	-3
Medical Service Corps	2,188	1,585	28	+4
Engineers	2,645	1,941	27	-4
Ordnance Corps	2,608	1,931	26	+2
Dental Corps	1,029	778	24	+10
Military Police Corps	918	726	21	-5
Armor	3,094	2,557	18	+6
Infantry	8,920	7,568	16	-2
Transportation Corps	2,076	1,809	13	-1
Air Defense Artillery	1,953	1,895	3	+10
Chemical Corps	542	539	1	-----
Field Artillery	4,421	4,537	12	-----
Chaplains	759	901	118	-----
Medical Corps	2,669	3,349	125	-----
WAC	175	259	148	-----

Control branch	Currently authorized	Actual	Percent of shortage	Percent differences of shortage since March 1971
<b>Majors and lieutenant colonels:</b>				
JAGC	608	261	58	+7
Veterinary Corps	224	128	43	+5
Signal Corps	2,775	1,793	36	-----
Military Intelligence	2,625	1,684	36	+3
Dental Corps	941	604	36	+6
Adjutant General	1,527	987	36	+6
Finance Corps	513	343	34	+4
Quartermaster Corps	1,890	1,271	33	-----
Engineers	2,300	1,630	30	-5
Medical Service Corps	1,923	1,370	29	+5
Military Police Corps	852	631	26	-2
Ordnance Corps	2,269	1,717	25	+6
Armor	2,736	2,111	23	+5
Infantry	7,442	6,216	17	-3
Transportation Corps	1,860	1,582	15	-----
Chemical Corps	490	455	8	+1
Air Defense Artillery	1,707	1,631	5	+9
Field Artillery	3,860	3,853	1	-6
Chaplains	703	815	115	-----
Medical Corps	2,256	2,945	130	-----
WAC	161	247	153	-----

1 Over.

STATEMENT OF REAR ADM. MERLIN H. STARING, JAGC, USN, JUDGE ADVOCATE  
GENERAL OF THE NAVY

Mr. Chairman and Members of the Committee: I am Rear Admiral Merlin H. Staring, the Judge Advocate General of the Navy. I am grateful for the opportunity to express my support of H.R. 4606 and to seek your favorable endorsement of that bill.

The statistical information presented to you by Mr. Buzhardt and the conclusions drawn from those statistics are borne out by the data concerning Navy judge advocate retention rates and recruiting rates. The Navy data are of course encompassed within the Defense-wide data presented by Mr. Buzhardt.

The Navy has experienced a widening gap between viable career force levels and actual career force levels since the early 1960's. There is every indication that the disparity between those levels will continue to worsen if we continue to try to operate with the tools now at hand. In addition, we have every reason to believe that a serious deficiency in the initial recruitment of young officers will arise within the next two years as our present "pipeline" of current law students and supply of obligated-service reserve officers is depleted. With the pressure of the draft gone, there is little to give impetus to a young lawyer or law student to join the Judge Advocate General's Corps.

Given our present circumstances, there are only two general courses of action open to us:

First, in an effort to meet our retention and recruiting requirements from a purely statistical point of view, we could lower our quality standards. We could accept those individuals who seem unlikely to rise to the level of competence and success normally attributed to the successful civilian lawyer, or who show less potential for doing so. In taking that course, however, we would settle for second- and even third-echelon lawyers to represent the interest of the United States in matters of economic importance, in matters of international importance, in the administration of our military justice system, and in matters vital to the welfare of our people. In my opinion, this alternative is unacceptable—and if we were to adopt it, we might not, even then, meet the Navy's numerical manpower requirements for lawyers in today's complex environment.

In the public interest, we must have Navy judge advocates who are highly competent—who are comparable in knowledge, experience, and skill to the civilian counterparts whom they will meet and contest in conducting their military law practice in every field of law.

I have talked extensively with our young Navy lawyers. I have asked them why they are leaving the Navy. When I first started asking that question, I expected to receive answers indicating an antipathy toward the military environment. With few exceptions, however, I did not receive that answer. When pressed, most of them indicated that they really were not "turned off" at the prospect of a military career. Instead, from the general run of their answers, I have concluded that most young lawyers leave the service after completion of their obligated service for one principal reason: They are confident that they will ultimately make more money in civilian practice. In addition, but subordinate to the recognized ceiling on the potential income of a Navy lawyer:

1. They do not like the disruption in their family life caused by the moves and the unaccompanied tours of duty which they must expect to experience in military service;

2. They do not look forward to the increase in "administrative duties," at the expense of what they consider to be the true "practice of law," as they grow more senior in rank; and

3. They desire the greater professional recognition which they feel they will gain as a lawyer in a civilian community.

Some of our lawyers are willing to accept these disadvantages of service life for reasons of patriotism or dedication to the service of their country. Others, however, despite a basic liking for the Navy, are unwilling to make these sacrifices. They are looking for job satisfaction at an income which will allow them to provide a satisfying standard of living for their families. They believe that they will find this in larger measure in the civilian practice of law.

I am submitting to your Committee, as an attachment to this statement, a letter which was solicited from one of our bright young lawyers who is leaving the Navy next month, at the end of his obligated service. His letter sets forth the reasons, as he knows them, that he and his contemporaries are electing civilian pursuits in preference to a naval career.

The second course of action open to us—and I believe it is the obvious one to pursue if we are to maintain a Judge Advocate General's Corps which will be able to meet its responsibilities—is the enactment of H.R. 4606. The enactment of that bill will make military lawyer salaries more nearly competitive with civilian lawyer salaries. It will make a career of Navy legal service more attractive economically and will thus compensate, in part, for the inescapable undesirable aspects of that service. It will operate to allow the services to be more selective in recruiting and retention, thereby ensuring that good lawyers are available to represent the interests of the United States and of their individual clients. And it will provide an added element of professional recognition for our lawyers. All of these incentives and attributes are required if we are to recruit and retain high-quality judge advocates in the naval service. I have been able to conceive no other remedy which will effectively accomplish that purpose without far greater cost.

The bill, with its provisions for monthly professional pay, will increase the likelihood of the retention of seasoned, experienced lawyers whose services are sorely needed. It will not, however, result in stagnation in the senior ranks. Our studies have indicated that, with an input of about 30 regular lawyers per year and promotion selection rates of 70%, 75%, and 60% to O-4, O-5, and O-6 grades—which we would hope to attain rather than the nearly 100% selections we are now forced to accept—we should be able to maintain a healthy, vigorous professional force, fully capable of meeting the Navy's requirements for legal services. Enactment of H.R. 4606 should assure that input as well as the greater selectivity needed to ensure that the best judge advocates are available for those ultimate positions of great responsibility.

DEPARTMENT OF THE NAVY,  
NAVY APPELLATE REVIEW ACTIVITY,  
Washington, D.C., September 7, 1972.

Capt. ROBERT B. NEWTON, JAGC, USN,  
Assistant Deputy JAG (Military Personnel),  
Arlington Annex, Arlington, Va.

DEAR CAPTAIN NEWTON: At your request I have prepared this letter to set forth some of the factors we discussed last week relative to my decision to leave the Navy in December and enter private practice. The observations I made are in many respects a composite of the reactions of several associates with whom I work; consequently, although there is by no means a "consensus," I think my views are characteristic of a substantial number of these young officers.

Probably the most discussed problem with continued military service is financial. I have made some rough calculations to determine what salary I would have to command as a civilian to have a "takehome" pay equivalent to that which I am currently receiving. For a lieutenant with over three years of service this equivalent salary figure is \$15,000 to \$15,500; for a lieutenant over four it is \$16,000 to \$16,500. This includes some provision for a health insurance plan—one which is unquestionably less inclusive than that provided to active duty personnel. The equivalent salary does not include any provision for commissary or exchange privileges. These are undoubtedly worth something, but no one knows for sure how much (examples of higher commissary and exchange prices than "outside" prices abound; the converse is also true).

From personal experience and discussions with contemporaries I have determined that the following salaries are available to attorneys with our backgrounds (i.e. graduation from law school 1968 and four years military service) :

New York	\$19,000
Philadelphia	19,000
Washington (private)	19,000-20,000
Washington (government)	17,500-19,000
Midwest and South (metropolitan areas)	15,000-15,500

<sup>1</sup> And up.

Additionally, a young associate can reasonably expect a raise of \$1,000 to \$2,000 per year for at least several years. On the other hand, a Navy attorney who has over four years service (\$16,500) can expect selection to Lieutenant Commander within a year or so and he will receive another raise when he goes "over six." Together these two raises result in an increase of \$800.00 per

year in base pay along with a \$240.00 per year increase in BAQ—an effective raise (considering the nontaxable character of BAQ) of about \$1,100. Thus in the East a lawyer leaving service can expect to receive approximately \$19,000 (\$3,000 to \$4,000 more than in service) *immediately* and within two years he can reasonably expect to earn \$21,000 to \$23,000 (\$4,000 to \$5,000 more than in service). In the Midwest and South the attorney will not receive a raise when he leaves the Navy and may take a small cut in pay, but in a year he will draw even and in two years he will make \$1,000 to \$3,000 more than his contemporary who stayed in the Navy.

It is difficult to extend these calculations any further into the future because general federal employee raises may enter the picture and a private attorney's income is subject to wide variations based on many factors. Nevertheless, the *expectation* is that the disparity in salaries will continue and become even greater. Both the short term pay advantage and the long term expectation are important factors in my decision to leave the Navy.

The retirement program which the military offers is one factor often cited as sufficient to overcome the salary problem discussed above. It is indeed a valuable fringe benefit, but there are two considerations which make it less important than it might appear at first blush. First, I do not particularly *want* to retire at age forty-five and, second, many law firms now have substantial retirement packages which compare favorably with that offered to retiring officers.

Of equal or greater importance in my decision to leave the Navy is a consideration of the type of work available as a Navy lawyer. I believe that I have already had the best legal jobs the Navy has to offer and, while there are isolated exceptions, the work available to me as a senior officer simply does not appeal to me as much as private practice.

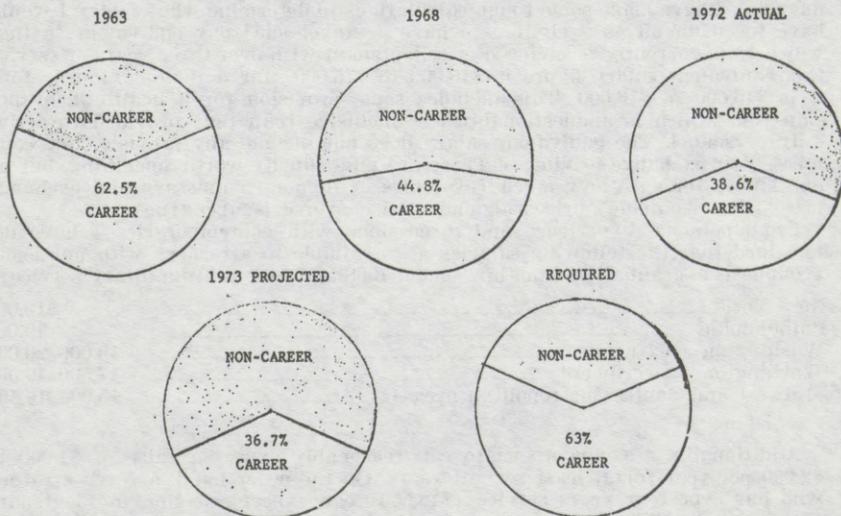
I hope that these observations will ultimately be of some value in solving the Navy's lawyer retention problems.

Very respectfully,

ARTHUR H. RAINEY,  
Lieutenant, JAGC, USNR.

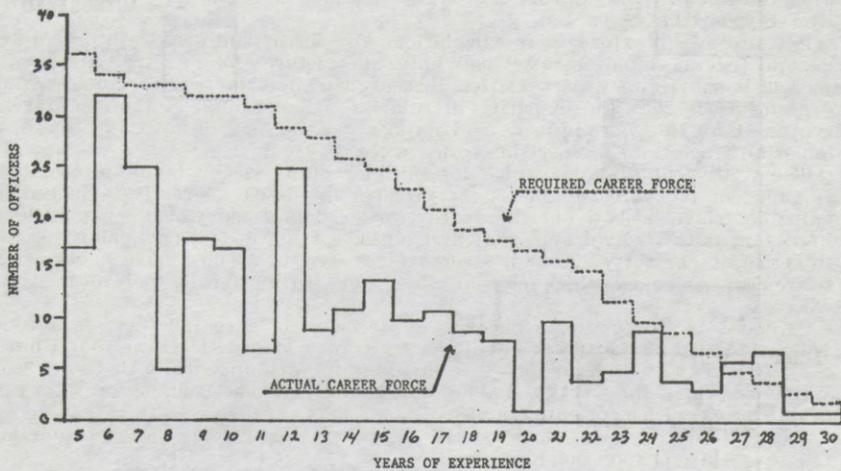
NAVY JAG CORPS CAREER FORCE

30 JUNE 1972



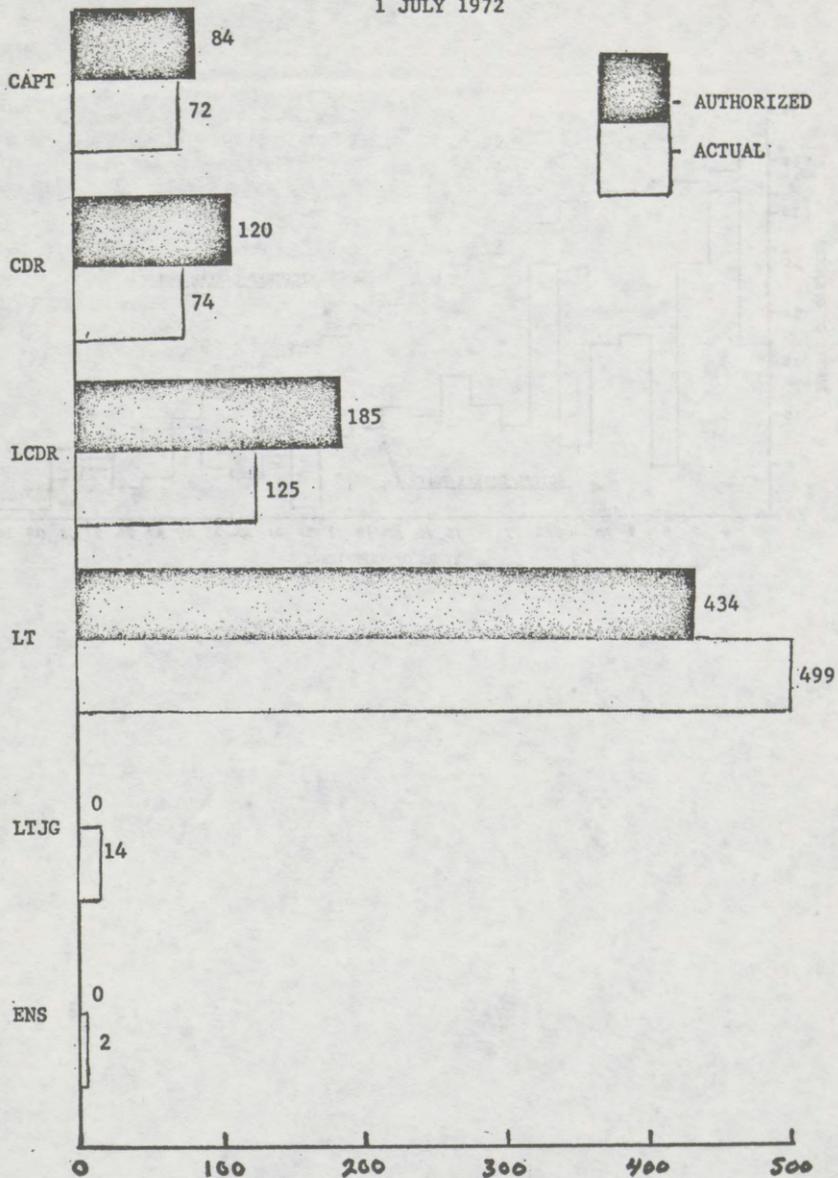
## NAVY JAG CORPS CAREER FORCE - REQUIRED v. ACTUAL

1 JULY 1972



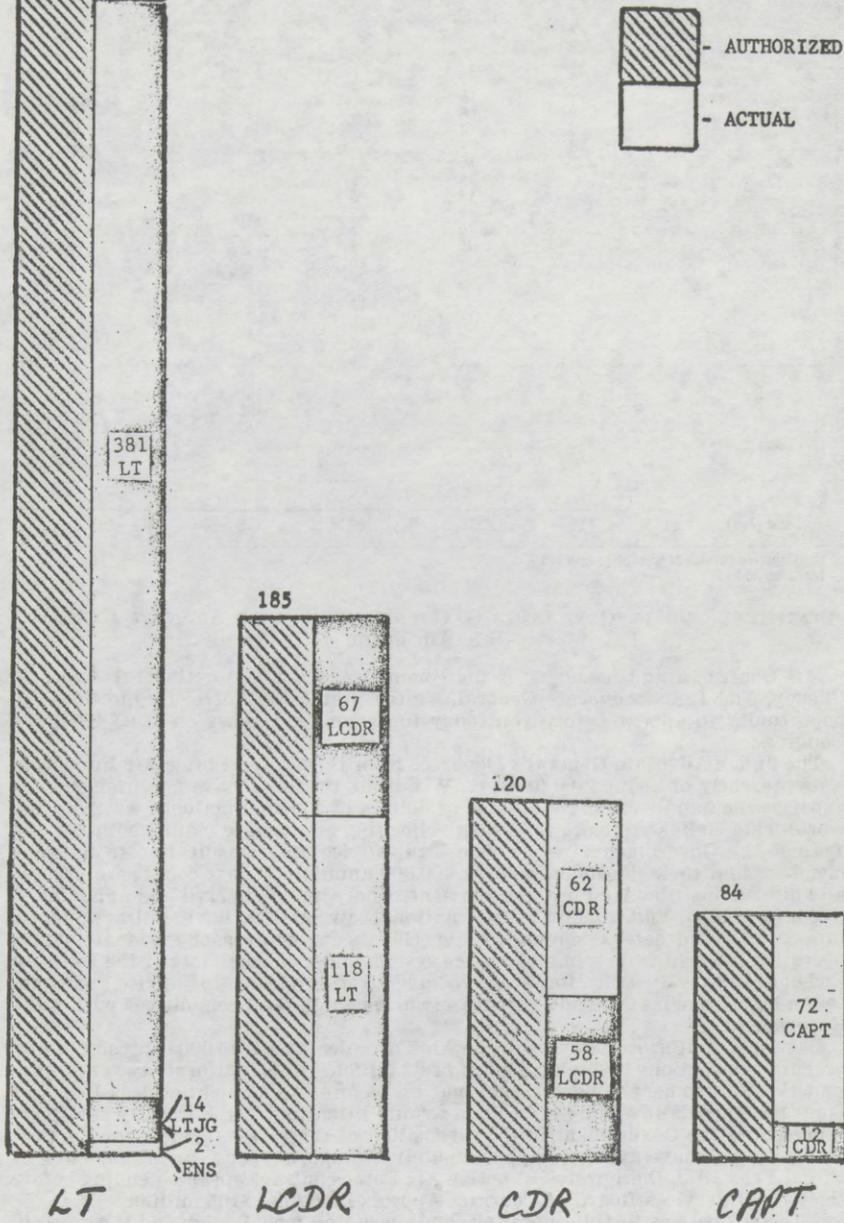
## NAVY JAG CORPS FORCE

1 JULY 1972



## NAVY JAG CORPS FORCE BY UTILIZATION

1 JULY 1972



NAVY JAG CORPS SELECTION RATES FOR VIABLE CAREER FORCE WITH H.R. 4606 PRO-PAY AND BONUS (INCLUDES ESTIMATED ATTRITION)

Years of service	Rank on board					Selection rate (percent)
	0 to 6	0 to 5	0 to 4	0 to 3	0 to 2	
31	7					
30	7					
29	7					
28	8					
27	8					
26	9					
25	9	3				
24	9	5				
23	9	6				
22	9	6				
21		6				60
20		15				
19		15	5			
18		15	5			
17		15	5			
16		15	5			
15			5			75
14			20			
13			20			
12			20			
11			20			
10			20			
9			20			
8						70
7				28		
6				101		
5				101		
4				101		
3					101	100
2						
1						
Total (795)	<sup>2</sup> 82	116	165	331	101	

<sup>1</sup> Constructive service credit for promotion.

<sup>2</sup> Includes 20 to 8.

STATEMENT OF MAJ. GEN. JAMES S. CHENEY, THE JUDGE ADVOCATE GENERAL,  
U.S. AIR FORCE

Mr. Chairman and members of the committee, I am Major General James S. Cheney, The Judge Advocate General, United States Air Force. I appreciate the opportunity to appear before you today to present my views on H.R. 4606, 92d Congress.

The Judge Advocate General's Department of the United States Air Force consists presently of about 1100 lawyers. Within its ranks we have procurement law experts who handle annually billions of dollars of contract actions; we operate a world-wide claims system, processing, collecting, and paying claims both for and against the Government; we provide legal advice and consultation to military members and their dependents—over 700,000 annually at last count; we process all suits against the Air Force; we have attorneys skilled in civil and administrative law, in labor and tax law, in international law; and we have military judges, prosecutors, and defense counsel, all specialists in the area of criminal justice, operating a world-wide criminal justice system under the mandate of the Uniform Code of Military Justice. Moreover, we have attorneys providing advice and counsel on legislative matters and serving on various high level committees within the Government.

Last year uniformed lawyers in the Air Force dealt with 43,000 contractual and procurement actions involving a total of \$8 billion. Other uniform lawyers represent the Government in contractual matters before the Armed Services Board of Contract Appeals involving high dollar value litigation. Air Force lawyers have represented the Government in the disposition of these cases which, for the past several years, have averaged approximately 225 appeals per year. At the close of Fiscal Year 1972, there were 231 active Air Force contract appeals pending before the Armed Services Board of Contract Appeals involving \$165 million.

Although we are in full operation, and operating well I might add, we are in trouble. We cannot retain the capable young lawyers that we need to maintain the proper balance of experienced and inexperienced legal officers. The majority

of our young officers exit the service at or within one or two years after their tour of obligated service. We simply cannot compete in the market place for their services.

In testimony on similar legislation in the 91st Congress, my predecessor stated that enactment of legislation in this area was essential to retaining experienced judge advocates. He also correctly pointed out that, while the retaining of well qualified judge advocates had become progressively more difficult, the scope of their responsibilities had expanded and become more demanding. Nothing has occurred since his statement in September of 1969 to change that observation. The retention trend is unmistakably down. In 1963 the Department had a shortage of 14 field grade officers (majors, lieutenant colonels and colonels who are the experienced attorneys of the Department). This shortage has increased each year since 1963 and on the 30th of June this year stood at 275. This represents a 38% shortage of experienced attorneys. This shortage is aggravated by two factors—first, officers who entered the service during WW II are now reaching mandatory retirement, and second, those officers entering the service subsequent to WW II are in increasing numbers retiring prematurely (after 20 years of service). The problem of premature retirement is dramatically illustrated by the fact that of the sixteen colonels and fifteen lieutenant colonels retiring this year, only two are mandatory retirements. This loss of experienced field grade attorneys obviously has to affect the quality of legal services in the Air Force. Moreover, I am convinced that at some point, in the not too distant future, the loss of experienced attorneys will seriously impair our ability to perform many vital and essential legal functions.

In speaking of experienced lawyers and the need for them, I do not mean to belittle the effort and talent of our young lawyers. I have been tremendously impressed by the capabilities of these young men. We have, by necessity, placed them in positions of high responsibility. For example, out of a total of approximately 240 Air Force bases throughout the world, where senior officers are authorized as the chief staff lawyer, 55 captains, many with less than three years experience, are now assigned in that capacity, serving populations of from 1200 to 10,500, exclusive of retired personnel and dependents entitled to legal services. In addition to military justice responsibilities they are actively engaged in dealing with problems of drug abuse, equal employment, protest and dissent, allegations of discrimination, civil rights, labor management problems, civilian personnel grievances, personal legal counseling and administrative discharge proceedings. In addition, we have captains discharging responsibilities normally assigned to officers in the grade of lieutenant colonel and GS-14 civilian attorneys in the procurement of major weapons systems involving many millions of dollars. These officers are doing a fine job but their usefulness, and the results obtained, are limited by their lack of experience.

In the fields of procurement, labor law, and international law, to mention a few, the lawyer is just beginning to reach his full capability after three or four years in the field. How fast and how well he learns is due in large measure to the guidance he receives from his superiors. An adverse ratio between the experienced and the inexperienced means the quality of training suffers and the experienced lawyers are left with insufficient time to perform their other duties. Furthermore, positions such as those of the military judges, members of the foreign claims commissions, and members of the Armed Services Board of Contract Appeals, as well as our staff judge advocates who advise our senior commanders on legal matters, require judge advocates of sound judgment who have had years of experience.

Unfortunately, these young men do not stay with us long enough to gain the required experience and be promoted to the higher grades. In fact our success in retaining a significant number of these young lawyers can only be described as dismal. Currently, we are retaining only 5.8% of the ROTC produced military lawyer. That is far below the number required to maintain our career force of 59% experienced attorneys.

What I have referred to thus far is the problem of *retaining* and I emphasize *retaining* experienced military lawyers. Up to the present time we have experienced no difficulty in procuring new inexperienced lawyers. In fact, we have not been able to take into the Department all of the ROTC law school graduates coming on active duty. I believe this can clearly be attributed to the draft. While lawyers are not drafted as such, the draft does account for much of the

input into ROTC. Many have looked upon this as the best way to insure they would be able to complete their education before entering the service. During the Vietnam era, with the draft threat very real, this source of young lawyers has been very productive. In a zero draft environment, however, even procurement may become a problem. We already have indications that the entry into the ROTC pipeline of candidates for law degrees is beginning to dry up. Only 154 ROTC graduates applied for an educational delay to attend law school this September. That figure is 59 officers short of our anticipated needs for FY 75. Applying the normal law school and bar examination attrition factor of 15% this can be projected as a shortage of 79 officers from this source in fiscal 1975.

We are already planning to combat this deficit by instituting a direct appointment program and actively recruit for young lawyers. Obviously to compete in the market place for the young men in a zero draft environment we must be competitive.

I am convinced beyond a doubt that passage of this bill will enhance our recruitment efforts, will assure us of the capability of retaining an adequate number of young officers past their period of obligated service, and will prevent the premature retirement of our experienced attorneys.

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STATEMENT OF BRIG. GEN. CLYDE R. MANN, DIRECTOR, JUDGE ADVOCATE  
DIVISION, HEADQUARTERS, U.S. MARINE CORPS

Mr. Chairman, members of the committee, I am Brigadier General Clyde R. Mann, Director, Judge Advocate Division, Headquarters, U.S. Marine Corps.

I am pleased to be present today and to have the opportunity to present to you the position of the Marine Corps concerning H.R. 4606, a bill "to provide for the procurement and retention of Judge Advocates and law specialists in the Armed Forces," which passed the House of Representatives in July 1971. H.R. 4606 is identical to S. 704.

First, the Marine Corps supports the enactment of this proposed legislation in its present form. The basis for this support is found in a critical need for additional experienced judge advocates on active duty within the Marine Corps. Any system of military justice, any program involving administrative due process, and any system of providing wise legal counsel to commanders is only as good as the lawyers who support them.

The Marine Corps has been plagued with two types of problems regarding the lawyer shortage. The first of these has to do with sheer numbers of lawyers, that is, the availability of a sufficient number of certified and designated judge advocates to meet those requirements imposed by law, regulation and good administrative procedures. The second has to do with the level of experience and maturity which is required to provide adequate supervision of junior lawyers, to fill advanced legal responsibilities such as sitting as military judges, and to furnish wise counsel to senior commanders. These two types of problems may be considered separately.

Looking first to the number of judge advocates—with no consideration of their level of experience—the Marine Corps has not, on any occasion since the implementation of the Military Justice Act of 1968, and even for several years before that, had an adequate number of military lawyers to fill the required legal billets.

We consider our present requirements to be 375 judge advocates. We have on hand about 323 judge advocates, leaving a shortage of about 52, or 14%. Should the administrative discharge bill, H.R. 10422, which passed the House in October 1971, be enacted into law, or if counsel are required in summary courts-martial before confinement may be adjudged as is required by the U.S. Supreme Court decision in *Argersinger v. Hamlin* as applied and adjudged by a Federal District Court in Hawaii, we would require additional judge advocates on a permanent basis, and our shortage would be increased accordingly.

We have obtained our present judge advocate assets at a time when this Nation was engaging in an armed conflict in Vietnam and under the imminence of the draft. With our armed forces involvement in Indochina reducing in intensity, and with the reduced draft quotas and the expressed goal of a no draft all-volunteer force, we have no way of actually determining how our

procurement efforts will fare in the future, but we can predict with reasonable certainty that it will become more difficult to attract lawyers into the armed forces.

But the judge advocate problem is much deeper than the acquisition of lawyers recently admitted to the practice of law to meet our total numerical requirements. Our biggest area of concern is judge advocate retention, which is essential if we are to provide the level of experience necessary to supervise newer lawyers, to fill billets involving greater responsibilities, and to adequately advise our commanders. If we consider that an "experienced" judge advocate is one entering his fifth year of service as a judge advocate and beyond (the same definition employed for a "career force" when the initial period of obligated service is four years), the Marine Corps needs 181 experienced judge advocates (48.2% of our total force) and has 66, for a shortage of 63%.

By grade, our "shortage" is even more dramatic. It reflects grave deficiencies in the grades of major, lieutenant colonel and colonel, which are the most critical grades in which experience is required. The following charts show our position as of 15 September 1972 with respect to our judge advocate requirements and assets (the following figures will vary slightly from those in the statement of Mr. Buzhardt because they have been recomputed and validated as of 15 September 1972 in order to present the most current and accurate information to this Committee).

COMPILATION OF ALL JUDGE ADVOCATES

	Number required	Number on hand	Percent required on hand	Number short	Percent shortage
Brigadier general.....	1	1	100	0	0
Colonel.....	29	22	76	7	24
Lieutenant colonel.....	42	20	48	22	52
Major.....	82	28	34	54	66
Total field grade.....	154	71	46	83	54
Captain/Lieutenant.....	221	252	114	(31)	(14)
Total.....	375	323	86	52	14

COMPILATION OF CAREER FORCE JUDGE ADVOCATES

Brigadier general.....	1	1	100	0	0
Colonel.....	29	22	76	7	24
Lieutenant colonel.....	42	20	48	22	52
Major.....	78	18	23	60	77
Total field grade.....	150	61	41	89	59
Captain/Lieutenant.....	31	5	16	26	84
Total.....	181	66	37	115	63

The breakdown of our total judge advocate requirements and assets is shown by years of commissioned service in the attached table (Exhibit I). It can be seen that there are shortages which can never be replaced except, possibly, by the return of inactive reserve judge advocates to active duty.

The two salient provisions of H.R. 4606 are each designed to attack a part of the lawyer shortage problem, but both point most forcefully to retention.

The bonus for continued obligated service is in sufficient amounts and at an appropriate time to be of significant value in influencing a decision to remain in the service. The amount of bonus money involved, together with the monthly pay provisions, can help provide a standard of living which approaches that of the civilian contemporary.

The Marine Corps finds itself in a critical situation with respect to judge advocates. An intensive self-help program has been implemented over the past several years which includes, among other things, the opportunity for selection to general officer grade as a lawyer, increased professional recognition, advanced legal education beyond the basic law degree, closer association with the civilian legal community, special consideration on assignments, etc. Yet the shortage continues and will continue absent other measures such as is currently being considered by this Committee. The matter is not within the existing power of the Marine Corps to correct.

The provisions of H.R. 4606 will be of major assistance in providing the quantity and quality of legal services to the armed forces, and to armed forces personnel, as contemplated by the Congress. Without additional compensation of the types proposed in H.R. 4606, the required level of experienced judge advocates cannot be achieved or maintained.

I have discussed this matter with General Cushman, the Commandant of the Marine Corps, and he has authorized me to inform you that he supports the enactment of this proposed legislation for the reasons which have been presented to this Committee today.

Mr. Chairman, that concludes my prepared remarks. I shall be pleased to attempt to respond to any questions you may have concerning the Marine Corps' portion of this problem.

## EXHIBIT I

## MARINE CORPS JUDGE ADVOCATES BY YEARS OF COMMISSIONED SERVICE

Years of commissioned service <sup>1</sup>	Number required	Number on hand	Percent required on hand	Years of commissioned service <sup>1</sup>	Number required	Number on hand	Percent required on hand
0 to 1 <sup>1</sup> .....	0	0	0	17 to 18.....	8	3	38
1 to 2 <sup>1</sup> .....	0	0	0	18 to 19.....	8	5	63
2 to 3 <sup>1</sup> .....	0	0	0	19 to 20.....	8	5	63
				20 to 21.....	6	2	33
3 to 4.....	38	26	68	21 to 22.....	6	3	50
4 to 5.....	38	60	158	22 to 23.....	6	4	67
5 to 6.....	43	109	254	23 to 24.....	6	3	50
6 to 7.....	48	37	77	24 to 25.....	6	3	50
7 to 8.....	20	4	20	25 to 26.....	5	1	20
8 to 9.....	19	7	37	26 to 27.....	4	2	50
9 to 10.....	18	7	39	27 to 28.....	3	1	33
10 to 11.....	17	7	41	28 to 29.....	3	3	100
11 to 12.....	12	8	67	29 to 30.....	2	2	100
12 to 13.....	10	10	100	30 to 31.....	1	2	200
13 to 14.....	10	4	40	31 plus.....	1	0	0
14 to 15.....	10	0	0				
15 to 16.....	10	2	20	Total.....	375	323	86
16 to 17.....	9	3	33				

<sup>1</sup> Including constructive service. No judge advocate entering the service directly from law school is on active duty during the 1st 3 "years of commissioned service" as that term is used herein, nor does he get credit for these 3 "years of commissioned service" for purposes of longevity pay.

## STATEMENT OF REAR ADM. WILLIAM L. MORRISON BEFORE THE SENATE ARMED SERVICES COMMITTEE ON H.R. 4606

Mr. Chairman and members of the Committee, I am Rear Admiral William L. Morrison, Chief Counsel, United States Coast Guard. I appreciate the opportunity to be able to present my views on H.R. 4606 and to lend Department of Transportation and Coast Guard support to the position expressed by the Department of Defense and my counterparts in the other armed forces favoring enactment of legislation which would provide additional monetary incentives for the retention of military lawyers.

Because of the Coast Guard's smaller size and the fact that we do not have a separate judge advocate corps, the problem of lawyer retention has not been as readily or as easily identifiable. The relevant facts that we can state, however, suggest similar dilemmas to those experienced by the other services and are wholly consonant with their appraisals. There is no question that the Coast Guard has been disadvantaged by the growing tendency for lawyers to seek the significantly greater remunerative benefits of a civilian law career.

In 1958 there were 107 military lawyers in the Coast Guard. Most of those could reasonably have been categorized as career lawyers. By 1968 the number readily identifiable as career lawyers had shrunk to approximately 39. Since then the number has increased slightly to approximately 48. During that period, continued service growth, more diverse responsibilities placed upon lawyers, the transfer of the Coast Guard to the Department of Transportation, the Military Justice Act, and the current emphasis on greater utilization of lawyers in administrative proceedings has placed severe demands on Coast Guard lawyers. By 1964,

the then available career lawyers were no longer available in sufficient number to fulfill the Coast Guard's minimal requirements. To meet that serious lawyer shortage, the Coast Guard instituted a direct reserve commission lawyer program with a 3 year period of obligated service. Of the 91 lawyers who have entered upon active duty under the program not one has been integrated into the regular Coast Guard. Only two lawyers extended beyond the initial period of obligated service for specified periods. One of these was separated in September of 1971. For the past two years, there have been relatively few applicants for available openings in our direct commission program.

The lack of any retention of direct commission lawyers coupled with the noted attrition of the career lawyer force and a growth in the service requirements for attorneys has created the same unhealthy imbalance in experience level described by the Department of Defense. The Coast Guard has reached a point where more than half of the authorized legal billets are filled by direct reserve commission lawyers of less than three years experience. Commencing with 1970, the initial period of obligated service for direct commission lawyers was increased to 4 years.

An analysis of the reasons for the reduction in the number of Coast Guard career lawyers in recent years must be essentially speculative. One of the reasons is founded upon the separation of officer-lawyers who entered the service during the World War II years, remained for careers of varying lengths, and who finally retired from the Coast Guard. A second reason is the lack of any influx through a direct commission program for the years between the end of World War II and 1965 when the present program began. Whether there would have been any significant additions to the career force if a program had been in existence seems open to question in view of our experience with the program. Certainly, the failure to attract any of the direct-commission lawyers into a service career has been a factor in the decrease of the career force.

In this connection, the results of a recent questionnaire-survey of all Coast Guard officers seem significant in viewing the attitudes of officer-lawyers towards a full career and in assessing the impact of H.R. 4606. Several of a large number of questions concerning service conditions, attitudes, motivation, opportunity, and the like, were concerned with pay. When asked to list benefits of service life, pay was listed as one of the top five by only six percent of the lawyers compared with eighteen percent of all officers. When asked to list problems of service life, pay was listed as one of the top five by 43.5 percent of the lawyers compared with 26.5 percent of all officers. Fifty one percent of the lawyers listed pay as having a negative or very negative effect on satisfaction with a service life compared with 20.6 percent of all officers. Finally, 46 percent of officer-lawyers think civilian pay would be better at present if they left the service compared with 39.6 per cent of all officers. However, 83 per cent of lawyers feel their civilian pay would be better in five years and 81 percent better in ten years if they left the service compared with 53.1 percent and 55.4 percent of all officers. The latter percentages are in my opinion, of key importance in explaining why direct commission lawyers do not seek a service career, why a significant number of career lawyers leave the service by retirement as soon as eligible, and why the proposed bill would have a marked effect in attracting and retaining career lawyers.

Since World War II, an influx of seventy-seven career lawyers into the Coast Guard whose careers can be accurately traced has occurred. This figure includes relatively recent additions to career ranks. Of that total number, nine have continued to the thirty-year career point, two continued to over twenty-eight years, five were separated short of a twenty-year career by resignation, and forty-three are now occupying legal billets. Three of the seventy-seven have been assigned to operational assignments outside the legal field after having served in legal assignments up to the 26th to 28th year of service. The remainder have retired at an average career point of about 22 years. I have noted previously my opinion as to the reason for this relatively early retirement point for the fifteen officers involved. Military lawyers are not blind to the increasingly attractive financial rewards of civilian legal careers and it is not at all surprising that over the past several years, approximately two-thirds of Coast Guard career lawyers who have attained a retirement eligibility have left the service.

I can speak only for the Coast Guard, but I am sure that what I am about to say is equally true for the other Armed Forces. We simply cannot afford the drain of experience and knowledge represented by the departure of our direct commission lawyers and the early retirement of our career lawyers. The direct commission lawyer leaves us at a time when he has become productive and acquired the experience and background to assure more responsible and more independent positions. Our career lawyers are leaving at a time when they are ready to step into senior legal billets giving direction and force to our legal programs and services and to providing the legal counsel necessary for senior managers to function effectively.

In my visits to district legal offices, I have talked with Coast Guard lawyers at all grade levels. There is practically unanimous agreement that legal work in the Coast Guard, and I am sure in the other Armed Forces as well, is interesting, is challenging, is rewarding, is useful, and is varied. There is much more to our legal duties than the system of criminal law represented by the Uniform Code of Military Justice. Rather than take the time to discuss the varied nature of legal duties in the Coast Guard, I should like to submit for the record a brief resume of the work performed by each of the six divisions and staff of my office. I think you will find that our various duties require knowledgeable and experienced lawyers in a wide variety of legal fields. The level of performance needed cannot be maintained unless some means can be found to attract and retain a career legal force. I believe that H.R. 4606 is a step in that direction.

In summary, I would like to reiterate our support for the objectives of the bill here under consideration and to acknowledge our conclusion, also, that increases in compensation for lawyers do realistically suggest the best current hope of retaining the lawyers considered essential to the needs of the armed forces.

Because career patterns of the relatively few Coast Guard law specialists offer scant statistics, we would defer to the views of the Department of Defense concerning the bonus aspects of the proposed legislation.

The estimated first year costs to the Coast Guard are about \$100,000. Subsequent year costs could be expected to increase gradually in accordance with current estimates of increasing lawyer need.

Gentlemen, that concludes my prepared statement. I shall be happy to answer any questions you may have.

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#### MILITARY LAWYER DUTIES

Following are brief descriptions of the functions carried out by each of the divisions and components of the Office of the Chief Counsel, Coast Guard. While district legal offices do not get involved in the detail and policy matter associated with Headquarters, nevertheless, each office is concerned with aspects of each of these functional areas and the military lawyers assigned must be knowledgeable in these areas.

*Maritime and International Law Division.*—Coast Guard law specialists assigned to this division have been attending international conferences as advisors, as United States representative, or as alternate representative. The conferences involved include those within the United Nations System as well as bilateral and multilateral meetings such as the IMCO Legal Committee, preparatory conferences for treaties, and plenipotentiary conferences to elaborate treaties. Recent examples include the Civil Liability for Oil Pollution Damage and the Intervention Convention both held at Brussels in 1969 where a Coast Guard military lawyer was head of the delegation dealing with the Intervention Convention, the 1971 International Oil Pollution Fund Convention where the division provided the principal legal advisor, and the 1972 Preparatory Conference on Ocean Data Acquisition Systems, where a Coast Guard military lawyer was the United States Representative. Coast Guard military lawyers from this division are also actively involved in the preparation of several forthcoming conventions including the 1972 International Rules of the Road, the 1973 Marine Pollution Convention, the Intervention Convention on Hazardous Materials, the Civil Liability for Pollution by Hazardous Substances, and the 1975 Wreck and Salvage Convention. Other matters in which the division's lawyers have been involved include the bilateral agreements with Canada on pollution and other items, the North Atlantic Fisheries Conduct Convention, and representation of the Department of Transportation in Law of the Sea matters.

In addition to its work in the international law area, military lawyers of this division deal with a wide variety of matters in the maritime law and safety area. Military lawyers interpret and render opinions on the laws relating to the administration of the merchant vessel inspection program, the environmental protection program, the boating safety program, the port safety program, and the fisheries patrol program. Advice and counsel on specific cases arising under these programs is available essentially on a twenty-four hour basis to operating commands and units. In addition, this division reviews all cases arising under the various penalty statutes in which a penalty has been assessed. Proceedings against merchant mariner's documents under B.S. 4450 are reviewed in the division. Among the remaining major functions of the division are administrative determinations of navigability of bodies of water and rivers for the purpose of application of United States Laws, review of bridge building permits, and the review of State/Federal agreements under the boating safety program.

*Legislation and Regulations Division.*—Law specialists assigned to this division participate and assist in the formulation of policy for legislative proposals and develop positions regarding legislation which affects the Coast Guard or in which the Coast Guard has an interest. Military lawyers draft Coast Guard sponsored legislation and prepare reports on other legislation. For Coast Guard legislative committee witnesses, they provide necessary supporting data, review statements, and generally coordinate and support preparation and attendance at legislative hearings. They also engage in any necessary discussions or negotiations with other agencies, the Office of Management and Budget, and cognizant Congressional Committees and staff members.

The division's lawyers are also responsible for drafting or providing legal advice and assistance in drafting Coast Guard material published in the Federal Register and for the legal review of internal rules, regulations, and related matter. They render legal advice and opinions interpreting and applying laws and regulations, and in this connection, represent the Chief Counsel at rule-making hearings and meetings. This responsibility encompasses significant rule-making areas reflected in seven volumes of the Code of Federal Regulations and including safety of life and property at sea and on the navigable waters of the United States, documentation of vessels, aids to navigation, obstructive bridges, environmental protection of waters, oceanography, port safety, procurement, claims, rules of the road, licensing of seamen, and vessel construction and inspection.

*General Law Division.*—This division provides legal advice and opinions with respect to a broad range of Coast Guard activities. Almost all phases of Acquisition Construction, and Improvement projects raise legal issues dealt with by the regulation lawyers of this division.

In dealing with these problems, a working knowledge of a considerable body of law and manipulation pertaining to the fiscal practices of both the government generally and the Coast Guard is required. Lawyers review all real property acquisitions and assist in the preparation of deeds, easements, leases, licenses, permits and any other papers pertaining to real and personal property.

A growing area of work for this division has to do with various laws dealing with protection of the environment. Legal questions are arising with increasing frequency in connection with the environmental impact of various Coast Guard construction projects and the construction of bridges over the navigable waters of the United States. With regard to the latter, the division renders advice and opinion relating to their locational clearance, operation and maintenance of drawbridges, and the alteration of those bridges considered to be obstructive.

In addition to the foregoing, the division handles legal questions arising from the interpretation of laws and regulations relating to military and civilian personnel generally; to promotions, discharges, retirements, and physical disabilities; to the availability, obligation, and expenditure of appropriated monies; to the acceptance of gifts; or donations by the Coast Guard; to civil rights matters; and to matters affecting the Reserve and the Coast Guard Auxiliary.

*Claims and Litigation Division.*—Law specialists assigned to this division provide assistance to the Department of Justice trial attorneys with respect to all litigation involving the Coast Guard except for that which arises out of procurement contracts. This work involves the preparation of litigation reports, assistance with investigations and other administrative matters and recommendations and advice as to Coast Guard practices and policies. Over one-hundred separate lawsuits are now pending involving both operation and administration, the majority of which are admiralty claims arising out of Search and Rescue

and Aids to Navigation activities. The remainder include challenges to Coast Guard issued bridge permits, litigation arising out of the licensing of seamen and documentation and inspection of vessels, and claims arising from motor vehicle accidents.

The division also does the preliminary work for prosecution of claims by the government for damages to Coast Guard aids to navigation, recovery of pollution costs and other claims arising out of interference or damage to Coast Guard activities. It considers claims against the government arising out of Coast Guard activities except contract and pays claims usually involving vessel and aircraft operations and, under the Federal Tort Claims Act, motor vehicle accidents. The division has settlement authority up to \$5,000 and makes positive recommendations to the Chief Counsel for claims over that amount.

Incidental matters performed in this division include advice to staff personnel on the litigative aspects of operational matters, rendering opinions on the application of the Freedom of Information Act, and the review of conscientious objector applications.

*Procurement Law Division.*—This division advises Coast Guard contracting officers as to the application of federal procurement laws and regulations to specific procurements and questions arising during formation of contracts and other stages of procurement actions. The division represents the Government before the Department of Transportation Contract Appeals Board in cases arising out of contract disputes and assists Department of Justice attorneys in preparing the Government's case in contract litigation before the United States Court of Claims and District Courts. The division also confers with the General Accounting Office, the General Services Administration and other federal agencies concerning Government contract and procurement matters. [The dollar value of claims presently being processed within the division is over ten million dollars.

*Military Justice Division.*—This division administers the military justice system of the Coast Guard based upon the Uniform Code of Military Justice and pertinent court decisions. This includes the development of guides and instructions, the review of all types of courts-martial, the administration of personnel resources including counsel and military judges; and the maintenance and revision of the military justice portions of the Coast Guard Supplement to the Manual for Courts-Martial. Law specialists of the division serve as counsel for courts-martial and as appellate counsel before the Court of Military Review and the Court of Military Appeals.

*Legal Assistance Activities.*—This program is designed to provide legal assistance on a personal level to military personnel and their dependents. The areas in which assistance is furnished include powers of attorney for personnel transferred to remote or isolated duty stations, wills and estates, landlord-tenant relationships, personal finances and credit, domestic relations and real and personal property. In addition, legal assistance officers provide aid in those areas of the law which particularly affect military personnel. These include the provisions of the Soldiers and Sailors Civil Relief Act, drivers license and motor vehicle registration requirements for nonresident servicemen and their dependents, state and local tax requirements for nonresident servicemen and their dependents and a variety of problems concerning domicile which result from the periodic transfer of military personnel.

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STATEMENT OF COL. JOHN T. CARLTON, EXECUTIVE DIRECTOR, RESERVE OFFICERS  
ASSOCIATION OF THE UNITED STATES

Mr. Chairman and members of the Committee, I appreciate the privilege of submitting to your Subcommittee, in the hearings on this important legislation, a statement reflecting the convictions of the Reserve Officers Association of the United States. This statement is based upon long and detailed study of the problem in the Armed Forces toward which this bill is directed.

With regard to this proposed legislation, I ask the inclusion with this statement of a resolution adopted by our Association at its National Council Meeting on 24 February, expressing ROA's strong support for H.R. 4606.

Essentially, Mr. Chairman, we are in full and complete accord with the statement made by the General Counsel for the Department of Defense, the Honorable Mr. Fred Buzhardt, as well as the Judge Advocates of the various

Services, Major General George S. Prugh, Army, Rear Admiral Merlin H. Starling, Navy, Major General James S. Cheney, Air Force, Brigadier General Clyde R. Mann, Marine Corps, and Rear Admiral William L. Morrison, Coast Guard. It does not seem to us that there should be any substantive issue which can be taken with this request.

All of us are aware that at this time there is a great need for incentives to participation in all elements of the Armed Services. This is particularly true in the professional field where the compensation and other rewards far exceed those available to the military Services.

While any military personnel must be dedicated and have a sense of commitment to service of his country, it is not realistic to expect him to make unreasonable sacrifices and it is not necessary that he do so.

We are convinced that H.R. 4606, as it has passed the House several times, is wholly in the National interest and it can be hoped that it will produce the climate and attractiveness to the military Service which is required if the mission of the General Counsel and the Judge Advocates of the various services and their staffs, including all the legal officers in the military Services, are to be fulfilled.

#### RESOLUTION No. 6

#### RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES

#### RETENTION OF EXPERIENCED JUDGE ADVOCATES IN THE ARMED FORCES

Whereas, for several years the Armed Forces have been unable to retain a significant number of Judge Advocates beyond their obligated period of service and this has resulted in an increasing shortage of experienced lawyers to meet the services' requirement, and

Whereas, this shortage has occurred at a time when commanders are particularly in need of experienced legal counsel in striking the proper balance between the rights of the individual and the Government's need to maintain an effective armed force, and

Whereas, the requirement for experienced lawyers has also continued to grow in such technical fields as procurement, taxation, labor law, and international law, and

Whereas, the Department of Defense has urged the enactment of H.R. 4606, 92d Congress, legislation designed to further the retention of experienced Judge Advocates in the Armed Forces, and the House of Representatives has unanimously approved this legislation: Now, therefore, be it

*Resolved*, That the Reserve Officers Association of the United States strongly support the enactment of legislation designed to retain experienced Judge Advocates and urge the Senate Armed Services Committee to hold hearings on H.R. 4606 at the earliest practicable date.

Adopted by the National Council February 24, 1972.

Attest:

JOHN T. CARLTON,  
*Executive Director.*

THE FEDERAL BAR ASSOCIATION,  
*Washington, D.C., September 19, 1972.*

Senator HARRY F. BYRD,  
*Chairman, Subcommittee on General Legislation,  
Senate Armed Services Committee, Washington, D.C.*

DEAR SENATOR BYRD: The Federal Bar Association wishes to express its support of H.R. 4606 which passed the House and is now under consideration by your Subcommittee. This Bill would provide a bonus and special pay as a means of attracting and retaining career military lawyers in our armed forces.

I commenced my term as President of the Federal Bar Association almost one year ago, and prior to that time I served a number of years in various positions within the national structure of the Association. During these years I have maintained a very close relationship with members of the military bar. This personal contact with military lawyers has permitted me to see the retention problem worsen in recent years and to appreciate the critical situation that is facing them today.

There are two facets to the problem of providing career military lawyers to the armed forces. First, the lawyer must be attracted to military service; and

second, he must be persuaded to remain for future service. The provisions of H.R. 4606 uniquely deal with these two considerations. It provides the bonus as an incentive for remaining on active service and it provides the special pay as an incentive for continued service in a career status.

The statistical data which you have no doubt received from the Department of Defense provides a dismal picture of the problem as it pertains to personnel shortages. A counteracting force, such as H.R. 4606 incentives, is needed to turn this situation around.

I am advised that 58% of the positions which should be filled by lieutenant colonels are filled by officers of lesser rank and experience, and that 85% of the positions which should be filled by majors with 6-14 years of experience are presently manned by captains with less than 3 years experience. These are alarming figures. The reality of the situation is even more alarming when it is considered that many of the major commands in the armed forces are having to rely on lawyers with less than 3 years of experience for their legal support. There are numerous examples of junior officers serving on independent duty where the responsibilities of the job would call for a much more experienced and senior officer.

While these young lawyers render outstanding service, it must be recognized that they are limited by their background and experience.

Although the general public may think of the military lawyer as a court-martial expert, they frequently lose sight of the fact that most of the work handled by judge advocates and law specialists is civil in nature. The importance and complexity of their work is illustrated by the fact that they are key advisors to the military commanders on general matters of policy and command administration; they handle admiralty and tort claims for and against the government as well as administer foreign claims, personnel claims, and various other claims under special statutes; commercial law work in matters of patent, procurement, contract negotiations and terminations are handled by judge advocates for many of the military departments; general litigation involving the Department of Defense is handled directly by judge advocates in some cases or they assist the U.S. Attorney in others; international law and treaty negotiations affecting the Department of Defense are handled by military lawyers; the very important field of private law encompassed in legal assistance to military personnel and their dependents is handled almost exclusively by military lawyers. An ever increasing load of work is being handled by military lawyers in the relatively new and emerging fields of environmental law, civil rights and labor law.

The scope of work involving the military lawyer is truly comprehensive and complex. Only a person of high intelligence, superior education, and above all, professional experience, can measure up to the requirements for a topnotch judge advocate or law specialist.

The question frequently comes to mind of whether the head of a large corporation would entrust his important legal business to a firm of 100 lawyers when only 7 members of the firm have more than eight years of experience. This is certainly analogous to the problem facing our armed forces.

The way things have been going in the past, the armed forces have been little more than training grounds for young judge advocates and law specialists. As the young attorney gains three to four years of experience and is becoming an experienced judge advocate or law specialist, he completes his obligated service and returns to civilian life. Under present conditions, very few young men remain for career service. This situation was justified to a certain degree in prior years because these attorneys were building a base of reserve forces. Today, however, the question is not how to strengthen the reserves but how to strengthen the regular forces.

This change in our basic needs calls for a reappraisal of our retention incentives. What we have been doing in the past is not sufficient. The retention bonus and continuation pay features of this legislation in our opinion, will provide the incentives necessary to take care of the problem for the foreseeable future.

I urge the Chairman and members of this Subcommittee to report favorably on H.R. 4606 and to lend their personal support to its approval by the full Committee and to its passage by the Senate. I also request that this letter be entered in the record of the hearing on this legislation.

Sincerely,

C. NORMAND POIRIER, *President.*

AMERICAN BAR ASSOCIATION,  
OFFICE OF THE PRESIDENT,  
Chicago, Ill., September 15, 1972.

HON. HARRY F. BYRD, JR.

*Chairman, General Legislation Subcommittee, Senate Armed Services Committee, Old Senate Office Building, Washington, D.C.*

DEAR SENATOR BYRD: I understand that among the bills which your Subcommittee will be considering on September 19 is H.R. 4606 which would provide incentive pay for military lawyers.

For many years, the American Bar Association has actively supported enactment of this type of legislation. The level of experience of military lawyers has been deteriorating over the years. In our view, it has now reached an unacceptable level for, as I understand it, more than two-thirds of the military lawyers now on duty have less than four years of experience. Further, almost all of these inexperienced lawyers will leave the service when they complete their tours of duty, having accepted active duty during the Vietnam conflict as a means of satisfying their military obligation. To compound this problem, the armed forces may be cut off from even this source of supply for, with the reduction in draft quotas, the number of law graduates who are applying for active duty is decreasing rapidly.

A committee of this Association which has studied this problem feels that there must be a higher percentage of experienced military lawyers in the armed forces if they are to furnish the high quality legal service which is needed. The committee is particularly concerned with whether, with the present level of inexperience among military lawyers, the armed forces can meet their responsibility of furnishing competent legal counsel to servicemen who are tried by court martial.

The incentive pay proposed by H.R. 4606 would make the pay of military lawyers more nearly in line with that of civilian lawyers. Enactment of this legislation should thus result in the retention of enough high quality military lawyers so that the armed forces and the individual serviceman can be furnished with satisfactory legal services.

Because the problem of military lawyer retention is so critical, officials of this Association stand ready to appear before the Subcommittee to expand upon these views and to answer questions or to provide any additional information needed. Further delay on this critically needed legislation will continue the drain from our armed services of much needed legal talent.

Sincerely yours,

ROBERT W. MESERVE.

(Whereupon, at 11:35 a.m., the hearing was concluded.)

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