



Office of Command Counsel Newsletter

April 1998, Volume 98-2

AMC Names & Trains Partnering Champions

AMC launched a significant milestone in the goal of expanding the use of Partnering by training nearly 80 individuals to be AMC Partnering Champions in two 2-day workshops, held 3-4 and 5-6 March 1998.

AMC Commander **General Johnnie E. Wilson** asked each major subordinate commander to designate five Partnering Champions, and a lead Partnering Champion, with the criteria that they each hold important acquisition-related positions. The primary role for these Partnering Champions is to be that command's focal point to provide information on Partnering, and to publicize, market and assist in identifying opportunities to choose Partnering as a business practice.

A special thanks to the members of the AMC Partnering Team: Team Chief **Mark Sagan**, Deputy Chief Counsel, CECOM, **Ken Bousquet**, TACOM Acquisition Center, **Dave DeFrieze**, IOC counsel and expert on

Partnering, and **Steve Klatsky**, Assistant Command Counsel, HQ AMC, the manager of the AMC Alternative Dispute Resolution (ADR) Program.

Lastly, a great job by **Tom Cavey** and **Holly Saunders** in workshop preparation and administration, and **Billy Mayhew** for invaluable assistance in organizing the workshop deskbook.

The Workshop Agenda (Encl 1) and list of Workshop Handouts (Encl 2) are provided for you. Additionally, one of the important handouts is on the History and Background of Partnering, prepared by **David DeFrieze**, which we provide to you (Encl 3).

Mark Sagan was a truly outstanding "Master of Cermonies" and Program Director. And thanks to **Ken Bousquet** for not complaining about *hangin'* around the lawyers.

A copy of Workshop handouts is on a disk that was given to each AMC Partnering Champion Work-

shop attendee. Contact your Lead Partnering Champion, or the AMC attorney from your Command who attended the Workshop, if you are interested in obtaining any of the material.

Additional information on this outstanding program, and the names of both AMC Lead Partnering Champions and AMC attorneys who are Partnering Champions, can be found on pages 3 and 4.

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CLE '98 Coming Up Soon-- June Will Be *Bustin'* Out All Over

AMC's 1998 Continuing Legal Education (CLE) Program will be held 8-12 June 1998 at the Grosvenor Hotel, Lake Buena Vista, Florida. As we go to press the draft agenda and list of CLE Program electives is on the way to each AMC legal office.

The theme of this year's CLE is "AMC Attorneys: Supporting the Total Army."

Steve Klatsky is chair of the CLE Planning committee. The CLE is the training highlight of the year for our legal community.

This year we will emphasize the many timely and challenging issues faced by AMC attorneys, and the roles we play in supporting the Total Army--military and civilian and contractors. We invite you to volunteer to actively participate in the program as speakers and, of course, we look forward to seeing you in June.

There is one new program format change that will debut at this year's workshop. The very important sessions held by the leaders of four different legal disciplines--acquisition, employment, environmental and intellectual property, have a new name: Legal Focus Sessions. The new designation represents

what those four-hour programs are: a chance for practitioners to get together and discuss--focus--on important developments.

For the fourth consecutive CLE Program we will emphasize electives, giving each attendee the opportunity to pick from a menu of titles, covering all aspects of our legal practice.

We are very pleased that we will have AMC Chief of Staff **MG James Link** join us at this year's program.

Plenary sessions on Force XXI and the Quadrennial Defense Review will highlight important issues for our future.

As always, the Awards Ceremony will highlight the significant achievements of AMC counsel during the past year. Joining us for that session will be Army General Counsel **William T. Coleman III**.

The annual CLE Program is the training highlight of the year, a rare chance to enhance your legal skills, meet your colleagues, share opinions and views, and become closer as a law firm and family. We hope to see as many as you as possible to enjoy and share this unique opportunity. ©

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Check out the Newsletter on the Web at http://amc.citi.net/amc/command_counsel/

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

Acquisition Law Focus

Partnering Workshop Highlights AMC Model

The interactive workshop emphasized the four-step AMC Partnering Model contained in the AMC Partnering Guide. Areas of concentration included team-building exercises, the history and background of Partnering as a tool to improve contract administration through enhanced communication, an overview of the AMC Partnering process, a snapshot of ADR that also discussed conflict escalation, and a discussion of legal and ethical issues.

Four-Step AMC Model

The four-step AMC Model discussion was conducted through small group discussions of four typical contract scenarios concerning different kinds of contracts and varied facts and circumstances.

The Partnering Charter and Partnering Workshop, step three of the AMC Model, was discussed at length, in that this is considered the most critical part of the process. It is during the

Partnering Workshop that the contracting parties create the important tools of the Partnering process: prepare their mission statement; identify goals and objectives, finding that many are common to both government and industry; surface anticipated “rocks in the road”, problems they know they will face, and designing an action plan to address each; draft a conflict escalation clause, empowering specific individuals with the authority to address issues at the lowest possible level; and agree to an ADR procedure to resolve issues without going to formal litigation.

Partnering Supports Acquisition Reform

Partnering is a vital component of AMC acquisition reform initiatives. AMC Partnering efforts have proven very successful, with evidence indicating that the Partnering process contributes to enhanced communication, reduced paper work, curtailed litigation, elimination of surprises, while improving the professionalism and morale of participants. ©

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Acquisition Law Focus

AMC Lead Partnering Champions Designated

AMC Commanding General **Johnnie E. Wilson** asked each AMC MSC Commander to designate five Partnering Champions (PC) and a Lead PC. The primary role of the Lead PC is to become the MSC Commander's representative in achieving the goal of expanding Partnering initiatives through the Command. The year are:

SSCOM: **Timothy Tweed**, Chief Contracts Division, Acquisition Center;

STRICOM: **Harlan Gottlieb**, Counsel;

CBDCOM: **Helen Morrison**, AMC Acquisition Center;

CECOM: **Lawrence Asch**, Procurement Analyst, Acquisition Center;

AMCOM: **LTC Louise P. Morgan**, Acquisition Center;

TACOM-Warren **Lorraine Maynard**, Acquisition Center;

IOC: **Marshall Collins**, Chief, Rockets, Mortar & Pyrotechnics Branch;

TECOM: **Joyce Roberts**, Chief, Contracting Branch; a

ARL: **Shirley A. Harvey**, Procurement Office; and,

TACOM-ARDEC: **Jerry Williams**, Counsel. ©

AMC Partnering Champion Counsel

Counsel plays an important role in Partnering. We are asking AMC attorneys to actively participate in the expansion of Partnering by identifying acquisition programs for Partnering, and to join in workforce education that is so important.

AMC attorneys who are AMC PCs are:

Bob Chase, ARL,

Richard Mobley, SSCOM,

Harlan Gottlieb,

STRICOM,

Caridad Ramos, ACALA,
John Klecha, TACOM-Warren,

Jerry Williams, TACOM-ARDEC,

Harvey Reznick, AMCOM,

David Scott, TECOM,
Maria Esparraguera,

CECOM,
John Metcalf, Belvoir,

CPT James Butler, Tobyhanna Army Depot,

Phil Hunter, CBDCOM, and

Diane Travers, HQ AMC

Whose Wearing the Uniform?

An example of the impact that military service downsizing has had is indicated by the following statistics concerning the numbers of employees/personnel who are wearing uniforms.

Army 482, 186

Navy 382, 892

Air Force 370, 297

Marines 171, 589

Coast Guard 33, 892

Postal Service 921, 216

These statistics are as of 31 December 1997.

Employee & Labor Relations Web Sites

The Internet is an outstanding source of information and legal research tool. We provide an extensive list of general purpose search engines, government agencies and offices, job locator, academic research sites, and some miscellaneous links (Newspapers and Dilbert, too!) (Encl 14). We give you the freedom to determine those links you want to add to your Bookmarks.

Acquisition Law Focus

Source Selection Participation Agreement

Lisa Simon, CBDCOM, DSN 584-1298, provides an excellent example of a Source Selection Participation Agreement, containing the rules of conduct relating to the procurement, including conflicts of interest, communication with offerors or their subcontractors, and safeguarding confidential information, which must be followed by government personnel involved in the source selection.

Principles for *ALL* To Follow

The agreement contains two specific provisions that appear applicable to most activities we engage in as government employees:

o You recognize that your participation in this source selection may be subject to intense scrutiny. As such, you agree to conduct yourself in such a way as to not adversely affect the confidence of the public or competing contractors in this source selection process.

o You agree to avoid any action, whether or not prohibited, that could result in, or could create, the appearance of a lack of independence or a lack of impartiality.

Avoid Conflicts of Interest

The conflict of interest section covers financial interests with a potential competing contractor, financial interests covering spouse and dependent children, and blood and marital relationships with competing contractor personnel.

The section also highlights prohibitions against solicitation regarding future employment, mandates that you do not ask, solicit, accept or receive any money, gratuity or other thing of value from one of the competing contractors.

The section on protecting confidential informational highlights the important role played by the contracting officer, who is the primary person ruling on the propriety of discussions between the government person and contractor personnel (Encl 4). ©

Cease Privatization: Study Better Says Fed'l Ct.

There is not much case law concerning the application of privatization of former federal activities. Your attention is invited to National Air Traffic Controllers Association v. Secretary of Transportation, DC NOhio, No I94CV0574, March 2, 1998. The Court ruled that the Federal Aviation Administration (FAA) must cancel its program to privatize 129 FAA-operated air traffic controller towers and reconsider whether these services should be contracted out.

The Court stated that since there is no mandate to privatize, there is no statutory basis for ignoring A-76 provisions requiring cost comparison study.

There is also interesting language concerning the issue of inherently governmental functions. The plaintiff union argued that air traffic services are inherently governmental functions and can not be contracted. Unfortunately, the Court decision does not hinge on this issue. Stay tuned! ©

Acquisition Law Focus

Using Liquidated Damages

ARDEC's **Bob Parise**, DSN 880-3410, supplies an excellent synopsis on the use of liquidated damages in government contracts. Although stating that the use of liquidated damages in government contracts is infrequent, a recent case may provide emphasis for expanded use. In Manufacturing Corporation v. U.S., 86 F.3d 1130 (Fed.Cir. 1996), the Court recognized that while state courts may be hostile to liquidated damage clauses, the federal law "does

not look with disfavor upon liquidated damage provisions in contracts."

One reason for lack of use may be that the FAR provides guidance on liquidated damages in only the construction contract area (FAR Subpart 11.5).

The court case has a nice quote from the noted jurist Learned Hand: "Courts should encourage (such agreements) to the utmost

instead of being disposed to lean against them." In this case the court stated that the contractor, rather than the government, has the burden of proof in challenging the enforceability (reasonableness) of a liquidated damage provision. The Manufacturing Corporation case contains several useful case opinions for those interested in this issue (Encl 5). ©

Contingent Fees & Foreign Military Sales Contracts

USASAC's **Larry Anderson**, DSN 767-8040, provides an update on new rules concerning limitations on allowable contingent fees for foreign material sales contracts (Encl 6).

Contingent fees are generally allowable under DOD contracts provided the fees are determined by the contracting officer to be fair and reasonable and are paid to a bona fide employee of an established commercial agency maintained by the contractor for the purpose of securing business.

As of 9 March 1998, the prior contingent fee limitation of \$50,000 per FMS case is no longer in effect. Now you can exceed this amount, provided payment has been identified and approved in writing by the foreign customer before contract award.

There is no change in the list of countries for which contingent fees are not allowed, unless specific facts and circumstances exist. They are Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Korea, Kuwait, Pakistan, Philippines, Saudi

Arabia, Turkey, Thailand and Venezuela.

Contingent fees on FMS contracts with these countries are allowable, provided payment has been identified and approved in writing by these countries before contract award.

DOD 5105.38-M, Security Assistance Management Manual, requires a provision in Letters of Offer and Acceptance with these nations to specifically address the contingent fee prohibition. ©

Acquisition Law Focus

Quick Primer: Sale or Exchange of Government Property

TACOM-ACALA counsel **Kay Krewer**, DSN 793-8414, provides an excellent paper on the impact that fiscal law principles have on the sale or exchange of Government property, with the Government keeping or applying the proceeds (Encl 7).

Generally, money from the sale or exchange of Government property must be deposited in the general Treasury fund and can not be applied to a specific contract.

2 Principles

The two applicable principles are:

1. The miscellaneous receipts statute, 31 U.S.C. Sec. 3302(b), which provides that moneys received on behalf of the Government have to be deposited in the general U.S. Treasury fund unless (a) there is specific statutory authority to apply the moneys to a specific account or use; or, (b) the receipt of money qualifies as a repayment to an appropriation.

2. The prohibition against augmentation of appropriations, a corollary of the separation of powers doctrine. The objective of the rule against augmentation of appropriations is to prevent a government agency from undercutting the congressional power of the purse by circuitously exceeding the amount Congress has appropriated for that purpose.

Statute & DOD Reg

The paper highlights 40 U.S.C. Sec. 481(c) and DOD implementation at DOD 4140-1.R, which provides an exception to the miscellaneous receipts statute and the augmentation of appropriations rules.

The statute and departmental implementation contain rules regarding property, sales, exchanges and rules concerning documentation and reporting.

Caution: The statute contains some severe penalties for violations. ©

The Public Votes: Civil Servants over Politicians!!

A recent survey conducted by the Pew Research Center for The People & The Press reported that 69% of those asked held favorable opinions of government workers. The public trusts government workers over politicians by a 67% to 16% margin.

Additionally, a comparison of views held by the public of several Federal agencies indicates an increased favorable rating between 1987 and 1997. For example, favorable ratings rose from 57% to 76% in DOD, with similar increases shown for the Postal Service, National Park Service, Food & Drug Administration, Federal Aviation Administration and NASA. The news is not so good for the Veteran's Administration (down to 59% from 68%) and the Internal Revenue Service (down to 38% from 49%).

American's think that the government is a good employer, but they still rate the private sector over the government by 70% to 23%.

Superior Knowledge--The Government's Duty to Disclose

IOC's **CPT Brian Weber**, DSN 793-8455, has written an outstanding treatise on the subject of the doctrine of superior knowledge, chock full of excellent case precedent and supported by 50 footnotes (Encl 8).

"If the government possesses special knowledge which is vital to the performance of a contract but which is unknown and not reasonably available to a bidder who is thereby misled, the government must disclose its superior knowledge or be held liable for breach of contract." *J.F. Shea Co. Inc. v. United States*, 4 Cl. Ct. 46, 53(1983).

Implied Duty to Disclose

Liability is based upon an implied duty to disclose information that is vital for the preparation of estimates for contract performance. *J. CIBNIC & R. NASH, ADMINISTRATION OF GOVERNMENT CONTRACTS*, 255-56 (3d ed. 1995). Stated differently, liability is based upon "an implied con-

dition in the contract that neither party will hinder the other in the discharge of the obligations created by the contract." *Bateson-Stolte, Inc. v. United States*, 145 Ct.Cl. 387, 390 (1959). This duty is consistent with the general contract law concepts of good faith and fair dealing.

Applied When the Government Knows More Than the Contractor Should

"The doctrine of superior knowledge is not aimed at compelling disclosure whenever the Government knows more than the contractor *might*. Its aim, instead, is to address those situations where the Government knows more than the contractor *should*." *Intercontinental Manufacturing, Co. Inc. v. United States*, 4 Cl.Ct. 591, 600 (1981) (emphasis original). "Cases in which the Government has been held to have breached a duty of disclosure involved situations

where the information withheld was not only vital to successful performance, but more important, was information of a character which the Government knew or should have known, and the contractor was neither aware or reasonably likely to become so. See *International Manufacturing* at 598-599.

Contractor Burden

To establish a breach of contract under the doctrine of superior knowledge, a contractor must produce specific evidence that it:

(1) attempted to perform without vital knowledge of a fact that affects performance costs or direction,

(2) the Government was aware the contractor had no knowledge of and had no reason to obtain such information,

(3) any contract specification supplied misled the contractor, or did not put it on notice to inquire; and

(4) the Government failed to provide the relevant information. *GAF Corp. v. United States*, 932 F.2d 947, 949 (Fed. Cir. 1991), *cert. denied*, 112 S. Ct. 965 (1992). ©

Acquisition Law Focus

A Dissertation on "Due Diligence"

CECOM's **Lea Duerinck**, DSN 992-3188, provides a treatise on the term "due diligence" as it pertains to its myriad meanings in the financial and legal realms. Included are many case citations pertaining to the merger and acquisition arena, in which the term is discussed in situations of acquisition of a government contractor by commercial entities.

"Due diligence is also discussed as it applies as a legal defense, in security regulations, and in the acquisition of real property.

Lastly, the term is discussed in relation to environmental issues, and to federal securities disclosure circumstances. An outstanding paper on an important legal concept (Encl 9).^c

Global Certifications Reduces Technical Evaluation Time

CECOM Acquisition Center-Washington counsel **Richard McGinnis**, DSN 221-5981, describes the use of global certifications as a tool in the area of information technology procurements (Encl 10) At the CECOM Acquisition Center-Washington (CAC-W), as with many Federal government procuring agencies, the length of time required to conduct best value, tradeoff process procurements for commercial information technology (IT) products had become a matter of increasing concern.

Requiring activities were anxious to have ordering vehicles in place which afforded access to the latest technology. Procurement

cycle times were such that proposed technology often lost some of its cutting edge by the date of award. In order to shrink the period for processing acquisitions, a number of techniques were considered. One of the techniques was the use of a global certification.

Under the global certification approach, a certification is used as an alternative to the submission of detailed material in a proposal for the purpose of establishing compliance with the minimum technical requirements of a solicitation. The global certification approach essentially shifts to the contractor the responsibility for verifying that the minimum re-

quirements have been satisfied. While the submission and evaluation of information on the technical solution is still required to support the tradeoff process typically used in the procurements conducted by CAC-W, the global certification technique provides an opportunity to reduce both the number of evaluators and the amount of time required for the technical evaluation.

This technique has been used at CAC-W solely in the commercial IT arena. The technique may not be appropriate for every procurement and a careful analysis should be conducted of the risks and benefits before applying it to other types of acquisitions.^c

Big Changes Proposed for EEO Complaints -- 29 CFR 1614 Revisions

The Equal Employment Opportunity Commission (EEOC) has proposed several significant changes to 29 Code of Federal Regulations 1614 addressing complaint processing. The entire package of changes can be accessed through the EEOC web site. Perhaps the **Ten Top** highlighted changes are:

1. Agencies must offer ADR in the informal complaint/counseling phase.
2. Revises dismissal rules, adding the right to dismiss for abuse of the EEO process.
3. Partial dismissals will be reviewed by EEOC AJs or by DA EEOCRA.
4. Includes a new "Offer of Resolution" provision that according to EEOC is similar to an offer of judgment under Rule 68 of the Fed Rules of Civil Procedure.
5. EEOC AJs will have the power to dismiss complaints and issue real decisions, not just recommended decisions. AJs will have the

power to award attorney fees and compensatory damages.

6. Expands AJs' summary judgment power to certain cases where material facts are in dispute.

7. EEOC AJs will issue real decisions on certification of class complaints. Currently AJs issue recommended decisions and HQDA decides whether a complaint should be certified as a class complaint.

8. The proposed rules include minor changes to the appeal process. The biggest change is agencies may file appeals (if we are dissatisfied w/ an AJ decision). The proposed rules also change the standard of review on appeal.

9. Requests for Reconsideration are live and well (they were eliminated in an earlier version of the proposed rules).

10. Amends the attorney fee provision to authorize payment of attorney fees for work performed by attorneys in the informal/counseling/ADR phase of the complaint process. ©

MSPB Caseload High Despite Downsizing

The Merit Systems Protection Board (MSPB) issued more than 10,000 decisions in fiscal year 1997. Of these, more than 8,300 decisions were issued by MSPB regional and field offices, and 1,800 by the three-member Board in Washington, D.C. The subject-matter issues include: 50% on adverse actions, 22% addressing retirement appeals, and 10% involving reduction-in-force. The remainder concern performance actions, within-grade denials, and termination of probationary employees.

On the issue of processing cases, MSPB regional and field offices average 108 days from docketing to decision, with more than 80% decided within the Board's 120-day rule.

Cases that start in the field and are then appealed to the three-member Board were completed, on average, in about 10 months.

The Board does very well when cases are appealed to the Federal Circuit Court of Appeals — with 96% being unchanged by the Court.

A copy of the MSPB Annual Review is available at <http://www.mspb.gov> ©

Employment Law Focus

SOELR 1998 Strikes Big Again With Library Materials Galore!!!

Once again the annual OPM Symposium of Employee and Labor Relations (SOELR) provides the employment law counselor with an outstanding compendium of materials. Under separate cover you will receive many of these critical updates of various issues. POC is **Cassandra T. Johnson**, HQ AMC, DSN 767-8050.

Here, we do provide you an index of SOELR handouts (Encl 11).

Additionally materials are available on many subjects such as: New Developments in Employee Relations—1997 In Review, Disability Discrimination, Selected Decisions on Leave and Reasonable Accommoda-

tion, Selected Cases Dealing With Medical Documentation, Cases Involving Selected Medical Conditions, Selected Cases Defining “Disabled Person”, Reasonable Accommodation for Emotional and Psychiatric Disorders, and Investigating Special Harassment Complaints..

Sample letters guard against error and prevent re-inventing the wheel. Thus, we provide a group of sample letters for Notice of Proposal to Separate, Proposal to Remove for Unavailability for Duty, Proposed Removal for Physical Inability to Perform, Decision Notice for Medical inability to Perform, and Notice of Decision to Remove—Inability to Maintain Regular Work Schedule (Encl 12).

Telecommuting is becoming an increasingly common issue subject to the collective bargaining process. We include the negotiated agreement applicable to the Department of Labor (Encl 13).

You may want to seek out your labor counselors to see the Glossary of Terms Relevant to Discipline and Appeals. So, now *everyone* will know the difference between discipline and adverse actions.

Once again, thanks so very much to DA DCSPER's **Dave Helmer** for providing these materials. Dave has an extensive E-Mail list for those seeking up-to-date information. Contact **Dave Helmer** at helmeDA@hqda.army.mil.

Public Sector Union Membership Falling

The number of workers in the united States belonging to unions fell 159,000 in 1997, to about 16.1 million, with most of the loss, about 107,000 coming in the public sector. Overall, union members comprise just more than 14% of the total workforce down 0.5 % from 1996.

The number of workers

covered by collective bargaining agreements dropped 225,000 to about 15.6% of the workforce. About 1/2 of this drop occurred in the public sector.

More men than women belong to unions (16.3% vs. 11.6%), and more African-Americans than whites or Hispanics.

The highest percentage of unionization is in the protective services, such as police and firefighters—just shy of 40%.

The median wage for a unionized worker in 1997 was \$640 per week compared with non-union job counterparts at \$478 per week. ©

Environmental ADR Legislation

The Environmental Policy and Conflict Resolution Act of 1998, Public Law 105-156, Feb 11, 1998, seeks to dramatically expand the use of Alternative Dispute Resolution (ADR) to the environmental sector. The term environmental dispute is broadly defined, referring to disputes or conflicts related to the environment, public lands, or natural resources. A formal ADR training mechanism and an environmental dispute resolution fund are key aspects of the legislation. Federal agencies are encouraged to use ADR processes in several ways, including using a foundation—The United

States Institute for Environmental Dispute Resolution.

AMC has an active Environmental Partnering ADR Program that works closely with ADR experts in the Environmental Protection Agency to identify opportunities to address disputes and conflicts early, without resorting to litigation. This program focuses attention on the interests of the parties rather than their legal positions. It uses the principle of open, honest communication to allow the parties to design their own solution to a problem.

POC at HQAMC for Environmental Partnering is **Stan Citron**, DSN 617-8043.

After We're Gone: Whose In Charge of Enforcing Land Restrictions

Land use restrictions, sometimes also called institutional controls, are a cost-effective approach to tailoring remediation to reuse alternatives at closing installations. However, a question often asked by regulators, local reuse authorities, and the public is how will these restrictions be enforced once the land is transferred to others. The DoD has published an excellent pamphlet, [A Guide to Establishing Institutional Controls at closing Military Installations](#) which can assist all stakeholders in working through such issues. A copy may be obtained from either **Bob Lingo**, DSN 767-8082 or **Stan Citron**, DSN 767-8043. Additional information about Institutional Control may be found on the DoD Environmental BRAC Home Page, <http://www.dtic.mil/envirodod/envbrac.html>

A New BRIM for BRAC

The Department of Defense has revised the Base Reuse Implementation Manual, DoD 4165.66-M. This is the Bible, Koran, Torah, etc for all those involved in reuse issues for BRAC installations. It may be accessed directly at

<http://emisary.acq.osd.mil/bccr/brim.nsf> or through the HQDA BRAC web site: <http://www.hqda.army.mil/acsimweb/brac/braco.htm> which has a great deal of other valuable information for Army personnel.

Environmental Law Focus

Budgeting for Bunnies: Funding Your INRMP

AMC is aware of a funding problem at the Installation and MSC level concerning an ACSIM policy memorandum dated 21 Mar 97, subject "Army goals and implementing guidance for natural resources planning level surveys (PLS) and Integrated Natural Resources Management Plan (INRMP)". The policy requires that all PLS be completed by FY 98, and funded as Class 1 requirements, and that all INRMPS be approved by FY2000. This policy is forcing many installations in AMC to scramble to budget, and to try to find funds to meet the deadlines.

The AMC Deputy Chief

of Staff for Engineering, Housing, Environmental and Installation Logistics, in conjunction with our office, is requesting that this policy requirement be reconsidered by ACSIM. The request asks that the PLS's be allowed to be completed by the installations as funding becomes available, up to and including FY 2000. We will also ask that the policy requirement for class 1 funding for FY 98 be dropped. However, in no case will the PLS's be delayed so as to jeopardize the statutory requirements of the Sikes Act concerning the completion of the INRMPS by 2001 or as otherwise required by the act. ©

Let the Public Know: Reporting Munitions Activity

The Department of Defense has issued new Guidance on applying the emergency Planning and Community right-to-Know Act (EPCRA) to Munitions to Meet the Requirements of Executive Order 12856 (Encl 15).

The purpose of this guidance is to provide the public information associated with DoD munitions activities. It will require tracking and reporting of demilitarization activities starting in calendar year 1999. ©

Preparing to Lease Our Property

HQDA has just provided a new revised format for preparing a Report of Availability for outgranting or leasing Army property. This format will be used for both BRAC and non-BRAC properties. Legal offices must review these Reports of Availability. The guidance and revised format is at Enclosure 16.

Thanks to Bob Lingo...

For continuing to provide many very useful Web Sites for environmental and environmental related issues. It is a great approach to using technology to increase our knowledge.

Contractor Employees in the Federal Workplace

The profile of today's Total Army looks like a combination of uniformed service personnel, civilian and contractor personnel. And, only one of these three groups wears a uniform. It is difficult to distinguish between Department of the Army civilians and contractor employees.

As contractors are more frequently a part of the Federal workplace, the issue of protecting sensitive information becomes even a more critical one.

AMC Ethics Counsel **Mike Wentink**, DSN 767-8003, has written a Point Paper on this subject, one that we urge you to disseminate to your workforce. No need to reinvent guidance when Mike has done so much (Encl 17).

The paper cautions that today you should always be aware of the status of individuals with whom you are speaking. The procurement integrity rules, the Privacy Act, and proprietary and trade secret requirements all are impacted by the changing face of our personnel.

The risks are great. Federal law makes it a crime to disclose a company's trade secrets, processes, operations, style of work, and other confidential information without permission.

Release of other information may not violate a specific law, but may result in unfair competitive advantage to the entity receiving the information. The result may be litigation and program turmoil, to say the least. ©

Job Hunting-- Don't Shoot Yourself!

One recurring issue of great concern, especially so as we downsize and look towards privatization and contracting out, is that of job hunting. As with all hunting, you can easily shoot yourself in the foot if you do not safely negotiate your way.

Mike Wentink DSN 767-8003, provided still another excellent paper that defines when the hunt begins: upon sending out a resume or the initiation of an expression of interest unless one of the parties unequivocally rejects the contact.

The paper also addresses the importance of reporting such contact as it may lead to determinations regarding disqualification from any official matter that affects that specific company. This directly impacts what kind of work can be performed during the hunt.

Lastly, the paper highlights procurement integrity concerns, and provides a sketch of the various statutory provisions addressing post-governmental employment activities (Encl 19). ©

Preventive Law Note: OGE Form 450 Info for the Force

Providing timely information to the workforce on Ethics matters saves lots of problems from arising. Here is **CECOM's** Memo to the workforce on the OGE 450 Confidential Financial Disclosure Report. Answers the who, what, when and the ever popular why--the purpose behind the policy (Encl 18). ©

Is the E-Mail Like a Telephone Without the Cord??

Rules for Using E-Mail: Flexible BUT DO NOT Abuse!

HQAMC's Ethics Counsel, **Mike Wentink**, DSN 767-8003, practices preventive law the way we want all AMC attorneys to do — often, regular, highlighting issues that focus attention on timely problem identification.

As E-mail proliferates policy guidance on appropriate use and, of course, prohibitions against certain activities, is critical.

CG Policy

AMC Chief of Staff **MG James Link**, on behalf of the Commander, issued Policy Memorandum 97-08 concerning this issue (Encl 20). The policy complies with the DOD Joint Ethics Regulation.

Looks At...

Important aspects of the CG's policy, which answer most questions, including the following terminology:

- o incidental use, occasional

- o most reasonably made during working hours

- o brief, infrequent, short
- o does not adversely affect official duties

- o reasonable duration and frequency

- o during personal time whenever practicable

- o serves a legitimate public interest

- o no adverse reflection on DoD.

Prohibitions

Things that we may NOT use e-mail for include:

- o chain letters — if you get one, do not pass it on, except to report it to your Information Systems Security Officer (ISSO), Information Management Area Point of Contact (IMAPOC) and the Helpdesk. If the sender is a Federal employee, the Helpdesk will report the matter to his or her postmaster. You can also let your Ethics Counselor know. After you report it, delete it!

- o broadcast messages of a personal nature to multiple addressees (for example, it might be appropriate to send a message concerning the weekend football game to a couple of your office buddies with whom you discuss sports matters routinely, but it probably would not be okay to send the e-mail to all employees in your branch or office; for sure, it would not be okay to send it to All Personnel! Never use the All Personnel address unless you are sure that there is an official purpose. If you have any doubts, ask your supervisor first.)

- o gambling, including office football or other sports pools.

- o transmitting sexually oriented material.

- o conducting a personal business (such as an antique business that you might have on the side). As with most ethics issues, if you think it is wrong, it may be--so ask before you act. ©

Faces In The Firm

Hello-Goodbye AMC Organizational Developments

Arrivals

HQAMC

We welcome **Lisa Simon**, from CBDCOM, who joins the Business Law Branch, concentrating on fiscal law issues. And we thank Lisa for her major contribution to the Newsletter.

Joining the Intellectual Property Division is **William Randolph**, who joins us from the OTJAG Intellectual Property Division.

Departures

IOC

Joanne Ogden (Paralegal Specialist) has left Seneca Army Depot Activity after 19-plus years with SEDA. It is with mixed emotions that we bid farewell to Joanne Ogden. We are sad to see Joanne leave, but are extremely delighted that she accepted "an offer she couldn't refuse". Joanne has done an outstanding job and has been a delight to work with. Joanne will be working for the Veteran's Administration in Syracuse, NY. Best of luck to you Joanne.

CBDCOM and SSCOM Provisional Organization

Effective 15 Jan,
New Flag in October

Permanent Orders 12-4, 12 January 1998 reorganized CBDCOM, SSCOM, and Surety Field Actv on a provisional basis. The new organization is designated as the U.S. Army Soldier and Chemical, Biological Command (SCBCOM)(Provisional). Effective date of provisional organization was 15 Jan 98. As correspondence will be addressed to Commander, U.S. Army Soldier and Chemical, Biological Command (Provisional). There is no change in the physical location of the two workforces. All personnel will remain in place. UCMJ authority will remain with existing commanders. Command and control authority will transfer on 1 Oct 98. ©

HooAH! for SSCOM: A Patent Arrives

SSCOM was notified by the U.S. Patent and Trademark Office that two registered trademarks were granted on Feb. 24, 1998 to the Army on the design and mark hooAH!

The marks will be used on the packaging of the energy bar to identify and distinguish the Army as the source of the product. The HOOAH! Bar will be produced by commercial firms for the military, however, there is potential for license agreements to produce a commercial HooAH! Bar. ©

**See You At
the CLE--Recap
in August
Newsletter**

Faces In The Firm

Promotions and Awards

STRICOM

STRICOM is pleased to announce the appointment of **Martha Zukos**, formerly secretary to the Chief Counsel, to the new position of Legal Technician. Her new responsibilities include providing assistance to counsel reviewing SF 450's, and legal research

BIRTHS

Mrs. **Joanne Lieving** (Legal Assistant, IOC Acquisition Law) and her husband, Tony, celebrated the birth of their second child, Monica Christine, on 20 February. The family is doing great. Monica was also welcomed home by her big sister, Kelsey. Congratulations!

Not our usual congratulatory note - but . . . Uncle **Rick Murphy** (IOC Environmental/Safety Law) is deserving of congratulations - his brother and sister-in-law celebrated the birth of quadruplets! The three little boys and one little girl will join their siblings to fill the house. Congratulations to the family and to you, Uncle Rick!

IOC

Ms. **Joanne Ogden** (Paralegal Specialist, SEDA) received the Superior Civilian Service Award, signed by Major General James Monroe, Commander, U.S. Army Industrial Operations Command, at a ceremony on 26 March. Mr. Anthony Sconyers, Chief Counsel, IOC, presented Joanne the award on behalf of the Command. Not only was Joanne the only member of the legal office at SEDA, but within the past year, she also took on the responsibilities of Public Affairs Officer and Reports of Survey Administrator at SEDA.

She has done an excellent job and demonstrated true commitment to SEDA, the Command, and her local community. Congratulations, Joanne. Well-deserved!

Wedding Bells

Congratulations to CECOM attorneys **Vince Buonocore** and **Kim Sawicki** who were married on April 4.

Similar sentiments for CECOM Administrative Officer **Dolores Howell** who married Kenneth Beldon Harper, Standard Motor Products, March 7.

WORKFORCE 2010 PROJECT

AMC Commander, **General Johnnie E. Wilson** has asked the AMC DCSPER to chair a committee to look at the composition of the AMC workforce in the year 2010. Each MSC is represented in this effort that includes looking at workplace challenges, trends and assumptions. The AMC Command Counsel representative to this project is **Steve Klatsky**. AMC Command Counsel **Ed Korte** is a member of the CG's Steering Committee. More information on this program will be forthcoming in the future. STAY TUNED.