

Speech by
ROBERT MORGAN
Attorney General
Staff Judge Advocate's Conference
Charlottesville, Virginia
March 6, 1973

It is a great pleasure and privilege to speak again to the Judge Advocate General's Conference. Many of you were here last October 5th when I outlined the purpose of our Special Committee on Legal Services to Military Forces. I had hoped then that the next time I spoke to you, I'd be able to show a finished study. This isn't possible, primarily because of our problems in staffing and the delay in getting materials to us.

I can report significant progress. I can also ask not only for your continued interest, but for your active assistance in our project. Let me ask the indulgence of you who were here last year, and reiterate briefly the role of our Special Committee.

The National Association of Attorneys General is composed of the Attorneys General of the fifty states and four territories. In 1969 and 1970, the Association conducted a comprehensive study of the powers, duties and operations of the office. This culminated in the publication of a voluminous report early in 1971. One section of that report concerned legal services to military forces, and was based in part on a questionnaire circulated to all Adjutants General. The report outlined some problems in this area, particularly concerning the liabilities of National Guard forces. The state Attorneys General, who serve as legal adviser to the Guard in most states, were deeply concerned with these problems.

At their 1971 winter meetings, the National Guard Association of the United States and the Adjutants General Association officially indicated their willingness to cooperate with the National Association of Attorneys General in studying such problems. The NAAG then created a special Committee on Legal Services to Military Forces. The Attorneys General of California, Indiana, and Mississippi and I were named to this group; I have the honor of serving as

Chairman. The Adjutants General of North Carolina, New Jersey, Maryland and Wisconsin were designated by their Association. Col. William Blatt of the National Guard Bureau and Col. W. D. McGlasson of the National Guard Association, who had assisted in the initial study, continued to cooperate. The Secretaries of the Army, Navy and Air Force each named their Judge Advocate General to this joint committee. We had a meeting in February of 1972 that defined the scope of the study and that reemphasized the strong support of all participants.

The Committee was given a challenging assignment. It was directed to do the following: to recommend ways to improve liaison between Attorneys General and military forces at both the state and national levels; to analyze the legal rights and liabilities of National Guardsmen; to develop model legislation where appropriate; to collect and analyze information on existing laws and administrative practice; and to strengthen relationships between legal advisers, military forces, and law enforcement officers, especially during emergency situations. No similar effort had ever been undertaken. There was no effective liaison, either formal or informal, between the state Attorneys General and the military, whether regular or reserve. There was no existing study of the powers and liabilities of National Guardsmen. There were no surveys of law or procedures of the National Guard.

The Committee thus undertook both to a major job of substantive research and to suggest innovative ways of strengthening these relationships. There have been many problems. In May of 1971, NAAG applied to the U.S. Department of Justice for a grant which would enable it to undertake research in several areas, including that proposed by the Special Committee on Legal Services to Military Forces. The grant was not awarded until December. There were recruiting problems, and an attorney to undertake

the research was not hired until the summer of 1972, despite what appeared to be excellent qualifications, ^{he} didn't come up with what we needed. Questionnaires were sent out to all Adjutants General in September; by the end of 1972, only nineteen had been returned. The grant, which was to terminate the end of 1972, had to be extended until July 1, 1973.

We hope these frustrations are a thing of the past, and that we will, before too long, be able to publish a major factual report that will be of real help to all of us. The Questionnaires to Adjutants General have now been returned by forty states. These are now being analyzed and, when combined by a study of statute and case law, will provide a solid base of information. On this base, we will be able to build recommendations for both legislative and administrative action. We have also initiated action in regard to the other major phase of the Committee's activity - improving liaison between Attorneys General and military forces.

Let me talk to you a little about each of these areas of Committee activity. But, before I do, let me stress again our great dependence on you.

We are studying areas that haven't previously been studied. The American Civil Liberties Union recently published a report on "The National Guard and the Constitution," which discussed the legal powers of Guardsmen. The ACLU study, however, was in the spirit of "know your enemy" and was not intended to be objective. Two staff Judge Advocates who are also members of their Attorneys General's staffs -- Willard Shank of California and John Armstrong of Wisconsin -- have prepared excellent papers on some of these problems. But there hasn't been an impartial study on a national level. We need your help not only in furnishing information, through our questionnaires and otherwise, but in giving us ideas. What problem areas are apparent to you? What legal situations need clarification? How can

your state's civil legal authorities help you? I can't urge too strongly that you let us know these things.

The Committee's primary effort now is directed toward production of a comprehensive report. The report will concern five general areas: 1) inter-jurisdictional problems, including both interstate and state-federal relationships; 2) provision of legal services to Guardsmen; 3) procedures and effect of invoking emergency or martial rule, and the peace officer powers of Guardsmen; 4) the liability and benefits of Guardsmen; and claims against the Guard and the Armed Forces. It will be based on an analysis of statutes and case law, plus the results of a detailed questionnaire which we sent to Adjutants General. Forty have now returned these questionnaires, and we are now tabulating and analyzing the results. The staff has also interviewed staff Judge Advocates in several states.

While analysis is far from complete, some general conclusions can be drawn from these questionnaires. These are:

- 1) There is a real need for continuing interchange among the states in matters relating to the Guard;
- 2) There are striking differences among state laws concerning the Guard;
- 3) There is still much uncertainty concerning the liability and immunity of Guardsmen; and
- 4) There is a close relationship between a state's National Guard and the Attorney General.

Let me quickly illustrate these points; they will be explored in depth in our forthcoming report.

First, we need to provide channels for continuing dissemination of information. By way of illustration, several states report that they are revising their militia codes. Other states need to know what changes were

proposed, and for what reasons. They need to know what suits are brought to challenge laws relating to the Guard, and with what results.

Second, there is great variation among state laws concerning the the Guard. This may be desirable, under our federal system, but we need to be cognizant of these differences. For example, state laws and constitutions prescribe who may order the Guard into active state service, and under what circumstances. Most states authorize only the Governor, or a person acting as the Governor in his absence, to call out the Guard. Some states, however, authorize a county or city official to direct the senior military office in his county or city to assist him under certain circumstances. Still other states authorize a local official to request assistance from the local commander of a military unit, but allow the commander to order his unit into service only if the Governor or Adjutant General can't be contacted. There is an equally great variation in the statutory definitions of when the Guard may be called into service.

Third, there is still a great deal of uncertainty as to the powers and immunities of Guardsmen. For example, our questionnaire asked what powers over civilians Guardsmen had when called up in an emergency. The response to this question illustrates considerable confusion and lack of clarity. The proper use of and authority for "peace officer powers" or of a "citizen's arrest" are not clear in some states. It should be pointed out, however, that the states have come along way in this regard since our 1970 questionnaire. The rules on use of deadly force, for example, now seem to be clearly defined in most states.

The fourth fact, and the one of particular interest to us, is the Attorney General's close contact with the National Guard in most states. Of 27 states which reported to us on this, all but five said that the Attorney General had given formal advisory opinions on questions of law to

to the National Guard. These opinions involved questions such as: the immunity of Guardsmen; the status of technicians; financial procedures for reimbursing costs of service in a disaster; and, on a possibly less vital level, the use of an Armory for dancing purposes. In most jurisdictions, the Attorney General or his staff serve as sole counsel for Guardsmen for actions committed while on official duty. Some states provide otherwise; they may allow him to decline to represent the Guardsmen, or authorize the Governor or Attorney General to appoint private counsel. On a less formal plane, almost half of the reporting states say that some member of the Guard's legal staff is also a member of the Attorney General's staff. To date, we have identified five states where the staff Judge Advocate is also an Assistant Attorney General. This undoubtedly assures close cooperation.

We hope, in our report, to clarify some of these questions. We hope, also, to suggest ways whereby Attorneys General can fully meet the Guard's need for legal counsel outside that furnished by JAG officers.

The other purpose of the Committee's work is to strengthen liaison between Attorneys General and regular military services. In this area, North Carolina has developed a pilot project that I'd like to tell you about. While this project now involves only one base, it is of broad significance as an example of the kind of constructive relationships that can be developed.

Consumer fraud is a problem everywhere, but it is too often particularly bad around military bases. Unscrupulous businessmen will prey on servicemen, who are in an unfamiliar town and must buy from businesses they don't know. Base legal personnel do a good job, but can't possibly develop or maintain the expertise necessary to combat consumer fraud successfully.

In North Carolina, as in most states, the Attorney General has a consumer fraud section, which does nothing but handle consumer complaints. Last summer, at our invitation, Captain Warren Pate of the Staff Judge Advocate's Office at Fort Bragg, spent two weeks with this office. He learned a lot about consumer fraud and about how to prevent it or to deal with the results. In October, the chief of our Consumer Protection Division spent two days at Fort Bragg, at the invitation of Brigadier General Krause of the XVIII Airborne Corps. He or, his representative, now attend the monthly meetings of the Armed Forces Disciplinary Control Board at Bragg.

These visits were informative and helpful in learning not only about specific deceptive practices, but in establishing an understanding of how and where problems are handled. They will be continued on a regular basis and, hopefully, assure a constant interchange of information. Attendance at monthly meetings of the Disciplinary Board enables our staff to keep informed of current problems at Bragg, and to contribute information about firms or practices which are the subject of complaints. We hope to extend this program to other bases in the state and to publicize it through the Committee,

The other purpose of the Committee's work is to strengthen liaison between Attorneys General and regular military services. In this area, North Carolina has developed a pilot project that I'd like to tell you about. While this project now involves only one base, it is of broad significance as an example of the kind of constructive relationships that can be developed.

Consumer fraud is a problem everywhere, but it is too often particularly bad around military bases. Unscrupulous businessmen will prey on servicemen, who are in an unfamiliar town and must buy from businesses they don't know. Base legal personnel do a good job, but can't possibly develop or maintain the expertise necessary to combat consumer fraud successfully.

In North Carolina, as in most states, the Attorney General has a consumer fraud section, which does nothing but handle consumer complaints. Last summer, at our invitation, Captain Warren Pate of the Staff Judge Advocate's Office at Fort Bragg, spent two weeks with this office. He learned a lot about consumer fraud and about how to prevent it or to deal with the results. In October, the chief of our Consumer Protection Division spent two days at Fort Bragg, at the invitation of Brigadier General Krause of the XVIII Airborne Corps. He or, his representative, now attend the monthly meetings of the Armed Forces Disciplinary Control Board at Bragg.

These visits were informative and helpful in learning not only about specific deceptive practices, but in establishing an understanding of how and where problems are handled. They will be continued on a regular basis and, hopefully, assure a constant interchange of information. Attendance at monthly meetings of the Disciplinary Board enables our staff to keep informed of current problems at Bragg, and to contribute information about firms or practices which are the subject of complaints. We hope to extend this program to other bases in the state and to publicize it through the Committee,

so that similar efforts can be undertaken in other states.

Another step we've taken in my office is to appoint a Military Cooperation Committee, which is responsible not only for assisting the Special Committee, but for all matters concerning military forces. This was created in response to a suggestion of the Special Committee, which felt that the greatest single need was for a definite point of contact with state government. It consists of three Assistant or Deputy Attorneys General, all of whom are active members of the National Guard or Reserve, and therefore have particular rapport with the military. As one example of the benefit of such a Committee, I recently wrote all base commanders in the state suggesting they contact any of these three Assistants if they could be of any help to returning POWs in handling problems involving state law.

A third example, again taken from North Carolina, is our Interagency Drug Squads, which involve state, local and military personnel in an effort to combat narcotics.

These are examples of the kinds of action we hope to sponsor. We hope you know of others, and that you will bring them to our attention, so we may assure they are given proper recognition. We need more cooperative action in such areas as environmental control, where military forces and bases have problems of compliance with state and federal antipollution laws. We need more exchange of information, both between civil and military authorities and between the states. We need effective channels of communication, to help resolve problems as they arise.

We also urge that you will suggest, from your own experience, ways of building more effective relationships between civil authorities and military services. We feel that is an area where civil authorities can take prompt and positive action to ensure that members of the National Guard and the Reserves and the regular services receive the strong support of state governments.