

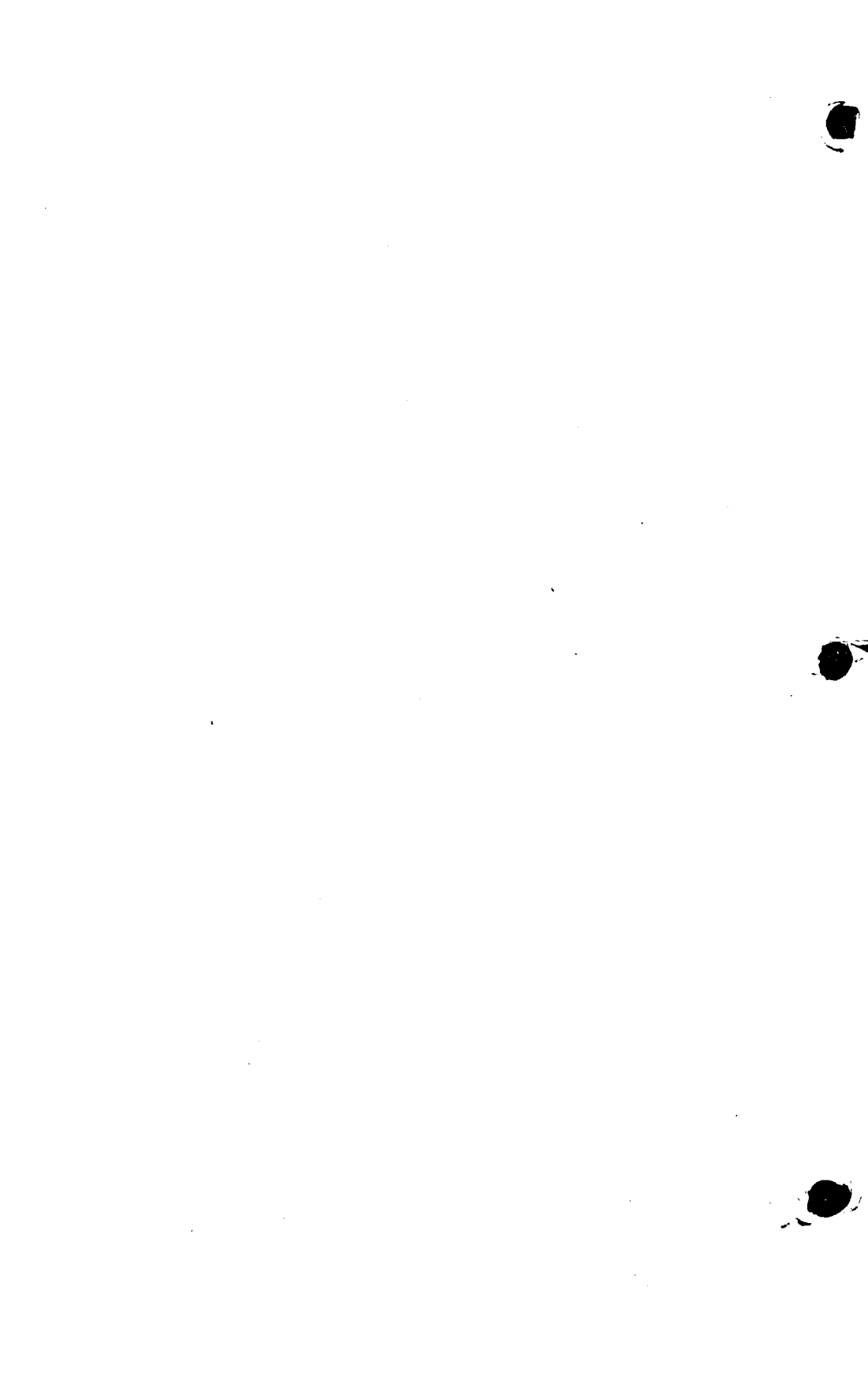
Annual Report
of the
**UNITED STATES COURT
OF MILITARY APPEALS**



and
THE JUDGE ADVOCATES GENERAL
of the
ARMED FORCES
and the
GENERAL COUNSEL
of the
DEPARTMENT OF THE TREASURY

**PURSUANT TO THE
UNIFORM CODE OF MILITARY JUSTICE**

**For the Period
January 1, 1954 to December 31, 1954**



Annual Report

SUBMITTED TO THE

COMMITTEES ON ARMED SERVICES

of the

SENATE AND OF THE

HOUSE OF REPRESENTATIVES

and to the

SECRETARY OF DEFENSE

and the

SECRETARIES OF THE DEPARTMENTS OF THE

ARMY, NAVY, AIR FORCE, AND TREASURY

PURSUANT TO THE

UNIFORM CODE OF MILITARY JUSTICE

For the Period

January 1, 1954 to December 31, 1954



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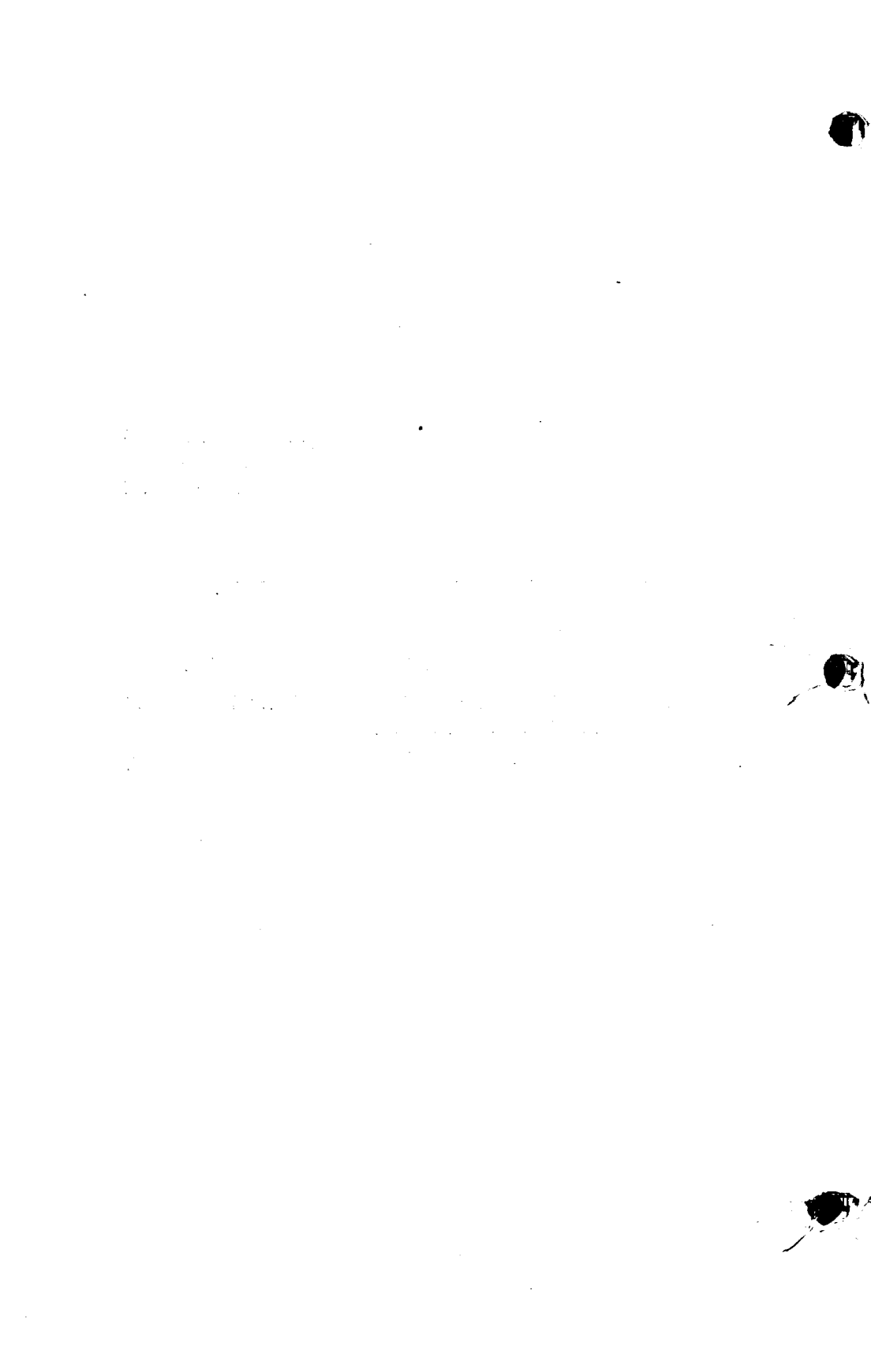
REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

**REPORT OF THE GENERAL COUNSEL OF THE DEPARTMENT OF THE
TREASURY (UNITED STATES COAST GUARD)**



Joint Report
of the
UNITED STATES COURT OF MILITARY APPEALS

and

THE JUDGE ADVOCATES GENERAL
OF THE ARMED FORCES

and

THE GENERAL COUNSEL OF THE
DEPARTMENT OF THE TREASURY

January 1, 1954 to December 31, 1954



JOINT REPORT

The following report, covering the period from January 1, 1954 through December 31, 1954, is the third report of the Committee created by Article 67 (g) of the Uniform Code of Military Justice, 50 U. S. C. 551-736. That enactment requires the Judges of the United States Court of Military Appeals, The Judge Advocates General of the Armed Forces, and the General Counsel of the Department of the Treasury to meet annually for the purposes of surveying the operations of the Code and preparing a report to the Committees on Armed Services of the Senate and of the House of Representatives, to the Secretary of Defense, and to the Secretaries of the Departments, concerning the status of military justice, and the manner and means by which it can be improved by legislative enactments.

The three Judges of the United States Court of Military Appeals, the three Judge Advocates General, and the General Counsel of the Department of the Treasury, hereafter referred to as the Code Committee, have met and conferred during the period covered by this report. Because of the underlying conceptual differences between members of the Code Committee on either the substantive changes or their timeliness, unanimity has not been reached on any recommendations not previously reported to the Congress. Generally speaking, the principles contained in the prior recommendations are reaffirmed, but, in some instances, The Judge Advocates General of the Services desire to present modifications in certain of those reforms. In addition, each military department, except the Department of the Treasury, has proposed additional amendments, but they involve sensitive areas and the individual members of the Code Committee hold divergent views as to their worth or present necessity. For the reason that reconciliation of the different concepts has not been attained, the respective military departments have proposed their individually desired recommendations in the Departmental subdivisions of this report.

The problems considered by the Code Committee during the reporting period have not changed from those enumerated in the second report of this Committee, and, therefore, will not be restated. But, because it is desirable to have Congress give consideration to the previous seventeen recommendations (attached hereto as Exhibit A and

by this reference made a part hereof) which may involve amendatory legislation, all members of the Code Committee believe a hearing before the Armed Services Committees of the Senate and of the House of Representatives on all suggested changes, both past and present, might be in order.

To suggest to Congress that the scope and importance of military justice has not lessened, we mention that approximately 247,000 courts-martial of all types were held throughout the world for the period of this report. In addition, so that members of Congress may have the benefit of information on the volume of business processed by service appellate agencies and the United States Court of Military Appeals, the following information is presented in recapitulated form:

	May 31, 1961 to Dec. 31, 1963	Jan. 1, 1964 to Dec. 31, 1964	Total
1. Total number of cases reviewed by the boards of review.....	48, 406	18, 594	67, 000
2. Total number of cases wherein the findings were modified by the boards of review.....	1, 933	490	2, 423
3. Total number of cases docketed with the United States Court of Military Appeals.....	4, 232	1, 829	6, 061
4. Total number of opinions published by the United States Court of Military Appeals.....	421	177	598
5. Total number of opinions published wherein the decisions of the boards of review were modified by the United States Court of Military Appeals.....	226	72	298

Respectfully submitted,

ROBERT E. QUINN,
Chief Judge.

GEORGE W. LATIMER,
Judge.

PAUL W. BROSMAN,
Judge.

C. B. MICKELWAIT,
*Acting The Judge Advocate General,
United States Army.*

IRA H. NUNN,
*The Judge Advocate General,
United States Navy.*

REGINALD C. HARMON,
*The Judge Advocate General,
United States Air Force.*

DAVID W. KENDALL,
*General Counsel,
Department of the Treasury.*

Exhibit A

FIRST

Experience has shown that a number of accused persons plead guilty at the time of trial; however, under present provisions of the Code, it is necessary to convene a court-martial composed of several officers before a plea may be entered. This increases substantially the cost of the trial to the Government and unnecessarily wastes the time and efforts of the officers who are required to meet, hear the plea and impose sentence. This has been a procedure which is peculiar to the military system and it is not used in civilian practice generally and the Federal practice in particular. If there is any benefit to the accused from this procedure, it is indiscernible and so unimportant that a change in this particular is considered desirable. **THEREFORE,**

It is *recommended* that in general court-martial cases, where the accused with the consent of his counsel requests and the convening authority approves, a one-officer court, whose identity must be known to the accused in advance, be permitted to accept a plea of guilty and adjudge a sentence in all, except capital, cases. This officer should have the qualifications of a law officer, must be certified as competent for that particular duty by The Judge Advocate General of the Service concerned, and have the rank of at least lieutenant colonel or commander.

SECOND

Under the Code, there is no requirement that any member of a special court-martial be a graduate of an accredited law school or a member of the bar. In many instances, the accused would prefer to have his case heard by a special court-martial composed of one officer, qualified under the provisions of Article 26 (a) of the Code, rather than by the present three-officer special court-martial. A provision permitting the accused such an election would result in improved administration of justice, less expensive proceedings, and better utilization of the time and talents of officers now required to sit on special courts-martial: **THEREFORE,**

It is *recommended* that where the accused, with the consent of his counsel, requests, and the convening authority approves, and where the identity of a one-officer court is known to the accused in advance, such officer be permitted to accept pleas of guilty, to conduct the trial of contested special court-martial cases, and to adjudge sentences. It is *further recommended* that The Judge Advocate General of the Service concerned be required to certify the officer to be competent to perform the duties in question.

THIRD

Under the present provisions of Article 51 (b) of the Code, the ruling by the law officer on a motion for a finding of not guilty can be overruled by the members of the court. This provision is not in accord with Federal practice, tends to make court-martial procedure unnecessarily cumbersome, and can be

eliminated without prejudice to the parties. The difficulty with the present provision is in the fact that it permits a complex, predominantly legal question to be determined by a group of officers untrained in the law. If the law officer must explain to the court-martial members the legal standard by which such a motion must be measured, it appears somewhat unusual to permit them to overturn his ruling which is presumably measured by the same standards. Moreover, the Code was drafted with an intent to move closer to civilian practice. To bring about that result, the law officer should decide questions of law and the court-martial members should be limited to deciding factual issues. We believe it is fair to say that a motion for a finding of not guilty often presents one of the most difficult problems which a law officer is called upon to resolve. Yet in some instances rulings rightly in favor of an accused have been overruled by the court-martial members. To permit them to pay no attention to a law officer on such a question of law has a tendency to cause them to ignore his other ruling: **THEREFORE,**

It is *recommended* that Article 51 (b) of the Code be amended to provide that the ruling of a law officer on a motion for a finding of not guilty be final.

FOURTH

Under the present procedure, cases where the accused pleads guilty receive the same appellate review as those cases where the accused pleads not guilty. It is felt that the review by a board of review should not be automatic when an accused has pleaded guilty. In that event, if he desires to raise errors on appeal, which should be limited to questions of law, including legality of sentence, he should file a notice of appeal to a board of review within 5 days from the date sentence is adjudged. In the absence of such notice of appeal, review will be under Article 69 of the Code only. *Provided*, that at the time of sentence he and his counsel are advised of his limited right of appeal. **THEREFORE,**

It is *recommended* that in cases involving pleas of guilty before a special or general court-martial, there be no review by a board of review of the same; that in such cases the accused be required within 5 days from the date sentence is adjudged to file a notice of appeal to a board of review. *Provided*, that the same be limited to questions of law, and that it affirmatively appears of record that the accused was advised of his appellate rights at the time of sentence.

FIFTH

As enacted, Article 65 (c) of the Code provides that special and summary court-martial records, where a punitive discharge has not been adjudged, must be reviewed by a judge advocate of the Army or Air Force, a law specialist of the Navy, or a law specialist or lawyer of the Coast Guard or of the Department of the Treasury. We believe it would be desirable to permit the review of these records by lawyers as well as judge advocates and law specialists in each of the services and not be limited to the Coast Guard or the Department of the Treasury. It would permit a wider use of the abilities of those lawyers in the service who are not now judge advocates or law specialists, and also permit the use of civilian lawyers for the purpose, in commands where such a use might be feasible. **THEREFORE,**

It is *recommended* that Article 65 (c) of the Code be amended so that the records of trials by summary and special courts-martial could be reviewed by lawyers as well as judge advocates and law specialists in each of the Services.

SIXTH

Article 37 of the Code forbids the censuring of courts-martial by the convening authority or any commanding officer. It is true that in legal contemplation staff officers act only in the name of their commanders. Nevertheless, to avoid any possible misconception, it is believed desirable to extend this Article to include staff officers serving convening authorities or other commanding officers. **THEREFORE,**

It is *recommended* that Article 37 of the Code, in regard to its prohibition of the censuring, reprimanding, or admonishing of courts, be amended to include the staff officers serving convening authorities and commanding officers.

SEVENTH

Many vexing problems have developed with respect to the administration of accused persons who were convicted at trial but whose appellate review has not yet been completed. These individuals at the present time must be classified as unsentenced prisoners and segregated for administrative purposes. Special treatment, not all of it for the benefit of the man himself, is now required. This additional administrative burden is excessive and costly, and could be eliminated without detriment to the accused. Other complications in regard to pay and allowances are caused by this peculiar status. Because finance officers and paymasters are personally liable for their disbursements of public funds, they need to know with certainty the effective dates of pay and allowance forfeitures, as well as the precise sums involved. **THEREFORE,**

It is *recommended* that Article 71 of the Code be amended to provide that a convening authority should be empowered to order all parts of a sentence into execution when approved by him except that portion involving dismissal, or a dishonorable or a bad-conduct discharge. This recommendation is not intended to affect sentences involving death or a general or flag officer.

EIGHTH

It is a curious feature of the Code that a person under sentence of death may accrue pay and allowances. If the theory is that pay and allowances are the consideration given for services rendered, there can be no justification for such a situation. **THEREFORE,**

It is *recommended* that the Code be amended by providing that in the case of a prisoner in confinement under sentence of death, no pay and allowances would accrue to him as a matter of law after the date the convening authority approves such sentence, subject, of course, to his rights under Article 75 in the event such sentence is disapproved or set aside.

NINTH

The distinction between custody and confinement drawn by Article 95 of the Code has led to considerable difficulty. In the relatively short length of time that the Code has been in effect, boards of review have been presented with a good many cases which have required them to distinguish between the two terms. Because some factual situations are difficult of resolution in this regard, some otherwise valid prosecutions have failed because the draftsman of the specification picked the wrong alternative. There need not be any distinction between the two terms for the alleged act of the accused person is essentially the same in each instance. In essence he escaped from lawful authority in whose hands he

reposed. The administration of justice in such a case should not be made to depend upon a lucky selection by the author of the charges. **THEREFORE,**

It is *recommended* that Article 95 of the Code be amended to eliminate all distinctions between custody and confinement.

TENTH

General court-martial cases which result in a finding of guilty and the imposition of a sentence which does not extend to a punitive discharge or confinement for 1 year or more are now reviewed in the offices of the respective Judge Advocates General under Article 69 of the Code. If an error is found, the Article requires that the case must be referred to a board of review. This referral with its attending burdens, seems to add an unnecessary step to the proceedings. The caseloads of boards of review are increased, the same record must be considered a second time, and the length of time required to dispose of the case becomes greater. **THEREFORE,**

It is *recommended* that in cases covered by Article 69 of the Code, The Judge Advocate General of the appropriate service be given authority to take such corrective action as boards of review now exercise under the authority granted to them by Article 66 of the Code.

ELEVENTH

Where a case is reversed and a rehearing ordered or the charges are dismissed by the United States Court of Military Appeals under Article 67 of the Code or a board of review under Article 66 of the Code, the convening authority in the field must carry the administrative burden of disposing of the charges. This results in needless delay and duplication of effort. **THEREFORE,**

It is *recommended* that The Judge Advocate General of the appropriate service should have the authority to dispose of a case ordered dismissed by the United States Court of Military Appeals or a board of review, or to dismiss a case wherein a rehearing has been directed by either appellate body but he finds that such rehearing is not practicable.

TWELFTH

Experience has shown that the 30-day appeal period provided for by Article 67 (c) of the Code has caused some unnecessary delays, as well as other difficulties in the handling of cases, and in the assignments to penal institutions, and has added other administrative duties without any consequent advantages to an accused. **THEREFORE,**

It is *recommended* that Article 67 (c) of the Code be amended to reduce the period during which a petition for grant of review may be filed to 15 days.

THIRTEENTH

Article 73 of the Code now provides that an accused may petition for a new trial during a 1-year period which begins on the date of the convening authority's approval of the sentence. It is believed desirable to amend this article so as to cause it to conform to the present Federal enactment. **THEREFORE,**

It is *recommended* that Article 73 of the Code be amended so that the time within which a petition for a new trial may be filed be extended to 2 years from the date of imposition of sentence. This will be in accord with the present Federal practice.

FOURTEENTH

Under Article 73 of the Code, there is substantial uncertainty in the services as to whether a new trial is required for an entire case involving multiple offenses even though the petition for a new trial may attack only one, or less than all, of the findings of guilty, while the unassailed findings would legally support the approved sentence. In such cases it would appear expeditious and desirable to provide authority to permit the dismissal of the particular findings attacked and thereafter permit appropriate sentence reduction on the review level without being required to direct a retrial on valid findings. **THEREFORE,**

It is *recommended* that Article 73 of the Code be further amended to provide that in all cases involving a petition for new trial, authority be given to order a new trial, in whole or in part, or to take corrective action as provided for under Article 66 (c) and (d) of the Code, and to extend similar authorization to The Judge Advocates General in those cases acted upon by them under the Article in question.

FIFTEENTH

At the present time the services have difficulty in prosecuting offenses involving bad checks because of the lack of any real guidepost to follow. This has led in those cases to inept specifications, failure of proof, improper instructions, and divergent standards of proof required as between the several services. **THEREFORE,**

It is *recommended* that an additional punitive statute having provisions similar to the District of Columbia bad-check law be added to the Code to meet the particular needs of the Services.

SIXTEENTH

Under the present provisions of Article 15 of the Code a commanding officer is not permitted to impose any pay loss on an enlisted man, nor is he allowed to sentence him to any confinement unless the offender is attached to or embarked upon a vessel. These provisions so restrict the authority of the commanding officer that when the necessity for discipline requires a small fine or a short period of confinement a trial by court-martial is required. That procedure is unnecessarily expensive and cumbersome, and results in a permanent and unfavorable entry in the service record of an accused. Neither the Government nor the accused person can be benefited by requiring formal trials when the issue can be settled satisfactorily by summary proceedings.

In the cases of officers the present permissible punishment for loss of pay is limited to the loss of one-half of 1 month's pay when imposed by an officer exercising general court-martial jurisdiction. Again, these restrictions on the authority of a commanding officer sometimes result in trials by courts-martial that otherwise might be disposed of administratively by the imposition of a non-judicial punishment. A broadening of the power to permit the imposition of a slightly greater punishment would be a benefit both to the Services and to the accused.

Under paragraph (d) of this Article, an accused has the right of appealing any sentence imposed to superior authority so that any real injustice could be corrected. **THEREFORE,**

It is *recommended* that the Congress give consideration to increasing the permissive punishments imposable under Article 15 of the Code, the maximum not to exceed the forfeiture of one-half of 1 month's basic pay per month for a period of 2 months in the case of officers, and the loss of one-half month's pay

for a period of 1 month, or confinement up to 7 days, in the cases of enlisted personnel.

SEVENTEENTH

The provisions of Article 54 of the Code and the regulations thereunder now require that verbatim records of trial be prepared in all general court-martial cases. This provision does not exclude those cases where a sentence of confinement for 1 year or less and not including a punitive discharge is imposed, and those cases where the accused is acquitted. Unquestionably, this requirement results in a waste of time, money, and effort, and unnecessary utilization of court reporters with little or no consequent benefits to the accused or the Government.

Present procedure provides that where a special court-martial does not impose a punitive discharge, a summarized record of trial may be prepared in accordance with the regulations prescribed by the President under the terms of Article 54 (b) of the Code. It is believed that general court-martial cases of the type herein referred to could be processed under the same provisions. **THEREFORE,**

It is *recommended* that Article 54 of the Code be amended to include general court-martial cases where the accused is acquitted, or the proceedings otherwise terminate in his favor, or where the sentence does not extend to death, dismissal, dishonorable or bad-conduct discharge, or to confinement for 1 year or more. *Provided*, that appropriate provision be made whereby an accused may, at his own expense, obtain a verbatim record of such trial.

*Report
of the*
UNITED STATES COURT OF MILITARY APPEALS

January 1, 1954 to December 31, 1954



UNITED STATES COURT OF MILITARY APPEALS

The following report of the United States Court of Military Appeals is herewith submitted for the period January 1, 1954 to December 31, 1954. For the information of Congress the report contains certain general observations from the Judges and statistics on the volume and scope of the work of the Court.

During the reporting period the Bar of the Court has continued its steady growth and there has been an increase in the civilian membership. On the last day of the period, membership of the Bar had reached 3,132 attorneys, and broken down on a percentage basis, 50 percent of the members were civilian practitioners and 50 percent were lawyers on duty with the Armed Forces. The three services, Army, Navy and Air Force have assisted many of their reserve component lawyers in becoming members of the Bar of this Court and, accordingly, attorneys now admitted to practice before the Court are residents of all 48 States, the Territory of Hawaii, Guam, and the Commonwealth of Puerto Rico. The Judges of the Court recognize the value of having both military and civilian lawyers participate in the administration of military justice and we commend the services for their efforts in affording to reserve officers an opportunity to be admitted to practice before the Court.

The Judges of the Court, in line with their previously adopted policy of familiarizing the public with the importance of, and benefits bestowed by, the Uniform Code of Military Justice, have been speaking before and lecturing to the military service schools, Reserve Officers' Associations, legal institutes, bar associations, and civic organizations. As a result of those efforts, together with the fine work being performed by the members of the Bar, the public generally is acquiring a better understanding of the "bill of rights" Congress enacted for the men and women in uniform and the civilians who accompany them overseas.

During the last reporting period the Judges of the Court joined with The Judge Advocates General of the Services and The General Counsel of the Department of the Treasury in seventeen recommendations for desired improvements in the Uniform Code of Military Justice. Those recommendations are contained in the second annual report covering the period June 1, 1952 to December 31, 1953.¹ We

¹ See Exhibit A—Joint Report.

reaffirm our approval of those recommendations and solicit the members of Congress to consider them at the first reasonable opportunity. The Judges, however, do not join in the additional reforms proposed by the Services. Accordingly, in this report we do not request favorable action on them.

It is to be noted that in the sectional reports of the individual services additional modifications of the Code are proposed by The Judge Advocates General. Some of these modifications embrace the recommendations of the Code Committee submitted to the Congress in the second annual report. Others, however, go far beyond the import of those previously considered. The reason the Judges of the United States Court of Military Appeals do not favorably recommend any of the additional proposals is because of a belief that either the need for them has not been demonstrated or they turn back the wheels of progress and destroy some of the substantial rights granted by Congress to members of the Armed Forces.

The Judges of the Court believe that Congress, when it enacted the Code, placed upon them, at least, two fundamental duties. The first, to require the trial of cases within the framework of the Uniform Code of Military Justice. The second, and the one of prime importance for this report, to advise Congress on the ways and means by which the Uniform Code of Military Justice could be improved, without taking away from an accused any substantial right which has been granted to him. We do not envisage our duties as members of the Code Committee to embrace any requirement that we defend the wisdom of Congress in enacting any particular provision of the Code, but we are prepared, upon an appropriate occasion, to do so. We, therefore, do not set out in this report our reasons for not joining those members of the Code Committee who seek substantive changes which we believe to be unnecessarily hostile to the purposes and intent of the Uniform Code. However, if Congress concludes to proceed with hearings on the proposed changes, the Judges stand willing to, and request the privilege of, presenting their individual views.

The operations of the Court during the past year have continued to place a substantial workload on the shoulders of the Judges. During its 43 months of existence, the Court has docketed by way of petition, certificate, or mandatory review, a total of 6,061 cases. Of that number action has been completed in 5,946. The Court has held oral argument in 572 cases, affecting 624 accused. Opinions published numbered 598 with 40 in the process of completion. Of the 598 opinions published, 27 involved Army officers; 7 Air Force officers; 4 Navy offi-

cers; and 1 Coast Guard officer. In addition, 6 involved civilians subject to the Code. The remainder concerned enlisted personnel.

As of the closing date of this reporting period, review has been completed in 20 capital cases involving 25 members of the Armed Forces who were sentenced to death.

A detailed analysis of the status of cases processed during the reported period is shown on Exhibit B attached hereto, and, made a part hereof.

ROBERT E. QUINN, *Chief Judge.*

GEORGE W. LATIMER, *Judge.*

PAUL W. BROSMAN, *Judge.*

Exhibit B
STATUS OF CASES
UNITED STATES COURT OF MILITARY APPEALS

CASES DOCKETED

<i>Total by Services</i>	<i>Total as of Dec. 31, 1953</i>	<i>Jan. 1, 1954 to Dec. 31, 1954</i>	<i>Total as of Dec. 31, 1954</i>
<i>Petitions (Art. 67(b)(3)):</i>			
Army-----	2,998	982	3,980
Navy-----	619	428	1,047
Air Force-----	460	430	890
Coast Guard-----	15	2	17
Total-----	4,092	1,842	5,934
<i>Certificates (Art. 67(b)(2)):</i>			
Army-----	62	5	67
Navy-----	86	9	95
Air Force-----	9	4	13
Coast Guard-----	3	2	5
Total-----	160	20	180
<i>Mandatory (Art. 67(b)(1)):</i>			
Army-----	17	6	23
Navy-----	0	0	0
Air Force-----	0	1	1
Coast Guard-----	0	0	0
Total-----	17	7	24
Total cases docketed-----	4,269	1,869	¹ 6,138

COURT ACTION

<i>Petitions (Art. 67(b)(3)):</i>			
Granted-----	393	104	497
Denied-----	3,488	1,703	5,191
Dismissed-----	5	0	5
Withdrawn-----	66	37	103
<i>Disposed of on motion to dismiss:</i>			
With opinion-----	5	2	7
Without opinion-----	16	5	21
<i>Disposed of by Order setting aside findings and sentence-----</i>			
-----	2	0	2
Remanded to Board of Review-----	8	5	13
Court action due (30 days)*-----	81	79	79
Awaiting briefs*-----	43	32	32

¹ 6,061 cases actually assigned Docket numbers. 45 cases were filed both as a Certificate and Petition, 30 cases were submitted as Petitions twice, 1 case certified twice, and 1 Mandatory case filed twice.

*As of December 31, 1953 and 1954.

COURT ACTION—Continued

<i>Total by Services</i>	<i>Total as of Dec. 31, 1953</i>	<i>Jan. 1, 1954 to Dec. 31, 1954</i>	<i>Total as of Dec. 31, 1954</i>
<i>Certificates (Art. 67(b)(2)):</i>			
Opinions rendered.....	122	43	165
Opinions pending*.....	14	8	8
Withdrawn.....	3	1	4
Set for hearing*.....	11	1	1
Ready for hearing*.....	5	0	0
Awaiting briefs*.....	5	2	2
<i>Mandatory (Art. 67(b)(1)):</i>			
Opinions rendered.....	14	7	21
Opinions pending*.....	0	0	0
Remanded to Board of Review.....	1	0	1
Set for hearing*.....	1	1	1
Ready for hearing*.....	1	0	0
Awaiting briefs*.....	0	1	1
<i>Opinions rendered:</i>			
Petitions.....	266	123	389
Motions to dismiss.....	5	2	7
Per curiam grants.....	18	3	21
Certificates.....	110	36	146
Certificates and Petitions.....	12	7	19
Mandatory.....	14	7	21
Motion to remand to Board of Review....	1	0	1
Petition for a New Trial.....	0	1	1
Petition for Reconsideration of Petition for New Trial.....	0	1	1
Total.....	426	180	606
<i>Completed cases:</i>			
Petitions denied.....	3,488	1,703	5,191
Petitions dismissed.....	5	0	5
Petitions withdrawn.....	66	37	103
Certificates withdrawn.....	3	1	4
Opinions rendered.....	421	178	599
Disposed of on motion to dismiss			
With opinion.....	5	2	7
Without opinion.....	16	5	21
Disposed of by Order setting aside findings and sentence.....			
.....	2	0	2
Remanded to Board of Review.....	9	5	14
Total.....	4,015	1,931	5,946

* 606 cases were disposed of by 598 published opinions. 39 opinions were rendered in cases involving 27 Army officers, 7 Air Force officers, 4 Navy officers, and 1 Coast Guard officer. In addition, 6 opinions were rendered in cases involving civilians. The remainder concerned enlisted personnel.

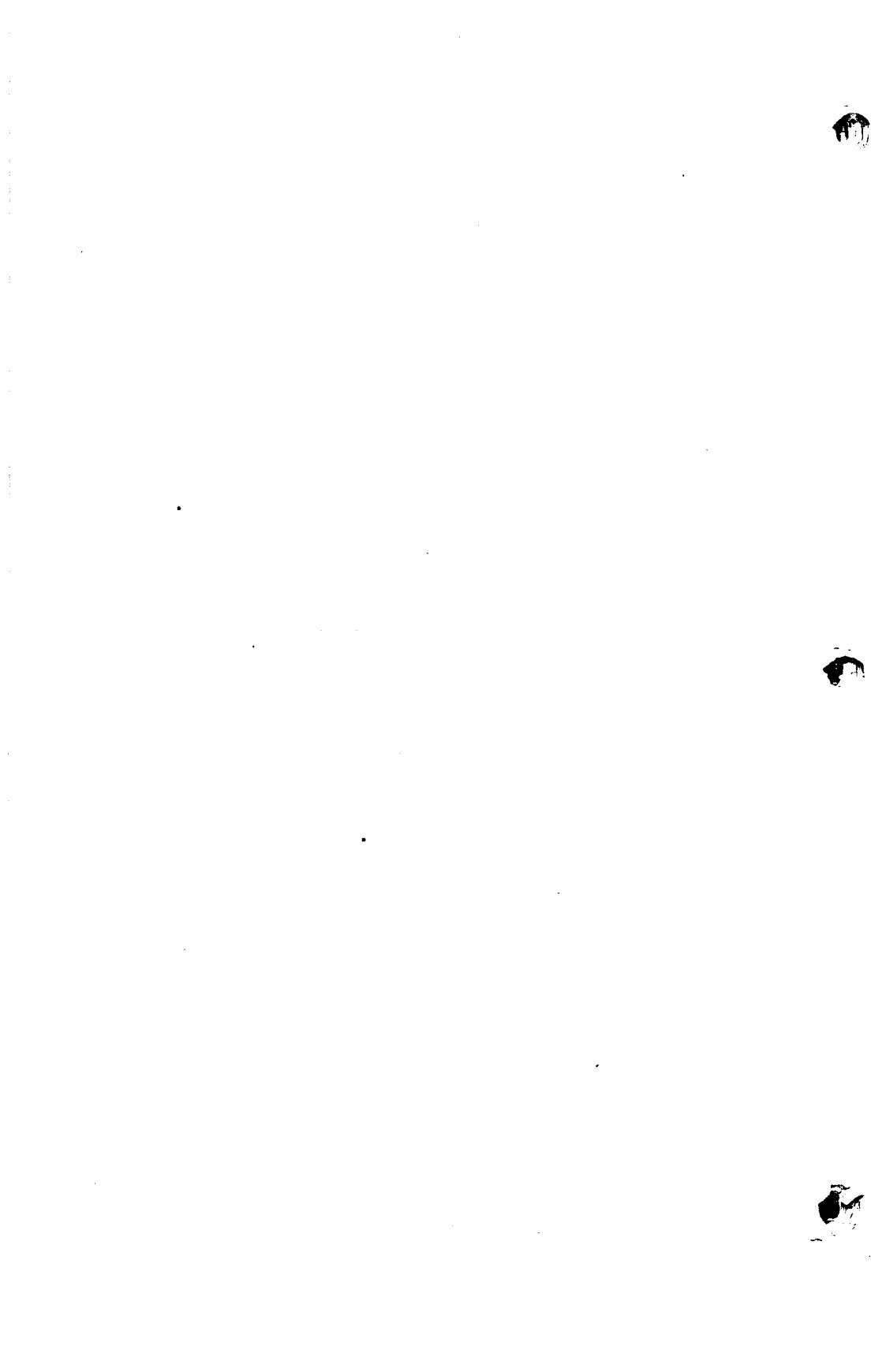
*As of December 31, 1953 and 1954.

COURT ACTION—Continued

	<i>Pending completion as of—</i>	
	<i>Dec. 31, 1953</i>	<i>Dec. 31, 1954</i>
Opinions pending.....	62	40
Set for hearing.....	24	11
Ready for hearing.....	16	1
Petitions granted—awaiting briefs.....	11	10
Petitions—court action due 30 days.....	81	79
Petitions—awaiting briefs.....	43	32
Certificates—awaiting briefs.....	5	2
Mandatory—awaiting briefs.....	0	1
Total.....	242	176

Report
of
THE JUDGE ADVOCATE GENERAL
of
THE ARMY

January 1, 1954 to December 31, 1954



REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY

1. Recommendations:

From the vantage point of nearly four years of operation under the Uniform Code of Military Justice, tested in some measure by the Korean conflict, the Military Services are now in a position to fairly evaluate its effectiveness.

As a restatement of the law of military offenses, the Code leaves little to be desired. The principle embodied within the Code of one standard of behavior for all members of the armed services is deserving of nothing but commendation. The Court of Military Appeals, whose members speak with the authority of judges, provides, for the first time in the history of our Nation, a source within the defense structure which is empowered to make final and binding interpretations of the military criminal law. Thus, the Code, in some of its main aspects, marks a great advance in the field of military justice.

Other principles embodied within the Code, mostly of an administrative nature, give rise to serious doubts as to whether it can be readily adapted to wartime conditions.

First, *Appellate Review*. The time consumed in processing cases involving no substantial legal issues is excessive. Currently, more than a year elapses, in the average case, between the date an accused is tried by court-martial and the date his sentence is ordered executed after review by the United States Court of Military Appeals. While it is true that discipline is an intangible composed primarily of pride, confidence, desire to do well, belief in the cause, and the promise of reward, it is also true that, for a small group, punishment or the fear of punishment is a most necessary ingredient of discipline. For this latter group, punishment to be effective must, among other things, be certain and be prompt. It is doubtful whether a system that requires more than a year to complete appellate review in peacetime can be relied upon in time of war to punish offenders promptly. There is little deterrent value in a system of military justice which precludes contemporary punishment of front line deserters. Moreover, a system which permits wartime offenders to languish in stateside detention barracks while faithful soldiers fight and die in far off lands does little for the morale of fighting men, particularly when it is common knowledge within the military that when passions cool and peace descends,

X the public again will demand clemency for those serving sentences for military offenses. Admittedly, a necessary condition precedent to an adequate solution is an enlightened public. However, some changes may and should be made now within the framework of the present Code. The system should be decentralized. Boards of review should not all sit within the Washington area. They should be located in the Army areas and within the theaters of operation overseas. The records of trial of general courts-martial should not all have to be forwarded from all parts of the world to the center of our Government before commanding generals may order sentences into execution. In time of war or full mobilization such a procedure will lead to complete paralysis of our military judicial system. It may be anticipated if the Code were amended to permit convening authorities to order into execution sentences approved by boards of review located in the field that time consumed in appellate review would be reduced by many months. Envisioned within such a plan would, of necessity, be means whereby cases involving legal points concerning which boards of review are in substantial disagreement are forwarded to The Judge Advocate General for resolution or for certification to the Court of Military Appeals for decision.

Secondly, *Non-Judicial Punishment and Inferior Courts*. In the Army, the vast bulk of offenses are petty—such as minor neglects or absences or little sins of commission. They should be dealt with summarily by admonitions, reprimand, restriction to limits, loss of privilege, extra work, or a few days of confinement and then be forgotten if they do not become a habit. The offender should be told of his alleged delinquency by his officer, asked for his comment, and then, there being no denial of the facts, should be awarded his punishment without further to-dos. Certainly there should be no resort to any form of court-martial with its attending smear on the young soldier's record. For many years petty offenses were disposed of in a paternalistic fashion both in the Army and in the Navy with profit to the services and to the offenders. The Code, with its heavy accent on formalities and its restrictions on commanders, has done much to destroy this highly desirable and effective method of maintaining discipline. Under its present provisions, there is very little that a commanding officer may do, short of court-martial, to impress upon those of his command who are hesitant to accept the rules and regulations attendant to a military life that such rules and regulations are to be questioned only at their peril. As a result, instead of being able to give parental guidance to first offenders, he must either order them before courts-martial, impose one of the inadequate punishments presently provided under Article 15, or ignore the matter entirely. To

ignore all such offenders or to order all of them before courts-martial certainly would result in righteous criticism of the commanding officer. Yet, to impose no more than a restriction or a similar punishment upon such individuals when the imposition of that type of punishment is meaningless, as in a combat situation or when located in one of the less attractive spots overseas, would obviously be of little value as a deterrent repetition. During the hearings on the present code before the Armed Services Committees of the Congress, all members readily agreed that there was an apparent need for the imposition of more severe sentences on military personnel attached to or embarked on vessels. After three years' experience under the Code, it has been demonstrated that commanding officers ashore need similar authority. Accordingly, it is recommended that subdivisions (a) (2) (E) and (F) of Article 15 be amended to permit commanding officers to impose the punishments prescribed therein upon enlisted personnel of their command without regard to their duty station.

Next in the scale above petty offenses are episodes which in civilian life would lead to the police court; such as, public drunkenness, traffic offenses, disorder, destruction of property, and military offenses of more than minor but considerably less than major importance. The Army's police court is the summary court-martial. Under the provisions of the Articles of War in effect prior to the enactment of the present Code, a summary court-martial had the power to try any person subject to military law, except officers, warrant officers, or cadets for any crime or offense not capital made punishable by these articles. Noncommissioned officers could not, if they objected thereto, be brought to trial before a summary court-martial. Under the present Code, no person may be brought to trial before a summary court-martial if he objects thereto, unless his commanding officer has first offered him nonjudicial punishment under Article 15. In many instances the punishments provided under Article 15 are completely inadequate as a means of punishing those who have committed offenses of a nature warranting a summary court-martial. Consequently, there is no recourse but to try the offender by special court-martial, a proceeding that requires at least five officers and a great deal of paper work and considerable delay and where in many instances it can result in no graver punishment than could have been adjudged by a summary court-martial.

Accordingly, it is recommended that the limitation on the authority of a summary court-martial added by the present Code be eliminated.

Thirdly, *The Law Officer and Pretrial Investigations*. I join with The Judge Advocate General of the Navy in urging the return of the law officer to the court as a voting member of the court and I also join

with him in the recommendation that Article 32 be simplified so as to permit less formalized pretrial investigations. Experience has shown that, prior to the enactment of the present Code when the law officer was as a member of the court instead of an officer of the court, he was of greater assistance to the other members in explaining the intricacies of the legal problems involved than he is under the present system. Thus, the Code has deprived the accused of a safeguard that he previously enjoyed. Similarly, experience has shown that under the present Code pretrial investigations have been formalized to an extent far greater than intended by the Congress, and, as a consequence, has resulted in the unnecessary expenditure of time and effort.

2. Operations:

a. During the calendar year of 1954, The Judge Advocate General's School at Charlottesville, Virginia, provided residential instruction for 800 military lawyers. The School conducted four cycles of the three-month course in basic military law, graduating 269 students. One advance course of 31 weeks was held for 23 selected officers of The Judge Advocate General's Corps. Lawyers specializing in the field of procurement law attended 6 two-week courses which covered generally the latest developments in that field. During the period 20 to 24 September 1954, a conference of Judge Advocates representing general court-martial jurisdictions throughout the world was also held at The Judge Advocate General's School.

The nonresident training activities of the School provided instruction for over 2,300 reserve officers. The School published and distributed instructional guides and material for the 101 Judge Advocate USAR school courses being conducted in 83 USAR school Judge Advocate branch departments with a total enrollment of 1,454.

The School conducted continuous research and planning in the field of military law. It assisted in the preparation, publication, and distribution of the 1954 edition of the military justice handbook entitled "The Law Officer", which is designed to aid law officers and presidents of special courts-martial in conducting military trials. It also prepared and published a revised edition of a special text book on claims, a military justice handbook entitled "Uniform System of Citation", the 1954 cumulative pocket part to the Manual for Courts-Martial, and the weekly letter of The Judge Advocate General which chronicles recent developments in military law of immediate importance to judge advocates in the field.

The School prepared and completed for distribution four more military justice films entitled "The Investigating Officer", "The Gen-

eral Court-Martial", "The Summary Court-Martial", and "Non-Judicial Punishment". The School planned and participated in "Logex 54", a logistical exercise in which students of the advanced class performed judge advocate duties under assumed combat conditions.

b. During the calendar year legislation was enacted which abolished the separate Judge Advocates' Promotion List and returned those officers whose names were on that list to the Army Promotion List for the purpose of restoring to those officers the seniority and grade lost by virtue of being on a separate promotion list.

c. In undertaking to solve the problem of court reporting in the Army, electronic recorder reproducer sets equipped with facemask devices for recording proceedings were procured and issued to the judge advocates of commands exercising general court-martial jurisdiction. A career field for enlisted court reporters was established and a course for court reporters is planned to begin at The Judge Advocate General's School in early 1955.

d. The commissioning of 200 officers in The Judge Advocate General's Corps during the fiscal year 1955 has been authorized. The majority of those commissioned under this program have been young officers recently graduated from law school without previous military training. To prepare them properly for their duties as judge advocates, they are given an eight-week course of training at The Infantry School followed by a three-month course in basic military law at The Judge Advocate General's School.

e. Pursuant to the Uniform Code of Military Justice, Article 6 (a), The Judge Advocate General and senior members of his staff in supervision of the administration of military justice inspected all Army headquarters and principal posts located within the continental United States. Also inspected were all commands in Alaska, Japan, Korea, and Hawaii in which general court-martial jurisdiction is being exercised over Army personnel.

3. Statistics:

a. The number of records of trial received in the Office of The Judge Advocate General for review pursuant to Article 66 during the period covered by this report follows:

	1 Jan 54
	to
	31 Dec 54
Total.....	*7304

*This figure includes cases that required review under Article 69 and action by boards of review.

In addition, the following table shows the number of records of trial received in the Office of The Judge Advocate General for examination pursuant to Article 69 during the same period:

	<i>1 Jan 54</i>
	<i>to</i>
	<i>31 Dec 54</i>
Total.....	1477

b. The following table shows the workload of the boards of review during the same periods:

	<i>1 Jan 54</i>	
	<i>to</i>	
	<i>31 Dec 54</i>	
On hand at beginning of period.....	258	
Referred for review.....	7482	7740
Reviewed.....	7529	
Pending at close of period.....	211	7740

c. From 1 January 1954 to 31 December 1954, 47.7 percent of the accused whose cases were received in the Office of The Judge Advocate General for review pursuant to Article 66 requested representation by appellate defense counsel before boards of review.

d. Based upon the number of cases reviewed by boards of review during this period, 12.8 percent were forwarded to the United States Court of Military Appeals pursuant to the three subdivisions of the Uniform Code of Military Justice, Article 67 (b).

EUGENE M. CAFFEY,
Major General, USA,
The Judge Advocate General.

31 December 1954

Report
of
THE JUDGE ADVOCATE GENERAL
of
THE NAVY

January 1, 1954 to December 31, 1954



REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

The Uniform Code of Military Justice has now been in effect for almost 4 years. Thus a reasonable period of time has elapsed to permit a study of its procedures.

Such a study has given rise to an opinion that the Code in its present form could not stand the strain of general mobilization and that under conditions of full mobilization there would result a breakdown of military criminal process which would leave the services with no really effective formal machinery for the maintenance of discipline and good order among their members.

This development, should it occur, would jeopardize the success of military missions.

Further, an observation of the operation of the Code during the recent past has shown that many of our men receive courts-martial for offenses which could have been punished by commanding officers before the Code came into effect. Thus the service records of many servicemen are becoming fouled by entries of conviction by court-martial in cases where a lesser punishment by commanding officers would be appropriate if these officers were empowered to impose an adequate punishment.

The situation should be altered if such can be done without doing harm to discipline within the services.

The situation has come about by reason of a reduction in the power of the commanding officer to administer punishment. The power of the commanding officer in this regard is now so slight and so ineffective that he must make more frequent use of the court-martial.

Proposals designed to reduce unnecessary burdens imposed upon the Services by the Uniform Code and to increase the powers of officers who exercise command are embodied in the attached draft of a bill to amend the Code. A sectional analysis of the bill accompanies the draft. Both the draft and the analysis are made a part of this report.

In April of 1954 the Judge Advocate General called a conference of legal officers at the School of Naval Justice, Newport, Rhode Island. This three day conference was attended by district and staff legal officers from the principal naval commands throughout the world. These officers, who are concerned with the daily administration of military justice, discussed mutual problems and submitted constructive recommendations to the Judge Advocate General.

The training of naval personnel in military justice during 1954 was conducted in three primary programs: courses of study at the School of Naval Justice, a motion picture training film program, and correspondence courses.

a. The U. S. Naval School (Naval Justice), U. S. Naval Base, Newport, Rhode Island, graduated 1,020 officers and 586 enlisted men from its 7-week intensive course on the provisions of the Code and Manual. 208 inactive Reserve officers were graduated from a 2-week active duty training course at the school during the period 21 August-3 September 1954. A 2-day course for prospective commanding and executive officers was attended by 27 officers, and a short course of 12 hours' instruction was given to 111 senior officers attending the Naval War College at Newport.

b. Eleven motion picture training films on the subject of military justice were being distributed throughout the Naval establishment at the beginning of 1954. During the year this number was augmented by a series of four films entitled "Navy Evidence in Courts-Martial," and a film entitled "Easy Out," depicting the consequences of a punitive discharge.

c. Correspondence courses on military justice were used extensively during 1954. A single-assignment course on the provisions of the Code was completed by 9,825 officers and enlisted men during the year. There are 2,239 persons currently enrolled in this course, and an average of 925 applications for the course are being received monthly.

A comprehensive 12-assignment course on Military Justice was completed by 2,805 officers and enlisted men during 1954. 7,201 persons are currently enrolled in the course, and an average of 1,000 applications for the course are being received monthly. Interest in this comprehensive course has been stimulated by the announcement that promotion examinations including military justice as an examination subject will be inaugurated in 1955.

During 1954, 7,196 records of trial were received in the Office of the Judge Advocate General for review pursuant to Article 66. Of this number, 2,671 were general courts-martial and 4,525 were special courts-martial. In addition, 488 records of trial were received in the Office of the Judge Advocate General for examination pursuant to Article 69.

The following table shows the workload of the boards of review during 1954:

On hand January 1, 1954.....	230	
Referred for review.....	7,196	7,426
Reviewed	7,225	
Pending December 31, 1954.....	201	7,426

During 1954, 58 percent of the accused whose cases were received in the Office of the Judge Advocate General for review pursuant to Article 66 requested representation by appellate defense counsel before boards of review.

Based upon the number of cases reviewed by boards of review during 1954, 5 percent were forwarded to the United States Court of Military Appeals pursuant to the three subdivisions of Article 67 (b), Uniform Code of Military Justice.

This report is submitted pursuant to Article 67 (g) of the Uniform Code of Military Justice.

IRA H. NUNN,
Rear Admiral, USN,
Judge Advocate General
of the Navy.

A BILL

To amend the Uniform Code of Military Justice.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Uniform Code of Military Justice (section 1, Act of May 5, 1950; 64 Stat. 107; 50 U. S. C. 551 et seq.) is amended as follows:

(a) Article 1 is amended by changing the period at the end thereof to a semi-colon and inserting a new clause (15), as follows:

"(15) 'Convening authority' shall be construed to refer to the officer who convened the court, an officer commanding for the time being, a successor in command, or any officer exercising general court-martial jurisdiction."

(b) Article 2 (4) is amended to read as follows:

"(4) Retired personnel of a regular component of the armed forces who are entitled to receive pay or personnel of a reserve component of the armed forces who are entitled to receive retired pay, retirement pay, or disability retirement pay."

(c) Article 12 is amended to read as follows:

"ART. 12. Confinement with enemy prisoners prohibited.

"No member of the armed forces of the United States shall be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces of the United States, except that a member of the armed forces of the United States may be confined in United States confinement facilities with members of the armed forces of friendly foreign nations."

(d) Article 14 is amended by deleting subdivision (b) thereof.

(e) Article 15 is amended to read as follows:

"ART. 15. Non-judicial punishment.

"(a) Under such regulations as the President may prescribe, one of the following disciplinary punishments may be imposed for minor offenses in addition to or in lieu of admonition or reprimand without the intervention of a court-martial—

(1) upon an officer or warrant officer of his command:

A. by an officer in command exercising general court-martial jurisdiction:

1. forfeiture of not to exceed one-half of his pay per month for a period not exceeding three months;

B. by any officer in command:

1. withholding of privileges for a period not to exceed two consecutive weeks; or

2. restriction to certain specified limits, with or without suspension from duty, for a period not to exceed two consecutive weeks;

(2) upon any other military person of his command:

A. by any officer in command exercising special court-martial jurisdiction:

1. confinement for a period not to exceed ten consecutive days; or

2. confinement on bread and water or diminished rations for a period not to exceed five consecutive days; or

3. forfeiture or detention of not to exceed one-half of his pay per month for a period not exceeding one month; or

4. reduction to next inferior grade;

B. by any officer in command:

1. withholding of privileges for a period not to exceed two consecutive weeks; or

2. restriction to certain specified limits, with or without suspension from duty, for a period not to exceed two consecutive weeks; or

3. extra duties for a period not to exceed two consecutive weeks, and not to exceed two hours per day, holidays included.

“(b) The Secretary of a Department may, by regulation, place limitations on the powers granted by this article with respect to the kind and amount of punishment authorized, the categories of officers in command authorized to exercise such powers, and the applicability of this article to an accused who demands trial by court-martial.

“(c) An officer in charge may, for minor offenses, impose on enlisted persons assigned to the unit of which he is in charge, such of the punishments authorized to be imposed by officers in command as the Secretary of the Department may by regulation specifically prescribe, as provided in subdivisions (a) and (b).

“(d) Any person punished under authority of this article who deems his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be in writing and shall be made within fifteen days from the date the punishment is imposed. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, his successor in command, and superior authority shall have power to suspend, set aside, or remit any part or amount of the punishment and to restore all rights, privileges and property affected.

“(e) The imposition of disciplinary punishment under authority of this article for any act or omission shall not be a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.”

(f) Article 16 is amended to read as follows:

“ART. 16. Courts-martial classified.

“(a) There shall be three kinds of courts-martial in each of the armed forces, namely:

(1) General courts-martial;

(2) Special courts-martial; and

(3) Summary courts-martial

“(b) A general court-martial shall consist of any number of members not less than five, including a law officer, except that a general court-martial shall consist only of a law officer if, prior to the convening of the court, the accused has so requested in writing, and the convening authority has consented thereto.

“(c) A special court-martial shall consist of any number of members not less than three, except that a special court-martial shall consist of only one officer if, prior to the convening of the court, the accused has so requested in writing, and the convening authority has consented thereto.

“(d) A summary court-martial shall consist of one officer.”

(g) Article 17 (b) is amended to read as follows:

"(b) In all cases, review subsequent to that by the officer who convened the court shall be carried out by the armed force of which the accused is a member."

(h) Article 18 is amended by inserting the following new sentence immediately after the first sentence:

"However, a general court-martial consisting only of a law officer shall not adjudge the penalty of death."

(i) Article 19 is amended to read as follows:

"ART. 19. Jurisdiction of special courts-martial.

"Subject to article 17, special courts-martial shall have jurisdiction to try persons subject to this code for any non-capital offense made punishable by this code, and under such regulations as the President may prescribe, for capital offenses. Special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this code except death, dishonorable discharge, dismissal, confinement in excess of 6 months, confinement on bread and water or diminished rations in excess of 30 days, solitary confinement in excess of 30 days, hard labor without confinement in excess of 3 months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for a period exceeding 6 months.

(j) Article 20 is amended to read as follows:

"ART. 20. Jurisdiction of summary courts-martial.

"Subject to article 17, summary courts-martial shall have jurisdiction to try persons subject to this code except officers, warrant officers, cadets, aviation cadets, and midshipmen for any noncapital offense made punishable by this code. No person with respect to whom summary courts-martial have jurisdiction shall be brought to trial before a summary court-martial if he objects thereto, unless under the provisions of article 15 he has been permitted and has elected to refuse punishment under such article. Where objection to trial by summary court-martial is made by an accused who has not been permitted to refuse punishment under article 15, trial shall be ordered by special or general court-martial, as may be appropriate. Summary courts-martial may adjudge any punishment not forbidden by this code except death, dismissal, dishonorable or bad-conduct discharge, confinement in excess of one month, confinement on bread and water or diminished rations in excess of 20 days, solitary confinement in excess of 20 days, hard labor without confinement in excess of 45 days, restriction to certain specified limits in excess of 2 months, or forfeiture of pay in excess of two-thirds of one month's pay."

(k) Article 22 (a) (4) is amended to read as follows:

"(4) any flag or general officer, or his successor, in command of a unit or activity of the Navy or Marine Corps;"

(l) Article 23 (a) (5) is amended to read as follows:

"(5) any officer in command of a unit or activity of the Navy or Coast Guard; the commanding officer of any Marine brigade, regiment, detached battalion, or corresponding unit; the commanding officer of any Marine barracks, wing, group, separate squadron, station, base, auxiliary airfield, or other place where members of the Marine Corps are on duty;"

(m) Articles 22 (b) and 23 (b) are amended to read as follows:

"(b) When any such officer is an accuser, the court shall be convened by a competent authority not subordinate in command to the accuser, and may in any case be convened by a superior competent authority when deemed desirable by him."

(n) Article 25 is amended by deleting subdivision (c) thereof and redesignating subdivision (d) as subdivision (c).

(o) Article 25 (a) is amended by inserting the following new sentence at the end thereof:

"However, to be eligible for appointment as a special court-martial, an officer shall have the qualifications specified for a law officer in article 26 (a)."

(p) Article 26 is amended to read as follows:

"ART. 26. Law officer of a general court-martial.

"(a) The authority convening a general court-martial shall appoint as one of the members thereof a law officer who is—

(1) an officer;

(2) a member of the bar of a Federal court or of the highest court of a State; and

(3) certified to be qualified for such duty by The Judge Advocate General of the armed force of which he is a member.

"(b) A law officer appointed as a general court-martial shall, in addition to having the qualifications specified in (a) above, be (1) specifically certified to be qualified for such duty by the Judge Advocate General of the armed force of which he is a member, and (2) serving in a grade above captain if a member of the Army, Air Force, or Marine Corps, and in a grade above lieutenant if a member of the Navy or Coast Guard."

"(c) No person shall be eligible to act as law officer in a case when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case."

(q) Article 27 (a) is amended to read as follows:

"(a) For each general and special court-martial the authority convening the court shall appoint a trial counsel and a defense counsel, together with such assistants as he deems necessary or appropriate. No person who has acted as investigating officer, law officer or court member in any case shall, unless expressly requested by the accused, act as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution shall act subsequently in the same case for the defense, nor shall any person who has acted for the defense act subsequently in the same case for the prosecution."

(r) Article 29 (b) is amended to read as follows:

"(b) Whenever a general court-martial is reduced below five members, the trial shall not proceed unless the convening authority appoints new members sufficient in number to provide not less than five members. When such new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read to the court in the presence of the accused and counsel."

(s) Article 29 is amended by redesignating subdivision (c) thereof as subdivision (d) and inserting a new subdivision (c) to read as follows:

"(c) No general court-martial shall proceed with the trial of a case in the absence of the law officer regularly detailed. The law officer, in addition to his duties as a member, shall perform the duties prescribed in article 51."

(t) Article 31 is amended to read as follows:

"ART. 31. Compulsory self-incrimination prohibited.

"(a) No person subject to this code shall compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him."

"(b) No person subject to this code who occupies an official position with a military law enforcement or military crime detection agency, or who is other-

wise engaged in or responsible for the conduct of an official military investigation, shall, during the course of such an investigation, interrogate or request any statement from an accused or any other person when the investigator has reasonable grounds to suspect that the person interrogated has committed the particular offense under investigation without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial."

"(c) No person subject to this code shall compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him."

"(d) No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement shall be received in evidence against him in a trial by court-martial."

(u) Article 32 (a) is amended to read as follows:

"(a) No charge or specification shall be referred to a general court-martial for trial until an investigation of all the matters set forth therein has been made. This investigation shall include inquiries as to the truth of the matter set forth in the charges, form of charges, and the disposition which should be made of the case in the interest of justice and discipline."

(v) Article 32 is amended by inserting at the end thereof the following:

"(e) For offenses in violation of articles 85 through 92 the accused may, after consultation with counsel, waive the investigation required by this article."

(w) The first sentence of article 37 is amended to read as follows:

"No authority convening a general, special, or summary court-martial, no other commanding officer, nor any officer serving on the staffs thereof, shall censure, reprimand, or admonish such court or any member, law officer, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceedings."

(x) Article 39 is amended to read as follows:

"ART. 39. Sessions.

"Whenever a general or special court-martial is to deliberate or vote, only the members of the court shall be present. All other proceedings, including any consultations of the court with counsel, shall be made a part of the record and be in the presence of the accused, the defense counsel, and the trial counsel."

(y) Article 41 (a) is amended by deleting the words "and the law officer of a general court-martial."

(z) Article 41 (b) is amended to read as follows:

"(b) In a general court-martial, each accused and trial counsel shall be entitled to one peremptory challenge, but the law officer shall not be challenged except for cause."

(aa) Article 42 (a) is amended to read as follows:

"(a) All interpreters and, in general and special courts-martial, the members, and the reporter shall take an oath or affirmation to perform their duties faithfully."

(bb) Article 43 (b) is amended to read as follows:

"(b) Except as otherwise provided in this article, a person charged with desertion or absence without leave in time of peace or any of the offenses punishable under articles 119 through 132 inclusive shall not be liable to be tried by court-martial if the offense was committed more than three years

before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command."

(cc) Article 44 (c) is amended to read as follows:

"(c) A proceeding which, subsequent to the introduction of evidence, is dismissed or terminated by the convening authority, or by the Judge Advocate General, or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused shall be a trial in the sense of this article."

(dd) Article 51 is amended by inserting at the end thereof the following:

"(d) The foregoing provisions of this article shall not apply to a general or special court-martial consisting of only one officer. Notwithstanding any other provision of this Code, the officer who is appointed as such a court-martial shall determine all questions of law and fact arising during a trial by such court and shall, in the event of conviction of the accused, adjudge an appropriate sentence."

(ee) The second sentence of article 51 (b) is amended to read as follows:

"Any such ruling made by the law officer of a general court-martial upon any interlocutory question other than the question of the accused's sanity shall be final and shall constitute the ruling of the court, but the law officer may change any such ruling at any time during the trial."

(ff) Article 51 (c) is amended by deleting the words "instruct the court as to the elements of the offense and."

(gg) Article 52 (a) (2) is amended to read as follows:

"(2) No person shall be convicted of any other offense to which he has pleaded not guilty, except by the concurrence of two-thirds of the members present at the time the vote is taken. When a plea of guilty to such an offense has been accepted by the court, a finding of guilty as to such offense may be entered in the record without voting thereon."

(hh) Article 52 is amended by inserting at the end thereof the following:

"(d) This article shall not apply to a general or special court-martial consisting of only one officer."

(ii) Article 54 is amended to read as follows:

"ART. 54. Record of trial.

"(a) Each court-martial shall keep a separate record of the proceedings of the trial of each case brought before it. A record of trial by a court-martial in which the sentence adjudged requires review by a board of review under article 66 shall contain a complete verbatim account of the proceedings and testimony before the court, and shall be authenticated in such manner as may be required by regulations which the President may prescribe. All other records of trial shall contain such matter and be authenticated in such manner as may be required by regulations which the President may prescribe."

"(b) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as authenticated."

(jj) Article 57 is amended to read as follows:

"ART. 57. Effective date of sentence.

"(a) Any period of confinement included in a sentence of a court-martial shall begin to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended shall be excluded in computing the service of the term of confinement."

"(b) All other portions of a sentence of a court-martial shall, under such regulations as the President may prescribe, become effective on the date ordered executed in accordance with article 71."

"(c) The President may prescribe periods during which a sentence to confinement may be interrupted and such periods shall be excluded in computing the service of the term of confinement."

(kk) Article 65 (a) is amended to read as follows:

"(a) When the convening authority has taken final action in a general court-martial case and the sentence as approved by him includes a bad-conduct discharge or exceeds a sentence that could have been adjudged by a special court-martial, he shall forward the entire record, including his action thereon and the opinion or opinions of the staff judge advocate or legal officer, to the appropriate Judge Advocate General. All other general court-martial records shall be transmitted and disposed of as the Secretary of the Department may prescribe by regulations."

(ll) Article 65 (b) is amended by deleting the words "to be reviewed by a board of review" wherever appearing therein.

(mm) Article 65 (c) is amended to read as follows:

"(c) All other special and summary court-martial records shall be forwarded to the officer exercising general court-martial jurisdiction over the command, or such other authority as may be designated by the Secretary of the Department, for review by a judge advocate of the Army or Air Force, a law specialist or lawyer of the Navy, or a law specialist or lawyer of the Coast Guard or Treasury Department. In addition to returning such records to the convening authority with a direction that certain action be taken, the officer exercising general court-martial jurisdiction, or the authority designated by the Secretary of the Department, may take the same action with respect to such records as is authorized for the convening authority. Such records shall be transmitted and disposed of as the Secretary of the Department may prescribe by regulations."

(nn) Article 66 (a) is amended to read as follows:

"(a) The Judge Advocate General of each of the armed forces shall constitute in his office one or more boards of review, each composed of not less than three officers, except that for the Coast Guard any member of a board of review may be a civilian officer. Each member of a board of review must have had at least six years of experience in legal duties in any department or armed force and must be a member of the bar of a Federal court or the highest court of a state."

(oo) Article 66 (b) is amended to read as follows:

"(b) The Judge Advocate General shall refer to a board of review the record in every case of trial by court-martial in which the sentence, as approved, affects a general or flag officer, or extends to death, or to the dismissal of an officer, cadet, or midshipman. He shall also refer to a board of review the record in every case of trial by court-martial in which the sentence, as approved, extends to dishonorable or bad-conduct discharge, or to confinement for one year or more, unless such dishonorable or bad-conduct discharge, or confinement for one year or more, was adjudged in a case where the accused pleaded guilty to each offense of which he was found guilty."

(pp) Article 66 (c) is amended to read as follows:

"(c) In a case referred to it, the board of review shall act only with respect to the findings and sentence as approved by the convening authority. It shall affirm only such findings of guilty as it finds correct in law and fact and determines on the basis of the entire record should be affirmed. It shall affirm the sentence or such part or amount of the sentence as it finds correct in law. In considering the record, it shall have authority to weigh the evidence, judge the

credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.”

(qq) Article 66 (e) is amended to read as follows:

“(e) The Judge Advocate General may dismiss the charges whenever the board of review has ordered them dismissed or whenever the board of review has ordered a rehearing and he finds a rehearing impracticable. Otherwise, The Judge Advocate General shall, unless there is to be further action by the President, or the Secretary of the Department, or the Court of Military Appeals, instruct the convening authority to take action in accordance with the decision of the board of review. If the board of review has ordered a rehearing and the convening authority finds a rehearing impracticable, he may dismiss the charges.”

(rr) Article 67 (b) (3) is amended to read as follows:

“(3) All cases reviewed by a board of review in which, upon petition of the accused and on good cause shown, the Court of Military Appeals has granted a review; but the court must consider a petition for a grant of review only if, (A) counsel who represented the accused at his trial or before the board of review, (B) appellate defense counsel appointed by The Judge Advocate General if the accused was not represented by counsel before the board of review, or (C) civilian counsel retained by the accused, certifies that in his opinion the errors of law relied upon materially prejudiced the substantial rights of the accused.”

(ss) Article 67 (c) is amended to read as follows:

“(c) The accused shall have ten days from the time he is notified of the decision of a board of review to petition the Court of Military Appeals for a grant of review, but such petition shall not deprive the board of review of jurisdiction over his case until the petition or other document is received in the Court of Military Appeals. The court shall act upon such a petition within thirty days of the receipt thereof.”

(tt) Article 67 (f) is amended to read as follows:

“(f) After it has acted on a case, the Court of Military Appeals may direct The Judge Advocate General to return the record to the board of review for further review in accordance with the decision of the court. The Judge Advocate General may dismiss the charges whenever the Court of Military Appeals has ordered them dismissed or whenever the court has ordered a rehearing and he finds a rehearing impracticable. Otherwise, The Judge Advocate General shall, unless there is to be further action by the President or the Secretary of the Department, instruct the convening authority to take action in accordance with the decision of the court. If the court has ordered a rehearing and the convening authority finds a rehearing impracticable, he may dismiss the charges.”

(uu) Article 69 is amended to read as follows:

“ART. 69. Review in the Office of The Judge Advocate General.

“Every record of trial by court-martial, in which there has been a finding of guilty and a sentence, the appellate review of which is not otherwise provided for by articles 65 and 66, shall be examined in the office of the Judge Advocate General. The Judge Advocate General may refer any such record to a board of review for review in accordance with article 66. If any part of the findings or sentence is found unsupported in law, The Judge Advocate General shall either refer the record to a board of review for review in accordance with article 66 or take such action in the case as is authorized for a board of review under articles 66 (c) and (d). If the record is reviewed by a board of review, there shall be no further review by the Court of Military Appeals except pursuant to the provisions of article 67 (b) (2). The Judge Advocate General is not required to affirm a finding of guilty or a sentence found correct in law and fact.”

(vv) Article 71 is amended to read as follows:

"ART. 71. Execution of sentence; suspension of sentence.

"(a) No court-martial sentence extending to death or involving a general or flag officer shall be ordered executed until approved by the President. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence or any part of the sentence, as approved by him, except the death sentence. After the approval of a sentence extending to death by the convening authority, an accused shall accrue no pay or allowances unless such sentence is set aside or disapproved and a sentence extending to death is not imposed upon a new trial or rehearing."

"(b) Except as provided in (d) and (e) below, no sentence or portion of a sentence extending to the dismissal of an officer (other than a general or flag officer), cadet, or midshipman shall be ordered executed until approved by the Secretary of the Department, or such Under Secretary or Assistant Secretary as may be designated by him. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of any part of the sentence as approved by him. In time of war or national emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person who is so reduced may be required to serve for the duration of the war or emergency and six months thereafter."

"(c) Except as provided in (d) and (e) below, no sentence or portion of a sentence extending to dishonorable or bad-conduct discharge shall be ordered executed until approved by The Judge Advocate General or affirmed by a board of review, as the case may be, and, in cases reviewed by it, the Court of Military Appeals."

"(d) All court-martial sentences and portions of sentences not involving dismissal or dishonorable or bad-conduct discharge may be ordered executed by the convening authority when approved by him. The convening authority may suspend the execution of any sentence, except a death sentence."

"(e) Under such regulations as the Secretary of the Department may prescribe, the officer exercising general court-martial jurisdiction over the accused may, at any time after he approves a sentence extending to dismissal or to dishonorable or bad-conduct discharge, and upon the specific request of the accused, order the dismissal or discharge executed if the accused is eligible for parole or the sentence to confinement has been executed. If the sentence is not sustained upon appellate review, or in any subsequent proceedings, action shall be taken in accordance with article 75."

(ww) Article 72 (a) is amended to read as follows:

"(a) Prior to the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of a general court-martial sentence which as approved includes a bad-conduct discharge or exceeds a sentence that could have been adjudged by a special court-martial, the officer having special court-martial jurisdiction over the probationer, or an officer designated by him if authorized by regulations prescribed by the Secretary concerned, shall hold a hearing on the alleged violation of probation. At such hearing the probationer shall be represented by counsel if he so desires. No hearing shall be required if the probationer is serving a sentence to confinement, imposed by a civil court, in a civilian confinement facility."

(xx) Article 73 is amended to read as follows:

"ART. 73. Petition for a new trial.

"At any time within 2 years after approval by the convening authority of a court-martial sentence which extends to death, dismissal, dishonorable

or bad-conduct discharge, or confinement for one year or more, the accused may petition the Judge Advocate General for a new trial on grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a board of review or before the Court of Military Appeals, The Judge Advocate General shall refer the petition to the board or court, respectively, for action. The board of review or the Court of Military Appeals, as appropriate, shall determine whether a new trial, in whole or in part, should be granted, or shall take appropriate action under article 66 or article 67, respectively. Otherwise, The Judge Advocate General may grant a new trial in whole or in part, or may vacate or modify the findings and sentence in whole or in part."

(yy) Article 75 (a) is amended to read as follows:

"(a) Except as provided in (d) below, and under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed portion of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed portion is included in a sentence imposed upon the new trial or rehearing."

(zz) Article 75 is amended by inserting at the end thereof the following:

"(d) Where a sentence of dismissal or of dishonorable or bad-conduct discharge which has been executed under article 71 (e) is not sustained upon appellate review, the Secretary of the Department shall, except as hereinafter provided, substitute therefor a form of discharge authorized for administrative issuance. An officer dismissed by such a sentence may be reappointed by the President alone to such commissioned rank and precedence as in the opinion of the President such former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to position vacancy and shall affect the promotion status of other officers only insofar as the President may direct. A person discharged by such a sentence may be authorized by the Secretary of the Department to serve out the remainder of his enlistment. A person reappointed or restored to duty after his dismissal or discharge has been executed under article 71 (e) shall not be considered a member of the military service for any purpose during the interval between his dismissal or discharge and his reappointment or restoration."

(aaa) Article 95 is amended to read as follows:

"ART. 95. Arrest and physical restraint.

"Any person subject to this code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court-martial may direct."

(bbb) The following is inserted as article 123a:

"ART. 123a. Making, drawing, or uttering check, draft, or order without sufficient funds.

"Any person subject to this code who—

- (1) for the procurement of any article or thing of value, or
- (2) for the payment of any past-due debt or other obligation, or
- (3) for any purpose with intent to defraud, makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in or credit with the bank or other depository for the payment of that check, draft, or order in full upon its presentment, shall be punished as a court-martial may direct. The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, pay-

ment of which is refused by the drawee because of insufficient funds of the maker or drawer in its possession or control, shall be prima facie evidence of his intent to defraud and of his knowledge of insufficient funds in, or credit with, that bank or other depository, if the maker or drawer shall not have paid the holder thereof the amount due thereon within five days after receiving notice in person, or writing, that the draft or order has not been paid. The word 'credit,' as used herein, shall be construed to mean arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order.

SECTIONAL ANALYSIS

Paragraph (a) amends article 1 by defining the term "convening authority."

Paragraph (b) amends article 2 (4) to provide that members of reserve components of the armed forces who are entitled to receive retired or retainer pay be made subject to the Code.

Paragraph (c) amends article 12 to provide that a member of the armed forces of the United States may be confined in United States confinement facilities with members of the armed forces of friendly foreign nations.

Paragraph (d) repeals subsection (b) of article 14. The proposed amendment to article 57 (paragraph (jj) below) provides that the President may prescribe periods during which a sentence to confinement may be interrupted, making the provision in article 14 (b) unnecessary.

Paragraph (e) amends article 15 as follows: eliminates the term "commanding officer" and in lieu thereof uses the term "officer in command;" provides that the officer exercising general court-martial jurisdiction may impose a forfeiture of one-half pay per month for three months upon officers, the officer exercising special court-martial jurisdiction may impose confinement for ten days, confinement on bread and water for five days, forfeiture of one-half of one month's pay, or reduction in grade upon enlisted persons; and provides that appeals from non-judicial punishment must be made within fifteen days from the date the punishment is imposed.

Paragraph (f) amends article 16 to provide that a general court-martial shall consist of five or more members *including* a law officer, or of a law officer only if, prior to the convening of such court, the accused requests in writing that he be tried before a law officer only and the convening authority consents thereto. Further, a special court-martial shall consist of three or more members, or of a single officer only if, prior to the convening of such court, the accused so requests in writing and the convening authority consents thereto.

Paragraph (g) amends article 17 (b) to provide that review subsequent to that by the officer who convened the court shall be carried out by the armed force of which the accused is a member.

Paragraph (h) amends article 18 to provide that the death penalty may not be adjudged by a general court-martial consisting of a law officer.

Paragraph (i) amends article 19 to provide that special courts-martial may adjudge confinement on bread and water for thirty days and solitary confinement for thirty days. Further, the provision that a bad-conduct discharge shall not be adjudged unless a complete record of the proceedings and testimony before the court has been made is eliminated.

Paragraph (j) amends article 20 to provide that a summary court-martial may adjudge confinement on bread and water for twenty days and solitary confinement for twenty days. Further, the provision that the President may prescribe limitations on these punishments is eliminated.

Paragraph (k) amends article 22 (a) (4) to provide that any flag or general officer, or his successor, in command of a unit or activity of the Navy or Marine Corps may convene general courts-martial.

Paragraph (l) amends article 23 (a) (5) to provide that the officer in command of a unit or activity of the Navy or Coast Guard may convene special courts-martial.

Paragraph (m) amends articles 22 (b) and 23 (b) to provide that a convening authority not subordinate in command to the accuser shall be "competent authority" within the meaning thereof, and that a court may, in any case, be convened by superior competent authority when deemed desirable by him.

Paragraph (n) repeals subsection (c) of article 25, thus eliminating enlisted persons as members of courts-martial.

Paragraph (o) amends article 25 (a) to provide that an officer acting as a special court-martial shall have the qualifications specified for a law officer in article 26 (a).

Paragraph (p) amends article 26 to provide that a law officer acting as a general court-martial shall, in addition to the qualifications specified therein, be an officer serving in the grade of major or lieutenant commander or higher and be specifically certified for such duty by The Judge Advocate General. This paragraph also makes the necessary changes in language to refer to the law officer as a member of the court to conform with the amendment to article 16, *supra*.

Paragraph (q) amends article 27 (a) by deleting the language which disqualifies an investigating officer, law officer, or court member from acting subsequently in the same case as trial counsel or assistant trial counsel.

Paragraph (r) amends article 29 (b) by deleting the word "law officer" from the last sentence thereof.

Paragraph (s) amends article 29 by inserting a new subsection (c) which provides that a general court-martial shall not proceed in the absence of the member who is the law officer of the court and provides that the law officer, in addition to his duties as a member, shall perform the duties prescribed in article 51.

Paragraph (t) amends article 31 using as a guide the limitations suggested by Judge Latimer in his dissenting opinion in *United States v. Wilson & Harvey* (No. 647), 8 CMR 48.

Paragraphs (u) and (v) amend article 32 by deleting the words "thorough and impartial" from subsection (a) thereof and by inserting a new subsection (e) providing for a waiver of the pre-trial investigation for offenses in violation of articles 85 through 92 (desertion to disobedience of orders).

Paragraph (w) extends the provisions of article 37 to include staff officers serving convening authorities and commanding officers.

Paragraph (x) amends article 39 by deleting therefrom references to the law officer who will, under the amended article 16, be a member of the court and will sit with the court in its closed sessions.

Paragraph (y) amends article 41 (a) by deleting the words "and the law officer of a general court-martial" because, under amended article 16, the law officer will be a member of the court.

Paragraph (z) amends article 41 (b) to permit a peremptory challenge only in a general court-martial.

Paragraph (aa) amends article 42 (a) to provide that only the members, interpreters and reporters be required to take an oath or affirmation to perform their duties faithfully, and deletes the requirement that the oath or affirmation be taken in the presence of the accused.

Paragraph (bb) amends article 43 (b) to increase the statute of limitations for the offense of absence without leave in time of peace from two to three years.

Paragraph (cc) amends article 44 (c) to provide that if, subsequent to the introduction of evidence, charges are dismissed or terminated by the Government the proceedings shall be a trial for the purpose of double jeopardy.

Paragraph (dd) amends article 51 to provide that the officer acting as a general or special court-martial shall determine all questions of law and fact arising in the course of the trial, and adjudge an appropriate sentence in the event of conviction.

Paragraph (ee) amends article 51 (b) to provide that the law officer shall rule with finality on a motion for a finding of not guilty.

Paragraph (ff) amends article 51 (c) by eliminating the requirement that the law officer instruct the court on the elements of the offense.

Paragraph (gg) amends article 52 (a) (2) to provide that if a plea of guilty has been accepted by the court, a finding of guilty as to the offense may be entered in the record without a vote thereon.

Paragraph (hh) amends article 52 to make the provisions thereof inapplicable to courts-martial consisting of one officer only.

Paragraph (ii) amends article 54 to provide that there shall be a verbatim record of trial in each case where the sentence adjudged requires review of the case by a board of review, and that such records shall be authenticated in accordance with regulations prescribed by the President.

Paragraph (jj) amends article 57 by deleting from subsection (a) thereof the provision concerning forfeiture of pay in order to permit convening authorities to execute all portions of a sentence except those requiring departmental review. Further, the President is authorized to prescribe periods during which a sentence to confinement may be interrupted, such periods to be excluded in computing the service of the term of confinement.

Paragraphs (kk) and (uu) amend articles 65 (a) and 69 to provide that the record of trial of a general court-martial which adjudged a sentence not extending to a bad-conduct discharge, or not exceeding the sentence that could have been adjudged by a special court-martial, shall be transmitted and disposed of as the Secretary of the Department may prescribe by regulations. Further, article 69 is amended to provide that the Judge Advocate General in his discretion may refer any case reviewed by him to a board of review as now provided in article 69, or he himself may have the power and may take such action in the case as a board of review can take under articles 66 (c) and (d). He need not affirm a finding of guilty or a sentence found correct in law and fact.

Paragraph (ll) and (oo) amend articles 65 (b) and 66 (b) to provide that cases involving a dishonorable or bad-conduct discharge or confinement for one year or more where the accused has pleaded guilty to each offense of which

he has been found guilty need not be reviewed by a board of review. The effect of this amendment is to cause such cases to be reviewed under article 69.

Paragraph (mm) amends article 65 (c) to provide that upon review of summary courts-martial and special courts-martial not involving a bad-conduct discharge, a supervisory authority may, in addition to his authority to return the record to the convening authority for action, take any action on the record that is authorized for the convening authority. Further, lawyers of the Navy are made eligible to review records of trial by summary and special courts-martial.

Paragraph (nn) amends article 66 (a) to provide that boards of review shall be composed of three officers except that for the Coast Guard any member of a board of review may be a civilian. Further, each member of a board of review must have had at least six years of experience in legal duties in any department or armed force.

Paragraph (pp) amends article 66 (c) to repeal the provision which requires the boards of review to consider the appropriateness of sentences.

Paragraph (qq) amends article 66 (e) to authorize the Judge Advocate General to dismiss the charges when the board of review so directs or when he finds that the rehearing ordered by the board of review is impracticable.

Paragraph (rr) amends article 67 (b) (3) to provide that the Court of Military Appeals must consider petitions for grant of review only when counsel who represented the accused at trial or before the board of review, or appellate defense counsel appointed by the Judge Advocate General if the accused was not represented by counsel before the board, or civilian counsel retained by the accused certifies that in his opinion the errors of law relied upon materially prejudiced the substantial rights of the accused.

Paragraph (ss) amends article 67 (c) to provide that an accused shall have ten days, from the time he is notified of the decision of the board of review, to petition the Court of Military Appeals for a grant of review. The board of review shall not be deprived of jurisdiction over his case until the petition or other document is received in the Court of Military Appeals.

Paragraph (tt) amends article 67 (f) to authorize the Judge Advocate General to dismiss the charges when the Court of Military Appeals so directs or when he finds that the rehearing ordered by the Court of Military Appeals is impracticable.

Paragraph (vv) amends article 71 to provide that all portions of a sentence of a court-martial may be ordered executed by the convening authority when approved by him, except that portion of a sentence involving dismissal, dishonorable or bad-conduct discharge. No sentence involving death or a general or flag officer may be ordered into execution until finally approved in accordance with the code. Further, no pay or allowances shall accrue to a prisoner after the date the convening authority approves a sentence of death. After his approval of a sentence which includes a dishonorable or bad-conduct discharge or a dismissal, the officer exercising general court-martial jurisdiction may, upon the specific request of the accused, order the discharge or dismissal executed if the accused is eligible for parole or there remains no unexecuted sentence of confinement.

Paragraph (ww) amends article 72 (a) to provide that a hearing in vacation proceedings is unnecessary where the accused is serving a sentence of confinement imposed by a civil court, or where the sentence of a general court-martial, as approved, does not extend to a bad-conduct discharge, or does not exceed the

sentence that could have been adjudged by a special court-martial. Further, the hearing in vacation proceedings may be held by an officer designated by the officer exercising special court-martial jurisdiction if authorized by the Secretary concerned.

Paragraph (xx) amends article 73 to extend the time within which an accused may petition for a new trial to two years from the date the convening authority approves the sentence, and to provide that the Court of Military Appeals and the board of review may, in addition to determining whether a new trial in whole or in part should be granted, take appropriate action under article 66 and article 67, respectively. Further, the Judge Advocate General is authorized to grant a new trial in whole or in part, or to vacate or modify the findings and sentence in whole or in part.

Paragraphs (yy) and (zz) amend article 75 to provide that where a sentence which includes a dishonorable or bad-conduct discharge or a dismissal which has been executed upon the specific request of the accused is not sustained upon appellate review, the Secretary of the Department shall, unless the accused is reappointed or restored to duty, substitute therefor a form of discharge authorized for administrative issuance. The President may reappoint an officer dismissed by such sentence to such commissioned rank and precedence as in the opinion of the President such former officer would have attained had he not been dismissed. The appointment of such former officer shall be without regard to position vacancy and shall affect the promotion status of other officers only insofar as the President may direct. A person discharged by such sentence may be permitted to serve out the remainder of his enlistment. Further, no person reappointed or restored to duty after his dismissal or discharge has been executed upon his request shall be a member of the military service for any purpose during the interval between his dismissal or discharge and reappointment or restoration.

Paragraph (aaa) amends article 95 to remove all distinctions between confinement and custody.

Paragraph (bbb) inserts an additional punitive article similar to the bad-check statutes of the District of Columbia (title 22, D. C. Code, sec. 1410) and the State of Missouri (Revised Statutes of Missouri 561.460, 561.470, 561.480).



Report
of
THE JUDGE ADVOCATE GENERAL
of
THE AIR FORCE

January 1, 1954 to December 31, 1954



REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

1. *a.* Since the creation of the United States Air Force, military justice has been administered therein under the Articles of 1920 as implemented by the 1928 Manual for Courts-Martial, the amended Articles commonly known as the Elston Act as implemented by the 1949 Manual, and the present Uniform Code of Military Justice as implemented by the 1951 Manual. Experience as indicated that, so far as the Air Force is concerned, military justice was administered more efficiently under the Elston Act than under the laws which preceded it and the Uniform Code which replaced it. The processing time in handling courts-martial cases is 40% more in the present system and the cost to the Government of final appellate review under the Uniform Code is many times the cost under the Elston Act. The rights of the individual were given at least equal protection under the Elston Act as is now provided by the Uniform Code. Moreover, in the event of a global war, the present excessive costs in both time and money would be multiplied many times and a very appreciable part of such increase would be caused by the necessity of transporting court-martial records from the various theaters of operation to Washington every time the accused desires to petition the United States Court of Military Appeals for a grant of review under Article 67 (b) (3).

b. It thus appears that it might be in order to recommend the repeal of the Uniform Code of Military Justice and the reenactment of the Elston Act with the necessary modifications to make it applicable to all the armed services and to provide a method whereby the services may resolve their differences on questions of law, should any such differences arise. However, on the other hand, such a recommendation might be considered premature since the Uniform Code has only been in operation about three and one-half years. Therefore, it is recommended that the Uniform Code, with some vital and necessary amendments which will be discussed hereinafter, be afforded another year of operation so that its effectiveness and workability, as amended, may be studied and evaluated with a view toward devising a system of military justice which will provide prompt and efficient justice at a reasonable cost to the American people and which will work in time of global war.

2. *a.* In the Annual Report of the United States Court of Military Appeals and The Judge Advocates General of the Armed Forces and the General Counsel of the Department of the Treasury for the period June 1, 1952 to December 31, 1953, The Judge Advocate General of the Air Force joined with the Court and the other Judge Advocates General in recommending certain changes to the Uniform Code of Military Justice (see Annual Report, 1952-1953, Joint Report pp. 3-10, Exhibit D pp 30-33). The Air Force urges favorable action on these recommended changes with certain modifications and attached to this report is a draft of the legislative proposal to implement the recommended changes. The reasons stated in last year's report for the recommended changes are deemed adequate and will not be repeated at this time. However, the modifications to the prior recommended changes and the reasons therefor are set out hereinafter.

b. In last year's report, it was recommended, inter alia, that the limits on punishment under Article 15 of the Uniform Code which permits imposition of non-judicial punishment by commanding officers should, insofar as forfeitures of pay of officers are concerned, be increased from one-half of an officer's or warrant officer's pay per month for a period not exceeding 1 month, to one-half of his monthly pay for a period not exceeding 2 months (see Annual Report, Sixteenth Recommendation pp 9-10). Experience has indicated that a greater increase is required to provide Commanders with sufficient powers to impose punishment under Article 15 so that adequate and effective action may be taken in order to avoid the necessity of trial by court-martial with its consequent adverse effect on the usefulness of the officer in the command and its resultant cost in time, money and manpower. It is therefore recommended that the limits on forfeitures be increased so as to permit imposition of forfeitures of one-half of 1 month's pay per month for a period not exceeding 3 months.

c. The United States Court of Military Appeals and the Judge Advocates General of the Armed Forces, as well as the General Counsel of the Department of the Treasury, joined in recommending the necessary amendments to the Uniform Code so as to provide for trial by a one-officer court in all, except capital, cases where an accused, his counsel, and the convening authority agree before-hand to such a trial. The prescribed qualifications of the officer who could serve as a one-officer court required, inter alia, that he have the grade of at least lieutenant colonel or commander (See Annual Report, First Recommendation, pp. 4-5). Since this officer must have the qualifications of a law officer and must be certified as competent to serve as a one-officer court by The Judge Advocate General of the Service concerned, the Air Force recommends that the qualifications as to grade be lowered to major or lieutenant commander. Such officers are of

senior grade so it is certain that they will have considerable experience in the field of military law. Moreover, the requirement that The Judge Advocate General of the Service concerned certify such officers as competent to perform such duty is deemed sufficient to insure that only those experienced officers competent to perform such duties will actually act as one-officer courts.

d. The Judge Advocates General recommended in last year's report that Article 67 (b) (3) be amended to provide that the United States Court of Military Appeals need only consider petitions for grant of review when the counsel representing the accused, at trial or on appellate review, certifies that in his opinion the errors of law relied upon in the petition materially prejudiced the substantial rights of the accused (Annual Report, Exhibit D, p. 31). Further study has indicated that a different procedure for processing petitions for grant of review should be instituted.

Three and one-half years' experience under the Uniform Code has clearly indicated that the unlimited authority of an accused to petition the United States Court of Military Appeals for a grant of review under Article 67 (b) (3) has resulted in numerous frivolous appeals being made to the court with attendant excessive costs in time, money and manpower as a result thereof.

At the present time, with approximately three million men in the armed forces, the most recent budget request for the amount needed to operate the Court for one year amounted to \$320,000. In the event of a war and complete mobilization, the number of personnel in the armed forces would increase tremendously. For example, during World War II there were approximately twelve million persons in uniform. It can thus be expected that the cost of maintaining the Court under its present setup would, in the event of war, increase at least four times its present cost and that even then, operation of the appellate system would be nearly impossible.

Additionally, experience has clearly indicated that modern warfare is carried on in a global capacity. In order to avoid lengthy delays in processing cases arising during a global war, the Congress has provided in Article 68 of the Uniform Code for executive authority to establish branch offices under an Assistant Judge Advocate General with Boards of Review in such branch offices. In wartime, petitions for review to the Court of Military Appeals would be emanating from the four corners of the world with the added transportation costs arising from forwarding the records of trial to Washington, D. C., so that the Court could determine whether a petition should be granted. In addition, the delay in processing such petitions which is inherent in the present system would, in wartime, necessarily reach staggering proportions.

From the figures furnished by the United States Court of Military Appeals in the last Annual Report, we find that as of 31 December 1953, 3,488 of 4,092 petitions forwarded to the Court were denied, or stated percentage-wise, 85 percent of the petitions for grant of review which were presented to the Court were denied.

In the Air Force, during the past year (1 January 1954 to 31 December 1954) the accused petitioned the Court for a grant of review in 431 cases and such petition was denied, indicating no justiciable issue was found to exist, in 386 cases or 90 percent of those petitioned (13 petitions granted, 6 petitions withdrawn and action pending on 26 petitions). In the event of all out mobilization, since the number of personnel on active duty in the armed forces would probably quadruple it is only reasonable to expect that the above figures on petitions presented and those denied would likewise be increased at least four times their present size. Accordingly, it is deemed essential to devise some means to lighten the work load of the United States Court of Military Appeals and to eliminate excessive and frivolous appeals so that the present system of military justice might function in the event of war.

Each time the accused petitions the Court of Military Appeals for a grant of review, the record of trial must be forwarded to the Court, pro-forma pleadings by appellate defense and government counsel must be filed, and the Court must review the matter to determine whether a petition for grant of review should be granted. In nearly every case of this nature, only general allegations of error are made without specifying any error of law, and the reply is likewise a general denial. In addition, nearly every such petition, where no specific error is assigned, is eventually denied review by the Court. Such procedure results in unnecessary waste of time, money and manpower with no benefit to an accused's substantial rights.

It is therefore recommended that petitions for grant of review should be forwarded to the United States Court of Military Appeals only after The Judge Advocate General of the Service concerned has issued a Certificate of Good Cause Shown. The procedure whereby an accused may obtain such a Certificate would require that within 10 days of receipt of the decision of the Board of Review, the accused may petition The Judge Advocate General of the service concerned for a Certificate of Good Cause Shown. The Judge Advocate General shall then refer the case to a Judicial Appeals Board constituted in his office. Judicial Appeals Boards constituted by The Judge Advocate General will be composed of at least three members who are senior officers above the rank of lieutenant colonel or commandant, who have at least ten years legal experience, and who are members of the bar of a Federal Court or of the highest court of a State. Pro-

cedure before the Judicial Appeals Board should be in accordance with uniform rules established by The Judge Advocates General which may provide for determination by such Boards on the pleadings. The Judicial Appeals Board which considers the case shall, *if all three members* agree that the accused has not shown good cause for appeal from the decision of the Board of Review, deny the petition. However, if the Judicial Appeals Board does not unanimously agree that the petition should be denied, The Judge Advocate General shall issue a Certificate of Good Cause Shown and forward the record of trial, the pleadings, the findings of the Judicial Appeals Board, and the Certificate, to the United States Court of Military Appeals for its consideration and decision as to whether the petition for grant of review should be granted. If branch offices of The Judge Advocate General are established under the authority of Article 68, then Judicial Appeals Boards as well as Boards of Review will also be established in the branch offices. This procedure will avoid the excessive costs and lengthy delays incident to frivolous appeals being considered by the Court and still guarantee an accused the right to appeal from the decision of the Board of Review. Moreover, this system may make it possible for the present appellate procedure prescribed in the Uniform Code of Military Justice to function during war.

3. *a.* Pursuant to the mandate of Article 6 (a), Uniform Code of Military Justice, that The Judge Advocate General shall make frequent inspections in the field in the administration of military justice, Major General Reginald C. Harmon and senior members of his staff have visited numerous Air Force installations in the United States and overseas during the period of this report.

b. Continued emphasis was given during this period to the rehabilitation and retraining of Air Force prisoners deemed potentially restorable to a duty status. While most Air Force confinement facilities have active rehabilitation programs in operation, the 3320th Retraining Group, Amarillo Air Force Base, Texas, has returned approximately 900 prisoners to a duty status since its activation in February, 1952. During the past year certain follow-up studies made by the Amarillo operation revealed that out of a group of about 500 prisoners returned to duty, 77% readjusted to productive duty status. The remaining 23% were unsuccessful in readjusting to productive duty as evidenced by their commission of further offenses and separation from the Air Force under conditions other than honorable.

c. Concerted effort has been continuously directed toward increasing the number of Judge Advocate General Department Reservists and Reserve Training Units. During 1953, the number of Training Units was increased from 39 to 68 and the number of Air Force Reserve attorneys either assigned to or training with these units has increased

from 390 to 858. In addition, during 1954, The Judge Advocate General sponsored a program which will afford every Reserve Training Unit a 3-day orientation and training exercise at Headquarters, United States Air Force in Washington, D. C. Already, 28 groups of Air Force Reserve attorneys have been flown to Washington and conducted through the Office of The Judge Advocate General for complete briefings by Major General Reginald C. Harmon and the officer in charge of each section. This training exercise has resulted in greater knowledge and understanding of the functions of the Office of The Judge Advocate General and in promoting and vitalizing the entire Air Force Reserve Training program.

d. In alleviating the critical shortage of qualified court reporters the Air Force has made great strides in the electronic court reporting field utilizing a closed microphone system. We are now able to train an airman typist, who has the proper background in military justice procedure and is otherwise qualified, to become a suitable court reporter in a few weeks time. The Air Force is now using about forty such court reporters and more are being trained at the present time.

e. Another development during the year was the creation of a new career field for airmen in the semi-professional legal specialty. This corrects the many difficulties previously encountered in sharing enlisted personnel with all other branches of the Air Force administrative field.

f. During the period of this report, 175 judge advocates newly-assigned and on active duty with the Judge Advocate General's Department of the Air Force were graduated from the Judge Advocate General's course conducted at the Command and Staff School, Air University, Maxwell Air Force Base, Alabama. However, it has been observed that virtually all new legal officer procurement for the next two years will come from college ROTC sources insuring considerable background in military service and a basic course in military law; the retention time of these officers on active duty (2 years) is substantially reduced by the time spent in attending the course, travel time both ways and accrued leave time; the shortage of prospective students makes the cost per student prohibitive, and a substantial portion of the benefits derived from the School could be provided by on-the-job training in Air Force legal offices during the early stages of the newly-assigned law school graduate's tour of active duty. Accordingly, a decision was made in October 1954 to close the School and place it on a standby basis effective 1 January 1955.

g. At the close of the period, there were 83 commands in the Air Force exercising general court-martial jurisdiction. Reciprocal court-martial jurisdiction has been granted by the Secretary of Defense to three commands, and general authorization for the inter-

service utilization of law officers and counsel has been granted to five commands.

4. a. The number of records of trial received in the Office of The Judge Advocate General for review pursuant to Article 66 during the period covered by this report follows:

	1 Jan 1954	
	to	
	31 Dec 1954	
Total.....		*3,744

*1,464 general courts-martial; 2,280 special courts-martial.

In addition, the following table shows the number of records of trial received in the Office of The Judge Advocate General for examination pursuant to Article 69 during the same period:

	1 Jan 1954	
	to	
	31 Dec 1954	
Total.....		373

b. The following table shows the workload of the Boards of Review during the same period:

	1 Jan 1954		
	to		
	31 Dec 1954		
On hand at beginning of period.....		156	
Referred for review.....		3,744	3,900
Reviewed.....		3,787	
Pending at close of period.....		113	3,900

c. From 1 January to 31 December 1954, 51 percent of the accused whose cases were received in the Office of The Judge Advocate General for review pursuant to Article 66 requested representation by appellate defense counsel before Boards of Review.

d. Based upon the number of cases reviewed by boards of review during the period, 11.6 percent were forwarded to the United States Court of Military Appeals pursuant to the three subdivisions of the Uniform Code of Military Justice, Article 67 (b). Of the total cases forwarded, all except five were based upon petitions of the accused for grant of review by the Court of Military Appeals. Four cases during the period were certified by The Judge Advocate General, and there was one mandatory review by the Court of Military Appeals. Petitions were granted by the Court of Military Appeals during the period in 3 percent of the cases which were petitioned, or 0.3 percent of the total number of cases reviewed by the Boards of Review.

REGINALD C. HARMON,
Major General, USAF,
The Judge Advocate General, United States Air Force.

A BILL

To amend the Uniform Code of Military Justice.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Uniform Code of Military Justice (64 Stat. 107, 50 U. S. C. 551 et seq.) is amended as follows:

(a) Article 1 is amended by changing the period at the end thereof to a semicolon and inserting a new clause (15), as follows:

"(15) 'Convening authority' shall be construed to refer to the officer who convened the court, an officer commanding for the time being, a successor in command, or any officer exercising general court-martial jurisdiction."

(b) Article 12 is amended to read as follows:

"ART. 12. Confinement with enemy prisoners prohibited.

"No member of the armed forces of the United States shall be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces of the United States, except that a member of the armed forces of the United States may be confined in United States confinement facilities with members of the armed forces of friendly foreign nations."

(c) Article 15 (a) (1) (C) is amended by deleting the words "one month" at the end thereof and substituting therefor the words "three months".

(d) Article 15 (a) (2) (E) is amended by deleting the words "if imposed upon a person attached to or embarked in a vessel,".

(e) Article 15 (a) (2) is amended by (1) changing the period at the end of clause (F) to a semicolon and inserting immediately thereafter the word "or", and (2) inserting a new clause (G), as follows:

"(G) forfeiture of not to exceed one-half of one month's pay."

(f) Article 16 is amended to read as follows:

"ART. 16. Courts-martial classified.

"(a) There shall be three kinds of courts-martial in each of the armed forces, namely:

- (1) general courts-martial;
- (2) special courts-martial; and
- (3) summary courts-martial.

"(b) A general court-martial shall consist of a law officer and any number of members not less than five, except that a general court-martial shall consist only of a law officer if, prior to the convening of the court, the accused has so requested in writing, and the convening authority has consented thereto.

"(c) A special court-martial shall consist of any number of members not less than three, except that a special court-martial shall consist of only one officer if, prior to the convening of the court, the accused has so requested in writing, and the convening authority has consented thereto.

"(d) A summary court-martial shall consist of one officer."

(g) Article 18 is amended by inserting the following new sentence immediately after the first sentence:

"However, a general court-martial consisting only of a law officer shall not adjudge the penalty of death."

(h) articles 22 (b) and 23 (b) are amended to read as follows:

“(b) When any such officer is an accuser, the court shall be convened by a competent authority not subordinate in command to the accuser, and may in any case be convened by a superior competent authority when deemed desirable by him.”

(i) Article 25 (a) is amended by inserting the following new sentence at the end thereof:

“However, to be eligible for appointment as a special court-martial, an officer shall have the qualifications specified for a law officer in article 26 (a).”.

(j) Article 26 is amended to read as follows:

“ART. 26. Law officer of a general court-martial.

“(a) The authority convening a general court-martial shall appoint as law officer thereof an officer who is a member of the bar of a Federal court or of the highest court of a State of the United States and who is certified to be qualified for such duty by The Judge Advocate General of the armed force of which he is a member.

“(b) A law officer appointed as a general court-martial shall, in addition to having the qualifications specified in (a) above, be (1) specifically certified to be qualified for such duty by The Judge Advocate General of the armed force of which he is a member, and (2) serving in a grade above captain if a member of the Army, Air Force, or Marine Corps, and in a grade above lieutenant if a member of the Navy or Coast Guard.

“(c) No person shall be eligible to act as law officer in a case when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

“(d) The law officer shall not consult with the members of the court, other than on the form of the findings and the sentence as provided in article 39, except in the presence of the accused, trial counsel, and defense counsel, nor shall he vote with the members of the court.”.

(k) Article 31 is amended to read as follows:

“ART. 31. Compulsory self-incrimination prohibited.

“(a) No person subject to this code shall compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

“(b) No person subject to this code who occupies an official position with a military law enforcement or military crime detection agency, or who is otherwise engaged in or responsible for the conduct of an official military investigation, shall, during the course of such an investigation, interrogate or request any statement from an accused or any other person when the investigator has reasonable grounds to suspect that the person interrogated has committed the particular offense under investigation without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

“(c) No person subject to this code shall compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

“(d) No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement shall be received in evidence against him in a trial by court-martial.”.

(l) The first sentence of article 37 is amended to read as follows:

"No authority convening a general, special, or summary court-martial, nor other commanding officer, nor any officer serving on the staffs thereof, shall censure, reprimand, or admonish such court or any member, law officer, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceedings."

(m) The second sentence of article 39 is amended to read as follows:

"After a general court-martial, other than one consisting only of a law officer, has finally voted on the findings or the sentence, the court may request the law officer and the reporter to appear before the court to put the findings or the sentence, as the case may be, in proper form, and such proceedings shall be on the record."

(n) Article 41 (b) is amended to read as follows:

"(b) Each accused and trial counsel shall be entitled to one peremptory challenge, but the law officer and an officer appointed as a special court-martial shall not be challenged except for cause."

(o) Article 51 is amended by inserting at the end thereof the following:

"(d) The foregoing provisions of this article shall not apply to a general or special court-martial consisting of only one officer. Notwithstanding any other provision of this code, the officer who is appointed as such a court-martial shall determine all questions of law and fact arising during a trial by such court and shall, in the event of conviction of the accused, adjudged an appropriate sentence."

(p) The second sentence of article 51 (b) is amended to read as follows:

"Any such ruling made by the law officer of a general court-martial upon any interlocutory question other than the question of the accused's sanity shall be final and shall constitute the ruling of the court, but the law officer may change any such ruling at any time during the trial."

(q) Article 52 is amended by inserting at the end thereof the following:

"(d) This article shall not apply to a general or special court-martial consisting of only one officer."

(r) Article 54 is amended to read as follows:

"ART. 54. Record of trial.

"(a) Each court-martial shall keep a separate record of the proceedings of the trial of each case brought before it. A record of trial by a court-martial in which the sentence adjudged requires review by a board of review under article 66 shall contain a complete verbatim account of the proceedings and testimony before the court, and shall be authenticated in such manner as may be required by regulations which the President may prescribe. All other records of trial shall contain such matter and be authenticated in such manner as may be required by regulations which the President may prescribe.

"(b) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as authenticated."

(s) Article 57 (b) is amended by inserting at the end thereof the following new sentence:

"The President may prescribe other periods during which a sentence to confinement may be interrupted and such periods shall be excluded in computing the service of the term of confinement."

(t) Article 65 (a) is amended to read as follows:

"(a) When the convening authority has taken final action in a general court-martial case and the sentence as approved by him includes a bad-conduct discharge or exceeds a sentence that could have been adjudged by a special

court-martial, he shall forward the entire record, including his action thereon and the opinion or opinions of the staff judge advocate or legal officer, to the appropriate Judge Advocate General. All other general court-martial records shall be transmitted and disposed of as the Secretary of the Department may prescribe by regulations.”.

(u) Article 65 (b) is amended by deleting the words “to be reviewed by a board of review” wherever appearing therein.

(v) Article 65 (c) is amended to read as follows:

“(c) All other special and summary court-martial records shall be forwarded to the officer exercising general court-martial jurisdiction over the command, or such other authority as may be designated by the Secretary of the Department, for review by a judge advocate of the Army or Air Force, a law specialist or lawyer of the Navy, or a law specialist or lawyer of the Coast Guard or Treasury Department. In addition to returning such records to the convening authority with a direction that certain action be taken, the officer exercising general court-martial jurisdiction, or the authority designated by the Secretary of the Department, may take the same action with respect to such records as is authorized for the convening authority. Such records shall be transmitted and disposed of as the Secretary of the Department may prescribe by regulations.”.

(w) Article 66 (b) is amended to read as follows:

“(b) The Judge Advocate General shall refer to a board of review the record in every case of trial by court-martial in which the sentence, as approved, affects a general or flag officer, or extends to death, or to the dismissal of an officer, cadet, or midshipman. He shall also refer to a board of review the record in every case of trial by court-martial in which the sentence, as approved, extends to dishonorable or bad-conduct discharge, or to confinement for one year or more, unless such dishonorable or bad-conduct discharge, or confinement for one year or more, was adjudged in a case where the accused pleaded guilty to each offense of which he was found guilty.”.

(x) Article 66 (e) is amended to read as follows:

“(e) The Judge Advocate General may dismiss the charges whenever the board of review has ordered them dismissed or whenever the board of review has ordered a rehearing and he finds a rehearing impracticable. Otherwise, The Judge Advocate General shall, unless there is to be further action by the President, or the Secretary of the Department or the Court of Military Appeals, instruct the convening authority to take action in accordance with the decision of the board of review. If the board of review has ordered a rehearing and the convening authority finds a rehearing impracticable, he may dismiss the charges.”.

(y) The catchline or article 67 is amended to read as follows:

“ART. 67. Review by the judicial appeals board and the Court of Military Appeals.”.

(z) Article 67 (b) (3) is amended to read as follows:

“(3) All cases reviewed by a board of review in which, upon petition of the accused, The Judge Advocate General, under article 67 (c), issues a certificate of good cause shown and the Court of Military Appeals grants a review.”.

(aa) Article 67 (c) is amended to read as follows:

“(c) The Judge Advocate General shall constitute in his office one or more judicial appeals boards, each composed of not less than three officers, each of whom—

(1) except under exigent circumstances for periods not in excess of 60 days, is serving in a grade above lieutenant colonel or commander, as the case may be;

(2) must be a member of the bar of a Federal court or of the highest court of a State; and

(3) has had at least 10 years' legal experience as defined in regulations prescribed by the President.

The accused shall have 10 days from the time he is notified of a decision by a board of review to petition The Judge Advocate General for a certificate of good cause shown and the petition shall be referred to a judicial appeals board. The Judge Advocate General and the judicial appeals board shall act upon the petition within 15 days after receiving it. If the judicial appeals board unanimously determines that the accused has not shown good cause for appeal, it shall deny the petition. Otherwise, The Judge Advocate General shall issue and forward a certificate of good cause shown, together with the petition, to the Court of Military Appeals. Procedure for judicial appeals boards shall be in accordance with uniform rules prescribed by the Judge Advocates General, and such rules may provide that determination by such boards will be on pleadings alone. The board of review shall have jurisdiction over the case until the petition and certificate is received by the Court of Military Appeals. The court shall act upon the petition within 30 days after receiving it."

(bb) The third sentence of article 67 (d) is amended to read as follows:

"In a case reviewed upon a certificate of good cause shown issued by The Judge Advocate General, such action need be taken only with respect to issues specified in the grant of review."

(cc) Article 67 (f) is amended to read as follows:

"(f) After it has acted on a case, the Court of Military Appeals may direct The Judge Advocate General to return the record to the board of review for further review in accordance with the decision of the court. The Judge Advocate General may dismiss the charges whenever the Court of Military Appeals has ordered them dismissed or whenever the court has ordered a rehearing and he finds a rehearing impracticable. Otherwise, The Judge Advocate General shall, unless there is to be further action by the President or the Secretary of the Department, instruct the convening authority to take action in accordance with the decision of the court. If the court has ordered a rehearing and the convening authority finds a rehearing impracticable, he may dismiss the charges."

(dd) Article 68 is amended to read as follows:

"ART. 68. Branch offices.

"Whenever the President deems such action necessary, he may direct The Judge Advocate General to establish a branch office, under an Assistant Judge Advocate General, with any distant command, and to establish in such branch office one or more boards of review and judicial appeals boards. Such Assistant Judge Advocate General and any such board of review and judicial appeals board may perform for that command, under the general supervision of The Judge Advocate General, the duties which The Judge Advocate General and a board of review and a judicial appeals board in his office would otherwise be required to perform in respect of all cases involving sentences not requiring approval by the President."

(ee) Article 69 is amended to read as follows:

"ART. 69. Review in the office of The Judge Advocate General.

"Every record of trial by court-martial, in which there has been a finding of guilty and a sentence, the appellate review of which is not otherwise provided

for by articles 65 and 66, shall be examined in the office of The Judge Advocate General. The Judge Advocate General may refer any such record to a board of review for review in accordance with article 66. If any part of the findings or sentence is found unsupported in law, The Judge Advocate General shall either refer the record to a board of review for review in accordance with article 66 or take such action in the case as is authorized for a board of review under article 66 (c) and (d). If the record is reviewed by a board of review, there shall be no further review by the Court of Military Appeals except pursuant to the provisions of article 67 (b) (2). The Judge Advocate General is not required to affirm a finding of guilty or a sentence found correct in law and fact.”.

(ff) Article 70 is amended to read as follows :

“ART. 70. Appellate counsel.

“(a) The Judge Advocate General shall detail in his office one or more officers as appellate Government counsel, and one or more officers as appellate defense counsel, who are qualified under the provisions of article 27 (b) (1).

“(b) Appellate Government counsel shall represent the United States before the board of review, the judicial appeals board, or the Court of Military Appeals when directed to do so by The Judge Advocate General.

“(c) Appellate defense counsel shall represent the accused before the board of review, the judicial appeals board, or the Court of Military Appeals—

(1) when he is requested to do so by the accused;

(2) when the United States is represented by counsel; or

(3) when The Judge Advocate General has transmitted a case to the Court of Military Appeals.

“(d) The accused has the right to be represented before the Court of Military Appeals, the judicial appeals board, or the board of review by civilian counsel if provided by him.

“(e) Military appellate counsel shall also perform such other functions in connection with the review of court-martial cases as The Judge Advocate General directs.”.

(gg) Article 71 is amended to read as follows :

“ART. 71. Execution of sentences; suspension of sentence.

“(a) No court-martial sentence extending to death or involving a general or flag officer shall be ordered executed until approved by the President. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence or any part of the sentence, as approved by him, except the death sentence. After the approval of a sentence extending to death by the convening authority, an accused shall accrue no pay or allowances unless such sentence is set aside or disapproved and a sentence extending to death is not imposed upon a new trial or rehearing.

“(b) Except as provided in (d) and (e) below, no sentence or portion of a sentence extending to the dismissal of an officer (other than a general or flag officer), cadet, or midshipman shall be ordered executed until approved by the Secretary of the Department, or such Under Secretary or Assistant Secretary as may be designated by him. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of any part of the sentence as approved by him. In time of war or national emergency, he may commute a sentence of dismissal to reduction to any enlisted grade. A person who is so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

"(c) Except as provided in (d) and (e) below, no sentence or portion of a sentence extending to dishonorable or bad-conduct discharge shall be ordered executed until approved by The Judge Advocate General or affirmed by a board of review, as the case may be, and, in cases reviewed by it, the Court of Military Appeals.

"(d) All court-martial sentences and portions of sentences not involving dismissal or dishonorable or bad-conduct discharge may be ordered executed by the convening authority when approved by him. The convening authority may suspend the execution of any sentence, except a death sentence.

"(e) Under such regulations as the Secretary of the Department may prescribe, the officer exercising general court-martial jurisdiction over the accused may, at any time after he approves a sentence extending to dismissal or to dishonorable or bad-conduct discharge, and upon the specific request of the accused, order the dismissal or discharge executed if the accused is eligible for parole or the sentence to confinement has been executed. If the sentence is not sustained upon appellate review, or in any subsequent proceedings, action shall be taken in accordance with article 75."

(hh) Article 72 (a) is amended to read as follows:

"(a) Prior to the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of a general court-martial sentence which as approved includes a bad-conduct discharge or exceeds a sentence that could have been adjudged by a special court-martial, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. At such hearing the probationer shall be represented by counsel if he so desires. No hearing shall be required if the probationer is serving a sentence to confinement, imposed by a civil court, in a civilian confinement facility."

(ii) Article 73 is amended to read as follows:

"ART. 73. Petition for a new trial.

"At any time within 2 years after approval by the convening authority of a court-martial sentence which extends to death, dismissal, dishonorable or bad-conduct discharge, or confinement for one year or more, the accused may petition The Judge Advocate General for a new trial on grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a board of review or before the Court of Military Appeals, The Judge Advocate General shall refer the petition to the board or court, respectively, for action. The board of review or the Court of Military Appeals, as appropriate, shall determine whether a new trial, in whole or in part, should be granted, or shall take appropriate action under article 66 or article 67, respectively. Otherwise, The Judge Advocate General may grant a new trial in whole or in part, or may vacate or modify the findings and sentence in whole or in part."

(jj) Article 75 (a) is amended to read as follows:

"(a) Except as provided in (d) below, and under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed portion of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed portion is included in a sentence imposed upon the new trial or rehearing."

(kk) Article 75 is amended by inserting at the end thereof the following:

"(d) Where a sentence of dismissal or of dishonorable or bad-conduct discharge which has been executed under article 71 (e) is not sustained upon appellate review, the Secretary of the Department shall, except as hereinafter pro-

vided, substitute therefor a form of discharge authorized for administrative issuance. An officer dismissed by such a sentence may be reappointed by the President alone to such commissioned rank and precedence as in the opinion of the President such former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to position vacancy and shall affect the promotion status of other officers only insofar as the President may direct. A person discharged by such a sentence may be authorized by the Secretary of the Department to serve out the remainder of his enlistment. A person reappointed or restored to duty after his dismissal or discharge has been executed under article 71 (e) shall not be considered a member of the military service for any purpose during the interval between his dismissal or discharge and his reappointment or restoration."

(ll) Article 95 is amended to read as follows:

"ART. 95. Arrest and physical restraint.

"Any person subject to this code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court-martial may direct."

(mm) The following is inserted as article 123a:

"ART. 123a. Making, drawing, or uttering check, draft, or order without sufficient funds.

"Any person subject to this code who—

- (1) for the procurement of any article or thing of value, or
- (2) for the payment of any past due debt or other obligation, or
- (3) for any purpose with intent to defraud,

makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full upon its presentment, shall be punished as a court-martial may direct. The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in its possession or control, shall be prima facie evidence of his intent to defraud and of his knowledge of insufficient funds in, or credit with, that bank or other depository, if the maker or drawer shall not have paid the holder thereof the amount due thereon within five days after receiving notice in person, or writing, that the check, draft, or order has not been paid. The word 'credit', as used herein, shall be construed to mean arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order."

Sec.2. This Act shall become effective on the first day of the tenth month after approval of this Act.

SECTIONAL ANALYSIS OF A BILL

To amend the Uniform Code of Military Justice.

Subsection (a) amends article 1 by defining the term "convening authority".

Subsection (b) amends article 12 to provide that a member of the armed forces of the United States may be confined in United States confinement facilities with members of the armed forces of friendly foreign nations.

Subsection (c) amends article 15 (a) (1) (C) to provide that a commanding officer exercising general court-martial jurisdiction may impose on an officer or warrant officer of his command forfeiture of one-half of his pay per month for a period not exceeding three months.

Subsection (d) amends article 15 (a) (2) (E) to provide that a commanding officer may confine an enlisted member of his command for a period not to exceed seven consecutive days.

Subsection (e) amends article 15 (a) (2) to provide that a commanding officer may impose on an enlisted member of his command forfeiture of one-half of one month's pay.

Subsection (f) amends article 16 to provide that a general court-martial shall consist of a law officer and five or more members, or of a law officer only, if, prior to the convening of such court, the accused requests in writing that he be tried before a law officer only and the convening authority consents thereto. Further, a special court-martial shall consist of three or more members, or of a single officer only, if prior to the convening of such court, the accused so requests in writing and the convening authority consents thereto.

Subsection (g) amends article 18 to provide that the death penalty may not be adjudged by a general court-martial consisting of a law officer only.

Subsection (h) amends articles 22 (b) and 23 (b) to provide that a convening authority not subordinate in command to the accuser shall be "competent authority" within the meaning thereof, and that a court may, in any case, be convened by superior competent authority when deemed desirable by him.

Subsection (i) amends article 25 (a) to provide that an officer acting as a special court-martial shall have the qualifications specified for a law officer in article 26 (a) .

Subsection (j) amends article 26 to provide that a law officer acting as a general court-martial shall, in addition to the qualifications specified therein, be an officer serving in the grade of major or lieutenant commander or higher and be specifically certified for such duty by The Judge Advocate General.

Subsection (k) amends article 31 using as a guide the limitations suggested by Judge Latimer in his dissenting opinion in *United States v. Wilson & Harvey* (No. 647), 8 CMR 48.

Subsection (l) extends the provisions of article 37 to include staff officers serving convening authorities and commanding officers.

Subsection (m) amends article 39 to provide that a law officer may enter a closed session of the court to assist in putting the sentence in proper form.

Subsection (n) amends article 41 (b) to provide that the one officer special court-martial may be challenged for cause only.

Subsection (o) amends article 51 to provide that the officer acting as a general or special court-martial shall determine all questions of law and fact arising in the course of the trial, and adjudge an appropriate sentence in the event of conviction.

Subsection (p) amends article 51 (b) to provide that the law officer shall rule with finality on a motion for a finding of not guilty.

Subsection (q) amends article 52 to make the provisions thereof inapplicable to courts-martial consisting of one officer only.

Subsection (r) amends article 54 to provide that there shall be a verbatim record of trial in each case where the sentence adjudged requires review of the case by a board of review, and that such records shall be authenticated in accordance with regulations prescribed by the President.

Subsection (s) amends article 57 (b) to authorize the President to prescribe periods during which a sentence to confinement may be interrupted. Further, such periods are to be excluded in computing the service of the term of confinement.

Subsections (t) and (ee) amend articles 65 (a) and 69, respectively, to provide that the record of trial of a general court-martial which adjudged a sentence not extending to a bad-conduct discharge, or not exceeding the sentence that could have been adjudged by a special court-martial, shall be transmitted and disposed of as the Secretary of the Department may prescribe by regulations. Further, article 69 is amended to provide that The Judge Advocate General in his discretion may refer any case reviewed by him to a board of review as now provided in article 69, or he himself may have the power and may take such action in the case as a board of review can take under article 66 (c) and (d). He need not affirm a finding of guilty or a sentence found correct in law and fact.

Subsections (u) and (w) amend articles 65 (b) and 66 (b), respectively, to provide that cases involving a dishonorable or bad-conduct discharge or confinement for one year or more where the accused has pleaded guilty to each offense of which he has been found guilty need not be reviewed by a board of review. The effect of this amendment is to cause such cases to be reviewed under article 69.

Subsection (v) amends article 65 (c) to provide that upon the review of summary courts-martial and special courts-martial not involving a bad-conduct discharge, a supervisory authority may, in addition to his authority to return the record to the convening authority for action, take any action on the record that is authorized for the convening authority. Further lawyers of the Navy are made eligible to review records of trial by summary and special courts-martial.

Subsection (x) amends article 66 (e) to authorize The Judge Advocate General to dismiss the charges when the board of review so directs or when he finds that the rehearing ordered by the board of review is impracticable.

Subsection (z) amends article 67 (b) (3) to provide that the Court of Military Appeals must consider petitions for grant of review only when upon petition of the accused, The Judge Advocate General issues a certificate of good cause shown.



Report
of
THE GENERAL COUNSEL
of
THE DEPARTMENT OF THE TREASURY
(UNITED STATES COAST GUARD)

January 1, 1954 to December 31, 1954



REPORT OF THE GENERAL COUNSEL OF THE TREASURY DEPARTMENT—UNITED STATES COAST GUARD

1. During the period of this report the decline in courts-martial of all types noted in the last annual report continued. Trials by courts-martial in the Coast Guard occurred at the remarkably low rate of approximately one for every thirty enlisted men, and only one general court-martial for every 1,200 enlisted men. It has been said that a normal rate for general courts-martial is 60 cases per 10,000 strength per year. In the Coast Guard only 8.3 enlisted men per 10,000 were tried by general court-martial. Comparative figures for records received in 1953 and 1954 follow:

	1954	1953
General courts-martial.....	19	19
Special courts-martial.....	168	279
Summary courts-martial.....	612	725
	799	1023
Total.....	799	1023

The continued decline of an already small incidence of courts-martial bears witness to the existence of a healthy state of morale among the personnel of the Coast Guard. It also reflects a diminution in AWOL offenses, which perennially constitute the bulk of all court-martial charges.

2. At the close of the year 32 officers of the Coast Guard were attorneys certified as competent to perform the duties of law officer, trial counsel and defense counsel, pursuant to the Uniform Code of Military Justice, Articles 26 and 27, and an additional 38 officers were certified as qualified trial and defense counsel. The assignments of a majority of these officers, however, are not primarily concerned with military justice duties. In the Fourteenth Coast Guard District, the District Commander has been empowered by the Secretary of the Treasury, with the concurrence of the Secretary of the Navy, to appoint Navy attorneys as law officers, trial counsel and defense counsel for general courts-martial in his district, pursuant to paragraphs 4g (3) and 6a of the Manual for Courts-Martial. During 1954 the services of Navy attorneys were utilized upon four occasions. District legal officers were furnished regularly with the advance opinions of the United States Court of Military Appeals, decisions of the Coast Guard Board of Review, the Coast Guard Law Bulletin, the Army JAG Chronicle Letter and the Navy JAG Journal.

3 a. During 1954 the number of records of trial received in the Office of the General Counsel of the Treasury Department for review by the Board of Review pursuant to Article 66 was 49. In addition 7 general court-martial records of trial were received for examination in the Office of the General Counsel pursuant to Article 69.

b. The following table shows the workload of the Board of Review:

On hand at beginning of period.....	5
Referred for review.....	49
Reviewed.....	53
Pending at close of period.....	1

c. The results of trial were modified by the Board of Review in 12 cases; in 2 of them findings and sentence were set aside and rehearings ordered; in 3 others both findings and sentence were modified; in 4 others the sentence alone was modified, and in 3 cases the findings were modified but not the sentence. Forty-one cases were affirmed without correction. In 5 of the latter the General Counsel took suspension action upon the punitive discharge contemporaneous with transmittal of the Board of Review decision to the accused. In sum, of 53 cases reaching the Board of Review, the results of trial were modified by either the Board or the General Counsel in 17 cases or 32 percent of the total. Pursuant to Article 67 of the Code, 2 cases were certified to the United States Court of Military Appeals and 2 others were appealed upon the petition of the accused.

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