



# Office of Command Counsel Newsletter

June 2002, Volume 02-03

## CLE 2002 Highlights: General Kern Addresses AMC Attorneys

**T**he CLE 2002 was a success; that's what we think we are hearing from attendees. Several memorable plenary sessions were aligned with the CLE theme, "**AMC Attorneys: Supporting the Objective Force.**"

This CLE was far different than any in the preceding 24 years: AMC Command Counsel **Ed Korte** was unable to attend due to illness. Deputy Command Counsel **Nick Femino**, Executive Officer **Holly Saunders** and CLE Committee Chair **Steve Klatsky** assumed additional responsibilities. A true team effort that ensured a smooth program.

It is always difficult to find people who have the knowledge, information and delivery on topics that support the CLE theme. This year we were fortunate for **COL William Johnson** who spoke on "Defining the Objec-

ive Force" and **LTC Jon Lockey** who described the "Objective Force Maneuver Unit of Action Concept". Both presentations were well received and the question and answer sessions added to the realization of what the objective force is, and the role AMC plays.

Two other exceptional plenary sessions concerned current issues: "Military Commissions" presented by **COL Paul Hutter** and Ethics and the Media by **Carol Knopes** of the Newseum.

Each year the perspective from the JAG Corps is presented. This year it was a pleasure to welcome **BG David Carey**, Assistant Judge Advocate General for Civil Law and Litigation.

**General Kern** addressed the attendees as part of the AMC Attorney Awards Program, and he focused our attention on the future--mission, organization and people.

## Pat Emery from ARL Selected AMC Attorney of the Year

*Details on the CLE  
Awards Ceremony  
inside*

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# Special CLE edition

## Pat Emery, ARL Counsel, Receives the Joyce I. Allen AMC Attorney of the Year Award

It was an honor to have the AMC Commander, **General Paul Kern** address us and then remain to assist in the Command Counsel Awards Ceremony.

At the annual AMC Continuing Legal Education Program **Pat Emery** of the U. S. Army Research Laboratory (ARL) was selected as the recipient of the AMC Attorney of the Year Award for 2002.

Pat was recognized for his exceptional efforts in support of the ARL Collaborative Technology Alliances (CTA) program. CTA represents the follow-on to the hugely successful ARL Federated Laboratory (Fed Lab) program, another initiative in which Pat was a key architect.

Fed Lab received a Hammer Award last year and the CTA program was built on the success of that initiative.

These two programs represent an experiment in pursuing Army research and development needs by establishing a collaborative research environment to serve as the crossroads for scientist and engineers from Government, industry and academia.

Pat's acquisition expertise, his legal skills, and his willingness to provide guidance on the applicable business concepts make him a critical player in this important program.

The other nominees for the Joyce I. Allen Attorney of the Year Award are: **Pat Drury**, CECOM Acquisition Center-Washington; **Frank Faraci**, AMCOM; **Terese Harrison**, OSC; **Violet Kristoff**, TACOM-W; **Denise Scott**, TACOM-ARDEC; **John Seeck**, OCS.

Congratulations to all.

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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.

## COL Donna Wright, CECOM SJA Receives Francis J. Buckley, Jr. Managerial Award

**COL Donna Wright**, CECOM is the recipient of the Francis J. Buckley, Jr. Managerial Award.

COL Wright was recognized for her significant work in the aftermath of September 11 in handling new and unique legal issues, working with the Ft. Monmouth community and her own staff to provide outstanding legal advice, counsel and guidance, and providing leadership to the SJA Division.

Security operations were a critical component of the command's post September 11 mission.

Coordination with local law enforcement personnel created legal issues that were expertly addressed.

Reservists who came to Ft. Monmouth received excellent briefings and required information from COL Wright and the team she managed.

COL Wright is an outstanding mentor for the military and civilian employees she manages.

Col Wright's planning of a recent Article 6 visit by a General Officer ensured visibility of several members of her office, giving each a significant contribution to a fine effort.

The other nominees for the Buckley Award are **Dave DeFrieze**, OSC and **Art Tischer**, AMCOM.

## David Kuhn, TACOM IP Counsel is Preventive Law Award Recipient

**David Kuhn** from TACOM-Warren is the recipient of the AMC Preventive Law Award.

The Command Counsel legal practice philosophy is to anticipate the needs of our clients and to develop programs and initiatives to address those needs.

Mr. Kuhn developed an intellectual property guide for contracting officers and acquisition personnel, titled "Intellectual property: Navigating Through Commercial

Waters." This was created in conjunction with the Undersecretary of Defense for Acquisition, Technology and Logistics.

To supplement the guide David executed an impressive array of preventive law notes, legal advisories and held seminars for clients.

The other AMC Preventive Law Award nominees are **Bruce Bartholomew**, AMCOM and **Maria Esparraguera** and **Jim Scuro**, CECOM.

pecial **CLE** edition

## AMC Team Project Award Received by CPT Douglas Moore from AMCOM, Redstone Arsenal

The recipient of the AMC Command Counsel Team Project Award is the Redstone Tax Assistance Team chaired by **CPT Douglas Moore**.

During the first 8 weeks of operation the team that CPT Moore organized filed over 2,100 federal and state returns representing over \$1,000,000.

The free services provided saved clients over \$155,000 in fees.

CPT Moore organized a team of military and civilian employees, some volunteers, ensured they were trained appropriately, established a campaign to inform the community of the tax service, and established office hours that provided maximum flexibility and convenience to the Redstone community.

In addition, the **CECOM Legal Office Emergency Acquisitions Team** was nominated for the Team Project Award.

## George Worman Receives AMC Command Counsel Achievement Award

This award is presented to an AMC field counsel nominated by HQ AMC counsel. This year's recipient is **George Worman**, Anniston Army Depot. On many occasions the Command Counsel has called upon George to provide in house legal counsel on sensitive, complex and difficult legal issues. George is an expert litigator and employment law practitioner, able to quickly develop the litigation strategy. He executes this strategy in an exemplary way with sophisticated oral and written communication skills.

# Acquisition Law Focus

## GAO, Protests, A-76 and Conflicts of Interest

On 5 Dec 2001, the GAO sustained the Jones/Hill Joint Venture protests which challenged the Navy's determination pursuant to OMB Circ. A-76 that it would be more economical to perform base operations and support services in-house at the Naval Air Station, Lemoore, CA.

GAO sustained the protests on many issues, including significant conflict of interest concerns:

A Conflict of Interest existed because a Navy employee and a consultant wrote and edited the performance work statement (PWS) and then prepared the most efficient organization (MEO).

The Navy Independent Review Official's Certification that the government could perform was not supported by either contemporaneous documentation or hearing testimony.

### Reconsideration

Upon the Navy's request for reconsideration GAO has modified its decision.

Now the conflict of interest rules will be applied prospectively from 10 Dec 01, the date that the Jones/Hill decision was released to the public.

If, on 10 Dec 01, an agency had already completed the PWS and invested substantial time and/or resources in preparing the in-house plan, GAO will not consider a protest ground alleging a conflict of interest based on the Jones/Hill decision.

In cases where the PWS has been started but there has not been substantial time invested in preparing the in-house plan, the GAO will consider a protest allegation that we failed to take steps to avoid or mitigate a conflict of interest.

If GAO decides that substantial time has been invested and, therefore, the conflict of interest rules cannot form a basis for protest, our action will be reviewed under the reasonableness standard.

POC is **Vera Meza**, Protest Litigation Branch Chief, DSN 767-8177.

## List of Enclosures

1. Whistleblower Protection Under OSHA
2. EEOC Final Rule: ADA and Federal Workforce
3. Agencies Pay for Discrimination--No Judgment Fund Anymore
4. Unionization and DA
5. TIM Q&A Fact Sheet
6. ELD Workshop
7. DOD Land Use Documentation and Guidance
8. DOD Letter to EPA re Land Use
9. OGE Raises Exemption on Stock Ownership
10. Tips, Bars, Restaurants, NAF and Appropriated Fund Employees.
11. Lexis Corner

## Invention Reporting: Natick and NIH Sign MOU

The U.S. Army Soldier and Biological Chemical Command (SBCCOM) Soldier Systems Center (SSC) at Natick, MA has signed a Memorandum of Understanding (MOU) with the National Institutes of Health (NIH) Office of Policy for Extramural Research Administration.

The MOU provides administrative support for compliance with invention reporting, by grantees/contractors, as described under the Bayh-Dole Act of 1980 (PL 96-517).

The Bayh-Dole Act gives grantees/contractors a right to elect title to Federally-supported subject inventions as a means to better promote commercialization of these inventions subject to a Government license to use or have others use the invention for Government purposes.

Grantees/contractors must meet certain reporting milestones to ensure that inventions made with Federal support are commercialized.

A major thrust of the re-inventing government initiative has been to streamline

reporting procedures through the use of electronic transmission of information and the development of standard formats and reporting procedures across government agencies. Our business partners, the grantees and contractors, have also identified these goals as a high priority.

### **iEdison**

To this end, the NIH developed Interagency Edison (iEdison), an electronic invention reporting and tracking system to assist the agency and grantees/contractors in timelier reporting of inventions arising from Federal support.

Reporting through iEdison simply and effectively allows grantees/contractors to comply with the law and improves the tracking of government rights. The administration of invention information in the iEdison database by NIH improves efficiency in a work environment that is often downsizing.

Considering the recent review by the GAO of the Army's practices in tracking

invention reporting under contracts, the use of iEdison is a significant improvement to the contract oversight aspect of invention reporting requirements of grantees/contractors.

### **Free NIH Assistance**

This assistance by NIH is provided at no cost to SSC or any collaborating agency. The MOU is based on the assumption that SSC has fewer than 200 inventions reported per year. The MOU will continue until either party notifies the other of termination, which may occur at any time by simply sending a letter to the other party.

Agencies of the Departments of the Air Force, Navy, Commerce and Agriculture, Fort Detrick of the Army's Medical Command, the Environmental Protection Agency, Food and Drug Administration, and National Science Foundation have signed on with NIH.

For more information contact Natick Counsel **Vin Ranucci**, DSN 256-4510

## GAO A-76 Report Released and Discussed at CLE 2002

**Dan Gordan**, Chief of the GAO provided attendees with a summary of the recently released GAO A-76 Panel Report.

Dan shared his thoughts and led a spirited discussion on this important effort.

In response to a requirement in the National Defense Authorization Act for Fiscal Year 2001, the Comptroller General of the United States convened a panel of experts to study the current A-76 process used by the government to make sourcing decisions.

The Panel consisted of representatives from Federal agencies, labor unions, private industry and other experts.

### **The mission statement developed:**

“The mission of the Commercial Activities Panel is to improve the current sourcing framework and processes so

that they reflect a balance among taxpayer interests, government needs, employee rights, and contractor concerns”.

### **The Panel adopted 10 Sourcing Principles**

Federal sourcing policy should:

1. Support agency missions, goals, and objectives.
2. Be consistent with human capital practices, designed to attract, motivate, retain, and reward a high-performing federal workforce.
3. Recognize that inherently governmental and certain other functions should be performed by federal workers.
4. Create incentives and processes to foster high-performing, efficient, and effective organizations throughout the federal government.
5. Be based on a clear,

transparent, and consistently applied process.

6. Avoid arbitrary full-time equivalent or other arbitrary numerical goals.

7. Establish a process that, for activities that may be performed by either the private or public sector, would permit public and private sources to participate in competitions for work currently performed in-house, work currently contracted to the private sector, and new work, consistent with these guiding principles.

8. Ensure that, when competitions are held, they are conducted as fairly, effectively, and efficiently as possible.

9. Ensure that competitions involve a process that considers both quality and cost factors.

10. Provide for accountability in connection with all sourcing decisions.

## Whistleblower Protection Under the Occupational Safety and Health Act

The OSHA provides some anti-discrimination protection for employees. Title 29, Section 660c(1) of the United States Code contains a provision that prohibits any person from discharging, or in any manner discriminating against, an employee because that party has exercised any right allowed under the OSHA to file a complaint (i.e. to report unsafe working conditions) or participate or testify in a related proceeding.

### Other DOL Authority

Along with what are traditionally thought of as "safety issues" under the OSHA, the DOL also has the authority under 29 CFR 24 to investigate complaints of employer retaliation for "whistle blowing"

under the following statutes: the Safe Drinking Water Act, the Water Pollution Control Act, the Toxic Substances Control Act, the Solid Waste Disposal Act, the Clean Air Act, the Energy Reorganization Act, and the Comprehensive Environmental Response, Compensation and Liability Act.

Reprisal complaints pertaining to potential violations of the above statutes can be filed within 30 days at the nearest Occupational Safety and Health Administration office.

Possible reprisal for reporting violations of the above statutes is investigated in the same manner by the DOL as possible reprisal for reporting potential violations of the OSHA (Encl 1)

## ADR Use on the Rise in EEO Complaints at OCI

Comparing statistics on ADR use by the DOD Office of Complaints Investigation reveals a sharp increase in the use of ADR.

### FY 00

Cases Using ADR=704  
Resolved by ADR=497  
Cost Avoidance=\$30-117 million

### FY 01

Cases using ADR=874  
Resolved by ADR=650  
Cost Avoidance=\$39-117 million

The success rate increased from 70% to over 74%

# Employment Law Focus

## EEOC Issues Final Rule on ADA and the Federal Workforce

The U.S. Equal Employment Opportunity Commission (EEOC) announced on May 21, 2002 the publication of a final rule to clarify the application of the employment provisions of the Americans with Disabilities Act of 1990 (ADA) to federal government workers.

“These changes to the Commission’s regulations will promote consistent enforcement of the Rehabilitation Act of 1973 and Title I of the Americans With Disabilities Act of 1990,” said EEOC Chair Cari M. Dominguez. “They will also promote the goal of increasing the employment of individuals with disabilities in the federal government and ensure that the federal government continues to serve as a model employer of individuals with disabilities.”

A complete copy of the announcement is at Enclosure 2.

## Agencies Will Pay for Discrimination Out of Own Pockets-Not Judgement Fund

President Bush signed legislation yesterday that is designed to hold federal agencies more accountable for acts of discrimination or reprisal against their employees.

It requires agencies to pay — out of their budgets — for settlements and judgments against them in discrimination and whistleblower cases.

Most settlements and awards in favor of federal employees who sue agencies in discrimination cases have been paid from a government-wide Judgment Fund.

In addition, the law requires agencies to file reports with Congress and the attorney general on case histories, including discipline taken and money expended.

A complete copy is at Enclosure 3.

## Unions and the Department of Army

**T**here are 377 collective bargaining agreements within Army covering approximately 94% of the bargaining unit employees.

Of those agreements, 40 are multi-unit involving 100 units; only 45 units and 4,707 unit employees are not covered.

Of the 126,786 employees, there are 90,149 (71%) white-collar (including 13,233 professionals) and 36,637 (29%) blue-collar employees.

There are 6,435 (4.8%) fewer bargaining unit employees and 23 (4.6%) fewer bargaining units compared to Jan 99.

A complete listing of data including the 24 different labor organizations that represent Department of Army employees is at Enclosure 4.

# Environmental Law Focus

## TIM--Q and A Fact Sheet

The Transformation of Installation Management (TIM) is an initiative to centralize installation management within the Army.

The purpose of this initiative is to improve management efficiencies and standardize the quality of services that soldiers can expect as they move between installations.

The TIM will be structured to have the Installation Management Agency (IMA) direct overall Army installation management operations. Regional offices will manage execution functions for all Army installations and garrisons within a geographical area.

According to the Q&A sheet, one of the tenets of the TIM plan is to minimize work force turbulence. The Army expects little, if any, changes in manpower at the installation level (See Questions 20-23).

Additional information is provided in the enclosure Q&A Sheet (Enclosure 5).

## ELD Discusses Online Compliance, Litigation and Federal Environmental News more

On 16 May 2002, the Army Environmental Law Division held a very informative workshop on the latest environmental law developments. The workshop topics included:

### **Compliance Topics**

- New DA PAM 200-1
- CAA Sovereign Immunity Update
- Fort Wainwright Update
- Water Issues Update

### **Restoration/Natural Resource Topic**

- Langley Air Force Base LUC Dispute
- LUC Implementation

### **Litigation Update**

- Litigation Reports
- SIAD OB/OD Lawsuit
- Fort Richardson Litigation
- Fort Huachuca ESA Decision

### **AEC Update**

- "Presidential Regulations" Update
- The Migratory Bird Treaty Act: *Waking a Sleeping Giant!*

(Enclosure 6).

This is a computerized, subscription-based information service operated by the EPA's Office of Enforcement and Compliance Assurance, Federal Facilities Enforcement Office. Subscribers to this free service will receive environmental news and information of interest to federal facilities.

To subscribe, send an email message addressed to [listserver@unixmail.rtpnc.epa.gov](mailto:listserver@unixmail.rtpnc.epa.gov). Leave the subject line blank, and in the body of the message write: subscribe FEDENVIRONEWS-ONLINE firstname lastname (e.g., subscribe FEDENVIRONEWS-ONLINE john doe).

Please follow the spacing and case parameters in the example. In separate text below your address, please indicate your federal agency, and/or state in which you are affiliated or located.

For further information, please contact Marie Muller, EPA, at [muller.marie@epa.gov](mailto:muller.marie@epa.gov).

## DOD Land Use Control Documentation Guidance

## DoD Environmental Management System (EMS) Policy.

### *DOD and EPA at Impasse*

The Department of Defense (DoD) and Environmental Protection Agency (EPA) are at impasse regarding documentation of land use controls (LUC) in clean up records of decision (ROD).

On 4 June 2002, DoD issued guidance to try to resolve this impasse. Under the guidance, the installation should continue to follow the DoD position that LUC implementation information (e.g. periodic monitoring, inspection reports, etc.) is not included in the ROD.

While EPA is expected to disagree with this approach, if their only disagreement involves LUC implementation documen-

tation, the installation should note this disagreement in the ROD and indicate that the ROD may be amended in the future based upon final resolution of the DoD/EPA policy level disagreement.

As long as EPA concurs with the underlying physical remedy, the installation “may and shall unilaterally issue and execute the ROD respecting those elements of the physical remedy”.

The DoD guidance also includes useful model ROD and transmittal letter language.

A copy of the DoD guidance and letter forwarding the guidance to EPA is provided at Enclosure 7 and Enclosure 8.

**O**n 23 April 2002, the DoD issued a press release announcing the availability of an EMS policy memorandum.

The memorandum directs DoD components to adopt an EMS and work to integrate it in all core business areas. Components may adopt ISO 14001.

Although not required, DoD components are encouraged to implement a complementary management system for safety and occupational health.

The policy memo is available at <https://www.denix.osd.mil/denix/Public/Library/EMS/Documents/dodems-040502.pdf>.

For further information, please call (703) 428-0711, or [public@defenseink.mil](mailto:public@defenseink.mil).

# OGE Raises the Exemption on Stock Ownership

Effective 18 April 2002, \$5000 no longer will be the correct answer. The correct answer will be: D. \$15,000. Long awaited, On April 18, 2002 the Office of Government Ethics' (OGE) proposed regulatory change to raise the exemption amount for stock ownership has now been published as a final regulation that takes effect on 18 April 2002.

The prior rule had an exemption of \$5,000. This change elevates the amount to \$15,000.

For purposes of applying the exemption, the employee must aggregate his or her stock ownership with stock owned by someone whose financial interests are imputed to him or her—spouse and minor children.

**Mutual Fund Ownership**  
OGE has also established

an exemption amount for ownership of sector mutual funds.

A sector mutual fund is a mutual fund that concentrates its investments in an industry, business, single country other than the United States, or bonds of a single State within the United States.

The exemption amount for sector funds is \$50,000.

There already is a blanket exemption for diversified mutual funds. A diversified mutual fund is one that does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States.

POC is Bob Garfield, AMC Ethics Team Chief, DSN 767-8003. (Enclosure 9)

# Tips, Bars, Restaurants, NAF and Appropriated Fund Employees

Bob Garfield provides an excellent analysis written by **Bruce Esnor**, concerning 18 USC Sec 209 which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee.

Both appropriated fund and non-appropriated fund employees whose primary occupational duties do not customarily and regularly involve tips, or involve government contracting, restaurant management, supervision of employees or other fiduciary duties are prohibited under 18 U.S.C. § 209 from soliciting or accepting tips as a "contribution to or supplementation of salary".

A great analysis on an interesting issue is at Enclosure 10.

# LEXIS CORNER

## Using People Locators and Public Records for, due diligence, background information, litigation and investigative research.

**LexisNexis** offers the most extensive collection of public records information available. Drawn from 1,100 sources, nearly 1.5 billion individual and business records and growing continually, LexisNexis public records include:

- person locators
- business locators
- real property records
- personal property records
- business and corporation information
- judgments and liens
- civil and criminal court filings
- verdicts and settlements
- licenses

**You can use it in a host of applications. Here are just a few examples:**

- simplify due diligence on entities you do business with,
- locate elusive parties, witnesses, defendants, judgment debtors, child support obligors, pension beneficiaries, heirs, and others
- track ownership of assets
- find bankruptcy history
- verify facts such as license status and history, a company's exact name, and so on
- trace an individual's business affiliations
- review Secretary of State filings
- gather intelligence on an individual on business.

Several sample searches are identified in the much prettier version of the Lexis Corner at Enclosure.

Contact **Corrin Gee** at 800-253-4183 X78236 or **Rachel Hankins** X78258

## Lexis at CLE 2002

Thanks to **Rachel Hankins** and **Coreen Gee** for their CLE 2002 contributions, and their active participation in the Legal Focus Sessions.

# Faces In The Firm

## Arrivals

**Beverly Fisher** has joined the STRICOM Legal Office as a Paralegal Specialist. Beverly came from the Human Resources Mgmt. Division.

Welcome **Kelly L. Daniel**, "**Lisa**", Associate Counsel. Lisa is a Navy employee who works on Army programs. Lisa comes to us from Peterson AFB, Colorado, where she was assigned as an Air Force JAG.

## AMC Senior Counsel and Office Chiefs Set to Retire

At CLE 2002, we took a moment to recognize the exceptional service of two veteran AMC Counsel who have led their respective offices, Both have announced their retirements.

### Bob Spazzarini

The Chief Counsel of AMCOM for the last 5 1/2 years retires shortly. Bob has over 38 years of government service, over 36 with AMCOM and its prior command-MICOM, at Redstone Arsenal.

Bob led AMCOM through a remarkable period, with the merger of the AMC legal office in St. Louis with Huntsville's legal community.

Raised in Connecticut, Bob received his BS and LLB from Georgetown University, Washington, DC. He also attained a masters degree in Public Administration from Harvard.

Bob exhibited a professional demeanor through the many significant actions he worked or managed over the years. So many AMCOM and AMC counsel have learned acquisition law from Bob, as well as how you can show leadership in a quiet and dignified manner.

### Les Renkey

The Chief Counsel of the Blue Grass Army Depot for over 29 years-that says it all. Les exhibited exceptional ability to adapt to the vast changes in the practice of law at a Depot.

Labor and Employment Law, Environmental Law, specific issues such as sexual harassment, personal liability, conflicts of interest are just a few of the legal disciplines that arose during these three decades.

Les handled these mission changes with rare professionalism.

Les received his BA from Notre Dame, was an Army Infantry Officer, received a law degree from the University of Kentucky, and attended his first AMC CLE in 1974.

## Departure

**Jim Savage** has announced that he will be retiring this year, and his service at Natick (and before that at Watertown, Mass) was recognized at the CLE. Jim has been with AMC for 16 years. He served his country well as an infantryman with combat service in Vietnam.

## Public Service Award

TACOM-RI Paralegal **Gail Fisher** received a Lifesaving Award from the American Red Cross in a TACOM-RI Town Hall meeting. She did the Heimlich maneuver on K Krewer who was choking on a piece of popcorn.

As K says "While some people might argue that saving the life of a lawyer is not really a public service, I was very glad that she was here!"