

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, 1964 to December 31, 1964**

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

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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

REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

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

Joint Report
of the
UNITED STATES COURT OF MILITARY APPEALS
and
THE JUDGE ADVOCATES GENERAL
OF THE ARMED FORCES
and
THE GENERAL COUNSEL OF THE
DEPARTMENT OF THE TREASURY

January 1, 1964, to December 31, 1964

JOINT REPORT

The following is the 13th annual 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 U.S. 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 the Secretary of the Treasury, and to the Secretaries of the Departments of the Army, Navy, and Air Force with regard to the status of military justice and to the manner and means by which it can be improved by legislative enactment.

The Chief Judge and the Judges of the U.S. 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, hereinafter referred to as the Code Committee, have met and conferred at the call of the Chief Judge several times during the period of this report. These conferences included a full consideration of legislative amendments to the Uniform Code of Military Justice consistent with the policy and purpose of this Committee.

No legislation directly relating to military justice was enacted during the second session of the 88th Congress. As noted in our last report, Senator Sam J. Ervin, Jr., chairman of the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, introduced 18 bills in the Senate on August 6, 1963. The stated purpose of the bills was to protect and enhance the constitutional rights of military personnel. On September 25, 1963, identical bills were introduced in the House of Representatives. Several of these bills would, if enacted, affect the administration of military justice in the armed forces. The bills were referred to the appropriate committee in each House of the Congress, and the chairman of each committee requested reports from the Department of Defense. In submitting these reports during 1964, the Department of Defense recommended, as substitutes for certain bills pertaining to military justice, legislative proposals substantially identical to those designated as "G" bill and "H" bill in our 1963 report. "G" bill was subsequently introduced as H.R. 10048 (88) and "H" bill was introduced as H.R. 10050 (88). Due to the press of Congressional business, no

hearings were scheduled for either of these bills, nor for the other bills introduced by Senator Ervin. Senator Ervin has indicated that he will reintroduce his bills early in the 89th Congress, and will request that hearings be held on them early in the first session of that Congress. "F" bill, also recommended in our 1963 report, was not formally introduced as a bill.

The Code Committee continues to recommend legislation embodying the substance of the bills denominated "F", "G", and "H", discussed in and attached to our report for the year 1963, and briefly described below.

"F" bill would permit convening authorities to order the confinement and forfeiture portions of certain sentences into execution upon approval. At present, a prisoner may complete the service of his term of confinement before his case has been finally reviewed. The distinction required in the treatment of such a prisoner from that accorded a sentenced prisoner complicates the administration of confinement facilities and has, on occasion, created complex administrative problems. "F" bill would eliminate this source of difficulty. The bill would also clarify the lesser punishments included in a death sentence, and eliminate a related anomaly in the present law by permitting the imprisonment and forfeiture of pay inherent in a death sentence to be made effective when the sentence is approved by the convening authority.

"G" bill, as noted in our report for 1963, is essentially a combination of the so-called "B" and "D" bills recommended in our report for 1962, with an additional provision that a bad-conduct discharge may not be adjudged unless an accused is represented by a qualified lawyer, or has refused the services of legally qualified counsel. In addition to this requirement for qualified counsel, "G" bill would authorize single-officer special and general courts-martial, and increase the authority of the law officer (or President of the court, in the case of a special court-martial without a law officer). It would provide authority, with necessary safeguards and procedural changes, whereby an accused person could waive a hearing before court members and be tried by the law officer alone—comparable to a trial without a jury in the Federal courts. The bill would also authorize pretrial sessions by a law officer, prior to the time the members are assembled, to consider and dispose of interlocutory questions and other procedural matters. This authority is similar to that contained in the Federal Rules of Criminal Procedure applicable to Federal courts. Various technical provisions are contained in the bill to clarify the status of the law officer in pretrial proceedings and related administrative matters.

Judge Ferguson continues to have reservations, as detailed in our report for the year 1962, concerning the desirability of some aspects of the proposals contained in "F" and "G" bills.

"H" bill would make two desirable changes in the remedies available to an accused who seeks relief after appellate review in his case has become final. The first change would extend from one year to two years the time within which a new trial may be granted. The other would give The Judge Advocate General specific statutory authority to vacate or modify a conviction or sentence which, not requiring review by a board of review under article 66, has become final. This authority could be exercised in case of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused. The authority that would be conferred by "H" bill would not affect the power of correction boards within the military departments to correct an error or remove an injustice under 10 U.S.C. 1552.

The "F", "G", and "H" bills are within the spirit of the Uniform Code of Military Justice, and their enactment is recommended. The bills and their respective sectional analyses are appended as exhibits A, B, and C.

The sectional reports of the Court and of the individual services outline the volume of court-martial cases subject to appellate review during the reporting period. Exhibit D is attached to recapitulate the number of court-martial cases of all types tried throughout the world, the number of such cases which are reviewed by boards of review, and the number ultimately reviewed by the United States Court of Military Appeals.

Respectfully submitted,

ROBERT E. QUINN,
Chief Judge.

HOMER FERGUSON,
Judge.

PAUL J. KILDAY,
Judge.

ROBERT H. McCAW,
The Judge Advocate General
United States Army.

WILFRED HEARN,
The Judge Advocate General
United States Navy.

ROBERT W. MANSS,
The Judge Advocate General
United States Air Force.

G. D'ANDELOT BELIN,
General Counsel
Department of the Treasury.

EXHIBIT A

"F"

A BILL

To amend chapter 47 (Uniform Code of Military Justice) of title 10, United States Code, by permitting timely execution of certain court-martial sentences.

1 *Be it enacted by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled, That*
3 chapter 47 (Uniform Code of Military Justice) of title 10,
4 United States Code, is amended as follows:

5 (1) Subchapter VIII is amended by striking out the
6 following item in the analysis:

7 "856. 56. Maximum limits."

8 and inserting the following item in place thereof:

9 "856. 56. Maximum limits; sentences included in
death sentence."

10 (2) Section 856 (article 56) is amended to read as
11 follows:

12 "§856. *Art. 56. Maximum limits; sentences included in*
death sentence

13 "(a) The punishment which a court-martial may
14 direct for an offense may not exceed such limits as
15 the President may prescribe for that offense.

16 "(b) A sentence to death includes dishonorable
17 discharge or dismissal, forfeiture of all pay and
18 allowances, and life imprisonment."

19 (3) Section 857 (article 57) is amended to read as
20 follows:

1 “§ 857. *Art. 57. Effective date of sentences*

2 “(a) Any period of confinement included in a sen-
3 tence of a court-martial begins to run from the date
4 the sentence is adjudged by the court-martial, but
5 periods during which the sentence to confinement is
6 suspended shall be excluded in computing the term of
7 confinement.

8 “(b) All other court-martial sentences and parts
9 thereof are effective on the date ordered executed.
10 No forfeiture may extend to any pay or allowances
11 accrued before the date the forfeiture is ordered
12 executed.”

13 (4) Section 871 (article 71) is amended—

14 (A) by striking out the first sentence in sub-
15 section (a) and inserting the following in place
16 thereof:

17 “A court-martial sentence involving a general
18 or flag officer and that part of a court-martial
19 sentence providing for death may not be executed
20 until approved by the President.”;

21 (B) by striking out the first two sentences in
22 subsection (b) and inserting the following in place
23 thereof:

24 “That part of a sentence providing for the dis-
25 missal, unsuspended, of a commissioned officer

1 (other than a general or flag officer), cadet, or
2 midshipman may not be executed until approved by
3 the Secretary concerned or such Under Secretary or
4 Assistant Secretary as may be designated by him.
5 He shall approve the dismissal or such commuted
6 form thereof as he sees fit and may suspend the
7 execution of the dismissal as approved by him.”;
8 (C) by amending subsection (c) to read as
9 follows:

10 “(c) That part of a sentence providing for,
11 unsuspended, a dishonorable or bad-conduct
12 discharge may not be executed until affirmed by
13 a board of review and, in cases reviewed by it,
14 the Court of Military Appeals.”; and

15 (D) by amending subsection (d) to read as
16 follows:

17 “(d) All other court-martial sentences and
18 parts thereof, unless suspended, may be ordered
19 executed by the convening authority when approved
20 by him. The convening authority may suspend the
21 execution of any sentence or part thereof, except
22 a death sentence.”

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

SECTIONAL ANALYSIS
OF
A BILL ("F")

To amend chapter 47 (Uniform Code of Military Justice) of title 10, United States Code, by permitting timely execution of certain court-martial sentences.

Section 1(1) amends subchapter VIII to amplify the analysis to reflect the amendment of article 56 proposed in section 1(2).

Section 1(2) amends article 56 by specifying in subsection (b) thereof that a sentence to death includes a dishonorable discharge or dismissal, total forfeitures, and life imprisonment. This amendment will allow forfeitures to be executed in accordance with the amendment to article 71 proposed in section 1(4), provide specific authority for confinement pending appellate review in death cases, and make it clear that a death sentence may be mitigated to dishonorable discharge, or dismissal, and life imprisonment or a lesser term of confinement (see *United States v. Russo*, 11 USCMA 352, 29 CMR 168).

Section 1(3) amends article 57 to delete the reference to applying forfeitures to pay or allowances becoming due on or after the date the sentence is approved by the convening authority in cases in which the approved sentence includes confinement not suspended. Under the amendment to article 71 proposed in section 1(4), this provision will no longer be necessary, for the convening authority will be able to order the forfeiture portion of a sentence (not involving a general or flag officer) into execution when approved by him. A new provision has been added, however, to indicate that forfeitures may not extend to pay or allowances accrued before the date the forfeiture is ordered executed.

Section 1(4) amends article 71(a) to provide that approval of the President is required only with respect to execution of the death penalty portion of a court-martial sentence and execution of any court-martial sentence involving a general or flag officer.

The section also amends article 71(b) to provide that approval by the Secretary concerned, or certain officials designated by him, is required in officer cases only with respect to execution of that part of the sentence providing for an unsuspended dismissal. Although the other portions of the sentence are not transmitted to him for approval under this article, he may, when he acts on the dismissal,

also exercise his powers under article 74 to remit or suspend any part or amount of the sentence which remains unexecuted at that time.

The amendment to article 71(c) requires affirmance by a board of review only with respect to execution of that part of the sentence providing for an unsuspended dishonorable or bad-conduct discharge and consequently will permit the convening authority to order executed other parts of the sentence, such as forfeitures and confinement, at the time he approves the sentence. This change in the law, together with the similar change in article 71(b), will do away with the administratively burdensome and unwarranted distinctions now drawn between prisoners in disciplinary barracks and other places of confinement based upon whether or not their sentences, including the confinement portion thereof, have been ordered executed. The class of sentences with which these amendments deal cannot now be ordered executed either in whole or, with the exception of application of forfeitures, in part until after lengthy appellate review.

Article 71(d) is amended to conform that article with the other amendments.

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

EXHIBIT B

"G"
A BILL

To amend chapter 47 (Uniform Code of Military Justice) of title 10, United States Code, by creating single-officer general and special courts-martial, providing for law officers on special courts-martial, affording accused persons an opportunity to be represented in certain special court-martial proceedings by counsel having the qualifications of defense counsel detailed for general court-martial, providing for certain pretrial proceedings and other procedural changes, and for other purposes.

1 *Be it enacted by the Senate and House of Representatives of the*
2 *United States of America in Congress assembled, That chapter*
3 47 (Uniform
4 Code of Military Justice) of title 10, United States Code, is
5 amended as

6 follows:

7 (1) Section 801 (10) (article 1(10)) is amended by inserting
8 the words "or special" after the word "general".

9 (2) Section 816 (article 16) is amended to read as follows:

10 "§ 816. *Art. 16. Courts-martial classified*

11 "The three kinds of courts-martial in each of the
12 armed forces are—

13 "(1) general courts-martial, consisting of—

14 "(A) a law officer and not less than five
15 members; or

16 "(B) only a law officer, if before the court
17 is assembled the accused, knowing the identity of
18 the law officer and after consultation with counsel,
19 requests in writing a court composed only of a law
20 officer and the convening authority consents thereto;

21 "(2) special courts-martial, consisting of—

22 "(A) not less than three members; or

 "(B) a law officer and not less than three
 members; or

1 “(C) only a law officer, under the same con-
2 ditions as those prescribed in clause (1)(B); and
3 “(3) summary courts-martial, consisting of one
4 commissioned officer.”

5 (3) Section 818 (article 18) is amended by adding the
6 following sentence at the end thereof:

7 “However, a general court-martial of the kind specified in
8 section 816(1)(B) of this title (article 16(1)(B)) may not
9 adjudge the penalty of death.”

10 (4) Section 819 (article 19) is amended by striking out the
11 last sentence and inserting the following sentence in place
thereof:

12 “A bad-conduct discharge may not be adjudged unless a
13 complete
14 record of the proceedings and testimony has been made and,
15 except in time of war, or of national emergency hereafter
16 declared
17 by the President or the Congress, the accused was repre-
18 sented or
19 afforded the opportunity to be represented at the trial by
20 counsel having the qualifications prescribed under section
21 827(b)
22 of this title (article 27(b)).”

23 (5) Section 825(c)(1) (article 25(c)(1)) is amended—

24 (A) by striking out the words “before the convening of
25 the court,” in the first sentence and inserting the words
26 “before the conclusion of a session called by the law officer
27 under section 839(a) of this title (article 39(a)) prior to
28 trial or, in the absence of such a session, before the court
29 is assembled for the trial of the accused,” in place thereof;
and

 (B) by striking out the word “convened” in the last
sentence and inserting the word “assembled” in place
thereof.

 (6) Subchapter V is amended by striking out the following

1 item in the analysis:

2 "826. 26. Law officer of a general court-martial."

3 and inserting the following item in place thereof:

4 "826. 26. Law officer of a general or special court-
martial."

5 (7) The catchline and subsection (a) of section 826
6 (article 26) are amended to read as follows:

7 "§ 826. *Art. 26. Law officer of a general or special
court-martial*

8 "(a) The authority convening a general court-martial
9 shall, and, subject to the regulations of the Secretary con-
10 cerned, the authority convening a special court-martial
11 may, detail as law officer thereof a commissioned officer
12 who is a member of the bar of a Federal court or of the
13 highest court of a State and who is certified to be
qualified

14 for that duty by the Judge Advocate General of the
armed force

15 of which he is a member. A commissioned officer who is
certi-

16 fied to be qualified for duty as a law officer of a general
17 court-martial is also qualified for duty as a law officer of
18 a single-officer or other special court-martial. A com-
missioned

19 officer who is certified to be qualified for duty as a law
20 officer of a special court-martial is qualified for duty as a
21 law officer of any kind of special court-martial. How-
ever, no

22 person may act as a law officer of a single-officer general
23 court-martial unless he is specially certified to be
qualified

24 for that duty. No person is eligible to act as law officer
in

25 a case if he is the accuser or a witness for the prosecution
or

26 has acted as investigating officer or as counsel in the
same case."

1 (8) Section 826(b) (article 26(b)) is amended by striking
2 out
3 the figures "839" and "39" and inserting the figures "839(b)"
4 and
5 "39(b)", respectively, in place thereof.
6 (9) Section 829 is amended—
7 (A) by striking out the words "accused has been
8 arraigned"
9 in subsection (a) and inserting the words "court has been
10 assembled for the trial of the accused" in place thereof;
11 (B) by inserting the words ", other than a single-officer
12 general court-martial," after the word "court-martial"
13 in the
14 first sentence of subsection (b); and by amending the last
15 sentence of subsection (b) to read as follows:
16 "The trial may proceed with the new members present
17 after
18 the recorded evidence previously introduced before the
19 members of the court has been read to the court in the
20 presence of the law officer, the accused, and counsel.";
21 (C) by inserting the words ", other than a single-officer
22 special court-martial," after the word "court-martial" in
23 the
24 first sentence of subsection (c); and by amending the last
25 sentence of subsection (c) to read as follows:
"The trial shall proceed with the new members present
as if no evidence had previously been introduced at the
trial, unless a verbatim record of the evidence previously
introduced before the members of the court or a
stipulation
thereof is read to the court in the presence of the law
officer, if any, the accused, and counsel."; and

1 (D) by adding the following new subsection at the end
2 thereof:

3 “(d) If the law officer of a single-officer court-
4 martial is unable to proceed with the trial because of
5 physical disability, as a result of a challenge, or for
6 other good cause, the trial shall proceed, subject to any
7 applicable conditions of section 816(1)(B) or (2)(C) of
8 this title (article 16(1)(B) or (2)(C)), after the detail
9 of a new law officer as if no evidence had previously
10 been introduced, unless a verbatim record of the evidence
11 previously introduced or a stipulation thereof is read in
12 court in the presence of the new law officer, the accused,
13 and counsel.”

14 (10) Section 835 (article 35) is amended by striking out the
15 second sentence and inserting the following in place thereof:

16 “In time of peace no person may, against his objection, be
17 brought to trial, or be required to participate by himself or
18 counsel in a session called by the law officer under section
19 839(a) of this title (article 39(a)), in a general court-
20 martial case within a period of five days after the service
21 of charges upon him, or in a special court-martial case
22 within
23 a period of three days after the service of charges upon
24 him.”

25 (11) Section 838(b) (article 38(b)) is amended by striking
26 out

the words “president of the court” in the last sentence and
inserting

the words “law officer or by the president of a court-martial
without

a law officer” in place thereof.

1 (12) Section 839 (article 39) is amended to read as follows :

2 "§ 839. *Art. 39. Sessions*

3 "(a) At any time after the service of charges which
4 have been referred for trial to a court-martial composed of
5 a law officer and members, the law officer may, subject to
6 section 835 of this title (article 35), call the court into
7 session without the presence of the members for the
purpose of—

8 "(1) hearing and determining motions raising
9 defenses or objections which are capable of determina-
10 tion without trial of the issues raised by a plea of
12 not guilty;

13 "(2) hearing and ruling upon any matter which may
14 be ruled upon by the law officer under this chapter,
15 whether or not the matter is appropriate for later con-
sideration or decision by the members of the court;

16 "(3) if permitted by regulations of the Secretary
17 concerned; holding the arraignment and receiving the
18 pleas of the accused; and

19 "(4) performing any other procedural function which
20 may be performed by the law officer under this chapter
21 or under rules prescribed pursuant to section 836 of this
22 title (article 36) and which does not require the presence
23 of the members of the court.

24 These proceedings shall be conducted in the presence of the
25 accused, the defense counsel, and the trial counsel and shall
26 be made a part of the record.

1 “(b) When the members of a court-martial deliberate or
2 vote, only the members may be present. After the mem-
3 bers of
4 a court-martial which includes a law officer and members
5 have
6 finally voted on the findings, the president of the court may
7 request the law officer and the reporter, if any, to appear
8 before the members to put the findings in proper form, and
9 these proceedings shall be on the record. All other pro-
10 ceed-
11 ings, including any other consultation of the members of
12 the
13 court with counsel or the law officer, shall be made a part
14 of the record and shall be in the presence of the accused,
15 the defense counsel, the trial counsel, and, in cases in which
16 a law officer has been detailed to the court, the law officer.”
17 (13) Section 840 (article 40) is amended to read as follows:
18 § 840. *Art. 40. Continuances*
19 “The law officer or a court-martial without a law
20 officer may, for reasonable cause, grant a continuance
21 to any party for such time, and as often, as may appear
22 to be just.”
23 (14) Section 841(a) (article 41(a)) is amended—
24 (A) by amending the first sentence to read as follows:
25 “The law officer and members of a general or special
26 court-martial may be challenged by the accused or the
trial counsel for cause stated to the court.”; and
 (B) by striking out the word “court” in the second
sentence and inserting the words “law officer or, if none,
the court” in place thereof.

1 (15) Section 842(a) (article 42(a)) is amended to read as
2 follows:

3 “(a) Before performing their respective duties, law
4 officers, members of general and special courts-martial,
5 trial counsel, assistant trial counsel, defense counsel,
6 assistant defense counsel, reporters, and interpreters
7 shall take an oath to perform their duties faithfully. The
8 form of the oath, the time and place of the taking thereof,
9 the manner of recording the same, and whether the oath
10 shall

11 be taken for all cases in which these duties are to be per-
12 formed or for a particular case, shall be as prescribed in
13 regulations of the Secretary concerned. These regulations
14 may provide that an oath to perform faithfully duties as a
15 law officer, trial counsel, assistant trial counsel, defense
16 counsel, or assistant defense counsel may be taken at any
17 time by any judge, advocate, law specialist, or other person
18 certified to be qualified or competent for the duty, and if
19 such an oath is taken it need not again be taken at the time
20 the judge advocate, law specialist, or other person is de-
21 tailed to that duty.”

22 (16) Section 845 (article 45) is amended—

23 (A) by striking out the words “arraigned before a
24 court-martial” in subsection (a) and inserting the words
25 “after arraignment” in place thereof; and

26 (B) by amending subsection (b) to read as follows:

(b) A plea of guilty by the accused may not be
received to any charge or specification alleging an

1 offense for which the death penalty may be adjudged.
2 With respect to any other charge or specification to
3 which a plea of guilty has been made by the accused
4 and accepted by the law officer or by a court-martial
5 without a law officer, a finding of guilty of the charge
6 or specification may, if permitted by regulations of the
7 Secretary concerned, be entered immediately without
vote.

8 This finding shall constitute the finding of the court
9 unless the plea of guilty is withdrawn prior to announce-
10 ment of the sentence, in which event the proceedings
shall

11 continue as though the accused had pleaded not guilty.”

12 (17) Section 849(a) (article 49(a)) is amended by inserting
after

13 the word “unless” the words “the law officer or court-martial
without

14 a law officer hearing the case or, if the case is not being
heard,”.

15 (18) Section 851 (article 51) is amended—

16 (A) by amending the first sentence of subsection
17 (a) to read as follows:

18 “Voting by members of a general or special court-martial
19 on the findings and on the sentence, and by members of a
20 court-martial without a law officer upon questions of
21 challenge, shall be by secret written ballot.”;

22 (B) by amending the first two sentences of subsection
(b)

23 to read as follows:

24 “The law officer and, except for questions of challenge,
25 the president of a court-martial without a law officer
26 shall rule upon all questions of law and all interlocutory

1 questions arising during the proceedings. Any such
2 ruling made by the law officer upon any question of
3 law or any interlocutory question other than the mental
4 responsibility of the accused, or by the president of a
5 court-martial without a law officer upon any question of
6 law other than motion for a finding of not guilty, is
7 final and constitutes the ruling of the court.”;

8 (C) by striking out the words “of a general court-martial
9 and the president of a special court-martial shall, in the
10 presence of the accused and counsel, instruct the court as to
11 the elements of the offense and charge the court” in the first
12 sentence of subsection (c) and inserting the words “and the
13 president of a court-martial without a law officer shall, in
the

14 presence of the accused and counsel, instruct the members of
15 the court as to the elements of the offense and charge them”
16 in place thereof; and

17 (D) by adding the following new subsection at the end
18 thereof:

19 “(d) Subsections (a), (b), and (c) of this section
20 do not apply to a single-officer court-martial. An
21 officer who is detailed as a single-officer court-
22 martial shall determine all questions of law and fact
arising

23 during the proceedings and, if the accused is convicted,
24 adjudge an appropriate sentence.”

25 (19) Section 852 (article 52) is amended—

26 (A) by inserting the words “as provided in section
845 (b)

1 of this title (article 45(b)) or” after the word “except” in
2 subsection (a) (2); and

3 (B) by adding to the first sentence of subsection (c)
4 the words “, but a determination to reconsider a finding
5 of guilty or, with a view toward decreasing it, a sentence
6 may be made by any lesser vote which indicates that the
7 reconsideration is not opposed by the number of votes re-
8 quired for that finding or sentence.”

9 (20) Section 854(a) (article 54(a)) is amended to read as
10 follows:

11 “(a) Each general court-martial shall keep a separate
12 record of the proceedings in each case brought before it,
13 and the record shall be authenticated by the signature of
14 the law officer. If the record cannot be authenticated by
15 the law officer by reason of his death, disability, or
16 absence, it shall be authenticated by the signature of the
17 trial counsel or a member. If the proceedings have resulted
18 in an acquittal of all charges and specifications or, if not
19 affecting a general or flag officer, in a sentence not includ-
20 ing discharge and not in excess of that which may otherwise
21 be
22 adjudged by a special court-martial, the record shall contain
23 such matters as may be prescribed by regulations of the
24 President.”

23 SEC. 2. This Act becomes effective on the first day of the
24 tenth month

24 following the month in which it is enacted.

SECTIONAL ANALYSIS
OF
A BILL ("G")

To amend chapter 47 (Uniform Code of Military Justice) of title 10, United States Code, by creating single-officer general and special courts-martial, providing for law officers on special courts-martial, affording accused persons an opportunity to be represented in certain special court-martial proceedings by counsel having the qualifications of defense counsel detailed for general courts-martial, providing for certain pretrial proceedings and other procedural changes, and for other purposes.

Section 1(1) amends article 1(10), the definition of a "law officer", to include an official of a special court-martial detailed in accordance with article 26 as well as such an official of a general court-martial. This reflects the amendment of article 16 (section 1(2)) which creates special courts-martial consisting of a law officer and members or just a law officer.

Section 1(2) amends article 16 to provide that a general or 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. Although such a procedure has not heretofore been available in any of the armed forces, an analagous method of disposition of criminal cases is provided in the Federal courts by Rule 23 of the Federal Rules of Criminal Procedure, which provides that:

"Cases required to be tried by a jury shall be so tried unless the defendant waives a jury trial in writing with the approval of the court and the consent of the Government."

The adoption of such a procedure will result in an appreciable reduction in both time and manpower normally expended in trials by courts-martial. The vast majority of cases in which an accused pleads guilty would probably be tried by a single-officer court. It should be noted that the convening authority is not required to establish a single-officer court-martial but may, in his discretion, refer cases to a court martial with members either because, with respect to special courts-martial, of a shortage of legally trained personnel available to the command or for other reasons.

Article 16 is further amended by providing for a special court-martial consisting of a law officer and not less than three members. The special court-martial with a law officer and members is designed primarily for the trial of cases involving factual and legal problems which might be considered too difficult for a legally untrained special court-martial president to handle.

Section 1(3) amends article 18 to provide that a general court-martial consisting of only a law officer may not adjudge the penalty of death.

Section 1(4) amends article 19 by providing that before a special court-martial may adjudge a bad-conduct discharge the accused must be represented or afforded the opportunity to be represented at the trial by counsel who is legally qualified in the sense of article 27(b). The offered representation, of course, will be at no expense to the accused. This amendment does not limit or otherwise affect any right the accused may have to obtain counsel of his own selection under article 38(b). Also, the accused may decide not to avail himself of the opportunity to be represented by counsel qualified under article 27(b).

Section 1(5) amends article 25 to provide in subsection (c)(1) that an accused who desires that enlisted members serve on his court-martial shall make such a request before the conclusion of a session called by the law officer under article 39(a) prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused. One of the purposes of the proposed amendment to article 39, *infra*, is to insure that the trial of the general issues will not be delayed after the members are in attendance. Under present practice, an accused can postpone his request for enlisted members until the appointed members of the court have gathered and, if enlisted persons are not then on the court, the court would be forced to adjourn until enlisted members are obtained and some of the officer members relieved.

The request for enlisted personnel may be made at any time prior to the conclusion of a session called prior to trial pursuant to the amendment to article 39. Only one pretrial session would be called in any particular case, although that session may continue for as long as may be necessary and may be recessed, postponed, continued, or reconvened. A reconvened pretrial session does not constitute a second such session, but rather a continuation of the session first called. If no pretrial hearing is held, the procedure for requesting enlisted persons will be substantially the same as the procedure now used.

Article 25 is further amended by substituting the word "assembled" for the word "convened" in subsection (c)(1). The term "convened" as used in the present subsection (c)(1) has been considered to be a term of art which has reference to that time in the court-martial proceedings when the members, the law officer, and counsel are sworn.

The amendment to article 43 contemplates that, if permitted by regulations of the Secretary concerned, the above personnel will be sworn at some time before their gathering in the courtroom. Accordingly, the term "convened" as used in the above sense might have no application under the amended procedure. Furthermore, the term "convened" is used elsewhere in the code to refer to the appointment of courts-martial, and consequently has caused some confusion in this respect. This and other amendments in this bill will obviate this confusion of terms by using the word "assembled" to refer to the gathering as distinguished from the appointment of the court.

Section 1(6) amends subchapter V by indicating in the analysis that law officers may be detailed to special as well as to general courts-martial.

Section 1(7) amends article 26(a) to provide that a commissioned officer acting as a single-officer general court-martial must have the qualifications generally specified for a law officer and, in addition, must be certified to be qualified for duty as a single-officer general court-martial by the Judge Advocate General.

The amendment also provides that a commissioned officer who is certified to be qualified for duty as a law officer of a general court-martial is also qualified for duty as a law officer of a single-officer or other special court-martial. A commissioned officer who is certified to be qualified for duty as a law officer of a special court-martial is qualified for duty as a law officer of any kind of special court-martial. The amendment will permit the establishment of a special list of individuals certified to be qualified to act as special court-martial law officers, thus making the opportunity to act in this capacity available to the younger judge advocates or legal specialists and providing a training ground for future general court-martial law officers. The detail of a law officer to a special court-martial is made subject to Secretarial regulations since the supply of individuals qualified as law officers is somewhat limited and will have to be controlled.

Section 1(8) amends article 26(b) to reflect the amendment to article 39.

Section 1(9) amends article 29 to provide that no member of a general or special court-martial may be absent or excused, except for the reasons specified, after the court has been assembled for the trial of the accused, and by specifically excepting from the operation of subsections (b) and (c) single-officer general and special courts-martial. This section further amends article 29 by deleting any reference in subsections (b) and (c) to the oaths of the members so as to make it clear that it is not required that new members take their oaths at the trial. The amendment to article 42 requires that the oath must be taken at some time before a member may perform his duties. The words "evidence previously introduced before the members of the court" have been inserted in place of the present language so that only that

evidence which has been introduced before the members of the court must be read to the court to which the new members have been detailed and so that all evidence, not just "testimony", will be included.

Subsection (d) is added to article 29 to provide for those instances in which the law officer of a single-officer general or special court-martial is absent, whether because of physical disability, challenge, or other good cause, and a new law officer is detailed. Just as in the case of absent court members, the trial shall proceed as if no evidence had previously been introduced unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new law officer, the accused, and counsel. The accused, knowing the identity of the newly detailed law officer and after consultation with counsel, must request in writing that the new single-officer court try his case (see section 1(2)). Otherwise, the charges must be returned to the convening authority for reference to a court-martial which includes members or for other disposition.

Section 1(10) amends article 35 by extending the protection of time for preparation by the defense to sessions called by the law officer under the proposed amendment to article 39.

Section 1(11) amends article 38 by providing in subsection (b) that, if the accused who has individual counsel does not desire that detailed counsel act in his behalf as associate counsel, detailed counsel shall be excused by the law officer instead of by the president when the trial is by a court-martial which includes, or may consist only of, a law officer. This change is made necessary by the provisions in this bill for single-officer courts-martial, and also by the amendment to article 39 which permits the law officer to call the court into session without the presence of the members. In the absence of the amendment to article 38(b), the law officer would not be empowered to excuse counsel at the session.

Section 1(12) amends article 39 to provide that the law officer of a court composed of a law officer and members may call the court into session without the attendance of members for the purpose of disposing of interlocutory motions raising defenses and objections, ruling upon other matters that may legally be ruled upon by the law officer, holding the arraignment and receiving the pleas of the accused if permitted by regulations of the Secretary concerned, and performing other procedural functions which do not require the presence of court members. The effect of the amendment, generally, is to conform military criminal procedure with the rules of criminal procedure applicable in the United States district courts and otherwise to give statutory sanction to pretrial and other hearings without the presence of the members concerning those matters which are amenable to disposition on either a tentative or final basis by the law officer. The pretrial disposition of motions raising defenses and objections is in accordance with Rule 12 of the Federal Rules of Criminal Procedure.

Other procedural and interlocutory matters will be presented for appropriate rulings by the law officer at pretrial sessions at his discretion, although he may not abuse that discretion by violating or impairing in these proceedings any substantial right of the accused. This is in accordance with the principles expressed by the United States Court of Military Appeals in *United States v. Mullican*, 7 USCMA 208, 21 CMR 334.

A typical matter which could be disposed of at a pretrial session is the preliminary decision on the admissibility of a contested confession. Under present practice, an objection by the defense to the admissibility of a confession on the ground that it was not voluntary frequently results in a lengthy hearing before the law officer from which the members of the court are excluded, although they must still remain in attendance. By permitting the law officer to rule on this question before the members of the court have assembled, the members are not required to spend considerable time merely waiting for a decision of the law officer. If he sustains the objection the issue is resolved, and the facts and innuendoes surrounding the making of the confession will not reach the members by inference or otherwise. If the law officer determines to admit the confession, the issue of voluntariness will normally, under civilian and military Federal practice, be relitigated before the full court.

This amendment merely provides a grant of authority to the law officer to hold sessions without the attendance of the members of the court for the purposes designated in the amendment and does not attempt to formulate rules for the conduct of these sessions or for determining whether or not particular matters not raised thereat, shall be considered as waived. These are questions more appropriately resolved under the authority given to the President in article 36: to make rules governing the procedure before courts-martial. The President now prescribes rules as to motions raising defenses and objections in court-martial trials in Chapter XII of the Manual for Courts Martial, as does the Supreme Court for Federal criminal trials in Rule 12 of the Federal Rules of Criminal Procedure.

This amendment also provides that the law officer of a special court-martial as well as the law officer of a general court-martial may be requested to appear before the court to put the findings in proper form.

Section 1(13) amends article 40 by making it clear that when the court includes a law officer that official will decide whether or not a continuance will be granted. This has actually been the practice under the code.

Section 1(14) amends article 41(a) by specifically providing that the law officer of a special court-martial may be challenged for cause. Further, article 41(a) is amended to provide that when a court-martial includes a law officer, he, rather than the members, shall

determine the relevancy and validity of challenges. The effect of this amendment is to conform procedures before courts-martial to procedures in the district courts in which the trial judge rules upon a challenge for cause against a juror.

Section 1(15) amends article 42(a) by omitting the requirement that the oath given to court-martial personnel be taken in the presence of the accused and further by providing that the form of the oath, the time and place of its taking, the manner of recording thereof, and whether the oath shall be taken for all cases or for a particular case, shall be as prescribed by regulations of the Secretary concerned. The amendment also contemplates that Secretarial regulations may permit the administration of an oath to certified legal personnel on a one-time basis as in the case of legal practitioners before civilian courts.

Section 1(16) amends article 45 to allow, if permitted by regulations of the Secretary concerned and if the offense is not one for which the death penalty may be adjudged, the entry of findings of guilty upon acceptance of a plea of guilty without the necessity of voting on the findings. At common law and under the practice in the United States district courts, the court may enter judgment upon a plea of guilty without a formal finding of guilty and the record of judgment entered on such a plea constitutes a judicial determination of guilt. The amendment is intended to conform military criminal procedure with that in civilian jurisdictions, and to delete from military practice the merely ritualistic formality of requiring the assembled court to vote on the findings. The section also deletes reference in subsection (a) to "arraignment before a court-martial" to conform with the changed article 39.

Section 1(17) amends article 49(a) to provide that, when a case is being heard, the law officer or court-martial without a law officer is the appropriate authority to forbid the taking of a deposition for good cause. The intent and purpose of this change is to vest in the law officer, or in the court-martial if it does not include a law officer, the authority to rule on this interlocutory matter after trial has begun.

Section 1(18) amends article 51 to reflect the amendment to article 41 which provides that, when a court-martial includes a law officer, he is the person who rules upon all challenges for cause, and to include specifically in subsection (c) the duty of the law officer and president of a court-martial without a law officer to instruct the *members* of the court. This section further amends article 51 to provide that rulings of the law officer of a special, as well as a general, court-martial on all questions of law and all interlocutory questions other than the accused's mental responsibility are final and that rulings of the president of a special court-martial without a law officer on questions of law other than a motion for a finding of not guilty are also final. The power given to the law officer by this amendment is in accordance with

Federal practice, and the power given to the president of a special court-martial to rule finally on questions of law is implicit in the decision of the United States Court of Military Appeals in *United States v. Bridges* (12 USCMA 96, 30 CMR 96).

Article 51 is further amended to provide that an officer who is detailed as a single-officer court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence.

Section 1(19) amends article 52 to conform with the amendment to article 45 by inserting in subsection (a)(2) a provision whereby findings of guilty may be entered against a person upon his plea of guilty without the formality of a vote, if permitted by regulations of the Secretary concerned and if the offense is not one for which the death penalty may be adjudged. Article 52 is further amended by adding to subsection (c) a provision whereby the members of the court may determine to reconsider a finding of guilty or, with a view to decreasing it, a sentence upon any vote which indicates that reconsideration is not opposed by the number of votes required for that finding or sentence. This amendment is consistent with justice and fair procedure, for such a vote would indicate that at least one of the members who had voted for the finding or sentence now desires to reconsider the matter. A reconsideration of a finding of guilty of a lesser included offense with a view to arriving at a finding of guilty of a greater offense is actually a reconsideration of a finding of not guilty, and accordingly a majority vote is required before such a reconsideration can be undertaken. This amendment is not intended to have any effect upon the time within which a finding or sentence may be reconsidered, this being part of the rule making power of the President under Article 36 (see paragraphs 74d(3) and 76c of the Manual for Courts-Martial for rules now in effect).

Section 1(20) amends article 54(a) to provide for authentication of a record of trial by general court-martial by the signature of the law officer. Under the present law, the record must be authenticated by the signature of both the law officer and the president, or, if they are unavailable for one of the reasons specified in the article, by two members. However, neither the president nor other members are present during the many hearings held out of their presence even under the present practice, and thus actually are unable to certify to the correctness of a transcription of those proceedings. The amendment further provides that if the law officer cannot, for one of the specified reasons, authenticate the record, it shall be authenticated by the signature of the trial counsel or a member. Authentication by a member, if the court has members, in this latter case may be a practical necessity despite the absence of the member from hearings conducted by the law officer. If the court has no members, then the

record would have to be authenticated by the law officer or, if he was unable to do so, the trial counsel.

This amendment further amends article 54 by permitting the President to provide for summarized records of trial in general court-martial cases resulting in acquittal of all charges and specifications or, if they do not affect a general or flag officer, in sentences not involving a discharge and not in excess of a sentence that can otherwise be adjudged by special courts-martial. This amendment corrects an inconsistency which has heretofore existed, since the use of a summarized record of trial is now permitted in special court-martial cases if the sentence does not extend to a bad-conduct discharge. The reasons which justify the employment of summarized records of trial in special court-martial cases are equally applicable to the class of general court-martial cases affected by this amendment, that is, the time, effort, and expense of preparing a verbatim transcript is not justified. It is recognized, of course, that the general court-martial case will have to be fully reported in the first instance, and the amendment deals only with preparation of the record after trial.

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

EXHIBIT C

"H"

A BILL

To amend chapter 47 (Uniform Code of Military Justice) of title 10, United States Code, to authorize the Judge Advocate General to grant relief in certain court-martial cases, to extend the time within which an accused may petition for a new trial, and for other purposes.

1 *Be it enacted by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled, That*
3 chapter 47 (Uniform Code of Military Justice) of title 10,
4 United States Code, is amended as follows:

5 (1) Section 869 (article 69) is amended by adding
6 the following new sentence at the end thereof:

7 "Notwithstanding section 876 of this title
8 (article 76), the findings or sentence, or both,
9 in a court-martial case which has been finally re-
10 viewed, but has not been reviewed by a board of
11 review, may be vacated or modified, in whole or in
12 part, by the Judge Advocate General on the ground
13 of newly discovered evidence, fraud on the court,
14 lack of jurisdiction over the accused or the
15 offense, or error prejudicial to the substantial
16 rights of the accused."

17 (2) Section 873 (article 73) is amended by striking
18 out in the first sentence the words "one year" the first
19 time they appear and inserting the words "two years" in
20 place thereof.

1 SEC. 2. The amendment made by section 1(1) of this
2 Act is effective upon the date of its enactment. The
3 amendment made by section 1(2) of this Act is effective
4 with respect to a court-martial sentence approved by the
5 convening authority on and after, or not more than two
6 years before, the date of its enactment.

"H"
SECTIONAL ANALYSIS
OF
A BILL

To amend chapter 47 (Uniform Code of Military Justice) of title 10, United States Code, to authorize the Judge Advocate General to grant relief in certain court-martial cases, to extend the time within which an accused may petition for a new trial, and for other purposes.

Section 1(1) amends article 69 by adding a new sentence authorizing the Judge Advocate General to either vacate or modify the findings or sentence, or both, in whole or in part, in any court-martial case which has been finally reviewed, but which has not been reviewed by a board of review, because of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused. It has been the experience of all the services in this class of cases, particularly with respect to summary court-martial cases and those special court-martial cases not reviewable by a board of review, that some provision should be made for removing the fact of conviction, as well as granting other relief. Since the decision to remove the fact of conviction is a judicial determination based on the traditional legal grounds mentioned in the proposed amendment, it is considered appropriate that the Judge Advocate General should be empowered to perform this function as well as to grant lesser forms of relief. This amendment would not limit the power now possessed by the Secretary concerned, acting through boards established under 10 U.S.C. 1552, to correct an error or remove an injustice.

Section 1(2) amends article 73 to extend the time within which an accused may petition the Judge Advocate General for a new trial from one to two years.

Section 2 provides that the amendment in section 1(1) becomes effective upon the date of its enactment and that the amendment in section 1(2) becomes effective with respect to a court-martial sentence approved by the convening authority on and after, or not more than two years before, the date of its enactment.

EXHIBIT D

Court-Martial Cases

Army.....	43,118
Navy.....	25,041
Air Force.....	7,551
Coast Guard.....	347
Total.....	76,057

Cases Reviewed by Boards of Review

Army.....	1,491
Navy.....	2,727
Air Force.....	761
Coast Guard.....	13
Total.....	4,992

Cases Docketed with U.S. Court of Military Appeals

Army.....	374
Navy.....	308
Air Force.....	184
Coast Guard.....	2
Total.....	868

For the Period
July 1, 1963 to June 30, 1964

Report
of the
UNITED STATES COURT OF MILITARY APPEALS

January 1, 1964, to December 31, 1964

UNITED STATES COURT OF MILITARY APPEALS

The following report of the United States Court of Military Appeals for the period January 1, 1964, to December 31, 1964, is submitted to the Congress in compliance with the provisions of Article 67(g), Uniform Code of Military Justice, 10 U.S.C. 867(g).

I

During the fiscal year 1964 the Court received 868 cases. Of these, 851 were filed with the Court by petition of the accused in accordance with Article 67(b)(3); 17 were certified to the Court by the Judge Advocates General of the services in accordance with Article 67(b)(2), and no mandatory cases were filed under Article 67(b)(1) of the Uniform Code of Military Justice.

II

Chief Judge Robert E. Quinn and Associate Judge Paul J. Kilday, during the summer recess, held meetings and discussions on military justice with commanders and staff judge advocates in the European theater. Some of the Command headquarters visited included U S A R E U R, U S A F E, U S N A V E U R, CINCSOUTH, COMFAIRMED, COMNAVACTS, TUSLOG, EUCOM, COMZ, Seventh Army, Third Air Force, 7th Air Division, 7206th Support Group and the Berlin Brigade.

Associate Judge Homer Ferguson gave the Commencement Address on May 28, 1964 at the Judge Advocate General's School, Charlottesville, Virginia. He also attended the American Bar Association Annual Meeting in New York City on August 10, 1964, and represented the Court at the meeting of the Judge Advocates Association at that time. On November 10, 1964, Judge Ferguson spoke at a meeting of the Federal Bar Association at Bolling Air Force Base on the subject "The Development of Due Process in Military Trials."

III

On October 22, 1964, Chief Judge Quinn and Judge Ferguson presided at a formal admission session of the Court in Atlanta, Georgia, in connection with the Regional Meeting of the American Bar Association. One hundred and thirteen attorneys were admitted to the bar of the Court at that time. The session was held in a courtroom of the United States District Court for the Northern

District of Georgia. The Court now has a membership of 11,162 practitioners from every State of the Union, an increase of 748 during calendar year 1964.

IV

H.R. 3179, 88th Congress, providing that judges of the United States Court of Military Appeals shall hold office during good behavior and for other purposes, passed the House of Representatives on July 9, 1963. The Armed Services Committee of the Senate failed to report on the bill before adjournment.

V

There is attached to this report a detailed analysis of the status of cases processed by the Court since it began operating in 1951.

Respectfully submitted,

ROBERT E. QUINN,
Chief Judge.

HOMER FERGUSON,
Associate Judge.

PAUL J. KILDAY,
Associate Judge.

EXHIBIT A

STATUS OF CASES
UNITED STATES COURT OF MILITARY APPEALS
CASES DOCKETED

<i>Total by services</i>	<i>Total as of June 30, 1962</i>	<i>July 1, 1962 to June 30, 1963</i>	<i>July 1, 1963 to June 30, 1964</i>	<i>Total as of June 30, 1964</i>
Petitions (Art. 67(b)(3)):				
Army -----	8,901	353	371	9,625
Navy -----	3,398	268	302	3,968
Air Force -----	3,641	204	176	4,021
Coast Guard -----	41	2	2	45
Total -----	15,981	827	851	17,659
Certificates (Art. 67(b)(2)):				
Army -----	129	6	3	138
Navy -----	187	5	6	198
Air Force -----	53	9	8	70
Coast Guard -----	6	0	0	6
Total -----	375	20	17	412
Mandatory (Art. 67(b)(1)):				
Army -----	31	0	0	31
Navy -----	3	0	0	3
Air Force -----	3	0	0	3
Coast Guard -----	0	0	0	0
Total -----	37	0	0	37
Total cases docketed -----	16,393	847	868	*18,108

¹ 2 Flag officer cases; 1 Army and 1 Navy.

² 17,818 cases actually assigned docket numbers. 121 cases counted as both petitions and certificates. 5 cases certified twice. 154 cases submitted as petitions twice. 2 mandatory cases filed twice. 5 mandatory cases filed as petitions after second Board of Review opinion. 3 cases submitted as petitions for the third time.

COURT ACTION

	Total as of June 30, 1963	July 1, 1963 to June 30, 1963	July 1, 1963 to June 30, 1964	Total as of June 30, 1964
Petitions (Art. 67(b)(3)):				
Granted.....	1, 657	88	99	1, 844
Denied.....	13, 853	765	758	15, 376
Denied by memorandum opinion.....	2	0	0	2
Dismissed.....	12	0	2	14
Withdrawn.....	321	6	5	332
Disposed of on motion to dismiss:				
With opinion.....	8	0	0	8
Without opinion.....	39	1	0	40
Disposed of by order setting aside find- ings and sentence.....				
.....	3	0	0	3
Remanded to Board of Review.....	143	6	4	153
Court action due (30 days) *.....	88	57	38	38
Awaiting replies †.....	25	21	25	25
Certificates (Art. 67(b)(2)):				
Opinions rendered.....	364	18	19	401
Opinions pending ‡.....	3	2	1	1
Withdrawn.....	7	0	0	7
Remanded.....	2	0	0	2
Set for hearing §.....	0	0	0	0
Ready for hearing §.....	0	0	0	0
Awaiting briefs §.....	0	2	1	1
By order.....	0	1	0	1
Mandatory (Art. 67(b)(1)):				
Opinions rendered.....	37	0	0	37
Opinions pending ‡.....	0	0	0	0
Remanded.....	1	0	0	1
Awaiting briefs §.....	0	0	0	0
<hr style="border-top: 1px solid black;"/>				
Opinions rendered:				
Petitions.....	1, 414	89	84	1, 587
Motions to dismiss.....	11	0	0	11
Motion to stay proceedings.....	1	0	0	1
Per curiam grants.....	27	2	1	30
Certificates.....	321	17	15	353
Certificates and petitions.....	41	1	4	46
Mandatory.....	37	0	0	37
Remanded.....	2	0	0	2
Petitions for a new trial.....	2	0	0	2
Petition for reconsideration of petition for a new trial.....	1	0	0	1
Motion to reopen.....	1	0	0	1
<hr style="border-top: 1px solid black;"/>				
Total.....	1, 858	109	104	2, 071

* As of June 30, 1962, 1963, and 1964.

† 2,071 cases were disposed of by 2,054 published opinions. 111 opinions were rendered in cases involving 63 Army officers, 28 Air Force officers, 15 Navy officers, 4 Marine Corps 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.

COURT ACTION—Continued

	<i>Total as of June 30, 1963</i>	<i>July 1, 1963 to June 30, 1963</i>	<i>July 1, 1963 to June 30, 1964</i>	<i>Total as of June 30, 1964</i>
Completed cases:				
Petitions denied.....	13,853	765	758	15,376
Petitions dismissed.....	12	0	2	14
Petitions withdrawn.....	321	6	5	332
Certificates withdrawn.....	7	0	0	7
Certificates disposed of by order.....	0	1	0	1
Opinions rendered.....	1,850	109	104	2,063
Disposed of on motion to dismiss:				
With opinion.....	8	0	0	8
Without opinion.....	39	1	0	40
Disposed of by order setting aside findings and sentence.....	3	0	0	3
Writ of error coram nobis by order....	0	0	1	1
Remanded to Board of Review.....	144	6	4	154
Total.....	16,237	888	874	17,999

	<i>Pending completion as of—</i>		
	<i>June 30, 1963</i>	<i>June 30, 1963</i>	<i>June 30, 1964</i>
Opinions pending.....	19	15	20
Set for hearing.....	0	0	0
Ready for hearing.....	0	0	1
Petitions granted—awaiting briefs.....	14	9	10
Petitions—Court action due 30 days.....	88	57	38
Petitions—awaiting replies.....	25	21	25
Certificates—awaiting briefs.....	0	2	1
Mandatory—awaiting briefs.....	0	0	0
Total.....	146	104	95

Report
of
THE JUDGE ADVOCATE GENERAL
of
THE ARMY

January 1, 1964, to December 31, 1964

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY

During Fiscal Year 1964, there was a sharp decrease in the overall court-martial rate per thousand strength (42.25) compared with that for Fiscal Year 1963 (59.70). Although the number of general court-martial trials increased by 22 over Fiscal Year 1963, there was a decrease of 2,121 in the number of special court-martial trials and a remarkable reduction in summary court-martial trials from 32,316 last year to 16,926, or approximately 47 percent. The decreases may be attributed primarily to the amended Article 15 of the Uniform Code of Military Justice, which was in effect for the entire fiscal year as compared with only 5 months during Fiscal Year 1963. There were 61% fewer summary court-martial cases in Fiscal Year 1964 than in a similar period immediately preceding the amendment of Article 15.

The number of court-martial trials for Fiscal Year 1964 (Average Strength—Total Army—1,015,287) follows:

	<i>Convicted</i>	<i>Acquitted</i>	<i>Total</i>
General.....	1,763	102	1,865
Special.....	23,102	1,225	24,327
Summary.....	16,055	871	16,926
Total.....	40,920	2,198	43,118

Records of trial by general court-martial received by The Judge Advocate General during fiscal year 1964:

For review under Article 66.....	1,393
For examination under Article 69.....	381
Total.....	1,774

Workload of the Army Boards of Review during the same period:

On hand at the beginning of period.....	110
Referred for review.....	*1,481
Total.....	1,591
Reviewed.....	1,491
Pending at close of period.....	100
Total.....	1,591

*This figure includes 3 cases which were referred to Boards of Review pursuant to Article 69, Uniform Code of Military Justice, and 9 cases on rehearing or reconsideration.

Actions taken during period 1 July 1963 through 30 June 1964 by Boards of Review:

Affirmed.....	1, 053
Sentence modified.....	394
Rehearing ordered.....	15
Charges dismissed.....	9
Findings affirmed/sentence disapproved.....	2
Findings and/or sentence disapproved in part.....	17
Returned to field for new SJA Review and C/A action.....	1
Total.....	1, 491

Of the 1,491 accused whose cases were reviewed by Boards of Review pursuant to Article 66 during the fiscal year, 1,104 (74%) requested representation by appellate defense counsel. The records in the cases of 374 accused were forwarded to the United States Court of Military Appeals pursuant to the second and third subdivisions of Article 67(b). These comprised 25.2 percent of the number of these cases reviewed by Boards of Review during the period. Of the mentioned 374 cases, 371 were forwarded on petition of accused and 3 were certified by The Judge Advocate General.

The actions taken by the Court of Military Appeals on Army cases for Fiscal Year 1964 were as follows:

<i>Opinions on Petitions</i>		<i>Certification</i>		<i>Mandatory Review</i>	
<i>Affirmed</i>	<i>Reversed</i>	<i>Affirmed</i>	<i>Reversed</i>	<i>Affirmed</i>	<i>Reversed</i>
18	12	3	1	0	0
		<i>Petitions Denied</i>	<i>Petitions Granted</i>		
		346	41		

In the 1963 Annual Report, there was discussed at some length 18 bills that were introduced in the Senate and House of Representatives during the 88th Congress which if enacted would affect the administration of military justice and administrative discharge proceedings. Also discussed were two bills proposed by the armed services as substitute measures for those of the 18 bills which concern the administration of military justice. Since that time, these two bills, denominated for reference purposes as the "G" and "H" bills, have been approved by the Department of Defense, transmitted to Congress, and introduced in the House of Representatives as H.R. 10048 and H.R. 10050. Formal hearings were not held prior to the adjournment of the 88th Congress, and the House Armed Services Committee made no report upon the proposed legislation. The "G" and "H" bills appear as Exhibits B and C to the joint report. I believe that these proposals will accomplish desirable and long-overdue changes in the field of military justice, and it is my hope that both will be introduced in, and passed by, the 89th Congress.

During 1964, efforts were continued to improve the administration of military justice. Department of the Army Pamphlet 27-7, *Military Justice Handbook, Guide for Summary Court-Martial Trial Procedure*, distributed to the field in December 1964, is completely new and represents the first composite reference and procedural guide available to officers appointed as summary courts-martial to assist them in performing their duties and functions. This handbook, together with Department of the Army Pamphlet 27-15, *Military Justice Handbook, Trial Guide for the Special Court-Martial President*, published in September, 1962, should insure that trials by inferior courts-martial are conducted in an orderly manner and in accordance with the mandates of the Uniform Code of Military Justice and principles basic to a fair trial. Both publications deal only with procedural matters and in no way conflict with the prohibitions applicable to instruction in this field mentioned by the United States Court of Military Appeals in *United States v. Johnson*, 14 USCMA 548, 34 CMR 328 (1964).

During 1964, Army Regulation 22-145, *Reports and Supervisory Review of Records of Summary and Special Courts-Martial*, was changed so as to add a provision requiring that an accused in a summary court-martial case be furnished a copy of the record of trial, thus affording such accused a right not previously enjoyed by him. Army Regulation 22-15, *Nonjudicial Punishment*, which sets forth Department of the Army policies, limitations and procedures relative to the imposition of nonjudicial punishment, was changed by adding specific emphasis to the proscription against any form of illegal command influence. In late 1964, a new training film, TF 15-3404, *Nonjudicial Punishment*, was approved for final print and distribution to the field.

EDUCATION AND TRAINING

During calendar year 1964, The Judge Advocate General's School, United States Army, Charlottesville, Virginia, provided resident instruction, in courses covering the entire spectrum of military law, for 965 military lawyers and civilians employed by the Government. In addition, a Judge Advocate Officer Refresher Course and a Law Officer Seminar were conducted.

The School also conducted two cycles of the 10-week Special Course for newly commissioned officers. Among the 203 military lawyer graduates of these two courses were officers from the Philippines, Pakistan, Iran, Viet-Nam, and Korea.

The 12th Judge Advocate Officer Career Course was completed on 15 May 1964. Among its 32 graduates were United States Navy legal specialists, and officers from Turkey, the Philippines, and Thailand. The 13th Career Class began its course of instruction on 8 September 1964 and will be graduated on 21 May 1965. It is composed of 29 officers, including 2 from the United States Navy and 2 from the United States Marine Corps.

In June 1964, two new school texts were published by the School: Department of the Army Pamphlet 27-161-1, *International Law*, and Department of the Army Pamphlet 27-173, *Military Justice-Trial Procedure*.

During 1964, the School provided nonresident instruction in military legal subjects for approximately 3,000 reserve component personnel consisting of judge advocate officers and other selected officers, warrant officers and enlisted men. The School prepared and distributed for utilization in 79 U.S. Army Reserve schools instructional materials for the Judge Advocate Officer Career Course, the Staff Judge Advocate Operations Course, and the New Developments Course. Instructional material was also prepared for members of The Judge Advocate General's Service Organization Detachments and for Reserve and National Guard officers assigned to troop program units. In addition the School's extension course program provided instruction for about 1,380 officers and enlisted men of all services.

The annual Judge Advocate General's Conference was held at the School in September 1964. Army judge advocates, representing court-martial jurisdictions throughout the world, participated in discussions and seminars covering a wide range of problems of significant importance to military lawyers.

Four issues of the *Military Law Review* were published during 1964. The annual survey of decisions of the Court of Military Appeals appeared in the April 1964 issue. Additionally, there were articles dealing with pretrial right to counsel, permissible bounds of staff judge advocate pretrial activity, an introduction to military justice in

France, and a comprehensive study of the military law of search and seizure.

The *Judge Advocate Legal Service* and the *Procurement Legal Service*, both published at The Judge Advocate General's School, continue to disseminate rapidly to judge advocates in the field current developments in military law.

PERSONNEL

Increase in Regular Army Appointments.—The number of officers who accepted Regular Army commissions continued to climb to a high of 41 in Fiscal Year 1964. Unfortunately, this record gain in career officers was more than offset by the loss of 53 career officers through death, retirement, and resignation. Although we will continue to have a high career-officer loss rate during the next few years, as officers with World War II service reach mandatory retirement, I am hopeful that we can offset these losses by a high Regular Army appointment rate.

Excess Leave Program.—Experience with the Judge Advocate General's Excess Leave Program, under which Regular Army officers are permitted to attend law school in an excess leave status, indicates that it will play an important part in solving the problem of increasing the experience level of our officers. As of the fall of 1964, a total of 89 Regular Army officers were attending law school under this program. Four officers completed their legal education under the program in 1964, were admitted to the bar, and are now performing judge advocate duties. Seventeen are scheduled to complete legal training and commence their service in the Corps in 1965, and, by 1966, an annual output of 30 to 35 officers should be achieved.

ROBERT H. McCaw,
Major General, USA,
The Judge Advocate General.

Report
of
THE JUDGE ADVOCATE GENERAL
of
THE NAVY

January 1, 1964, to December 31, 1964

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

Following the practice in recent years of having the Code Committee Report reach the Armed Services Committees of Congress shortly after the convening of each new session, this report, although embracing calendar year 1964, contains, unless otherwise indicated, statistical information covering fiscal year 1964.

Courts-martial of all types—general, special, and summary—convened within the Navy and Marine Corps totaled 25,041 in FY 1964 as compared to 39,033 in FY 1963. This represents an overall decrease of 13,992 cases or 36 percent. The decrease in case load cannot be attributed to a decrease in service strengths since they have increased slightly, but may be attributable to PL 87-648 which increased the Article 15 UCMJ nonjudicial punishment authority of commanding officers. A comparative analysis of the first two quarters of FY 1963 (before the new Article 15 became law) with the first two quarters of FY 1964 (during which time the new law was in effect) shows a 65 percent decrease in Navy and a 57 percent decrease in Marine summary courts-martial cases.

Navy Boards of Review received for review during FY 1964, 338 general courts-martial and 2,375 special courts-martial as compared to 420 general courts-martial and 2,806 special courts-martial during FY 1963. Of the 2,713 cases received for review by Boards of Review during FY 1964, 61 percent of the accused requested counsel (1,654 cases). A more detailed statistical report is attached as exhibit A.

An ad hoc committee consisting of representatives of the Judge Advocates General of the Army, Navy and Air Force is updating the present Manual for Courts-Martial with a view to having it published in looseleaf form. The Interservice Committee for revision of the Manual completed a first draft of the revised Manual which was distributed to the Judge Advocates General of the three services for comments. Comments and recommended changes to the draft were returned to the Interservice Committee in April 1964. A second draft of the revised Manual has now been completed by the Committee and again distributed to the three services for comment. It is anticipated that the Manual will be published in the revised form at an early date.

The informal newsletter "Off the Record," mentioned in my last report, has been continued with a different format and enlarged

content. It is anticipated that increased benefits will result from the changes introduced in this publication. Comments on the current state of the law and suggestions for procedural improvements, which have been so well received in the field, will continue to be an integral part of this publication.

Subsequent to the introduction of eighteen bills variously pertaining to the administration of military justice during the second session of the Eighty-Eighth Congress, the Military Justice Division has participated extensively in the formulation and presentation of the position to be advanced by the Judge Advocate General of the Navy with respect to each measure. At the present time, the final Department of Defense position pertaining to each proposal has been drafted and transmitted to the appropriate congressional committees. In certain instances, the Department has offered alternative bills in an attempt to tailor the final legislative package precisely to the frequently diffuse requirements of military necessity and constitutional law.

The U.S. Naval Justice School, operating under the technical supervision of the Judge Advocate General, continued to offer intensive instruction in the fundamental principles of military justice. Six regular seven-weeks' classes were convened at the Justice School in Newport, Rhode Island, and one class was convened at Camp Pendleton, California. Six-hundred eighty-seven line, staff corps and newly commissioned officer lawyers of the Navy, Marine Corps, and Coast Guard completed the regular courses of instruction offered by the Naval Justice School during the fiscal year. Three-hundred sixty-eight enlisted members of the Army, Navy, Air Force, Marine Corps, and Coast Guard were trained to perform legal clerk and court reporting duties for their respective services. In addition, 88 enlisted personnel, principally Army, received training in Closed Microphone Court Reporting and 601 officers of the Navy, Marine Corps, and Coast Guard were given instruction specifically designed to meet the needs of senior officers. The Naval Justice School afforded instruction in military justice, legal clerk duties, and court reporting for a grand total of 1,744 officers and enlisted personnel of all the armed forces and the Coast Guard during the fiscal year.

At the direction of the Secretary of the Navy, the Judge Advocate General undertook a study to determine the feasibility of relocating elements of the Office of the JAG out of the Pentagon Building and the consolidation of the East and West Coast Boards of Review and Appellate Counsel Divisions. As a result of the study, a branch office of the Office of the Judge Advocate General is being established at the Washington Navy Yard. In October of this year, the U.S. Navy-Marine Corps Judiciary Activity, the East Coast Boards of Review, and East Coast Appellate Defense and Appellate Government Counsel Divisions were relocated at the Washington Navy Yard. It is also planned to disestablish the West Coast Office of the Judge

Advocate General prior to July 1965 and to transfer the West Coast Boards of Review, the West Coast Appellate Defense, and Appellate Government Counsel Divisions to the Washington Navy Yard. All the relocated activities will then be consolidated and established as a Navy judicial activity which will be a branch office of the Office of the Judge Advocate General under a director. It is anticipated that the establishment of one centralized branch office in close proximity to the Court of Military Appeals and JAG headquarters should offer increased opportunities for efficiency and economy.

The Navy-Marine Corps Judiciary Activity, activated on 1 July 1962, with its principal office in Washington, D.C., continued to provide specially selected Judiciary Officers to sit as law officers on all general courts-martial convened within the Navy and Marine Corps during the year 1964. During 1964 a consolidation of the workload of two Judiciary Branch Offices was effected resulting in savings to the Government and reduction of one officer billet. The Judiciary Program has continued to improve the quality of the judicial proceedings of general courts-martial with avoidance of the numerous law officer errors that were prevalent prior to the Judiciary Program. Consequently, the quality of justice administered by the Navy has also been greatly enhanced through the use of specially selected Judiciary Officers.

WILFRED HEARN,
Rear Admiral, USN,
The Judge Advocate General

EXHIBIT A

FISCAL YEAR 1964

General courts-martial:		
Received for review under Article 66.....	338	
Received for review under Article 69 and acquittals.....	102	
Total.....		440
Special courts-martial:		
Received for review under Article 66.....	2,375	
Received for review under Article 65c.....	4	
Reviewed in the field.....	11,437	
Total.....		13,816
Summary courts-martial:		
Received for review under Article 65c.....	2	
Reviewed in the field.....	10,783	
Total.....		10,785
Total all courts-martial.....		25,041
Board of review actions:		
On hand for review 1 July 1963.....	111	
Received for review during fiscal year 1964.....	2,713	
Total on hand.....		2,824
Reviewed during fiscal year 1964.....	2,727	
Pending review on 30 June 1964.....	97	
Total.....	2,824	
Findings modified by boards of review during fiscal year 1964.....		
Requests for appellate counsel.....		103
		1,654
U.S. Court of Military Appeals actions:		
Petitions forwarded to USCMA.....	302	
Cases certified to USCMA by JAG.....	6	
Total cases docketed with USCMA.....		308
Petitions granted by USCMA.....	24	
Petitions denied by USCMA.....	265	
Total petitions acted upon by USCMA.....		289

Report
of
THE JUDGE ADVOCATE GENERAL
of
THE AIR FORCE

January 1, 1964, to December 31, 1964

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

1. Major General Albert M. Kuhfeld, The Judge Advocate General, completed a distinguished military career upon his retirement on 30 September 1964. His eminent position and singular accomplishments in the field of military law were honored in the award of the Distinguished Service Medal, the nation's highest decoration for other than combat service. A copy of the citation accompanying the award is appended to this report. In his further honor, the Albert M. Kuhfeld Award was endowed by Brigadier General (Air Force Reserve) and Mrs. Richard C. Hagan. The Award, to be made each year to an outstanding young Judge Advocate, will accord merited recognition to the accomplishments of young lawyers in the Air Force.

2. Brigadier General Robert W. Manss was appointed to the grade of major general in the Regular Air Force and appointed The Judge Advocate General for a four-year term effective 1 October 1964.

3. Complying with the requirements of Article 6(a), Uniform Code of Military Justice, Major General Kuhfeld visited overseas bases in the United States Air Force Southern Command and United States Air Forces in Europe, and numerous bases in the United States. General Manss also inspected the legal activities of bases in the United States. Both Generals Kuhfeld and Manss attended several bar association meetings and spoke before many civic, professional, and military organizations during the year.

4. *a.* The number of records of trial received in the Office of The Judge Advocate General, for review pursuant to Article 66 and for examination pursuant to Article 69, during fiscal year 1964, is shown in the following table:

Total number records received	879
Referred to Boards of Review pursuant to Article 66.....	741
General Court-Martial records	275
Special Court-Martial records.....	466
Examined pursuant to Article 69.....	138

The Boards of Review modified the findings and/or sentence in 92 cases.

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

On hand 30 June 1963.....	94
Referred for review.....	741
Reviewed and dispatched.....	761
Pending 30 June 1964.....	74

c. During the fiscal year 63.0 percent of the accused, whose cases were reviewed pursuant to Article 66, requested representation by Appellate Defense Counsel before Boards of Review.

d. The following table shows the number of cases forwarded to the United States Court of Military Appeals pursuant to the three subdivisions of the Uniform Code of Military Justice, Article 67(b); and the number of petitions granted during the period:

Cases reviewed and dispatched by Boards of Review.....	761
Cases forwarded to USCMA.....	183
Number cases based on petitions.....	175
Number cases certified by TJAG.....	8
Percent total forwarded of total cases reviewed.....	24.0
Petitions granted.....	33
Percent petitions granted of total petitioned.....	18.9
Percent petition granted of total cases reviewed by Boards of Review.....	4.3

e. During the period of this report, the following number of courts-martial were convened in the Air Force:

General Courts-Martial.....	421
Special Courts-Martial.....	2,707
Summary Courts-Martial.....	4,423

Total..... 7,551

5. Production was completed and distribution made of Training Film TF-5582, "The Uniform Code of Military Justice—Article 15—Non-Judicial Punishment". This film informs Air Force personnel of the background of Article 15 and portrays examples of its use. The first full year reportable Article 15 actions during fiscal year 1964 are as follows:

		<i>Percentage of total num- ber of cases</i>
Total cases.....	31,019	
Officers.....	356	1.1
Airmen.....	30,663	98.9
Reduction in grade.....	18,892	60.9
Forfeiture of pay.....	16,067	51.9
Restriction (over 14 days).....	5,502	17.7
Corrective custody/Quarters arrest.....	3,960	12.8
Extra duties (over 14 days).....	2,588	8.3
Detention of pay.....	213	0.7
<i>Mitigating actions:</i>		
Appeals taken.....	854	*2.8
Appeals denied.....	760	**89.0
Suspensions.....	7,272	*23.4
Other action.....	836	*2.7

*Of total actions.

**Of appeals taken.

6.a. Production was completed and distribution made of training film TF-5581, "The Soldiers' and Sailors' Civil Relief Act". This film depicts a sequence of legal problems in the affairs of several airmen and the applicability of the Soldiers' and Sailors' Civil Relief Act. It also contains an explanation of the general provisions of the Act.

b. The Office of The Judge Advocate General supervised and arranged, on behalf of all of the Armed Services, for the publication of Decisions of the United States Court of Military Appeals and Selected Decisions of the Boards of Review of all the Services in the Court Martial Reports. The same service was also performed in regard to publishing legal opinions of the Armed Services and opinions of the Army and Air Force Exchange Service in the Digest of Opinions.

7. On 30 September 1964, there were 1,226 Judge Advocates on active duty. Of these, 661 were members of the Regular Air Force, 218 were Career Reserve officers, and 347 were Reserve officers with established dates of separation. The Regular officer strength, however, increased by 77 between 30 June 1963 and 30 September 1964. These new Regular officers were selected through an automatic central screening process by a board of officers sitting at Headquarters, United States Air Force. During the year, a selection board was also convened to consider the applications of 496 individuals seeking direct appointment as Reserve officers with a concomitant three year tour of active duty. Because of vacancy limitations, only 100 of these could be selected and all are expected to be called to active duty by 30 June 1965.

8. At the close of the period of this report, there were 81 commands exercising general court-martial jurisdiction.

9. An interservice committee that has been working on a revision of the Manual for Courts-Martial on the basis of statutes, Executive orders, and case law intervening since the original publication in 1951, submitted a draft of the revision to The Judge Advocates General of the three services for their consideration.

ROBERT W. MANSS,
Major General, USAF,
The Judge Advocate General,
United States Air Force.

EXHIBIT A

CITATION TO ACCOMPANY THE AWARD OF
THE DISTINGUISHED SERVICE MEDAL
TO
ALBERT M. KUHfeld

Major General Albert M. Kuhfeld distinguished himself by exceptionally meritorious service to the United States in a position of great responsibility as The Judge Advocate General, United States Air Force, from 1 April 1960 to 30 September 1964. By virtue of General Kuhfeld's leadership, The Judge Advocate General's Department of the United States Air Force has attained a position of eminence among the military legal departments, and has provided outstanding legal services in the fields of military justice and civil law to the United States Air Force. Under General Kuhfeld's guidance, a sound body of military criminal law has been developed through which the ends of justice may be served. Major General Kuhfeld was the moving force in the establishment of a meaningful retraining and rehabilitation program for convicted airmen which afforded many individuals the opportunity to earn an honorable place in society, and which saved invaluable trained manpower for the United States Air Force. Major General Kuhfeld's unparalleled achievements in this important assignment are in keeping with the highest standards of performance and traditions of the military service. The singularly distinctive accomplishments of Major General Kuhfeld culminate a distinguished career in the service of his country, and reflect the highest credit upon himself and the United States Air Force.

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

January 1, 1964, to December 31, 1964

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 Article 67(g) of the Uniform Code of Military Justice, 10 U.S.C. 867(g).

The court-martial volume in the Coast Guard again decreased in fiscal year 1964. The 1964 figures reflect the influence of the first full year during which commanding officers exercised their enlarged powers to impose nonjudicial punishment under Article 15 as amended.

The following table shows the number of court-martial records received at Coast Guard Headquarters during each of the past five fiscal years:

	1964	1963	1962	1961	1960
General courts-martial.....	3	6	4	4	6
Special courts-martial.....	89	139	148	162	158
Summary courts-martial.....	255	448	683	586	666

Two Coast Guard cases were docketed with the United States Court of Military Appeals during the year, both on petition of the accused; neither petition was granted. The Court heard one Coast Guard case during the year, *United States v. MERROW*. Its opinion affirming the decision of the Board of Review in that case was published in 14 USCMA 265, 34 CMR 45. Since the inception of the Uniform Code of Military Justice, a total of 51 Coast Guard cases have been appealed to the Court of Military Appeals—45 by petition of the accused and six by certification of the General Counsel of the Treasury Department.

The three general courts-martial and the 89 special courts-martial received during the fiscal year 1964 have been analyzed in order to provide fuller information as to their characteristics. These 92 cases involved 93 accuseds, there being one trial in joinder. Of the 93 accuseds, two were officers.

Thirty-eight of the persons tried were represented by lawyers; the remaining 55, all of whom were enlisted men, did not have qualified counsel. Six of the accused employed civilian lawyers; only one of these was also represented by a service-designated lawyer. All but two of the accused who had civilian lawyers pleaded guilty.

There were contests in only 25 of the cases. The 68 other defendants pleaded guilty on arraignment. In the guilty plea cases, 21 of the accused had succeeded in negotiating pretrial agreements. Of these 21, 15 were represented by lawyers; the other six agreements were obtained by non-lawyers. Only one of the four civilian lawyers who entered guilty pleas proposed a pretrial agreement.

The table below lists the charges (but not the number of specifications) preferred in the 92 records examined:

Unauthorized absence.....	49
Larceny.....	12
Assault and battery.....	10
Drunk; disorderly; breach of peace.....	10
Breaking restriction.....	7
False claim, statement or report.....	7
Offenses against military property.....	7
Prohibited use or possession of liquor.....	6
Failure to obey order or regulation.....	6
Wrongful appropriation.....	5
Missing ship.....	4
Willful disobedience of order.....	4
Aggravated assault.....	3
Dereliction in duty.....	3
Disrespect to superior officer.....	2
Communicating a threat.....	2
Escape from custody.....	2
Impersonating officer.....	2
Damage to private property.....	1
Desertion.....	1
False ID card.....	1
Gambling with subordinates.....	1
Graft.....	1
Housebreaking.....	1
Indecent lewd acts.....	1
Issuing bad checks.....	1
Sodomy.....	1
Unlawful cohabitation.....	1

Sixty-four of the 93 persons tried did not have any previous convictions. The 29 others had an aggregate of 46 previous convictions, of which 12 were by special courts-martial and 34 by summary courts.

Bad conduct discharges (including one dishonorable discharge) were adjudged by the court-martial in 17 cases. Six of the punitive discharges were disapproved by the convening authority; only 11 reached the Board of Review. After completion of appellate review and clemency action, there were only three unsuspended bad conduct discharges. In all three cases the accused had been represented by qualified counsel. Of the 17 accused who were sentenced to a bad conduct discharge by the court-martial, six had no previous convictions. The 11 others had 28 previous convictions, nine of them by special courts-martial.

The trial court acquitted the accused in three cases. In six others either the convening authority or the officer exercising general court-martial jurisdiction set aside both the findings and the sentence. In only 34 instances (37% of the cases) was the sentence as adjudged by the court-martial finally affirmed and ordered executed.

Confinement was included as part of the sentence in only 63 of the cases. The average confinement imposed by the general courts-martial was 11 months; the average confinement adjudged by sentence of special courts-martial was four months.

Noteworthy among the military justice items published in the *Coast Guard Law Bulletin* during the year was a complete commanding officers guide for conducting mast and imposing nonjudicial punishment under Article 15, in the October 1963 issue. Another featured article was the discussion of pretrial agreements, with a recommended form of agreement, published in the June 1964 issue.

G. D'ANDELOT BELIN,
General Counsel,
Treasury Department.