



# Office of Command Counsel Newsletter

June 2000, Volume 2000-3

## CLE 2000--Recap Awards & Highlights

The AMC Continuing Legal Education Program held during the week of 22-26 May 2000 was, in the estimate of many veteran AMC counsel, the best CLE in memory. Whether through luck, design or chance, the combination of guest speakers, substantive topics and the tour of the Kennedy Space Center seemed to hit a high note for the nearly 140 attendees.

A special thanks to the CLE Planning Committee: Chairperson **Steve Klatsky**, **Holly Saunders**, **COL Demmon Canner**, **Bill Medsger**, **Vera Meza**, **Bob Lingo**, **Cassandra Johnson** and **Ed Stolarun**.

Our Executive Officer **Holly Saunders** did a wonderful job organizing the program and administering to the needs of our attendees. At the CLE she was ably assisted by **Debbie Reed**, HQ AMC, **Martha Zukos**, STRICOM, **Claudia Klus**, AMCOM and **Ed Frazier**, HQ AMC.

As always, the June editions of the Command Counsel Newsletter will highlight several parts of the CLE.

We include comments from some of the plenary speakers in this Newsletter edition.

Our Web Master, **Josh Kranzberg**, will be loading CLE handout materials and presentations on the AMC Command Counsel Web site for access by our readership.

We thank those who took the time to fill out the evaluation sheets and to make substantive comments on CLE Program design and format. **Steve Klatsky** has already sent out an e-mail to all heads of AMC legal offices reminding that the CLE planning is a year-long affair. During the course of the year, if you hear a good speaker or think of a good topic let us know immediately.

**CECOM** Receives the Command Counsel **Editor's Award** for significant contributions to the Command Counsel Newsletter--2 years in a row! Thanks again.

**Charles Blair-  
Atty of the Year**  
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# Heard at CLE 2000...

## **Ed Korte on the CG's Priorities...**

- People—Stabilize the Workforce
- Army Transformation
- Preserve AMC's Organic Base
- AMC Support's the Warfighter
- ADR—Partnering
- Logistics Modernization
- Strategic Sourcing—A-76
- HQ AMC Reorganiztrion
- HQ AMC Relocation
- Focus on Contract Delinquencies
- Ethics
- Acquisition Reform Implementation

## **BG Bob Barnes, Ass't Judge Advocate General on Litigation, Jurisdiction and the JAG Corps**

Litigation numbers are the same although the workforce is down 50%

ADR—Supporter—more in the future

Leverage IT knowledge to support litigation

Paperless litigation in 5 years

## **MG Chuck Mahan, AMC Chief of Staff:**

### **AMC is...**

**Army's Materiel  
Development Command**

**Army's Technology  
Command**

**MISSION: TO Maintain a  
Logistics Overmatch!**

Extraterritorial Jurisdiction Act of 2000: US Federal court jurisdiction over civilians, dependents and contractors. Military can arrest and detain civilians and bring them back to the US for trial.

Continuation Pay to deal with recruitment and retention issues.

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Check out the Newsletter on the Web at [http://www.amc.army.mil/amc/command\\_counsel/](http://www.amc.army.mil/amc/command_counsel/)

Letters to the Editor are accepted. Length must be no longer than 250 words. All submissions may be edited for clarity.

# From the AMC Ombudsman:

## Top 10 Responses From Federal Employees to Industry...

10. We always do it that way, it's the system.
9. If you do that (complaint/protest)it will delay the action and work against you.
8. We had a personnel cut—it will take a long time to look into that.
7. I share your concerns, but you'll have to take that to higher HQ.
6. This is caused by acquisition reform.
5. Direct your action to the KO, PM or...
4. Submit your complaint in writing.
3. You can file a protest or sue us.
2. That action did not get legal review.
1. It's not in the government's best interests.

## ...And What We Can Do

Set good example, help organization be open, responsive and professional.

Ensure complaints/requests are investigated and actions taken.

Don't assume government and industry have common understanding—communication

Actively promote just solutions.

Work to improve problem-solving process and the way we do business.

***The LEXIS  
Corner--A  
New Feature***

## List of Enclosures

1. Partnering Implementation Assessment Team (PIAT)
2. Consequential Damages--Federal Court Decision
3. Toxic Release Inventory Reporting
4. ELD Bulletin March 2000
5. ELD Bulletin April 2000
6. ELD Bulletin MAr 2000
7. Annual Ethics Training--Use & Misuse of Resources
8. AMC Communications Systems Policy
9. Gifts for Guest's of Honor

Check the Web for CLE 2000 Materials--Each Legal Office Attending CLE 2000 received 3 Disks with materials. Share please. Please share. Share please. Please share!!!!

pecial **CLE** edition

## **Charles Blair--**

### **Selected AMC Attorney of the Year**

The AMC Attorney of the Year Award is called the **Joyce I. Allen** Award. Joyce Allen was an attorney with the AMC legal office in St. Louis.

The Joyce I. Allen AMC Attorney of the year Award recognizes that individual in our community who exemplifies the highest professional standards in the quality of legal advice provided to clients in the Army Materiel Command and the United States Army. The recipient of this award epitomizes the attributes in the Command Legal Program philosophy of comprehensive legal support.

This year's nominees selected for special recognition, in alphabetical order, were:

**John Biffoni**, ARL, **Charles Blair**, AMCOM, **Vince Buonocore**, CECOM, **Larry Manecke**, OSC-Rock Island Arsenal, **Robert Maskery**, TACOM-W, **David Scott**, SBCCOM, **Denise Scott**, TACOM-ARDEC, **John Seeck**, OSC.

### ***Blair Selected***

During his 15 year career, Charles Blair has become a recognized expert in foreign sales and has expertly handled many complex, unique and precedent-setting cases in the government contracts arena.

As legal advisor for the Theater Army Maintenance Program, Charles recom-

mended using a multi-year, indefinite quantity contract, which has now become a standard for almost all maintenance and overhaul requirements.

He provided legal advice to the Saudi Arabian Foreign Military Sales Program at ATCOM in 1988, concerning the Blackhawk Program. Mr. Blair was 1 of 2 ATCOM officials requested by the Saudi's to provide in-country program status briefing to the Commander, Royal Saudi Arabian Land Forces Army Aviation Program.

In 1994 Mr. Blair volunteered to deploy to Saudi Arabia to support the AMC Logistics Support Element during Operation Vigilant Warrior. He spent 1 month providing legal support until replaced by an Army Judge Advocate.

When ATCOM was asked to furnish a lawyer to be part of an advance party to Redstone Arsenal, Charles volunteered and arrived in Huntsville 3-months before any other St. Louis personnel.

His early appearance was a great help to the transition and merger of the 2 legal offices. He worked closely with the Primary Move Coordinator, assisting in many important ways to provide information to his St. Louis colleagues, and preparing for the physical move and office relocation.

Charles' amiable likeability, intelligence, and willingness to do whatever was necessary were major factors contributing to the smooth transition.

Congratulations to Charles for setting an outstanding example for all of us.

pecial CLE edition

## **Pat Terranova--** **Managerial Excellence Award**

To honor the former Chief Counsel of the then named US Army Missile Command (predecessor to AMCOM) the AMC Command Counsel established the **Francis J. Buckley, Jr.** Award for Managerial Excellence in 1993. This award recognizes the AMC attorney who exemplifies the highest standards of management in leading members of the AMC legal community in accomplishment of a significant, long-term project or program.

This year we recognize the following nominees: **Beth Biez**, AMCOM, **Pat Terranova**, CECOM, **Dave DeFrieze**, OSC, **CPT Walter Parker**, CECOM.

### ***Terranova Selected***

CECOM's **Pat Terranova's** selection is based upon his sustained ex-

ceptional performance of supervisory duties and management of Business Law Division C, a truly unique and innovative organization within the CECOM Legal Office.

In November 1997, Pat was selected as Chief, Business Law Division C, an organization which consists of subordinate off-site CECOM Legal Office locations at Fort Belvoir, Virginia, Fort

Huachuca, Arizona, Alexandria, Virginia and Tobyhanna Army Depot, Pennsylvania.

Pat organized the newly established Division and implemented policies and procedures to effectively manage the diverse missions, workload, personnel and resources of this truly "virtual" organization.

## **Mike Walby--**

### **Command Counsel Achievement Award**

TACOM's **Mike Walby** has worked a complex and potentially precedent-setting employment law case that deals with novel reduction in force and whistleblower issues. The case started in 1995. The Merit Systems Protection Board ruled in favor of the complainant, TACOM ap-

pealed successfully to the full 3 member Board, and the employee appealed to the US Court of Appeals for the Federal Circuit, where the matter is now pending.

Several novel issues made this case particular sensitive, requiring extensive re-

search and coordination with officials at TACOM, HQ AMC and the Department of Justice.

The Achievement Award is unique in that candidates from AMC field legal offices are nominated by attorneys at HQ AMC.

# Special CLE edition

## Jack Glandon--

### **Preventive Law Program Award**

The Command Counsel Preventive Law Award recognizes the achievement that best exemplifies the philosophy of providing early legal advice and participation in the decisionmaking process so that the client has the benefit of counsel at the vital stage of a program or project.

This year the following counsel were nominated by their Chief Counsels: **Theodore Chupien**, CECOM, **Sam Shelton**, ARL, **Jack Glandon**, AMCOM, **Bradley Crosson**, OSC, **Terese Harrison**, OSC, **Violet Kristoff**, TACOM, **Denise Marrama** and **Paula Pennypacker**, CECOM, **SBCCOM's Legal Assistance Section**, and **Marina Yokas-Reese**, OSC.

### *Glandon Selected*

**Jack Glandon** from AMCOM is a Patent Attorney & member of the AMCOM General Law/Intellectual Property Law Division. He is recognized for his outstanding efforts in the area of legal review of proposed publicly accessible web sites.

During the last 2 years Jack has reviewed and pro-

vided substantive guidance and comment on over 150 proposed web sites to ensure compliance with copyright and trademark laws.

Mr. Glandon has created a preventive law program that includes intensive 1-on-1 training of PAO and Security Directorate personnel on the necessary and essential aspects of the review & created an extensive checklist for the benefit of the user community in creating web pages.

## **Team Project Award to SBCCOM--CSEPP**

Six Teams were nominated this year.

1) **SBCCOM**—Chemical Stockpile Emergency Preparedness Program (CSEPP) Guidebook & Workshop Team

2) **Anniston** Army Depot Legal/CPAC/EEO Roundtable Training Team.

3) **CECOM** and Ft. Monmouth Legal Services Tax Program.

4) **CECOM** Legal Team Supporting the Joint Tactical Radio System Program.

5) **AMCOM** Omnibus 2000 Program Team.

6) The **Operations Support Command** Acquisition Law Team.

SBCCOM's Team supported by **Ruth Flanders**, **Lisa Simon** and **Les Mason** was selected in recognition of the outstanding work in The project consisted of 3 main steps:

1) The team drafted a guidance manual on negotiating and drafting CSEPP MOAs and MOUs.

2) A CSEPP Workshop on MOAs and MOUs was held for

attorneys and emergency planners from the various interested agencies and municipalities.

3) Site-specific assistance in reviewing and revising MOAs and MOUs is being provided on as-needed basis.

The SBCCOM Team guidebook has been adopted by the Federal emergency Management Agency (FEMA) as a model approach to dealing with the complex issues surrounding CSEPP activities.

# Acquisition Law Focus

## Partnering Implementation Assessment Team (PIAT)

This summer a team led by **Ed Korte** and **Sallie Flavin** will review 3 Partnered programs each at CECOM, TACOM-W, STRICOM, AMCOM and OSC. The focus is to determine lessons learned, methods used and results attained in the use of Partnering. This Partnering Implementation Assessment Team (PIAT) will interview those industry and government personnel who are involved in the Partnering process, with the ultimate purpose of revising the AMC Partnering Guide to reflect real-life experiences.

Lead Partnering Champions at the MSCs will be the visit coordinator. Recently, each LPC was provided a list of 20 questions the PIAT will ask each Partnering participant interviewed (Encl 1):

### **The Decision to Partner:**

1. What motivated you to use Partnering (P) in this Program?
2. Who initiated the P effort?
3. Were both parties receptive to the idea of Partnering?
4. What was the first step taken to begin the P effort? When?
5. What role did the AMC P Guide play in the decision to P?

### **Facilitated Partnering Workshop:**

6. Did you use a professional P facilitator?
7. What did you do to locate the P facilitator?
8. Describe the initial P workshop?
  - a. How did you decide who should participate? Sub-contractors included?

- b. What was the length and cost?
- c. What P tools were developed during the P Workshop?
- d. Did you develop Metrics to track develops? What kind?
9. Were follow up P Workshops held?
10. What role did the P facilitator play after and/or between P Workshops?

### **Lessons Learned, Issues & Concerns:**

11. Describe "Lessons Learned": such as techniques used, ideas raised, policies and procedures utilized in the P effort.
12. What difficulties did you face in applying P?
13. How did you solve these problems?

### **Assessment:**

14. What is your personal assessment of P?
15. Describe successes and benefits derived from using P—time, money, resources, morale and other factors.
16. If you had it to do over, what would you do differently in applying P?
17. Would you use P again?
18. Now that you experienced P, what would you say to those who might be deciding whether to P?
19. What revisions to the AMC P Guide and P Model would you recommend?
20. How would you assess your command's support and commitment to P?

# Acquisition Law Focus

## Consequential Damages When Contractors Fail to Perform? *Yes!*

**ISSUE:** Can the Government recover consequential damages for contractors' failure to perform under Federal fixed priced or cost-reimbursable Inspection of Services provisions?

**ANSWER:** Yes, according to the U.S. Court of Federal Claims in Hamilton Securities Advisory Services, Inc. V. United States, 46 Fed. Cl. 164, Mar, 15, 2000; No. 98-169C.

OSC Acquisition Counsel **Dave Defrieze**, SN 793-8424, provides an excellent article focused on a recent court case that involved a contract to provide financial advisory support services to the Department of Housing & Urban Development (Encl 2).

The issue before the court was whether the Inspection of Services Clause - Fixed price (February 1992) provides the exclusive remedy and only possible source of damages for the parties. The court found that it did not, and permitted the Govern-

ment to pursue consequential damages.

Central to this decision was a determination as to whether the claim "arose under" the contract or whether the claim was "related to" the contract. A claim arises under a contract when the contract terms themselves provide for complete definable relief for the specific claim alleged. If the contract specifically provides for relief, then the claim is not a claim for breach of contract. Therefore, breach of contract damages are not allowable.

Accordingly, we should consider claims for consequential damages against contractors our who fail to perform (and possibly set them off as was done in the Hamilton case). Likewise, we should consider the potential for such claims against us should we not meet our duties under contract.

## AMC Protests Statistics

Comparison of case filings with the GAO and under the AMC-Level Protest Program during the October-April FY 99 and FY 00 timeframes:

### GAO:

FY 99--36  
FY 00--35

### AMC-Level

FY 99--11  
FY 00--14

### Total

FY 99--47  
FY 00--49

**Check the Web for AMC CLE Program Materials**

# Report on DOD Labor Management Partnership

# Its Performance Report

“Only by changing the nature of Federal labor management relations so that managers, employees, and employees’ elected union representatives serve as partners will it be possible to design and implement comprehensive changes necessary to reform Government.” (Executive Order 12871, 1993).

So opens the Report of the Examination of Partnership and Labor Relations in the Department of Defense, published on the internet at <http://www.cpms.osd.mil/fas/DPCReport/index.htm>.

We include a copy of the **Table of Contents** to this important compendium:

- Defense Partnership Council Members
- Dedication
- Table of Figures
- Introduction
- Executive Summary
- Methodology of Survey
- Chapter 1 - Characteristics and Causal Factors of Successful Partnerships

Chapter 2 - Improvements in Organizational Effectiveness Resulting from Partnership

Chapter 3 - Barriers to Partnership

Chapter 4 - Training and the Success of Partnerships

Chapter 5 - Unmatched Responses

Chapter 6 - Conclusions, Recommendations, and Next Steps

Appendix A - Survey Questionnaires

Appendix B - Methodology of Survey

Appendix C - Contributors to the Study and Report

Among the many memorable quotes in the study is the following:

“Across the Federal Government, labor and management are forming partnerships. By acknowledging their mutual interests and objectives, many former adversaries now work together as a united team with a common purpose and vision.”

The Federal Labor Relations Authority issued its FY 99 Program Performance report.

The Report addresses four broad goals. 1) providing high quality services that timely resolve disputes; 2) using alternative methods of dispute resolution and avoidance to reduce the costs of conflict; 3) maintaining internal systems that support programs needs — notably information technology systems; and 4) developing FLRA staff to ensure an effective organization with the flexibility to meet program needs.

You’ll learn that Office of General Counsel (OGC) reduced the number of overage representation cases from 51% in FY 1997 to 16% at the end of FY 1999; and that the Authority pretty much met the goal of increasing by 10% the number of decisions issued and reducing by 20% the number of cases pending Authority member decision over one year old.

You can also read the report on the Authority’s web page at [http://www.flra.gov/reports/annual199/annual\\_1999.html](http://www.flra.gov/reports/annual199/annual_1999.html)

## Employment Law Focus

# Executive Order Bars Discrimination Based on Parenthood--EO 11478

Executive Order 11478, as amended on 2 May 2000 bans discrimination against parents in the federal workforce, but does not create any new legal remedies.

Under the new Executive Order, parents cannot be discriminated against in any aspect of employment, including recruitment, referral, hiring, promotions, discharge, or training.

In addition, employers in the Executive Branch are prohibited from acting on the assumption that parents, or individuals with parental responsibilities, cannot satisfy the requirements of a particular job. The new law defines parental status expansively and applies to adoptive and foster parents, as well as biological parents and stepparents. The Office of Personnel Management is expected to provide further guidance.

## REDS Developments

In the six months since REDS was exported throughout AMC via the September 1999 REDS Training Program we have achieved much, to include recognition by Headquarters, Department of the Army as a Model ADR program for workplace disputes, and inclusion in the Office of Personnel Management Com-

pendium of Agency ADR Practices.

Additionally, we have made distribution of over 20,000 REDS brochures to AMC employees, so that they learn about the benefits of ADR and the component parts of REDS at a neutral time and place--before a dispute arises.

We have seen excellent support from Commanders and senior managers.

Without exception AMC labor unions have been very supportive of REDS objectives and focus on the future employment relationship.

If you have questions about REDS or the implementation of ADR for workplace disputes, contact **Steve Klatsky** at DSN 767-2304, [sklatsky@hqamc.army.mil](mailto:sklatsky@hqamc.army.mil).

# Environmental Law Focus

## President Issues Earth Day Executive Orders: **Greening of Government--** Transportation Issues Covered

On April 21 for Earth Day 2000, the President signed three new environmental Executive Orders:

### **Greening the Government**

(1) EO 13148-Greening the Government Through Leadership in Environmental Management,

### **Transportation Efficiency**

(2) EO 13150-Greening the Government through Federal Fleet and Transportation Efficiency, and

### **Federal Workforce Transportation**

(3) EO 13150-Federal Workforce Transportation. They are printed in the Federal Register on 26 April

2000, at 65 FR 24595, 24607, and 24613 respectively.

The Environmental Management Order promotes installation environmental management systems, environmental compliance audits, and pollution prevention.

The Fleet and Transportation Efficiency Order promotes the purchase of alternative and high fuel economy vehicles and recycled materials for vehicle maintenance.

Interestingly, the Federal Workforce Transportation Order directs Federal agencies to implement a transportation fringe benefit program offering qualified Federal employees the option to exclude from taxable wages their commuting costs incurred through the use of mass transportation and vanpools.

## Army Guidance Announced for Lead Hazards in Real Estate Transfers

On March 28 2000 Army issued its Guidance for Lead-Based Paint Hazard Management During Transfer of Army Real Property. It can be obtained on the Army Base Realignment and Closure Website <http://www.hqda.army.mil/acsimweb/brac/braco.htm>.

The Guidance applies to "residential real property, which includes property currently used for non-residential purposes, but for which there is a reasonable certainty that it will be used as residential property after transfer.

The Guidance implements the new DoD lead based paint guidelines for Disposal of DoD Residential Real Property-A Field Guide, also posted on the Army BRAC Website.

# Environmental Law Focus

## Does the Army Have A No New Landfill Policy?

Yes, sort of.

A 1991 Assistant Chief of Engineers policy memo indicated that Army policy would prohibit any new landfills where a regional system exists.

The revised AR 420-49 does provide a procedure for approving new landfills or expansion of existing ones, but only after all other alternatives have been explored.

So, it may be a very cold day in \*\*\* before any new solid waste landfills are approved. Taking together with the emphasis on privatizing Army utility functions, the preferred approach is to have a government agency take over ownership of any Army landfills, with the Army receiving favorable rates that reflect our contributions to the regional system.

## Final Toxic Release Inventory Reporting for Ranges

On April 4, 2000 DoD issued its final Guidance on Applying the Emergency Planning and Community Right-to-Know Act (EPCRA) Toxic Release Inventory Requirement to Ranges, (Encl 3).

This final guidance supplements earlier DoD guidance issued in March 1995, June 1996, and March 1998.

It applies to any designated area set aside, managed, and used to conduct research on, develop, test and evaluate military munitions and explosives, other ordnance, or weapon systems, or to train military personnel in their use and handling.

As the guidance notes, DoD ranges are unique, making application of EPCRA reporting difficult.

## Environmental Differential Pay-- Notification re Grievances

You are asked to notify AMCCC's Employment Law Team in the event a grievance on environmental differential pay is filed. There are both environmental and employment law issues inherent in these type of cases.

### 3 ELD Bulletins

Environmental Law Division Bulletins for March 2000 (Encl 4), April 2000 (Encl 5) and May 2000 (Encl 6) are provided for those who have not received an electronic version from ELD or who have a general interest in Environmental Law.

# From the Command Counsel--Annual Ethics Training for 2000: Use & Misuse of Resources...

**T**he Federal Government's ethics program requires one-hour of ethics training each year for those employees who file Public (SF 278) or Confidential (OGE Form 450 or OGE Optional Form 450-A) Financial Disclosure Reports.

The training must be "verbal" this year for all employees; there is no option for a "written" briefing for the Confidential filers. We are to remind these employees of their responsibilities under part I of Executive Order 12674, as modified, the conflict of interest statutes (18 U.S.C. §§ 201 - 209), the Standards of Ethical Conduct (5 C.F.R. Part 2635), and the DoD Joint Ethics Regulation (DoD 5500.7-R). We also ensure that they know who their ethics officials are, who will help them apply these laws and regulations to their personal situations.

In addition, we normally focus on a particular aspect

of these rules, and make this the primary subject of our training. For CY 2000, I encourage you to adopt the following: ***Use and Misuse of Government Resources***, with special attention given to Government computers, e-mail, and Internet access.

**Mike Wentink** and I already presented this training to about 70 of your SES/ST employees at the SES Executive Roundtable on 1 May. It was a resounding success. It is not surprising that there was considerable interest in this timely topic. We encouraged the attendees to also attend the training that you, their local Ethics Counselors will present, because their presence at such events is an important demonstration of leadership support to the workforce.

In addition, we urged them to have as many of their employees attend as possible — not just the "filers." The fact of the matter is that whether or not employees file

a financial disclosure report, and whether or not they attend ethics training, they are held accountable for compliance with all of the ethics rules and standards of conduct.

Unless you determine that your command requires another topic, please present the ***Use and Misuse of Government Resources*** training this year. I look forward to the synergy created by across-the-board training on this topic in AMC. A training package that you can build on will be sent to all AMC Ethics Counselors shortly after our CLE program in Orlando.

### **EDWARD J. KORTE**

This memo to the AMC Chief Counsels, dated 18 May 2000 is enclosed for your use (Encl 7).

# Ethics Focus

## ...And Ethics Training Material

At the AMC Annual CLE program **Ed Korte** advised the Chief Counsels that the preferred subject matter for this year's training in AMC is "Use and Misuse of Government Resources," with emphasis on Government computers, e-mail and internet access. The memorandum that he presented to the Chief Counsels is enclosed in this Newsletter.

**Mike Wentink** has sent to Ethics Counsel a supportive slide show for your use. Make sure that, after you open the file, hit "View" and then select "Notes page" where Mike provides additional information for most of the slides.

Mr. Wentink says: "Actually, all you have to do is to change some names, and you are set to go. But, you should find the training package to be flexible enough for you to adjust things to meet your specific needs. If you actually use the slides for handouts, I recommend that you hold back the "answer" slides until you are finished".

Another possible hand-out is a question and answer sheet for the attendees to keep track of their answers, also sent out to AMC Ethics Counsel. Finally, Mike suggests that you hand out YES/NO answer cards that the audience can use to vote on the various questions.

Other materials of import to your executing the Ethics Training include AMC CG's Policy #97-08 (Pol97-08.doc), and whatever local policy that might also exist.

There is also a slight change that was issued on 23 Feb 99, but I don't have it in electronic format. You should be able to obtain that from your DOIM.

In addition, don't forget the HQ AMC (AMCIO-F) 9 Oct 98 memorandum concerning additional guidance on the use of cell phones. We don't have this in electronic format, but mention it so that you can obtain it from your DOIM if you don't already have a copy.

## AMC Communications Systems Use Policy--For Official Use Only!

Although dated 1997 we provide an excellent memorandum describing various "for official use" only requirements pertaining to government communications systems (Encl 8).

"Official use" includes communications, including the Internet, that are necessary in the interest of the Federal Government, as well as emergency communications.

"Authorized personal use" include incidental use of communications, including the Internet, as authorized by this policy memorandum or as specifically authorized by supervisors using guidelines issued under this memorandum.

The memorandum highlights several examples and standards that we all should be aware of and to which we must comply.

## Ethics Focus

# Metallica--A Case Study in Computer Misuse

This year's Ethics Training theme is "Use and Misuse of Government Resources" with emphasis on our Government-provided computers, e-mail accounts, and internet access. Here is an example of a potential misuse that creates significant security concerns, and which is an abject lesson of the fact that there is no such thing as anonymity in cyberspace.

It seems that there is software out there that permits individuals to share music on-line by permitting the users to access, search, and download music from each others hard drives!

Wow! I don't know how good our firewalls are, but can you imagine our employees letting whoever wants to come in and search their harddrives and download music? That's like letting any member of the public who has an interest in music to visit our offices at any time, whether we are around or not, and see if they can find our personal CDs that we keep in our drawers... what a security nightmare!

Then there is the part about the lack of anonymity!

This makes the paper because the heavy-metal band

Metallica was upset about the violation of its copyright by many thousands of people. So, one weekend, it hired someone to do some internet sniffing of just one of the software services, and identified more than 335,000 individuals who were allegedly violating the band's copyrights by unlawfully sharing its songs over the internet! The band has now sued the makers of the software for copyright infringement and racketeering. I wonder what the potential liability is of these 335,000 persons (and their employers, if they were doing this from work?) Right now, the band is demanding that the software company block all of these persons from using this service any further. Not very anonymous, is it.

Just something else to worry about... but, I suggest that it is a good teaching point. When we are sending e-mail and surfing out their in cyberspace, we leave little puppy tracks that lead back to us and to our employer!

Here is the link:

[http://dowjones.wsj.com/  
i / l a w /  
SB957292964164971320-d-  
industry-c1-law.html](http://dowjones.wsj.com/i/law/SB957292964164971320-d-industry-c1-law.html)

# Gifts for Guest's of Honor

From **Mike Wentink**, AMC Ethics Team Chief:

"Here is the situation posed to me:

Officers of a particular branch (e.g., Signal Branch) are hosting a formal ball at an installation. They have invited a senior Signal Corps officer (3-star General Officer (GO) not in their chain of command) to attend as the Guest of Honor and Speaker. They want to pay the cost of the Guest Speaker's attendance and also to present a nice token of their appreciation. They are looking at such possibilities as: a crystal clock with pictures of the locality etched in, set into a marble base (about \$50); a crystal eagle for \$35; and a crystal multi-tiered knick-knack with the division patch. They figure that there surely should not be any problem if it is the senior GO who is the Guest Speaker because he is not in their chain of command.

The local Ethics Counselor asked for my thoughts. This is how I analyzed the situation".

To check Mike's analysis we provide the narrative for you (Encl 9).

# Faces In The Firm

## Arrivals Departures Promotions

### AMCOM

Welcome to **CPT Veronica Rodriguez** and **1LT Erick S. Ottoson**, who have joined the Office of Staff Judge Advocate. **CPT Rodriguez** comes to us from Korea while **1LT Ottoson** has just completed the basic course at Charlottesville, VA.

### OSC--Tooele

**F. Gil Brunson** has joined the Tooele Army Depot Legal Office. Gil is a former **LTC** in the JAG Corps with considerable experience in military law and installations.

### OSC--Sierra

**William Bradley**, Environmental/Safety Law Team, and his wife, Linda, are heading for Sierra Army Depot. We certainly will miss them – after all, Bill's been at Rock Island for a hundred years!!! Good luck!

### CECOM

**SFC Ursula Freeman** has joined the SJA Division as the Chief Legal NCO. She arrived from a position as a Court Reporter in Korea.

### CECOM

**LTC Diana Moore**, SJA will PCS to the Standards of Conduct Office, OTJAG. Her replacement is **LTC Donna Wright** who was a Military Judge in Germany.

**CPT Frances Martellacci** left the Army for a position as a Legal Clerk, U.S. Magistrate Judge, in Newark, N.J.

**SGT Donnie Lipsey**, Legal NCO and NCOIC of the Tax Center, left the Army. He plans to continue his education in Iowa.

### OSC

**CPT Humphrey Johnson**, TEAD will be departing for private practice in Maine.

**Major Gene Baime** left the OSC, Environmental/Safety Law Team, for the JAG School

### TACOM/ARDEC

**Robert C. Hennessy**, Attorney Advisor retired on April 28 after 20 years of service with the Picatinny legal office. His specialty for most of that time was environmental law.

### AMCOM

**CPT John L. Faris, III** was promoted on 1 June 2000.

### CECOM

**Marla S. Flack** was promoted to Procurement Analyst, GS-1102-13.

## Births

**CPT Walt Parker** and his wife, Laurie, celebrated the birth of their new daughter, Amber McKenzie Parker, on 19 May 2000, with brother Alec excited about the new arrival. Amber weighed in at 8 pounds, 6 ounces and was 20.5 inches long.

# Faces In The Firm

## Awards & Recognition

### ARL

**Patrick J. Emery** received a Special Act Award for his participation in the Electromagnetic Gun (E-Gun) Program. The E-Gun Program is the largest section 845 prototype agreement awarded by the Army and was awarded in May 2000.

### AMCOM

We are all very proud of our two AMC CLE Award recipients. Congratulations to **Charles Blair**, who received the Joyce I Allen Attorney of the Year Award and **Jack Glandon**, who received the Preventive Law Award.

### HQ AMC--New Jobs

**Lisa Simon** has assumed a new position as Technology Attorney responsible for areas such as Trademark, Copyright, Computer Law and E-Commerce.

**Cassandra Johnson** is the new Office of Command Counsel Fiscal Law counsel.

### CECOM

**Richard C. McGinnis** received the Commander's Award for Civilian Service for his outstanding service as Project Counsel for three of the largest information technology source selections conducted by the CECOM Acquisition Center-Washington: Infrastructure Solutions-1; Personal Computers-3 and Portable Computer-3, the combined estimated value of which exceeds \$775M

**Robert E. Dudley, Jr.** received the Achievement Medal for Civilian Service for his outstanding service as Project Counsel for the 100 kilowatt (kW) and 200 kW Tactical Quiet Generator source selection conducted by the CECOM Acquisition Center. Largely as a result of his efforts, to include the successful defense of three bid protests, this procurement, valued at \$85-100M, was completed in a timely manner.

### CECOM

**Guy Rayner** received the Commander's Award for Civilian Service for his expert procurement knowledge, skills and efforts that contributed greatly to the development and successful accomplishment of CECOM's competition goals to include his development of desktop management information tools used within the Competition Management Division of the Legal Office.

**Garrett E. Nee** received the Commander's Award for Civilian Service for his efforts that contributed greatly to enhanced industry awareness of acquisition opportunities, by developing a systemic process to post a listing of planned requirements for spare parts on the CECOM Acquisition Business Opportunities Page.

## EXCITING NEWS FROM LEXIS/NEXIS

### Editors Note

We hope you enjoy this new Command Counsel Newsletter feature,

Thanks to **Rachel Hankins** of LEXIS for contributing important information to make our legal research user friendly.

If you have questions or have information on your use of technology to support your legal practice, please consider sharing it with our readers.

Contact **Steve Klatsky**, HQ AMC at DSN 767-2304, [sklatsky@hqamc.army.mil](mailto:sklatsky@hqamc.army.mil)

Did you know you have access to LEXIS-NEXIS via your Web browser (Netscape or Internet Explorer)?

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- Information about LEXIS-NEXIS (resources, training, literature, What's New, FAQ's)

- Account contacts to communicate with the LEXIS-NEXIS team by providing feedback, asking questions and making comments

This web page has been specifically customized for Army Materiel Command legal personnel and is intended to be a true time saver in your information gathering process. Bookmark it today at <http://www.lexis-nexis.com/amc>.