



Office of Command Counsel Newsletter

April 1999, Volume 99-2

AMC CLE 99 Coming in May

The 1999 Continuing Legal Education (CLE) Program announcement and draft agenda was sent to each AMC legal office in early March. The CLE will be held 24-28 May at the Grosvenor Hotel, Lake Buena Vista, Florida. We are looking forward to the annual meeting that brings together 150 of our counsel to discuss current legal developments, share experiences and recognize achievements during our awards ceremony.

This year we offer a series of electives on important issues including: **Public-Private Partnership, Environmental Guns & Butter, Affirmative Action in Selection Actions, Contractors on the Battlefield, Software Patents, Resource Stewardship, Foreign Access to Technology, Partnering, Settlement Agreements, Competitive Sourcing and Privatization, Army Working Capital Fund, JAGCNet, REDS, Protests by the Government, and LEXIS/NEXIS.**

Plenary sessions will address Y2K Legal Issues, Fiscal Law and Ethics updates, the JAGCNet, and presentations by AMC Chief of Staff **MG Norman E. Williams, MG John D. Altenburg, Jr.** The Assistant Judge Advocate General, and the Honorable **William T. Coleman III**, General Counsel of the Army.

There will be four hours of Legal Focus sessions devoted to Acquisition Law, Employment Law, Environmental Law and Intellectual Property Law. These sessions provide a rare opportunity for AMC practitioners to meet and discuss in detail the important legal issues of the day.

The annual CLE Awards Luncheon will highlight the significant achievements of AMC counsel with the announcement of the Attorney of the Year, Preventive Law Award, Managerial Award, Achievement Award, Team Project Award and the AMC Newsletter Editor's Award.

General Johnnie E. Wilson has sent a memorandum to subordinate commanders

encouraging them to send their lawyers to the program.

The CLE Planning Committee in the Office of Command Counsel is **Steve Klatsky, COL Demmon Canner, Bill Medsger, Vera Meza, Ed Stolarun and Holly Saunders.** They are receiving outstanding support from field counsel who have been very responsive to requests for topics and participation as speakers.

We hope to see you in May.

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ADR: Resources for Drafting Dispute Resolution Clauses

1. A Drafter's Guide to CPR Dispute Resolution Clauses at: <http://www.cpradr.org/adrscrn.htm>

2. Lex Mundi College of Mediators - Mediation Agreement Form at: <http://www.lexmundi.org/med-agreement.html>

3. Appendix B: CPR Model Mediation Agreement: Europe at: <http://www.cpradr.org/medeuapb.htm>

4. Mediation Agreement at: <http://www.mediate-net.org/agreement.html>

5. Mediation Clauses and Rules at: <http://www.law.murdoch.edu.au/teach/units/L367/medclaus.htm>

6. Court-Annexed Mediation Agreement at: <http://www.law.murdoch.edu.au/teach/units/L367/medag.htm>

7. Model Mediation Agreement for Business Dis-

putes in Europe — Commentary at <http://www.cpradr.org/medeucom.htm>

And here is a list of some articles on the subject of drafting ADR agreements:

a. Mediation, Arbitration & Exp. Arb Rules at: http://www.wipo.org/eng/arbit/rules/mediation/med_rule.htm

b. Mediation Pitfalls and Obstacles at: <http://www.adrr.com/adrr1/essayc.htm>

c. Negotiation Styles in Mediation at <http://www.adrr.com/adrr1/essayb.htm> ©

Deadline for the June Newsletter is the last work day of May

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Check out the Newsletter on the Web at 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.

Acquisition Law Focus

Indemnifying Contractors and PL 85-804

IOC's **Bridget Stengel**, DSN 793-8431 has prepared an article describing the history, nature and scope of Public Law 95-804, the statute that offers to indemnify contractors performing especially hazardous work (Encl 1).

A contractor requesting indemnification must submit a request to the contracting officer. This request must comply with Federal Acquisition Regulation (FAR) 50.403-1.

The request must identify and define the unusually hazardous or nuclear risks for

which indemnification is requested, together with a statement indicating how the contractor is exposed to these risks. It must also include a statement of all insurance coverage applicable to the risks to be defined in the contract as unusually hazardous. The contractor must furnish information regarding the availability, cost and terms of additional insurance or other forms of financial protection.

The indemnification process and approval authority and examples from the experience of the IOC are all part of this fine work. ©

Protest: Composition of A-76 Eval Boards

The General Accounting Office recently upheld a bid protest in an Air Force case over the composition of the Evaluation Board that was reviewing contractor proposals in an A-76 cost comparison. GAO accepted protesters' arguments that a board in which 14 of the 16 evaluators held jobs that were being studied in the cost comparison had an inherent conflict of interest which could only be remedied by reconstituting the entire board and re-

evaluating the proposals. The Evaluation Board eliminated all of the proposals as being technically unacceptable. Many Army MACOMs follow similar procedures for selecting at least some of their board members. It is not uncommon for members of the evaluation board to hold jobs that will go away if the contractor wins the cost comparison. DZS Baker, et al, B-281224, 12 January 1999. Thanks to **Mike Wentink** for taking note of the case. ©

List of Enclosures

1. Indemnifying Contractors & PL 85-804
2. Business Cards Update
3. Contractors on the Battlefield
4. Contractor Non-Disclosure Agreements
5. Y2K Liability
6. REDS@TACOM Fact Sheet
7. SOELR Index
8. 59 Minutes & Other Incentive Awards
9. Charges!
10. Feb 99 ELD Bulletin
11. March 99 ELD Bulletin
12. Fraud Update
13. A-76 & Conflict of Interest
14. Conferences & Meetings
15. Contractors in the Workplace

**See You At
CLE**

In Florida

24-28 MAY 1999

Business Cards Update

HQ AMC fiscal law counsel **Lisa Simon**, DSN 767-2552, provides a status report on the issue of Business Cards (Encl 2).

Employees who regularly deal with members of the public or with organizations outside of their office may print business cards on their computers and printers using Government-purchased card stock.

There are four Army policy restrictions to this authority:

We cannot customize the business cards

We must print business cards in black and white only

We should print business cards in batches of fifty or less.

We cannot purchase new software to print the cards

In addition, as a matter of DA policy, investigators and recruiters may purchase business cards from a commercial printer.

The Army made a conscious decision to implement a restrictive business card policy. They concluded, as a matter of policy, that money spent on commercially-printed business cards could be better spent elsewhere.

The rules on business cards will be included in an upcoming change to AR 25-30, "The Army Integrated Publishing and Printing Program." ©

FMS Customer Participation in Contract Preparation & Negotiation

John J. Hamre, Deputy Secretary of Defense, issued a memorandum dated 23 March 1999, concerning customer participation in FMS contract preparation and negotiations. Currently, when a country buys through the FMS program, the country (or "customer") is not allowed to participate in the negotiation of the contract to fill that country's needs. The new policy encourages the FMS customer to participate in

discussions with offerors, and for the contracting officer to provide explanation of price reasonableness when requested. However, even with this new policy, the contracting officer remains the sole government negotiator, the FMS customer must agree to the participation, and proprietary information must be protected. DFARS 225.7304 will be amended to reflect the new procedure. POC is **Craig Hodge**, DSN 767-8940. ©

Contractors on the Battlefield

CECOM's **John Reynolds**, DSN 992-9780, provides an excellent preventive law note on this very important issue (Encl 3).

With the downsizing of active duty military forces and the increased use of technically complex military equipment and weapons systems has come an increasing reliance on contractor support, to include the battlefield arena.

The types of contractor battlefield support provided generally fall under two main categories. The first is system support type contracts which are designed to provide sustainment, maintenance and item management. The second is contingency contracting wherein contractors provide a variety of logistics and engineering/construction services for both peacekeeping and wartime operations. The use of contractors under battlefield conditions brings with it a multitude of considerations and problems which need to be addressed in all phases of the acquisition process (Requirements Planning, Solicitation, Source Selection and Post-Award Administration. ©

Contractor Non-Disclosure Agreements

CECOM's **John Metcalf**, DSN 654-2229 and **Patrick Terranova**, DSN 992-3210, have authored an article on Contractor Non-Disclosure Agreements, describing what these agreements are, how they are used and when it is appropriate for Government employees to sign these agreements (Encl 4).

Increasingly, particularly in the Research and Development community, Government personnel are being asked to sign documents called non-disclosure agreements before contractors will enter into discussions about their capabilities. The purpose of these agreements is

to protect the contractor's trade secrets and proprietary data that may be revealed during the discussions. Government employees may also be requested to sign non-disclosure agreements in conjunction with plant visits where manufacturing processes are considered trade secrets.

Before signing such an agreement, Government employees should coordinate the request that a non-disclosure agreement be signed with legal counsel. Additionally, they must be prepared to abide by the terms and conditions of such a non-disclosure agreement. Government employees are bound by the

Trade Secrets Act, which makes them subject to criminal penalties if they reveal a contractor's trade secrets or proprietary data. Furthermore, civil actions may be brought against the Government, its employees and support contractors and may result in monetary damages being assessed for violations of a non-disclosure agreement. The document the employee signs will be considered evidence of the fact that the data they received was considered proprietary and that they personally agreed not to reveal it. ©

DOD and Personal Liability for Y2K Problems

HQ AMC counsel **Steve Klatsky**, DSN 767-2304 has prepared an article for the AMC Y2K team addressing several issues related to Y2K liability. The first section addresses the immunity-liability inherent to government officials, describing the theory of "acting within the outer perimeter of official duties" (Encl 5).

There is also a section that addresses potential DOD liability.

One important area involves certification that computer systems are Y2K compliant. The Army legal position is that certifications made in good faith as part of an official's job duty would not subject the official to personal liability. The law pro-

vides immunity from personal liability for those actions of federal officials acting within their "scope of duties". The Army Y2K Program requires certification whenever an entry is made in the database that a specific computer is Y2K compliant. Thus, certification is part of the official duties of AMC personnel who perform that act. ©

Employment Law Focus

REDS--ADR in the Workplace to be Exported to You

The AMC Model Alternative Dispute Resolution Program REDS (Resolving Employment Disputes Swiftly) is being revised for exporting throughout AMC. The REDS pilot conducted at TACOM, ARL and Anniston Army Depot during 1998 has been completed.

The REDS Team members from the three pilot sites and the HQ AMC REDS Team met 16-18 March to review the experiences at the three sites, revise the REDS brochure and Action Plan, and to develop an agenda for a REDS training program.

The test results appear quite promising: participants comment favorably on their experiences, with a resolution rate of over 75%. Litigation is being avoided as REDS focuses on the future employment relationship.

The REDS Team approach, with EEO in the lead with support from legal and civilian personnel is working well. Cooperative working relationships are accelerating the benefits of ADR and REDS.

The REDS Model has been approved by the DA Equal Employment Opportunity Compliance and Complaints Review Agency as fitting the EEO regulatory requirements of offering ADR as an alternative to traditional EEO complaint's processing.

Each Test side presented a briefing on their experiences. The workforce education process has been successful. We enclose a copy of a REDS Fact Sheet from TACOM (Encl 6).

Much more information about the future of REDS will be provided shortly. ©

Supreme Ct. to Decide EEOC Comp Damages Power

The Supreme Court has agreed to decide whether the EEOC has authority to order federal agencies to award their employees compensatory damages for violations of Title VII of the Civil Rights Act of 1964, West v. Gibson, U.S. No. 98-238, cert granted January 15.

In March 1998, the Seventh Circuit ruled that EEO lacked the authority to order compensatory damages. In part, that decision was based on the view that to allow compensatory damages to be awarded without a jury trial would push Title VII's waiver of sovereign immunity for federal employees too far. Gibson v. Brown, 137 F.3rd 992 (7th Cir. 1998). The Eleventh Circuit agreed with the Seventh in Crawford v. Bab-bitt, 148 F.3rd 1318 (11th Cir. 1998).

This ruling conflicts with that of Fitzgerald v. Secretary of Veteran's Affairs, 121 F.3rd 203 (5th Cir. 1997), which held that administrative agencies may offer compensatory damages for emotional injuries to federal employees pursuing a Title VII claim. ©

SOELR Materials for the Labor Counselor Library

The Index of materials from the recent OPM Symposium on Employee and Labor

Relations is provided. They will be provided to AMC labor counselors (Encl 7).

Union Lobbying May Violate the DOD Appropriations Act Charges-- Four Basic Steps

In New Hampshire National Guard, 54 FLRA No. 38 (1998), the Authority found a proposal calling for official time to lobby Congress violated the 1996 DoD Appropriations Act which provides at Section 8015, "None of the funds made available by this Act shall be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before the Congress."

Identical language is also contained in the 1999 Defense Appropriations Act at Section 8012. As such, proposals for official time to

lobby Congress on any legislation or appropriation matters pending before the Congress would be nonnegotiable.

If you presently have such language in your contract, or are authorizing official time for union officials to lobby Congress "...directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before the Congress" you need to stop it. (Of course, you'll have to offer appropriate I&I bargaining.)

Keep in mind that this applies only to appropriated fund bargaining units. ©

When an employee challenges an adverse action before a third party, the single most important issue in determining the outcome is the agency's ability to prove the facts it gave as a reason for action in the notice of proposal.

Many, many actions are overturned, not because the agency failed to prove there was a reason for disciplinary action, but rather because the agency failed to prove the specific reason it gave.

If your actions are to stand, it is critical that you take time for careful, objective analysis before you ever begin to draft the proposal notice.

The enclosed paper from SOELR walks the practitioner through the important analytical process, including four important steps: evaluating evidence, developing alternative charges, case law, and refining charges (Encl 9). ©

59 minutes & Other Incentive Awards

SBCCOM Counsel **Bob Poor**, DSN 584-1290 provides an excellent overview of the civilian incentive awards program, including both monetary and non-monetary recognition (Encl 8). Specifically

the paper addresses the use of 59 minutes administrative leave as a non-monetary incentive award. There are some excellent citations to law, CFR and DOD regulations. ©

Five ADA Cases Set For Supreme Court Hearing

A record five Americans with Disabilities Act disputes will be heard over the next two months, beginning with the case of a stroke victim in Texas who says her boss refused to provide retraining, her colleagues mocked her speech impediment and she was fired after being told she would never be able to do anything again.

The question is whether an individual who has applied for Social Security disability benefits, but then returned to work, can claim in an ADA lawsuit that she was “qualified” for the job and discriminated against. A federal appeals court said the application for benefits creates a presumption that the person is not qualified.

The case, Cleveland v. Policy Management Systems Corp., is being closely watched by a variety of advocates, including those representing the mentally retarded, elderly and people with AIDS, and by employers, which argues that courts should presume that once someone has applied for Social Security benefits she is not “qualified” for the job.

A larger issue to be addressed by the justices is how

to define “disabled”—the foundation of any ADA claim. If bad eyesight can be corrected, can it be the basis for a job discrimination lawsuit? If medicine can reduce high blood pressure, can a mechanic claim a trucking company fired him because of his hypertension?

In Sutton v. United Air Lines, plaintiff sisters were denied pilot positions with United Airlines because of nearsightedness. They argue that it should not matter whether the disability can be corrected by drugs, glasses or something else. But United points to the ADA’s language specifically covering people whose impairment “substantially limits one or more major life activities,” and says the availability of glasses and contact lenses means the sisters’ myopia is not substantially limiting. “

Ruling for the airlines in Sutton v. United Air Lines, the 10th U.S. Circuit Court of Appeals declared that if plaintiffs are “disabled” because their uncorrected vision substantially restricts their ability to see, they cannot be qualified for pilot jobs. And if they are qualified be-

cause their vision is correctable, the court said, they cannot be limited in “the major life activity” of seeing and are therefore beyond ADA protection. Other federal courts have ruled the opposite, that disabilities should be determined without any mitigating measures, and it will now fall to the Supreme Court to resolve the conflict.

The sisters contend that not everyone who wears glasses should be considered disabled, but the severity of their bad vision (about 20/200 in the right eye, 20/400 in the left) qualifies them. The two other related cases involve a truck driver who is blind in one eye (Albertson’s v. Kirkingburg) and a mechanic with high blood pressure (Murphy v. United Parcel Service).

In a fifth case, Olmstead v. L.C., the justices will address states’ responsibility for providing treatment and rehabilitation in the community, rather than in institutions, for the mentally disabled.

It has taken nearly a decade for core questions of disability rights to advance to the court.

Stay tuned. ^c
CC Newsletter

Environmental Law Focus

We Don't Pay State CAA Fines and We're Sticking to It

Recent state enforcement actions proposing fines against Army installations for alleged Clean Air Act (CAA) violations renew the need for a common approach by Army installations to inform and instruct state regulators that sovereign immunity prevents the payment of such fines. The Environmental Law Division has drafted a sample letter for use by installations faced with a potential state CAA fine. It is included in the March Environmental Law Division Bulletin, as above, but deserves special mention and attention. ^c

ELD Bulletins

The February and March 1999 Environmental Law Division Bulletins are provided (Encl 10, Encl 11) for those who have not received an electronic version or who have a general interest in Environmental Law.

Applying NEPA to Your Installation's Operations and Testing

The Army Corps of Engineers, through a contractor, has prepared a Guidance NEPA Manual for Installations Operations and Training, June 1998. Looks like a great source of NEPA reference material and practical advice on how to apply NEPA to these activities. It covers such areas as NEPA considerations in master planning; real property acquisition, leasing, or disposal; military construction,

operation and maintenance, and military training. At press time, we are not sure whether this Guidance Manual has been approved by the Army for distribution. However, we will be providing information through our environmental legal channels as to its status, and if anyone would like more information from it on the above subject areas, contact **Bob Lingo, DSN 767-8082.**

Green Construction— Something for the Army too

The Air Force has put together a comprehensive Guide for designing, constructing, using, and demolition of facilities in a responsible, sustainable manner. As they say, "Sustainable Development is Green Construction." Something our instal-

lation managers and planners might consider. The Environmentally Responsible Facilities Guide may be obtained from the Air Force Center for Environmental Excellence, at the following: <http://www.afcee.brooks.af.mil/green/greenform.htm>. ^c

Taking the Broad Look at Your Environmental Management

In December 1998, the EPA Office of Enforcement and Compliance Assurance issued its final Environmental Management Review (EMR) Policy for Federal Facilities. An EMR is composed of many environmental management system audits conducted over a one to three day period. The EMRs are based on a combination of the code of environmental Management Principles (CEMP) and the seven areas in the EPA phase III Environmental Management Systems audit protocol.

EMRs conducted by EPA are free and are not an inspection, an audit or a Pollution Prevention assessment. It is a review of a facility's overall program and includes recommendations from EPA. The 1996 interim policy is posted at the EPA's Office of Enforcement and Compliance Assurance Web page, under policies for Federal Facilities, <http://es.epa.gov/oeca/polguid/polguid6.html>. It is expected that the final policy should be posted there soon. For additional information, contact **Bob Lingo, DSN 767-8082.**

Is Your Environmental Compliance Y2K Compliant?

It seems that the Y2K bug has affected everything as we near the next millennium. EPA has even issued an enforcement policy designed to encourage prompt testing of computer-related equipment to ensure that environmental compliance is not impaired by the Y2K computer bug. Under the policy, <http://www.epa.gov/year2000>, EPA stated its in-

tent to waive 100% of the civil penalties that might otherwise apply, and to recommend against criminal prosecution for environmental violations caused by specific tests that are designed to identify and eliminate Y2K related malfunctions. The entire policy can also be obtained in 64 *Federal Register* 11881, March 10, 1999. ©

Fraud Update

HQ AMC Fraud Advisor, **Diane Travers**, DSN 767-7571, provides a copy of the OTJAG Fraud Division Update #38 (Encl 12).

The paper addresses statutory developments:

a. The International Anti-Bribery and Fair Competition Act of 1998. Pub.L. 105-366, 112 Stat. 3302 (10 November 1998).

b. The Department of Defense Appropriations Act for Fiscal Year 1999. Pub.L. 105-262, 112 Stat.2279 (17 Oct. 1998).

c. Ethical Standards for Federal Prosecutors. Section 801 of the Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999, Pub. L.105-277, 112 Stat. 2681 (21 Oct. 1998).

Additionally, there is a section on recent developments in procurement fraud cases:

a. Release of Information in *Qui Tam* Cases

b. DOJ Contacts with Represented Persons

c. Recovery of Funds under Army Contracts in Fraud Cases

d. Reporting Old Misconduct – An Obstacle to Debarment

e. Considerations in Debarment.

Ethics Focus

Conflicts of Interest Issues & the A-76 Process

The increased use of competitive sourcing, makes it imperative that all employees be aware of the conflict of interest issues that may arise in the course of conducting an A-76 Study and the corresponding source selection. Moreover, a recent General Accounting Office (GAO) decision makes it clear that an inadequate appreciation for this area can be the death knell for an A-76 competitive sourcing effort.

CECOM's **Jim Scuro**, DSN 992-9801, has written an excellent paper on this vital issue (Encl 13).

The purpose of the

memorandum is to provide guidance regarding potential conflicts of interest in the performance of Commercial Activities Studies. This guidance provides general information to be used to avoid conflicts of interest and the appearance of any conflicts of interest in the conducting of a Commercial Activities Study.

The paper addresses the legal and regulatory framework, FAR coverage, DA Pamphlet 5-20, all sorts of GAO case law, the right of first refusal issue, and, of course, the revised supplemental handbook, OMB Circular A-76. ©

Commanders Support to Civil

Authorities re the Y2K Problem

The Deputy Secretary of Defense issued a 22 February memorandum with guidance regarding what support commanders may give to civil authorities for requests related to the Y2K problem. The memo is available on line at http://army./mil/army-y2k/depsecdef_dod_civil_support.htm. ©

Army Reorganizes IL&E and RDA

Secretary of the Army **Louis Caldera** announced Feb. 16, 1999, that he is moving the Army logistics missions from the Assistant Secretary of the Army for Installations, Logistics, and Environment (ASA-IL&E) to the Assistant Secretary of the Army for Research, Development, and Acquisition (ASA-RDA).

This move will consolidate acquisition and logistics policy and oversight for greater efficiency. The involved assistant secretaries are coordinating all necessary administrative actions to complete the formal transfer of the logistics function as soon as possible. The new organizations are adopting new names.

The Assistant Secretary of the Army for RDA is now the Assistant Secretary of the Army for Acquisition, Logistics, and Technology, ASA-ALT.

The Assistant Secretary of the Army for IL&E is now the Assistant Secretary of the Army for Installations and Environment, ASA-IE. ©

Conferences & Meetings: No Pro Forma Approvals Please

Recently at the Army Research Laboratory, confusion of the requirements for obtaining conference approvals resulted in an IG complaint and scores of extra hours of work for both conference sponsors and reviewing attorneys. Although well below usual review thresholds, legal review of conference approvals is required by AMC-R 1-12, para 6b. As we shall see, the issues involved are complex enough to justify this review.

ARL's **Bob Chase**, DSN 290-1599, has prepared a fine preventive law note covering several issues related to the issue (Encl 14).

Mention of the FAR brings up another issue. FAR 19.502-2 provides that all acquisitions between \$2500 and \$100,000 are reserved for small business unless the contracting officer is unable to obtain offers from two or more small business concerns competitive with market prices and with regard to the quality and delivery of the goods and services being purchased.

This can be tricky in practice. You might think that most hotels would fit the definition of a small business. Most of those which meet our requirements, however, tend to be owned by large-business parents. If owned by franchise holders, a given hotel may yet be a small business. The point is that one must be aware of the requirement and document the disposition.

The regulation further deals with issues such as mementoes, social activities, guest speakers and registration fees.

You should study both the AMC regulation and your own local implementation to fully understand your coordination and approval procedures. The perception, whether by an IG or the Washington Post, of government waste is always a cause for concern. By fully understanding the relevant regulations and educating your clients concerning them, you may be able to save them severe embarrassment. ©

Preventive Law Note: Contractors in the Workplace

The TACOM-ACALA Legal Office, DSN 793-8414, prepared an outstanding preventive law item on contractors in the workplace, covering many important and timely issues, including:

1. The normal employee-supervisor relationship doesn't exist.
2. The work is governed by the contract.
3. Contractor employees are not covered by the same rules, regulations, or bargaining agreements as Government employees.
4. We can't accept gifts from contractor personnel.
5. We can't solicit gifts from contractor personnel.
6. Restrict access to proprietary data.
7. Restrict access to procurement integrity information.
8. Restrict access to information covered by the Privacy Act.
9. Always identify contractor personnel (Encl 15). ©

AMC Legal Office Profile

Communications-Electronics Command, Fort Monmouth, NJ

CECOM Command History

Early History

The U.S. Army Electronics Command (ECOM) was first established at Fort Monmouth as a component of AMC in August 1962. As a result of the Army Materiel Acquisition Review Committee (AMARC) recommendations which were designed to separate the research and development and readiness functions within AMC, in 1978, ECOM was divided into the Communications-Electronics Materiel Readiness Command (CERCOM), the Communications Research and Development Command (CORADCOM) and the Electronics Research and Development Command (ERADCOM). This three pronged configuration was used until 1981 when CORADCOM and CERCOM merged to form the Communications-Electronics Command (CECOM). In 1985, ERADCOM ceased to exist.

Goldwater-Nichols

Impact

With the passage of the Goldwater-Nichols Reorganization Act of 1986 and the implementation of the Program Executive Officer (PEO)

concept, three PEO organizations were established at Fort Monmouth: PEO, Communications Systems (PEO-COMM); PEO Command and Control Systems (PEO-CCS) and PEO, Intelligence and Electronic Warfare (PEO-IEW). In July 1995, PEO-COMM merged with PEO-CCS to form PEO, Command, Control and Communications Systems (PEO-C3S).

Signal Reorganization

As a result of the Signal Organization and Mission Alignment (SOMA)/Information Management Functional Area Assessment (IMFAA) decisions, in October 1996, the Information Systems Command (ISC), headquartered at Fort Huachuca, AZ, was redesignated as the Army Signal Command (ASC). At that time, significant portions of ISC's information management, acquisition and engineering elements were realigned under CECOM. Additionally, the Information Systems Selection and Acquisition Activity (ISSAA), Alexandria, VA, formerly part of the Directorate for Information Systems for Command, Control, Communications, and

Computers (DISC4), was transferred to CECOM and renamed the CECOM Acquisition Center-Washington (CAC-W). CECOM also assumed operational control, and then command and control, of Tobyhanna Army Depot (TYAD), Tobyhanna, PA, in October 1997 and October 1998, respectively.

1997 to the Present

In early 1997, PEO-IEW was redesignated PEO, Intelligence, Electronic Warfare and Sensors (PEO-IEW&S).

Also in 1997, as a result of Base Realignment and Closure (BRAC) decisions, the Army Research Laboratory (ARL) relocated from Fort Monmouth to Adelphi, MD, and CECOM Headquarters, along with the Logistics and Readiness Center, the Acquisition Center and several other Directorates (including the Legal Office) relocated from a leased facility in Tinton Falls, NJ, onto the main post of Fort Monmouth. Additionally, CECOM assumed responsibility for several of the Aviation and Troop Support Command's (ATCOM's) business areas.

AMC Legal Office Profile

Communications-Electronics Command, Fort Monmouth, NJ

CECOM's Mission

CECOM's mission is "(t)o develop, acquire and sustain superior information technologies and integrated systems, enabling battlespace dominance for America's warfighters." Its principal business areas encompass communications, command and control, electronic sensors and combat, software and information warfare. The total CECOM population is presently 10,146 (9,597 civilians and 549 military) with fewer than 50% of that total located at Fort Monmouth.

Legal Office Staffing

The CECOM Legal Office has personnel stationed in five separate geographic locations: Fort Monmouth, NJ; Fort Belvoir, VA; Alexandria, VA; Fort Huachuca, AZ; and Tobyhanna, PA. There are a total of 73 people employed by the CECOM Legal Office: 28 civilian attorneys, 4 acquisition and 13 administrative/paraprofessional personnel, 7 officers and 2 enlisted personnel at Fort Monmouth; 3 attorneys, 3 patent agents and 2 administrative/paraprofessional personnel at Fort Belvoir; 3 attorneys and 1 administrative employee at CAC-W; 1 attorney at Fort Huachuca; and 4 attorneys and 2 administrative/paraprofessional personnel at TYAD.

Awards & Recognition

CECOM attorneys have been selected for the following honorary awards:

AMC Attorney of the Year - 1985, 1989, 1993, 1996

AMC Award for Managerial Excellence - 1995

AMC Team Project Award - 1990, 1994, 1995, 1997, 1998

AMC Preventive Law Award - 1990, 1997

AMC Achievement Award - 1989, 1993, 1997

CECOM Leadership Award - 1997

CECOM 10 Outstanding Personnel of the Year - 1997

CECOM Employee of the Year - 1991

Secretary of the Army's Award for Outstanding Achievement in Materiel

Acquisition - 1987, 1988, 1996

The David Packard Excellence in Acquisition Award - 1996

Army Chief of Staff's Award for Excellence in Legal Assistance - 1989-1997

TJAG's Award for Excellence in Claims Support - FY96

Legal Office Objectives

In furtherance of CECOM's mission, the critical objectives for the Legal Office are as follows:

1. Serve as an ethics and values-based professional organization.

2. Provide timely, independent and effective legal advice, counsel and advocacy for our clients.

3. Serve as the advocate for effective competition throughout the acquisition process.

4. Provide world class quality legal services to soldiers and their family members.

5. Understand and anticipate our clients' needs and exceed their expectations.

6. Maximize innovation to create and facilitate acquisition/logistics/technology reform.

7. Sustain a diverse, professional workforce committed to equal employment opportunity, mutual respect and teamwork.

(Part II of the CECOM Legal Office Profile will appear in Newsletter 99-3, June 1999.)

Faces In The Firm

Hello-Goodbye

CECOM

Welcome to **Jignasa Desai** who began working as a general attorney in Business Law Division A on 16 February 1999. Ms. Desai graduated from Rutgers College and Rutgers Law School. Upon her graduation, she served a judicial clerkship and subsequently worked several years as a litigation associate for a private law firm in New Jersey.

CPT Frances Bajada Martellacci arrived in March after a tour in Korea. She was a trial counsel and the Engineer Brigade judge advocate. Prior to her tour in Korea, CPT Martellacci was assigned at White Sands Missile Range. She received her undergraduate degree from City College of New York and her JD from New York Law School. CPT Martellacci is working in the Military Law Branch.

Linda Cooper recently joined the Legal Office and is assigned as the receptionist in the Legal Services Branch. Previously, she was a procurement technician in the Acquisition Center.

IOC

Bart L. Howell has joined the McAlester Army Ammunition Plant Legal Office. Mr. Howell has been at McAlester since January 1999. He was formerly with the Stipe Law Firm. We welcome Mr. Howell to the IOC/AMC family and look forward to working with him.

AMCOM

We welcome back **Brian E. Toland**, who joined the Acquisition Law Division effective 14 February 1999.

LT Chin-Zen Plotner joined the Office of Staff Judge Advocate on 5 April after completing the Basic Course at TJAGSA.

AMCOM

Tina M. Pixler, Acquisition Law Division, and her husband Chris Wood, are the proud parents of Sara Michelle Wood, who was born on February 21 and weighed 7 pounds and 6 ounces.

SBCOM

Vicky Upchurch, Patent program gave birth to Taylor Annie Nicole Upchurch on

AMCOM

CPT David M. Dahle has left this office to accept a full time AGR position with the Army National Guard in Boise, Idaho.

IOC

CPT Dean Andrews, counsel at Tooele Army Depot, is leaving the Army and heading to beautiful Colorado where he will be practicing law as a civilian. We wish him the best of luck!

ARL

IP Counsel **Frank Dynda** has taken a position with the U.S. Army Legal Services Agency.

Births

Feb 10. She will have a work at home program before returning in May.

IOC

Sam Walker (Acquisition Law, IOC) is a grandpa again! Alice Walker was born in late February. The beautiful baby girl is the first child of Joseph and Sarah Walker.

Faces In The Firm

Promotions Awards and Recognition

HQ AMC

Holly Saunders has been promoted to Office of Command Counsel Executive Officer.

AMCOM

Fred W. Allen was promoted to GS-15, Chief, Acquisition Law Division,

Carl Ray Stephens was promoted to GS-15, Branch B, Acquisition Law Division on 14 February 1999.

TACOM

Promotion of **Susan Lewandowski** (GS-15) to assume the duties of Chief, Business Law Division, TACOM-Wrn. Her promotion was effective 14 Mar 99. Sue has replaced Dominic Ortisi who retired in January.

CPT Karin Wiechmann (currently of the TACOM-Wrn Business Law Division) has been selected to fill the civilian General Attorney (GS-12) vacancy in the General Law Division, TACOM-Wrn. She officially comes on-board on 26 April.

IOC

Mr. William G. Bradley is part of the New Mexico Hazardous Waste Fee Project (Team) that has been nominated to receive Vice President Al Gore's Hammer Award. The group's (Central Regional Environmental Office; White Sands Missile Range; NASA; TRADOC; USAF Regional Environmental Office; NM Environmental Department; Montgomery & Andrews (representing NM Oil and Gas Association); DOE; USAF Legal Services Agency; and IOC) informal partnership developed an improved hazardous waste regulation.

The team's effort on which the award is based is the more efficient manner in which remediation and prevention techniques are devised, reviewed, and subsequently employed. We extend our congratulations on your nomination and wish the Team the best of luck!

AMCOM

On 1 April 1999 **Dayn T. Beam** was presented Outstanding Achievement in Value Engineering for FY98.

HQ AMC

COL Bill Adams received the Legion of Merit, in recognition of his four years as AMC Deputy Command Counsel/Staff Judge Advocate. During the 25 March ceremony, AMC Commander, **General Johnnie E. Wilson**, presented the award to COL Adams. Nancy Adams, Bill's wife looked pleased, too.

Bob Lingo was recognized in the 25 March AMC Command Counsel awards ceremony with the Department of the Army Achievement Medal for Civilian Service. Mr. Lingo performed his duties as a member of the Tooele Army Depot BRAC Transfer Team in an exceptionally meritorious manner. COL Gary Dinsick BRAC Office, OACSIM initiated the medal for Bob's hard work.

**See You At
CLE**

**In Florida
24-28 MAY 1999**