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, 1957, to December 31, 1957

WM. S. FULTON

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

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Contents

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January 1, 1957 to December 31, 1957

JOINT REPORT

This report, which covers the period from January 1, 1957 through December 31, 1957, represents the sixth report of the Committee created by Article 67 (*g*) of the Uniform Code of Military Justice, 10 U. S. C. 867(g). That article 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 to survey the operations of the Code and prepare a report to the Committees on Armed Services of the Senate and the House of Representatives, to the Secretary of Defense, and to the Secretaries of the Departments, with regard to the status of military justice and to the manner and means by which it can be improved by legislative enactment.

The Judges of the United States Court of Military Appeals, the Judge Advocates General, and the General Counsel of the Department of the Treasury, hereinafter referred to as the Code Committee, have met and conferred during the period of this report. The Code Committee is submitting refinements of the previous recommendations contained in the second annual report for the calendar year 1953 and reaffirmed in subsequent annual reports to date. These recommended changes are set out in exhibit A with an accompanying statement of purpose, their principal features, and sectional analysis.

To supplement the above recommendations, there was appointed a continuing work subcommittee, composed of a representative of each branch of the Armed Services and the Court. The purpose of this subcommittee is to conduct a critical examination of the Code in the light of the experience gained during the past 7 years of operation thereunder. Detailed interim reports will in turn be submitted to the parent Code Committee for further consideration and discussion. This co-ordinated study should result in further beneficial changes for consideration by the Congress to the end of improving the workings of the Code.

The sectional reports of the Court and of the individual services outline the volume of court-martial cases subject to appellate review during this reporting period. Exhibit B is attached to recapitulate the number of court-martial cases of all types tried throughout the

world, and processed since the Uniform Code of Military Justice went into effect.

Respectfully submitted,

ROBERT E. QUINN,
Chief Judge.

GEORGE W. LATIMER,
Judge.

HOMER FERGUSON,
Judge.

GEORGE W. HICKMAN, JR.,
The Judge Advocate General,
United States Army.

CHESTER WARD,
The Judge Advocate General,
United States Navy.

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

JOHN K. CARLOCK,
Acting General Counsel,
Department of the Treasury.

EXHIBIT A

PURPOSE

The purpose of this proposed legislation is to improve the administration of military justice in the armed forces. This proposal is based on recommendations by the Court of Military Appeals, The Judge Advocates General of the Army, Navy, and Air Force, and the General Counsel of the Department of the Treasury, made at previous annual meetings as required by section 867 (g) of Title 10, United States Code. In essence, this proposal is designed to eliminate some of the procedural difficulties and delays which have arisen under the Uniform Code of Military Justice since May 31, 1951, and to provide for more prompt and more efficient administration of military justice, both from the standpoint of the individual and the Government.

PRINCIPAL FEATURES

1. *Single-officer courts.* The proposed legislation, which is based upon Rule 23 of the Federal Rules of Criminal Procedure, would permit an accused to request and, if the convening authority consents thereto, be tried before a single qualified officer, instead of a multiple-member special court-martial. The adoption of such a procedure will result in a reduction of both time and manpower normally expended in trials by special courts-martial. The rights of the accused in such cases are protected by the requirement that the officer acting as a special court-martial have the basic qualifications of a law officer under article 26 (a) and that he be certified as qualified for that duty by The Judge Advocate General.

2. *Records of trial.* At the present time, the use of a summarized record of trial is permitted in trials by special courts-martial when the accused is acquitted of all charges and specifications or when the sentence does not extend to a bad-conduct discharge. On the other hand, all records of trial by general courts-martial are complete verbatim accounts of the proceedings thereof, even though the sentence is one which, if adjudged by a special court-martial, could be summarized. The proposed bill would correct this situation by providing for a complete verbatim record in only those cases in which sentence adjudged includes a bad-conduct discharge or is more than that which could be adjudged by a special court-martial. All other records of trial would contain such matter as may be required by regulations prescribed by the President.

3. *Review of records of trial.* The present law requires all general court-martial cases to be forwarded to The Judge Advocate General even though the sentence of the court is such that, if adjudged by a

special court-martial, the record of the special court-martial would not have been so forwarded. The proposed bill corrects this situation. It provides that general court-martial cases in which the sentence as approved does not include a bad-conduct discharge or does not exceed a sentence that could have been adjudged by a special court-martial shall be transmitted and disposed of in the same manner as similar special court-martial cases.

The present law requires that all sentences extending to a punitive discharge or confinement for 1 year or more be reviewed by a board of review. The proposed legislation provides that cases now required to be reviewed by a board of review only because the sentence includes a punitive discharge or confinement for 1 year or more will be examined in the office of The Judge Advocate General in accordance with article 69, rather than by a board of review, if the accused pleaded guilty and if he stated in writing that he does not desire review by a board of review. The enactment of this provision would materially lessen the number of cases which need to be reviewed by boards of review and will thereby diminish the overall time required to process court-martial cases. As this procedure upon review would be employed only in those cases where the accused has pleaded guilty, it is believed that his substantial rights will not be prejudiced thereby.

The present law requires The Judge Advocate General to refer article 69 cases to a board of review for corrective action when he finds all or part of the findings or sentence incorrect in law or fact. In a great many cases, the irregularities concerned involve matters well settled in the law, and in those cases the board of review's action amounts to no more than the application of those well-settled principles. This situation results in an unnecessary burden on the boards of review and unduly increases the time required to process court-martial cases. To eliminate this unnecessary reference to a board of review, the proposed legislation authorizes The Judge Advocate General to correct the irregularity or injustice, vesting in him the same powers and authority with respect to those cases that a board of review has. It will be noted that The Judge Advocate General remains authorized to refer any article 69 case to a board of review in his discretion, and it is required that any finding or sentence incorrect in law or in fact be corrected either by a board of review or by The Judge Advocate General.

4. *Powers of The Judge Advocate General.* The proposed legislation authorizes The Judge Advocate General to dismiss the charges when the Court of Military Appeals or the board of review orders a rehearing which The Judge Advocate General finds impracticable. It is believed that The Judge Advocate General is, in many cases, in the best position to dismiss the charges himself or to determine whether or not a rehearing is impracticable. Further, the administrative

necessity of forwarding the record to the convening authority would, in many cases, be eliminated.

5. *Execution of sentences.* Currently, about 407 days elapse 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. As a result, many prisoners complete confinement before their cases have been completely reviewed. Further, since an unsentenced prisoner is not subject to the same treatment as a sentenced prisoner, the administration of confinement facilities is unduly complicated. In some instances, delays in completion of the required review have led to complex administrative problems and loss of morale. Consequently, the proposed legislation provides that a convening authority may order executed all portions of a sentence except that portion involving dismissal, dishonorable or bad-conduct discharge, or affecting a general or flag officer, thus eliminating the differences between sentenced and unsentenced prisoners. No sentence extending to death may be executed until approved by the President, although the proposed legislation will remove an anomalous result under the present code by providing that an accused sentenced to death forfeits all pay and allowances, and that the forfeiture may be made effective on the date the sentence is approved by the convening authority.

6. *New trial.* To better protect the rights of an accused, the proposed legislation extends the time within which an accused may petition for a new trial to 2 years from the date the convening authority approves the sentence. Further, the board of review, the United States Court of Military Appeals, and The Judge Advocate General would be permitted to grant more comprehensive relief than is now possible.

7. *Votings and rulings.* The proposed bill provides that a law officer shall rule with finality upon a motion for a finding of not guilty. It is anomalous to allow the lay members of a court-martial to overrule the law officer on a question which is purely an issue of law.

8. *Punitive articles.* The present code does not provide specific statutory authority for the prosecution of bad-check offenses. The proposed legislation adds an additional punitive article which contains provisions similar to the bad-check statutes of the District of Columbia and the State of Missouri, including a provision that a failure to pay the holder of a bad check the amount due within 5 days shall be prima facie evidence of an intent to defraud. One of the difficulties arising under existing law is the necessity to prosecute bad-check offenses under one of three separate articles (121, 133, or 134), none of which may be considered as a bad-check statute. Because of technical difficulties that arise as a result of the unfortunate pleading of the wrong article, an obviously guilty person sometimes

escapes punishment. There are many difficulties inherent in obtaining a conviction of an accused for a bad-check offense without proof of specific intent. Because of this, the proposed legislation is desirable to provide specific statutory authority for the prosecution of bad-check offenses.

9. *Nonjudicial punishment.* Good military discipline requires that a commanding officer be given greater authority in imposing nonjudicial punishment. Consequently, the proposed legislation provides that a commanding officer in a grade of major or lieutenant commander or above may confine an enlisted member of his command for a period of not more than 7 days, or impose a forfeiture of one-half of 1 month's pay. Under article 15, officers may be punished for minor offenses, such as traffic violations, by imposition of forfeitures, and they are thereafter not handicapped professionally by a trial by court-martial. However, in order to achieve an effective monetary punishment for enlisted members in similar cases, it is necessary to resort to a trial by court-martial, resulting in a permanent black mark on the enlisted member's record in the form of a conviction by court-martial. The change contemplated by the proposed legislation would permit prompt and effective disposition of such minor offenses. In addition, 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 for 2 months, instead of 1 month as now provided in the code. The 1-month limitation has proved unsatisfactory to commanders in the field and is not cured by the fact that an officer may be tried by a special court-martial. An officer's present and future value within his command is seriously and permanently impaired by the publicity attendant to trial by court-martial. When such an event occurs, prompt transfer of the officer after trial is imperative, regardless of the outcome. Such a procedure is costly in time, money, and manpower. It is believed to be essential that commanding officers retain their present power to try officers by special court-martial as exceptional circumstances warrant. However, it is considered desirable to increase the punitive powers of article 15 so that an adequate punishment can be imposed upon an officer for a relatively minor offense.

10. *Miscellaneous.* To facilitate administration of confinement facilities under the United Nations or other allied commands, the proposed legislation authorizes the confinement, in United States confinement facilities, of members of the armed forces of the United States with the members of the armed forces of friendly foreign nations.

In addition, the proposed legislation makes other changes in the present code of a technical nature, designed generally to improve the administration of military justice within the framework of the existing code.

A BILL

To amend title 10, United States Code, as relates to 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 title 10, United States Code, is amended as follows:

(1) Section 801 is amended by adding the following new clause at the end thereof:

"(13) 'Convening authority' includes, in addition to the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or any officer exercising general court-martial jurisdiction."

(2) Section 812 is amended to read as follows:

"§ 812. *Art. 12 Confinement with enemy prisoners prohibited*

"No member of the armed forces of the United States may 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."

(3) Section 815 is amended—

(A) by striking out in subsection (a) (1) (C) the words "one month's pay" and inserting the word "his pay per month for a period of not more than two months" in place thereof;

(B) by striking out at the end of subsection (a) (2) (E) the word "or";

(C) by striking out the period at the end of subsection (a) (2) (F) and inserting a semicolon in place thereof; and

(D) by adding the following new clauses at the end of subsection (a) (2):

"(G) if imposed by an officer in the grade of major or lieutenant commander or above, forfeiture of not more than one-half of one month's pay; or

(H) if imposed by an officer in the grade of major or lieutenant commander or above, confinement for not more than seven consecutive days."

(4) Section 816 is amended by striking out the word "; and" in clause (2) and inserting the words "or only of a law officer who is certified

to be qualified for duty as a single-officer special court-martial by the Judge Advocate General of the armed force of which he is a member if, before the court is convened, the accused, knowing the identity of the law officer, and upon advice of counsel, requests in writing a court composed only of a law officer and the convening authority has consented thereto; and" in place thereof.

(5) Sections 822 (b) and 823 (b) are each amended to read as follows:

"(b) If any person described in subsection (a), except the President of the United States, is an accuser, the court must be convened by a competent authority not subordinate in command or grade to the accuser, and may in any case be convened by a superior competent authority."

(6) Section 825 (a) is amended by adding the following new sentence at the end thereof:

"However, to be eligible for appointment as a single-officer special court-martial, the officer must have the qualifications specified for a law officer in section 826 (a)

of this title (article 26 (a)) and must be certified to be qualified for duty as a single-officer special court-martial by the Judge Advocate General of the armed force of which he is a member."

(7) Section 837 is amended by striking out in the first sentence thereof the words "nor any other commanding officer" and inserting the words "or any other commanding officer, or any officer serving on the staffs thereof" in place thereof.

(8) Section 841 (b) is amended by inserting after the words "law officer" the words "and an officer appointed as a single-officer special court-martial".

(9) Section 851 is amended—

(A) by striking out in the second sentence of subsection (b) the words "a motion for a finding of not guilty, or";

(B) by inserting in the third sentence of subsection (b) after the word "trial" the words "except a ruling on a motion for a finding of not guilty that was granted"; and

(C) by adding the following new subsection:

"(d) Subsections (a), (b), and (c) of

this section do not apply to a single-officer special court-martial. An officer who is appointed as a single-officer special court-martial shall determine all questions of law and fact arising during the trial and, if the accused is convicted, adjudge an appropriate sentence."

(10) Section 854 is amended to read as follows:

"§ 854. *Art. 54. Record of trial*

"(a) Each court-martial shall make a separate record of the proceedings of the trial of each case brought before it. A record of the proceedings of a trial in which the sentence adjudged includes a bad-conduct discharge or is more than that which could be adjudged by a special court-martial shall contain a complete verbatim account of the proceedings and testimony before the court, and shall be authenticated in such manner as the President may, by regulation, prescribe. All other records of trial shall contain

such matter and be authenticated in such manner as the President may, by regulation, 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. If a verbatim record of trial by general court-martial is not required by subsection (a), the accused may buy such a record under such regulations as the President may prescribe."

(11) Section 857 is amended by adding the following new sentence at the end of subsection (a):

"A sentence to death includes forfeiture of all pay and allowances and dishonorable discharge. The forfeiture may apply to all pay and allowances becoming due on or after the date on which the sentence is approved by the convening authority."

(12) Section 865 is amended—

(A) by amending subsection (a) to read as follows:

"(a) When the convening authority has

taken final action in a general court-martial case and the sentence approved by him includes a bad-conduct discharge or is more than that which could have been adjudged by a special court-martial, he shall send the entire record, including his action thereon and the opinion of the staff judge advocate or legal officer, to the appropriate Judge Advocate General.";

(B) by striking out in subsection (b) the words "to be reviewed by a board of review" wherever they appear therein; and

(C) by amending subsection (c) to read as follows:

"(c) All other records of trial by court-martial shall be reviewed by—

(1) a judge advocate of the Army or Air Force;

(2) an officer of the Navy or Marine Corps on active duty who is a member of the bar of a Federal court or of the highest court of a State; or

(3) In the Coast Guard, or the Department of the Treasury, a law specialist or member of the bar of a Federal court or of the highest court of a State."

(13) Section 866 is amended—

(A) by amending subsection (b) to read as follows:

"(b) The Judge Advocate General shall refer to a board of review each record of trial by court-martial in which the approved sentence—

(1) extends to death;

(2) affects a general or flag officer;

(3) extends to the dismissal of a commissioned officer or a cadet or midshipman; or

(4) includes a dishonorable or bad-conduct discharge, or confinement for one year or more, unless the accused pleaded guilty to each offense of which he was found guilty and has stated in writing, after the convening authority

acted in his case, that he does not desire review by a board of review."; and

(B) by amending subsection (e) to read as follows:

"(e) The Judge Advocate General may dismiss the charges 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, the Secretary concerned, 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."

(14) Section 867 is amended by inserting the following new sentence after the first sentence of subsection (f):

"The Judge Advocate General may dismiss

the charges whenever the Court of Military Appeals has ordered a rehearing and he finds a rehearing impracticable."

(15) Section 869 is amended to read as follows:

"§ 869. *Art. 69. Review in the office of the Judge Advocate General*

"Every record of trial by court-martial forwarded to the Judge Advocate General under section 865 of this title (article 65), the appellate review of which is not otherwise provided for by section 865 or 866 of this title (article 65 or 66), shall be examined in the office of the Judge Advocate General. 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 under section 866 of this title (article 66) or take such action in the case as a board of review may take under section 866 (c) and (d) of this title (article 66 (c) and (d)). If the record is reviewed by a board of review, they may be no further review by the Court of Military Appeals, except under section 867 (b) (2) of this title (article 67 (b) (2))."

(16) Section 871 is amended—

(A) by striking out in subsection (b) the first sentence and inserting the following in place thereof:

"That part of a sentence extending to the dismissal of a commissioned officer or a cadet or midshipman may not be executed until approved by the Secretary concerned, or such Under Secretary or Assistant Secretary as may be designated by him.";

(B) by amending subsection (c) to read as follows:

"(c) That part of a sentence extending to dishonorable or bad-conduct discharge may not be executed until approved by the Judge Advocate General or affimed by a board of review, as the case may be, and, in cases reviewed by it, affirmed by the Court of Military Appeals."; and

(C) by inserting in subsection (d) after the words "court-martial sentences" the words "and parts of sentences".

(17) Section 873 is amended—

(A) by striking out in the first sentence after the word "within" the words "one year" and inserting the words "two years" in place thereof; and

(B) by striking out the last sentence and inserting the following in place thereof:

"The board of review or the Court of Military Appeals, as the case may be, shall determine whether a new trial, in whole or in part, should be granted or shall take appropriate action under section 866 or 867 of this title (article 66 or 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."

(18) Section 895 is amended by striking out the words "custody or confinement" and inserting the words "physical restraint lawfully imposed" in place thereof.

(19) Subchapter X of chapter 47 is amended—

(A) by inserting the following new section after section 923:

"§ 923 a. *Art. 123 a.* *Making, drawing, or uttering check, draft, or order without sufficient funds.*

"Any person subject to this chapter who—

(1) for the procurement of any article or thing of value;

(2) for the payment of any past-due obligation; or

(3) for any purpose with intent to deceive or 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,

SECTIONAL ANALYSIS

Section 1 (*1*) amends article 1 by defining the term "convening authority".

Section 1 (*2*) amends article 12 to provide that a member of an armed force of the United States may be confined in United States confinement facilities with members of the armed forces of friendly foreign nations.

Section 1 (*3*) amends article 15 to authorize a commanding officer exercising general court-martial jurisdiction to impose upon an officer of his command forfeiture of one-half of his pay per month for a period of 2 months. It also authorizes a commanding officer in a grade of major or lieutenant commander or above to impose upon an enlisted man of his command forfeiture of not more than one-half of 1 month's pay or confinement for not more than 7 consecutive days.

Section 1 (*4*) amends article 16 to provide that a special court-martial shall consist of only a law officer if the accused, before the court is convened, so requests in writing and the convening authority consents thereto. However, before he makes such a request, the accused is entitled to know the identity of the law officer and to have the advice of counsel.

Section 1 (*5*) amends articles 22 (b) and 23 (b) to provide that, except for the president, a convening authority not subordinate in command or grade 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 considered desirable by him.

Section 1 (*6*) amends article 25 (a) to provide that the officer acting as a special court-martial must have the qualifications specified for a law officer in article 26 (a) and, in addition, must be certified to be qualified for duty as a single-officer special court-martial by the Judge Advocate General.

Section 1 (*7*) extends the provisions of article 37 to include staff officers serving convening authorities and commanding officers.

Section 1 (*8*) amends article 41 (b) to provide that a single-officer special court-martial may be challenged only for cause.

Section 1 (*9*) amends article 51 to provide that the law officer shall rule with finality on a motion for a finding of not guilty. If such a motion is granted, however, he may not later change that ruling. It also provides that an officer acting as a special court-martial shall

determine all questions of law and fact arising during the trial and, if the accused is convicted, adjudge an appropriate sentence.

Section 1 (10) amends article 54 by requiring each court-martial to make a separate record of the proceedings of the trial in each case brought before it. In each case where the sentence adjudged includes a bad-conduct discharge or is more than that which could be adjudged by a special court-martial, a verbatim account of the proceedings and testimony must be prepared and authenticated in accordance with regulations prescribed by the President. It also provides that if a verbatim account is not required, the accused may buy such a record.

Section 1 (11) amends article 57 (a) to provide that an accused sentenced to death forfeits all pay and allowances and that the forfeiture may apply to all pay and allowances becoming due on or after the date the sentence is approved by the convening authority.

Section 1 (12) amends article 65 to require the convening authority, when he has taken final action, to send to the appropriate Judge Advocate General each record of trial in which the sentence, as approved by him, includes a bad-conduct discharge or is more than that which could have been adjudged by a special court-martial. It also deletes language implying that all records of trial by special court-martial forwarded to The Judge Advocate General under that section must be reviewed by a board of review. It also provides for the review and disposition of all records of trial not otherwise provided for in article 65 (a) and (b).

Section 1 (13) amends article 66 to provide that a record of trial, which would otherwise be reviewed by a board of review because the sentence includes a dishonorable or bad-conduct discharge or confinement for 1 year or more, need not be reviewed by a board of review if the accused pleaded guilty to each offense of which he was found guilty and if he stated in writing after the convening authority acted in his case that he does not desire review by a board of review. It also authorizes The Judge Advocate General to dismiss the charges whenever he finds that a rehearing ordered by a board of review is impracticable.

Section 1 (14) amends article 67 (f) to authorize The Judge Advocate General to dismiss the charges whenever he finds that a rehearing ordered by the Court of Military Appeals is impracticable.

Section 1 (15) amends article 69 to provide that every record forwarded to The Judge Advocate General under article 65, the appellate review for which is not otherwise provided by article 65 or 66, shall be examined in the office of The Judge Advocate General. He may refer such a record to a board of review or he may take such action in the case as a board of review may under article 66 (c) and (d). If the record is reviewed by a board of review, there will be no further review by the

Court of Military Appeals except under article 67 (b) (2). The effect of this amendment is to require examination in the office of The Judge Advocate General of those records of trial in which the sentence includes a dishonorable or bad-conduct discharge or confinement for 1 year or more which need not be reviewed by a board of review because the accused pleaded guilty.

Section 1 (16) amends article 71 to provide that all portions of sentences of a court-martial may be ordered executed by the convening authority when approved by him, except that portion of the sentence involving death, dismissal, or dishonorable or bad-conduct discharge or affecting a general or flag officer. It describes those authorities which must approve a sentence before it may be executed. The parenthetical phrase "other than a general or flag officer" is omitted as surplusage in view of the express provision of article 71 (a).

Section 1 (17) amends article 73 to extend the time within which the accused may petition for a new trial to 2 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 or 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 the sentence in whole or in part.

Section 1 (18) amends article 95 to remove all distinction between confinement and custody.

Section 1 (19) 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).

Section 2 provides that these amendments become effective on the first day of the tenth month following the month in which enacted.

EXHIBIT B

EXHIBIT B

	1955	1956	1957	Total
Personnel Strength of Armed Forces [1]	2,701,972	2,780,723	2,617,042	----------
Court-Martial Cases for Armed Forces	[2] 1,227,220	185,816	187,171	1,600,207
Cases Reviewed by Boards of Review	[3] 84,245	13,920	12,193	110,358
Cases Wherein Findings were Modified by Boards of Review	[3] 2,861	421	469	3,751
Cases Docketed with USCMA	[3] 7,942	1,523	1,616	11,081
Opinions Published by USCMA	[3] 754	98	209	1,061
Opinions Published Wherein Decisions of Boards of Review were Modified by USCMA	[3] 357	54	142	553

[1] As of December 31; all military personnel on extended or continuous active duty. Data include special categories of such personnel, as follows: Nurses, Navy and Marine Corps Reservists associated with Reserve Activities and Officer Candidates. Retired personnel are excluded.

[2] Total Court-Martial cases for calendar years 1951 through 1955.

[3] Total Court-Martial cases from May 31, 1951 (effective date of the Uniform Code of Military Justice) to December 31, 1955.

Report

of the

UNITED STATES COURT OF MILITARY APPEALS

January 1, 1957 to December 31, 1957

UNITED STATES COURT OF MILITARY APPEALS

The following report of the United States Court of Military Appeals covers the calendar year period January 1 through December 31, 1957, and is submitted to Congress pursuant to Article 67 (*g*) of the Uniform Code of Military Justice (10 U. S. C. 867 (g)). The principal subject of this report concerns itself with the number of cases processed during the last year, the status of the docket, as well as additional pertinent information on the activities and accomplishments of the Court.

The total number of cases filed in the United States Court of Military Appeals in calendar year 1957 was 1,636, an increase of 94 cases over calendar year 1956. Pending completion as of December 31, 1957, there were 338 cases as compared with 206 for the previous terminal date. This latter increase is attributed to the internal workload of the Court, which has sharply risen during the reporting period. By way of illustration, there were written and published 209 opinions in 1957, doubling the output of 104 opinions in 1956. Of this total number of 209 written and published opinions, 142 either reversed or modified the decisions of the boards of review. This upward trend reflects the Court's demand for stricter compliance with provisions of the Code at the court-martial and intermediate review levels. It is believed that this trend will result in bringing each branch of the Armed Services in closer harmony with the sound practices which obtain in our civilian system.

The Court admitted 769 practioners to the membership of its bar, which now totals 6,916. Civilian attorneys admitted to practice, indicating an interest in the field of military law, outnumber percentagewise the attorneys in the Armed Services and represent every State in the American Union as well as the Territories of Alaska and Hawaii and the Commonwealth of Puerto Rico.

In view of the substantial workload of the Court, it was not feasible for the Judges to accept all of the many invitations extended to them to address various Reserve Officers Associations, State and Regional Bar Associations, and other civic organizations. However, the Judges conferred with many officers of supervisory rank from each branch of the Armed Services during the course of the year in order to acquaint themselves with the problems encountered at the operation level of the Code in the field. The Court, since its creation in 1951, has been

required to interpret the Code and to enforce its provisions according to the intent of the Congress. This intent was to establish a complete, fair, and impartial judicial system. It must be noted that the Court in its daily work has never lost sight of this goal.

The Judges of the Court repeat their approval of the 17 recommendations, with certain reservations by Judge Homer Ferguson, originally submitted to Congress in its second annual report and advanced in the subsequent annual reports to date. With minor refinements since their original submission, these recommendations are restated as exhibit A to the Joint Report, page 3, with the hope that appropriate action to effect their early enactment will be taken during the present session of Congress.

To summarize the work product of the Court since its establishment, the Court has docketed by way of petition, certificate, or mandatory review 11,081 cases. Completed action can be reported in 10,864 of these. Opinions numbering 1,061 have been published with another 120 in the process of completion. Of the 1,061 published opinions, 40 involved Army officers; 8 Naval officers; 11 Air Force officers; 2 Coast Guard officers, and 17 civilians. The remaining opinions involved enlisted personnel. As of December 31, 1957, review had been completed in 29 capital cases involving 34 members of the Armed Services.

Attached is a detailed analysis of the status of cases processed since the Court came into existence in 1951.

Respectfully submitted,

ROBERT E. QUINN,
Chief Judge.

GEORGE W. LATIMER,
Judge.

HOMER FERGUSON,
Judge.

STATUS OF CASES

UNITED STATES COURT OF MILITARY APPEALS

CASES DOCKETED

	Total as of Dec. 31, 1955	*Jan. 1, 1956 to Dec. 31, 1956*	*Jan. 1, 1957 to Dec. 31, 1957*	*Total as of Dec. 31, 1957*
Petitions (Art. 67(b)(3)):				
Army	5,000	810	965	6,775
Navy	1,496	248	232	1,976
Air Force	1,282	453	403	2,138
Coast Guard	24	4	6	34
Total	7,802	1,515	1,606	10,923
Certificates (Art. 67(b)(2)):				
Army	67	7	8	82
Navy	110	13	14	137
Air Force	16	7	6	29
Coast Guard	5	0	0	5
Total	198	27	28	253
Mandatory (Art. 67(b)(1)):				
Army	29	0	2	31
Navy	0	0	0	0
Air Force	1	0	0	1
Coast Guard	0	0	0	0
Total	30	0	2	32
Total cases docketed	8,030	1,542	1,636	[1] 11,208

[1] 11,081 cases actually assigned docket numbers. Sixty-three cases counted as both Petitions and Certificates. Three cases certified twice. Fifty-seven cases submitted as Petitions twice. One Mandatory case filed twice. Three Mandatory cases filed as Petitions after second Board of Review opinion.

COURT ACTION

	Total as of Dec. 31, 1955	*Jan. 1, 1956 to Dec. 31, 1956*	*Jan. 1, 1957 to Dec. 31, 1957*	*Total as of Dec. 31, 1957*
Petitions (Art. 67 (b) (3)):				
Granted	627	102	297	1,026
Denied	6,878	1,390	1,229	9,497
Dismissed	5	0	0	5
Withdrawn	131	24	56	211
Disposed of on motion to dismiss:				
With opinion	7	0	0	7
Without opinion	25	2	4	31
Disposed of by Order setting aside findings and sentence	2	0	0	2
Remanded to Board of Review	23	3	12	38
Court action due (30 days)[2]	75	91	111	111
Awaiting briefs[2]	52	35	47	47

[2] As of December 31, 1955, 1956, and 1957.

	Total as of Dec. 31, 1955	Jan. 1, 1956 to Dec. 31, 1956	Jan. 1, 1957 to Dec. 31, 1957	Total as of Dec. 31, 1957
Certificates (Art. 67 (b) (2)):				
Opinions rendered	184	24	22	230
Opinions pending [2]	7	4	10	10
Withdrawn	4	0	0	4
Set for hearing [2]	0	4	3	3
Ready for hearing [2]	0	1	2	2
Awaiting briefs [2]	3	5	5	5
Mandatory (Art. 67 (b) (1)):				
Opinions rendered	25	5	1	31
Opinions pending [2]	3	0	0	0
Remanded to Board of Review	1	0	0	1
Ready for hearing [2]	1	0	0	0
Awaiting briefs [2]	0	0	1	1
Opinions rendered:				
Petitions	521	75	185	781
Motions to Dismiss	8	1	0	9
Per Curiam Grants	21	0	1	22
Certificates	159	22	21	202
Certificates and Petitions	25	1	1	27
Mandatory	25	5	1	31
Remanded to Board of Review	1	0	0	1
Petition for a New Trial	1	0	0	1
Petition for Reconsideration of Petition for New Trial	1	0	0	1
Total	762	104	209	[3] 1, 075
Completed Cases:				
Petitions denied	6, 878	1, 390	1, 229	9, 497
Petitions dismissed	5	0	0	5
Petitions withdrawn	131	24	56	211
Certificates withdrawn	4	0	0	4
Opinions rendered	755	104	209	1, 068
Disposed of on Motion to dismiss:				
With opinion	7	0	0	7
Without opinion	25	2	4	31
Disposed of by Order setting aside findings and sentence	2	0	0	2
Remanded to Board of Review	24	3	12	39
Total	7, 831	1, 523	1, 510	10, 864

[2] As of December 31, 1955, 1956, and 1957.

[3] 1075 cases were disposed of by 1061 published opinions. 61 opinions were rendered in cases involving 40 Army officers, 11 Air Force officers, 8 Navy officers, and 2 Coast Guard officers. In addition, 16 opinions were rendered in cases involving 17 civilians. The remainder concerned enlisted personnel.

COURT ACTION—Continued

	Pending completion as of—		
	Dec. 31, 1955	*Dec. 31, 1956*	*Dec. 31, 1957*
Opinions pending	33	37	120
Set for hearing	0	17	18
Ready for hearing	9	4	2
Petitions granted—awaiting briefs	12	17	34
Petitions—Court action due 30 days	75	91	111
Petitions—awaiting briefs	52	35	47
Certificates—awaiting briefs	3	5	5
Mandatory—awaiting briefs	0	0	1
Total	184	206	338

Report

of

THE JUDGE ADVOCATE GENERAL

of

THE ARMY

January 1, 1957 to December 31, 1957

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY

During the period covered by this report, a draft of legislation containing recommended changes to the Uniform Code of Military Justice was forwarded to Congress for introduction. The draft is a revision of S. 2133 and H. R. 6583, 84th Congress, 1st Session, and substantially embodies the joint position of The Judge Advocates General of the Armed Forces and the United States Court of Military Appeals taken in the annual report for the period 1 June 1952 to 31 December 1953. The bill appearing as exhibit A in the annual report for the period 1 January 1956 to 31 December 1956, is substantially similar to the present draft legislation. It is believed that enactment of the legislation would effect an improvement in the administration of military justice and at the same time add to those substantial protections already accorded accused persons.

The Supreme Court decision in the case of *Reid* v. *Covert*, 354 U. S. 1 (1957), did not provide a definite ruling as to the constitutionality of the Uniform Code of Military Justice, Article 2 (11). The holding of the case was limited to the declaration that court-martial jurisdiction could not constitutionally extend to the trial of civilian dependents overseas for capital offenses in peacetime, thus leaving unanswered the question of jurisdiction as to noncapital offenses and as to civilian employees overseas. However, one United States District Court (*United States ex rel Smith relator* v. *Kinsella, S. D. W. Va.*, decided 12 August 1957) and one Army board of review (CM 396739, *Tyler*, decided 11 October 1957) have extended the holding to preclude trial of dependents for noncapital offenses. Other habeas corpus cases raising these issues are now pending. In the event the Supreme Court decision is broadly applied by judicial interpretation so as to prevent court-martial trial of any civilians overseas in time of peace, trial of such persons, at this time, can be only in a foreign tribunal. This objectionable situation could be alleviated by remedial Congressional legislation. Accordingly, this office is considering the recommendation of appropriate legislative proposals.

A study was instituted of the methods now in use to supply law officers for general courts-martial. A resulting plan is being considered to create a judiciary division in the Office of The Judge Advocate General, staffed by selected qualified senior judge advocate officers to divide the world into judicial areas and the areas into judicial circuits and to give one or more members of the division duty stations in each

circuit as required by local case loads. This plan is intended to provide better qualified personnel with the law officer function as their exclusive duty. A limited application of this plan was inaugurated in two pilot areas: (1) Europe, and (2) Sixth United States Army area (less Fort Huachuca, Ariz.) and Alaska, commencing 1 January 1958 with the law officer reporting to the senior staff judge advocate in the pilot area.

The past year has seeen many changes in basic military law and its underlying concepts, primarily as a result of the decisions of the appellate tribunals. It is the military's responsibility to apply the law as interpreted, even though these decisions may involve a deviation from prior practices and procedures. However, without question these changes place an increased burden and responsibility upon the service lawyer, and render it imperative that the importance of his position in the military be accorded appropriate recognition.

During the past year, the recommendation was made by my office that electrocution supplant hanging as the means of executing the death penalty imposed by courts-martial in time of peace in the United States. This recommendation was guided by the principle that methods and procedures of law enforcement utilized in the military should conform, insofar as practicable, to methods and procedures used in civilian jurisdictions. A study revealed that the majority of states having capital punishment utilize the electric chair as the means of executing the death penalty and resulted in the above recommendation. In lieu of approval of the recommendation, the Secretary of the Army expressed the desire that the means of execution of the death penalty be discretionary with proper authority so that electrocution may be selected as an additional alternative to those means now prescribed.

The determination of when individuals whose conduct would otherwise be criminal ought to be exculpated on the ground that they were suffering from mental disease or defect when they acted as they did has always been a major problem in the criminal law, and has recently been receiving increased public attention. The present test utilized in paragraph 120*b*, *Manual for Courts-Martial, United States, 1951*, has been subjected to the criticism that it uses language that is confusing as a matter of law and antiquated in the light of present day psychiatric knowledge. An extensive study has been conducted in my office, which study currently recommends that section 4.01 of the American Law Institute Model Penal Code be adopted as the military test of criminal responsibility by means of an appropriate revision of the *Manual for Courts-Martial, United States, 1951.*

During the past year the civilian bar has indicated an increased interest in military law. Several state and local bar associations have or are organizing Military Law Committees. Such committees will

foster appreciation and consideration of mutual problems and the closer liaison developed thereby will become increasingly valuable.

An Assistant Executive for Reserve Affairs in The Judge Advocate General's Office was appointed this year. His function is to assure that, in the event of mobilization, there will be a highly trained, capable group of officer-lawyers available in sufficient numbers to assure the accomplishment of the mission of the Corps.

During the calendar year 1957, The Judge Advocate General's School, United States Army, provided resident instruction for 553 military lawyers. Three cycles of the 11-week basic course in military law were conducted and 237 students, including one officer of the Japan Ground Self-Defense Force and one officer of the Republic of Korea Army, were graduated.

The Fifth Advanced Course of 35 weeks was completed in May and the Sixth Advanced Course was begun in September 1957. The 25 officers of the sixth class include five from the Navy, one from the Marine Corps, one from the Coast Guard, and one from the Armed Forces of the Philippines. In the revised program of instruction for the course, increased emphasis has been placed on problem-type instruction, progressively presenting more difficult and broader problems, and on seminar of committee-type discussions of these problems. The presentation of a graduate-level thesis relating to a significant problem area in the field of military law continues to be an integral part of the advanced course. During the year, several of these were published in legal periodicals, and all of the unclassified theses presented by members of the Fifth Advanced Course were reproduced in order to stimulate further study and to facilitate research in the field of military law.

In the field of procurement law, the School conducted a 2-week course in contract termination, a seminar on the utilization and disposition of government property, and two cycles of the 3-week Procurement Law Course. Approximately 200 military and civilan attorneys of the Government, representing all of the Armed Forces and many other governmental agencies, attended these courses.

In June, 50 judge advocates of the Army National Guard and Air National Guard attended a 2-week refresher course. The course, conducted for the first time in 1956, has now been established on a continuing basis. In July, the first Law Officer Course was conducted at the School. Twenty-one officers attended the 3-week course. The course is designed to educate and train law officers of general courts-martial in their judicial duties and responsibilities. A conference of branch service school instructors in military law was held during September and was attended by representatives of various Army service schools. Emphasis was placed on the application of leadership techniques in order to avoid the necessity for punitive action.

During the period 30 September to 4 October, a conference of judge advocates representing general court-martial jurisdictions throughout the world was held at the School. It was attended by over 100 senior officers who discussed with outstanding members of the military and civilian communities the role of the military lawyer in the atomic age.

During the year, the School provided nonresident training programs in military justice and other military-legal subjects for approximately 2,000 Reserve judge advocates. In the USAR school program, instructional material was distributed to 87 USAR school judge advocate branch departments which conducted 127 classes with a total enrollment of approximately 1,000 students in the 3-year Associate Company Officer Course and the 6-year Advanced Officer Course. Because of budgetary limitations, the number of students in the USAR school program for the current school year is considerably less than the number who participated during the previous school year. In the judge advocate Extension Course Program, the School administers 46 branch material subcourses, including 23 new and revised subcourses, for approximately 800 officers. Selected training materials were also furnished to other reserve judge advocates in training units and in mobilization designation positions.

Various Department of the Army publications, including "The Special Court-Martial Convening Authority", which is a practical guide to assist inferior court-martial convening authorities in the performance of their duties in connection with the administration of military justice; a revision of "The Law Officer," which is a guide for the law officer of a general court-martial and the president of a special court-martial; and a revision of the "United States Army, 1956 Cumulative Pocket Part" to the "Manual for Courts-Martial, United States, 1951" were also prepared. The School continued to publish the "Procurement Legal Service," a biweekly digest of significant decisions and opinions in the field of government contract and procurement law, and the periodical command letter of The Judge Advocate General which disseminates recent developments in military law of importance to judge advocates in the field. With the start of the USAR school year, this latter publication has been distributed to all Reserve judge advocates in the Ready Reserve as part of their training media. In addition, action was initiated to obtain approval for the publication of a military law quarterly in which articles and advanced class theses will be published for distribution to the military services.

The school again participated in the planning and conduct of an interservice logistical exercise involving combined action by advanced officer course students from 17 Army service schools. "LOGEX 57" tested the feasibility of separating judge advocate staff-advisory func-

tions from operational functions. The latter functions, highly variable in quantity under different conditions of military operations, were performed by small judge advocate operational units organized as trial teams, claims teams, and war crimes teams. The concept was developed to permit the Corps to perform its function of providing legal services in an Army reorganized for modern mobile warfare.

The commissioning of 125 officers in The Judge Advocate General's Corps during the fiscal year 1958 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 8-week course of training at The Infantry School followed by a 3-month course in basic military law at The Judge Advocate General's School.

Pursuant to the Uniform Code of Military Justice, Article 6 (a), The Judge Advocate General and senior members of his staff concerned with the supervision of the administration of military justice inspected Army headquarters and principal posts located within the Continental United States and major oversea commands.

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 57 through 31 Dec 57
Total	[1] 3598

[1] This figure includes 2 cases for which both review pursuant to Article 66 and examination pursuant to Article 69 were required by the Code; these cases are not reflected in the figures for Article 69, below.

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

	1 Jan 57 through 31 Dec 57
Total	[2] 771

[2] One court of inquiry case included.

The following table shows the workload of records of trial in the Boards of Review during the same period.

	1 Jan 57 through 31 Dec 57
On hand at beginning of period	221
Referred for review	[3] 3617
Total	3838
Reviewed	3598
Pending at close of period	240
Total	3838

[3] This figure includes 19 cases which were received for review pursuant to Article 69 and referred to Boards of Review.

From 1 January 1957 through 31 December 1957, *1810* of the 3745 accused whose cases were reviewed by boards of review pursuant to Article 66 (48.3 percent) requested representation by appellate defense counsel before the boards of review.

The records in the cases of 977 accused were forwarded during this period to the United States Court of Military Appeals pursuant to the three subdivisions of the Uniform Code of Military Justice Article 67 (b); this figure is 26.1 percent of *3745*, the number of accused whose cases were reviewed by boards of review during the period.

GEORGE W. HICKMAN, Jr.
Major General, USA,
The Judge Advocate General.

Report

of

THE JUDGE ADVOCATE GENERAL

of

THE NAVY

January 1, 1957 to December 31, 1957

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

Improvement in the administration of military justice in the Navy and Marine Corps continues to be of prime concern to The Judge Advocate General. The organizational changes referred to in last year's annual report have accomplished much; however, they have not and cannot make up for the lack of sufficient personnel. Undermanned offices, and overworked officers, are not conducive to quality work. As a result, there has been some criticism of the administration of military justice in the Navy, both by the United States Court of Military Appeals and by Navy commanders.

Landmark decisions of the United States Court of Military Appeals within the last year have redefined the proof necessary to sustain desertion (Cothern); denied the use of the Manual to court-martial members (Rinehart); determined that the offense of unauthorized absence is a necessarily lesser included offense of missing movement through neglect (Posnik); and asserted the right of an accused to have a qualified lawyer appointed to represent him at an Article 32 investigation (Tomaszewski). While undoubtedly these decisions are a necessary implementation and interpretation of the law, for the "line" of the Navy on whom falls the initial responsibility for maintaining discipline, they represent drastic departures from former thinking—and doing.

More and more it is becoming evident that the preparation, trial, and review of courts-martial is a full-time assignment for the military lawyer. This means that we need more rather than fewer officer-lawyers if we are to carry out the will of Congress and the decisions of the United States Court of Military Appeals. In the face of these increasing demands, it is important to note that today, as never before, young lawyers completing their obligated military service are returning to civilian life. To meet this ever-present problem, a new procurement program for Reserve law specialists has been inaugurated. The program is designed to reach into the accredited law schools of our country for topflight talent. Those selected are commissioned Lt. (jg.), granted 3 years constructive credit, and assigned a permanent law specialist designator. This insures their assignment to legal duty in law billets. This approach will, it is hoped, make the Navy Law Program more attractive. The fact remains, however, that these young lawyers, fresh out of law school, need training and experience. By the time they have attained a modicum of either, their obligated service has been completed. A replacement must be provided and the

training cycle begins all over. The ultimate answer lies in a realistic career incentive program, and this the Judge Advocate General is making every effort to provide.

The philosophy (and practice) that all or most persons in a disciplinary status are escape risks requiring confinement to insure their presence pending disposition of their case; congested court dockets resulting from too few lawyers and inadequate clerical as well as court reporting staffs; plus congested dockets at appellate levels not excluding the United States Court of Military Appeals, have either singly or in combination nurtured a brig population and/or a discipline problem of alarming portent. The discipline problem is especially acute in those cases where the confinement portion of the sentence has been completed yet the punitive discharge, which is an integral part of the sentence, cannot be executed pending final outcome of appellate review procedures. A completed enlistment—an element not found in civil life—adds to complication. Some means must be found to accommodate this type of case. The problem is not without solution and should be made an agenda item at an early meeting of the Judge Advocates General and the United States Court of Military Appeals. As an interim measure, every effort should be made to speed appellate reviews.

On the positive side of the ledger, giant steps have been taken to improve the administration of justice in the Navy.

SECNAVINST 5811.1 of 11 September 1957 advised convening authorities of general courts-martial of their authority to make pretrial agreements to reduce charges and/or to mitigate punishment in cases where the accused pleads guilty. A major command reports that the use of this instruction has cut courtroom hours by more than 66% in each case. The conservation of manpower resources expended in prisoners and guards; the savings of time and the reduction of paper work in the trial and review of cases; the reduction in both pretrial and post-trial delays; the consequent reduction in brig time for offenders not properly classified as criminals; and the potential savings of millions of dollars in naval appropriations are obvious.

SECNAVINST 5811.2 of 17 December 1957 extends the area of pretrial agreements to include special courts-martial. Since these courts-martial constitute a much larger proportion of the Navy's trial work than do general courts-martial (approximately 10 to 1), this instruction will afford even greater opportunities to reduce our brig population, conserve manpower and money, and improve the administration of military justice in the Navy.

These pretrial agreements must be handled with prudence, for only if used judiciously will they accomplish their purpose. Defense counsel must continue to represent the accused with vigor notwithstanding the agreements. He must never abdicate his client's cause.

Another important, positive step taken to improve the administration of military justice was the establishment of the Sentence Review Procedure within the Office of The Judge Advocate General. This procedure was established for the purpose of assisting The Judge Advocate General in insuring uniformity of punishment as well as the appropriateness of the sentence. Within the framework of this procedure, The Judge Advocate General reduced the sentence in approximately 400 cases during 1957.

By improving the system for notice to an accused of his appellate rights following a decision by a board of review, the average time lag between the board of review decision and promulgation to an accused has been reduced from 15 days to 5 days. This has accelerated appellate processing time and final disposition of court-martial cases.

An all-out effort is being made to improve the quality and standard of the presentation of cases before boards of review and the United States Court of Military Appeals. Wherever consistent with the overall needs of the service, the more experienced and seasoned lawyers in the field of criminal law are being assigned to appellate work.

Increasing brig populations and congested board of review dockets, as hereinbefore referred to, gave rise to special studies of these problems. In most instances lack of sufficient personnel to process the disciplinary case load was found to be the underlying cause. In December 1957, in an effort to alleviate the situation, the Chief of Naval Personnel, on the recommendation of The Judge Advocate General, created two Task Forces—each consisting of experienced law specialists and court reporters. It will take some few months to organize the two groups, nevertheless the potential value of having two mobile teams available to move into areas overloaded with disciplinary cases is readily apparent. Of special import is the fact that these Task Forces, when not on the move, will be engaged in expediting the appellate review dockets. Since resort to the task force concept is but a temporary measure, The Judge Advocate General has recommended that the legal staffs of receiving stations and similar activities be reviewed with the view of providing a sufficient number of qualified personnel to handle the work loads.

In December 1957, The Judge Advocate General formally launched OPERATION TAPECUT—a program designed for improving and speeding the administration of justice and promoting discipline in the Navy and Marine Corps. The program has four specific purposes: (1) To decrease the tie-up of manpower resources in our brigs; (2) To conserve the manpower resources of personnel responsible for the administration of justice and discipline—particularly commanding officers and executive officers afloat; (3) To improve the quality and effectiveness of justice in the Navy and Marine Corps by simplifying

and expediting its processes; and (4) as an all-important end result—to promote discipline without sacrificing justice.

We are confident that the successful results of all of these programs will be evident during the years to come.

For many years, desertion has been a most vexing problem in the Navy and Marine Corps. It had two facets—the justice side and the administrative side. A re-estimate of the problem was necessitated by the *Cothern* decision and this resulted in ALNAV 28:

> "* * * As a result of the Cothern case, a desertion conviction cannot be sustained if the only repeat only evidence of the specific intent to desert is the period of absence, regardless of its length. In preferring a charge of desertion and recommending trial thereon, it is therefore essential that there be some other evidence of an intent to desert. Article 10, UCMJ, applies to this situation and if this additional evidence of an intent to desert is not reasonably and speedily available, the accused should be tried for unauthorized absence only * * *."

The following figures on desertion and unauthorized absence commitments in Navy retraining commands during the period July through December 1957 indicate the effect of the *Cothern* decision and ALNAV 28:

Deserters

Month	Number committed	Median sentence in months	Sentences in months	
			High	Low
July	45	15. 5	36	4
August	33	18. 3	24	5
September	35	12. 8	34	6
October	28	12. 4	36	6
November	13	[1]	30	6
December	11	[1]	45	5
First Half 1957 (Monthly Average)	49	18. 0	72	4

Unauthorized Absentees

Month	Number committed	Median sentence in months	Sentences in months	
			High	Low
July	503	6. 0	24	2
August	564	5. 8	36	2
September	534	5. 9	18	4
October	603	5. 6	18	1
November	527	5. 6	24	2
December	489	5. 3	24	1
First Half 1957 (Monthly Average)	486	6. 3	25	1

[1] Not available.

During 1957, 5,666 records of trial were received in the Office of The Judge Advocate General for review pursuant to Article 66; an increase of 406 over 1956. Of this number 1,750 were general courts-martial and 3,916 were special courts-martial. These figures indicate a decrease of 82 general courts-martial and an increase of 488 special courts-martial over 1956. In addition, 438 records of trial were received in the Office of The Judge Advocate General for examination pursuant to Articles 69 and 65 (c); an increase of 73 over 1956.

The following table shows the workload of the boards of review during 1957:

On hand January 1, 1957	273	
Referred for review during 1957	5,666	
Total		5,939
Reviewed during 1957	5,633	
Pending December 31, 1957	306	
Total		5,939

The two boards of review established on the West Coast by The Judge Advocate General received for review 655 general courts-martial and 1,479 special courts-martial. This total of 2,134 cases comprised 37.7% of the total number of cases received by The Judge Advocate General for review by boards of review during the reporting period.

During 1957, 59.6% 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. This constitutes a decrease of almost 2 percent from 1956, which in turn showed a decrease of 2 percent from 1955. Thus for the second year, the trend toward consistent increase in this respect prior to 1955 has been reversed. The number of accused requesting appellate representation remains substantial, amounting to 3,374.

Of cases reviewed by boards of review during 1957, 4.4% were forwarded to the United States Court of Military Appeals pursuant to Article 67 (b) (2) and (3) of the Code.

TRAINING

(a) *Courses of Study at the U. S. Naval School (Naval Justice).* The U. S. Naval School (Naval Justice), staffed by law specialists and under the technical supervision of The Judge Advocate General, continues to rank as one of the best service schools in the Navy. It is again emphasized that the course of instruction is aimed at training officers of the line (nonlawyers) in the working requirements of the Uniform Code of Military Justice. The school also offers a course

of instruction for enlisted personnel—chiefly yeomen. Enlisted courses are aimed at (1) the training of yeomen in court-martial procedures in order to enable them to perform the clerical functions in connection with courts-martial and related matters and (2) the training of court reporters using the closed-microphone court reporting system. This latter course is open to members of the Army, Air Force, and Coast Guard. In addition, the school offers a senior officers' short course for actual and prospective commanding officers and executive officers aimed at familiarizing them with their responsibilities in the administration of the Code.

To the same end, provision is made for a special 28-hour course for senior officers attending the Naval War College at Newport.

Each summer, sandwiched between regular courses, a special 2-week course of instruction is provided for inactive Reserve officers requesting active duty training. As in the past, this year's attendance taxed the facilities of the school.

(b) *Courses of Study Conducted by the Staff of the Naval Justice School Away From Newport.* Again as in the past, at the request of the Commandant of the Marine Corps, a team of officer and enlisted instructors from the school conducted the regular 7-week course given both officers and enlisted men at Camp Pendleton, California.

The school staff continued its participation in the San Francisco and New Orleans Law Seminars by sending teams to conduct short courses of instruction in military law.

Considering the small staff of instructors (14 officers and 7 enlisted), the total student output as shown by the following table is really phenomenal:

	Officers	*Enlisted*
Regular 7-week Course	700	424
Court Reporting Course	------	293
Senior Officer's Short Course	155	-------
Special Course Naval War College	99	-------
Reserve Training Course	125	-------
Special 7-week Course at Camp Pendleton	73	60
Limited Duty Officers	695	-------
Aviation Ground Officers	111	-------
Total	1, 958	777

(c) *Courses of Study at the P. G. Line School, Monterey.* Approximately 700 naval officers attending the P. G. Line School at Monterey, received, as part of their education, a course of instruction in Military Justice. Two Law Specialists are assigned to the teaching staff for this purpose. The course of instruction is patterned after the one developed at Naval Justice School.

Operating under a training quota allocated to The Judge Advocate General, five law specialists attend the P. G. Line School course each

year. Not only does this afford the Navy lawyer an opportunity to become familiar with problems of the line, but it permits the line officer and the lawyer to exchange ideas—thus creating greater rapport between the two.

(d) *Motion Picture Training Film Program.* The distribution of 16 motion-picture training films on the subject of military justice, prepared in prior reporting periods, continued throughout the naval establishment during calendar year 1957. However, certain of them require editing as a result of changes wrought by decisions of the United States Court of Military Appeals [e. g., Rinehart—use of manual denied to court members]. As an interim measure, the JAG Journal has been used as the vehicle to alert all users of the films involved.

(e) *Correspondence Courses.* The correspondence courses discussed in the last Annual Report were again offered during the past year. Based upon the number of persons participating in this program, these courses continue to attract widespread interest of military personnel.

(f) *Post Graduate Training in Military Law.* The Judge Advocate General considers that post graduate training in military law by law specialists is necessary for the improvement of the individual officer, for thereby, the quality of legal service rendered is improved. The Army Judge Advocate General's School at Charlottesville, Virginia, provides the perfect vehicles. In the words of David O. Maxwell, Esquire, former President of the American Bar Association, "The school provides training for senior judge advocates of the Army and law specialists of the Navy to equip them for leadership in the military law practice." The Judge Advocate General continues to make full use of his quota of five officers per year for this course.

Distribution of kits containing basic legal reference material for use by Navy and Marine Corps Reserve officer-lawyers who are assigned primary duty in the line but who have legal duties as a collateral matter was continued during 1957. Approximately 275 of these kits have been distributed during the year.

Emphasis on the training of inactive Naval Reserve officers-lawyers in military justice has continued during 1957. At the present time there are 50 organized Reserve Law Companies in the ten Naval Districts located in the continental United States, with approximately 900 lawyers actively participating in the program. In addition to scheduled drills throughout the year, many of these officers undertook active-duty training at naval installations and in the Office of The Judge Advocate General. Specialized training was conducted at the Naval Justice School, and seminars in military justice were sponsored by The Judge Advocate General at New Orleans (17–27 March 1957)

and San Francisco (7–20 September 1957). Approximately 300 lawyers participated in these three specialized programs.

During 1957, The Judge Advocate General and senior members of his staff visited several Naval Commands, both in the United States and overseas, so that they might have first-hand observations of the administration of military justice in the field and personally acquaint themselves with the problems confronting local commanders. These visits have contributed to the improvement in the administration of justice. They will be continued.

The Judge Advocate General and members of his staff attended the winter meeting of the House of Delegates of the American Bar Association held at Chicago in February 1957 and the annual American Bar Association meeting held in London in the summer of 1957. Participation with the civilian bar continues to afford an excellent opportunity for a constructive interchange of ideas between military lawyers and civilian practitioners and, additionally, it fosters the intense and continuing interest in the effective administration of military justice which has been demonstrated by the civilian members of the legal profession.

Committee hearings on the recommendation for the improvement of the Uniform Code of Military Justice, as commented upon in last year's report, are still in the offing. Whether or not the Armed Services Committee of the House of Representatives will hold hearings during 1958 is still problematical.

During the past year, the *JAG Journal* continued efforts to promote legal forehandedness among personnel charged with the administration of Naval justice, and to bring to notice recent developments in this field. Articles published included topics emphasizing points of law under the Uniform Code of Military Justice, decisions of the United States Court of Military Appeals, and trends indicated by the Court's decisions. Also, wide dissemination of digests of important United States Court of Military Appeals decisions was accomplished by means of the Court-Martial Reports Digest section. To expedite research of material contained in past issues of the Journal, a 10-year cumulative index was published.

An item of major significance was the December 1957–January 1958 issue of the Journal. This issue, published as a symposium, was devoted to the Navy's program for improving the speeding up of the administration of justice and promoting discipline in the Navy and Marine Corps. It included articles by the Secretary of the Navy, the Assistant Secretary of the Navy (Personnel and Reserve Forces), the Chief of Naval Operations, the Commandant of the Marine Corps, and the Judge Advocates General of the Army, Navy, and Air Force. In addition, the issue contained articles discussing a Dockside Court procedure designed to improve and speed up the trial and review of

special courts-martial, desertion after the *Cothern* decision, and the prearranged plea system.

The period covered by this report covers an historic era in the development of an improved system of administration of military law and military justice in the Navy and Marine Corps. With the "coming of age" of military justice, we must continually be alert for further improvement in its administration.

CHESTER WARD,
Rear Admiral, USN,
The Judge Advocate General.

Report

of

THE JUDGE ADVOCATE GENERAL

of

THE AIR FORCE

January 1, 1957 to December 31, 1957

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

1. The proposed amendments to the Uniform Code of Military Justice which were being studied within the military departments at the time of my last report have been concurred in by the Department of the Army, the Department of the Navy, the Department of the Treasury, and the Court of Military Appeals, and were forwarded to Congress on 2 November 1957. The proposed legislation should result in a substantial improvement of the administration of military justice. Its early enactment is urged.

2. On 10 June 1957, the Supreme Court handed down its decision after rehearing in the habeas corpus cases of *Reid* v. *Covert* and *Kinsella* v. *Krueger*, 354 U. S. 1. The latest opinion of the court overturned its previous decision in these cases which had been handed down on 11 June 1956. This prior decision was referred to in the annual report for 1956.

In its 1957 decision, four of the justices held in effect that it is unconstitutional for Congress to provide for the trial of civilians in time of peace by courts-martial (although the opinion indicated that there might be a class of civilians so closely connected with the armed forces that they would be subject to its jurisdiction, this group was not defined). Two of the justices concurred with the result but limited their decision to the narrow question of whether or not civilian dependents overseas could be tried for capital offenses by courts-martial in time of peace. Using *Powell* v. *Alabama* as a guideline for distinguishing trials involving capital offenses from those involving noncapital offenses, they held that such jurisdiction was unconstitutional and left open the question of whether or not it would be constitutional to court-martial civilian dependents for noncapital offenses, or to court-martial civilian employees for either capital or noncapital offenses. Two of the justices dissented and held that Article 2 (11) was a necessary and proper exercise of the power granted to Congress to make rules for the government and regulation of the land and naval forces. One justice did not participate in the cases.

On 2 December 1957 a petition for a writ of habeas corpus was filed in the United States District Court for the District of Columbia on behalf of a Department of the Air Force civilian employee convicted of a noncapital offense by an Air Force court-martial convened in

Morocco. (*United States of America ex rel Dominic Guagliardo* v. *Neil H. McElroy et al*). The case was argued before the District Court on 17 December 1957 and upon completion of argument the case was taken under advisement by the court.

3. There were 1,201 judge advocates on active duty with the United States Air Force on 1 January 1957; on 31 December 1957 there were 1,202 judge advocates. During this one-year period, 286 judge advocates were gained while 285 were lost to the United States Air Force. The difficulty in recruiting and the mass exodus to civilian life of the professionally qualified military lawyer continues to be one of the most serious problems facing the Air Force today. Approximately 50 percent of the Air Force Judge Advocate General's Department is composed of inexperienced young lawyers recently out of law school. As these young military lawyers complete their military obligation and obtain legal experience, they voluntarily return to more lucrative and rewarding practices in civilian life. Their replacements are young lawyers recently graduated from law schools who, too, at the end of 2 or 3 years, will also return to civilian practice. The Uniform Code of Military Justice cannot be administered with the high degree of professional competence intended by Congress, while this situation continues. Incentives beyond those now available are essential if the Air Force is to retain competent judge advocates.

4. During the period of this report, Major General Reginald C. Harmon, The Judge Advocate General, his assistant, Major General Albert M. Kuhfeld, and senior members of his staff visited numerous Air Force installations in the United States and overseas, pursuant to the requirement of Article 6 (a) of the Uniform Code of Military Justice. In addition, they attended bar association meetings, veterans' conventions and various conferences where the Uniform Code of Military Justice was a topic of discussion.

5. The Office of The Judge Advocate General supervised and arranged for the publication of three bound volumes of Court-Martial Reports and one volume of Digest of Opinions containing legal opinions of the United States Court of Military Appeals, Army, Navy, Air Force, and Coast Guard. In addition, it published five quarterly paperbound volumes of Digest of Opinions; drafted, edited, and published slip sheet annotations to the Manual for Courts-Martial, 1951, of cases decided by the United States Supreme Court and the United States Court of Military Appeals, which overruled or modified portions of the Manual and the Uniform Code of Military Justice; analyzed, indexed and digested 335 decisions by the United States Court of Military Appeals and Air Force Boards of Review and 107 grants of review by the United States Court of Military Appeals; drafted and edited a complete revision of the courts-martial

instructions guide for law officers and presidents of special courts-martial; and published 40 issues of the JAG Index-Digest which provides a rapid competent vehicle for disseminating military justice information to judge advocates in the field.

6. To offset personnel losses in the active duty force due to overall Air Force reduction in force and the critical retention problem, a sharp increase in the mobilization assignment program throughout the commands was sponsored by The Judge Advocate General to augment the legal support of the regular establishment. A conversion of training to an "on-the-job-training" concept at all levels was directed so that maximum utilization of available legal talents would inure to the benefit of the active force in meeting increased workloads. The overall strength of the Reserve department expanded to 2,250 participating and trained judge advocate Reserve. Proficiency was insured by staff visits from Headquarters, United States Air Force, Headquarters, Continental Air Command and its numbered Air Force headquarters. The Judge Advocate General's program of Reserve orientation visits to Washington continued, though somewhat curtailed by reduced Air Force Reserve training flights. Briefings were conducted in the Office of The Judge Advocate General, allied legal agencies of the Government, and admissions to the various federal courts were arranged for eligible visiting reservists.

7. *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 of this report follows:

	1 January 1957 to 31 December 1957
Total	* 2,856

*1,026 general courts-martial; 1,830 special courts-martial.

The Board of Review modified findings of guilty in 83 of these cases.

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 January 1957 to 31 December 1957
Total	308

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

	1 January 1957 to 31 December 1957	
On hand at beginning of period	186	
Referred for review	2,856	3,042
Reviewed	2,887	
Pending at close of period	155	3,042

c. From 1 January to 31 December 1957, 53 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, 11.4 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 six were based upon petitions of the accused for grant of review by the Court of Military Appeals. Six cases during the period were certified by The Judge Advocate General. Petitions were granted by the Court of Military Appeals during the period in 15 percent of the cases which were petitioned, or 0.2 percent of the total number of cases reviewed by the Boards of Review.

e. During the period of this report there were 37,311 courts-martial convened in the Air Force.

8. At the close of the period, there were 93 commands in the Air Force exercising general courts-martial jurisdiction.

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

Report

of

THE GENERAL COUNSEL

of

THE DEPARTMENT OF THE TREASURY
(UNITED STATES COAST GUARD)

January 1, 1957 to December 31, 1957

REPORT OF THE GENERAL COUNSEL OF THE TREASURY DEPARTMENT

UNITED STATES COAST GUARD

The courts-martial volume increased substantially during the past year, but for the most part minor summary courts accounted for the higher figures. There was some increase in special courts, but there were fewer Board of Review cases and less general courts-martial. For the past 5 years, courts-martial in the Coast Guard numbered as follows:

	1957	*1956*	*1955*	*1954*	*1953*
General courts-martial	14	19	23	19	19
Special courts-martial	233	202	159	168	279
Summary courts-martial	751	585	480	612	725
Total	998	806	662	799	1023

During the year eight petitions for review were forwarded to the Court of Military Appeals, all pursuant to Article 67 (c) of the Code. Petitions were denied in five of the cases; the remaining three were granted and subsequently argued before the Court. In two of these, *United States* v. *Gray* and *United States* v. *Turner*, no decision had been rendered at the end of the year. In the third case, *United States* v. *Rinehart*, 8 USCMA 402, 24 CMR 212, the Court directed a rehearing on the sentence because of a reference by the Government to a policy statement in the Manual for Courts-Martial during the argument on the sentence. Upon another point, however, this case seems destined to be a landmark in military law. The majority opinion was the vehicle for a direction to the Armed Forces forbidding members of courts from consulting the Manual while deliberating on the findings or sentence. The Court thereby placed a long-indulged practice of courts-martial beyond the pale.

Another Coast Guard case of some interest was the regrettable but necessary bringing to trial of an inactive reservist in order to enforce his enlistment obligations incurred pursuant to the Reserve Forces Act of 1955. The case is believed to be the first successful prosecution of a member of the Ready Reserve arising out of a failure to attend prescribed drills under the 1955 Act.

An ALDIST, memoranda from the Chief Counsel, and the Coast Guard Law Bulletin were utilized to keep legal officers in the field

abreast of important developments in courts-martial law. For example, while the Court of Military Appeals did not outlaw courtroom use of the Manual until November 15, 1957, the *Boswell* opinion of July 19, 1957, pointed to such a prohibition, and in anticipation of it the Chief Counsel of the Coast Guard on July 24, 1957, advised District Legal Officers that the Manual must be kept out of court-martial deliberations. District Legal Officers additionally received regularly such material as the Advance Opinions of the Court of Military Appeals, the Army JAG Chronicle and the Navy JAG Journal.

After more than 4 years of faithful service on the Board of Review, Captain C. R. Couser left to assume command of the *CGC Ingham.* The vacancy in the Board was filled with the designation of Commander W. L. Morrison, formerly legal officer in New York, and the Board was reconstituted with Mr. Arthur Rosenwasser, chairman, Commander Morrison and Commander A. J. Caliendo. During the year the Board reviewed 42 cases, one of which involved a commissioned officer. Board action modified the results of trial in 15 cases, amounting to 35 percent of those reviewed. In one case the findings and sentence were wholly disapproved; in five others both findings and sentence were partially disapproved; in four cases the sentence alone was reduced, and in five cases the findings alone were modified. Board action resulted in setting aside five punitive discharges. In five instances the General Counsel exercised residual clemency after the action of the Board of Review.

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Department of the Treasury.

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WM. S. FULTON