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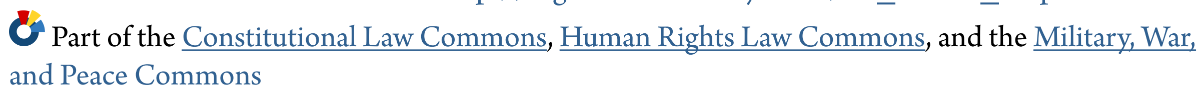
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Recommended Citation
25 Judge Advocate General Journal (Navy) 53–56 (1970)

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CAFETERIA WORKERS REVISITED: DOES THE COMMANDER HAVE PLENARY POWER TO CONTROL ACCESS TO HIS BASE?

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The Supreme Court's decision in Cafeteria Workers v. McElroy (1961) has often been cited by military commanders to support claimed plenary power over access to the installation commanded. Observing that plenary power is a rarity in contemporary society, Lieutenant Lieberman questions the proferred interpretation of Cafeteria Workers particularly in light of more recent decisions. He concludes that while commanders do possess broad powers over access, the power is not plenary but must be weighed in each instance against the individual's rights of freedom of speech and association.

IN A POLITICAL society of checks and balances in which the electorate has historically been expanding and a Bill of Rights expansively maintained, the existence of pockets of plenary governmental power is not only politically dubious but also fraught with legal tension. That plenary governmental power bound by neither procedural nor substantive restrictions is not the usual rule in the United States should not be surprising. The power of Congress to exclude aliens from our shores may be an instance of absolute Federal authority. The power of a military commander to control access to his base or installation may be another; so, at least since 1961, have military commanders, buttressed by the Supreme Court's decision in *Cafeteria Workers v. McElroy,* 367 U.S. 886 (1961), often insisted.

Established doctrines have a way of being liberalized or distorted in an era of climactic change. Today's political confrontation in many arenas—young and old, political and non-political, conservative and liberal, military and civilian—poses or doubtless will soon pose a direct challenge to the holders of unfettered power. The military is not immune; indeed, it is at the center of the battle.

Today the military commander is faced with a perplexing variety of situations in which civilians insist on their right to enter a military reservation, a right the commander may be reluctant to recognize. The youth with shoulder-length hair, the housewife on whose car is affixed a peace or ecology symbol, the civilian minister who seeks to counsel military prisoners to resist military authority, and the civilian worker with known antiwar beliefs all pose problems for the commander who is convinced that a decision to permit them access to his base will be detrimental to the order and discipline which must necessarily prevail on an installation. The legal basis for the decision to exclude is invariably said to be a simple one: the Supreme Court has said the commander may do so. Since *Cafeteria Workers* is the beginning—and often the end—of analysis, a review of that

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case is offered here to seek its meaning and limits, if any.

The circumstances of the case in brief: a short-order cook at the Naval Gun Factory in Washington, D.C., was asked for the return of her identification badge for an undisclosed failure to meet the security requirements of the installation. The Gun Factory was a highly sensitive military post: because personnel there designed, produced, and inspected naval ordnance, including "weapons systems of a highly classified nature," all employees were required to be cleared for security, and access was strictly controlled. Mrs. Brawner worked at a cafeteria operated by M & M Restaurants, Inc., her employer. M & M operated the cafeteria by virtue of a contract with the Gun Factory; the contract provided that failure "to meet the security requirements or other requirements under applicable regulations of the activity, as determined by the Security Officer" of the Gun Factory would result in exclusion. The commander upheld the security officer's determination that the contractual provisions should come into play, denied a request for a hearing because it would "serve no useful purpose," and Mrs. Brawner's badge was taken from her and access to the base denied her. M & M offered her employment in another restaurant in the suburban area, but asserting inconvenience of the location, she declined and brought suit to compel access to her former job. The Court held against her.

I. THE TEACHING OF *CAFETERIA WORKERS*

At various times, *Cafeteria Workers* has been said to stand for at least three propositions: (1) the commander has plenary power to control access; (2) the exclusion of a civilian without a hearing is not a constitutional denial of due process; and (3) the courts are without the power to review exclusion orders based on the assertion that admission would prejudice morale and discipline.[1] The three "holdings" are interrelated, and are discussed here in order of ascending difficulty.

A. *Judicial Review*

The third asserted holding, that courts may not review exclusion orders based on good order and discipline, is simply erroneous. The order in *Cafeteria Workers* itself was not related to the effect that Mrs. Brawner would have on the working atmosphere within the Naval Gun Factory. It was premised solely on the determination that she failed to meet the essential security requirements of the installation. Moreover, at no point in the discussion does the Supreme Court majority even hint that it or any other court should have dismissed the case for want of jurisdiction or standing. To the contrary, the court implicitly suggests its power to review by stating that the exclusion without a hearing was proper "when the reason advanced was, as here, entirely rational." Orders not entirely rational, or not in accord with the commander's own regulations,[2] are presumably subject to judicial review to insure that what minimal standards were established by *Cafeteria Workers* are in fact followed. For the Court noted, though it does not appear to have held, that exclusion would not have been constitutional had the stated reasons therefor been "patently arbitrary or discriminatory"—in the famous example, had Mrs. Brawner been a Democrat or a Methodist. Where arbitrary or discriminatory application of an otherwise lawful power is a possibility, the power of judicial review will not be denied.

B. *Right to a Hearing*

If the Court did not seem to extinguish all possibility of judicial review, it unquestionably narrowed the scope of that review so as to render it nearly superfluous. For the gist of the Court's decision was that so long as the commander does not announce grounds that are patently arbitrary or discriminatory but rather states reasons that are entirely rational, he is under no constitutional compulsion to offer a hearing to affected persons in order to justify the determination reached. This means, in operative terms, that so long as the reason for exclusion is couched in proper terminology, the courts may not inquire beneath the surface. As Mr. Justice Brennan wrote in dissent:

> The mere assertion by government that exclusion is for a valid reason forecloses further inquiry. That is, unless the government official is foolish enough to admit what he is doing—and few will be so foolish after today's decision—he may employ "security requirements" as a blind behind which to dismiss at will for the most discriminatory of causes.[3]

But there can be no doubt that, at the present time, an administrative hearing is not constitutionally necessary to sustain the exclusion order,

1. Brief for the Appellee, pp. 25–32, Bridges v. Davis (9th Cir. 1970 No. 25317).

2. Greene v. McElroy, 360 U.S. 474 (1959); *Cafeteria Workers* at 898.

3. *Cafeteria Workers* at 900.

for the facts in *Cafeteria Workers* strongly suggest how weak the Government's interest in excluding Mrs. Brawner probably was. She was not branded a "security risk," there was no evidence that she would be unable to work on any other military installation, there was no evidence of intentional wrongdoing, and she was only a cook. Nevertheless, the Court found no deprivation of due process absent a hearing.

A word of caution is due at this point. For the Court's analysis of the constitutional question was extraordinary, because it was *ipsie dixit* rather than logical, and *ipsie dixits* do not necessarily remain law forever. The Court noted that "it has become a settled principle that government employment, in the absence of legislation, can be revoked at the will of the appointing officer." [4] But the Court necessarily recognized immediately that the proposition just stated was not true, since the Federal Government may not constitutionally discharge an employee because of race or religion.[5] The Court went on to say that the recognized constitutional limitation of the general proposition did not lead to a hearing requirement. But the cases that established the limitation were not concerned with the issue of a hearing, nor are the purposes to be served in imposing a constitutional prohibition against discrimination necessitated by the right to a hearing. Quite the contrary: the exact issue was whether, given the limitation, a hearing was necessary to protect it, and this issue the Court simply ducked by begging the question. Because the issue had not been argued in a previous case does not conclude the matter; indeed, *Cafeteria Workers* was the ideal vehicle for an analysis that is entirely lacking. Having found no previous discussion, the Court illogically concluded no discussion at all was warranted. Nevertheless, to reiterate, *Cafeteria Workers* did hold that denial of a hearing is not denial of due process.

C. *Power to Exclude*

The major portion of *Cafeteria Workers* was devoted to analysis of the power of the commander to exclude. This power the Court found without difficulty, and it was not disputed by the dissenters. But constant semantic shifting by the Court majority makes opaque the extent of the power. The Court said that the applicable Navy Regulation (Article 0734) "made absolute the commanding officer's power to withdraw [Mrs. Brawner's] permission to enter the Gun Factory at any time." The Court subsequently limited the power by observing that "patently arbitrary or discriminatory" exclusion would be impermissible. Hence, the net holding of *Cafeteria Workers* is that the commander has the power to exclude anyone from his base assuming that he follows any regulations he or higher authority has promulgated to effect the exclusion, and assuming that the reason for exclusion is neither patently arbitrary nor discriminatory.

II. THE WEAKNESS OF *CAFETERIA WORKERS*

A clear implication of *Cafeteria Workers* is the judicial presumption that the commander acted in good faith. When he excluded Mrs. Brawner from the Gun Factory because of her failure to meet "security requirements," it did not appear from any evidence discussed by either the majority or dissenters that there was any suspicion Mrs. Brawner was excluded because she was in fact a "Democrat or a Methodist." "For all that appears," said Mr. Justice Stewart for the majority, "the Security Officer and the Superintendent may have simply thought that Rachel Brawner was garrulous, or careless with her identification badge." [6] The dissent was grounded in large part on disagreement with the presumption of good faith, for as Mr. Justice Brennan said in dissent: "Under today's holding she is entitled to no process at all . . . . She may be the victim of the basest calumny, perhaps even the caprice of the government officials in whose power her status rested completely." [7]

The disagreement between the majority and dissenting opinions appears stark, but there is a possible line of reconciliation. For, as noted above, *Cafeteria Workers* did not rule out relief through judicial review where arbitrary exclusion can be shown. In other words, Mrs. Brawner had the burden of proof, she adduced no evidence to suggest she had been treated arbitrarily, and failing that proof there was no reason to conclude that the commander had acted other than properly. This line of approach is not explicit because as the issues were framed, the Court addressed only two questions: whether the commander had the disputed power and whether any right secured

4. *Id.* at 896, and citing Vitarelli v. Seaton, 359 U.S. 535, 539 (1959), for the proposition that a Federal civilian employee who was not covered by the Civil Service Act "could have been summarily discharged by the Secretary at any time without the giving of a reason."

5. *Citing* United Public Workers v. Mitchell, 330 U.S. 75 (1947).

6. *Cafeteria Workers* at 899.

7. *Id.* at 901.

by the Constitution was denied. The latter issue, absent evidence of arbitrariness, did not permit a discussion of the content of those exclusions which would be considered "patently arbitrary or discriminatory."

Two questions are involved in any inquiry into such content: (1) does any set of allegations exist which, if true, would permit the commander to conclude that the applicant was a "security risk"?; and (2) are the allegations true? The purpose of an administrative hearing, of course, would be to set forth on the record the allegations—*e.g.*, that Mrs. Brawner was garrulous or careless with her badge (in order to quell any notion that the exclusion was aimed at her religious belief)—and to permit a showing that the allegations were not simply slanderously communicated to the commander out of spite, blackmail, or a heedless disregard for the truth.

The weakness of *Cafeteria Workers* becomes apparent. For though no one is entitled to an administrative hearing, nothing in *Cafeteria Workers* precludes a court from reviewing the exclusion if the presumption of good faith is rebutted. This does not mean that a court would review a commander's determination that the allegations are true nor the determination that those failing to meet "security requirements" should be excluded; but it does mean that a court may well question whether the allegations, assumed to be true, are such as would constitutionally permit an exclusion order to stand; that is, whether the assumed facts may constitutionally be the basis for the judgment that the security requirement is not met. In other words, the reviewing court can be neither the trier of facts nor the promulgator of general rules for the protection of military interests, but it will examine the critical nexus between the facts and the rule at the point of application.

III. THE APPLICATION OF *CAFETERIA WORKERS*

To test the application of the foregoing suggestion, assume the following set of facts. A civilian woman and former WAC who works aboard an Army base at the credit union tells an officer in a "casual" conversation that she is to chair near Chicago an antiwar peace rally of servicemen and veterans. The next day she hands out literature concerning the rally near, but not inside, a naval station some eight miles from the Army installation. When she returns to the Army base that evening her car is searched, and upon discovery of 50 pounds of such literature the sentries remove her from the base. Four days later she receives written notice from the post commander that she is henceforth barred from entry on the stated ground that he believes her possession of the literature indicates she would in the future distribute the material in violation of a post regulation prohibiting such activities. The credit union discharges her from her job.

She brings suit. What result? A three judge panel of the Seventh Circuit, in *Kiiskila v. Nichols,*[8] held on the authority of *Cafeteria Workers* that the exclusion order was valid. But distinctions between *Kiiskila* and *Cafeteria Workers* indicate that the result is not ineluctable, as the Seventh Circuit's *en banc* reversal pointedly demonstrates.

First, *Cafeteria Workers* concerned an exclusion based on "security." *Kiiskila,* and most contemporary problems relating to access, deal with the protection of order and discipline, a different interest. Second, and more importantly, in *Cafeteria Workers* the commander gave no facts to justify his conclusion that Mrs. Brawner failed to meet "security requirements" whereas in *Kiiskila* the commander stated explicitly what facts grounded his conclusion that Miss Kiiskila was a threat to base discipline. Third, unlike *Cafeteria Workers, Kiiskila* contains facts which tend to rebut the presumption favoring the commander.

As to the first distinction—security vs. base discipline—the authority of the commander to issue regulations to protect either interest is not questioned. But it is suggested here that courts, in reviewing exclusionary orders, will be less inclined to let a commander hide behind a declaration *ex cathedra* that a civilian is a threat to discipline than a threat to security. That is, given a determination that a person is a threat to discipline, without further explanation, may raise a presumption, contra *Cafeteria Workers,* of arbitrariness.

Second, when the commander states how his regulations applied to the facts yield an exclusion order, the reviewing court suddenly has a basis for reversal if the application is arbitrary—that is, the commander's explanation supplies the court with sufficient information to decide the validity of the administrative determination. Note that the second distinction does not obviate the need, from the plaintiff's perspective, for an administrative hearing, since

(Continued on page 61)

8. 38 U.S.L.W. 2450 (7th Cir. 1970), reversed No. 17580 (7th Cir. 1970) (*en banc*).

military judge before whom the accused's case is heard. The revision incorporates the Federal civilian standard of a presumption of release and requires the judge to list his reasons for a denial of deferment in writing. A denial would be appealable to the Court of Military Review. The deferment could be rescinded by the judge "for cause."[63] This provision, if enacted, would bring the deferment system much closer to the Bail Reform Act. Congress' reaction to this proposed provision will demonstrate just how "similar to" the civilian bail system it intended deferment of confinement to be, and will also reflect its assessment of how well the present system is working.

It is likely that military commanders would prefer to retain the present system. Transfer of the deferment decision to the military judge with a presumption of release would probably result in many cases in an adversary proceeding in which the command would have the burden of overcoming the presumption. Article 57(d), as presently written, squarely places the burden on the accused to justify his release. The proposed system would, therefore, increase the command's workload. It might also result in a commander's having to accept for duty individuals whom he considered to be disciplinary threats and whose confinement he personally would not have deferred. It is suggested that more relaxed deferment provisions would be much more palatable to commanders if corollary provisions gave them the authority to impose conditions designed to insure presence for ultimate sentence execution. For instance, if a system could be designed with coordination through local law enforcement officials and parents whereby a practical guarantee of return could be made, it might be feasible in some instances to apply deferment by sending the member home on leave without pay pending final case review.

Argument about the merits of proposed revisions aside, it is clear that by enacting Article 57(d) Congress intended to give the accused a substantial opportunity to demonstrate a case for freedom during the appellate process, and is likely to become impatient with the present system if it fails in practice to afford that opportunity. Therefore, it would appear to constitute enlightened self-interest on the part of commanders wishing to retain the present system to exercise reasonable liberality in its operation.

63. S. 4191, 91st Cong., 2d Sess., § 857(d) (1970): "'(d) On application by an accused who is under sentence to confinement that has not been ordered executed, the military judge detailed to the trial of the accused may defer service of the sentence to confinement. Deferment shall be granted unless it affirmatively appears likely that the accused would flee to avoid confinement or would be a danger to the military or civilian community. Denial of deferment shall be accompanied by a written statement signed by the military judge who granted it. A denial of the application of an accused for deferment of service of sentence pending appeal of his conviction may be appealed by the accused, as an interlocutory matter, to the Court of Military Review.'"

CAF. WORKERS

(Continued from page 56)

under *Cafeteria Workers* the court must accept as true the facts recited in the commander's explanation. The court cannot review the weight of the evidence. But it may perform the task for which it is historically suited—namely, reviewing the commander's application of his concededly lawful regulations to his necessarily accepted facts to determine whether he has acted in a "patently arbitrary or discriminatory" manner.

The third distinction between *Kiiskila* and *Cafeteria Workers* merely supports the force of the second. For the existence of facts in the record concerning appellant's activities may suggest to the court it need be less apprehensive that it will upset important interests than where those interests are cloaked in an impenetrable veil of mystery.

The questions remain, then, what disposition the Seventh Circuit might have made of *Kiiskila* had it not read *Cafeteria Workers* so woodenly; and what disposition courts might make in the future of cases involving discipline and order on military bases.

The answer to the first question is at hand, having been supplied by the Seventh Circuit itself. The exclusion order "and the concomitant loss of her civilian employment violated her rights to freedom of speech and association under the first amendment."[9]

The court of appeals states at the outset the necessity of balancing Miss Kiiskila's interest against that of the United States; it is noteworthy that though *Cafeteria Workers* did not purport to be based on a weighing of interests, language therein concerning the small harm to Mrs. Brawner occasioned by the exclusion order at a sensitive military installation gives support

9. Kiiskila v. Nichols, No. 17580 at 4 (7th Cir. 1970).

to the Seventh Circuit's analysis. In undertaking a balancing test, the court holds that the exclusion order in *Kiiskila* "is essentially equivalent to dismissal of a person from government employment." [10] The court went on to note the "particularly great emphasis [which] must be placed on the interest of society in encouraging free exchange of ideas." [11] Thus,

> [T]o protect society's interest in uninhibited and robust debate the first amendment demands that government be prohibited from inhibiting or suppressing speech by indirection through discharge of a government employee when the same objective could not constitutionally be achieved by criminal sanctions or other direct means.[12]

In *United States v. Robel,*[13] the Supreme Court held unconstitutional an act which subjected a member of the Communist Party to criminal prosecution for continued employment at a "defense facility." The Act, said the Court,

> put [the worker] to the choice of surrendering his organizational affiliation, regardless of whether his membership threatened the security of a defense facility, or giving up his job. . . . The statute quite literally establishes guilt by association alone, without any need to establish that an individual's association poses the threat feared by the Government in proscribing it. The inhibiting effect on the exercise of the First Amendment rights is clear.[14]

This case arose not as the result of a denial of a hearing: the worker was indicted and the case heard in Federal district court. The Supreme Court, in voiding, based its holding on the constitutional determination that the Government has no power to premise exclusions on such a vague basis.

It is arguable that when the only penalty is dismissal from a Federal job, predicated on exclusion from the military base, cases dealing with the imposition of criminal penalties are inapposite. The Seventh Circuit held otherwise. Since the Court's decision in *Spevack v. Klein,*[15] to which the Seventh Circuit does not advert, a Government job may not be conditioned on a waiver of constitutional rights. Then-Chief Justice Holmes' old and oft-quoted holding that a man may have the constitutional right to talk politics but does not have the right to be a policeman [16] is no longer good law, as the Seventh Circuit in a disparaging tone realizes. It follows, therefore, that though the right to hold a job on a military installation is by no means absolute, it cannot be denied upon the refusal of a worker to forego a constitutional right. An exclusion so predicated amounts to the "patently arbitrary and discriminatory" action condemned in *Cafeteria Workers.*

Against the constitutional right to engage in antiwar demonstrations outside a military reservation, the court could find set forth no "overwhelming countervailing state interest peculiarly pertaining to plaintiff's job." [17] The Government argued that Miss Kiiskila's job inside a military reservation distinguished her case from cases concerning public employment generally. The court noted the absence of evidence demonstrating that Miss Kiiskila's presence on base or her off-base activities affected military discipline. The Government's contention was characterized as "a broad claim that undefined military and national defense considerations are sufficient to permit the Government to infringe plaintiff's rights to freedom of speech and association," [18] a claim rejected by the Supreme Court in *United States v. Robel.*[19]

The Government argued that public employment may be predicated on a foregoing of otherwise protected speech that would impair the ability of a person to carry out his job. The court dismissed the contention without analysis because Kiiskila's speech did not relate to her job at the credit union nor did the Government introduce evidence on the point. The Government also argued that the commander's fear that plaintiff would engage in antiwar activity on the base in violation of a post regulation justified the exclusion order. The court replied, citing *Tinker v. Des Moines Independent Community School District:* [20]

> "In our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression." Thus, unless we are to permit the deprivation of constitutional rights through subterfuge, the validity of a commanding officer's exclusion of a civilian employee from a military installation must turn upon more than his own subjective statements of the reason for his action.[21]

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10. *Id.* at 5.
11. *Id.*
12. Kiiskila v. Nichols, No. 17580 at 6 (7th Cir. 1970).
13. 389 U.S. 258 (1967).
14. *Id. at* 265.
15. 385 U.S. 511 (1967); *see also* Garrity v. New Jersey, 385 U.S. 493 (1967).
16. McAuliffe v. Mayor of New Bedford, 155 Mass. 216, 220, 29 N.E. 517 (1892).
17. Kiiskila v. Nichols, No. 17580 at 7 (7th Cir. 1970).
18. *Id.*
19. *Supra* note 13 at 263–4: "The phrase 'war power' cannot be invoked as a talismanic incantation to support any exercise of congressional power which can be brought within its ambit."
20. 393 U.S. 503, 508 (1969).
21. Kiiskila v. Nichols, No. 17580 at 8–9 (7th Cir. 1970).

It is important to note explicitly what *Kiiskila II* did not say. It did not say "off-the-base conduct can never be considered in determining the validity of an exclusion order." [22] In fact, if the Government could have proved that off-base conduct "directly and imminently foreshadows proscribed on-the-base activity" it could be used, the court says, "in determining the likelihood that plaintiff will violate post regulations." [23] But if it is important to recognize the limits of this case, it is even more important to realize how far the Seventh Circuit did go in limiting the power of commanders to exclude. For the Seventh Circuit did not merely rely on a vaguely asserted constitutional right to talk; it held expressly that the commander had failed to prove what real—not merely hypothetical—effects plaintiff's activity would have on military personnel. The ramifications of this holding may eventually strike deep, as cases concerning long hair, symbols on automobiles, and other instances of allegedly disruptive activity are tested in the courts. In this day of accelerating dissent and attack against the prevailing view of things, it can be confidently expected that similar issues will arise again. It is important for commanders to realize that nothing in the law precludes a court from examining his reasons for exclusion. If commanders are aware of the fluidity of the legal situation they may be able to keep the change of course within narrow limits. But if they insist on a too-hearty reliance on *Cafeteria Workers* as dispositive, the change will be dramatic and discomfiting when it comes. Those who act reasonably will be treated reasonably, and the power to maintain order and discipline, though it will not be plenary, will remain intact.

22. *Id.* at 9.
23. *Id.*

COMP. GEN.

(Continued from page 34)

provides also that a new form will be prepared when a change occurs which affects certain information on the current form, including a change in the name of a beneficiary.

Therefore, in order to change his beneficiary, a member of the Marine Corps must execute and sign a new Record of Emergency Data Form and forward it to the specified Marine Corps office. Such was not accomplished in this case and, while the sergeant may have been improperly advised of the Marine Corps requirements for changing the beneficiary, and as a possible consequence of that advice failed properly to execute and file the beneficiary change prior to his death, such facts afford no basis to pay any amount due to any person other than the beneficiary on record. Accordingly, as the sergeant's pending beneficiary change was not, at the time of his death, completed, signed and processed according to law and regulations, the change had no legal force and effect. (Comp. Gen. Decision B-168397 of December 22, 1969.)

PAY AND ALLOWANCES—Travel and transportation allowances upon an emergency recall from leave of five or more days duration. Proposed amendment to Paragraph M6601-1 of the Joint Travel Regulations (JTR) is not objectionable in providing for reimbursement for return travel due to a recall from leave under emergency conditions, notwithstanding the length of time a member has been on leave.

● The Secretary of the Navy requested that the Comptroller General rule as to whether Paragraph M6601-1 of the JTR may be amended to grant reimbursement for travel expenses incurred by service members who are recalled under urgent and unforeseen circumstances from authorized leave of five days or more. Paragraph M6601-1 now provides that such reimbursement may be made only when the member is recalled within 24 hours after his departure in a leave status. The proposed change would provide for reimbursement for travel regardless of the number of the days the member has been in a leave status.

The Comptroller General stated that the reasoning set forth in 46 Comp. Gen. 210(1966) applies in this instance. In that case, the Comptroller General sanctioned the provisions of M6601-1 as it now appears in the JTR in regard to payment of travel expenses for members recalled from leave due to urgent or unforeseen circumstances within 24 hours after the service member's departure on leave. An element of "public interest" was found to exist in such a circumstance.

The Comptroller General reiterated that the emergency conditions brought about by contingency operations or emergency war operations requiring the recall of service members from leave involve an element of "public business." Therefore, expenses for such return travel due to a termination of leave are reimbursable, if pursuant to appropriate regulation. Accordingly, the Comptroller General could perceive no objection to the proposed change to Paragraph M6601-1 which would authorize payment for travel for members recalled under emergency conditions from a leave of five or more days duration notwithstanding the length of time the member has been on leave. (Comp. Gen. Decision B-159680 of May 27, 1970.)