



# Office of Command Counsel Newsletter

August 2001, Volume 2001-4

## AMC Environmental Counsel Robert S. Lingo Retires

The retirement of one who has worked with us for what commentators' call a generation is always filled with mixed emotions. You are happy for the person and the family. You know that the Lingo family, his wife Anne and daughters Robin and Tracy are looking forward to the exciting times and new experiences they will have in the future.

There is a career full of memories:

— Service in the Air Force JAG, in part in Japan, in part skiing in Japan during those years.

— Air Force JAG Reserve career culminating in retirement.

— His entry with AMC at what is now the Army Research Laboratory practicing both employment and environmental law from 1975-1978

— Service to HQ since 1979 as senior environmen-

tal counsel and Environmental Law Team Chief.

Bob is from Nebraska, although his genealogical interests have explored the Lingo clan far and wide, as well as geographical sites such as Lingo Island off the Eastern Shore of Delaware. He is proud of his home state—home of the author Willa Cather, the Big Red college football machine and the unicameral legislature. If you are unaware of what a unicameral legislature is, or that Nebraska is the only state with one, then you have not been by Bob's office door, which has an excellent article on it. His academic career includes being named to the Order of the Coif at the University of Nebraska.

Bob has practiced environmental law from the very beginning—when not the most brilliant mind could imagine present day scope. From Rocky Mountain clean-

up, the DOD Munitions Rule, The Aberdeen 3 personal liability case to the Land of Oz land use case at Sunflower Army Ammo Plant, and the multiple laws filled with melodic acronyms—CERCLA, NEPA and BRAC.

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## Lingo cont...

Shortly after Bob Lingo arrived at AMC, the command was faced with the prospect of shutting down 15 installations due to noncompliance with environmental requirements. Bob Lingo was instrumental in developing guidance to allow these installations to continue to operate by negotiating environmental compliance agreements. These agreements later became the model for Federal Facility Compliance Agreements used by all Department of Defense services.

Several years later, Bob Lingo was involved in developing a program to provide indemnification to GOCO ammunition plants. This established a firm statutory foundation and specific criteria for indemnifying GOCO ammunition plants. In addition, Bob Lingo has worked diligently to integrate the environmental and procurement disciplines by serving as a member of the DAR Environmental Subcommittee and assisting in developing the Army acquisition and materiel development NEPA guidance.

From 1993 to present, Bob Lingo played a leading

role in the disposal of excess installations. In the BRAC area, he negotiated the disposal of Vint Hills Farm Station, Detroit Army Tank Plant, and Woodbridge Research Facility. Bob Lingo was also a key legal advisor in the first use of early transfer authority involving Tooele Army Depot. In the non-BRAC area, Bob Lingo helped establish the Caddo Lake Refuge and was a major player in the continuing effort to transform Sunflower Army Ammunition Plant into a Wonderful World of Oz theme park.

Bob has had to learn the law and often had to make educated judgements on what new laws and regulations might mean to current and future actions, balancing Federal law with the many state laws and regulations that may or may not have applied depending on the shifting political winds. He is the mentor for the entire cadre of AMC environmental counsel.

Retirement means the end of Federal service, but the adventure and the experiences and the relationships will continue. We will miss you, and your service can never be forgotten.

### **Newsletter Details**

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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.

## Force Protection-- Contractors on the Battlefield

OSC's **CPT Derek Stratman**, DSN 793-3387, provides an excellent article, the purpose and scope The purpose of this document is to address certain issues concerning force protection as it relates to contractors (Encl 1).

Specifically, this document addresses

(a) whether contractors are entitled to force protection from the Department of Defense (DOD);

(b) whether contractors are obligated to obey force protection procedures;

and (c) how force protection issues relating to contractors may be resolved.

Generally, contractors are responsible for their own safety – the Army does not have an obligation to provide them with force protection (absent contract language to the contrary).

While contractors are on Army installations, they benefit from the security measures in force there (like any

other civilian who happens to be on an Army base). When they leave the borders of the post, the contractors themselves (and the local civilian police) are responsible for their safety.

At permanent installations overseas, responsibility for the off-post safety of contractors (as with all U.S. citizens abroad) rests with local law enforcement and the Department of State (DOS) (see United States Code, Title 22, Section 4802).

In a forward deployed environment, the commander's duty to provide force protection to contractors increases. "When U.S. contractors are deployed from their home stations, in support of Army operations/weapon systems, the Army will provide or make available, on a reimbursable basis, force protection and support services commensurate with those provided to DOD civilian personnel to the extent authorized by law." DA Policy Memo, 12 DEC 1997.

## List of Enclosures

1. Force Protection and Contractors on the Battlefield
2. Partnering--CG Seeks identification of major contracts that solicit Partnering
3. Reducing delinquency rates for individual travel charge card accounts
4. Retirements--Rules, Requirements and Exceptions
5. The 10 Best Legal Sites on the Web
6. The Lexis Corner

## AMC Partnering for Success--Initiatives Identified on Major Contract Award Chart

### CG Memo to MSC Commanders highlights Partnering

HEADQUARTERS, U.S.  
ARMY MATERIEL COMMAND  
**5001 EISENHOWER  
AVENUE, ALEXANDRIA, VA  
22333-0001**

**REPLY TO  
ATTENTION OF:**

MSC Commander

Dear General\_\_\_:

Ed Korte, AMC Command Counsel and AMC Senior Advisor for Alternative Dispute Resolution, has informed me that the June 26-27 Lead Partnering Champion (LPC) Workshop was a very successful one, identifying several initiatives to support our goal of making Partnering an AMC business practice. Each of your representatives has received a copy of the LPC workshop After-Action Report. My special thanks to the LPCs who are our principal Partnering advocates for identifying opportunities to Partner, educate and

implement the program at your commands.

As you know, each week during the Tuesday morning Command Group Update,

I review the major subordinate commands' projected major contract awards. Beginning August 14, 2001 these contract award charts will be annotated to identify those procure-

ments that have included Partnering in their solicitations. I anticipate the continued growth of our Partnering Program. The AMC Partnering Guide is being revised to include a new section on lessons learned representing the collective experiences gained thus far in Partnering. We expect the new Guide to be published and distributed throughout AMC before the end of the fiscal year.

I commend each of you for your active support of our command-wide

Partnering Program and urge you to meet with your Lead Partnering Champion to discuss your command's use and opportunities for future use of Partnering. Your personal advocacy and encouragement will send a message to your workforce that you actively support this important program and assure me that we are making a concerted effort to institutionalize this proven practice throughout AMC.

AMC—Army READINESS Command... Supporting Every Soldier Every Day.

Sincerely,

John G. Coburn  
General, U.S. Army

(Enclosure 2)

# Coordination with your CPOC-- Reminder from HQ DA

This is a reminder of the need for installation personnel, EEO and legal offices to coordinate with the servicing CPOC on grievances, EEO complaints and settlements involving CPOC actions. This requirement was addressed in Mr. Snyder's 16 Mar 01 memorandum, subject "Installation - Civilian Personnel Operations Center (CPOC) Coordination on Grievances, and Equal Employment Opportunity Complaints (EEO) Involving CPOC Actions."

Briefly, the memo reemphasizes the requirement for coordination between installations and CPOCs when processing grievances and EEO complaints (and associated

settlements) which would involve some action to be taken (or previously taken) by the CPOC.

The memorandum also reminds installations of the need to coordinate with the CPOC upon receipt of any grievance over a CPOC action. CPOCs are to identify and publish its points of contact for coordinating these issues.

Further, CPOCs should keep installations informed of the execution of personnel actions associated with the grievance/EEO complaint or settlement and timely provide copies of the completed actions to the installation/activity identified official responsible for monitoring compli-

ance with the terms of the grievance/EEO settlement. A copy of the memorandum is available on the CPOL web site at

[http://cpol.army.mil/library/armyregs/memos2/mer\\_cpoc\\_griev.html](http://cpol.army.mil/library/armyregs/memos2/mer_cpoc_griev.html)

The real message here is that civilian personnel matters work best when there is a team effort at the installation level as well as with those in the CPOC who serve the installation and command.

## DOD Issues Policies re Reducing Delinquency Rates for Individual Travel Charge Card Accounts

DOD recently issued new policies with respect to individual travel charge card accounts.

Highlights are in this condensed version: **SALARY OFFSET PROCESS**

### CONDENSED VERSION

At delinquent day 90, the Bank of America (BOA) will send a letter to the cardholder advising that if the account is not paid in full or alternative payment arrangements are not made, the account will be sent to the Defense Finance and Accounting Service (DFAS) for salary offset. The letter fully explains the cardholder's legal rights with regard to the debt and collection. These rights include requesting a hearing concern-

ing the amount and validity of the debt; inspect and copy records related to the debt; enter into a repay agreement with the contractor. It also notifies them that an administrative fee and 3 late fees have been added to the debt. The GSA Smart Pay Contract authorizes the contractor to pass all costs incident to collection to the cardholder. The late fees are charged, upfront, because it is a standard banking business practice to require 3 payments before an account is "aged current" and no additional late fees charged. If the account is paid in full within a 3-month period, BOA will refund excess late fees. Cardholders are given 30 days to respond.

At delinquent day 120, barring no reply from the

cardholder, a file will be generated by BOA and sent to DFAS-Cleveland/Salary Offset. The salary-offset branch will match the file against existing pay systems and then forward a file to affect collection. The collection amount, not to exceed 15% of disposable income per month until the debt is satisfied, will be made and the proceeds sent to BOA for crediting to the account.

A more detailed summary is provided at Enclosure 3.

## AMC Issued Enhanced Leasing Guidance

Section 2812 of the National Defense Authorization Act for FY 01, significantly revised the Army's leasing statute, 10 U.S.C. 2667. The revised law expands the categories of consideration, both cash and in-kind, that the Services may accept for leasing property. It includes the ability to use cash proceeds for restoration, environmental restoration, acquisition of facilities, construction and other services. It also includes a broader range of in-kind consideration that can be accepted to include con-

struction of new facilities, alterations, restoration including environmental and other services. It provides installations a means of reducing infrastructure costs, and providing facilities and services. Base operating support, demolition services and environmental restoration, etc may be accepted as in-kind consideration thus reducing funds need for these purposes. AMC issued implementing guidance on 1 Aug 2001. A point of contact is AMCIS-R, **Donald Carter**, (703) 617-9895.

## The Non-Binding Guidance from EPA

The EPA has initiated an Interpretive Documents Collection web site that is intended to provide a central point of access to non-binding general Headquarters EPA policy, guidance and interpre-

tive documents that describe how the agency intends to exercise its discretionary authority and explains what a statute or regulation means. It may be accessed at: <http://www.epa.gov/guidance>

## Europe Requires Treated Wood Pallets

The European Community (EU) has adopted an Emergency Measure in an attempt to stop further spread of the eelworm, a microscopic pinewood nematode.

This measure will require that coniferous non-manufactured wood packing materials originating in the United States, Canada, Japan or China are heat treated or kiln dried heat treated prior to import into the European Community. Implementation date is 1 October 2001.

DoD is working with the Department of Agriculture to develop a plan, due to the large number of coniferous softwood pallets and boxes used in the logistic chain to deliver ammunition, weapons, subsistence and general purpose products.

Failure to comply with the requirements of the Emergency Measure can result in the refusal, destruction or treatment of materials at the point of entry to the EU. Information is at: <http://www.aphis.usda.gov/ppq/swp/eunmwp>.

# Retirements--Rules, Restrictions & Exceptions

There are a number of scheduled departures and retirements from HQAMC. Now seems like a good time to review the rules on giving gifts to our commanders, directors and supervisors.

The **Standards of Ethical Conduct for Employees of the Executive Branch** has a “special, infrequent occasion” exception to the general rule that we should not give gifts to our official superiors. Reassignment or transfer outside of the superior-subordinate chain and retirement are examples of “special, infrequent occasions” where employees may honor another’s service to our organization and the Army with a gift appropriate to the occasion. Also, this is one of the two situations when it is permissible to solicit other employees to contribute to a gift.

However, there are restrictions.

1. The maximum value of any gift(s) from a donating group may not exceed \$300. Gifts that are also given to the spouse are included in the \$300 maximum. However, this limit does not include the value of the food, refreshments and entertainment provided to the honoree and his or her personal guests at the event that marks the occasion. In addition, plaques and similar items for presentation purposes only and with little or no intrinsic value (e.g. no sterling silver or gem encrusted engraved plates) are not considered to be gifts, and are not included in the \$300 limit.

2. If an employee contributes to the gift from two different donating groups (e.g., the CSM contributes to both the enlisted personnel gift and to the command group’s gift to the departing commander), the total value

of the two gifts may not exceed \$300.

3. The maximum that may be solicited from other employees is \$10, although an employee may contribute more than \$10 on his or her own initiative.

4. Employee participation and the amount of contribution must be entirely voluntary.

5. We may not solicit from “outside sources.” For example, we may not solicit contributions from support contractors or their employees. In addition, we may not accept voluntary contributions from them for this gift.

6. We may not use appropriated funds to purchase a gift for a departing or retiring employee. For example, we may not purchase supplies from the self-service supply center to frame a memento, such as the picture of

# Retirements--Rules, Restrictions & Exceptions continued...

the building or of the honoree's colleagues.

What's a "donating group"? That depends on the situation. In deciding on "donating groups," consider the basic rule and the appearances. We want to avoid situations where employees feel compelled to participate because of a competitive atmosphere, with one organization wanting to outdo another, or other reasons. We want to make sure that the person being honored is not embarrassed. Finally, as a very practical matter, the honoree has only so much wall space, places to put "things," and storage. A few years ago, a very senior officer retired, and, at his quarters, he had two garages full of gifts and plaques and mementos. The officer kept a very small fraction of what was in the two garages, and the rest was left either for Army museums or disposal.

Keep the "donating groups" to the minimum necessary to honor the departing employee.

When the situation arises where the employees of your organization want to collect money for a gift for a departing employee, it is best to seek the advice of your Ethics Counselor before you begin to solicit. What you want to avoid is the situation where the honoree must either return the gift, or pay you fair market value for it.

**Mike Wentink**, 617-8003  
Associate Counsel & Ethics Counselor

**Sam Shelton**, 617-8004  
Associate Counsel & Ethics Counselor

**Stan Citron**, R 617-8043  
Associate Counsel & Ethics Counselor

(Enclosure 4)

# Ten Best Legal Sites

We enclose a copy of the article by **Robert J. Ambrogio**, Law Technology News, July 23, 2001 in which he names his favorite best top 10 useful web sites for lawyers (Enclosure 5).

FindLaw

lexisONE

law.com

Legal Information Institute

Google.com

FirstGov

Thomas

Securities and Exchange Commission

ABAnet

Federal Judiciary  
Homepage

(Enclosure 5)

# Exciting Enhancements to LexisNexis

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## Floating Cite Assistant

Provides quick pinpoint cite information without performing any unnecessary scrolling within a document. All you have to do is rest the cursor anywhere in the text of the document and in a few seconds a pop up box will appear indicating the pinpoint cite. **To activate this feature**, click on Options (upper right corner) and check the box next to "Show floating pagination assistant."

## Shepard's Table of Authorities

The Table of Authorities (TOA) provides an analysis of cited legal authorities upon which a citing case based or supported its opinion. When you *Shepardize* a case the TOA will give you a list of references (cases and law reviews) cited by your case.

Thanks to **Rachel Hankins**, 202-857-8258 (Enclosure 6)

# Faces In The Firm

## Hello & Goodbye

### Arrivals

#### HQ AMC

**COL David Howlett** is the new AMC Deputy Command Counsel/Staff Judge Advocate, arriving from his previous position with the Environmental Law Division. Dave is a native of Rochester, New York.

**Bob Garfield** has accepted a position with the General Law Division and will be arriving in mid September from AMCCOM. Bob is a long time member of the AMC legal community, having served with the AMC St. Louis legal office for over 20 years.

#### TACOM

**Kevin Story**, accepted an acquisition law position with TACOM-Warren, departing Corpus Christi to return to his former place of employment.

#### AMCOM

**MAJ John Hughey** is the new Deputy SJA having just completed the JAG School Graduate Course.

### Departures

#### HQ AMC

**LTC Mike Walters** retired from the JAG Corps and immediately started his new career as a labor counselor with Walter Reed Army Medical Center.

### Promotions

#### ARL

**Angela Davis** was promoted from General Law Legal Assistant to a Paralegal Specialist.

#### AMCOM

**Hal Dilworth** was recently promoted to a GS-14 in the Adversary Proceedings Division.

### Births

#### OSC

Congrats to new grandpa **John Rock** on the birth of his grand daughter Andrea Rose Hassman.

#### AMCOM

**Tom and Elise Aug** welcomed their daughter Grace Alexander on July 3.

## Former Rock Island Chief Counsel Hancks Dies

Former Rock Island Chief Counsel **Marvin L. Hancks**, 73, Moline, passed away Saturday, Aug. 18, 2001, Marvin was born Aug. 17, 1928. He married Mary Jane Bales June 10, 1950, in Rock Island.

Marvin graduated from St. Ambrose College in June 1959 and graduated with honors from Washington College of Law, American University, Washington, D.C., in 1962.

He was employed by the Rock Island Arsenal in September 1962 in its legal office, becoming chief counsel in 1981. He served in that position until he retired in 1992. After retirement, he worked in the Rock Island School District as a volunteer and teachers' aide.

He was a member of the Rock Island County Bar Association. He served in the Army during the Korean War.

Survivors include his wife, Mary, Moline; stepfather, Raymond P. Hogan, Rock Island; sons and daughters-in-law, Rian W. and Linda Hancks, Moline, and Derek and Linda Hancks, Moline; three grandchildren, Caitlin, Joshua and Carly; and a sister, Marian Birmont.