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, 1958, to December 31, 1958

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

SECRETARY OF THE TREASURY

and the

SECRETARIES OF THE DEPARTMENTS OF THE

ARMY, NAVY, AND AIR FORCE

PURSUANT TO THE

UNIFORM CODE OF MILITARY JUSTICE

For The Period

January 1, 1958, to December 31, 1958

Contents

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, 1958, to December 31, 1958

JOINT REPORT

The following report, covering the period from January 1, 1958, through December 31, 1958, is the seventh 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 to prepare 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 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 not urging the consideration of additional recommendations at this time other than those set out in its last annual report for calendar year 1957. These suggested amendments, with certain refinements, are identical with those originally proposed in the 1953 Annual Report and reaffirmed in all subsequent annual reports to date. For purposes of availability, these recommended changes are set out in Exhibit A with an accompanying Statement of Purpose, their principal features, and Sectional Analysis. It is hoped that the Congress will resume hearings held in 1956 on these recommendations for the purpose of enacting into law those changes it believes would be most beneficial to the sound administration and effectiveness of the Uniform Code of Military Justice.

Under consideration by the Code Committee is a report received during the latter part of this reporting period from its appointed subcommittee, composed of a representative of each branch of the Armed Services and the Court. This subcommittee first met in the early part of 1958 to conduct a critical review of the operations of the Code at all levels. From this continuing study other changes may be recommended for consideration and action by the Congress.

This annual report, as well as previous annual reports, includes statistical information based on the close of business of the calendar

year. Statistics must be compiled by the Offices of the Judge Advocates General and the General Counsel of the Treasury Department from commands located throughout the world. This results in some delay in supplying these reports to the Congress. The members of the Code Committee believe that the reports would be of greater value to the Congress if they reached the Armed Services Committees shortly after the convening of each new session. To accomplish the above purpose, the Code Committee, while continuing to submit its reports on a calendar year basis, suggests that the statistics be reflected therein as of the close of the preceding fiscal year.

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.
NELSON P. ROSE,
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 or deceive. 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 words "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, there 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 affirmed 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:

"§ 923a. *Art. 123a. 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, with intent to defraud; or

(2) for the payment of any past due obligation, or for any other purpose, with intent to deceive; 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 the drawee's possession or control, is prima facie evidence of his intent to defraud or deceive and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentment. In this section the word 'credit' means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order."; and

(B) by inserting the following new item in the analysis:

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

SEC. 2. This Act becomes effective on the first day of the tenth month following the month in which it is enacted.

SECTIONAL ANALYSIS

of a bill

To amend title 10, United States Code, as relates to the Uniform Code of Military Justice.

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 1st day of the 10th month following the month in which enacted.

EXHIBIT B

EXHIBIT B

	1956	*1957*	*1958*	*Total*
Personnel strength of Armed Forces [1]	2, 780, 723	2, 617, 042	2, 565, 923	----------
Court-martial cases for Armed Forces	[2] 1, 413, 036	187, 171	143, 032	1, 743, 239
Cases reviewed by boards of review	[3] 98, 165	12, 193	9, 444	119, 802
Cases wherein findings were modified by boards of review	[3] 3, 282	469	536	4, 287
Cases docketed with USCMA	[3] 9, 465	1, 616	1, 561	12, 642
Opinions published by USCMA	[3] 852	209	307	1, 368
Opinions published wherein decisions of boards of review were modified by USCMA	[3] 411	142	181	734

[1] As of Dec. 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 1956.

[3] Total court-martial cases from May 31, 1951 (effective date of the Uniform Code of Military Justice) to Dec. 31, 1956.

Report

of the

UNITED STATES COURT OF MILITARY APPEALS

January 1, 1958, to December 31, 1958

UNITED STATES COURT OF MILITARY APPEALS

This report of the United States Court of Military Appeals for the year January 1, 1958, to December 31, 1958, is submitted to Congress pursuant to Article 67(*g*) of the Uniform Code of Military Justice, 10 U.S.C. 867(*g*).

The report contains certain observations of a general nature, as well as the statistics on the volume and scope of the work of the Court during the past year.

During calendar year 1958, there were 1,608 cases filed in the United States Court of Military Appeals. It appears that there is now a levelling off in the number of cases filed at about 1,700 per year since the Court's establishment. The number of opinions released in the reporting period was 306. This is the largest number of opinions written by this Court in a single year. By comparison, in 1957, 209 opinions were written and published and, in 1956, 104 opinions were released by the Court. Of these 306 opinions, 181 constituted reversals or modification of decisions of the boards of review.

The Court has now admitted 7,449 practitioners to the membership of its bar of which number 533 were admitted in 1958. This membership includes attorneys from all 49 States, the Territory of Hawaii, the Commonwealth of Puerto Rico, and also includes American attorneys practicing in Germany, Guam, Canada, and the Panama Canal Zone. In addition, because of the normal duty rotation of uniformed personnel, military lawyers admitted to practice may now be found wherever United States troops are stationed throughout the world.

The workload of the Court was very heavy during the year 1958 and for that reason it was not possible for the Judges to accept all of the invitations extended to them to address various Reserve Officers Associations, State and Regional Bar Associations, and other civic organizations; however, the Judges did make themselves available for lectures at the military Service Schools at Charlottesville, Va., and Newport, R.I., and for as many other appearances as could be worked into a heavy schedule. Also, the Judges conferred with officers of supervisory rank from each branch of the Armed Services in order to become familiar with the problems that occur in military justice at the operational level. The Judges believe that cooperation and coordination among all levels of the military and the Court in the sphere of military justice can only result in a continuation of the

improvement of the system of military justice which is the aim of the Court in consonance with the expressed intent of the Congress.

The Judges have earnestly endeavored to make the United States Court of Military Appeals a *court* in every sense of the word. In addition, they have tried to discharge their obligations with fairness, firmness, justice, impartiality, and judicial dignity.

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

While a detailed analysis of the status of cases processed since the Court came into existence in 1951 is attached hereto, a brief summary of those statistics may serve as a convenient and ready reference. The Court, since 1951 has docketed by way of petition, certificate or mandatory review, 12,816 cases. Of this number, action has been completed in 12,650. Opinions numbering 1,368 have been published with another 40 in the process of completion. Of the 1,368 published opinions, 50 related to Army officers; 11 Naval officers; 15 Air Force officers; 2 Coast Guard officers, and 20 civilians. The remaining opinions affected enlisted personnel. As of December 31, 1958, review had been completed in 31 capital cases including 35 members of the Armed Services.

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 by services	*Total as of Dec. 31, 1956*	*Jan. 1, 1957 to Dec. 31, 1957*	*Jan. 1, 1958 to Dec. 31, 1958*	*Total as of Dec. 31, 1958*
Petitions (Art. 67(b)(3)):				
Army	5,810	965	755	7,530
Navy	1,744	232	290	2,266
Air Force	1,735	403	534	2,672
Coast Guard	28	6	2	36
Total	9,317	1,606	1,581	12,504
Certificates (Art. 67(b)(2)):				
Army	74	8	12	94
Navy	123	14	7	144
Air Force	23	6	6	35
Coast Guard	5	0	0	5
Total	225	28	25	278
Mandatory (Art. 67(b)(1)):				
Army	29	2	0	31
Navy	0	0	2	2
Air Force	1	0	0	1
Coast Guard	0	0	0	0
Total	30	2	2	[1] 34
Total cases docketed	9,572	1,636	1,608	[2] 12,816

[1] 2 flag officer cases; 1 Army and 1 Navy.

[2] 12,642 cases actually assigned docket numbers. 74 cases counted as both Petitions and Certificates. 3 cases certified twice. 92 cases submitted as Petitions twice. 1 mandatory case filed twice. 4 mandatory cases filed as Petitions after second Board of Review opinion.

COURT ACTION

	Total as of Dec. 31, 1956	Jan. 1, 1957 to Dec. 31, 1957	Jan. 1, 1958 to Dec. 31, 1958	Total as of Dec. 31, 1958
Petitions (Art. 67 (b) (3)):				
Granted	729	297	239	1, 265
Denied	8, 268	1, 229	1, 348	10, 845
Denied by Memorandum Opinion	0	0	1	1
Dismissed	5	0	4	9
Withdrawn	155	56	53	264
Disposed of on motion to dismiss:				
With opinion	7	0	0	7
Without opinion	27	4	4	35
Disposed of by Order setting aside findings and sentence	2	0	0	2
Remanded to Board of Review	26	12	69	107
Court action due (30 days) [3]	91	111	66	66
Awaiting briefs [3]	35	47	30	30
Certificates (Art. 67 (b) (2)):				
Opinions rendered	208	22	31	261
Opinions pending [3]	4	10	7	7
Withdrawn	4	0	1	5
Set for hearing [3]	4	3	4	4
Ready for hearing [3]	1	2	0	0
Awaiting briefs [3]	5	5	2	2
Mandatory (Art. 67 (b) (1)):				
Opinions rendered	30	1	2	33
Opinions pending [3]	0	0	0	0
Remanded	1	0	0	1
Awaiting briefs [3]	0	1	1	1
Opinions rendered:				
Petitions	596	185	273	1, 054
Motions To Dismiss	9	0	0	9
Motion To Stay Proceedings	0	0	1	1
Per Curiam grants	21	1	0	22
Certificates	181	21	26	228
Certificates and Petitions	26	1	4	31
Mandatory	30	1	2	33
Remanded	1	0	47	48
Petition for a New Trial	1	0	0	1
Petition for Reconsideration of Petition for New Trial	1	0	0	1
Motion to Reopen	0	0	1	1
Total	867	209	353	[4] 1, 429

[3] As of Dec. 31, 1956, 1957, and 1958.

[4] 1,429 cases were disposed of by 1,368 published opinions. 79 opinions were rendered in cases involving 50 Army officers, 15 Air Force officers, 11 Navy officers, 2 Coast Guard officers, and 1 West Point Cadet. In addition, 19 opinions were rendered in cases involving 20 civilians. The remainder concerned enlisted personnel. The Court remanded 47 cases in 1958 by Order.

Completed cases:	*Total as of Dec. 31, 1956*	*Jan. 1, 1957 to Dec. 31, 1957*	*Jan. 1, 1958 to Dec. 31, 1958*	*Total as of Dec. 31, 1958*
Petitions denied	8,268	1,229	1,348	10,845
Petitions dismissed	5	0	4	9
Petitions withdrawn	155	56	53	264
Certificates withdrawn	4	0	1	5
Opinions rendered	859	209	307	1,375
Disposed of on motion to dismiss:				
With opinion	7	0	0	7
Without opinion	27	4	4	35
Disposed of by Order setting aside findings and sentence	2	0	0	2
Remanded to board of review	27	12	69	108
Total	9,354	1,510	1,786	12,650

	Pending completion as of—		
	Dec. 31, 1956	*Dec. 31, 1957*	*Dec. 31, 1958*
Opinions pending	37	120	40
Set for hearing	17	18	12
Ready for hearing	4	2	0
Petitions granted—awaiting briefs	17	34	9
Petitions—Court action due 30 days	91	111	66
Petitions—awaiting briefs	35	47	30
Certificates—awaiting briefs	5	5	2
Mandatory—awaiting briefs	0	1	1
Total	206	338	160

Report

of

THE JUDGE ADVOCATE GENERAL

of

THE ARMY

January 1, 1958, to December 31, 1958

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY

Adoption of the proposed changes to the Uniform Code of Military Justice found in Exhibit A to the Joint Report would provide for more prompt and efficient administration of military justice both from the point of view of the individual and the Government. This bill has been made a part of the Department of Defense Legislative Program for 1959. Comments received from judge advocates in the field indicate that support of this proposed legislation has been unanimous.

As noted in my report of last year, changes in basic military law are occurring with increasing rapidity as a result of the decisions of appellate tribunals. The following brief survey indicates the more important of these innovations:

(1) *Counsel for the accused.* In the case of *United States* v. *Kraskouskas*, 9 USCMA 607, 26 CMR 387, it was held that it is prejudicial error to permit an accused, even at his own request and with full advice as to his right to be represented by qualified counsel, to be represented before a general court-martial by a non-lawyer.

(2) *Changes in the Manual for Courts-Martial.* The most significant change in the Manual during 1958 was the decision overruling paragraph 127b which provided that a court could not adjudge confinement at hard labor for more than 6 months unless a punitive discharge was included in the same sentence. *United States* v. *Varnadore*, 9 USCMA 471, 26 CMR 251 and *United States* v. *Holt*, 9 USCMA 476, 26 CMR 256.

(3) *Conduct punishable under Article 134, UCMJ.* Nonpayment of a check issued as a part of a gambling debt does not now constitute conduct punishable under Article 134, UCMJ, even though the fact of nonpayment is widely known to the civilian community. *United States* v. *Lenton*, 8 USCMA 690, 25 CMR 194.

(4) *Review of general courts-martial by SJA and action by convening authority.* A staff judge advocate and his convening authority are both disqualified to act on the case of an accused where the convening authority upon the recommendation of the staff judge advocate approves a grant of immunity to a co-conspirator who subsequently testifies as a prosecution witness in the case. *United States* v. *Albright*, 9 USCMA 628, 26 CMR 408, and *United States* v. *White*, 10 USCMA 63, 27 CMR 137.

(5) *Instructions on constructive knowledge.* Where an accused is charged with violating a lawful order of his commanding officer

under Article 92(2), it is prejudicial error to instruct the court that constructive knowledge of the order exists when the accused "by the exercise of ordinary care, should have known of the matter, whether or not he did so in fact." *United States* v. *Curtin*, 9 USCMA 427, 26 CMR 207.

(6) *Self-incrimination.* The application of the provisions of Article 31, UCMJ, has been extended to declare illegal the order of a superior officer to an accused to submit to a blood alcohol test. *United States* v. *Musguire*, 9 USCMA 67, 25 CMR 329. The same principle was applied to the production of urine specimens, *United States* v. *Forslund*, 10 USCMA 8, 27 CMR 82, and handwriting exemplars, *United States* v. *Minnifield*, 9 USCMA 373, 26 CMR 153. It was reasoned that under Article 31 an accused may not be compelled to produce evidence against himself by either an oral or a physical act. The Court further construed Article 31 to require a military policeman to inform a soldier of his rights pursuant to Article 31 before requesting him to produce his pass if the military policeman suspects him of having committed a pass violation or some other offense. *United States* v. *Nowling*, 9 USCMA 100, 25 CMR 362.

In many instances these sharp departures from previous military legal practice have created difficult problems for military law enforcement authorities. In order to correct some of these deficiencies, proposed remedial legislation is under study.

Until recently a prisoner confined in a disciplinary barracks who was determined to be eligible for parole under pertinent regulations could not be released on parole until his discharge had been executed. By the terms of Article 71(*c*) of the Uniform Code of Military Justice no sentence which includes a dishonorable or bad-conduct discharge (unsuspended), (or confinement for 1 year or more) can be executed until it has been affirmed by a board of review and, in cases reviewed by it, the Court of Military Appeals. It frequently happened that when a prisoner was determined to be eligible for parole, the review of his case was pending before the Court of Military Appeals. The individual thus found that he would have to choose between perfecting his appeal or being released on parole. More often he chose the latter. To alleviate this situation, the Secretary of the Army, on 10 June 1958, upon recommendation of The Judge Advocate General, approved a plan to authorize a form of conditional release known as "Commandant's Parole" for those unsentenced prisoners whose parole had been duly approved but whose case had not been finally reviewed by the Court of Military Appeals. Implementation of the plan has required two advance decisions of the Comptroller General, but the necessary action to implement this policy has now been accomplished.

The law officer program, inaugurated on 1 January 1958 in two pilot areas, has demonstrated that specialization by law officers has resulted in a higher standard of performance, fewer errors, and less reversals by appellate agencies. On 13 November 1958, a Field Judiciary Division was established under the direct supervision and control of The Judge Advocate General. This Division was created with the personal approval of the Secretary of the Army to administer the manner in which officers will be designated and made available for appointment as law officers of general courts-martial. The Division is comprised of specially selected senior officers deemed best qualified by maturity, temperament, training, and experience to perform judicial functions. These officers have been designated judicial officers and their sole duty will be to perform the functions and duties of law officer. In this connection, Judicial Areas are being designated and subdivided into Judicial Circuits, and one or more judicial officers have or will be given a duty station within each Circuit, where they will be available for appointment as law officers of all general courts-martial convened there, but will remain under Department of the Army command and operational control. It is not contemplated that the certification of those officers who have been previously certified as provided by Article 26(a), UCMJ, will be withdrawn. However, following notification of the activation of each Circuit the affected convening authorities will thereafter appoint as law officer only a judicial officer or other such officer as may be expressly designated for that duty by The Judge Advocate General. It is estimated that a period of 9 months will be required for complete worldwide implementation of this program.

A serious personnel problem exists. As this report is being written, 1,011 judge advocate officers are on active duty. Of them, 513 are in the Regular Establishment and 498 are in the Judge Advocate General's Corps Reserve. The Regular Army authorized strength is 645, but 21 percent of the spaces therefor are vacant. It is very significant that only 20 of the 392 lieutenants on active duty are members of the Regular Army. With such negligible input of career lawyers at the bottom, it is becoming necessary to fill increasing numbers of responsible positions in the Judge Advocate General's Corps with officers who lack proper experience and maturity and who are not motivated toward a military career. Also, with virtually no input at the bottom, in the future we will have practically no officers in the higher grades. Even now, experienced military lawyers are in such short supply that it is impossible to maintain an appropriate career development program.

During the calendar year 1958, The Judge Advocate General's School, United States Army, provided resident instruction for 629 military lawyers and civilian attorneys employed by the Government.

Two cycles of the 11-week basic course in military law were conducted and attended by 123 junior officer students.

The Sixth Advanced Class completed 35 weeks of resident study at the School in May 1958, and the Seventh Advanced Class entered upon its course of instruction on 15 September 1958. The 22 officers of the Seventh Class include 2 Navy legal specialists, a Marine officer, a member of the Armed Forces of the Philippines, and a Burmese officer. The revised instructional program emphasizes the combination of short related subjects into broader courses, thus avoiding unnecessary duplication, allowing instructors greater flexibility, and permitting more emphasis to be placed on important areas. The requirement of a graduate-level thesis continues to constitute an important part of the advanced curriculum. Many of the theses prepared by members of past classes have been reproduced and distributed to field jurisdictions or have formed the basis of scholarly articles published in various legal periodicals.

In the field of procurement law, the School conducted four 3-week courses as well as 2 weeks' instruction in contract termination and a research and development seminar. Approximately 270 military and civilian Government attorneys, representing all of the Armed Forces and many other official agencies, participated in these classes.

The annual National Guard Judge Advocate Refresher Course, attended by 78 Army and Air Force National Guard officers, was conducted during June 1958. Thirty-eight Army officers attended two 3-week courses designed to prepare them more fully for assignment to duty as law officer of a general court-martial.

New courses conducted at the School during 1958 were the 2-week Army Reserve Judge Advocate Refresher Course and the International Law Course. The former, which will be continued on an annual basis, was attended by 58 Reserve officers not on active duty. The latter, designed to meet the need of many oversea commands for specialized advice in international law, was attended by 14 officers and 1 civilian Government attorney.

During the period 29 September 1958, through 2 October 1958, the annual 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 of the Corps who participated in panel discussions of space law concepts, development of the recently instituted law officer program, and other problems in military law which now confront military legal personnel.

Several Department of the Army publications were revised during 1958 at the School and distributed to officers in the field. Foremost among these was Department of the Army Pamphlet 27–9, *The Law Officer*, which furnished, in looseleaf format, guidance to law officers of general courts-martial and presidents of special courts-martial in

the conduct of trials and the preparation of appropriate instructions. The publication of the *Military Law Review* was initiated on a quarterly basis as a Department of the Army pamphlet series. Its purpose is to provide military lawyers with a forum in which to present scholarly articles concerning their specialty. Two issues have been printed and distributed, and the manuscript of the third issue has been forwarded to the Government Printing Office. The *Military Law Review* has also enabled the School fully to share the wealth of military legal knowledge contained in accumulated advanced class theses with judge advocates and legal specialists of all services as well as with members of the civilian bar.

The School continued to publish the *Procurement Legal Service*, a biweekly digest of significant decisions and opinions concerning Government contracts and procurement law, and the weekly command letter of The Judge Advocate General by which recent developments in military law are disseminated to all members of the Corps, including those officers assigned to the Ready Reserve. Distribution of a quarterly newsletter to all of the School's mobilization designees was initiated in April 1958. This service is designed to assist designees in maintaining their ability immediately to assume the duties of their particular assignments upon mobilization.

A study of the feasibility of instituting a system of probation and parole at the convening authority level was completed at the School and is now being reviewed by the Department of the Army. It proposes to establish by regulations a system of probationary control whereby more accused will be restored to duty by convening authorities under the supervision of their immediate commanding officers and probation officers appointed for each general and special court-martial jurisdiction. The object of the proposal is to secure a substantial reduction in the number of punitive discharges ordered executed in the Army.

A new training film entitled "Investigation of a Claim Against the Government" was placed in production. Arrangements were also initiated for the production of a recruiting film entitled "Career Opportunities in The Judge Advocate General's Corps" to be used in procuring applicants for Regular Army commissions in the Corps.

Nonresident training was provided in military justice and other military legal subjects to almost 2,000 Reserve judge advocates. The School continued its support of the USAR School Program with distribution of instructional material to 83 judge advocate branch departments. These departments conducted 118 classes with a total enrollment of approximately 1,000 students in associate company and advanced officer courses. A catalog of available instructional material for Reserve components was also published and distributed to the various Reserve units which have judge advocate sections assigned.

During September 1958, the School conducted its first Reserve Affairs Conference, designed to acquaint those responsible for the administration of the Reserve judge advocate program with current projects, directives, and policies of The Judge Advocate General and to discuss mutual problems. The conference was attended by representatives of the Office of The Judge Advocate General, each of the six zone of interior armies, and the United States Continental Army Command.

Advanced class students and 14 selected Reserve officers participated in LOGEX 58, the annual post exercise and map maneuver conducted for administrative and technical service schools of the Army. Student and Reserve officer players organized and manned legal staffs of major commands supporting a field army in an oversea theater of operations. Particular emphasis was placed on problems of international law developed from the presence of United States Armed Forces in the territory of a sovereign allied nation and the use of operational judge advocate teams designed to permit rapid shifting of legal personnel strength to meet changing workloads in various commands. Their use follows the trend toward decentralization and dispersion visualized for the atomic battlefield.

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:

	Jan. 1 through Dec. 31, 1958
Total	2,226

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:

	Jan. 1 through Dec. 31, 1958
Total	578

The following table shows the workload of records of trials in the Boards of Review during the same period:

	Jan. 1 through Dec. 31, 1958
On hand at beginning of period	240
Referred for review	[1] 2,235
Total	2,475
Reviewed	[2] 2,336
Pending at close of period	139
Total	2,475

[1] This figure includes 9 cases which were received for review pursuant to Art. 69 and referred to Board of Review.

[2] There were 2,447 accused persons involved in this figure.

From January 1, 1958, through December 31, 1958, of the 2,447 accused whose cases were reviewed by boards of review pursuant to Article 66, 61.5 percent requested representation by appellate defense counsel before the boards of review.

The records in the cases of 765 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 31.3 percent of 2,447, 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, 1958, to December 31, 1958

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

Disciplinary problems within the Naval Establishment during the past several years, with the concomitant human and financial losses in wasted manpower, have required renewed efforts throughout the Navy to meet the challenge of improving naval leadership and the administration of military justice. OPERATION TAPECUT, initiated in 1957 by the Judge Advocate General to speed up the administration of military justice throughout the Navy, post-trial interview techniques, new clemency procedures, negotiated plea program and organizational improvements in the Office of the Judge Advocate General have reflected improved personnel management techniques in military justice. The Marine Corps in particular has achieved distinguished success in many areas of the administration of justice.

OPERATION TAPECUT, during the year 1958, has produced tangible evidence of having achieved its primary aim. Between September 30, 1957, and September 30, 1958, a year which showed a decline in Naval and Marine Corps strength of only 2½ percent, the total number of personnel confined in the Navy for all purposes shrunk from 6,379 to 4,412. This represents a 30-percent decline. More significant, however, was the 42-percent drop in the number of personnel confined who were *not* under sentence. The success of OPERATION TAPECUT has proved such that it will continue to be emphasized.

OPERATION TAPECUT was directed principally at the presentencing phase of the court-martial. With such marked success in reducing the Navy brig population—without sacrificing the quality of justice administered in the Navy—the Judge Advocate General has been encouraged to reevaluate what can be done "after sentencing." The success attained by the Army in this phase has also spurred our efforts in this fertile field.

The Judge Advocate General continued the use of his Sentence Review Procedure during 1958. The sentences in all cases received by the Judge Advocate General under Articles 65, 66, and 69 were subjected to a thorough review for both appropriateness and uniformity. Using the authority delegated to him by the Secretary of the Navy under Article 74a, the Judge Advocate General suspended and remitted a number of punitive discharges and reduced the period of confinement and/or forfeitures in many instances. In view of a

more enlightened sentence review by convening and supervisory authorities and by the boards of review, the number of clemency actions by the Judge Advocate General was considerably less than during 1957.

The Navy leadership potential which is presently being manifest in the fleet and throughout the Navy as the result of a vibrant leadership program initiated by the Secretary of the Navy in May 1958 can be expected to save many of the young men in the service from experiencing the military court-martial. This program may also salvage many of the young men returned to duty in a probationary status. Effective leadership might well permit a larger "restorability" success than could heretofore have been reasonably expected.

Post-trial interviews in individual cases, of course, permit the exercise of a better judgment with regard to clemency and restorability. Ideally this would be a *required* phase in each case. Unfortunately, the law specialist personnel shortage has prevented the Navy-wide adoption of the post-trial interview technique. Staff legal officers have, however, been encouraged by the Judge Advocate General to obtain as much post-trial information as possible concerning their sentenced personnel so that the convening and subsequent reviewing authorities could better judge the efficacy of reducing or suspending part of or all of the sentence. Emphasis on the post-trial interview and on probation and clemency procedures will continue in the forthcoming year.

The "Negotiated Plea Program" of the Navy was announced by SECNAVINST 5811.1 of September 11, 1957, and SECNAVINST 5811.2 of December 17, 1957. Experience for the year 1958 indicated that these agreements have been handled judiciously and with prudence to accomplish their intended purpose. This program has afforded a reduction in our brig population, has conserved manpower and money, has improved the over-all administration of military justice and has greatly reduced the over-all processing time for records of trial throughout the Navy.

Many landmark decisions were handed down by the United States Court of Military Appeals during 1958 which have exposed several of the troublesome areas in military law. Many of these decisions demonstrate the maturing and changing of military law on a case-to-case basis. They also demonstrate that today's demands in the field of military justice (as well as in the other fields of law) require the professional experience of the full-time practicing lawyer.

There has been a marked decrease in the number of records of trial received in the Office of the Judge Advocate General for review under Articles 66, 69, and 65(c). During 1958, 4,476 records of trial were received in JAG for review under Article 66, which was 1,190 less than 1957's total—a decrease of approximately 21 percent. Of this

total, 990 were general courts and 3,486 were special courts. These figures show a decrease of 760 general courts-martial (43.5 percent) and a decrease of 430 special courts-martial against 1957 totals (11 percent). In addition 235 records of trial were received in JAG for examination under Articles 69 and 65(c), a decrease of 203 under 1957 (46.4 percent). The following shows the *workload of boards of review* during 1958:

On hand 1 January 1958	306	
Referred for review during 1958	4,476	
Total		4,782
Reviewed during 1958	4,615	
Pending 31 December 1958	167	
Total		4,782

During 1958, 54 percent of the accused whose cases were received for review under Article 66 requested representation by appellate defense counsel (2,429 out of 4,476). In 1957, 59 percent of the accused entitled to representation requested it. During 1958, 270 petitions were acted upon by the USCMA. Of this total, 217 petitions were denied and review was granted in 53 cases. The JAG certified seven cases to USCMA during this period. The two boards of review on the West Coast received for review 407 general courts-martial and 1,344 special courts-martial. This total of 1,751 comprised approximately 39 percent of the total of 4,476 cases received for review by boards of review during 1958.

Patently the *number* of courts-martial during any period of time cannot be equated with the *quantity* of law work experienced during that same period. With a reduction in the number of court-martial cases one could have expected a proportionate decrease in the demands placed on our law specialists. Such a decrease was not apparent in 1958. The bold reduction in numbers of cases in military justice contrasted sharply with tne increase in demands for legal services of law specialists in other fields. There has been a steady and continuing increase in the legal work in the Office of the Judge Advocate General and in the offices of the naval lawyer throughout the world.

Typical of the growing demand for legal services was the increase during the past year in the number of requests made by fleet and shore establishments of the Navy for the establishment of new or additional billets for lawyers. The majority of these requests could not be granted in view of the present ceiling limitations placed on the law specialist strength. Pressures for additional legal services have been mounting and continue to mount. To afford a measure of relief to the immediate pressures in overload in court-martial work,

two JAG task forces have been established. These task forces are on circuit to assist those commands which find themselves in urgent situations. When not on circuit they assist the appellate counsel in their preparation of cases. This task force concept has contributed to speedy justice, reduced brig populations, and lessened delays before and after trial. It has not, however, proved to be the answer to the personnel ceilings which have been placed on the number of law specialists—ceilings justified on the basis of the over-all situation in the Navy, but which cannot help but have an adverse effect upon the Navy's legal service.

Added to the dilemma of shortage there is a constant and continuing turnover of legally trained personnel—especially in the junior grades. The procurement program for law specialists referred to in last year's report has provided sufficient attorneys to fill authorized vacancies. So long as the draft law remains in effect no short-term procurement difficulties are anticipated. There is a desperate need, however, for a realistic and current *retention* program.

The present constant ebb and flow of unseasoned, inexperienced young lawyers in the Navy has produced a real handicap. (I am sure that the other services have felt this same handicap, but numberswise, they are in a better position to absorb it.) Few recent law school graduates have had sufficient experience in the law to undertake many of the specific legal tasks required of the naval lawyer—tasks where a highly specialized skill in the law is essential. The lack of career incentive to the young top flight men of the profession has required the Navy to rely on a hard corps of "senior" law specialists for the complex legal services performed by the Navy's lawyer.

The personnel problem is expected to become *more* acute in light of anticipated high selection attrition which was experienced during last year's selection cycle in the law specialist group. The acuteness of the problem is evident in the fact that to date 72 percent of all the law specialist Commanders have felt the impact of at least one passover. Twenty-five percent of all regular law specialists have been passed over at least once. The potential loss of legal experience which this group represents—experience both civilian and military which cannot be replaced—is such that if effected it would cause depressive damage to the legal services of the Navy—services to which the Navy, its personnel and their dependents are entitled and need.

Continued education for the Navy's professional lawyers, though limited, extends to some phases of the law specialists' responsibilities. Courses at the Naval War College, the Armed Forces Staff College, and the Navy Line School provide a non-legal technical training in military organization, planning, and operations. Training in these subjects provides a degree of knowledge, understanding, and familiarization which is beneficial to the naval officer lawyer. Continuing professional

legal training in military law, international law, and other fields which are of unique importance to the service lawyer is offered at the Army Judge Advocate General's School. In very limited numbers Navy law specialists are also eligible for training in the social sciences (International Relations) and in Petroleum Law at civilian colleges and universities.

While the above courses of study provide training in fields of vital importance to today's lawyer, they do not, however, represent an adequate program of continued legal education. Studies are being made to broaden the opportunities for continuing legal education for the law specialists. No lawyer ever outgrows the need for a continuing education in general practice or the special field he has entered. One of the prime responsibilities of the Judge Advocate General is to provide opportunity for continuing legal education in military law and in other fields.

The U.S. Naval School (Naval Justice), staffed by law specialists and under the technical supervision of the Judge Advocate General, continues to afford an opportunity for the non-lawyers of the naval service to become familiar in the working requirements of the Uniform Code of Military Justice. With a staff of 15 officers and 7 enlisted instructors, the following was accomplished during 1958:

	Officers	*Enlisted*
Regular 7-week Course	611	350
Court Reporting Course	-------	324
Senior Officer's Short Course	103	------
Special Course Naval War College	71	------
Reserve Training Course	143	------
Special 7-week Course at Camp Pendleton	89	57
Limited Duty Officers	593	------
Law Reserve Seminars:		
New Orleans	94	------
San Francisco	73	------
Total	1,777	731

The Judge Advocate General has continued his emphasis on the importance of the Inactive Reserve officer-lawyer training program. Notwithstanding a curtailment of funds for active duty training of this group of Reserve naval officers, the Judge Advocate General has successfully sponsored and conducted two law seminars in order to keep the Reserve lawyers equipped and prepared to assist the defense of the Nation in the event of mobilization. The seminars conducted during 1958 were held in San Francisco and New Orleans. The second week of each of these seminars was devoted to a rigorous and concentrated refresher course in military justice. In addition to these seminars, additional training in military law was conducted at the U.S. Naval School (Naval Justice) and at the district legal offices

throughout the country as well as in the Office of the Judge Advocate General. The Reserve Officer Training Program continues to receive emphasis by the Judge Advocate General as one of the essential programs in the Navy.

The year 1958—the period of this report—witnessed many important improvements in the administration of military justice. Additional improvements can be expected to materialize with experience and continued effort. The professional competence, the thoroughness in advice and counsel and the rigorous standard expected of an attorney's work have been carefully preserved in spite of personnel limitations that threaten the quality of legal service throughout the Navy. At this time the Judge Advocate General is seriously concerned over the personnel posture of the law specialist organization which now faces the loss of years of mature legal experience at a time when this experience cannot be replaced.

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

Report

of

THE JUDGE ADVOCATE GENERAL

of

THE AIR FORCE

January 1, 1958, to December 31, 1958

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

1. The proposed amendments to the Uniform Code of Military Justice, not having received favorable action during the last session of Congress, were restudied during the period of this report. As a result of such re-study, proposed Section 923a (Art. 123a), dealing with the "Making, drawing, or uttering check, draft, or order without sufficient funds," was amended. On December 11, 1958, the proposed amendments and a sectional analysis thereof were transmitted to the President of the Senate and the Speaker of the House of Representatives (see Exhibit A to Joint Report) and it is expected and hoped that this needed legislation will be introduced and receive favorable action by the Congress during its next session.

2. In the case of *United States ex rel. Guagliardo* v. *McElroy et al.*, referred to in my report for calendar year 1957, the United States District Court for the District of Columbia on January 13, 1958, dismissed the petition for habeas corpus and discharged the order to show cause. The Court in its opinion held that Article 2(11) of the Uniform Code of Military Justice, in so far as it applies to civilian employees, was a valid exercise of the power of Congress to make rules for the Government and regulation of the land and naval forces (Art. 1, Sec. 8, Clause 14 of the Constitution). An appeal was taken from the Court's order and on September 12, 1958, the United States Court of Appeals for the District of Columbia, one judge dissenting, reversed the order of the District Court. The Court in its majority opinion concluded that pursuant to the holding of the Supreme Court in *Reid* v. *Covert*, 354 U.S. 1, a civilian employee of the Armed Forces could not constitutionally be tried by court-martial for a capital offense. The Court then held that Article 2(11), as enacted, was non-severable and thus could not provide a valid basis for the courts-martial of civilian employees charged with non-capital offenses. The Solicitor General has filed a petition for a writ of certiorari in this case and the petition is presently under advisement by the Supreme Court.

3. On January 1, 1958, there were 1,202 Judge Advocates on active duty with the United States Air Force; on December 31, 1958, there were 1,203 Judge Advocates on duty. During this period 218 Judge Advocates were gained while 217 were separated from active duty. Approximately one-half of the Judge Advocates on active duty with the Air Force Judge Advocate General's Department are young lawyers recently out of law school who possess a minimum of experience. If these young officers leave the Air Force they must be replaced by recent law school graduates who, in turn, serve their obligated period of service and return to civilian law practice. This

continued personnel turnover is not conducive to the administration of the Uniform Code of Military Justice with the high degree of professional competence which Congress intended. This Department has taken many administrative steps to provide incentives for these young officers to become career Judge Advocates, among which is an extended forecast assignment system whereby an officer may know of his next assignment 1 year prior to the date of that assignment. Even with such administrative improvements additional incentives which can only be provided by congressional action are essential.

4. During the year 1958, Maj. Gen. Reginald C. Harmon, The Judge Advocate General, and Maj. Gen. Albert M. Kuhfeld, The Assistant Judge Advocate General, made staff visits to legal offices both in the United States and overseas as required by Article 6a of the Uniform Code of Military Justice. In addition, they attended Bar Association meetings, spoke before veterans' organizations and attended other meetings where the subject of military law was a topic of discussion.

5. The Office of The Judge Advocate General supervised and arranged for the publication of two 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 four quarterly paperbound volumes of Digest of Opinions; drafted, edited, and published two sets of slipsheet 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 for Courts-Martial and the Uniform Code of Military Justice; analyzed, indexed and digested 394 decisions by the United States Court of Military Appeals and Air Force boards of review and 125 grants of review by the United States Court of Military Appeals; and published 27 issues of the Air Force Judge Advocate General Bulletin which provides a rapid competent vehicle for disseminating military justice information to judge advocates in the field.

6. The changed concept of the mobilization assignment program of The Judge Advocate General's Department, both in Headquarters United States Air Force and in the command provided a high degree of utilization of Reserve Judge Advocate legal talent. This "on-the-job" training concept resulted in the augmentation of the active force to meet heavy workloads. The Continental Air Forces continued to bring to Washington groups of Reserve officers who were admitted to practice before the United States Court of Military Appeals and the United States Supreme Court as applicable and attended briefings in the Office of The Judge Advocate General and other Federal agencies.

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:

	Jan. 1 to Dec. 31, 1958
Total	2,222*

*768 by general court-martial; 1,454 by special court-martial.

The board of review modified findings of guilty in 39 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:

	Jan. 1 to Dec. 31, 1958
Total	249

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

	Jan. 1 to Dec. 31, 1958	
On hand at beginning of period	155	
Referred for review	2,222	
		2,377
Reviewed	2,331	
Pending at close of period	46	
		2,377

c. From January 1 to December 31, 1958, 53 percent of the accused whose cases were reviewed 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, 23.3 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 13 percent of the cases which were petitioned, or 0.3 percent of the total number of cases reviewed by the boards of review.

e. During the period of this report, there were 27,948 courts-martial convened in the Air Force.

8. At the close of the period, there were 90 commands in the Air Force exercising general court-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, 1958, to December 31, 1958

REPORT OF THE GENERAL COUNSEL OF THE TREASURY DEPARTMENT

UNITED STATES COAST GUARD

This report of the General Counsel of the Treasury Department is submitted pursuant to the mandate of Article 67(g) of the Uniform Code of Military Justice to survey the operation of the Code annually and to make recommendations on matters considered appropriate. The courts-martial volume in the Coast Guard during 1958, with the figures for purposes of comparison of the preceding 4 years, is shown in the table below:

	1958	*1957*	*1956*	*1955*	*1954*
General courts-martial	10	14	19	23	19
Special courts-martial	213	233	202	159	168
Summary courts-martial	665	751	585	480	612
Totals	888	998	806	662	799

The average number of courts per year for the 5 years has been 831. During 3 years before the Uniform Code, the average number of courts per year was 1,869. Courts-martial have decreased very substantially under the Code despite the fact that the Code gave the Coast Guard broader jurisdiction and greater punishment power.

What this proves is problematical. Certainly, it is much more difficult to try an offender by a general or special court-martial under the Code than it was by comparable court-martial under the prior law. However, the one-officer summary court of today is as simple as the pre-Code deck court and furnishes no more of an obstacle to the trial of offenses. Difficulty of trial may account for the decline in general and special courts-martial, but it is not a logical cause for the decline in summary courts or in total volume. Possibly many offenses were unnecessarily tried by courts before the Code; possibly many offenses which would have been tried by deck court in 1950 are being disposed of at mast today. Nevertheless, it is a fact that if the 1950 ratio of courts to personnel strength had held true in 1958, then without utilizing any more general and special courts-martial, we should have had 2,117 summary courts-martial instead of the 665 actually reported in the table above. If the ratio for all of the Armed Services in 1957 was carried out in the Coast Guard in 1958, the total of courts would have been 1,840 instead of 888.

The number of courts in the Coast Guard in 1958 was at the rate of 1 for every 29 enlisted men; approximately three-fourths of these were summary courts. In the fiscal year 1950, the rate was 1 court for every 11 men. In the Armed Forces as a whole in 1957, the ratio was 1 court to every 13.9 men.

Punitive discharges executed as a result of courts-martial have been approximately at the rate of 1 for every 1,000 enlisted persons, based on Coast Guard figures for the past 3 fiscal years. In the pre-Code year of 1950, such executed discharges were at the rate of 1 for every 109 enlisted men. The punitive discharge rate has declined steadily since the effective date of the Uniform Code of Military Justice, and in each year under the Code, the rate of such discharges from the Coast Guard has been the lowest of all the military services.

It is noteworthy that there has been no increase in administrative Undesirable Discharges to balance the decrease in court-martial discharges; on the contrary, Undesirable Discharges in 1950 before the Code far exceeded the number of such discharges in any year under the Code. If the materially fewer Bad Conduct Discharges, Dishonorable Discharges, and Undesirable Discharges since the effective date of the Code was caused by the Code, I am inclined to applaud rather than to condemn the Code for it.

During 1958, the Treasury Department Board of Review rendered 51 decisions in Coast Guard court-martial cases referred to it pursuant to Article 66(c) of the Code—40 of these cases, almost 80 percent, were guilty plea cases. The accused asked for appellate counsel in 5 of the 11 not guilty plea cases and in 15 of the 40 guilty plea cases. Remedial action by the board was accorded in only 3 of the 11 not guilty plea cases, but in 13 of the 40 guilty plea cases. In 10 cases the board modified the sentence alone; in 4 others it changed both findings and sentence; and in 2 cases, the findings were corrected but the sentence left unchanged. In 9 of the 14 cases in which the board modified the sentence, the punitive discharge was set aside. Of the nine punitive discharges eliminated, all but one were in guilty plea cases. In one other guilty plea case, the accused benefited from the board's recommendation that the bad conduct discharge be remitted on probation.

It may be noted that most of the board's corrective action took place in the area of guilty plea cases. It was chiefly in this area, too, that the board discovered errors of law affecting not only the sentence, but also the findings, as where the statement of offense was found to be legally insufficient. In the 14 instances where the board modified the sentence, such action was taken on grounds of legal error in 9 of the cases and on the ground of appropriateness of the punishment in the remaining 5. The accused petitioned the Court of Military Appeals

for a grant of review of the board of review decision in only two cases; both petitions were denied.

The foregoing analysis of the board of review's performance supports a conclusion that Article 66(c) of the Code has operated in a salutary fashion in requiring mandatory appellate review of the guilty plea cases; and that it has served the cause of justice also in permitting the board of review to determine what part or amount of the sentence should be approved as correct in law and fact on the basis of the entire record.

NELSON P. ROSE,
General Counsel,
Treasury Department.

U. S. GOVERNMENT PRINTING OFFICE: 1959

WM. S. FULTON