

# Civilianizing of MILITARY GOVERNMENT COURTS

**T**HE UNITED STATES has carried out several occupations during the past 100 years, and for the first time it is establishing a civilianized judicial system to replace the Army-created Military Government courts which have been functioning in the US-controlled area of Germany since World War II ended in 1945.

The new system, known as the United States Military Government Courts for Germany, consists of a Court of Appeals composed of a chief judge and six associate judges; 11 district courts and subordinate magistrate courts, along with the Office of Chief Attorney. It is directly under the Chief of Staff, OMGUS, and has been relieved of its former ties with the Legal Division, OMGUS, and the state OMG's.

Judge William Clark of Princeton, N. J., for many years a member of the Federal bench, has been named chief judge. Three associate judges also have been appointed: Carl W. Fulgham, chief of MG Courts Branch, OMG Wuerttemberg-Baden; Marc J. Robinson, deputy chief, legal office, OMG Hesse, and Juan A. Sedillo, chief, legal office, OMG Bavaria. Worth B. McCauley, deputy chief of OMG Bavaria's Legal Division, was designated chief attorney.

Three MG ordinances have been promulgated, effective Aug. 18, to effect this transition. They are No. 31, "United States Military Government Courts for Germany;" No. 32, "Code of Criminal Procedure for United States Military Government Courts for Germany;" and No. 33, "Code of Civil Procedure for United States Military Government Courts for Germany."

It is a recognized principle of international law, Judge Clark has pointed out, that in an occupation by foreign armies, whether belligerent or pacific, the occupying power has

a right to establish its own system of courts, for only in this way can it be sure that its security and that of its troops is preserved and the public order guaranteed.

**I**N ALL the previous US occupations during the past 100 years, the court systems were military in character and constituted provost courts or military commissions. Their procedure was taken from courts-martial and of necessity lacked some of the equalities and safeguards of the civilian courts.

These judicial procedures marked the US occupation policies starting with the occupation of Lower California after the Mexican War and carried out in several southern states after the Civil War, in Cuba, Puerto Rico and the Phillipines after the Spanish-American War, in the Rhineland after World War I, and in southern Germany during the first three years after World War II.

The MG courts which functioned in Germany prior to the recent ordinances were established under



*Judge William Clark, of Princeton, N. J., chief of the Court of Appeals for the newly-organized Military Government courts in US-Occupied Germany.*

(Army Signal Corps)

MG Ordinance No. 2 which was enacted during the wartime days of SHAEF. The ordinance was applied as the armies entered Europe, progressed through France and Belgium and finally into Germany, being continued into the occupation. It was drawn with a view of combat conditions and was equally applicable to post-combat conditions.

Actually Ordinance No. 2 did not provide an integrated system. Each court was an individual unit, responsible to the state OMG director and guided by various regulations, instructions and interpretations. Opinions were not required, and when written, were not published. There was no opportunity for oral and public argument. Review was administrative and not judicial.

**T**HE NEWLY-ESTABLISHED courts are entirely civilian and follow the features of the Federal courts in the United States. Persons and cases brought before them are surrounded by the same ethical practices and rights which are inherent in the American system of justice. These courts bear somewhat the same relation to the German courts that the US federal courts bear to the state courts.

The New MG courts continue to handle the cases of United Nations nationals, displaced persons, German nationals in whose case Military Government has a direct interest, dependents of US occupation personnel and other cases involving US and Allied nationals as might be referred to its jurisdiction.

Military personnel and civilian employes of the Department of the Army remain primarily subject to courts martial.

The German courts are for cases involving German nationals not concerned under the jurisdiction of the MG courts or courts-martial.



While the courts are organized as a separate unit directly under the Chief of Staff, OMGUS, the Office of the Chief Attorney and the prosecutors are part of the Legal Division, OMGUS, in order to keep the court personnel independent of the prosecution. The seat of the Court of Appeals and of the Office of the Chief Attorney is in Nuremberg.

In summarizing the ordinances setting up the new court system, Col. John M. Raymond, director of the Legal Division, OMGUS, pointed out that the Court of Appeals and the Office of Chief Attorney were set up as of Aug. 18, but the district courts were to be established in each state as soon as administrative arrangements have been completed in that state. He said an MG order would be published stating the date each district court became operative.

"At that time all cases in which trial has been begun will be continued to a conclusion of the case under the old system," Colonel Raymond explained. "All cases in which trial has not been begun will be transferred and processed under the new system." Although no provisions are included for trial by jury, he added, the ordinance was prepared so that jury trial can be introduced.

MG ordinance No. 31 includes the following provisions:

The Court of Appeals shall consist of the Chief Judge and six associate judges. The court shall sit in two panels of three members each. But the full court shall sit in any case in which the death penalty has been imposed by a district court or in such other cases as requested by two or more judges of the Court of Appeals. Two judges must concur in a decision of a panel, and a majority of the judges sitting must concur in a decision of the full court.

The judges shall have power to administer oaths, to punish for contempt of court, to act on applications for release from confinement, and to exercise all other powers incidental to the performance of their judicial functions. Parties appearing before the Court of Appeals either in person or by counsel shall be entitled to submit briefs, and, by leave of court, to make oral arguments. All opinions shall be officially reported in the English and German languages of which the English shall be the official text.

The Court of Appeals may prescribe the form of civil and criminal complaints, answers, motions, orders, petitions for leave to appeal, appeal petitions, petitions for review, and other formal papers which may be filed in or issued by the MG courts. Subject to, and consistent with applicable MG legislation, directives and regulations, it may prescribe and publish rules of practice and procedure for the courts and for the admission and discipline of persons entitled to practice.

The Court of Appeals shall have a clerk and a marshal and such other personnel as may be required for the proper conduct of its business. The clerk shall have authority

to authenticate documents on behalf of the court and to affix the seal of the court of such documents. The marshal shall have authority to enforce the order of the Court.

The 11 judicial districts were established as follows (note map on Page 5):

- First: Bremen.
- Second: US Sector Berlin.
- Third: Northern Hesse; seat: Marburg.
- Fourth: Southern Hesse; seat: Frankfurt.
- Fifth: Northern Wuerttemberg-Baden; seat: Heidelberg.
- Sixth: Southeastern Wuerttemberg-Baden; seat: Stuttgart.
- Seventh: Southwestern Bavaria; seat: Augsburg.
- Eighth: South-central Bavaria; seat: Munich.
- Ninth: Eastern Bavaria; seat: Regensburg.
- Tenth: North-central Bavaria; seat: Ansbach.
- Eleventh: Northwestern Bavaria; seat: Wuerzburg.

Each district court shall consist of one or more district judges and one or more magistrates who shall sit singly except that a district court composed of three district judges or two district judges and a magistrate may hear and decide any civil or criminal case, and, in the latter, may impose any lawful sentence including death. A majority of such court shall decide any case before it, provided that no sentence of death



Marc J. Robinson, an associate judge of the Court of Appeals, who is former deputy chief of the Legal Division, OMG Hesse. (PIO OMGH)

shall be imposed except by the unanimous decision of the court.

A district judge sitting singly may hear and decide any criminal case and may impose any sentence allowed by law not exceeding imprisonment for a term of 10 years or a fine of \$10,000 (or such equivalent in Deutsche marks or other currency as may be prescribed) or both such imprisonment and fine. He may hear and decide any civil case.

A magistrate sitting singly may hear and decide any criminal case and may impose any sentence allowed by law not exceeding imprisonment for a term of 12 months or a fine of \$1,000 (or such equivalent in Deutsche marks or other currency as may be prescribed) or both such imprisonment and fine.

In addition to or in lieu of any authorized power of sentence, a district judge or a magistrate may make such order concerning any property or business involved in an offense, or make such order concerning the person of the accused as is authorized by law. Where an accused is charged with an offense under German law, the court shall be limited to the sentence or other penal provision of such law.

Any person convicted by a magistrate shall be entitled to file a petition for review to the district court, specifying the errors which it is alleged were committed. The record of the case shall be reviewed by a district judge.

A record shall be made and kept of all proceedings in the district courts, including proceedings before magistrates in such form as shall be prescribed by rule of the Court of Appeals and written opinions shall be filed by the district judges in all cases heard by

them. Each district court shall have a clerk and a marshal and such other personnel as may be required for the proper conduct of its business.

District courts shall have criminal jurisdiction over all persons in the US area of control except persons, other than civilians, who are subject to military, naval or air force law and serving with any forces of the United Nations. No person subject to US military law shall be brought to trial for any offense except upon authorization of the Commander-in-Chief, European Command. No member of an Allied mission, visiting governmental official, or person subject to the military law of any country other than the United States, shall be brought to trial for any offense except upon authorization of the Military Governor.

District courts shall have jurisdiction to hear and decide cases involving: offenses under legislation issued by or under the authority of the Allied Control Council, offenses under MG legislation, and offenses under German law in force in the judicial district.

District courts shall have exclusive jurisdiction to hear and decide all civil cases over which jurisdiction is denied to German courts by Military Government. The district courts shall have concurrent jurisdiction with German courts to hear and decide civil cases in which a national of any of the United Nations or a stateless person is a party.

District courts may exercise civil jurisdiction in the following cases only: cases for damages arising out of the operation of motor vehicles not owned by the US Government, cases brought by Military Government for the enforcement of penalties or forfeitures, and cases brought under the provisions concerning the Rhine navigation.

District courts may exercise civil jurisdiction only in cases in which the cause of action arose in the US Area of Control, or with respect to transitory causes of action arising elsewhere in Germany, in which at least one party, at the time of filing the complaint, resides or is stationed, or if a juristic person has its principal place of business, within the US area of control.

The trial of all criminal cases, except for Rhine navigation cases, shall be by the district court in the district in which the alleged offense was committed, unless a judge of the Court of Appeals on application of the chief attorney directs that it be tried in the district where the accused was residing or stationed at the time the alleged offense was committed, or in the district where the accused was arrested or imprisoned.

The trial of all civil cases, except for Rhine navigation cases, shall be by the district court: in the district in which the defendant resides is stationed, or is found, or, if a juristic person, has its principal place of business; in the district where the cause of action arose; or in the district in which real property which is the subject of the litigation is situated.

Criminal and civil cases under the Revised Rhine Navigation Act shall be tried by the district court for either the Fourth or Fifth Judicial District.

The district court in which the case is filed may grant a change of venue upon motion for that purpose made prior to the commencement of trial, and upon its own motion at any stage of the proceedings, where it is clear that the interests of justice or the convenience of the parties will be served thereby.

The Court of Appeals shall have original jurisdiction to act on applications for release from confinement when the person is confined by virtue of a sentence of a court composed of more than one judge. It shall have appellate jurisdiction to consider on appeal final orders of individual judges of the Court of Appeals and final judgement and orders of the district judges except in Rhine navigation cases.

The appeal may include both question of fact, except that, in dealing with questions of fact the court shall set aside or reverse the decision of the district court in criminal cases only if the evidence a reasonable doubt and in civil cases only if the evidence

**Judicial districts  
of US Military  
Courts for Germany**



does not substantially support the judgment.

The Court of Appeals shall grant leave to appeal in any criminal case upon application of the person or persons convicted, or in any civil case upon application of any party or parties thereto, if it appears that the decision of the district court is in conflict with a decision of another district court or of the Court of Appeals, or that there has been a denial of due process of law, or that an important question of law is presented, or that the rights of any party making application for appeal have been substantially prejudiced.

In any case in which a district court has imposed a penalty of 10 years or more, the Court of Appeals shall upon application of the person or persons convicted, grant leave to appeal. Even though no petition for appeal is filed, the Court of Appeals shall consider every case in which a district court has imposed a sentence of death in the same way as if the defendant had claimed and been granted leave to appeal.

Even though no petition is filed for review of a decision of a magistrate or for appeal from a judgment or order of a district court, the Court of Appeals may call up and review any criminal case in which it believes that the rights of a defendant may have been substantially prejudiced; and it may by rule or order provide for such review of all criminal cases in certain categories.

Upon any appeal or review the Court of Appeals may reduce the sentence, vacate the findings in whole or in part, enter a judgment for the defendant or set the judgment, or findings and sentence aside and order a new trial, and issue any other order or orders appropriate in the circumstances. In any case on review under provisions of the previous paragraph where a new trial is ordered and such new trial results in a conviction, the sentence may not be increased.

The district courts of the Fourth and Fifth Judicial Districts shall have competence to sit as Rhine Navigation Courts for the purposes of the revised Rhine Navigation Act of Oct. 17, 1868.

Such courts shall have criminal jurisdiction to investigate and punish all violations of regulations concerning navigation and the policing of the river, to impose fines therefor of not less than DM 50 and not more than DM 1,000, and in default of payment to impose a term of imprisonment not exceeding one month.

Such courts shall have civil jurisdiction to decide, in summary proceedings, actions concerning the payment and the amount of pilot fees, crantage, weighing fees, harbor and pier dues; concerning obstructions placed by individuals on the tow path; concerning damages to others caused by boatmen or raftsmen during a voyage or while landing; and concerning claims against the owners of horses used in towing boats up-stream for damages to landed property.

Appeals from a decision of a district court sitting as a Rhine Navigation Court may be made to the commission Centrale du Rhine, as prescribed by Article 37 of the Revised Rhine Navigation Act, instead of to the Court of Appeals. In exercising such jurisdiction the court shall be governed by relevant German legislation applicable to Rhine Navigation Courts in effect immediately before Nov. 14, 1936 insofar as such legislation is not inconsistent with these provisions.

A district attorney and one or more assistant district attorneys shall be appointed for each judicial district. The district attorney shall prepare and file criminal complaints and prosecute all criminal cases in the district court of his district. He shall represent Military Government in all cases before that court. District attorneys shall be subject to the supervision and direction of the chief attorney in the performance of their duties.

The chief attorney may appoint one of the district attorneys in each state in which there is more than one district as chief district attorney for that state. The chief district attorney, or the district attorney where there is no chief district attorney, shall consult,

from time to time, with the OMG director or with his chief legal officer in order to insure proper coordination in the prosecution of criminal offenses.

The chief attorney shall be responsible for the conduct of his office and the supervision and direction of all district attorneys. He shall act for the prosecution in all criminal cases brought before the Court of Appeals. He shall represent Military Government in all cases before that court. He or one of his assistants may assume the prosecution of, or the representation of Military Government in, any case in a district court.

The chief judge and associate judges of the Court of Appeals and the chief attorney shall be appointed by the Military Governor upon the advice of his legal adviser. All other judges and magistrates shall be appointed by or under the authority of the Military Governor upon the advice of his legal adviser and the chief judge of the Court of

Articles in previous issues of the *Information Bulletin* dealing with MG courts and the judicial system in the US occupied areas include:

**Legislative and Judicial Policy,**  
No. 1, July 28, 1945.

**Legal Division,** No. 79, Feb. 10, 1947.

**New Role in MG Courts,** No. 101, July 14, 1947.

**It's the Law,** No. 127, Jan. 27, 1948.

**Habeas Corpus,** No. 127, Jan. 27, 1948.

**Courts in Germany, Part II,**  
No. 135, May 18, 1948.

Texts of the Three ordinances, No. 31, No. 32 and No. 33, are given, both in English and German, in OMGUS letter, AG 010.6 (LD), dated Aug. 16.

Appeals. All assistants to the chief attorney and all district attorneys and their assistants shall be appointed by or under the authority of the Military Governor upon the advice of his legal adviser and the chief attorney.

A judge or magistrate shall not be removed from his office while such office continues to exist, prior to the termination of his US contract of employment in Germany, except upon formal charges and for cause. Judges of the Court of Appeals shall be entitled to a hearing by the Military Governor, or his representative, before being removed from office for cause. All other judges and magistrates shall be entitled to a hearing before the Court of Appeals, sitting *in banc*, before being removed from office for cause.

The chief judge and associate judges of the Court of Appeals, district judges, magistrates, the chief attorney and his assistants, and the district attorneys and their assistants must be graduates in law and members in good standing of the bar of one of the states of the United States or of the District of Columbia, and must have been engaged in active legal work as an attorney at law as judge of a court of record, or as a teacher of law at a law school approved by the American Bar Association for at least:

Ten years in the cases of the chief judge and associate judges of the Court of Appeals, and the chief attorney.

Five years in the cases of the district judges, and assistants to the chief attorney.

Three years in the cases of magistrates and district attorneys.

Two years in the cases of assistant district attorneys.

The above qualifications may be waived by the Military Governor in any particular case upon written recommendation of his legal adviser.

Judge Clark served as judge of the New Jersey Court of Errors and Appeals for two years, on the US District Court of New Jersey for 14 years, and the US Circuit Court of Appeals, Third Circuit, for four years. In World War II, he served for six months as a colonel on General MacArthur's staff in the Pacific, and for 3½ years as liaison officer with the British armies in North Africa, Sicily, Italy and Normandy.

Consultant to the director of the Legal Division, OMGUS, since January, 1948, when he arrived in Berlin, Judge Clark has served on the Military Government Court for Civil Actions, and made a study of judicial conditions in the Military Government court system.

Mr. Fulgham, associate judge, was for eight years a county judge in Garfield County, Colo. He served for three years as district attorney, 9th Judicial District, Colorado, and for 16 years was US commissioner for the District of Colorado. During World War II, he was a major in the Army, serving as legal specialist.

Mr. Robinson, associate judge, practiced law in Boston for 18 years. During World War II he was a captain and received legal assignments in Military Government, including that of chief legal officer, 7th Army.

Mr. Sedillo, associate judge, practiced law for 10 years in Santa Fe, N.M. He was state senator for four years, and became chairman of the Judiciary Committee. During World War II he served as colonel in the Judge Advocate General's Office.

Mr. McCauley, chief attorney, practiced law for 12 years in Oklahoma. A major in JAG during the war, he served as Post Judge Advocate, Trial Judge Advocate and Defense Counsel on Special and General Courts-Martial and Staff Liaison Officer.