Declassified E.O. 12356 Section 3.3/NND No. 785017

ACC

10000/109/1564

Declassified E.O. 12356 Section 3.3/NND No. 785017

10000/109/1564

ALLIED MILITARY COURTS, EXPENSES
JULY 1943; FEB. - MAY 1944

Declassified E.O. 12356 Section 3.3/NND No. 785017

273 War Recd CA 121 27/ 12/2

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
[illegible] SUB-COMMISSION
A.P.O. 394

ORU/eap

11th May 1944

AG3/4130/2

SUBJECT: Attendance of Members of Italian Armed Forces, Police, etc., before Courts Martial.

HEADQUARTERS
12 MAG 1944
A. C. C.

TO : AFHQ, AG3

1. Your AG3 154-1 dated 14th April 1944 is acknowledged.

2. Before taking the matter up with the Italian Government inquiries were made which established that in fact witness fees are never paid to members of the Italian Armed Forces or Police when attending before Courts Martial or Military Commissions either in HQ AAI or PBS.

3. In the circumstances it is not proposed to carry the matter further unless so directed by you.

(sgd) C. R. Upjohn.

C. R. UPJOHN,
Colonel;
Chief Legal Officer.

HEADQUARTERS
12 MAG 1944
A. C. C.

Copy to: AG & MG Sec.
(ref/273/21/CA of 8 May 44)

21

NFA

Captain Eden assures me that the above statement is correct JFK 12/5

2827

Declassified E.O. 12356 Section 3.3/NND No. 785017

HEADQUARTERS
ALLIED CONTROL COMMISSION
F.C. & M.G. Section
APO 394

BSE/273/22/GA. 8 May 1946.

SUBJECT: Re-Insurement of Witnesses' Expenses.

TO : Admin Section - For Legal Sub-Commission.

With reference to your letter AG3/4002/1 of 4 May 1946, the proposed amendment is agreed to.

HOSKINS. FINCH.
Colonel.
Deputy Executive
Commissioner.

Copy to: Finance Sub-Commission.
(Ref letter from Legal Sub-Com addressed this HQ copy to you AG1/4002/6/1. of 4 May 46.)

2827

Declassified E.O. 12356 Section 3.3/NND No. 785017

HEADQUARTERS
ALLIED CONTROL COMMISSION
A.G. & M.G. Section
APO 394

Ref/273/22/CA. 8 May 1944.

SUBJECT: Attendance of Members of Italian Armed Forces, Police etc before Courts Martial.

TO : Admin Section - For Legal Sub-Com.

Reference your ACC/1330/A. of 25 April 1944 this HQ has been informed that it is not the practice to pay fees to witnesses within the 5th and 8th Army Areas, and no difficulty is found in securing attendance of such witnesses.

NORMAN E. YEKE,
Colonel,
Deputy Executive
Commissioner.

Declassified E.O. 12356 Section 3.3/NND No. 785017

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.G. Section
APO 394

Ref/273/20/CA. 8 May 1944.

SUBJECT: Allied Military Courts - Witnesses Fees.

TO : R.C. Region IV.

1. Reference your R4/250.55 of 26 April 1944, the question of re-imbursing witnesses their expenses and outlays for attending AMG Courts has been considered.

2. It was the considered general opinion of the conference held on 1 May 44 and attended by all Regional Legal Officers, that to make any public announcement that witnesses in Allied Military Courts may claim compensation for "reasonable loss" would be to court disaster and that therefore it is most undesirable to lay down a general scale of costs for witnesses' attendances.

3. The reasons for that opinion are as follows :

(a) There would be a strong temptation for accused persons to bring all their family and also, perhaps, friends to testify ; thereby earning a few lire each but lengthening the hearing of cases.

(b) Re-imbursement would be claimed, doubtless, in a large number of cases in which no "reasonable loss" had been suffered.

(c) In large centres it would be necessary to establish a "taxing office" to check the bona-fides of each claim ; to establish the amount of loss sustained (e.g. by verifying with an employer whether a witness, who had spent some hours in Court, had received pay in respect of that period or how much had been deducted from his normal pay or how much his normal earnings had been reduced); and finally paying out the correct amount.

4. It was however considered that there should be power to order in any individual case of hardship, (e.g. where a witness has had to travel a long way and perhaps pay for one, or two, nights lodging) that a proper payment by way of re-imbursement be made.

5. In the circumstances Legal Sub-Commission are issuing as an addition to the loose leaf Allied Military Courts handbook now being distributed an amendment to Article 18 in the form of the attached.

2621
NORMAN E. FISKE,
Colonel,
Dep. Executive Commissioner.

Copy to:
Admin Sec - For Legal Sub-Com

Declassified E.O. 12356 Section 3.3/NND No. 785017

Cf Folio 18.

Col Flake.

Legal Sub Commission wish to issue an amendment to the Allied Military Courts handbook giving the Court or Provincial Legal Officer power to reimburse, in exceptional cases, witnesses outlays for journeys &c.. Witnesses normally should be reimbursed for loss of wages, travel expenses. Fees are not paid to witnesses as a rule, and there is no intention to pay them. It is felt that where hardship arises the Court should have the power to award a sum to cover those cases. I think it should be agreed to and if you approve will inform Legal S.C..

7/5/44.

J. Hubert Blake Maj.

Declassified E.O. 12356 Section 3.3/NND No. 785017

I. 273 6th Bn

HEADQUARTERS
AMG FIFTH ARMY (Field)
APO 464 U.S. ARMY

6 MAY Recd

U-6525

5 May 1944.
208/CA/81.

SUBJECT : Attendance of Members of Italian Armed Forces, Police, etc. before Courts Martial.

TO : Executive Commissioner, R.C. M.G. Section, ACC HQ.

---

1. In reply to your letter Ref 273/14/CA dated 30th April, it is not the practice to pay fees to witnesses appearing before Allied Military Courts in this Army Area and no difficulty is found in securing their attendance when required.

E. B. MAYNE,
Lt Col, UDF,
C of S, AMG V Army.

273 2e CAB. U 6500 #5 18

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

6 MAY Recd

4 May 1944

ACC/4002/6/L .

SUBJECT : Re-imbursement of witnesses's expenses.

TO : RC & MC Section . 15

1. Reference 275/15/CA of 1 May 1944 and enclosures thereto

2. The question of re-imbursement of witnesses's expenses has been the subject of recent correspondence between this Sub-Commission and Regions and was again discussed at a conference on 1 May 1944, which was attended by all Regional Legal Officers.

of the conference held on this date attended by all Regional Legal Officers

3. It was the considered general opinion, that to make any public announcement that witnesses in Allied Military Court may claim compensation for "reasonable loss" would be to court disaster and that therefore it is most undesirable to lay down a general scale of costs for witnesses's attendances.

4. The reasons for that opinion are as follows :

(a) There would be a strong temptation for accused persons to bring all their family and also, perhaps, friends to testify : thereby earning a few lire each but lengthening the hearing of cases.

(b) Re-imbursement would be claimed, doubtless, in a large number of cases in which no " reasonable loss " had been suffered.

(c) In large centres it would be necessary to establish a "taxing office" to check the bona-fides of each claim : to establish the amount of loss sustained (eg, by verifying with an employer whether a witness, who had spent some hours in Court, had received pay in respect of that period or how much had been deducted from his normal pay or how much his normal earnings had been reduced); and finally paying out the correct amount.

5. It was however considered that there should be power to order in any individual case of hardship, (eg where a witness has had to travel a long way and perhaps pay for one or two nights lodging) that a proper payment by way of re-imbursement be made.

6. If you agree with the foregoing, I propose to print and publish, as an addition to the loose leaf Allied Military Courts handbook now being distributed, an amendment to article 18 in the form of the attached.

Declassified E.O. 12356 Section 3.3/NND No. 785017

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6. If you agree with the foregoing, I propose to print and publish, as an addition to the loose leaf Allied Military Courts handbook now being distributed, an article in the form of the attached.

G. R. UPJOHN,
Colonel,
Chief Legal Officer .

Copy to : Finance Sub-Commission (ref. Tele conversation-Col UPJOHN-Col POLEY-5 May 44)

Declassified E.O. 12356 Section 3.3/NND No. 785017

Declassified E.O. 12356 Section 3.3/NND No. 785017

17

Draft amendment to Art. 18

The Court has power...

Draft

Add :-

(h) To order a proper payment to be made to any witness for costs of attendance. Normally no costs of attendance will be allowed to a witness. In exceptional cases, however, where a witness has been put to substantial expense (e.g. by reason of having been obliged to make a long journey or pay for lodging) or where earning power has been substantially affected, the Court or the Provincial Legal Officer may, on application by the prosecution or defence, order that a payment be made to a witness of a sum sufficient to prevent any real hardship. No scale is laid down. Each such case will be dealt with on its individual merits. The sum ordered to be paid will be sufficient, and only sufficient, to prevent any real hardship.

Payments made under any such order will be debited to the Provincial or Communal funds (as directed by the Regional Finance Officer) and shall be made in such manner as the Regional Commissioner shall appoint.

See notes on Art 18

OK.

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1 4 MAY Recd 173 CA BR. C-6295 M 16 SLD.

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.G. SECTION
APO 394

Ref/173/14/CA

30 April 1944

SUBJECT: Attendance of Members of Italian Armed Forces, Police, etc., before Courts-Martial

TO : Major Brown, Room 24, (A.F.H.Q.) SCAOs 5th and 8th Armies

1. The Military Government Section, AFHQ, have requested that the Italian Government be approached to permit the attendance of members of the Armed Forces, Governmental Police, etc. as witnesses before the Courts and Commissions without payment of fees.

2. Before doing so, however, it is desired to know what the present position is in your areas. It is believed that in some cases no fees are paid at all.

3. Please inform this headquarters if such witnesses fees are paid and the method of payment.

Norman E. Fiske

NORMAN E. FISKE,
Colonel,
Deputy Executive Commissioner

Copy to:
Legal Subcom. (Ref your ACC/4120/1 of 25 April 44)

1st Ind. 4/5/44.

To: Hq, ACC, RC & MG Sect, APO 394.

1. No objection from our point of view.

Major Reeks 4/5/44

Edwin J. Mercer

EDWIN J. MERCER, Maj. QMC
ASST LEGAL OFFICER, A.F.H.Q.

2029

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HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.G. Section
APO 394

15

Ref/273/15/CA. 1 May 1946.

SUBJECT: Allied Military Courts.

TO : Main Section - Legal Sub-Commission. 13

1. There is forwarded for perusal copy of letter from Region IV reference 94/250-55 dated 26 April 1946.

2. The question of re-imbursing witnesses before AMG Courts for any reasonable loss entailed by their attendance has apparently been discussed between the Regional Legal Officer and the Chief Legal Officer.

3. May this Branch have your comments on the subject matter of the above-mentioned letter please.

HERBERT E. FITCH
Colonel,
Deputy Executive
Commissioner.

Letter 1/5/46
2022

Declassified E.O. 12356 Section 3.3/NND No. 785017

HEADQUARTERS
ALLIED CONTROL COMMISSION
R.C. & M.G. Section
APO 394

Ref: C/273/24/CA. 29 April 1944.

SUBJECT: Attendance of Members of Italian Armed Forces, Police, etc., before Courts-Martial.

TO : Major Brown,
Room 24, P.B.S.
SCAOs. 5th and 8th Armies.

1. The Military Government Section, AFHQ, have requested that the Italian Government be approached to permit the attendance of members of the Armed Forces, Governmental Police etc as witnesses before the Courts and Commissions without payment of fees. Please investigate the position and state what fees, if any, are at present being made to civilian and Italian members of the Armed Forces. Please also state the method of payment.

2. If no fees are being paid to witnesses then it would appear unnecessary to raise the question with the Italian Government.

NORMAN E. PEDDY,
Colonel,
Deputy Executive
Commissioner.

Copy to: Legal Sub-Commission - Ref your ACC/4130/L of 25 Apr 44.

203 28 APR Recd CAB 1 AJS/pm 13

6 C

U-557

HEADQUARTERS REGION 4
ALLIED MILITARY GOVERNMENT
A. P. O. 394

MEMORANDUM

TO : ACC (R.C. & M.G. Section)

FROM : HQ Region 4, AMG

SUBJECT: Allied Military Courts - Witnesses Fees

REF : R4/250.55

DATE : 26 April 1944

HEADQUARTERS
27 APR 1944
A. C. C.

1. The Regional Legal Officer has been asked by the Chief Legal Officer for his views on the question of the payment of the expenses of witnesses attending AMG Courts, and has given his views personally to the Chief Legal Officer.

2. The question is an important one of principle and I am strongly of the opinion that provision should be made for witnesses before AMG Courts to be reimbursed any reasonable loss which their attendance entails.

3. The difficulty of persuading reliable Italian witnesses to come forward is well known, and the absence of any provision for reimbursement may well be a contributing factor.

4. In view of the devaluation of the lire, the rates payable under the existing Italian legislation do not provide a satisfactory basis for the payment of witnesses in AMG Courts and it is therefore suggested that AMG Courts should be authorised to order the reimbursement of expenses on a reasonable basis in the light of current rates.

[illegible] Pierce

Declassified E.O. 12356 Section 3.3/NND No. 785017

REF : R4/250-55

DATE : 26 April 1944

HEADQUARTERS
27 APR 1944
A. C. C.

1. The Regional Legal Officer has been asked by the Chief Legal Officer for his views on the question of the payment of the expenses of witnesses attending AMG Courts, and has given his views personally to the Chief Legal Officer.

2. The question is an important one of principle and I am strongly of the opinion that provision should be made for witnesses before AMG Courts to be reimbursed any reasonable loss which their attendance entails.

3. The difficulty of persuading reliable Italian witnesses to come forward is well known, and the absence of any provision for reimbursement may well be a contributing factor.

4. In view of the devaluation of the lire, the rates payable under the existing Italian legislation do not provide a satisfactory basis for the payment of witnesses in AMG Courts and it is therefore suggested that AMG Courts should be authorised to order the reimbursement of expenses on a reasonable basis in the light of current rates.

5. Payment could be made through the Provincial Finance Officer or in the case of Rome City, through a Central Courts Cashier. In all cases, payment should be made on a written order of the Court for specified costs.

2521

Regional Commissioner
Region 4, AMG

b/u

Sect 15-20

Declassified E.O. 12356 Section 3.3/NND No. 785017

Declassified E.O. 12356 Section 3.3/NND No. 785017

HEADQUARTERS
26 APR 1944
A. C. C.

REAR HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

/rlp.
ACC/4130/L. 25 April 1944.

SUBJECT : Attendance of Members of Italian Armed Forces, Police, etc.; before Courts-Martial.

TO : Executive Commissioner.

1. The enclosed communication from MGS, AFHQ dated 18 April 1944 with enclosures has been considered by this sub-commission which has not so far learned of any difficulties having been experienced.

2. Before taking up this matter with the Italian Government, it is suggested that the PBS, 5th and 8th Armies be consulted to ascertain what, if any, difficulties they have experienced. Certainly, if everything is working smoothly, it would not appear to be particularly advisable to stir this matter up with the Italian Government.

Richard H. Wilmer

RICHARD H. WILMER,
Lt. Col., CAC,
Deputy Chief Legal Officer.

Declassified E.O. 12356 Section 3.3/NND No. 785017

CONFIDENTIAL

ALLIED FORCE HEADQUARTERS CMS/CF/thh

Military Government Section

MGS 154-1 18 April 1944

SUBJECT: Attendance of Members of Italian Armed Forces, Police, etc., before Courts-Martial

TO : Allied Control Commission
(Attention: Chief Legal Officer)

1. Attention is invited to the inclosed correspondence (copied), subject "Expenses of Courts-Martial (U.S.), and particularly to the second recommendation in paragraph 4 of minute 2:

> "It is further recommended that Allied Control Commission arrange with the Italian Government to permit attendance of members of the armed forces, governmental police, etc., to attend as witnesses before the courts and commissions referred to without payment of fees."

By minute 6 the Commanding General, MATOUSA, returns the file to the Military Government Section in order that appropriate action by the Allied Control Commission vis-a-vis the Italian Government may be sought. It is contemplated that the United States Army will be prepared to reciprocate by causing any of its soldiers sought as a witness to appear - subject of course to military exigencies.

2. Attention is further invited to the inclosed memorandum from G-1(B), requesting that the same arrangement be made for the benefit of British service courts, on the same basis of reciprocity.

3. It is accordingly requested that the matter be taken up with the Italian Government to the end that the desired arrangement be effected.

4. In the event that, by reason of any anticipated difficulty or otherwise, the Allied Control Commission wishes to consult on the matter, it is to be noted that Colonel Tom H. Barratt, JAGD, Executive Officer of the Judge Advocate's Section, MATOUSA, expects to be at the office of the U.S. Claims Commission at Naples about April 23. It is suggested that, if it appears desirable, he be reached at that address.

CHARLES M. STOCKTON
Colonel, G.S.C.,
Chief of Section.

Incl: AR 35-4120, Expenses of Courts Martial etc.

Declassified E.O. 12356 Section 3.3/NND No. 785017

*AR 35-4120
1-2

ARMY REGULATIONS
No. 35-4120

WAR DEPARTMENT,
WASHINGTON 25, D. C., 30 July 1943.

FINANCE DEPARTMENT

EXPENSES OF COURTS MARTIAL, COURTS OF INQUIRY, MILITARY COMMISSIONS, AND RETIRING BOARDS; ADMINISTRATION OF OATHS IN GENERAL

	Paragraphs
Section I. General	1
II. Fees and allowances	2-8
III. Vouchers and appropriations	9-10

SECTION I

GENERAL

	Paragraph
Use of term "court"	1

1. **Use of term "court."**—The term "court" as used in these regulations will be understood to mean court martial, court of inquiry, military commission, or retiring board.

SECTION II

FEES AND ALLOWANCES

	Paragraph
Reporters	2
Witnesses	3
Interpreters	4
Service of subpoena	5
Taking of depositions	6
Furnishing copies of official records or documents	7
Compensation for attendance upon civil courts	8

2. **Reporters.**—a. *General.*—Reporters appointed under the provisions of the one hundred and fifteenth article of war (act 4 June 1920 (41 Stat. 810; 10 U. S. C. 1587; M. L. 1939, sec. 1731)), including reporters properly appointed for retiring boards, are entitled for their services in such capacity to payment at the rates specified in *b* to *i* below, or at such lower rates as may be stated in the appointing instrument.

b. Per diem pay.

(1) For each day in attendance at court, a reporter is entitled to a per diem payment of not to exceed $5.

(2) In computing such per diem pay, the calendar day ending at midnight is the unit, and a fraction of such day will be considered a whole day.

(3) Only one per diem of not to exceed $5 for any 1 day is authorized, even if the reporter attends two or more courts.

c. Hourly pay.

(1) In addition to the per diem payment prescribed in *b* above, a reporter is entitled to an hourly payment of not to exceed 50 cents for each hour actually spent in court during the trial or hearing.

(2) In computing time spent in court for purposes of determining the hourly payment—

(a) The time will be reckoned for each day separately if only one court is attended in such day.

(b) Time in attendance at each court will be reckoned separately, if more than one court is attended in 1 day.

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*This pamphlet supersedes AR 35-4120, 15 March 1943, including C 1, 31 October 1943, and C 2, 3 February 1943.

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2817

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FINANCE DEPARTMENT

(c) A fractional part of an hour equal to or greater than ½ hour at the end of a day's attendance or attendance before a court will be considered a whole hour.

(d) A fractional part of an hour, less than ½ hour, will be disregarded, except that if the total time in attendance in 1 day or at one court in 1 day is less than 1 hour such time will be considered as a whole hour.

d. Piecework pay.

(1) *Rates.*—In addition to the per diem and hourly pay prescribed in *b* and *c* above, a reporter will be paid at not to exceed the following rates:

(a) For transcribing notes and for making that portion of the original record which is required to be typewritten, 20 cents for each 100 words; but no allowance will be made for original letters which are attended as exhibits.

(b) For the second and each additional carbon copy of the record when authorized by the convening authority, 2 cents for each 100 words; no allowance will be made for the first carbon copy.

(c) For copying papers material to the inquiry, 15 cents for each 100 words.

(d) For each carbon copy of the papers referred to in (c) above, when ordered by the court for its use, 2 cents for each 100 words.

(2) *Payment for second original.*—Where an original copy is lost and no carbon copies are available from which a second original may be made, payment may be made for the preparation of a second original transcript from the stenographer's notes at the rate prescribed in (1) (a) above for original transcripts. *See MS. Comp. Gen., B 11887, 15 August 1940.*

(3) *Words, how counted.*—In determining the amounts due under the provisions of (1) above the following rules for counting words will govern:

(a) The abbreviations "Q." standing for the word "question," and "A." standing for the word "answer," and all dates as "25th" and "1942," will each be counted as one word.

(b) Punctuation marks will not be counted as words.

(c) The certifying officer may determine the total number of words by counting the words on a sufficient number of pages to arrive at a fair average of words per page and multiplying such average by the total number of pages.

(d) The number of pages, as well as the number of words, in each respective transcript for which compensation for copying is claimed will be shown on vouchers covering payments to reporters at piece-work rates. *See MS. Comp. Gen., A 44019, 4 January 1937.*

e. Mileage.

(1) Except for such portion of the journey as is covered by transportation furnished in kind, a reporter is entitled to mileage for traveling from his home or usual place of employment to the court and for his return journey at rates prescribed in paragraph 3b(3) for civilian witnesses not in Government employ.

(2) If the reporter returns each night to his home he does not thereby become entitled to additional mileage unless the sessions of the court are held on nonconsecutive days. *Ops. JAG, 7 September 1910.*

(3) The fact that a reporter may serve two or more courts in the same day does not warrant a duplication of his mileage allowance.

f. Allowance in lieu of subsistence.

(1) When the official of the court having control in such matters keeps the reporter at his own expense away from his usual place of employment for 24 hours or more on public business referred to the court, a per diem allowance of not to exceed $4 in lieu of sub-

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sistence will be paid to the reporter for himself. A like allowance when ordered by the court will be paid to the reporter for each necessary assistant.

(2) The time for which the per diem allowance for expenses is to be paid will be computed in the manner prescribed in paragraph 3b(3) in the case of a civilian witness not in Government employ.

(3) The fact that a reporter returns each night to his home does not preclude the view that he is kept away from his usual place of employment for 24 hours. *Ops. JAG, 7 September 1910.*

(4) Service as reporter before two or more courts in the same day does not warrant duplication of the per diem allowance in lieu of subsistence.

g. Constructive attendance.—A reporter duly employed, but who after arrival at court performs no service owing to adjournment, is entitled to mileage, to a day's pay, as prescribed in *b* above, for constructive attendance, and also to the per diem allowance prescribed in *f* above if kept away from his usual place of employment for 24 hours. *See Ops. JAG, 18 February 1911; 1 June 1914.*

h. Detail of enlisted men.— * * * That hereafter enlisted men of the Army detailed to serve as stenographic reporters for general courts martial, courts of inquiry, military commissions, and retiring boards, while so serving, shall receive extra pay at the rate of not exceeding 10 cents for each one hundred words taken in shorthand and transcribed, such extra pay to be met from the annual appropriation for expenses of courts martial, and so forth. *Act 25 August 1937 (50 Stat. 805; 10 U. S. C. 899; M. L. 1939, sec. 1436).*

i. Employment of persons receiving pay from Government.—Compensation for clerical duties performed for a court will not be paid to a person who is in the pay of the Government, except to an enlisted man detailed as a stenographic reporter as provided in *h* above, or retired military personnel to the extent permitted under the dual compensation laws quoted in AR 35–1520, 35–1760, and 35–3820. *See 5 Comp. Gen. 374; 16 id. 332; MS. Comp. Gen., A 16068, 19 June 1928; and A 77297, 12 August 1937.*

3. **Witnesses.**—*a. Members of Military Establishment.*

(1) *On active duty.*—Persons in the military service, on active duty, when required to attend as witnesses before courts are entitled to the allowances provided by law and regulations for the travel under orders generally of such persons. *See 10 Comp. Dec. 51.*

(2) *Retired members not on active duty.*—Retired members of the Military Establishment, not on active duty, when called as witnesses (other than expert witnesses), are entitled for their services as such to the mileage and other fees prescribed in *b*(3) below for civilian witnesses not in Government employ. *See 10 Comp. Dec. 51; 23 id. 207.*

b. Civilians.

(1) *General.*

(a) Persons not subject to military law when called as witnesses are entitled to the fees and mileage allowed to witnesses attending courts of the United States. *See AW 23 (act 5 June 1920 (41 Stat. 791; 18 U. S. C. 149); M. L. 1939, sec 380); 1 Comp. Gen. 343.*

(b) When the court is sitting in a foreign country the commander of the theater of operations, defense command, department, base, service command, or task force within whose command the court is convened shall fix fees and allowances to be paid to witnesses, not in excess of the maximum rates permitted to witnesses attending the courts of the United States or the courts of the foreign country, whichever rates may be the higher. *MS. Comp. Gen., B 28805, 15 September 1942, 21 October 1942.*

(2) *In Government employ.*

(a) When any officer or employee of the United States is summoned as a witness for the Government, his necessary expenses incident to travel by common carrier, and if travel is made by privately owned automobile, mileage at a rate not to exceed 5 cents per mile, together with a per diem allowance not to exceed $6 in lieu of subsistence * * * shall * * * be

Declassified E.O. 12356 Section 3.3/NND No. 785017

FINANCE DEPARTMENT

paid * * *, but no [redacted] mileage or compensation in addition to his salary shall in any case be allowed. Whenever any such officer or employee of the United States performs travel in order to appear as a witness on behalf of the United States in any case involving the activity in connection with which such person is employed, his travel expenses and per diem allowance in lieu of subsistence in connection therewith shall be payable from the appropriation otherwise available for the travel expenses of such officer or employee, such payment to be made by the disbursing officer charged with the disbursement of funds under that appropriation after proper certification by a certifying officer of the department or agency concerned. *R. S. 850, as amended by sec. 2, act 25 December 1942 (56 Stat. 1098).*

(5) *Employees of Philippine Government.*—Employees of the civil government of the Philippine Islands are not in the employ of the United States. *See M.I. Comp. Dec., 20 August 1902.*

(3) *Not in Government employ.*

(a) *General.*—* * * witnesses (other than witnesses who are salaried employees of the Government, and detained witnesses) in the United States courts, * * * who attend, * * * shall be entitled to a per diem for each day of actual attendance and for each day necessarily occupied in traveling to attend court, * * * and return home, and, in addition, mileage as hereinafter provided. *Sec. 1, act 26 April 1926 (44 Stat. 323; 28 U. S. C. 600a; M. L. 1939, sec. 767).*

(b) *Excluding Alaska and Canal Zone.*

1. Witnesses attending in such courts, * * * shall receive for each day's attendance and for the time necessarily occupied in going to and returning from the same, 22 (but see 2 below), and 5 cents per mile for going from his or her place of residence to the place of trial or hearing and 5 cents per mile for returning: *Provided*, That witnesses (other than witnesses who are salaried employees of the Government and detained witnesses) in the United States courts, * * * who attend court * * * at points so far removed from their respective residences as to prohibit return thereto from day to day, shall be entitled, in addition to the compensation provided by existing law, as modified by this Act, to a per diem of $3 for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to attend court and return home. In cases in which the United States is a party, witnesses on behalf of the United States shall be entitled to the payments provided by this section * * *. *See sec. 3, act 26 April 1926 (44 Stat. 323; 28 U. S. C. 600a; M. L. 1939, sec. 767), as amended by sec. 1, act 24 December 1942 (56 Stat. 1088).*

2. * * * That no part of the sum herein appropriated shall be used to pay any witness more than one attendance fee for any one calendar day, which fee shall not exceed $1.50 except in the District of Alaska * * *. *Act, 2 July 1942 (56 Stat. 486), and other Department of Justice appropriation acts.*

(c) *In Alaska and Canal Zone.*

1. In Alaska such witnesses are entitled to the witness fees and mileage prescribed for witnesses before the United States district court in the judicial division in which the trial or hearing is held.

2. In the Canal Zone such witnesses are entitled to the same witness fees and mileage as are prescribed for witnesses before the United States court in the Canal Zone.

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Declassified E.O. 12356 Section 3.3/NND No. 785017

EXPENSES OF COURTS

3. Responsible officers in Alaska and in the Panama Canal Zone must keep informed as to the fees payable in United States courts in those places. In Alaska the fees vary in the different judicial divisions.

(d) *Computation of mileage.*

1. In computing the mileage prescribed in (b) above, travel must be estimated over the shortest usually traveled route (by established lines of railroad, stage, or steamer).

Where, however, a witness by using his own automobile so reduces the time required for the round trip as to effect a definite saving in the matter of fees, he may be allowed mileage for the distance actually traveled by automobile provided the excess mileage does not exceed the saving in fees. *11 Comp. Gen. 60.*

2. A civilian witness not in Government employ, when furnished transportation in kind by the Government, is entitled to 5 cents per mile less the cost of transportation furnished.

3. A civilian witness residing within the jurisdiction of the court, who is subpenaed and attends the trial in obedience to such subpena, is entitled to mileage actually traveled by the shortest usually traveled route between his residence and the place of trial, regardless of whether both are in the same city. *See MS. Comp. Gen., A 28031, 30 July 1929.*

(e) *Computation of per diems.*—In computing the per diem of $1.50 for travel and actual attendance and the per diem of $3 for expenses of subsistence, the calendar day beginning at midnight is the unit, and the per diems accrue from the time it is necessary for the witness to leave his home in order to arrive at the place of trial at the appointed time until the time he could arrive at his home by the first available transportation after his discharge from attendance, any fractional part of a day under such computation to be regarded as a day for per diem purposes. *See 5 Comp. Gen. 1028, as modified by 6 Comp. Gen. 480 and 6 id. 835.*

(f) *Attendance at more than one case on same day.*

1. A person attending as a witness in more than one case on the same day under a general subpena to appear and testify is entitled to only one per diem of $1.50 (see MS. Comp. Gen., A 98263, 13 July 1928) for each day's attendance, but if separate subpenas are issued in each case, the defendants being different, the witness is entitled to a separate per diem for actual attendance in each case. *See 3 Comp. Gen. 531; 7 id. 153; MS. Comp. Gen. A 31598, 7 May 1930.*

2. The duplication of fees on account of attendance as witness in more than one case on the same day does not apply to the 5-cent mileage allowance nor to the per diem of $3 in lieu of subsistence.

c. *Attendance before officer taking deposition.*—A witness who is required to appear before an officer (civil or military) empowered to take depositions and there to give testimony under oath to be used before a court, is entitled for such service and for the necessary travel incident thereto, including return travel to the allowances prescribed in *a* and *b* above the same as though his appearance were before a court. *See 8 Comp. Gen. 18.*

d. *Attendance before military courts or boards of limited jurisdiction.*—A subpena or other compulsory process addressed to a civilian by a military court or board which has not express statutory authority to issue such process, such as a board of officers convened to investigate and report upon the facts connected with the death of an enlisted man while on detached duty, is void and civilian

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witnesses who appear before such a board in response to such void process must be regarded as having done so voluntarily and are not entitled to witness fees, in the absence of a specific appropriation therefor. *See 8 Comp. Gen. 64. See also MS. Comp. Gen., A 76159, 13 June 1936.*

e. Tender of fees.

(1) The fees of such witness and his mileage, at the rates allowed to witnesses attending the courts of the United States (including fee for 1 day's actual attendance and mileage for the journey to and from the place where the witness is to appear under the subpena), shall be duly paid or tendered said witness. *See AW 23 (act 4 June 1920 (41 Stat. 791; 10 U. S. C. 1491; M. L., 1939, sec. 3691).*

(2) The officer serving the subpena for the appearance of a civilian witness before a general court martial, when ordered by proper authority, is entitled to reimbursement for fees and mileage necessarily advanced to the witness from personal funds at the time of the service and there is no requirement that such advances be only by a disbursing officer, but the orders should be in writing, issued in advance of the payment directed and not confirmatory of the action previously taken, and a certified copy should be filed in support of the reimbursement voucher, as well as the cash receipt, evidencing actual payment. *See 18 Comp. Gen. 352.*

f. Expert.

(1) An expert witness employed in strict accordance with paragraph 99, Manual for Courts-Martial, 1928, may be paid compensation at the rate prescribed in advance by the official empowered to authorize his employment. If any defect exists in the manner of employment, payment of fees in excess of those prescribed in *a, b,* and *c* above will not be made by a disbursing officer. *See 11 Comp. Gen. 384.*

(2) An expert while employed on behalf of the Government is an officer or employee of the United States within the laws affecting traveling and subsistence expenses of officers and employees of the Government generally. His traveling allowances are therefore subject to the limitations prescribed in the Subsistence Expense Act of 1926 and the Standardized Government Travel Regulations. *See 6 Comp. Gen. 718.*

(3) A retired officer, not on active duty, employed as an expert witness is not entitled to any compensation in addition to his retired pay for such service. (*See 27 Comp. Dec. 220; MS. Comp. Gen., A 38382, 12 September 1930.*) The traveling allowance of such a retired officer, so employed, are subject to the limitations prescribed in the Subsistence Expense Act of 1926 and the Standardized Government Travel Regulations. *See 6 Comp. Gen. 712.*

(4) There is no authority for payment by the Government of fees to an expert, who was employed by an officer or employee of the Government to aid in the performance of his duties, other than an expert witness who actually appears as such. *See MS. Comp. Gen. A 24039, 13 November 1928.*

g. Essentials to payment of witness fees.

(1) A person who, although not subpenaed, is present at a trial or hearing before a court or other body authorized to compel the attendance of witnesses by compulsory process, and who is compelled or required to testify at such hearing, is entitled to fees and mileage allowable to witnesses. *MS. Comp. Gen., A 18634, 15 July 1937.*

(2) A person who was neither subpenaed nor requested to appear as a witness, but who voluntarily requested and was granted permission to testify to certain matters considered pertinent to an inquiry being conducted, is not entitled to mileage and witness fees. *See 3 Comp. Gen. 213.*

4. Interpreters.—An interpreter appointed under the provisions of the one hundred and fifteenth article of war is entitled for his services as such to the allowances prescribed for witnesses (par. 3).

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5. **Service of subpena.**—*a.* [illegible]re being no fee or compensation prescribed by the laws of the United States for the service of a subpena by a civilian, the fees and mileage allowed by the local law for similar services may be paid. *See Dig. Op. JAG, 1912-30, sec. 146.*

b. If no specific fee or mileage is fixed by local law, reasonable allowances may be paid.

6. **Taking of depositions.**—*a. Fees of civil officers.*—A civil officer before whom a deposition is taken may be paid the fees allowed by the law of the place where the deposition is taken (or a reasonable fee if no specific fee is fixed by local laws), but no mileage or other allowance for travel of the civil officer to the witness is provided for or authorized by law. *See 2 Comp. Gen. 65.*

b. Travel of witnesses.—If the witness and the civil officer before whom the deposition is to be taken do not reside at the same place, the witness should be required to perform the necessary travel, and he is entitled to mileage or other travel allowance therefor as prescribed in paragraph 3c.

c. Oaths in matters of military administration.—Where the service of one of the officers designated in the one hundred and fourteenth article of war (act 4 June 1920 (41 Stat. 810; 10 U. S. C. 1586; M. L., 1929, sec. 472)), is not available, fees may be paid to civil officers for administering oaths in matters relating to military administration, subject to the conditions indicated in *a* above.

7. **Furnishing copies of official records or documents.**—The fees provided by the local laws may be paid to the proper officials for furnishing such certified copies of public records or documents and expenses in connection with the procurement of photostatic copies, photographs, and negatives as are required by the court.

8. **Compensation for attendance upon civil courts.**—Compensation to civilians in or out of Government employ for attendance upon civil courts is not payable by Army disbursing officers.

SECTION III

VOUCHERS AND APPROPRIATIONS

Paragraph
Vouchers 9
Appropriations to which expenses are chargeable 10

9. **Vouchers.**—*a. Forms to be used.*

(1) Payment of fees and mileage of witnesses not in Government employ under the provisions of paragraph 3*b*(3) and *c* will be made on War Department Form No. 338 (Public Voucher for Fees and Mileage of Witnesses and for the giving of Depositions).

(2) Payment of travel allowances of military personnel and civilian employees will be made on the forms specified in AR 35-5020.

(3) Payment of other fees and allowances for services under the provisions of these regulations will be made on War Department Form No. 335 (Public Voucher—Personal Services) and War Department Form No. 335a (Statement of Personal Services).

(4) Vouchers will be prepared as prescribed in AR 35-1040.

b. Certification.—The administrative certificate on the vouchers prescribed in *a* above will be signed by the officer, usually the trial judge advocate, who has administrative control of the services rendered.

c. Mode of travel.—Vouchers will be stated to show mode of travel, that is, whether by commercial means or Government or privately owned conveyance. See AR 35-5020.

d. Lost vouchers.—Where the voucher of a witness has been lost, a new voucher may be issued by the trial judge advocate upon a satisfactory showing, supported by affidavit, of such loss. The new voucher should be so noted as to indicate its character and should be forwarded to the Chief of Finance for settlement.

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10. Appropriations to which expenses are chargeable.—a. The travel of members of the Military Establishment on active duty is chargeable to the appropriation or appropriations for the travel allowances of such persons for travel under orders generally. The other travel allowances provided for in these regulations are payable from appropriations for travel of the Army.

b. Fees paid civil officers under the provisions of paragraph 6c are chargeable to the appropriations applicable to the subject matter of the oath.

c. The other fees and allowances (except travel allowances) provided for in these regulations are payable from appropriations for expenses of courts martial.

[A. G. 220.4 (12 Jul 43).]

BY ORDER OF THE SECRETARY OF WAR:

G. C. MARSHALL,
Chief of Staff.

OFFICIAL:
J. A. ULIO,
Major General,
The Adjutant General.

DISTRIBUTION:
A.

U. S. GOVERNMENT PRINTING OFFICE: 1943

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9

INFORMAL ROUTING SLIP

Ag Ltr 0-689

SUS:-16 March

DATE: 6 March

SUBJECT: Expenses of Courts-Martial

NO.	FROM	TO	DATE	
1	AG OP	JA		Action recommended?

J.E.H.
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Declassified E.O. 12356 Section 3.3/NND No. 785017

JA 6307

CONFIDENTIAL

13 April 1944

Expenses of Courts-Martial (Witness fees)

2 JA AG Opns thru C.F.O. Mil Gov't Sec 4 G-1 in turn 13 Apr 1944

1. In the basic letter (013.2) dated 23 February 1944, the Commanding General, 15th Air Force invited attention to Sec V, Circular 17, AFHQ 1943 relating to the payment of witness fees to witnesses before courts-martial, etc., in North Africa and requested information as to whether similar provision had been made for payment of such fees in Italy. By 1st Indorsement, dated 3 March 1944 the CG, AAF/MTO requested advice as to whether this headquarters contemplated amending Circular 17, referred to above. Response to the request for recommendation has been delayed, pending receipt of the Italian laws on the subject.

2. The matter of witness fees and mileage is governed by AR 35-4120, 30 July 1943. Paragraph 3b (1) (b) provides:

> "When the court is sitting in a foreign country the commander of the theater of operations within whose command the court is convened shall fix fees and allowances to be paid to witnesses, not in excess of the maximum rates permitted to witnesses attending the courts of the United States or the courts of the foreign country, which ever rates may be the higher."

The witness fees and mileage payable to civilians, military personnel and governmental employees in Italian Territory for attendance upon civil and criminal courts are much less than in the United States. The Italian rates which vary with the qualifications of the witness are, in part, as follows:

a. In the case of an ordinary civilian witness and where the distance between his residence and the courthouse is less than 2½ kilometers, a male witness is paid (according to the legal rate) 3 lire per day; a female witness 2 lire per day; and minors under 14 years of age receive no compensation.

b. In the case of an ordinary civilian witness and where the distance between his residence and the courthouse is more than 2½ kilometers, a male witness is paid for actual traveling expenses as heard and determined by the court; a female witness is paid 40 lire for the first five kilometers of distance and 30 lire for each succeeding kilometer; and minors under 14 years of age are paid 4 lire for the first day's attendance and 6 lire for each succeeding day.

Declassified E.O. 12356 Section 3.3/NND No. 785017

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2 JA AG Opns 13 Apr (Continued)
thru 1944
C.F.C.
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G-1 in
turn

c. If the witness is a member of the armed forces or of the militarized police, his compensation is different and depends upon his rank. If he is a "maresciallo" he receives payment of actual traveling expenses plus 20% of the amount thereof; 50 lire for each kilometer of distance traveled to the courthouse; a fee of 13 lire for the first day; and 20 lire for each succeeding day's attendance. A sergeant receives actual traveling expenses plus 20% thereof; 25 lire for each kilometer traveled; 8 lire for the first day; and 12 lire for each succeeding day's attendance. Other ranks are paid varying figures.

3. In view of existing Army regulations, payment of rates as high as those paid in the United States is authorized. However, it is not believed that there is any necessity to make such payment nor is it believed advisable. Neither is it believed advisable to place upon a trial judge advocate the computation of fees and mileage in accordance with the Italian practice. This office has been informally advised that in the normal case witnesses needed for courts are transported generally by the military and are generally subsisted by them where subsistence is necessary.

4. It is recommended, therefore, that a flat rate of 80 lire be authorized as the daily fee for the attendance of a person not subject to military law as a witness before a court-martial, military commission, court of inquiry or retiring board in Italian Territory. This is compatible with the normal daily wage received for laborers employed in Italian Territory and would probably cover normal expenses of subsistence and mileage. It is further recommended that ACC arrange with the Italian Government to permit attendance of members of the armed forces, governmental police, etc., to attend as witnesses before the courts and commissions referred to without payment of fees. This is handled in Africa and England on a reciprocal basis.

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Declassified E.O. 12356 Section 3.3/NND No. 785017

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Expenses of courts-martial (witness fees) 13 April 1944

2 JA AG Opns 13 Apr 44 (Continued)
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5. If the arrangements recommended can be accomplished, it is recommended that Section V, Circular 17, AFHQ, 1943 be rescinded and that a NATOUSA Circular in substantially the following form be published:

"WITNESS FEES and mileage.

"1. Persons not subject to military law when called as witnesses before courts-martial, military commissions, courts of inquiry or retiring boards of the United States Forces will be allowed the following fees:

"a. In French North and West Africa and Corsica, 42 francs for each day or part of a day in attendance.

"b. In Italian Territory, 60 lire for each day or part of day in attendance.

"c. Expert witness, in either territory referred to in a and b, will be procured and paid in the manner provided by paragraph 99, Manual for Courts-Martial, U. S. Army 1928.

"2. Mileage will be allowed witnesses in going from their place of residence to the place of trial or hearing and in returning to their place of residence, at the following rates:

"a. In French North and West Africa and Corsica, 1.4 francs per kilometer.

"b. In Italian territory, 2.8 lire per kilometer.

Declassified E.O. 12356 Section 3.3/NND No. 785017

13 April 1944

Expenses of courts-martial (Witness fees)

2 JA AG Opns thru CFO Mil Govt Sec 3 G-1 in turn 13 Apr 1944 (Continued)

"c. No mileage will be allowed where travel is performed by military conveyance."

For the Acting Theater Judge Advocate:

TOM H. BARRATT
Col., JAGD
Executive Officer
Judge Advocate Section

1 Incl; File re above subject.

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3 C.F.O. MGS 14 Apr 44 Concur.

/s/ L.H. Sims,
/T/ L.H. SIMS,
Brigadier General, U.S. Army,
Chief Finance Officer.

LHS/dsm

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4 MGS G-1 15 Apr 44

1. Concur.

2. If the policy recommended Minute 2 is adopted, it is requested that before the NATOUSA Circular is issued the papers be returned to MGS, in order that it may seek, through the ACC, the arrangement with the Italian Government recommended by par. 4 of Minute 2.

/s/ Charles M. Spofford
/T/ CHARLES M. SPOFFORD
Colonel, G.S.C.
Chief of Section

CMS/jjr

Declassified E.O. 12356 Section 3.3/NND No. 785017

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A-9324

4

Expenses of courts-martial (Witness fees) 17 April 1944

5	G-1 thru C/S NATO	MGS	17 Apr	1. Concur in Note 2. 2. Returned to MGS for action indicated in Note 4.

For and in the absence of the AC of S, G-1 :

appd ? /s/ W.P.E.
/T/ W.P.E.

RGM/s Incl: n/c 18/4/44

6	C/S NATO	MGS	18 Apr	Note 5 is approved - Papers accordingly returned to you for action indicated in Note 4.

D.D.E. by GC

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3

HEADQUARTERS FIFTEENTH AIR FORCE
APO 520
US ARMY

N/SJW/plt.

23 February 1944.

In reply refer to:
013.2

SUBJECT: Expenses of Courts-Martial.

THRU : Commanding General, AAF/MTO, APO 650, US ARMY.

TO : Commanding General, NATOUSA, APO 534, US ARMY.

1. Pursuant to the authority contained in Section 3, AR 35-4120, Section V, Circular Number 17, Allied Force Headquarters, dated 4 February 1943 authorizes the payment of 42 francs per day to persons not subject to Military Law called as witnesses before courts-martial in French West and North Africa, and allows mileage at the rate of 1.4 francs per kilometer in going from the place of residence of the witness to the place of trial or hearing and in returning to the place of residence.

2. It is requested that this Headquarters be advised whether or not any provision has been made for the payment of civilian witnesses, and expert witnesses called to testify before courts and boards in Italy, and interpreters whose services are required at such hearings.

For the Commanding General:

/s/ J. M. Ivins,
J. M. IVINS,
Lieutenant Colonel, AGD,
Adjutant General.

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013.2 1st Ind
HEADQUARTERS, AAF/MTO, APO 650, 3 March 1944.

TO: Commanding General, NATOUSA, APO 534, U. S. Army.

Information is desired as to whether your headquarters contemplates amendment of Circular 17, Allied Force Headquarters 4 February 1943 to include the payment of civilian witnesses in Italy.

For the Commanding General:

/s/ J.M. Siller,
J.M. SILLER,
Captain, Air Corps,
Actg. Asst. Adj. Gen.

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Declassified E.O. 12356 Section 3.3/NND No. 785017

COPY

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CONFIDENTIAL.

SUBJECT:- Attendance of Members of Italian Armed Forces, Police, etc., before Courts Martial.

ALLIED FORCE HEADQUARTERS.

G1/B/3020/A3.

19 Apr 44.

MCS (For Lt.Col. Fairman).

It is understood that you are recommending that the Allied Control Commission arrange with the Italian Government to permit attendance of members of armed forces, government, police, etc., as witnesses before U. S. Courts Martial and Commissions without payment of fees on a reciprocal basis subject to the exigencies of military service.

We would be glad if you could include the British Army in such arrangement.

/s/ C. C. Baker
Lt Col.
A.A.G.

FOR-
Major General, DAG.,
G-1 (B)

2608