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
JUNE 1, 1952, to DECEMBER 31, 1953

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Annual Report

SUBMITTED TO THE

COMMITTEES ON ARMED SERVICES

of the

SENATE AND OF THE HOUSE OF REPRESENTATIVES

and to the

SECRETARY OF DEFENSE

and the

SECRETARIES OF THE DEPARTMENTS OF THE ARMY, NAVY, AIR FORCE, AND TREASURY

PURSUANT TO THE
UNIFORM CODE OF MILITARY JUSTICE

For the Period
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and

THE GENERAL COUNSEL OF THE DEPARTMENT OF THE TREASURY

JUNE 1, 1952, to DECEMBER 31, 1953

JOINT REPORT

The following is the second Report of the Committee created by Article 67 (*g*) of the Uniform Code of Military Justice, 50 U. S. C. 551–736, which requires that 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 meet annually for the purposes of surveying the operations of the Code and preparing a report to the Committees on Armed Services of the Senate and of the House of Representatives, to the Secretary of Defense, and to the Secretaries of the Departments, concerning the number and status of pending cases, and to submit appropriate recommendations for amendments to the Code, and for other purposes. The report covers the period from June 1, 1952, through December 31, 1953, which is in excess of 1 year, but the report is being submitted at this time pursuant to the recommendation made in the first Annual Report submitted for the period covering May 31, 1951, to May 31, 1952, to the effect that reports be submitted thereafter on a calendar year basis.

Pursuant thereto, the Judges of the Court, The Judge Advocates General, and the General Counsel of the Department of the Treasury, hereinafter referred to as the Code Committee, have had various meetings and conferences during the period covered by this report. In addition to those conferences, The Judge Advocates General and the General Counsel of the Department of the Treasury appointed a Committee of military personnel, hereinafter referred to as the Service Committee, for the purpose of considering and recommending changes in the Uniform Code of Military Justice, and the Court appointed a Committee of civilian attorneys, hereinafter referred to as the Court Committee, for the purpose of studying and making recommendations which it believed would improve the workings of the Code. The Service Committee had various meetings and considered recommendations received from the Services and thereafter filed a report containing recommendations which formed the basis of the report of The Judge Advocates General and the General Counsel of the Department of the Treasury, dated August 20, 1953, and set out as Exhibit D to the individual section report of the Court. In carrying out its duties, the Court Committee met from time to time and, upon occasion, the members of the Court, The Judge Advocates General, and the Gen-

eral Counsel of the Department of the Treasury participated in the meetings. The Court Committee made its report and recommendations on the 21st day of December 1953. A complete copy of this report appears as Exhibit B to the individual section report of the Court.

The problems and questions considered and discussed by the various committees have covered almost the entire field of military justice. They have included procedural questions, expansion of the system in time of emergency, the removal of inconsistencies between the Code and the Manual, adequacy of representation, the necessity for a Judge Advocate Corps in all Services, the legality of sentences, elimination of some of the delays encountered in appellate procedure, the simplification of some phases of trial procedure, restriction of the right of appeal in guilty plea cases, and the desirability for amendments and changes.

Many of the above mentioned problems will require further study and additional testing under the Code before any worthwhile recommendations can be submitted. However, the period of operational experience since the first report has established to the satisfaction of the undersigned reporting parties that there are certain requirements now prescribed by the Code which result in a substantial loss of time and an excessive expenditure of money without any real benefit to an accused. It is believed that they can be simplified or eliminated without materially prejudicing any right of one accused of committing a crime.

The following recommendations are unanimously supported by the reporting parties for consideration by the Congress.

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

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

concerned, and have the rank of at least lieutenant colonel or commander.

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

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

THIRD: Under the present provisions of Article 51 (*b*) of the Code, the ruling by the law officer on a motion for a finding of not guilty can be overruled by the members of the court. This provision is not in accord with Federal practice, tends to make court-martial procedure unnecessarily cumbersome, and can be eliminated without prejudice to the parties. The difficulty with the present provision is in the fact that it permits a complex, predominantly legal question to be determined by a group of officers untrained in the law. If the law officer must explain to the court-martial members the legal standard by which such a motion must be measured, it appears somewhat unusual to permit them to overturn his ruling which is presumably measured by the same standards. Moreover, the Code was drafted with an intent to move closer to civilian practice. To bring about that result, the law officer should decide questions of law and the court-martial members should be limited to deciding factual issues. We believe it is fair to say that a motion for a finding of not guilty often presents one of the most difficult problems which a law officer is called upon to resolve. Yet in some instances rulings rightly in favor of an accused have been overruled by the court-martial members. To permit them to pay no attention to a law officer on such a question of law has a tendency to cause them to ignore his other ruling: THEREFORE,

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

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

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

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

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

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

It is *recommended* that Article 37 of the Code, in regard to its prohibition of the censuring, reprimanding, or admonishing of courts,

be amended to include the staff officers serving convening authorities and commanding officers.

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

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

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

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

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

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

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

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

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

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

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

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

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

It is *recommended* that Article 73 of the Code be amended so that the time within which a petition for a new trial may be filed be ex-

tended to 2 years from the date of imposition of sentence. This will be in accord with the present Federal practice.

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

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

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

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

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

In the cases of officers the present permissible punishment for loss of pay is limited to the loss of one-half of 1 month's pay when imposed by an officer exercising general court-martial jurisdiction. Again, these restrictions on the authority of a commanding officer sometimes result in trials by courts-martial that otherwise might be disposed of

administratively by the imposition of a non-judicial punishment. A broadening of the power to permit the imposition of a slightly greater punishment would be a benefit both to the Services and to the accused.

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

It is *recommended* that the Congress give consideration to increasing the permissive punishments imposable under Article 15 of the Code, the maximum not to exceed the forfeiture of one-half of 1 month's basic pay per month for a period of 2 months in the case of officers, and the loss of one-half month's pay for a period of 1 month, or confinement up to 7 days, in the cases of enlisted personnel.

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

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

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

Consideration has been given to many other proposals and recommendations but either because the Code Committee as a whole was not unanimous, or because some of the problems were not common to all departments, or, in some cases, because it was felt there had not been a sufficient trial period to develop the vices or virtues of a particular subject, no other joint recommendations are presented to the Congress at this time. However, the lack of action at this time is not intended to be an expression of approval or disapproval of any other considered subject. Some may be supported and others not considered appropriate by individual members of the Code Committee. Any expres-

sions on the merits of those will be included in the sectional reports by the Services sponsoring their consideration.

To present to the Congress the size, importance and workload of military justice, it should be noted that approximately 457,000 courts-martial of all types were held throughout the world for the 19-month period, from May 31, 1951, to December 31, 1952. In addition, the following general information is extracted from the combined reports as to the workload of the statutory boards of review and the Court, and presented in a recapitulated form:

	May 31, 1951 to Dec. 31, 1952
1. Total number of cases reviewed by the boards of review	48,406
2. Total number of cases wherein the findings were modified by the boards of review	1,933
3. Total number of cases docketed with the United States Court of Military Appeals	4,232
4. Total number of published opinions rendered by the United States Court of Military Appeals	421
5. Total number of published opinions wherein the decisions of the boards of review were modified by the United States Court of Military Appeals	226

Respectfully submitted,

ROBERT E. QUINN,
Chief Judge.
GEORGE W. LATIMER,
Judge.
PAUL W. BROSMAN,
Judge.
E. M. BRANNON,
The Judge Advocate General,
United States Army.
IRA H. NUNN,
The Judge Advocate General,
United States Navy.
REGINALD C. HARMON,
The Judge Advocate General,
United States Air Force.
ELBERT P. TUTTLE,
General Counsel,
Department of the Treasury.

Report

of the

UNITED STATES COURT OF MILITARY APPEALS

JUNE 1, 1952, to DECEMBER 31, 1953

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UNITED STATES COURT OF MILITARY APPEALS

The following report of the United States Court of Military Appeals is herewith submitted for the period June 1, 1952, to December 31, 1953. While a 19-month period is covered in this report, in order to permit an evaluation on a calendar year basis and to allow an easy comparison with past and future reports, the statistics are divided into two periods. The first period covers the 7 months intervening between the last report and December 31, 1952; and the last period embraces the calendar year 1953. In addition to the statistics for the reported period, certain pertinent data showing the Court's volume of business since its beginning are also included.

I

Subsequent to the submission of the last report to the Congress, the Court has been assigned permanent quarters in the courthouse formerly occupied by the United States Court of Appeals for the District of Columbia. The Judges of the Court are indebted to the Federal officials who contributed to this assignment and they desire to express publicly their appreciation for the excellent accommodations which were made available. The building and conveniences are dignified and appropriate and they permit the Court to function on a full-time basis without the previous handicap of sharing courtroom facilities. Furthermore, the previously reported inadequate office accommodations no longer exist and presently a Court library and reading room are available in the courthouse to serve to the needs of the Court staff and members of the Bar.

II

During the period in question the Bar of the Court has continued its steady growth and there has been a marked increase of participation by civilian counsel in cases before the Court. On December 31, 1953, membership of the bar numbered 1,672 and these are apportioned on a percentage basis of one-third civilian practitioners and two-thirds attorneys in military uniform. Experience has shown that as the members of the State and Federal bars and the public generally have become more familiar with the scope and effect of the Code, and its beneficient provisions, they have lost many erroneous concepts concerning the abuses supposedly present in military justice. Many law-

yers now realize that procedures under the Code afford protection to an accused that compares favorably with that found in civilian courts. The Judges of the Court have recognized the importance of having the public and the Service lawyers become more familiar with the workings of the Code and the administration of military justice and, therefore, have made extended efforts to acquaint members of the Armed Services, and the public generally, with the protection afforded men in the service and the requirements imposed on those enforcing the provisions of the Code. These efforts have included appearances and lectures before the Judge Advocate Schools of the various Services, the Armed Forces Staff College, Reserve Officers Associations, Bar Associations, and civic organizations in general.

III

On January 15, 1953, the Court appointed a Committee of outstanding civilian attorneys consisting of: Hon. Whitney North Seymour, Chairman, Hon. Ralph G. Boyd, Hon. Henry T. Dorrance, Hon. Felix E. Larkin, Hon. Joseph A. McClain, Jr., Hon. George A. Spiegelberg, Hon. Arthur E. Sutherland and Hon. Donald L. Deming, Secretary, for the purpose of studying and making recommendations concerning ways and means to, and the desirability of, amending the provisions of the Code and to more fairly and expeditiously administer military justice. To avoid confusing this Committee with the Code Committee, we shall designate it as the Court Committee. In carrying out its duties, the Court Committee met from time to time and, upon occasion, the Judges of the Court and The Judge Advocates General participated in the meetings. Among other things, the Court Committee considered a report and recommendations submitted by the Joint Services. After its various meetings and deliberations, the Court Committee made its report and recommendations to the Court under date of December 21, 1953. A complete copy of the report is attached as Exhibit B. All affirmative recommendations, other than one procedural item and the one which appears immediately hereinafter, have been set out in the Joint Report and adopted by the reporting members. For that reason they will not be restated. The one recommendation made by the Court Committee, which has not as yet been acted upon by The Judge Advocates General and the General Counsel of the Department of the Treasury is as follows:

That in time of emergency the Court be authorized to certify its needs to the Chief Justice of the United States who would then be authorized to designate one or more active or retired Federal circuit or district court judges for temporary service with the Court. In the event no such Judge was available for assignment, the Chief Justice would then so certify to the President, who, with the advice and consent of the Senate, could then appoint one or more Judges (duly qualified under Article 67) for 1-year terms on the Court, with such term renewable during the emergency for 1-year periods only. This proposal is sub-

ject to the acceptance of the responsibilities involved by the Chief Justice of the United States.

The members of the Court believe this recommendation has merit and, therefore, endorse it for the consideration of the Congress.

IV

The Court Committee was opposed to the Services' proposal that it not be necessary to have a hearing prior to vacating a suspended sentence in those cases where an accused is serving a sentence of confinement in a Federal or State institution by reason of a sentence imposed by a civil court, or in those cases where a general court-martial sentence does not involve a discharge or exceed a sentence that could have been imposed by a special court-martial. The Court Committee noted that the elimination of such hearing might cut down a substantial right of an accused. The Services jointly recommended the approval of the foregoing in its entirety. The Court has given careful consideration to the positions of both the Court Committee and the Services and believes there is a safe and desirable middle ground, particularly, in those cases which involve an accused who has been confined in a Federal or State institution. In this connection, the Court recommends that a suspension be vacated without hearing only in those cases where the accused is serving such a sentence after final conviction of an offense involving moral turpitude.

V

The Court Committee considered a recommendation by the Services that after approval of a sentence extending to a punitive discharge of an enlisted man (afterwards amended to include a dismissal of an officer), the officer exercising general court-martial jurisdiction be authorized, upon specific request of the accused, to order such discharge or dismissal executed, provided the accused is eligible for parole or there remains no unexecuted sentence of confinement. The recommendation contained the further proviso that such case would be reviewed in the usual manner, and, if the discharge was not finally sustained on appellate review, the Secretary of the Department concerned could take action similar to that provided for in Article 76 (*b*) of the Code. The members of the Court Committee concluded that further study was required before a decision on the desirability of such a proposal could be reached. The Court Committee went on to note, however, that in the event such recommendation was favorably considered, there should be a mandatory restoration of the accused to duty. The Court Committee specifically took issue with the recommendation that such an accused would not be considered a member of the military for any purpose during the interval between discharge

and restoration, stating that it felt such a provision was clearly unfair to an accused whose conviction was set aside.

The Judges of the Court have given careful consideration to the views of both the representatives of the Services and the Court Committee. They believe that here, too, there is a safe and desirable common meeting ground which should be fair and just to both the accused and the Government. The Judges, therefore, recommend that the Code be amended to provide that after approval of a sentence involving a punitive discharge or dismissal, an officer exercising general court-martial jurisdiction may, upon the specific request of the accused, order such discharge or dismissal into execution forthwith. In such event the case should be reviewed in accordance with the applicable provisions of the Code and if the discharge is not sustained upon such review, then the Secretary of the Department concerned is authorized to substitute for such punitive discharge an appropriate administrative discharge or, at the request of the accused, he must restore such accused to duty with all rights, privileges, and property to which he is entitled by law and of which he has been deprived by virtue of the execution of such punitive discharge.

VI

The Court Committee disapproved of the recommendation suggested by the Services which has for its purpose the reduction of the workload of the Court and involved a proposed limitation of the Court's jurisdiction by requiring counsel to accompany any petition for a grant of review with a certificate of merit. The Judges of the Court believe that this particular proposal and recommendation is undesirable and, therefore, support the position of the Court Committee.

VII

The Court Committee considered the recommendation proposed by the Services that the law officer be permitted to enter and assist the Court in putting both the findings and the sentence in proper form. A conclusion was reached that the proposed change was undesirable. The Court supports the Court Committee, at least, to the extent that the Judges are of the opinion that any difficulties in this regard are purely procedural in nature and do not warrant any change in the substantive law.

VIII

The Court Committee noted the Services' recommendation that the term "convening authority," when used in the sense of paragraph (*b*) of Articles 22, 23, and 24, be redefined so that in such cases there could be a referral to an officer of equal instead of superior rank. The Court Committee was opposed to this recommendation and the Judges find

no compelling reason to remove the present protection afforded by the Articles in question. The experience of the Court has indicated that the actual application of the present requirements has generally been limited to a small number of cases and, therefore, has caused no serious inconvenience to the Services. Any inconveniences caused are more than compensated for by the purpose and protection of the provisions involved. At this time, the Judges of the Court therefore join with the views of the Court Committee in that these Articles be not amended.

IX

The Court Committee considered three other proposals. These are quoted in its report as follows:

"(*a*) The proposal to have the President prescribe periods during which a sentence to confinement may be interrupted;

"(*b*) The proposal that Article 12 be amended so that there will be no prohibition against confining members of the Armed Forces of the United States with those of friendly foreign nations in American confinement facilities; and

"(*c*) The proposal that Articlé 31 should be redrafted to make it more practical and reasonable in application so that it does not impose an insuperable burden upon law enforcement agencies."

It was the consensus of opinion of the members of the Court Committee that further time should be afforded them to study those proposals. The Judges of the Court feel that the matters therein mentioned are not of sufficient importance to require a specific recommendation at this time and that the Court Committee should be afforded an opportunity to further consider the subjects. For that reason no affirmative recommendations on those items are submitted at this time.

X

In addition to the recommendations set out above, on July 29, 1953, the Court Committee recommended that certain statistics be obtained from the Services (copy attached as Exhibit C) in order to provide a basis for a continuing study and appropriate recommendations. Because of the difficulties to be encountered in obtaining some of the requested data, the Judges of the Court, The Judge Advocates General of the Services, and the General Counsel of the Department of the Treasury are preparing a uniform data sheet for reporting on items which are important and reasonably obtainable.

XI

As a final recommendation, the Court invites attention to the one it sponsored in the initial Annual Report, to the effect that the jurisdiction of a special court-martial under Article 19 of the Code be limited

so that a bad-conduct discharge may not be adjudged as part of a sentence. While this recommendation does not have the unanimous approval of the Services, the reasons for its enactment are still cogent and will not be repeated. No significant improvement in the trial tactics and techniques in cases before special courts-martial has been observed during the additional period of time covered by this report. Accordingly, the Court adheres to its original recommendation.

XII

The operations of the Court have continued to require the processing of a large number of cases. During its 31-months' existence, the Court has docketed by way of Petition, Certificate, or Mandatory review, a total of 4,232 cases. Of this number, action was completed in 4,015. The Court heard oral arguments in 483 cases, which have resulted in 421 published opinions, with 62 opinions in the process of completion. Of the 421 opinions rendered, 19 involved Army officers, 3 Air Force officers, 2 Navy officers, and 1 Coast Guard officer. In addition, 3 involved civilians subject to the Code. The remainder concerned enlisted personnel.

During calendar year 1953, negotiations were concluded with Lawyers Co-Operative Publishing Company of Rochester, New York, for the publication of the opinions in permanent bound volumes, which are now available. In addition, through the same legal publishing firm, a weekly advance sheet release was inaugurated, copies of which are reaching promptly every major military command throughout the world. A detailed analysis of the status of cases processed during the reported period is shown on Exhibit A attached hereto, and, made a part hereof.

XIII

In concluding this section of the report, the Judges desire to express their appreciation to members of Congress for their helpful and constructive assistance; to the Department of Defense for its willing cooperation; to The Judge Advocates General of the Services and The General Counsel of the Department of the Treasury for their efforts to improve military justice; to the Court Committee members who have generously and gratuitously devoted their time, and to the civilian and military lawyers who have participated in military justice litigation.

ROBERT E. QUINN,
Chief Judge.
GEORGE W. LATIMER,
Judge.
PAUL W. BROSMAN,
Judge.

Exhibit A

STATUS OF CASES

UNITED STATES COURT OF MILITARY APPEALS

CASES DOCKETED

Total by services	*May 31, 1951, to May 31, 1952*	*June 1, 1952, to Dec. 31, 1952*	*Jan. 1, 1953 to Dec. 31* 1953*	*Total as of Dec. 31, 1953*
Petitions (Art. 67 (b) (3)):				
Army	570	924	1, 504	2, 998
Navy	103	175	341	619
Air Force	76	114	270	460
Coast Guard	6	2	7	15
Total	755	1, 215	2, 122	4, 092
Certificates (Art. 67 (b) (2)):				
Army	15	18	29	62
Navy	36	30	20	86
Air Force	4	2	3	9
Coast Guard	2	0	1	3
Total	57	50	53	160
Mandatory (Art. 67 (b) (1)):				
Army	5	7	5	17
Navy	0	0	0	0
Air Force	0	0	0	0
Coast Guard	0	0	0	0
Total	5	7	5	17
Total cases docketed	817	1, 272	2, 180	[1] 4, 269

COURT ACTION

Petitions (Art. 67 (b) (3)):				
Granted	113	132	148	393
Denied	462	983	2, 043	3, 488
Dismissed	1	1	3	5
Withdrawn	7	9	50	66
Disposed of on motion to dismiss:				
With opinion	5	0	0	5
Without opinion	0	4	12	16
Disposed of by Order setting aside findings and sentence	0	1	1	2
Remanded to Board of Review	0	0	8	8
Court action due (30 days)*	135	168	81	81
Awaiting briefs*	32	87	43	43

[1] 4,232 cases actually assigned Docket numbers. 37 cases were filed both as a Certificate and Petition, certified twice, or petitioned twice.

*As of May 31, 1952, Dec. 31, 1952 and Dec. 31, 1953.

COURT ACTION—Continued

Certificates (Art. 67 (b) (2)):	*May 31, 1951, to May 31, 1952*	*June 1, 1952, to Dec. 31, 1952*	*Jan. 1, 1953, to Dec. 31, 1953*	*Total as of Dec. 31, 1953*
Opinions rendered	27	22	73	122
Opinions pending	12	21	14	14
Withdrawn	0	3	0	3
Set for hearing*	0	9	11	11
Ready for hearing*	0	7	5	5
Awaiting briefs*	18	18	5	5
Mandatory (Art. 67 (b) (1)):				
Opinions rendered	0	3	11	14
Opinions pending	2	4	0	0
Remanded to Board of Review	0	0	1	1
Set for hearing*	0	1	1	1
Ready for hearing*	0	1	1	1
Awaiting briefs*	3	3	0	0
Opinions rendered:				
Petitions	48	57	161	266
Motions to dismiss	5	0	0	5
Per Curiam grants	9	8	1	18
Certificates	27	20	63	110
Certificates and Petitions	0	2	10	12
Mandatory	0	3	11	14
Motion to remand to Board of Review	0	0	1	1
Total	89	90	247	[1] 426
Completed cases:				
Petitions denied	462	983	2, 043	3, 488
Petitions dismissed	1	1	3	5
Petitions withdrawn	7	9	50	66
Certificates withdrawn	0	3	0	3
Opinions rendered	84	90	247	421
Disposed of on motion to dismiss:				
With opinion	5	0	0	5
Without opinion	0	4	12	16
Disposed of by Order setting aside findings and sentence	0	1	1	2
Remanded to Board of Review	0	0	9	9
Total	559	1, 091	2, 365	4, 015

	Pending completion as of—		
	May 31, 1952	*Dec. 31, 1952*	*Dec. 31, 1953*
Opinions pending	48	69	62
Set for hearing	0	24	24
Ready for hearing	0	40	16
Petitions granted—awaiting briefs	22	25	11
Petitions—court action due (30 days)	135	168	81
Petitions—awaiting briefs	32	87	43
Certificates—awaiting briefs	18	18	5
Mandatory—awaiting briefs	3	3	0
Total	258	434	242

*As of May 31, 1952, Dec. 31, 1952, and Dec. 31, 1953.

[1] 426 cases were disposed of by 421 published opinions. 25 opinions were rendered in cases involving 19 Army officers, 3 Air Force officers, 2 Navy officers, and 1 Coast Guard officer. In addition, 3 opinions were rendered in cases involving civilians. The remainder concerned enlisted personnel.

Exhibit B

REPORT OF COURT COMMITTEE

The Committee of the Bar appointed by the Court to consider various matters affecting the Court and the new Military Code hereby submits its report on matters considered during the past year. Following its appointment, the Committee held its first meeting on January 27, 1953, and thereafter held meetings on May 28 and 29, and November 17, 1953. In addition, there were meetings of various subcommittees. The Committee has been privileged to meet with the Court on several occasions and also to meet with The Judge Advocates General and to discuss various matters with them. The following recommendations and comments have taken into account all of these discussions. Where our report deals with possible legislative proposals we have not attempted to consider or deal with technical problems of draftsmanship.

1. As we have previously advised, the Committee felt that it would be highly desirable for the Court to obtain and have available complete statistical information that would throw light on the operations of military justice under the Code. The Committee also felt that it would be in the public interest for enough of this information to be included in the annual reports of the Court and The Judge Advocates General, so that both the Congress and the public may understand the workings of military justice under the new system. The Committee's specific suggestions concerning additional areas in which statistical information would be useful were outlined in its letter to the Court dated July 29, 1953. (See Exhibit C.)

2. The Committee has given careful consideration to the problems of the Court in the event of a sharp increase in its work which would follow any future considerable expansion of the Armed Forces as a result of war or other emergency. Since such problems could not be dealt with by limiting the Court's jurisdiction without flying in the face of the reforms established by Congress in the new Code, we have concluded that it would be desirable to have some stand-by legislation to cover this eventuality in advance when there would be ample time for deliberate consideration. We have explored a number of possibilities and have come to the conclusion that legislation along the following lines would best meet the problem:

In a national emergency (to be precisely defined), the Court should be authorized when necessary to certify to the Chief Justice of the United States that the Court needs additional temporary assistance. Upon receipt of such a certificate the Chief Justice should be authorized to assign one or more active or retired Federal judges of the District Court or the Court of Appeals for temporary service with the Court. (The hypothesis is that in a time of real emergency, as the work of this Court increased, the work of other Federal courts might be reduced and thus judges of those courts might become available for temporary assignment to this Court.) If thereafter the Chief Justice certified to the President that he was unable to provide other Federal judges for temporary assignment, the President might, with the advice and consent of the Senate, appoint one or more judges for 1-year terms, renewable only during the emergency period upon certification of continued need by the United States Court of

Military Appeals, and possessing the qualifications required by Article 67. Upon the designation or appointment of additional judges, the Court could provide for sitting in divisions with such combinations of temporary or permanent judges as it might determine. In due course it would, of course, be desirable to explore this proposal with Chief Justice Warren to make sure that the general plan of adding these duties to the existing burdens of the Chief Justice would be acceptable.

3. The Committee agreed that the recommendation previously submitted to the Congress by the Court and The Judge Advocates General of the Army and the Air Force in their last Annual Report to eliminate the bad-conduct discharge from the competency of special courts-martial was entirely sound and should be renewed and supported.

4. A number of proposals for changes in the Code made by The Judge Advocates General and the General Counsel of the Treasury were submitted to and considered by the Committee. These proposals had the unanimous recommendation of The Judge Advocates General and the General Counsel of the Treasury except for three as to which the General Counsel of the Treasury dissented. The latter proposals relate to (1) one-officer special and general courts-martial; (2) execution of punitive discharges prior to the completion of appellate review; and (3) the confinement together in American confinement facilities of members of the Armed Forces of the United States and of friendly foreign nations. The list of proposals which were considered by the Committee is set out in Exhibit D.

A. After considering all the proposals, it was the Committee's opinion that the following appeared to have such merit that they deserved to be provided for as soon as practicable:

a. Subject to the comments which follow, the Committee favored the proposed innovation of a special and a general court-martial consisting of one law officer who should be certified by The Judge Advocate General of his service as competent to perform duties as a one-man court. In the case of a general court-martial this officer should be of a rank of lieutenant colonel or its equivalent. There need be no rank requirement as to special courts. This one-officer court would be competent to receive pleas of guilty from the accused if, prior to convening such court, the accused personally has requested in writing, with advice of counsel, that the court consist only of a law officer, whose identity shall have been made known to the accused in advance of his request, and the convening authority consents thereto. If the accused pleads guilty before such a court, it would then pass sentence upon him but would not be competent to act in capital cases.

In the event of a plea of guilty before such court, or before a special or general court as presently constituted, the accused will not receive an automatic review of his record of trial regardless of the sentence imposed. In order to take an appeal it was felt that the accused should be required to demand it affirmatively. Such appeals should be restricted to questions of law. But it was further felt that there should also appear in the record evidence that the accused had been advised of his rights of appeal and upon advice of counsel had decided not to seek review. It was thought that elimination of automatic appeals in cases involving pleas of guilty, most of which must necessarily be without merit, would result in a substantial lightening of the load of appellate review without, however, completely eliminating the possibility of an appeal in such cases where a legal question was actually involved.

b. The Committee also recommends, in the case of special courts-martial, the extension of the jurisdiction of this proposed alternative one-man court to try cases as well as receive guilty pleas. This special court-martial would be

convened in the same manner and have the same qualifications as outlined above to the extent applicable.

The Committee believes that this innovation would provide a useful alternative method of administering justice under the Code with much less expenditure of man hours than the present courts of multiple personnel. In any event, the accused's present rights are preserved as he will not be tried by a one-man court unless he so requests. It was further thought that limiting this experiment for trials to special courts-martial now would allow a period for closer study of its effectiveness and that this can be accomplished in a court of limited jurisdiction such as special courts-martial without substantial risk. Such use on a limited basis would provide very substantial savings. If the results of such experiment and study establish the merits of a one-man court for trying cases, serious consideration could then be given to its extension to general courts-martial. We do not believe that such a substantial innovation should be introduced throughout the military justice system without a period of experimentation on a limited scale.

c. The Committee agreed that The Judge Advocate General should be free to take corrective action in cases wherein he finds error without referring such cases to a Board of Review, or awaiting action by the Court, as is now required. It was thought, particularly with regard to cases examined in his office in accordance with Article 69, that The Judge Advocate General should have the power of taking such action as the Board of Review can take under Article 66.

d. The Committee agreed that Article 67 (*f*) should be amended to authorize The Judge Advocate General to order charges dismissed when the United States Court of Military Appeals directs their dismissal, or when the United States Court of Military Apeals or the Board of Review orders a rehearing which The Judge Advocate General finds impracticable.

e. The Committee felt that Article 67 (*c*) should be amended to provide that the period during which the accused may petition the United States Court of Military Appeals for a grant of review be 15 days from the time he is notified of the decision of the Board of Review. It was felt that this shortening of time would aid in the expeditious handling of cases without cutting down any substantial right of the accused. We are inclined to think 15 days is a more reasonable change than the 10 days proposed.

It was also recommended that the Board of Review shall not be deprived of jurisdiction over a record of trial until the petition, certificate, motion, letter of transmittal, or other document is received in the office of the Clerk of the Court. The Committee supports this recommendation on the assumption that no substantial delay will ordinarily be involved in perfecting the appeal.

f. The Committee agreed with the proposal about execution of sentence: that provision could properly be made so that all portions of a sentence of a court-martial may be ordered executed by the convening authority when approved by him, except that portion of a sentence involving dismissal, dishonorable or bad-conduct discharge. This proposal does not, of course, extend to sentences involving death or a general or a flag officer.

g. The Committee approved the proposal that: no pay or allowances shall accrue to a prisoner in confinement after the date a convening authority approves a sentence of death, subject to his rights under Article 75 where the sentence is disapproved or set aside.

h. The Committee agreed with the proposal to amend Article 73 to extend the time within which an accused may petition for a new trial to 2 years from the date of announcement of sentence in open court.

i. The Committee supported the recommendation that the law officer be empowered to rule with finality on a motion for a finding of not guilty.

j. The Committee approved of the recommendation that: any and all distinctions between confinement and custody be removed from Article 95.

k. Likewise, it agreed that: an additional punitive article be added which would include provisions similar to the bad-check statute of the District of Columbia (Title 22, DC Code, Sec. 1410).

l. The Committee agreed that the provisions of Article 37 be expressly extended to include staff officers serving convening authorities and commanding officers.

m. It approved the proposal that Article 65 (*c*) be amended to include, as to each of the services, lawyers as well as law specialists as eligible to review records of trial by summary and special courts-martial.

B. The Committee also gave consideration to the other proposals submitted by The Judge Advocates General and the General Counsel of the Treasury but did not find itself in accord in certain respects as follows:

a. The Committee felt that there was no need for an amendment to the Code to provide specifically that a supervisory authority may take any action on a record in review that is authorized for a convening authority in addition to his power to return the record to the convening authority, as the Court has already specifically so ruled in a decision on the existing statute. In that situation, supplementary legislation to declare existing law would seem to be unnecessary.

b. The Committee was definitely opposed to the proposal that the Court only consider Petitions for Grant of Review when accompanied by a certificate of merit from counsel. In this connection, it should be added that the Committee gave serious consideration to many other proposals that would reduce the workload of the Court by cutting down its present jurisdiction. However, it was felt that no action should be taken at this time along those lines.

The Committee is thoroughly aware of the tremendous administrative problem and the burden connected with the large volume of appeals to the Court, many of which are frivolous. Nevertheless, the Court has been able to function efficiently and justly under its present heavy workload. Except as set forth elsewhere in this report, we do not now favor placing restrictions on appeals to the Court.

c. The Committee felt that further study would be required before reaching a decision on the desirability of the proposal to allow a convicted accused who has been sentenced to a punitive discharge to request his immediate discharge after completing his sentence of confinement where his case has not yet been finally reviewed. However, the Committee felt that if this proposal were to be favorably considered, there should be made mandatory the accused's restoration to duty if the conviction should be subsequently reversed following such discharge.

Furthermore, the Committee was of the opinion that there should be stricken from the proposal the provision that no person restored to duty following such discharge will be considered a member of the military service for any purpose during the interval between his discharge and restoration. It felt that such a provision was clearly unfair to an accused whose conviction is overturned upon review.

d. The Committee was opposed to the proposal to make a hearing unnecessary in a proceeding for the vacation of suspension of sentence when the accused is serving a sentence of confinement in a State or Federal institution, which sentence was imposed by a civilian court, or when the sentence of a general court-martial as approved or affirmed does not extend to a bad-conduct discharge and does not exceed the sentence that could have been adjudged by a special court-martial. It was thought that the elimination of such hearing might cut down a substantial right of an accused.

e. The Committee was opposed to the proposal that the Code be amended to permit the law officer of a general court-martial to assist the court in putting both the findings and sentence in proper form, even though such proceedings are recorded.

f. The Committee was opposed to the proposal to redefine the term "convening authority" so as to remove the requirement that he be "superior."

C. In addition to the proposals discussed above, there were submitted several others which the Committee felt would require further study and it is therefore not reporting on them at this time; and all others not specifically mentioned above are likewise to be considered as subject to further study. Among these proposals are—

a. The proposal to have the President prescribe periods during which a sentence to confinement may be interrupted;

b. The proposal that Article 12 be amended so that there will be no prohibition against confining members of the Armed Forces of the United States with those of friendly foreign nations in American confinement facilities; and

c. The proposal that Article 31 should be redrafted to make it more practical and reasonable in application so that it does not impose an insuperable burden upon law enforcement agencies.

5. The Committee felt that the law should be made plain that no record should ordinarily be required in the case of acquittals except as to matters that relate to jurisdiction and thus double jeopardy. This would obviate a tremendous amount of useless effort which is now being expended upon verbatim records for trials that result in acquittals. However, an accused who has been successful should be free to obtain a full record, at his own expense, if he desires to do so.

The Committee hopes that the above recommendations will be of assistance to the Court. We wish to express our great appreciation to the members of the Court and its staff for the fine cooperation, and to assure the Court that we are available for further consultation if that should be desired. We have also appreciated the fine cooperation with the Committee of representatives of the services.

Respectfully yours,

WHITNEY NORTH SEYMOUR,
Chairman for the Committee.
RALPH G. BOYD,
HENRY T. DORRANCE,
FELIX E. LARKIN,
JOSEPH A. MCCLAIN, JR.,
GEORGE A. SPIEGELBERG,
ARTHUR E. SUTHERLAND,
DONALD L. DEMING, *Secretary.*

December 21, 1953

Exhibit C

LETTER FROM COURT COMMITTEE REQUESTING STATISTICS

SIMPSON THACHER & BARTLETT
120 Broadway, New York 5, N. Y.

July 29, 1953

Hon. ROBERT E. QUINN, *Chief Judge,*
Hon. GEORGE W. LATIMER, *Judge,*
Hon. PAUL W. BROSMAN, *Judge,*
United States Court of Military Appeals,
Washington 25, D. C.

DEAR SIRS:

The Committee of the Bar, appointed by the Court to consider various matters affecting the Court and the new Military Code, met in Washington on May 28 and 29, 1953. In the course of its meeting, the Committee unanimously agreed that it would be desirable for the annual reports of the Court and of the Judge Advocates General to contain fuller information as to the operation of the system of military justice than they now do. Furthermore, for adequate review of the operation of that system from time to time, it would be extremely desirable to collect other information and have it regularly available even though it might not find its way into the reports.

It goes without saying that the public is profoundly interested in the working of the system of military justice and is entitled to have available information which will enable it to see how well the system is working. The Congress, too, is interested and is entitled to full information. The Court itself and the other members of the Code Committee will wish to have and provide the fullest possible information.

In our proposal that more information should be collected and made available, we do not suggest undertaking the burdensome task of collection of facts as to the past. We suggest rather that machinery should now be set up for the collection of information as to future operations so that it may be conveniently available. We are not ourselves in a position to specify how the information should be obtained or the precise details. All that we are in a position to do is to outline the subject matters with respect to which we believe information should be collected, leaving it to the Court and others to determine what is the most satisfactory way of collecting the information. Accordingly, we set out below the general areas in which information should be obtained. If it seems desirable to have any further specification, I should be glad to designate Messrs. Boyd, Spiegelberg, and Sutherland as a Subcommittee of the Committee for the purpose of trying to arrive at further specifications, either by correspondence or meeting. I shall be glad to participate in any such correspondence or discussion.

The objective of the information to be collected is to inform as to how the system of military justice actually operates. The information should include:

1. What sorts and numbers of offenses are involved.
2. Volume of the various offenses per thousand men. The locale of such offenses: Whether in the United States or in foreign theaters.
3. All relevant facts as to changes in results of convictions which will throw light on the vital question of the extent to which the system avoids conviction of the innocent.
4. Facts and figures establishing the operation and success of the device of Preliminary Investigation including the number of cases disposed of by such investigations.
5. The extent to which there is inequality of sentence:
   (*a*) Among services.
   (*b*) Among commands.
   (*c*) Geographically.
   (*d*) As between officers and enlisted men.
6. Extent to which too heavy sentences are ordinarily imposed, and the ultimate fate of such sentences involving, among other things:
   (*a*) Extent to which sentences are diminished in the course of review.
   (*b*) The stage at which the sentences are diminished.
   (*c*) Administrative reduction of sentences after process of review is completed.

   This analysis should further reveal the sentence actually imposed, the possible maximum for the offense, the recommendation of the Staff JA, the action thereon of the Convening Authority, the final action of the Board of Review or JAG, and the final administrative action after the process of review is completed.
7. The time required between conclusion of investigation and ultimate disposition, so that reasonable calculations could be made as to where time savings could be accomplished without adversely affecting the system.

It may well be that as the Court studies this matter it will conclude that facts in other areas should likewise be gathered. The Committee would applaud any such decision because our basic feeling is that it is essential to have fullest information if the Code Committee is to realize fully the objective for which it was established by Congress and if the objective of the new Military Code is to be fully accomplished.

Respectfully yours,

WHITNEY NORTH SEYMOUR,
Chairman for the Committee.
RALPH G. BOYD,
HENRY T. DORRANCE,
FELIX E. LARKIN,
JOSEPH A. MCCLAIN, JR.,
GEORGE A. SPIEGELBERG,
ARTHUR E. SUTHERLAND,
DONALD L. DEMING, *Secretary.*

EXHIBIT D

REPORT
OF
JUDGE ADVOCATES GENERAL OF THE ARMY, NAVY AND AIR FORCE
AND
THE GENERAL COUNSEL, DEPARTMENT OF THE TREASURY
CONCERNING
RECOMMENDED CHANGES TO THE UNIFORM CODE OF MILITARY JUSTICE

August 20, 1953

The Judge Advocates General of the Army, Navy, and Air Force and the General Counsel, Department of the Treasury, recommend that the following changes to the Uniform Code of Military Justice be adopted by the Congress.

a. It is recommended that there be three kinds of court-martial in each of the Armed Forces which shall have the composition, jurisdiction and review outlined below.

(1) *Summary courts-martial* shall remain unchanged.

(2) *Special courts-martial* shall consist of any number of members not less than three *or*, if prior to the convening of such court the accused personally has requested in writing that the court-martial consist of one officer only and the convening authority consents thereto, of one officer having the qualifications specified for a law officer in Article 26 (*a*). The jurisdiction of special courts-martial shall be as prescribed in Article 19.

(3) *General courts-martial* shall consist of a law officer and any number of members not less than five (5) *or*, of a law officer only, if prior to the convening of such court the accused personally has requested in writing that the court-martial consist of a law officer only, and the convening authority consents thereto. A one-officer court may not adjudge a death penalty. The qualifications of a law officer acting as a one-officer general court-martial shall be as specified in Article 26 (*a*) and in addition he shall be of at least the grade of a lieutenant commander or a major and shall be specifically certified to be qualified as the law officer of a one-officer general court-martial. Unless a sentence to death, dismissal, dishonorable or bad-conduct discharge, or confinement for one year or more is adjudged the record shall contain such matter, be authenticated in such manner as may be required by regulations which the President may prescribe and need be reviewed only by the officer exercising general court-martial jurisdiction.

(4) *Single Officer courts.* Article 51 should be amended to provide that Sections (*a*) (*b*) and (*c*) of that Article shall not apply to courts-martial consisting of one officer only, and notwithstanding any other provisions of the Code, a court-martial consisting of one officer only shall determine, subject to appellate review, all questions of law and fact arising in the course of a trial by such

court and, in the event of conviction of the accused, shall, within the legal limitations, adjudge an appropriate sentence.

(5) *Review of records of trial.*

(*a*) *Summary courts-martial.* The review of summary courts-martial shall remain unchanged, except an amendment to the Code should provide expressly that a supervisory authority may take any action on a record in review that is authorized for a convening authority in addition to his power to return the record to the convening authority for action.

(*b*) *Special courts-martial.* The review of special courts-martial sentences not involving a bad-conduct discharge shall remain unchanged except that an amendment to the Code should provide expressly that a supervisory authority may take any action on a record in review that is authorized for a convening authority, in addition to his power to return the record to the convening authority for action. The review of all cases involving an approved bad-conduct discharge will be by the convening authority, the officer exercising general court-martial jurisdiction, and thereafter as provided for a like sentence adjudged by a general court-martial.

(*c*) *General courts-martial.* The review of general courts-martial records by Boards of Review shall remain unchanged except, that cases now reviewed by a Board of Review because they involve a punitive discharge or confinement for one year or more will be reviewed under Article 69 if the accused has pleaded guilty to each offense of which he has been found guilty. With respect to all cases examined in his office in accordance with the provisions of Article 69, The Judge Advocate General, in his discretion, may refer any case reviewed by him to a Board of Review as now provided in Article 69, or he himself may have the power and may take such action in the case as a Board of Review can take under Article 66 (*c*) and (*d*). He need not affirm a finding of guilty or a sentence found correct in law and fact.

b. It is recommended that the following changes be made in appellate review in addition to those specified in paragraph *a* (5) above.

(1) *Powers of reviewing authorities.* Article 67 (*f*) should be amended to authorize The Judge Advocate General to order charges dismissed when the United States Court of Military Appeals directs their dismissal, or when the United States Court of Military Appeals or the Board of Review orders a rehearing which The Judge Advocate General finds impracticable.

(2) *Review by the United States Court of Military Appeals.*

(*a*) Article 67 (*c*) should be amended to provide that the period during which an accused may petition the United States Court of Military Appeals for a grant of review shall be 10 days from the time he is notified of the decision of the Board of Review, but the Board of Review shall not be deprived of jurisdiction over a record of trial until the petition, certificate, motion, letter of transmittal or other document is received in the office of the Clerk of the Court.

(*b*) Article 67 (*b*) (3) should be amended to provide that the United States Court of Military Appeals need only consider Petitions for Grant of Review when counsel who represented the accused at trial in accordance with Article 38 (*b*) or before the Board of Review in accordance with Article 70, or appellate defense counsel appointed by The Judge Advocate General if the accused was not represented by counsel before the Board of Review, shall certify that in his opinion the errors of law relied upon materially prejudiced the substantial rights of the accused.

(3) *Execution of sentences*

(*a*) All portions of a sentence of a court-martial may be ordered executed by the convening authority when approved by him, except that portion of a sentence involving dismissal, dishonorable or bad-conduct discharge. No sen-

tence involving death or a general or flag officer may be ordered into execution until finally approved in accordance with the Code.

(*b*) The Uniform Code of Military Justice should be amended to provide that at any time after his approval of a sentence extending to a punitive discharge the officer exercising general court-martial jurisdiction upon specific request of the accused, may order the discharge adjudged into execution provided there remains no unexecuted sentence of confinement, or if the accused is eligible for parole. Thereafter the case will be reviewed in the ordinary manner, and if the discharge is not sustained upon appellate review or subsequent proceedings in the case the Secretary of the Department concerned will take action similar to that now provided in Article 75 (*b*). No person restored to duty after such discharge at his own request shall be a member of the military service for any purpose during the interval between his discharge and restoration.

(*c*) No pay or allowances shall accrue to a prisoner in confinement after the date a convening authority approves a sentence of death.

(*d*) Any period of confinement included in a sentence of a court-martial shall begin to run from the date the sentence is adjudged by the court-martial, but the President may prescribe periods during which a sentence to confinement may be interrupted.

(4) *Vacation of suspension.* Article 72 (*a*) should be redrafted to make a hearing unnecessary in vacation proceedings when the accused is serving a sentence of confinement, imposed by a civilian court, in a State or Federal institution, or when the sentence of a general court-marital as approved or affirmed does not extend to a bad conduct discharge and does not exceed the sentence that could have been adjudged by a special court-martial.

c. It is recommended that Article 73 be amended to extend the time within which an accused may petition for a new trial to 2 years from the date sentence is announced in open Court; to provide that the action of the Board of Review on a petition, in addition to determining whether a new trial in whole or in part should be granted, shall include such action authorized by articles 66 (*c*) and 66 (*d*) as may be appropriate; to provide that the action of the United States Court of Military Appeals on a petition for a new trial, in addition to determining whether a new trial in whole or in part should be granted, shall include such action authorized by Articles 67 (*d*), 67 (*e*), and 67 (*f*) as may be appropriate; and to provide that The Judge Advocate General may grant a new trial in whole or in part, vacate or modify the findings and sentence in whole or in part, restore the rights, privileges, and property affected by the vacated portion of the sentence and, in appropriate cases, substitute for a dismissal, dishonorable discharge or bad-conduct discharge, previously executed, a form of discharge authorized for administrative issuance.

d. It is recommended that trial procedure be simplified by adoption of changes which would amend the Uniform Code of Military Justice as indicated below:

Voting and Rulings. The Code should be amended to permit the law officer of a general court-martial to assist the court-martial in putting both the findings and sentence in proper form such proceedings to be recorded. The law officer should also be empowered to rule with finality on a motion for a finding of not guilty.

e. It is recommended that the punitive articles be amended to incorporate the following:

(1) Any and all distinctions between confinement and custody should be removed from Article 95.

(2) An additional punitive article should include provisions similar to the bad-check statute of the District of Columbia (Title 22, D. C. Code, Sec. 1410).

f. It is finally recommended that the Uniform Code of Military Justice be amended to incorporate the following changes:

(1) The term "convening authority" should be defined in Article 1 to mean the officer who convened the court, an officer commanding for the time being, a successor in command, or any officer exercising general court-martial jurisdiction. In the sense of Articles 22 (*b*), 23 (*b*), and 24 (*b*) a convening authority shall be deemed to be "competent authority" if he is not subordinate to the accuser in the chain of command. The requirement that he be "superior" should be removed.

(2) Article 12 should be amended so that there will be no prohibition against confining members of the Armed Forces of the United States with members of the Armed Forces of friendly foreign nations in American confinement facilities.

(3) Article 31 should be redrafted to make it more practical in application. The limitations suggested by Judge Latimer in his dissenting opinion in *United States* v. *Wilson & Harvey* (No. 647), dated 27 February 1953, should be used as a guide for the statutory revision.

(4) The provisions of Article 37 should be extended to include staff officers serving convening authorities and commanding officers.

(5) Article 65 (*c*) should be amended to include lawyers as well as law specialists as eligible to review records of trial by summary and special courts-martial.

MAJ. GEN. E. M. BRANNON, USA,
The Judge Advocate General of the Army.
REAR ADM. IRA H. NUNN, USN,
The Judge Advocate General of the Navy.
MAJ. GEN. REGINALD C. HARMON, USAF,
The Judge Advocate General,
United States Air Force.

Note: See attached copy of Letter signed by MR. ELBERT P. TUTTLE,
General Counsel,
Department of the Treasury.

THE GENERAL COUNSEL OF THE TREASURY

WASHINGTON

September 23, 1953

TO: The Judge Advocate General of the Army.
The Judge Advocate General of the Navy.
The Judge Advocate General of the Air Force.

FROM: The General Counsel of the Treasury Department.

SUBJ: Report of proceedings by a board of officers convened to make recommendations upon changes in the Uniform Code of Military Justice.

Except for the three items discussed below, I would join with The Judge Advocates General in proposing the amendments to the Uniform Code of Military Justice recommended by the board.

I suggest that the following three items not be proposed for the reasons given:

1. *One-officer general and special courts-martial.*

This recommendation appears to be contrary to the theory incorporated in the Code under which the judgment of one officer is deemed adequate with respect to minor offenses, the judgment of at least three officers is deemed necessary in cases of more serious offenses involving more serious punishments, and the judgment of a still broader cross-section is deemed desirable for the most serious cases involving the most stringent penalties.

Presumably the reason for the recommendation is that the "existing system requires the services of large numbers of line officers who could be more profitably employed in their normal duties." If this is the reason, the board appears to have underestimated the importance of the function of military justice and the pressures behind the enactment of the Code in the first place. Just as in the civilian judicial scheme jury service is one of the highest duties of citizenship, so in the system of military justice service on a court is one of the most important duties an officer can perform. Defendants are very often young men under their majority whom the laws of most jurisdictions will not permit to exercise the franchise. They are away from their home surroundings and the people to whom they would normally turn for advice and help in reaching a decision that may be of utmost importance to their future lives. In addition, the very nature of the necessary military relation between enlisted man and officer is such as to make it most difficult for the former to make the decision which will best protect his interests on a matter of this kind when a particular course is suggested by an officer, regardless of how objective and fair the latter may try to be in so doing. For these reasons I believe that the request of the accused for a one-man court-martial will not, in many cases, be made with the insight and judgment called for in such an important exception to the basic theory of the Code. I would not, therefore, favor the submission of this recommendation to the Congress.

2. *Execution of punitive discharges.*

It is submitted that execution of a punitive discharge prior to final approval of a case, even upon the request of the accused, is unwise. A punitive discharge is one of the severest sentences a court-martial can impose. No obstacle to their avoidance, either actual or psychological, should be placed in the way of the

reviewing authorities. One of the striking lessons learned from the review of cases under section 207 of the Legislative Reorganization Act of 1946 is that punitive discharges are too easily given when some other course, which is not available at the time of review, would have been wiser. And the request of the accused does not change the situation; an accused is peculiarly unable to make a wise decision in these circumstances. Any advantages which may be gained from the proposed procedure would most certainly be outweighed by the ultimate disadvantages.

3. *Confinement with members of armed forces of friendly foreign nations.*

While there does not appear to be any real objection to the principle of this proposal, it is suggested that the benefit to be gained from it is not of enough consequence to warrant The Judge Advocates General in evoking the repercussions that are likely to ensue from the proposal.

ELBERT P. TUTTLE.

Report

of

THE JUDGE ADVOCATE GENERAL

of

THE ARMY

JUNE 1, 1952, to DECEMBER 31, 1953

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY

1. *a.* In addition to the recommendations of The Judge Advocates General of the Army, Navy, and Air Force, enumerated in Exhibit D to the individual report of the United States Court of Military Appeals, The Judge Advocate General of the Army is of the view that the following changes to the Uniform Code of Military Justice should be made:

(1) Article 15 should be amended to authorize an officer exercising general court-martial jurisdiction to impose upon officers and warrant officers of his command forfeitures of not to exceed one-half of an accused's pay per month for a period of 3 months. In addition, authority should be granted to commanding officers to confine enlisted personnel of their command for a period not to exceed 7 consecutive days, even though not attached to or embarked in a vessel, and to impose a forfeiture of not to exceed one-half of 1 month's pay, subject to the Table of Maximum Punishments and the Table of Equivalent Punishments.

(2) As previously recommended in the Joint Report for the period 31 May 1951 to 31 May 1952, article 19 should be amended by adding bad-conduct discharges to the list of prohibited punishments.

(3) Article 57 should be amended to provide that in cases where the accused petitions the Court of Military Appeals for a grant of review contrary to the advice of his appellate defense counsel his sentence of confinement, if affirmed, shall not begin to run until the date that the case is affirmed or the petition denied by the Court of Military Appeals.

b. During the period 28 September 1953 to 2 October 1953, a conference of Judge Advocates representing general court-martial jurisdictions throughout the world was held at the Judge Advocate General's School, Charlottesville, Virginia. Many problems confronting Staff Judge Advocates in the field were considered including all matters covered in the Joint Report, *supra.* In addition to planning and conducting this conference, the school conducted five complete cycles of the regular course, graduating 419 students. The school also published and distributed a military justice handbook entitled "The Law Officer", designed for use by law officers of general courts-martial and presidents of special courts-martial, and the "JAG Chronicle", a

weekly publication in which are digested the decisions of the Court of Military Appeals, the boards of review, and selected opinions of The Judge Advocate General. The school planned and participated in "LOGEX-53", a logistical exercise in which student officers of the advanced class of the school performed the duties of staff judge advocates under assumed combat conditions. Final editing of the first military justice training film entitled "The Uniform Code of Military Justice" was completed by the school. This film is the first of a series of five training films and is designed to explain to enlisted personnel their rights and obligations under the Uniform Code of Military Justice. The other four films, now in various stages of production, are "The Investigating Officer", "The General Court-Martial", "The Summary Court-Martial", and "Non-Judicial Punishment".

c. The separate Judge Advocate's promotion list was established by the Congress to discourage command influence and to serve as an inducement to attract and retain highly qualified personnel in the Judge Advocate General's Corps. Experience in the Navy and Air Force, without separate promotion lists, indicates minimal relationship between separate promotion lists and command influence. Moreover, the separate promotion list, with few exceptions, has stifled promotions in the Corps to a point where officers of the Judge Advocate General's Corps are promoted almost 3 years later than they would have been promoted had their names been carried on the Army promotion list, with an ever-widening gap. This situation can be cured only by corrective legislation. Accordingly, legislation has been proposed which, if enacted, will transfer all officers on The Judge Advocate's promotion list to the Army promotion list in the position they would have attained had they at all times remained on the Army list.

d. In seeking means of solving the problem of court reporting in the Army, the electronic court reporting system has been decided upon as a solution. This involves the use of the relatively new stenomask employed in conjunction with recorder reproducer machines. A school for enlisted court reporters will be held at the Judge Advocate General's School, University of Virginia, to train reporters in the use of the adopted equipment and in matters of administration incident to court reporting. The first class is tentatively scheduled for 10 May 1954.

e. The Judge Advocate General was authorized to procure 200 officers by direct commission during fiscal year 1954. The bulk of the officers obtaining direct commissions have been young lawyers recently graduated from law school and without military experience. Arrangements are being made with The Infantry School for a short course in infantry training for future officers given direct commissions and called to active duty without prior training.

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

	1 Jun. 1952 to 31 Dec. 1952	*1 Jan. 1953 to 31 Dec. 1953*
Total	4,469	8,244

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 periods:

	1 Jun. 1952 to 31 Dec. 1952	*1 Jan. 1953 to 31 Dec. 1953*
Total	1,490	2,040

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

	1 June 1952 to 31 Dec. 1952		*1 Jan. 1953 to 31 Dec. 1953*	
On hand at beginning of period	425		304	
Referred for review	4, 332	4, 757	8, 506	8, 810
Reviewed	4, 453		8, 552	
Pending at close of period	304	4, 757	258	8, 810

c. From 1 June to 31 December 1952, 74.8 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. From 1 January to 31 December 1953, 69.7 percent of the accused requested representation by appellate defense counsel before boards of review.

d. Based upon the number of cases reviewed by boards of review during the two periods, 21.9 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*), from 1 June to 31 December 1952 and 17.3 percent were forwarded to the Court from 1 January to 31 December 1953.

E. M. Brannon
Major General, USA
The Judge Advocate General

31 December 1953

Report

of

THE JUDGE ADVOCATE GENERAL

of

THE NAVY

JUNE 1, 1952, to DECEMBER 31, 1953

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

1. The Judge Advocate General of the Navy, in conjunction with The Judge Advocates General of the Army and Air Force, has recommended certain changes in the Uniform Code of Military Justice. These recommendations, Exhibit D, are based upon the findings of a committee of officers representing the various branches of the Armed Forces who have conducted a lengthy study of the Code and its operation during the past 2 years. Proposed legislation implementing these recommendations has been drafted and will be submitted to the Department of Defense for inclusion in the Department of Defense Legislative Program for 1954. The Judge Advocate General of the Navy urges favorable action on these recommendations, and in addition recommends the following amendments to the Uniform Code of Military Justice:

a. An amendment to Article 15 to permit commanding officers to impose 7 days' confinement both ashore and afloat and, as an additional alternative punishment, to impose forfeiture of one-half of 1 month's pay upon enlisted persons. It is considered that discipline and morale in the Navy have suffered under the present restrictions on non-judicial punishment. An increase in the non-judicial powers of commanding officers will enable them to deal effectively with youthful first offenders and thereby deter many of them from becoming repeated offenders.

b. An amendment to Article 15 to permit an officer exercising general court-martial jurisdiction to impose on an officer or warrant officer of his command forfeiture of one-half of his pay for 3 months instead of 1 month as now provided in the Code.

c. An amendment to Article 15 to permit reduction to the next inferior grade without requiring that the grade from which demoted be established by the command or an equivalent command. The naval command structure ashore differs inherently from the command structure afloat, and the command structure of the Marine Corps differs from that of the Navy. These differences in command structure have made it difficult to determine what is an equivalent command in the Navy. Removal of this requirement will enable the services to issue separate regulations governing reduction in rate suited to their individual needs and the peculiarities of their command structures.

d. An amendment to Article 43 to provide that the statute of limitations for absence offenses in time of peace be increased from 2 to 3 years, making it the same as that for desertion. Convictions for desertion, even in cases of prolonged absence, may not be obtained due to failure of proof of the intent to desert. In these cases the accused is clearly guilty of absence without leave, but because of the shorter period in the statute of limitations, he may avoid punishment for the lesser included offense of which he is found guilty. Increasing the statutory period from 2 to 3 years for absence offenses in time of peace will close this loophole in the law.

2. In addition to participating in the aforementioned study of the Uniform Code of Military Justice, The Judge Advocate General of the Navy joined with The Judge Advocates General of the Army and Air Force and the General Counsel of the Treasury Department in a study of the Manual for Courts-Martial, United States, 1951. A committee of officers representing the various branches of the Armed Forces and a representative of the United States Court of Military Appeals met in the early part of 1953 for this purpose and submitted extensive recommendations for revising the Manual. It was decided, however, that because of the cost involved, revision of the Manual should await action on the recommended changes to the Code.

3. During the period covered by this report, the Navy has continued its efforts to indoctrinate and train its members in the provisions of the Uniform Code of Military Justice and the Manual for Courts-Martial, United States, 1951. The result of these efforts has been increased familiarity with the Code and Manual and greatly improved administration of military justice throughout the Naval Establishment. Salient features of the Navy's military justice training program included the following actions, taken during the period from 1 June 1952 to 31 December 1953:

a. The Navy Department has produced 11 motion picture films on military justice and distributed them throughout the Navy, Marine Corps, and Naval Reserve training units. Five of these films depict the operation of the Uniform Code of Military Justice from the commission of an offense to completion of appellate review, and are entitled: "The Code and You," "Non-Judicial Punishment," "The Summary Court-Martial," "The Special Court-Martial," and "The General Court-Martial." Six of these films are a series entitled "This Is the Code," which explain the Articles of the Code which Article 137 thereof requires must be explained to enlisted persons on entering active duty, upon completion of 6 months' active duty, and at the time of their reenlistment. Another series of four films on the subject of Evidence is now in production and will soon be completed and distributed, while still another film on the effects of a bad-conduct discharge has been planned.

b. During the period from 1 June 1952, to 31 December 1953, the U. S. Naval School (Naval Justice), U. S. Naval Base, Newport, Rhode Island, graduated 1,969 officers and 1,267 enlisted persons from its 7-week intensive course on the provisions of the Code and Manual. In addition, 265 inactive Reserve officers were graduated from a 2-week active duty training course at the school in September of 1952 and 1953.

c. Beginning in July 1952, a 12-assignment correspondence course on Military Justice was made available to officers and enlisted persons in the Navy. As of 31 December 1953, 705 officers and enlisted persons had completed this course, 3,867 are currently enrolled therein, and an average of 363 applications for enrollment in this course are being received monthly. In addition to this comprehensive course, a single-assignment correspondence course on the Uniform Code of Military Justice is being distributed to large numbers of naval personnel who wish to study a brief summary of the Code's provisions. During the period of this report, 38,609 naval personnel completed this short course; there are 4,083 persons currently enrolled therein, and an average of 1,766 applications for enrollment are being received monthly.

d. "The JAG Journal" is published monthly by the Office of The Judge Advocate General of the Navy as an informal forum for legal matters of current interest to the naval service. It is distributed throughout the Navy. During the period covered by this report, 28 articles directly related to military justice were published in the Journal in addition to numerous articles on legal matters. The Journal is also used as a medium for expeditious Navy-wide dissemination of particularly important decisions of the United States Court of Military Appeals.

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

	1 June 1952 to 31 Dec. 1952	*1 Jan. 1953 to 31 Dec. 1953*
Total	*4, 376	**9, 542

*General courts-martial 1,897; Special courts-martial 2,479.
**General courts-martial 4,532; Special courts-martial 5,010.

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 periods:

	1 June 1952 to 31 Dec. 1952	*1 Jan. 1953 to 31 Dec. 1953*
Total	367	621

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

	1 June 1952 to 31 Dec. 1952		1 Jan. 1953 to 31 Dec. 1953	
On hand at beginning of period	356		174	
Referred for review	4, 376	4, 732	9, 542	9, 716
Reviewed	4, 558		9, 486	
Pending at close of period	174	4, 732	230	9, 716

c. From 1 June to 31 December 1952, 15.9 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. From 1 January to 31 December 1953, 28.7 percent of the accused requested representation by appellate defense counsel before boards of review.

d. Based upon the number of cases reviewed by boards of review during the two periods, 6.8 percent were forwarded to the United States Court of Military Appeals pursuant to the three subdivisions of the Uniform Code of Military Justice, Article 67 (*b*), from 1 June to 31 December 1952, and 4.5 percent were forwarded to the Court from 1 January to 31 December 1953.

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

Report

of

THE JUDGE ADVOCATE GENERAL

of

THE AIR FORCE

JUNE 1, 1952, to DECEMBER 31, 1953

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

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

b. A series of conferences of Air Force judge advocates was held during the spring of 1953 for the purpose of examining the administration of military justice in the Air Force and implementation of the Uniform Code of Military Justice. A conference of all staff judge advocates of the major air commands (ZI) was held at Bolling Air Force Base, Washington, D. C. on 8 and 9 April 1953, followed by regional conferences at Mitchel Air Force Base, New York, Randolph Air Force Base, Texas, and Hamilton Air Force Base, California. Major General Harmon and Brigadier General Albert M. Kuhfeld, The Assistant Judge Advocate General, attended and participated in all of the conferences.

c. An active program for the rehabilitation and restoration to duty of members of the Air Force convicted by courts-martial has been in effect during the entire period of this report. Pursuant to this program, increased emphasis has been placed upon rehabilitation and restoration training in all Air Force confinement facilities, and particularly in the 3320th Retraining Group, Amarillo Air Force Base, Texas. This unit, a minimum-restraint facility, has been in operation since February 1952, and during this period 635 individuals have been restored to duty out of a total of 1,210 sent there for retraining.

d. During the latter part of 1952 final action was taken to remove rated judge advocates from flying status or to assign them to flying duties. This action resulted in a loss to the Judge Advocate General's Department of a total of 98 officers, including 22 lieutenant colonels, 30 majors, 30 captains, 14 first lieutenants, and 2 second lieutenants. Additional procurement action was necessary to replace these losses. At the present time there are approximately 1,200 officers assigned to the Department. Of this number, 505 attorneys are certified by The Judge Advocate General as competent to perform the duties of law officer, trial counsel, and defense counsel pursuant to the Uniform Code

of Military Justice, Articles 26 and 27, and an additional 647 are certified as competent to perform the duties of trial and defense counsel pursuant to Article 27. Of these approximately 1,200 attorneys, 1,153 are designated as judge advocates pursuant to the Act of September 19, 1951 (65 Stat. 326; 10 U. S. C. 1837 (a)).

e. Since the advent of the Uniform Code of Military Justice, The Judge Advocate General has maintained at the Command and Staff School, Air University, Maxwell Air Force Base, Alabama, a Judge Advocate General's Course. The mission of this course, of 14 weeks' duration, is to instruct the newly-assigned officer-lawyer in the administration of military justice under the Uniform Code of Military Justice and to acquaint him with military-legal matters, a knowledge of which is necessary for him to perform his duties as legal advisor to his commander. During the period of this report 319 judge advocates graduated from the Judge Advocate General's Course.

f. At the close of the period there were 76 commands in the Air Force exercising general court-martial jurisdiction. Reciprocal court-martial jurisdiction has been granted by the Secretary of Defense to three commands, and general authorization for the inter-service utilization of law officers and counsel has been granted to four commands.

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

	1 June 1952 to 31 Dec. 1952	1 Jan. 1953 to 31 Dec. 1953
Total	*2, 318	**4, 933

*612 general courts-martial; 1,706 special courts-martial.
**1,596 general courts-martial; 3,337 special courts-martial.

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

	1 June 1952 to 31 Dec. 1952	1 Jan. 1953 to 31 Dec. 1953
Total	207	411

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

	1 June 1952 to 31 Dec. 1952		1 Jan. 1953 to 31 Dec. 1953	
On hand at beginning of period	313		258	
Referred for review	2, 318	2, 631	4, 933	5, 191
Reviewed	2, 373		5, 035	
Pending at close of period	258	2, 631	156	5, 191

c. From 1 June to 31 December 1952, 43 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. From 1 January to 31 December 1953, 44 percent of the accused requested representation by appellate defense counsel before boards of review.

d. Based upon the number of cases reviewed by Boards of Review during the two periods, 4.9 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*), from 1 June to 31 December 1952, and 5.5 percent were forwarded to the Court from 1 January to 31 December 1953. Of the total cases forwarded, all except four were based upon petitions of the accused for grant of review by the Court of Military Appeals. Two cases during each period were certified by The Judge Advocate General, and there were no mandatory reviews by the Court of Military Appeals. Petitions were granted by the Court of Military Appeals during the period from 1 June to 31 December 1952 in 6.9 percent of the cases which were petitioned, or 0.3 percent of the total number of cases reviewed by the Boards of Review. From 1 January to 31 December 1953 petitions were granted in 5.6 percent of the cases which were petitioned, or 0.3 percent of the total number of cases reviewed by the boards of review.

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

Report

of

THE GENERAL COUNSEL

of

THE DEPARTMENT OF THE TREASURY

(UNITED STATES COAST GUARD)

JUNE 1, 1952, to DECEMBER 31, 1953

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

1. The General Counsel of the Treasury Department has joined The Judge Advocates General of the other Armed Forces in recommending the changes to the Uniform Code of Military Justice set forth in an appendage to the preceding Joint Report. While the General Counsel expressed an objection to the original proposal for authorizing one-officer courts, he concurs with the proposal as presently set forth in the Joint Report in view of the additional safeguards incorporated therein.

2. During the period covered by this report a noticeable decline in number of all types of courts-martial held in the Coast Guard as compared to the number of trials reported during the period covered by the previous report was observed.

3. On May 5, 1953, the General Counsel announced that it would thenceforth be the Department's policy to remit punitive discharges on probation in ordinary cases where the accused received his first such sentence and was not at the same time sentenced to such confinement as would afford him an opportunity to demonstrate that he was worthy of restoration to duty.

4. The number of records of trial received in the Office of the General Counsel of the Treasury Department for review pursuant to Article 66 during the two periods covered by this report follows:

	1 June 1952 to 31 Dec. 1952	*1 Jan. 1953 to 31 Dec. 1953*
Total	47	76

In addition, the following table shows the number of general courts-martial records of trial received for examination pursuant to Article 69 during the same periods:

	1 June 1952 to 31 Dec. 1952	*1 Jan. 1953 to 31 Dec. 1953*
Total	7	5

5. The following table shows the workload of the Board of Review during the same periods:

	1 June 1952 to 31 Dec. 1952	*1 Jan. 1953 to 31 Dec. 1953*
On hand at beginning of period	6	0
Referred for review	49	77
Reviewed	55	72
Pending at close of period	0	5

From 1 June 1952 to 31 December 1953 twenty of the accused whose cases were reviewed pursuant to Article 66 requested representation by appellate defense counsel before the Board of Review. During the same period 9 cases were forwarded to the United States Court of Military Appeals pursuant to Article 67 of the Code, 8 by petition of the accused and 1 by certification.

6. Of the 127 cases reviewed by the Board of Review during the period of this report, 30 were general courts-martial, including 3 which were referred under the provisions of Article 69, and the remainder, or 97, were special courts-martial. The Board set aside the findings and sentence in 12 cases. In 10 cases both findings and sentence were modified; in 19 cases the sentence alone was modified; in 4 cases the findings were modified but not the sentence. Sixty-four and six-tenths percent of the cases reviewed by the Board of Review were affirmed without correction. The Board of Review disapproved or modified findings in 20.4 percent of all the cases it reviewed; it disapproved or modified findings in 26.6 percent of the general court-martial cases. It may be noted that the incidence of error was slightly higher for general courts-martial than for special courts-martial. So far as Coast Guard trials are concerned, special courts-martial commit fewer errors requiring corrective action than do general courts-martial; if remedial actions upon sentences were also considered, the percentages would be still more favorable to special courts-martial. In the Coast Guard our experience does not demonstrate that the exercise by special courts-martial of the power to adjudge punitive discharges has impaired the administration of military justice.

Elbert P. Tuttle
General Counsel
Treasury Department

U. S. GOVERNMENT PRINTING OFFICE: 1954