

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, 1961 to December 31, 1961**

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

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OF THE ARMED FORCES
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DEPARTMENT OF THE TREASURY

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JOINT REPORT

The following is the tenth 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 United States Court of Military Appeals, The Judge Advocates General of the Armed Forces, and the General Counsel of the Department of the Treasury to meet annually to survey the operations of the Code and to prepare a report to the Committee 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 United States 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 reconsideration of the provisions of the so-called Omnibus Bill which was resubmitted to the Congress on January 13, 1961, by the Department of the Air Force on behalf of the Department of Defense as a part of the Department of Defense legislative program for 1961. That bill, with the accompanying statement of purpose and principal features, is contained in the Joint Report of the Code Committee for the period January 1, 1959, to December 31, 1959.

While the Code Committee reendorses and rerecommends the enactment of the Omnibus Bill, further study of the proposed legislation and discussion of the various provisions in the Omnibus Bill has resulted in a determination that, consistent with the formerly announced objectives of the Code Committee, some of the provisions of the Omnibus Bill should be expanded. Further, the Code Committee has been advised that due to the press of legislative business in the Congress, it will be impossible for the Congress to consider the entire Omnibus proposal at this session. It has been suggested to the Code Committee that individual bills embodying legislative changes deemed most important in the administration of military justice be submitted for the consideration of the Congress. Accord-

ingly, three individual bills were drafted and designated respectively, for reference purposes, as the "A", "B", and "C" Bills. The so-called "C" Bill, identical with that part of the Omnibus Bill which proscribes the making, drawing or uttering of checks, drafts or orders without sufficient funds was enacted into law on October 4, 1961 (Public Law 87-385, 87th Congress). Such enactment by its terms becomes effective on March 1, 1962, and implementing Executive Orders have been prepared for submission to the President. Consistent with the suggestions made to the Code Committee, it has been decided to urgently recommend for adoption by the Congress during this session the "A" and the "B" Bills.

The principal features of the so-called "A" and "B" Bills embody several of the basic concepts of the so-called Omnibus legislation, as well as other proposals submitted by the Judges of the United States Court of Military Appeals in their annual report for the period January 1 to December 31, 1960. In that report, the Court specifically recommended eliminating the summary court-martial, increasing the corrective powers of commanders under Article 15, Uniform Code of Military Justice, and conferring greater authority upon law officers analogous to those exercised by judges of Federal civil courts.

More specifically, the so-called "A" Bill provides for increased authority of commanders to impose nonjudicial punishment. It has been introduced in the House of Representatives as H.R. 7656, 87th Congress. This bill is set out in Exhibit I with an accompanying statement of purpose and its principal features.

The so-called "B" Bill provides, inter alia, for elimination of the summary court-martial, procedures for single officer courts-martial, and increased authority of the law officer. This bill has received the unanimous approval of the Code Committee and is set out in Exhibit II with an accompanying statement of purpose and its principal features.

In addition, the Code Committee has under consideration at the present time several procedural changes relating to simplification of court-martial trials by providing for pretrial sessions to consider and dispose of interlocutory and other procedural matters. These will be submitted to the Congress at a future date after the Code Committee has had an opportunity to consider the possible advantages or disadvantages of such changes.

The proposed legislation as set forth in Exhibits I and II is within the spirit of the Uniform Code of Military Justice. Enactment thereof would be most beneficial to the sound administration of military justice and is recommended.

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 III 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 the 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.

CHARLES L. DECKER,
The Judge Advocate General
United States Army.

WILLIAM C. MOTT,
The Judge Advocate General
United States Navy.

ALBERT M. KUHFIELD,
The Judge Advocate General
United States Air Force.

ROBERT H. KNIGHT,
General Counsel
Department of the Treasury.

EXHIBIT I

87TH CONGRESS, 1ST SESSION

H.R. 7656

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 1961

Mr. VINSON introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend section 815 (article 15) of title 10, United States Code, relating to non-judicial punishment, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That section 815 (article 15) of title 10, United States
4 Code, is amended to read as follows:

5 "§ 815. Art. 15. *Commanding officer's non-judicial punish-*
6 *ment*

7 "(a) Under such regulations as the President may
8 prescribe, and under such additional regulations as may be
9 prescribed by the Secretary concerned, limitations may be
10 placed on the powers granted by this article with respect

1 to the kind and amount of punishment authorized, the cate-
2 gories of commanding officers and warrant officers exercising
3 command authorized to exercise or delegate those powers,
4 the applicability of this article to an accused who demands
5 trial by court-martial, and the kinds of courts-martial to
6 which the case may be referred upon such a demand.
7 Under similar regulations, procedures may be prescribed
8 with respect to the suspension of punishments authorized
9 hereunder.

10 “(b) Subject to subsection (a) of this section, any
11 commanding officer may, in addition to or in lieu of admoni-
12 tion or reprimand, impose one or more of the following
13 disciplinary punishments, or such equivalent punishments
14 as the Secretary concerned may prescribe, for minor of-
15 fenses without the intervention of a court-martial—

16 “(1) upon officers of his command—

17 “(A) restriction to certain specified limits, with
18 or without suspension from duty, for not more than
19 thirty consecutive days.

20 “(B) if imposed by an officer exercising gen-
21 eral court-martial jurisdiction or an officer of gen-
22 eral or flag rank in command:

23 “(i) arrest in quarters for not more than
24 thirty consecutive days.

1 “(ii) forfeiture of not more than one-half
2 of one month’s pay per month for two months.
3 “(2) upon other personnel of his command—
4 “(A) if imposed upon a person attached to
5 or embarked in a vessel, confinement on bread and
6 water or diminished rations for not more than
7 three consecutive days.
8 “(B) correctional custody for not more than
9 thirty consecutive days.
10 “(C) forfeiture of not more than one-half of
11 one month’s pay per month for two months.
12 “(D) reduction to the lowest grade or any in-
13 termediate grade, if the grade from which demoted
14 is within the promotion authority of the officer im-
15 posing the reduction or within the promotion
16 authority of any officer subordinate to the one who
17 imposes the reduction.
18 An officer in charge may impose on enlisted members
19 assigned to the unit of which he is in charge such of the
20 punishments authorized under subsection (b) (2) as the
21 Secretary concerned may specifically prescribe by regula-
22 tion. For the purposes of this subsection, ‘correctional
23 custody’ is the physical restraint of a person during duty or
24 nonduty hours and may include extra duties, fatigue duties,

1 or hard labor. If practicable, correctional custody will not
2 be served in immediate association with persons awaiting
3 trial or held in confinement pursuant to trial by court-
4 martial.

5 “(c) The officer who imposes the punishment author-
6 ized in subsection (b), or his successor in command, may,
7 at any time, suspend probationally any part or amount of
8 the unexecuted punishment imposed and may suspend a re-
9 duction in grade or a forfeiture imposed under subsection
10 (b), whether or not executed. In addition, he may, at any
11 time, remit or mitigate any part or amount of the unexecuted
12 punishment imposed and may set aside in whole or in part
13 the punishment, whether executed or unexecuted, and re-
14 store all rights, privileges, and property affected.

15 “(d) A person punished under this article who con-
16 sider his punishment unjust or disproportionate to the of-
17 fense may, through the proper channel, appeal to the next
18 superior authority. The appeal shall be promptly forwarded
19 and decided, but the person punished may in the meantime
20 be required to undergo the punishment adjudged. The
21 superior authority may exercise the same powers with
22 respect to the punishment imposed as may be exercised
23 under subsection (c) by the officer who imposed the punish-
24 ment.

25 “(e) The imposition and enforcement of disciplinary

1 punishment under this article for any act or omission is not
2 a bar to trial by court-martial for a serious crime or offense
3 growing out of the same act or omission, and not properly
4 punishable under this article; but the fact that a disciplinary
5 punishment has been enforced may be shown by the accused
6 upon trial, and when so shown shall be considered in deter-
7 mining the measure of punishment to be adjudged in the
8 event of a finding of guilty.”

9 Sec. 2. This Act becomes effective on the first day
10 of the fifth month following the month in which it is enacted.

PURPOSE

The purpose of this proposed legislation is to improve the administration of military justice in the Armed Forces. The prime objective of this bill is to increase the authority of designated commanders under Article 15, Uniform Code of Military Justice. Serious morale problems adversely affecting discipline are engendered by the inadequacy of powers of commanders under the present Article to deal with behavioral infractions without resorting to the processes of criminal law.

PRINCIPAL FEATURES

This legislation proposes to effect the following major changes:

a. Designated commanders, or those to whom authority has been delegated by regulations, will be empowered to impose increased punishments or prescribed equivalents.

b. In the case of enlisted personnel, increased punishments will be substantially within the punitive authority of a summary court-martial. Imposition of correctional custody not to exceed 30 days, forfeiture of not more than one-half pay per month for 2 months, and reduction to the lowest enlisted grade are authorized as maximum punishments.

c. In officer cases, provision is made for the imposition of restriction not to exceed 30 days, and, when imposed by an officer exercising general court-martial jurisdiction or an officer of general or flag rank in command, arrest in quarters for not more than 30 days and forfeiture of not more than one-half pay per month for 2 months.

(d) In order to remedy the restrictive implications of a Comptroller General decision (B-131093, June 1957) which held that a reduction under Article 15, once accomplished, could not be remitted or suspended, this legislation provides that the officer who imposes the punishment, his successor in command, and the superior authority to whom an appeal is taken, may suspend probationally any part or amount of the unexecuted punishment imposed, including a reduction in grade or a forfeiture, whether or not executed and may at any time remit, mitigate or set aside the punishment in whole or in part and restore all rights, privileges and property affected.

Of major concern is the stigma of a criminal conviction which results when resort must be had to trial by summary court-martial. This legislation, by increasing the powers of a commander and providing

for adequate punishments for minor infractions without the initiation of court-martial proceedings, will effect a marked improvement upon discipline.

It is contemplated that the exercise of the powers granted to commanders under the new proposal will be regulated by Executive Order of the President and by service regulations promulgated by the Service Secretaries.

Because of the limitations of the present Article, resort must be had to trial by court-martial whenever an officer commits any but the most insignificant offense. This seriously impairs the effectiveness of such an officer and requires that he be considered for prompt transfer from the command in which he has been tried. As proposed, the increased powers conferred upon commanders under Article 15 with respect to officers will insure adequate punishment for relatively minor offenses through nonjudicial means.

The provisions of this proposal authorizing the suspension, reduction, mitigation or setting aside of punishments will place in the hands of commanders a useful tool to effect rehabilitation of offenders.

EXHIBIT II

A BILL

To amend chapter 47 (Uniform Code of Military Justice) of title 10, United States Code, by abolishing summary courts-martial and creating single-officer general and special courts-martial, 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 801(10) (article 1(10)) is amended by
6 inserting the words “or special court-martial” after
7 the words “general court-martial”.

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

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

11 “The two 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
15 five members; or

16 “(B) only a law officer if, before the
17 court is convened, the accused, knowing the
18 identity of the law officer, and after
19 consultation with counsel, requests in
20 writing a court composed only of a law officer
21 and the convening authority has consented
22 thereto; and

1 “(2) special courts-martial, consisting of—
2 “(A) not less than three members; or
3 “(B) a law officer and not less than three
4 members; or
5 “(C) only a law officer, under the same
6 conditions as those prescribed in clause (1) (B)
7 of this section unless otherwise prescribed
8 by the Secretary concerned in the case of
9 accused persons who demand trial by court-
10 martial in lieu of punishment under section
11 815 (article 15).”
12 (3) Section 810 (article 10) is amended by striking
13 out the words “tried by a summary court-martial,” in the
14 first sentence and inserting the words “punishable under
15 section 815 of this title (article 15),” in place thereof.
16 (4) Section 818 (article 18) is amended to read as
17 follows:
18 “§ 818. *Art. 18. Jurisdiction of general courts-*
19 *martial*
20 “Subject to section 817 of this title (article 17),
21 general courts-martial have jurisdiction to try persons
22 subject to this chapter for any offense made punish-
23 able by this chapter and may, under such limitations
24 as the President may prescribe, adjudge any punish-
25 ment not forbidden by this chapter, including the

1 penalty of death when specifically authorized by
 2 this chapter. General courts-martial also have juris-
 3 diction to try any person who by the law of war is
 4 subject to trial by a military tribunal and may
 5 adjudge any punishment permitted by the law of war.
 6 However, a general court-martial of the kind specified
 7 in section 816(1) (B) of this title (article 16(1) (B))
 8 may not adjudge the penalty of death.”
 9 (5) Subchapter IV is amended—
 10 (A) by repealing section 820 (article 20); and
 11 (B) by striking out the following item in the
 12 analysis:
 13 “820. 20. Jurisdiction of summary courts-martial.”
 14 (6) Subchapter V is amended—
 15 (A) by repealing section 824 (article 24); and
 16 (B) by striking out the following items in the
 17 analysis:
 18 “824. 24. Who may convene summary courts-martial.
 19 * * * * *
 20 “826. 26. Law officer of a general court-martial.”
 21 and inserting the following item in place thereof:
 22 “826. 26. Law officer of a general or special
 23 court-martial.”
 24 (7) Section 826 (article 26) is amended to read as
 25 follows:

1 "§ 826. *Art. 26. Law officer of a general or*

2 *special court-martial*

3 "(a) The authority convening a general court
4 martial shall, and the authority convening a special
5 court-martial may, detail as law officer thereof a
6 commissioned officer who is a member of the bar of
7 a Federal court or of the highest court of a State
8 and who is certified to be qualified for such duty
9 by the Judge Advocate General of the armed force of
10 which he is a member. A commissioned officer who
11 is certified to be qualified for duty as a law
12 officer of a general court-martial is also qualified
13 for duty as a law officer of a single-officer or
14 other special court-martial. A commissioned officer
15 who is certified to be qualified for duty as a law
16 officer of a special court-martial is qualified for
17 duty as a law officer of a single-officer special
18 court-martial. However, no person may act as a
19 law officer of a single-officer general court
20 martial unless he is specially certified to be
21 qualified for that duty.

22 "(b) No person is eligible to act as law officer
23 in a case if he is the accuser or a witness for the
24 prosecution or has acted as investigating officer
25 or as counsel in the same case.

1 “(c) The law officer may not consult with the
2 members of the court, other than on the form of the
3 findings as provided in section 839 of this title
4 (article 39), except in the presence of the accused,
5 trial counsel, and defense counsel, nor may he vote
6 with the members of the court.”

7 (8) Section 829 (article 29) is amended—

8 (A) by inserting the words “, other than a
9 single-officer general court-martial,” after the
10 word “court-martial” in the first sentence of sub-
11 section (b);

12 (B) by amending subsection (c) as follows:

13 (i) by inserting the words “, other than a
14 single-officer special court-martial,” after
15 the word “court-martial” in the first sentence;
16 and

17 (ii) by striking out the words “the accused”
18 and inserting the words “the law officer, if
19 any, the accused,” in place thereof; and

20 (C) by adding the following new subsection at
21 the end thereof:

22 “(d) If the law officer of a single-officer
23 court-martial is unable to proceed with the
24 trial because of physical disability, as a result

1 of a challenge, or for other good cause, the
2 trial may continue after the detail of a new law
3 officer who is duly sworn, subject to applicable
4 conditions set out in section 816 (1) (B) or (2) (B)
5 (article 16 (1) (B) or (2) (B)), as if no evidence
6 had previously been introduced, unless a verbatim
7 record of the testimony of previously examined
8 witnesses or a stipulation thereof is read to the
9 court in the presence of the new law officer, the
10 accused, and counsel.”

11 (9) Section 837 (article 37) is amended by striking
12 out the words “, special, or summary” and inserting the
13 words “or special” in place thereof.

14 (10) Section 839 (article 39) is amended—

15 (A) by inserting the words “or a special court-
16 martial with a law officer” after the word “court-
17 martial” in the second sentence; and

18 (B) by inserting the words “and in special
19 court-martial cases in which a law officer has been
20 detailed,” after the word “cases,” in the last
21 sentence.

22 (11) Section 841 (article 41) is amended—

23 (A) by striking out the words “law officer of
24 a general court-martial” in the first sentence of

1 subsection (a) and inserting the words "law officer of
2 a general or special court-martial" in place thereof;
3 (B) by striking out the word "court" in the second
4 sentence of subsection (a) and inserting the words "law
5 officer" in place thereof; and
6 (C) by inserting the words "and an officer de-
7 tailed as a single-officer general or special court-
8 martial" after the words "law officer" in subsection (b).
9 (12) Section 843 (b) and (c) (article 43 (b) and (c)) are
10 each amended by striking out the word "summary" and insert-
11 ing the word "special" in place thereof.
12 (13) Section 851 (article 51) is amended—
13 (A) by amending the first sentence of subsection
14 (a) to read as follows:
15 "Voting by members of a general or special court-
16 martial on the findings and on the sentence, and
17 by a special court-martial without a law officer
18 upon questions of challenge, shall be by secret
19 written ballot.";
20 (B) by amending the first two sentences of sub-
21 section (b) to read as follows:
22 "The law officer of a general or special court-
23 martial, and the president of a special court-
24 martial when no law officer is detailed, shall
25 rule upon all questions of law and all inter-
26 locutory questions arising during the proceedings.

1 Any such ruling made by the law officer of a gen-
2 eral or special court-martial upon any question
3 of law or any interlocutory question other than
4 the accused's mental responsibility is final and
5 constitutes the ruling of the court.”;
6 (C) by striking out the words “general court-martial
7 and the president of a special court-martial” in the
8 first sentence of subsection (c) and inserting the words
9 “general or special court-martial and the president of a
10 special court-martial when no law officer is detailed”
11 in place thereof; and
12 (D) by adding the following new subsection at the
13 end thereof:
14 “(d) Subsections (a), (b), and (c) of this sec-
15 tion do not apply to a single-officer court-martial.
16 An officer who is detailed as a single-officer court-
17 martial shall determine all questions of law and
18 fact arising during the trial and, if the accused is
19 convicted, adjudge an appropriate sentence.”
20 (14) Section 852(c) (article 52(c)) is amended by strik-
21 ing out the words “All other questions” in the first sen-
22 tence and inserting the words “All other questions or
23 rulings (other than those to be decided by a law officer)”
24 in place thereof.
25 (15) Section 854 (article 54) is amended—
26 (A) by amending subsection (a) to read as follows:

1 “(a) Each general court-martial shall keep a
2 separate record of the proceedings of the trial of
3 each case brought before it, and the record shall
4 be authenticated by the signature of the law officer
5 if the court did not include members, or by the sig-
6 natures of the president and the law officer if the
7 court included members. If the record cannot be
8 authenticated by either the president or the law
9 officer, by reason of his death, disability, or
10 absence, it shall be signed by a member in lieu of
11 him if the court included members, or by the trial
12 counsel in lieu of the law officer if the court
13 did not include members. If both the president and
14 the law officer are unavailable for any of those
15 reasons, the record shall be authenticated by two
16 members.”; and
17 (B) by striking out the words “and summary” in
18 subsections (b) and (c).
19 (16) Section 934 (article 134) is amended by striking
20 out the words “, special, or summary” and inserting the
21 words “or special” in place thereof.
22 (17) Section 936(a) (3) (article 136(a) (3)) is amended
23 to read as follows:
24 “(3) All single-officer general or special
25 courts-martial.”

1 SEC. 2. Sections 4711, 4712, 9711, and 9712 of title 10,
2 United States Code, are each amended—

3 (1) by striking out the words “a summary court-martial”
4 wherever they appear therein and inserting the words “an
5 officer detailed for the purpose” in place thereof;

6 (2) by striking out the words “the summary court-
7 martial” wherever they appear therein and inserting the
8 words “the officer detailed for the purpose” in place
9 thereof; and

10 (3) by striking out the words “The summary court-
11 martial” wherever they appear therein and inserting the
12 words “The officer detailed for the purpose” in place
13 thereof.

14 SEC. 3. Chapter 445 of title 10, United States Code, is
15 amended—

16 (1) by amending the catchline of section 4712 to
17 read as follows:

18 “§ 4712. *Disposition of effects of deceased persons*
19 *by the officer detailed*”; and

20 (2) by striking out the following item in the analysis:

21 “4712. Disposition of effects of deceased persons by
22 summary court-martial.”

23 and inserting the following item in place thereof:

24 “4712. Disposition of effects of deceased persons
25 by the officer detailed.”

1 SEC. 4. Chapter 945 of title 10, United States Code, is
2 amended—

3 (1) by amending the catchline of section 9712 to
4 read as follows:

5 “§ 9712. *Disposition of effects of deceased persons*
6 *by the officer detailed*”; and

7 (2) by striking out the following item in the
8 analysis:

9 “9712. Disposition of effects of deceased persons
10 by summary court-martial.”

11 and inserting the following item in place thereof:

12 “9712. Disposition of effects of deceased persons
13 by the officer detailed.”

PURPOSE

This bill seeks revision of certain provisions of the Uniform Code of Military Justice to enhance discipline and facilitate the administration of military justice in the Armed Forces.¹

PRINCIPAL FEATURES

a. Elimination of Summary Courts-Martial. The Judges of the United States Court of Military Appeals as well as commanders in all three services are concerned with the stigma which flows from conviction by summary court-martial for minor behavioral infractions. With the increased powers conferred upon commanders under H.R. 7656 if enacted (Exhibit I), assuring effective disciplinary sanctions for minor infractions, there will no longer be any genuine need in the Armed Forces judicial structure for summary courts-martial. Furthermore, summary court-martial convictions which constitute a permanent blot on the individual's military record and follow him into civilian life would be eliminated.

b. Single Officer Courts. The proposed legislation, which is based upon Rule 23 of the Federal Rules of Criminal Procedure, permits an accused to request and, if the convening authority consents thereto, be tried before a single qualified officer, instead of before a multiple-member general or special court-martial. The adoption of such a procedure will result in a reduction of both time and manpower normally expended in trials. The rights of the accused in such cases are protected by the requirement that the officer acting as a single officer court be certified as qualified for that duty by The Judge Advocate General of the service of which he is a member.

c. Increased Authority of Law Officers. This legislation provides that a law officer shall rule with finality upon all legal questions, including the capacity of an accused to stand trial. It also permits the law officer to pass with finality upon all challenges. Under present requirements of the Uniform Code of Military Justice, the court-martial must pass upon challenges for cause against the individual members thereof. This provision has engendered many difficulties because to evaluate the matters affecting eligibility of a member, the other members of the court-martial must be apprised of the grounds

¹ Enactment of this bill is dependent upon enactment of the "A" Bill insofar as provisions on elimination of the summary court-martial are concerned. The remainder of its provisions may be enacted independently.

for the challenge. In many instances, the member who has been challenged, in stating why he feels he should not serve on the court-martial, gives information which practically disqualifies all other members of the court-martial who heard the explanation.

d. Under the Uniform Code of Military Justice, as interpreted many times by the United States Court of Military Appeals, the law officer is required to act in the image of a judge in civilian life. The provisions of this proposal would serve to more firmly accomplish this objective. The proposed legislation also permits the appointment of a law officer on special courts-martial when the appointment of the law officer is deemed desirable. It would then impose on the law officer of a special court-martial all of the authorities and responsibilities of a law officer of a general court-martial.

EXHIBIT III

Court-Martial Cases

Army -----	63, 419
Navy -----	45, 042
Air Force-----	16, 345
Coast Guard-----	752
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Total -----	125, 558

Cases Reviewed by Boards of Review

Army -----	1, 432
Navy -----	3, 376
Air Force-----	1, 195
Coast Guard-----	24
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Total -----	6, 027

Cases Docketed with U.S. Court of Military Appeals

Army -----	382
Navy -----	337
Air Force-----	259
Coast Guard-----	1
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Total -----	979

**For the Period
July 1, 1960, to June 30, 1961**

Report
of the
UNITED STATES COURT OF MILITARY APPEALS

January 1, 1961 to December 31, 1961

UNITED STATES COURT OF MILITARY APPEALS

The following report of the United States Court of Military Appeals for the period January 1, 1961, to December 31, 1961, 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).

During the period the Chief Judge and the Associate Judges made numerous appearances before bar associations, civic organizations, service schools and similar organizations. In addition, visits were made to military installations on inspection tours in order that the judges might observe first-hand the operation of the military judicial system on all levels.

The workload of the Court during the fiscal year 1961 consisted of a review of 979 cases. Of these, 954 were on petition of the accused filed in accordance with Article 67(b)(3), 24 were certified to the Court by the various Judge Advocates General in accordance with Article 67(b)(2), and one mandatory case involving a death sentence was filed under Article 67(b)(1) of the Uniform Code of Military Justice.

On May 1, 1961, the term of office of Judge George W. Latimer, who served under a 10-year appointment, expired.

On June 1, 1961, President Kennedy announced from Paris, France, that he intended to appoint Representative Paul J. Kilday, Democrat of Texas, as a judge of the Court to succeed Judge Latimer. On June 28, 1961, the Senate officially received the executive nomination of Congressman Kilday, and such nomination was confirmed on July 17, 1961. Thereafter, on September 25, 1961, the judicial oath of office was administered to Paul J. Kilday by Mr. Justice Tom C. Clark in a formal ceremony in the courtroom of the United States Court of Military Appeals after which he immediately assumed the duties of his new office as Associate Judge of the Court.

A detailed analysis of the status of cases processed by the Court from its establishment in 1951 through June 30, 1961, is attached hereto as Exhibit A and a 10-year chronology of the operations of the Court is included as Exhibit B.

Respectfully submitted,

ROBERT E. QUINN,
Chief Judge.

HOMER FERGUSON,
Judge.

PAUL J. KILDAY,
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, 1959</i>	<i>July 1, 1959 to June 30, 1960</i>	<i>July 1, 1960 to June 30, 1961</i>	<i>Total as of June 30, 1961</i>
Petition (Art. 67(b)(3)):				
Army-----	7,757	342	371	8,470
Navy-----	2,435	310	330	3,075
Air Force-----	2,866	330	252	3,448
Coast Guard-----	38	1	1	40
Total-----	13,096	983	954	15,033
Certificates (Art. 67(b)(2)):				
Army-----	105	6	11	122
Navy-----	151	23	7	181
Air Force-----	36	7	6	49
Coast Guard-----	6	0	0	6
Total-----	298	36	24	358
Mandatory (Art. 67(b)(1)):				
Army-----	31	0	0	31
Navy-----	2	1	0	3
Air Force-----	1	1	1	3
Coast Guard-----	0	0	0	0
Total-----	34	2	1	37
Total cases docketed-----	13,428	1,021	979	15,428

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

² 15,182 cases actually assigned docket numbers. 104 cases counted as both Petitions and Certificates. 5 cases Certified twice. 128 cases submitted as Petitions twice. 2 Mandatory cases filed twice. 5 Mandatory cases filed as Petitions after second Board of Review Opinion. 1 case submitted as a Petition for the third time.

COURT ACTION

<i>Petitions (Art. 67(b)(3)):</i>	<i>Total as of June 30, 1959</i>	<i>July 1, 1959 to June 30, 1960</i>	<i>July 1, 1960 to June 30, 1961</i>	<i>Total as of June 30, 1961</i>
Granted.....	1, 318	124	114	1, 556
Denied.....	11, 369	843	842	13, 054
Denied by Memorandum Opinion.....	1	1	0	2
Dismissed.....	9	0	1	10
Withdrawn.....	279	20	8	307
Disposed of on Motion to Dis- miss:				
With Opinion.....	7	0	1	8
Without Opinion.....	36	0	2	38
Disposed of by Order setting aside findings and sentence.....	2	1	0	3
Remanded to Board of Re- view.....	107	8	23	138
Court action due (30 days) ²	67	77	57	57
Awaiting briefs ³	29	19	25	25
<i>Certificates (Art. 67(b)(2)):</i>				
Opinions rendered.....	282	29	37	348
Opinions pending ³	6	10	2	2
Withdrawn.....	5	1	0	6
Remanded.....	0	1	0	1
Set for hearing ³	0	0	0	0
Ready for hearing ³	0	1	1	1
Awaiting briefs ³	6	6	1	1
<i>Mandatory (Art. 67(b)(1)):</i>				
Opinions rendered.....	33	2	1	36
Opinions pending ³	0	1	0	0
Remanded.....	1	0	0	1
Awaiting briefs ³	1	0	1	1
<i>Opinions rendered:</i>				
Petitions.....	1, 115	113	91	1, 319
Motions to Dismiss.....	10	0	1	11
Motion to Stay Proceedings.....	1	0	0	1
Per Curiam grants.....	22	0	4	26
Certificates.....	245	27	34	306
Certificates and Petitions.....	35	2	3	40
Mandatory.....	33	2	1	36
Remanded.....	49	6	21	76
Petition for a New Trial.....	1	0	0	1
Petition for Reconsideration of Petition for New Trial.....	1	0	0	1
Motion to Reopen.....	1	0	0	1
Total.....	1, 513	150	155	1, 818

² As of June 30, 1959, 1960, and 1961.

³ 1,818 cases were disposed of by 1,727 published Opinions. 96 opinions were rendered in cases involving 57 Army officers, 20 Air Force officers, 13 Navy officers, 3 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. The Court remanded 47 cases in Fiscal Year 1959 by Order; 6 cases in Fiscal Year 1960 by Order; and 21 cases in Fiscal Year 1961 by Order.

<i>Total as of June 30, 1959</i>	<i>July 1, 1959 to June 30, 1960</i>	<i>July 1, 1960 to June 30, 1961</i>	<i>Total as of June 30, 1961</i>
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Completed cases:

Petitions denied.....	11, 369	843	842	13, 054
Petitions dismissed.....	9	0	1	10
Petitions withdrawn.....	279	20	8	307
Certificates withdrawn.....	5	1	0	6
Opinions rendered.....	1, 459	144	133	1, 736
Disposed of on motion to dis- miss:				
With opinion.....	7	0	1	8
Without opinion.....	36	0	2	38
Disposed of by Order setting aside findings and sentence.....	2	1	0	3
Remanded to Board of Re- view.....	106	9	23	138
Total.....	13, 272	1, 018	1, 010	15, 300

Pending completion as of

	<i>June 30, 1959</i>	<i>June 30, 1960</i>	<i>June 30, 1961</i>
Opinions pending.....	30	38	16
Set for hearing.....	0	1	0
Ready for hearing.....	1	0	1
Petitions granted—awaiting briefs.....	15	9	17
Petitions—Court action due 30 days.....	67	77	57
Petitions—awaiting briefs.....	29	19	25
Certificates—awaiting briefs.....	6	6	1
Mandatory—awaiting briefs.....	1	0	1
Total.....	149	150	118

EXHIBIT B

TEN-YEAR CHRONOLOGY OF THE UNITED STATES COURT OF MILITARY APPEALS

The Uniform Code of Military Justice (10 USC § 801) became law on May 5, 1950. This Code had a profound effect on the judicial system of the Armed Forces of the United States. It unified the services in the field of military justice for the first time in history. The Code did not become effective until May 31, 1951, thus giving each service ample opportunity to prepare for the changes which were to take place.

The Code evolved really as a result of public clamor after World War I at which time many apparent or actual injustices were brought to light. At that time some major changes were made in the system and, in general, public concern over such problems dissipated. In the short span of years between World Wars I and II minor changes were made but with the advent of World War II it became very obvious that drastic changes and improvements were in order. The public became aware of many miscarriages of justice both through the press and through information received from relatives in the armed forces. For the first time since the Civil War almost every family in the Nation had a personal stake in the soldiers, sailors, and marines who were doing battle for the survival of a free world. As a result, more and more people became aware of the importance of a judicial system which while adequate to maintain military discipline, nevertheless would give rights to those accused of crime closely paralleling the rights enjoyed by the civilian community. The Uniform Code of Military Justice was designed to perform this function.

One of the most significant accomplishments of the Uniform Code of Military Justice was the establishment of a supreme court of the military composed entirely of civilians. The United States Court of Military Appeals, presently located at 5th and E Streets NW., Washington, D.C., is that Court.

To this military tribunal President Harry S Truman appointed three men from civilian life. The Chief Judge was Robert E. Quinn, former Governor of Rhode Island and judge of the Superior Court in that State. Chief Judge Quinn was given a 15-year term of office. Associate Judge George W. Latimer was appointed for a term of 10 years and Associate Judge Paul W. Brosman received the 5-year appointment. All subsequent full appointments were to be for a term

of 15 years. The reason for the staggered terms was to avoid the possibility of two or more terms expiring at the same time.

Chief Judge Robert E. Quinn was nominated as Chief Judge of the Court by President Truman on May 22, 1951, for the term expiring May 1, 1966. He was confirmed by the Senate on June 19, 1951, and he took the oath of office June 20, 1951.

Chief Judge Quinn was born in Phenix, R.I., on April 2, 1894. He received a Bachelor of Arts Degree from Brown University in 1915 and a Bachelor of Laws Degree from Harvard University in 1918. He was admitted to the Rhode Island Bar and was a practicing attorney in Providence, R.I., from 1917 until he entered public office. He was a member of the United States Diplomatic Intelligence Service in England and France from 1917 to 1919, a member of the Senate of the State of Rhode Island from 1923 to 1925 and from 1929 to 1933. He served as Lieutenant Governor of Rhode Island from 1933 to 1936, and as Governor of that State from 1937 to 1939. He became a judge of the Superior Court of Rhode Island commencing on May 1, 1941, and he served as legal officer of the First Naval District from 1942 to 1945. In 1943 Judge Quinn was requested by Secretary of the Navy Forrestal to collaborate with Arthur Ballantyne, Esquire, of New York in reviewing the Articles for the Government of the Navy. In 1944, he was sent to the Pacific Ocean Area by Secretary Forrestal to adjust certain extraterritorial problems with New Zealand, Australia, and other nations, and to study the operation of military justice in that area. He was attached to the U.S.S. *Miza* and was recommended by Admiral Thomas L. Gatch for the Legion of Merit for "giving advice and instruction on ships and stations in the Pacific Ocean Area, in combat areas, and during combat . . ." He was awarded the Commendation Medal and ribbon by Secretary Forrestal and also by Secretary Matthews. In addition, he was cited by the United States Army for Distinguished Service. Judge Quinn is a member of the Democratic Party.

Judge George W. Latimer was nominated by President Truman as judge of the United States Court of Military Appeals on May 22, 1951, for the term expiring May 1, 1961. His nomination was confirmed by the Senate on June 19, 1951, and he took the oath of office on June 20, 1951.

Judge Latimer was born in Draper, Utah. He attended grade schools in Salt Lake City, Utah. He received a Bachelor of Laws Degree from the University of Utah in 1924. He was a practicing attorney in Salt Lake City from 1925 to 1940 and from 1945 to 1946. He enrolled in the Reserve Officer Training Corps at the University of Utah in 1920. He was commissioned in the National Guard in 1925 and served that organization in all ranks from second lieutenant to colonel. He was inducted into the Federal service as division staff

officer of the Fortieth Infantry Division in February 1941. He was promoted to colonel and became chief of staff of the division and served in that capacity while the division was in Hawaii, Guadalcanal, New Britain, and Luzon, Negros, and Panay, Philippines. He engaged in combat in those areas in 1944 and 1945 and was awarded three battle stars and the Legion of Merit for duty while in combat. He was relieved from active duty in November 1945. Judge Latimer was elected to the Supreme Court of the State of Utah in 1947 for a 10-year term and served until June 1951 at which time he resigned to accept the appointment to the United States Court of Military Appeals. Judge Latimer is a member of the Republican Party.

Judge Paul W. Brosman was nominated as a judge of the United States Court of Military Appeals on May 22, 1951, for the term expiring May 1, 1956. He was confirmed by the Senate on June 19, 1951, and he took the oath of office on June 20, 1951.

Judge Brosman was born in Albion, Ill., on November 9, 1899. He received a Bachelor of Arts Degree from Indiana University in 1926, a Bachelor of Laws Degree from the University of Illinois in 1924, Doctor of Juridical Science Degree from Yale University in 1929. He was admitted to law practice in Illinois in 1924 and Louisiana in 1942. He was an instructor in business law at Indiana University in 1924 and 1925 and an assistant professor at the same university in 1925 and 1926. He was professor of law at Mercer University from 1926 to 1928, a Sterling Fellow in Law at Yale from 1928 to 1929 and professor of law at Tulane University from 1929 to 1932. Between 1932 and 1951 he was professor of law, assistant dean, and dean at Tulane University Law School. Judge Brosman served as a private in the United States Army in World War I. He was commissioned a major in the Army in 1942 and was assigned to the Army Air Force. He was chief of the Military Justice Division, Office of the Air Judge Advocate, Continental Air Command, Mitchel Air Force Base, Long Island, in 1950 and 1951. He was awarded the Legion of Merit. Judge Brosman was a member of the Democratic Party.

The Uniform Code of Military Justice, the law which established the United States Court of Military Appeals, specifically provided that not more than two of the judges of the Court could be appointed from the same political party, nor would any person be eligible for appointment to the Court who was not a member of the bar of a Federal court or of the highest court of a State. The Congress also gave to the President of the United States the prerogative to designate from time to time one of the judges as Chief Judge. From the date of original appointment to the writing of this chronology, July 1961, Robert E. Quinn has been the Chief Judge.

The Code also provided that "If any judge of the Court of Military Appeals is temporarily unable to perform his duties because of illness or other disability, the President may designate a judge of the United States Court of Appeals to fill the office for the period of disability." The President, to date, has not exercised this right.

The judges, having taken the oath of office on June 20, 1951, established on June 21, 1951, temporary quarters in Room 2-A-862 of the Pentagon Building, Washington, D.C. The Court convened for the first time in said quarters on June 22, 1951, and approved the appointment of Mr. David L. Smith as Assistant to the Clerk. The appointment was effective June 25, 1951. Mr. Smith was the first employee hired by the Court.

The Court did not officially meet again until July 9, 1951, at which time it approved the appointments of Phyllis I. Roule as Secretary to Judge Brosman, and Ida M. Hansen as Secretary to Judge Latimer.

On July 11, 1951, the Court met again and approved "Rules of Practice and Procedure" for practice before the Court.

On July 12, 1951, the Court moved its quarters from the Pentagon Building and established further temporary quarters on the Seventh Floor of the Internal Revenue Building at 10th and Constitution Avenue NW., Washington, D.C.

The charter members of the personnel of the Court and the dates they reported for duty are listed below. (It should be noted that the term "charter member" has been arbitrarily chosen by the author to refer to the three original judges and any employees hired during the year 1951.)

Robert E. Quinn, Chief Judge—June 20, 1951
George W. Latimer, Associate Judge—June 20, 1951
Paul W. Brosman, Associate Judge—June 20, 1951
David L. Smith—June 25, 1951
Ida M. Hansen—July 9, 1951
Phyllis I. Roule—July 9, 1951
Richard L. Tedrow—July 16, 1951
David F. Condon—July 16, 1951
Alfred C. Proulx—July 30, 1951
Louise Rowe—July 30, 1951
Leonora Brown (Vaz)—July 31, 1951
Anthony Ortega—August 3, 1951
Beatrice M. Meyer—August 6, 1951
Vincent Murray—August 31, 1951
Margery Sarff—September 17, 1951
Michael Katen—September 21, 1951
Daniel Walker—October 1, 1951
Montroze P. Wilson—October 1, 1951
Frederick R. Hanlon—October 15, 1951

Katherine J. Norman—November 5, 1951

Virginia Siegel—November 13, 1951

Edward Gallogly—November 28, 1951

The first admissions to the bar of the Court were had on July 25, 1951, when the Court, in open session in the courtroom of the United States Court of Customs and Patent Appeals (also located on the 7th Floor of the Internal Revenue Building), recognized the eminent qualifications of Rear Admiral George L. Russell, Judge Advocate General of the Navy, Major General Reginald C. Harmon, Judge Advocate General of the Air Force, Brigadier General James L. Harbaugh, Jr., Judge Advocate General of the Army, and Mr. John K. Carlock, Assistant General Counsel for the Department of the Treasury. Thereafter, on the same day 43 officers and civilian attorneys were sponsored by the original 4 members of the bar and were duly admitted to practice before the Court.

The Code provides that review of cases by the Court may occur in three different ways.

1. All cases in which the sentence, as affirmed by a Board of Review, affects a general or flag officer or extends to death.
2. All cases reviewed by a Board of Review which The Judge Advocate General orders forwarded to the Court of Military Appeals for review.
3. All cases reviewed by a Board of Review in which, upon petition of the accused and on good cause shown, the Court of Military Appeals has granted a review.

In any case reviewed by it, the Court of Military Appeals shall act only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the Board of Review. The Court may take action only with respect to matters of law.

The first case docketed with the Court was *United States v. John J. McSorley*. The opinion in this case was released on November 29, 1951. The petition was dismissed for lack of jurisdiction. The opinion may be found at page 84 of Volume 1 of the Court's reports.

The first case heard by the Court was *United States v. Mickey McCrary*, Private, United States Air Force (Docket No. 4). The case, argued on September 7, 1951, had been certified to the Court by The Judge Advocate General of the Air Force. On argument Colonel Abner E. Lipscomb represented the accused, McCrary, and Lieutenant Colonel Jean F. Rydstrom and Captain William E. Shannon represented the United States.

The case of *United States v. McCrary*, 1 USCMA 1, became the first opinion released by the Court. This occurred on November 8, 1951. Judge Latimer wrote the majority opinion in which Judge Brosman concurred with a separate opinion. Chief Judge Quinn

dissented with a rather lengthy opinion. The decision of the Board of Review which had affirmed the conviction was affirmed by the Court.

On September 28, 1951, President Harry S. Truman signed Executive Order 10295 establishing the Seal of the Court which was described therein as follows:

In front of a silver sword, point up, a gold and silver balance supporting a pair of silver scales, encircled by an open wreath of oak leaves, green with gold acorns; all on a grey blue background and within a dark blue band edged in gold and inscribed "United States Court of Military Appeals" in gold letters.

Replicas of this seal are located in the lower main hallway at the entrance to the Court, in the Clerk's Office, in the chambers of each judge, and in the Courtroom itself.

In the first year of the Court's existence, through June 30, 1952, the Court released 97 opinions. In that period 996 cases were docketed with the Court. In the next fiscal year, that is, the period July 1, 1952, to June 30, 1953, the Court docketed the largest number of cases for any year up to the present date. In that year 2,215 cases were docketed. Thereafter, the number of cases filed with the Court leveled off so that as of June 30, 1961, 15,182 cases had been docketed, an average in a 10-year period of 1,518 cases per year.

The decrease in the number of cases may be attributed to several factors. First, the decisions of the Court have established the law on many points so that many of the errors committed in the lower tribunals have now been corrected. Also the number of men in the armed forces has decreased each year thus cutting down on the number of courts-martial. For example, on July 1, 1951, there were approximately 1,600,000 personnel in the Army and in the fiscal year July 1, 1951, to June 30, 1952, the Army held 8,037 general courts-martial. On July 1, 1959, the personnel of the Army had been reduced to approximately 873,000 and in the year July 1, 1959, to June 30, 1960, the Army held 2,060 general courts-martial. In addition, it should be remembered that in the early stages of the Court's existence the United States was involved in the Korean conflict.

These reasons, plus others, such as the awarding of administrative discharges in lieu of a court-martial, a practice which this Court deplures, have tended to reduce the number of cases coming before the Court of Military Appeals. While the case-load has been reduced, some idea of the tremendous work accomplished by the Court in its early years can be gleaned from the fact that it is still one of the busiest appellate courts in the country.

The opinions of the Court were originally published in mimeographed form and then printed in pamphlet form by the Government Printing Office. Contacts were made with publishing firms and in early 1952 a contract was made with The Lawyers Co-opera-

tive Publishing Co. for the printing of advance sheets and, at the proper time, bound volumes. Generally, the same procedure is used today. Opinions are released in mimeographed form on Fridays at noon. At that time they are sent to the publishing company in Rochester, N.Y., and within the space of 10 days to 2 weeks the printed advance sheet with headnotes is completed by the publisher. The plate for these advance sheets serves as the plate for the printed volume.

To date the Court has 11 volumes outstanding and volume 12 is well on the way. These volumes contain all the opinions of the Court as well as final actions on every case filed with the Court. Volume 1 also contains the Rules of Practice and Procedure although such rules have been modified three times since they were originally adopted on July 11, 1951. The Rules were revised March 1, 1952, May 31, 1953, and January 1, 1959. Under the present case-load the Court completes about one volume of cases a year.

On April 12, 1952, the Court submitted an "Interim Report of the United States Court of Military Appeals" to the Committees on Armed Services of the Senate and House of Representatives and to the Secretary of Defense and the Secretaries of the Army, Navy, Air Force, and Treasury pursuant to the requirements of the Uniform Code of Military Justice. This report was made solely by the Court and covered the period May 31, 1951, to March 1, 1952. In the years thereafter the Annual Reports have been submitted in conjunction with the Reports of the Army, Navy, Air Force, and Coast Guard (Treasury). Such reports were made on a calendar year basis except for the year 1952 where, after the interim report, the next report was filed for the period May 31, 1951, to May 31, 1952. In each of the Annual Reports the Court and the respective services filed individual reports and also a joint report. However, the joint report was omitted in the report for the year January 1, 1960, to December 31, 1960. There were several reasons for the omission but the most significant was that the Army, in its report, indicated it no longer agreed with all the recommendations that had been made previously and therefore submitted its own new recommendations for changes to the Uniform Code. Since these changes had not been submitted to the Code Committee beforehand there had been no discussion as to the merits or demerits of such proposals. This eliminated the possibility of agreement on any matters of substance in a joint report.

In 1952 the Court took under consideration the appointment of a Civilian Committee to study the progress made under the Uniform Code of Military Justice during the first 2 years of its actual operation with a view to recommending improvements wherever necessary. Thus on January 15, 1953, the Court established the Court Committee consisting of the following distinguished lawyers: Whitney N. Sey-

mour (Chairman), New York; Ralph G. Boyd, Massachusetts; Felix E. Larkin, New York; Dean Joseph A. McClain, Jr., North Carolina; George A. Spiegelberg, New York; Professor Arthur E. Sutherland, Massachusetts; Henry T. Dorrance, New York; and Donald L. Deming (Secretary), New York.

That Committee held its first meeting in Washington, D.C., on May 28, 29, 1953, and thereafter met three times in New York City and once again in Washington, D.C. This last meeting was held May 23, 1956. While consideration was given to further meetings none has been held due to inability to co-ordinate the members of the Committee at a convenient time and also due to the failure of Congress to act upon the various earlier recommendations.

After the Court moved to its permanent quarters at 5th and E Streets NW., Washington, D.C., in October 1952, the great majority of the sessions of the Court were held at that address. However, there were sessions held for various reasons at other locations.

On August 17, 1954, a special admission session was held in conjunction with the Annual Meeting of the American Bar Association, at the United States Courthouse in Chicago, Ill. Chief Judge Quinn and Judges Latimer and Brosman were present. At that session 336 applicants were admitted. This was the largest admission session held in the 10-year history of the Court.

On July 19, 1956, a special admission session was held at Fort George G. Meade, Md. Judge Latimer was present as presiding judge. Fifty-six applicants were admitted.

The next special session took place less than a month later, specifically August 15, 1956, at Ross Auditorium, Great Lakes Naval Station, Great Lakes, Ill. Chief Judge Quinn presided and 201 applicants were admitted.

On August 22, 1956, a special admission session was held at Patrick Hall, Fort Benning, Ga. Judge Latimer presided and 103 applicants were admitted.

On August 28, 1956, a special admission session was held in the United States District Court for the Northern District of Texas, Dallas, Tex., in conjunction with the Annual Meeting of the American Bar Association. Chief Judge Quinn, Judge Latimer, and Judge Ferguson presided. One hundred and forty-eight applicants were admitted.

On November 19, 1956, a special admission session was held in the Bar Association Building in New York City. Judges Latimer and Ferguson presided. One hundred and seventy-six applicants were admitted to the bar.

On July 27, 1957, a special session was held in the Conference Room, Headquarters Third Air Force, Victoria Park Estate, South Ruislip,

Middlesex, England. Chief Judge Quinn and Judge Ferguson presided at the admission of 10 applicants.

On August 19, 1958, a special admission session was held at the United States Post Office, Yukon, Alaska, 8 miles from the Arctic Circle. Chief Judge Quinn presided. One applicant was admitted.

The following day, August 20, 1958, a special session was held at Camp H. M. Smith, Honolulu, Territory of Hawaii. Judge Ferguson presided and 19 motions for admission were granted.

Finally, on August 3, 1960, a special session was held at the United States District Court, Federal Building, Honolulu, Hawaii. Judge Latimer presided at the admission of 68 applicants.

As stated previously, the United States Court of Military Appeals has been located at 5th and E Streets NW., Washington, D.C., for the past 8½ years. The building occupied by the Court was authorized by the Congress by Act of May 30, 1908 (35 Stat. 544), for the use of the Court of Appeals of the District of Columbia. That Court was established by act of February 9, 1893 (27 Stat. 434). Under the act of June 7, 1934 (48 Stat. 926), the title of the court was changed to "United States Court of Appeals for the District of Columbia." Under the act of June 25, 1948 (62 Stat. 870), the title of the court was changed to "United States Court of Appeals for the District of Columbia Circuit." When that Court moved to the new courthouse at 3d Street and Constitution Avenue NW., the Court of Military Appeals took over the building.

The original authorization of the Congress provided for construction of the building under the supervision of the Architect of the Capitol at a limit of cost of \$200,000. Subsequent appropriations, totaling \$240,792 for construction, and, in addition, \$29,600 for furnishings were provided.

The building, located in Judiciary Square, was completed and occupied October 1, 1910.

Pursuant to the provisions of section 404 of the Judiciary Appropriations Act, 1953, jurisdiction over the building was transferred from Architect of the Capitol to the General Services Administration effective October 1, 1952.

The United States Court of Military Appeals moved into the building on October 31, 1952.

Only one of the original appointees to the Court, Chief Judge Quinn, is still on the bench at this time. On December 21, 1955, Judge Brosman died suddenly of a heart attack in his chambers on the second floor (Room 217) of the Court's building at 5th and E Streets NW., Washington, D.C. The Honorable Homer Ferguson, former United States Senator from Michigan, was nominated by President Dwight D. Eisenhower on January 30, 1956, to fill the unexpired 5-year term of Judge Brosman, and for a 15-year term

ending May 1, 1971. At the time of his nomination Judge Ferguson was Ambassador to the Philippines. The appointments were confirmed unanimously by the United States Senate on February 17, 1956. Judge Ferguson was given the oath of office in the West Conference Room of the Supreme Court Building by the Chief Justice of the United States, Earl Warren, on April 9, 1956.

Judge Ferguson was born in Harrison City, Pa. He attended the University of Pittsburgh and received a Bachelor of Laws Degree from the University of Michigan in 1913. He was admitted to the Bar of Michigan in 1913. He practiced law in Detroit from 1913 to 1929. He was appointed Circuit Judge of the Circuit Court of Wayne County, Mich., in 1929 and was elected to successive terms until the year 1941. He sat as a one-man grand jury in Wayne County, Mich., from August 1939 to the end of 1942. He was United States Senator from Michigan from 1943 to 1955. He was United States Ambassador to the Philippines from March 22, 1955, to April 8, 1956, at which time he resigned that position to accept appointment to the United States Court of Military Appeals. Judge Ferguson is a Republican.

On February 15, 1956, memorial proceedings were held in the Courtroom at 10:00 a.m. with Chief Judge Quinn and Judge Latimer presiding. Respects were paid to the late Judge Brosman in remarks made by Chief Judge Quinn, Brigadier General Herbert M. Kidner, United States Air Force, Major General Eugene M. Caffey, United States Army, Rear Admiral Ira H. Nunn, United States Navy, Major General Reginald C. Harmon, United States Air Force, Honorable Fred C. Scribner, Jr., Department of the Treasury (representing the United States Coast Guard), and Honorable Frederick Bernays Wiener, Secretary, The Judge Advocates Association. Judge Brosman's chair was draped in black for the ceremony.

On February 25, 1957, a meeting was held in the Courtroom for presentation of a bronze plaque in the memory of the late Judge Paul W. Brosman. Chief Judge Quinn and Associate Judges Latimer and Ferguson sat on the bench. The officers and directors of The Judge Advocates Association took chairs reserved for them in the well of the Courtroom. The public section of the Courtroom was filled with other friends of the late Judge Brosman, including Judges of the United States Court of Appeals for the District of Columbia Circuit, the United States District Court for the District of Columbia, The Judge Advocate General and the Assistant Judge Advocate General of the Air Force, and distinguished members of the bar of the Court of Military Appeals. Chief Judge Quinn recognized Colonel Nicholas Allen, President of The Judge Advocates Association, who gave a eulogy of Judge Brosman and presented a bronze plaque to the Court on behalf of The Judge Advocates Association. Colonel Thomas H. King, First Vice-President of the Association and

Chairman of the Committee on Arrangements for the occasion, and Richard Love, Secretary of the Association, unveiled the plaque, the inscription on which reads as follows:

In Memory of
Judge
Paul W. Brosman
One of Our Charter Members
Who Died on December 21, 1955,
while serving as one of
the Original Judges on the
United States Court
of Military Appeals
Dean and Teacher of the Law
Judge Advocate, U.S. Air Force
By his Associates in the
Judge Advocates Association

Chief Judge Quinn thanked the members of the Association and accepted the plaque on behalf of the Court, noting that it would be given a place of prominence in the Courthouse. He praised the work of Judge Brosman and lauded him personally as an able legal scholar and a friend.

Judge Latimer spoke of Judge Brosman as a friend, an indefatigable worker, a stylistic writer and a judge whose judgment was sound.

Judge Ferguson stated that although he had not known Judge Brosman personally he had a very high regard for Judge Brosman's opinions and work in the Court. Thereupon, the Court adjourned. The plaque was later placed in the stairwell of the Court between the first and second floors where it remains to this day.

On November 18, 1958, the Court noted with regret the death of Chief Judge Bolitha J. Laws by adopting the following resolution:

"The United States Court of Military Appeals notes the recent passing of Honorable Bolitha J. Laws, Chief Judge of the United States District Court for the District of Columbia with deep regrets. In his death, the Nation suffers the loss of a man of learning, industry, wisdom and understanding, who, dedicated to the cause of justice, served his trust and country well. He will forever be recognized as an able and outstanding jurist and he will long be remembered in gratitude by his fellow countrymen."

Copies of this resolution were forwarded by the Clerk of the Court to Mrs. Bolitha J. Laws of Washington, D.C., and to Honorable F. Dickinson Letts, Chief Judge of the United States District Court for the District of Columbia.

On May 27, 1959, the Court, with Chief Judge Quinn and Judges Latimer and Ferguson present, adjourned out of respect to John Foster Dulles, former Secretary of State, who died Sunday, May 24, 1959, and who was to be buried on the afternoon of May 27 at services held in the National Cathedral and at Arlington National Cemetery.

On October 20, 1959, the Court established a grievance committee

composed of three members of the bar of the Court. Honorable Nicholas Chase was named Chairman of the Committee, and Major B. R. Kennedy, United States Army (Retired), and Reverend Joseph M. Snee, S.J., were designated as members of the Committee. The Court's first problem in this field was referred to the Committee on this date.

The grievance committee made its report and recommendation to the Court on January 7, 1960, and on January 11, 1960, a rule to show cause was issued to the party concerned. Thereafter, on February 17, 1960, the first and, up to the present time, the only disbarment order was issued by the Court.

On March 24, 1961, the Court, in regular session, recognized Commissioner Daniel F. Carney who introduced to the Court Colonel Edward T. Johnson, United States Army, Chief of the Army Field Judiciary Division, who was to be retired March 31, 1961. Chief Judge Quinn, Judge Latimer, and Judge Ferguson all commended Colonel Johnson on his fine work on the law officer program and wished him good fortune in his retirement.

On May 1, 1961, the term of office of Judge George W. Latimer, who served under a 10-year Presidential appointment, expired.

In the first 10 years of its operations through June 30, 1961, the Court admitted 9,091 applicants to the Bar of the Court. In addition, the Court granted honorary membership to 25 lawyers from 8 foreign countries. The countries include Sweden, Thailand, Philippines, Burma, Vietnam, Taiwan, Korea, and Nicaragua.

In addition to the 3 judges, the Court has a staff of approximately 39 employees, all civilians. To assist the judges in the review of the many cases received by the Court, there are at present 10 Court Commissioners and 1 Chief Commissioner. Mr. Richard L. Tedrow has been the Chief Commissioner since he came on duty with the Court in July 1951. It is the function of the Commissioners to review the cases as they are received in the Court. A case is considered received when a petition is filed by the accused, or a certificate is filed by one of the Judge Advocates General, or when an Assignment of Errors (in a mandatory case) is filed, and a reply to the initial pleading has been filed. The date of receipt is significant because the Court, after receipt of the reply in each case, has thirty (30) days in which to act, that is, either grant, deny, or dismiss the proceeding. The reviews, the pleadings, and the record of trial are sent to the judges who after careful consideration make the final decision as to the action to be taken. If the case is denied, then normally that is the end of legal appellate review in the military system. The only exception to this would, under ordinary circumstances, be a petition for reconsideration filed with the Court. If the petition is granted or if the case is either one certified by a Judge Advocate General or a mandatory case

(a case involving the death penalty or one affecting either a general or a flag officer), then the case is set down for hearing. Two judges constitute a quorum and the concurrence of at least two judges is required for the rendition of a final decision. Therefore, of course, at least two judges must sit to hear a case. Normally, all three judges participate in the hearings, the only exception being the unavailability of one judge because of sickness or other pressing business, such as an appearance before a Congressional Committee. After a case has been heard the judges meet and determine which of the judges shall write the opinion in a given case. Obviously, if the judges are in disagreement on the disposition of a case, the opinion is assigned to one of the two judges who agree.

After the opinions are released the parties may request rehearing, modification or reconsideration of the Court's action. However, such a petition must be filed with the Court within five (5) days of the receipt of notice of entry of an order, decision or opinion of the Court. Mandates (on opinion cases only) are issued twelve (12) days after the release of an opinion. Issuance of the mandate brings to a close the legal appellate review of the case in the Court unless the Court has ordered further action by one of the lower echelons of the court-martial system. Thus, further action on a case by a board of review in the office of The Judge Advocate General is usually appealable to the Court again.

In addition to the employees in the immediate chambers of the judges and also the office of the Commissioners, there is, of course, as in all courts, a Clerk's Office. Alfred C. Proulx is Clerk of the Court and he has held that position since he came with the Court in July 1951. In addition, that office has a Deputy Clerk and various clerical employees. The Clerk's office is responsible for the receipt and recording of all papers and pleadings filed with the Court and action taken by the Court on any case coming before it.

The Court has a very fine legal library on the third floor of its building. Numbering approximately 13,000 volumes, the Library holdings include basic reference works common to both general and law libraries; legal volumes covering the Federal and State statutes; decisions of the Supreme Court of the United States, Federal courts, and State courts as recorded in the West Publishing Reporter System; pamphlets and loose-leaf services necessary for the operations of the Court; and voluminous material from the military services in connection with the military laws and regulations coming within the scope of the Uniform Code of Military Justice; as well as fairly comprehensive collections in such specializations as criminal law, military law, law of evidence, certain aspects of international law. In addition, there are smaller personal collections of legal reference works located in the chambers of each of the three judges.

Since April 1952, the Library has been in the very capable hands of Miss Dorothy V. Allport. It is largely through her efforts that such an excellent library is available to personnel of the Court and members of the bar of the Court.

On June 1, 1961, President Kennedy announced from Paris, France, that he intended to appoint Representative Paul J. Kilday, Democrat of Texas, as a judge of the Court to succeed Judge Latimer. Press Secretary Pierre Salinger issued a statement which said that Mr. Kilday plans to "serve out the current session of the Congress so that his district will have representation." On June 28, 1961, the Senate officially received the executive nomination of Congressman Kilday.

In its 10-year history the Court has made a profound impact on military justice. During that period, the Court has had much praise for the work it is doing in promoting a fair and equitable military justice system. There have also been critics on the other side who feel the Court has changed the system so radically that military discipline has been adversely affected.

To all who have an interest in military justice, and this should include everyone, it can be stated without equivocation that the Court has done, and is doing, what the people of the United States through their duly-elected representatives have authorized it to do. When justice is done, discipline cannot suffer. Discipline is a function of command. When there is a lack of discipline, there is a lack of command. If those in command are unable to achieve a high state of discipline, it constitutes persiflage to attempt to transfer the blame to a military justice system which is in essence the same as its civilian counterpart. It should be noted, however, that there is no indication that discipline actually has suffered during the operation of the Uniform Code of Military Justice.

In October 1959, General L. L. Lemnitzer, Chairman of the Joint Chiefs of Staff, stated:

"I believe that the Army and the American people can take pride in the positive strides that have been made in the administration and application of military law under the Uniform Code of Military Justice. The Army today has achieved the highest state of discipline and good order in its history."

In September 1960, General G. H. Decker, Chief of Staff, United States Army, stated:

"Today our Army has the highest state of discipline and of personal conduct in our history. We have never had better morale within the Army."

The Court of Military Appeals looks back with pride upon its 10-year history. Its work is not yet accomplished—it can never be—for the law is a living thing. Amendments and improvements in the law will always be possible. The enforcement and interpretation of

the law is dynamic in nature, not static, and so long as we operate under a democratic system the law will remain dynamic. This is the way in which the Court of Military Appeals has construed the mandate of Congress in the Uniform Code and this is why the Court looks forward to the future with hope and anticipation—hope that the Code will be an instrument by which the military will achieve justice and maintain discipline, and anticipation that the improvements in the Code already recommended to the Congress will come to fruition in the very near future.

FREDERICK R. HANLON
Deputy Clerk

July 1, 1961.

Report
of
THE JUDGE ADVOCATE GENERAL
of
THE ARMY

January 1, 1961 to December 31, 1961

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY

There was a slight increase in the court-martial rate per thousand strength for fiscal year 1961 over that for fiscal year 1960. While there were more inferior court-martial trials during this period, the number of general court-martial trials decreased for the eighth successive year. The number of court-martial trials for fiscal year 1961 (Average Strength-Total Army-923,828) follows:

	<i>Convicted</i>	<i>Acquitted</i>	<i>Total</i>
General.....	1,768	131	1,899
Special.....	22,108	1,363	23,471
Summary.....	36,499	1,550	38,049

Total—All Courts-Martial.....	60,375	3,044	63,419
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Records of trial by general court-martial received by The Judge Advocate General during Fiscal Year 1961:

For review under Article 66.....	1,387
For examination under Article 69.....	512
Total.....	1,899

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

On hand at beginning of period.....	125
Referred for review.....	*1,401
Total.....	1,526
Reviewed.....	1,432
Pending at close of period.....	94
Total.....	1,526

*This figure includes 14 cases which were referred to Boards of Review after examination under Article 69, Uniform Code of Military Justice.

Of the 1,389 accused whose cases were reviewed by Boards of Review pursuant to Article 66, and completed in accordance with Article 71, from 1 July 1960 through 30 June 1961, 1,056 (76.03 percent) requested representation by appellate defense counsel before the Boards of Review. The records in the cases of 386 accused were forwarded to the United States Court of Military Appeals pursuant to the three subdivisions of Article 67b. These accused constituted 26.95 percent of those whose cases were reviewed by Boards of Review during the period.

For the last 10 years, disciplinary actions in the services have been governed by the provisions of the Uniform Code of Military Justice. Through constant contact with commanders, staff officers, service lawyers, and others, and through detailed study of the Code, I am convinced, as was my predecessor, that amendments to the Code not only are vital to the effective operation of an Army in wartime but are essential at the present time. In these 10 years, only two amendments to the Code have been made—one being an amendment to Article 58 of the Code and the other an insertion of a new article, Article 123a, the so-called “bad check” article.

An area of the Code most urgently requiring change involves non-judicial punishment. Commanders must be given effective disciplinary authority which will permit them to make adequate disposition of the type of offense now referred to summary courts-martial, which should be abolished. This concept was approved by the United States Court of Military Appeals in its last Annual Report. New types of courts, including legally qualified single-officer courts and special courts-martial with law officers, are needed. Law officers charged with the responsibility of insuring that established legal standards are maintained during trial require additional authority to perform such functions properly. Legislation designed to accomplish these objectives was prepared as a joint effort with the other service Judge Advocates General. This legislation was approved by the Department of Defense and other agencies and has been sent to the Congress.

At the request of the United States Court of Military Appeals made at a meeting of the Code Committee, my office has drafted legislation to permit pretrial hearings by law officers to dispose of interlocutory matters before the members of the court assemble, thus saving the valuable time of these individuals, and to permit other “streamlining” of court-martial procedures. This legislation has been submitted to the Court.

Other changes to the Code should also be effected and are now being considered. Formal pretrial investigations should be more legally oriented and more in keeping with the methods employed in the civilian jurisdictions in the United States. Article 31 should be amended to provide a definition of the word “statement” that would clarify military law in this respect, and I believe that the definition found in Rule 62(1) of the Uniform Rules of Evidence would serve this purpose. We should adopt United States district court rules which will permit disposition, at the trial level, of some of the issues now considered by appellate bodies, and the convening authority should be relieved of the requirement of acting on findings and be concerned only with the sentence. Certain of the punitive articles require changes. Additionally, I am of the opinion that codal provisions are required to make it clear that military sentences to confinement are

indeterminate and to provide for better methods of executing these and other sentences. Enactment of legislation effecting these changes will materially assist in the proper and orderly administration of military justice.

The Field Judiciary Division, activated in January 1959, has continued to provide full-time law officers for all general courts-martial. This program has contributed to higher standards of practice in general court-martial trials and has continued to result in fewer appellate reversals. This system has won the support and praise of the Court of Military Appeals and many of those interested in improving the administration of military justice. To indicate the widespread support of the system, all mobilization designee spaces of the Field Judiciary have been filled during the past year by eminently qualified judges and practicing attorneys residing throughout the United States.

On 1 January 1961, the Army Judge Advocates Judicial Conference was created. Those officers of the Judge Advocate General's Corps are members whose assignments require them to perform judicial duties at the trial or appellate level. The purpose of the Conference is to discuss and recommend methods of improving the judicial aspects of the administration of military justice. The first session of the Conference was held on 28 and 29 September 1961. The Conference initiated work on Supplementary Rules of Practice and Procedure in general courts-martial which are designed to improve procedures and to bring court-martial practices closer to those of the Federal courts.

No system of law is better than the lawyers who administer the system. The quality of the legal service which The Judge Advocate General's Corps renders to today's Army is geared, inevitably, to the talent and experience of the individual judge advocates who make up the Corps. From Korea to the Pentagon to Iran, the 1,000 officer lawyers of the Army engaged in the practice of the many facets of military law are unmatched, as a group, for legal skill. No problem is too broad or too complicated for the dedicated soldier lawyer. The administration of military justice and the execution of other military legal responsibilities are today a matter of pride for the Army and of pride in the serving judge advocates.

The future, however, is uncertain. Despite an upswing in the past year in the retention rate of obligated tour officers and in the number of junior officers who have accepted Regular Army commissions, mandatory losses of experienced officers over the next 10 years will seriously threaten the capacity of the Corps to fulfill its missions. We are already handicapped by a lack of sufficiently experienced officers.

Many solutions have been proposed which are designed to provide an incentive to qualified attorneys to accept Regular Army commissions

or to remain on active duty with the Corps. None of these solutions has met with success. It has not been possible to obtain extra pay on any of the various bases suggested. Congress has seen fit to continue the prohibition against sending young officers of other branches to law school at Government expense—this educational program being perhaps one of the most certain cures for our personnel problems and our grade imbalance.

Nevertheless, the Corps has increased its efforts to meet personnel requirements. We have just completed annual visits to approximately 120 accredited law schools. In addition, we have made known our vacancies to local, State, and national bar associations. Full page advertisements are carried in three legal periodicals, and our officers are ever alert to place the opportunities of a Judge Advocate career before interested groups.

Although our retention rate of obligated tour officers increased to 18 percent for fiscal year 1961, caution must be exercised in evaluating this figure. It is strongly affected, I think, by our policy of assigning obligated tour officers who will extend their categories to the overseas areas of their choice. The increased retention rate should not be accepted as a trend, but rather as the immediate result of our assignment policy. The end results will not be known until the extended category officers have completed their required tours.

In fiscal year 1961, 30 officers accepted Regular Army appointments, a striking increase. It should be noted, however, that during this same period the Corps lost 29 experienced career officers, and it is impossible to estimate how many of the new appointees will remain with us for 30 years. With a requirement for 786 Regular Army officers, we have only 520, a shortage of 266.

In order to tap every possible source of legal talent we launched, in June 1961, the Judge Advocate General's Excess Leave Program. Under this plan highly qualified Regular Army officers, with less than 10 years active service, and Distinguished Military Graduates of the Reserve Officers Training Corps who have been commissioned in their basic branch, are detailed to our Corps. They are then placed on excess leave (without pay and allowances) while they pursue the law study necessary to gain a legal education. Three officers are already participating in this program and an encouraging number have filed applications for entry into the program in the months ahead. Also, in the period covered by this report, three Women's Army Corps officers who are attorneys have been detailed to our Corps.

Although the personnel picture has improved slightly, I am of the opinion that prompt action must be forthcoming to provide sufficient incentive so that lawyers will seek a judge advocate career. It appears absolutely essential that legal training at Government expense should be available for career officers.

During 1961, The Army Judge Advocate General's School provided resident instruction for 738 military lawyers, civilian lawyers, and other personnel employed by the Government. Five Procurement Law Courses, two Civil Affairs Law Courses, a National Guard Judge Advocate Refresher Course, a USAR Judge Advocate Refresher Course, an International Law Course, a Contract Termination Course, and a Military Justice Course were conducted. The school completed two cycles of the 10-week Special Course, in which 94 military lawyers were graduated. On 13 November 1961, 101 members of the 35th Special Course, now in residence, began their instruction. The Ninth Career Officer's Course of 35 weeks' training duration had 28 members and was completed on 26 May 1961. The Tenth Career Officer's Course, now in residence, began instruction on 11 September 1961. Officers from the Philippines, Viet-Nam, the Republic of China, Nicaragua, Thailand, and Burma attended courses at the school.

During 1961, the school provided nonresident training in Military Justice and other military legal subjects for approximately 2,123 reserve judge advocates. The school continued its support to the USAR school program with distribution of instructional material to 77 USAR schools. These schools began in September 1961 to teach the first year reserve duty phase of the new Career Course. Approximately 1,000 judge advocates participated in the USAR School Program, and 1,123 were enrolled in the Extension Course Program.

Annual active duty training for all personnel assigned to Judge Advocate General Service Organizations (TOE 27-500D) was conducted at Fort Sheridan, Ill., from 9 July to 23 July 1961. Actual conduct of this training was accomplished by reserve personnel with guidance from the school. Guest speakers presented new developments and trends in various fields of military law.

Four issues of the *Military Law Review* were published during this period. In addition to scholarly articles, comments, and notes of interest to judge advocates, this publication contains the annual survey of recent United States Court of Military Appeals decisions.

A new training film entitled "Evidentiary Problems and Trial Techniques" was completed during this period. It is designed to train new Judge Advocate General's Corps officers and nonlawyers in proper court-martial trial techniques.

In conclusion, the work of the Code Committee during the past few months has been encouraging. I believe that progress has been made toward a common agreement among the members of the Committee on those changes to the Uniform Code of Military Justice that are most urgently needed for the effective administration of military justice in the Services. However, progress and results are not the same. In a small war, with our well-trained reserve and our regulars,

we could probably handle the military justice problems in a land army reasonably well. I am of the opinion, however, that the Code, as interpreted, would be inadequate to maintain appropriate law and order in a land army of the size of that used in World War II, particularly if the greater part of the war was fought in highly populated areas.

CHARLES L. DECKER,
Major General, USA,
The Judge Advocate General.

Report
of
THE JUDGE ADVOCATE GENERAL
of
THE NAVY

January 1, 1961 to December 31, 1961

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

In keeping with prior report practices, this report although embracing calendar year 1961 contains, unless otherwise indicated, statistical information covering fiscal year 1961.

Courts-martial of all types convened within the Navy and Marine Corps charging servicemen with offenses—military and civil; misdemeanor and felony—totalled 45,042 in fiscal year 1961 as compared to 46,281 in fiscal year 1960, an overall decrease of 1,239 cases. General courts-martial for fiscal year 1961 totalled 500 cases, as compared with 805 cases in fiscal year 1960. Since, normally, general courts-martial involve serious military offenses or felonies, this decrease in caseload is deserving of special attention since within the same period the incidence of civil felonies in metropolitan areas as reported in the Uniform Crime Reports by the Federal Bureau of Investigation have increased some 10 percent.

In last year's report, I noted a trend away from the general courts-martial in favor of the special courts-martial. This trend seems to have continued into the year just past despite the decreased overall case load. Special courts-martial for fiscal year 1961 totalled 15,589 as compared to 15,830 in 1960. Summary courts-martial totalled 28,953 in fiscal year 1961 as compared to 29,646 in fiscal year 1960.

Navy Boards of Review during fiscal year 1961 received for review 369 general courts-martial and 2,992 special courts-martial. The pending cases at the end of the fiscal year were 136 as compared to 151 at the commencement of the year. Boards modified the findings in 112 of the cases reviewed. Fifty-four percent of the accused whose cases were received for review by Boards of Review requested representation by appellate defense counsel. During the fiscal year 345 petitions were acted upon by the U.S. Court of Military Appeals. Of this total 291 petitions were denied and review was granted in 54 cases. The Judge Advocate General certified seven cases to the Court during this period.

The JAG Task Forces (East and West Coast) created in 1957 to meet Command's urgent requirements for legal services over and above their own capabilities, continue to function. Although depleted in strength, within their numerical capabilities they continue to respond to requests for special services whenever and wherever required. Whether as counsel for a court of inquiry, for a party, as trial or

defense counsel, or special lecturer on military justice, they were made available. And, of course, when not away on a task force mission, they were engaged in appellate counsel work.

Last year I reported that the Navy had been authorized by the Secretary of the Navy to institute, on a pilot basis, a law officer (Circuit Rider) program whereby specially selected officers and none others would serve as law officer to general courts-martial. I also reported that the Commandant of the Marine Corps had instituted a similar program for Marine commands in Continental United States. The pilot programs have worked so well in reducing prejudicial error at the trial level that I have recommended the program be extended to serve the entire naval establishment.

In order to keep our lawyers in the field current in military justice matters, my Assistant Judge Advocate General for Military Justice has developed a Kiplinger type newsletter which he distributes to all Navy and Marine lawyers in the field. This informal communication advises the field of new developments, new decisions, errors frequently committed, pitfalls that are apt to be encountered, and the like. Response to this type newsletter has been most favorable.

With but minor modifications, the Manual for Courts-Martial has remained unchanged since its effective date in 1951. During this 10-year period, the United States Court of Military Appeals has handed down numerous decisions which have rendered invalid, modified or qualified various provisions of the Manual. The extent of these changes has been such that, in the hands of a nonlawyer, the Manual is now a poor tool for use in the administration of Military Justice. Since the nonlawyer is the prime user of the Manual, the situation is fast becoming alarming. As an interim measure, my office, working with the staff of the U.S. Naval Justice School, compiled a list of the Manual provisions that had been modified by case law. This compilation was published as the August 1961 edition of the *JAG Journal* for distribution to the field. Over 20,000 copies of this one issue of the *JAG Journal* have been distributed and the demand continues. I am constrained to observe that much of the criticism directed against the Uniform Code of Military Justice stems from the fact that the Manual for Courts-Martial is no longer what it purports to be. In the words of the Commander-in-Chief of the Pacific Fleet, "Many of the difficulties which have attended our administration of naval justice during this period [the past 10 years] might have been avoided or diminished by giving our personnel a sharp up-to-date tool with which to work." One of the prime needs of military justice lies in the complete revision of the Manual and it is my recommendation that such a task be undertaken by the three services and the Coast Guard at the earliest practicable time.

A representative of my office, working in a panel with representatives of the Judge Advocates General of the Army and Air Force and the General Counsel of the Coast Guard, prepared a comprehensive revision of the Uniform Rules of Procedure for Proceedings in and before Boards of Review during this year. These new rules of procedure were approved by all of the Judge Advocates General and the General Counsel of the Treasury Department. The rules, which became effective 28 February 1961, have since been published in pamphlet form as NAVEXOS P-2319.

Early in the First Session of the 87th Congress the Omnibus Amendments to the Uniform Code of Military Justice were again forwarded to the Congress as a part of the Department of Defense legislative program. This legislation was not, however, introduced. Early in the year representations were made by members of the staff of the House Armed Services Committee that amendments to the Uniform Code of Military Justice should be sought by means of small non-controversial bills rather than a single bill containing several changes. Consequently, conferences were commenced between representatives of the Judge Advocates General of the Army, Navy and Air Force to formulate such small bills. A compromise bill which would increase the authority of a commanding officer to impose nonjudicial punishment was agreed upon by all representatives and was given number one priority with respect to any changes that might be needed to the Code. Additionally two other compromise bills were drafted which would (a) realign the composition of courts-martial and abolish the summary court-martial and (b) create a substantive offense involving bad checks. The bill relating to nonjudicial punishment was introduced as H.R. 7656 and the bill relating to bad checks was introduced as H.R. 7657. The other compromise bill proposed by the representatives of the Judge Advocates General was not introduced. No action was taken with regard to H.R. 7656 but H.R. 7657 was enacted into law.

The enactment of H.R. 7657 as Article 123a of the Uniform Code of Military Justice demanded changes in the Manual for Courts-Martial. Representatives of my office together with representatives of the Judge Advocates General of the Army and Air Force are working out the details of an Executive order that will implement the changes in the Manual.

During the year the publication "1955 Naval Supplement to the Manual for Courts-Martial, United States, 1951" was superseded by a publication entitled "Manual of the Judge Advocate General." Regulations appearing in Chapter I of the 1955 Naval Supplement were revised and reissued as Chapter I of the JAG Manual. The revision of Chapter I was accomplished with a view to making clearer and more concise the regulations governing the administration of military

justice in the naval service. A number of separate departmental directives were incorporated within the new chapter. Among the major procedural changes effected were the elimination of the requirement that a summary of evidence be inserted in the records of trial of summary courts-martial, and the establishment of comprehensive rules of procedure for the handling of petitions for new trial in the Office of the Judge Advocate General.

In the field of legal education the U.S. Naval Justice School, which is under the technical supervision of the Judge Advocate General and commanded by a navy law specialist, graduated 2,160 students during fiscal year 1961. The School presents regular and special intensive courses of instruction in the fundamental principles of military law and procedure which are designed to train officers and enlisted personnel of the armed forces who have not been trained in the law. As a part of the continuing program for common specialist training of armed forces personnel the Justice School trains enlisted and civil service personnel of all armed services in closed microphone court reporting as well as military justice. The faculty of the school consists of 15 officer lawyers and 8 enlisted instructors. In addition to the law specialists and enlisted personnel of the Navy, the faculty includes one officer lawyer and one enlisted instructor of the Marine Corps and one Army and one Air Force enlisted instructor.

The personnel problem has remained acute during the year. The demand for legal services in the Navy has exceeded the net procurement of new lawyers. The majority of new officers are Reserves serving their obligated service.

Early in the year the Secretary of Defense recommended to the Congress enactment of a bill to establish a Judge Advocate General's Corps in the Navy. This bill was approved by the current administration and introduced as H.R. 12347 by Mr. Vinson on May 23, 1961. The American Bar Association, the Federal Bar Association, The Judge Advocates Association, The Reserve Officers Association, the Naval Reserve Association as well as many State and local bar associations are on record favoring a JAG Corps in the Navy. Action on the Corps bill, like action on the amendments to the Uniform Code of Military Justice is long overdue. Enactment of this legislation will provide professional status for lawyers in the Navy, and make a naval legal career more attractive to young lawyers.

W. C. MOTT,
Rear Admiral, USN,
The Judge Advocate General.

Report
of
THE JUDGE ADVOCATE GENERAL
of
THE AIR FORCE

January 1, 1961 to December 31, 1961

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

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

*1 July 1960
through
30 June 1961*

Total..... 1, 194
387 by general court-martial; 807 by special court-martial.
The board of review modified findings of guilty in 35 of these cases.

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

*1 July 1960
through
30 June 1961*

Total..... 158

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

*1 July 1960
through
30 June 1961*

On hand at beginning of period..... 88
Referred for review..... 1, 194
Reviewed..... 1, 195
Pending at close of period..... 87

c. From 1 July 1960 through 30 June 1961, 60 percent of the accused whose cases were received in the Office of The Judge Advocate General for review pursuant to Article 66 requested representation by appellate defense counsel before boards of review.

d. Based upon the number of cases reviewed by boards of review during this period, 21.6 percent were forwarded to the United States Court of Military Appeals pursuant to the three subdivisions of the Uniform Code of Military Justice, Article 67(b). Of the total cases forwarded, all except seven were based upon petitions of the accused for grant of review by the Court of Military Appeals. Seven cases during the period were certified by The Judge Advocate General. Petitions were granted by the Court of Military Appeals during the period in 10 percent of the cases which were petitioned, or 2.1 percent of the total number of cases reviewed by the boards of review.

e. During the period of this report there were 16,345 courts-martial convened in the Air Force.

2. a. At the close of the period of this report there were 86 commands exercising general courts-martial jurisdiction.

b. On 10 July 1961, in accordance with paragraphs 4g(3) and 6a, Manual for Courts-Martial, 1951, the Secretaries of the Army, Navy, and Air Force, individually, and with mutual concurrence, authorized the Commander, Field Command, Defense Atomic Support Agency, and all general and special courts-martial convening authorities subordinate to the Commander, Field Command, to appoint officers of any of the armed forces qualified under the Uniform Code of Military Justice, Article 26(a), to perform the duties of law officer, and the Uniform Code of Military Justice, Article 27(b), to perform the duties of trial and defense counsel, who are made available to serve in such capacities on general and special courts-martial convened by them. The Commander, Field Command, Defense Atomic Support Agency, had previously been empowered by the Secretary of Defense to convene general courts-martial and to refer for trial the cases of members of any of the armed forces assigned or attached to or on duty with his command.

c. On 22 November 1961, in accordance with paragraphs 4g(3) and 6a, Manual for Courts-Martial, 1951, the Secretary of the Air Force, with the concurrence of the Secretary of the Navy, authorized the Commander, Air Forces Iceland, to appoint officers of the Navy qualified under the Uniform Code of Military Justice, Article 26(a) to perform the duties of law officer, and the Uniform Code of Military Justice, Article 27(b), to perform the duties of trial and defense counsel, who are made available to serve in such capacities on general courts-martial convened by the Commander, Air Forces Iceland.

3. Although the Department of Defense legislative proposal "To amend title 10, United States Code, as relates to the Uniform Code of Military Justice" (so-called "Omnibus Bill") was forwarded to the Speaker of the House of Representatives and the President of the Senate on 13 January 1961, it was not introduced. However, that portion of the proposal relating to a specific statutory authority for the prosecution of bad-check offenses was introduced as H.R. 7657 on 14 June 1961 and subsequently enacted as Public Law 87-385. This act will become effective on 1 March 1962, as Article 123a, Uniform Code of Military Justice.

4. Legislation increasing the authority of designated commanders under Article 15 was introduced as H.R. 7656, but was not acted upon by the Congress.

5. During the calendar year period, Major General Albert M. Kuhfeld, The Judge Advocate General, and Major General M. R. Tidwell, Jr., the Assistant Judge Advocate General, made staff visits

to legal offices in the United States and overseas as required by Article 6(a) of the Uniform Code of Military Justice. Generals Kuhfeld and Tidwell also attended various bar association meetings and spoke before numerous civic, professional and military organizations.

6. On 1 January 1961 there were 1,231 judge advocates on active duty in the United States Air Force; on 31 December 1961 there were approximately 1,340 judge advocates on active duty. The increase came from the build-up of the Air Force in accordance with the authority contained in Public Law 87-117 (August 1, 1961) and the Presidential directive implementing that law. As previously reported, a relatively high percentage of the judge advocates on active duty have a minimum of judge advocate experience. The retention rate of young company grade officers, serving only a 3-year obligated tour, remains low. Although departmental efforts to increase the retention rate are continuing, there is still a high personnel turnover and no indication that the situation will improve.

7. As in the past, The Judge Advocate General's Office supervised and arranged for the publication of Decisions of the United States Court of Military Appeals and selected Decisions of the board 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 Army and Air Force Exchange Service in the Digest of Opinions.

ALBERT M. KUHFIELD,
Major General, USAF,
The Judge Advocate General.

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

January 1, 1961 to December 31, 1961

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

This is the report of the General Counsel of the Treasury Department for the year ending December 31, 1961, submitted pursuant to the mandate of Article 67(g) of the Uniform Code of Military Justice.

The table below shows the type and number of Coast Guard court-martial cases as determined by the number of trial records received for appellate review or for filing during the fiscal year 1961. For purposes of comparison the figures for the two preceding fiscal years are also shown.

	1961	1960	1959
General courts-martial.....	4	6	3
Special courts-martial.....	162	158	187
Summary courts-martial.....	586	666	643
Totals.....	752	830	833

The current year's total not only represents a substantial decrease from the totals of the two preceding fiscal years, but also from the average of 831 courts per year for the 5 calendar years 1954-58.

Of the general court-martial cases, three required review by the Board of Review pursuant to Article 66 and one by the General Counsel pursuant to Article 69. Of the special courts-martial, 104 were made final by the supervisory review of a general court-martial convening authority and 35 by appellate action of the General Counsel. The remaining 21 special courts-martial required review by the Board of Review. Of the 586 summary courts-martial, final supervisory review was accomplished by the General Counsel in 25 cases, by the Commandant of the Coast Guard in 10 cases and by a general court-martial convening authority in the field in the remaining 551 cases.

During the period of this report the Treasury Department Board of Review received 3 general courts-martial and 21 special courts-martial for review under Article 66(b) of the Code. In only one of these cases did the accused petition the Court of Military Appeals for further review; and in this case the petition was denied. The 24 cases reviewed by the Board of Review represent the most serious of the Coast Guard's court-martial cases. While punitive discharges were adjudged in all 24 cases, in 10 instances the convening authority re-

mitted the bad conduct discharge on probation before transmitting the case for appellate action. Of the 14 remaining unsuspended bad conduct discharges, the Board of Review disapproved 4 and recommended remission on probation in a fifth case, which probation the General Counsel granted. Still another bad conduct discharge was suspended by the Department on the recommendation of the Commandant. In summary, out of 24 bad conduct discharges coming to the attention of the Board of Review, only 8 survived the appellate process unsuspended.

A period of confinement was adjudged in all but 2 of the 24 Board of Review cases. The average period of confinement imposed in these cases was 4.4 months. The convening authority mitigated the confinement in four of the cases; the Board of Review reduced the confinement in only one case. The confinement actually served in each of these cases was, of course, further reduced by the automatic good conduct time allowance. The Board of Review ordered no rehearings on either findings or sentence, and set no trial aside.

In pursuance of the requirements of Article 6(a) of the Code, a senior member of the staff of the Chief Counsel, U.S. Coast Guard, conducted an inspection during the past fiscal year of the district legal offices located in Long Beach and San Francisco, Calif., Seattle, Wash., and Juneau, Alaska.

ROBERT H. KNIGHT,
General Counsel.