ANNUAL REPORT
of the
UNITED STATES COURT OF MILITARY APPEALS

and

THE JUDGE ADVOCATES GENERAL
of the
ARMED FORCES
and the
GENERAL COUNSEL
of the
DEPARTMENT OF THE TREASURY

PURSUANT TO THE UNIFORM CODE OF MILITARY JUSTICE

For the Period

January 1, 1959, to December 31, 1959

WM. S. FULTON

ANNUAL REPORT

SUBMITTED TO THE

COMMITTEES ON ARMED SERVICES

of the

SENATE AND OF THE

HOUSE OF REPRESENTATIVES

and to the

SECRETARY OF DEFENSE

and

SECRETARY OF THE TREASURY

and the

SECRETARIES OF THE DEPARTMENTS OF THE

ARMY, NAVY, AND AIR FORCE

PURSUANT TO THE

UNIFORM CODE OF MILITARY JUSTICE

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Contents

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JOINT REPORT

The following is the eighth annual report of the Committee created by article 67(g) of the Uniform Code of Military Justice, 10 U.S.C. 867(g). That article requires the Judges of the United States Court of Military Appeals, the Judge Advocates General of the Armed Forces, and the General Counsel of the Department of the Treasury to meet annually to survey the operations of the Code and to prepare a report to the Committees on Armed Services of the Senate and of the House of Representatives, to the Secretary of Defense and Secretary of the Treasury, and to the Secretaries of the Departments of the Army, Navy, and Air Force with regard to the status of military justice and to the manner and means by which it can be improved by legislative enactment.

The Judges of the United States Court of Military Appeals, the Judge Advocates General, and the General Counsel of the Department of the Treasury, hereinafter referred to as the Code Committee, have met and conferred during the period of this report. These conferences included, among other items, a full consideration of reports of a subcommittee appointed by the Code Committee to conduct a critical review of operations under the Code. The studies of this subcommittee were conducted over a 2-year period and have covered all phases of military discipline and military justice. Their reports present an integrated series of closely related recommendations designed to improve operations under the Uniform Code. While the conclusions submitted have been accepted in large measure by the Code Committee, they have not been made the basis for additional proposals for amendments to the Uniform Code. Rather, the Code Committee has adhered to its consistent practice of submitting only those proposals which are unanimously agreed upon, leaving the Service members and the Court free to express their views and individual recommendations in their separate annual reports.

Upon this basis, the Code Committee is not urging the consideration of any recommendations other than those set out in the annual reports of 1957 and 1958. The proposals therein suggested are refinements of those made in the 1953 annual report and reaffirmed in all subsequent annual reports in the interim. For purposes of availability, these recommended changes are set out in Exhibit A with an accompanying statement of purpose, their principal features, and sectional analysis.

As forecast in the 1958 annual report, the statistical information contained herein covers the period July 1, 1958, through June 30, 1959. Although this represents a partial duplication of information heretofore reported, this changeover from calendar year to fiscal year coverage was considered necessary. The statistics are compiled by the Services on the basis of figures submitted by commands located throughout the world. In the past the practical difficulties attendant upon amassing these figures on a calendar basis have prevented the submission of the report to the Congress close to the convening of each new session.

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

Respectfully submitted,

ROBERT E. QUINN,
Chief Judge.
GEORGE W. LATIMER,
Judge.
HOMER FERGUSON,
Judge.
GEORGE W. HICKMAN, Jr.
The Judge Advocate General,
United States Army.
CHESTER WARD,
The Judge Advocate General,
United States Navy.
REGINALD C. HARMON,
The Judge Advocate General,
United States Air Force.
DAVID A. LINDSAY,
General Counsel,
Department of the Treasury.

EXHIBIT A

PURPOSE

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

PRINCIPAL FEATURES

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

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

3. *Review of records of trial.* The present law requires all general court-martial cases to be forwarded to the Judge Advocate General

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

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

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

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

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

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

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

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

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

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

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

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

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

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 10, United States Code, is amended as follows:

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

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

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

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

"No member of the armed forces of the United States may be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces of the United States, except that a member of the armed forces of the United States may be confined in United

States confinement facilities with members of the armed forces of friendly foreign nations."

(3) Section 815 is amended—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Section 851 is amended—

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

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

(C) by adding the following new subsection:

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

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

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

"§ 854. *Art. 54. Record of trial*

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

such matter and be authenticated in such manner as the President may, by regulation, prescribe.

"(b) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as authenticated. If a verbatim record of trial by general court-martial is not required by subsection (a), the accused may buy such a record under such regulations as the President may prescribe."

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

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

(12) Section 865 is amended—

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

"(a) When the convening authority has

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

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

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

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

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

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

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

(13) Section 866 is amended—

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

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

(1) extends to death;

(2) affects a general or flag officer;

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

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

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

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

"(e) The Judge Advocate General may dismiss the charges whenever the board of review has ordered a rehearing and he finds a rehearing impracticable. Otherwise, the Judge Advocate General shall, unless there is to be further action by the President, the Secretary concerned, or the Court of Military Appeals, instruct the convening authority to take action in accordance with the decision of the board of review. If the board of review has ordered a rehearing and the convening authority finds a rehearing impracticable, he may dismiss the charges."

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

"The Judge Advocate General may dismiss

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

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

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

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

(16) Section 871 is amended—

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

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

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

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

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

(17) Section 873 is amended—

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

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

"The board of review or the Court of Military Appeals, as the case may be, shall determine whether a new trial, in whole or in part, should be granted or shall take appropriate action under section 866 or 867 of this title (article 66 or 67), respectively. Otherwise, the Judge Advocate General may grant a new trial in whole or in part or may vacate or modify the findings and sentence in whole or in part."

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

(19) Subchapter X of chapter 47 is amended—

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

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

"Any person subject to this chapter who—

(1) for the procurement of any article or thing of value, with intent to defraud; or

(2) for the payment of any past due obligation,

or for any other purpose, with intent to deceive; makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full upon its presentment, shall be punished as a court-martial may direct.

The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order,

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

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

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

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

SECTIONAL ANALYSIS

of a bill

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

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

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

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

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

Section 1(5) amends articles 22(b) and 23(b) to provide that, except for the president, a convening authority not subordinate in command or grade to the accuser shall be "competent authority" within the meaning thereof, and that a court may, in any case, be convened by superior competent authority when considered desirable by him.

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

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

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

Section 1(9) amends article 51 to provide that the law officer shall rule with finality on a motion for a finding of not guilty. If such a

motion is granted, however, he may not later change that ruling. It also provides that an officer acting as a special court-martial shall determine all questions of law and fact arising during the trial and, if the accused is convicted, adjudge an appropriate sentence.

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

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

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

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

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

Section 1(15) amends article 69 to provide that every record forwarded to the Judge Advocate General under article 65, the appellate review for which is not otherwise provided by article 65 or 66, shall be examined in the office of the Judge Advocate General. He may refer such a record to a board of review or he may take such action in the case as a board of review may under article 66 (c) and (d). If

the record is reviewed by a board of review, there will be no further review by the Court of Military Appeals except under article 67(b)(2). The effect of this amendment is to require examination in the office of the Judge Advocate General of those records of trial in which the sentence includes a dishonorable or bad-conduct discharge or confinement for 1 year or more which need not be reviewed by a board of review because the accused pleaded guilty.

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

Section 1(17) amends article 73 to extend the time within which the accused may petition for a new trial to 2 years from the date the convening authority approves the sentence, and to provide that the Court of Military Appeals and the board of review may, in addition to determining whether a new trial in whole or in part should be granted, take appropriate action under article 66 or article 67, respectively. Further, the Judge Advocate General is authorized to grant a new trial in whole or in part, or to vacate or modify the findings and the sentence in whole or in part.

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

Section 1(19) inserts an additional punitive article similar to the bad-check statutes of the District of Columbia (title 22, D.C. Code, sec. 1410) and the State of Missouri (Revised Statutes of Missouri 561.460, 561.470, 561.480).

Section 2 provides that these amendments become effective on the 1st day of the 10th month following the month in which enacted.

EXHIBIT B

EXHIBIT B

Court-Martial Cases

Army	58, 887
Navy	46, 703
Air Force	24, 035
Coast Guard	833
Total	130, 458

Cases Reviewed by Boards of Review

Army	1, 853
Navy	4, 217
Air Force	1, 888
Coast Guard	53
Total	8, 011

Cases Docketed with U.S. Court of Military Appeals

Army	614
Navy	301
Air Force	463
Coast Guard	5
Total	1, 383

For the Period
July 1, 1958, to June 30, 1959

Report

of the

UNITED STATES COURT OF MILITARY APPEALS

January 1, 1959, to December 31, 1959

UNITED STATES COURT OF MILITARY APPEALS

The following report of the United States Court of Military Appeals for 1959 is submitted to Congress pursuant to article 67(g), Uniform Code of Military Justice, 10 U.S.C. 867(g). The period covered by the statistical portions of this report is July 1, 1958, through June 30, 1959. Thus, it is apparent that the first 6 months of the period have heretofore been covered in the 1958 report. As pointed out in the Joint Report, this changeover permits the submission of all reports closer to the date each new session of the Congress convenes.

During the period, the Chief Judge and the Associate Judges appeared before numerous bar associations, civic organizations, the Judge Advocate Schools of the various Services, Reserve Officers Associations, Reserve Officers Groups, and similar organizations. By these appearances large segments of the civilian bar have become acquainted with the judicial advances made possible within the military services under the Uniform Code. As a result, some of the cloak of mystery in which the proceedings of courts-martial have been shrouded has been removed. The Court's efforts in this desirable aim have been aided in large measure by the ever increasing number of articles on the subject of military justice appearing in leading bar reviews, law journals, and other legal periodicals published and distributed regularly throughout the United States.

A thorough inspection of the operations of the Code at all levels was made by the individual Judges in visits to military installations here and throughout the Pacific area. These inspections included lengthy conferences with military commanders, staff judge advocates, and legal officers respecting their experience in the disposition of judicial and disciplinary problems, the impact of the Code and of the decisions of the Court upon their operations and numerous related subjects. While the opinions expressed by those consulted were not universally favorable to the Code, an examination of the complaints disclosed they were almost invariably founded on misconceptions of the requirements of the Code. Other areas of disagreement represented differences in approach thoroughly considered by Congress when adoption of the Code was under consideration. From all of the information, views, and critical analyses which we have obtained from all sources, one significant conclusion may be drawn. The trial and appellate procedures established by the Code for the conduct of general courts-martial assure a greater measure of due process of law to the

individual than ever, while preserving military discipline at its highest peak. Concerning discipline, General L. L. Lemnitzer, Chief of Staff, United States Army, recently declared:

> "I believe that the Army and the American people can take pride in the positive strides that have been made in the administration and application of Military law under the Uniform Code of Military Justice. *The Army today has achieved the highest state of discipline and good order in its history.*" (Department of Army, Pamphlet No. 27-101-18, 7 October 1959)

Areas for further improvement remain, however. In the view of this Court such improvements may be made by amendments within the spirit and framework of the present enactment.

In addition to, and, in two instances, in extension of the proposals agreed upon by the Code Committee in the Joint Report, Exhibit A, concerning which Judge Homer Ferguson has certain reservations, the Court believes that the following four changes will increase discipline and enhance the stature of courts-martial as truly judicial forums. They are:

1. The summary court-martial should be eliminated and its disciplinary powers transferred to the officer now authorized to convene such courts. This authority should be exercised in the manner presently prescribed by article 15. The right of the individual to demand trial by special court-martial should be preserved. Such a change will eliminate time-consuming procedures rarely understood by those who are charged with their administration, while it will assure effective disciplinary sanctions for infractions of the rules. It will not constitute a previous conviction for any purpose nor time lost nor a permanent blot on the individual's military record which will follow him into civilian life.

2. The jurisdiction of a special court-martial under article 19 of the Code should be modified to eliminate bad conduct discharges as a part of the permissive punishments of such tribunals. This proposal was advanced in the Court's first annual report, and is further supported by the actions of the Army and the Air Force, as well as by the findings of a study group appointed by the Code Committee. The gravity of a punitive discharge is such that it should not be imposed except upon conviction by a judicial tribunal wherein the offender is afforded all of the safeguards of true due process of law. The Army has eliminated them at the special court-martial level entirely. They are imposed by special courts-martial convened within the Air Force only if qualified legal personnel are available to represent both the prosecution and the defense. No sound reason for continuing this power has been advanced to support the continuation of a punishment found unsupportable by the Court, two major Services, and a committee consisting of representatives of the Court and the Services.

3. (a) The law officer program initiated voluntarily by the Department of the Army, under the supervision and control of Major General George W. Hickman, Jr., the Judge Advocate General, should be established by law in each of the other services. Under this program specially selected senior officers deemed best qualified by maturity, temperament, training, and experience to perform judicial functions, are designated by the Judge Advocate General as judicial officers. Their sole duty is to serve as law officers of general courts-martial. They are assigned to Judicial Areas or Circuits and remain under departmental command and operational control. The removal of the judicial officers from the command of the convening authorities will necessarily result in a greater degree of judicial independence, and the limitation of their duties will inevitably result in the necessary judicial acumen for performance in the image of a Federal Judge.

(b) If the law officers are placed in this independent position, then, and only then, other responsibilities more consistent with those reposed upon Federal Judges may wisely be vested in them. These should include:

(1) Authority to preside over the trial of an accused by general court-martial in a "jury-waived" session, provided the accused, upon the advice of counsel requests it;

(2) Authority to pass on, with finality, all challenges (article 41(a)) and all interlocutory questions including motions for findings of not guilty and those pertaining to the accused's sanity (article 51(b)).

(3) The sentencing power and the power to punish for contempts (articles 51(a) and 48, respectively) now vested in the members, should be transferred to the law officer.

4. The boards of review, now established in the offices of the Judge Advocates General of each of the Armed Forces (article 66(a)) should be consolidated under the Secretary of Defense and termed "Military Courts of Review." The members, officers or civilians should be appointed for a fixed term by the Secretary of Defense. They should sit in panels of three, no two of whom shall have been appointed from any one service. Their authority (article 66 (c) and (d)) should remain unchanged. This modification will insure greater independence and accomplish more substantial uniformity in the application of the Code throughout the Services, as well as uniformity in the sentences finally approved. (Judge Latimer has certain reservations with respect to this latter proposal.)

Attention is invited to the status of the Court and its supporting personnel relative to the Civil Service Commission. In this regard the Judges have earnestly endeavored to make the United States Court of Military Appeals a court in every sense of the word. They have tried to discharge their obligations with fairness, firmness, jus-

tice, impartiality, and judicial dignity. However, a court cannot actually be a court unless it has absolute independence. Anything less is incompatible with its judicial obligations.

The Civil Service Commission has interfered to some extent to our ablity to discharge our obligations freely and fairly. We maintain that we should not be subject to Civil Service interference; that we are not subject to them in any way, and that no court can be a court in the full sense of the word if any Executive Agency can interfere in its affairs. We would welcome an expression to that effect from the Congress.

A detailed analysis of the status of cases processed since the Court came into existence in 1951 through June 30, 1959 is attached hereto.

Respectfully submitted,

ROBERT E. QUINN,
Chief Judge.
GEORGE W. LATIMER,
Judge.
HOMER FERGUSON,
Judge.

STATUS OF CASES

UNITED STATES COURT OF MILITARY APPEALS

CASES DOCKETED

Total by services	*Total as of June 30, 1957*	*July 1, 1957, to June 30, 1958*	*July 1, 1958, to June 30, 1959*	*Total as of June 30, 1959*
Petitions (Art. 67(b)(3)):				
Army	6,273	889	595	7,757
Navy	1,842	304	289	2,435
Air Force	1,961	446	459	2,866
Coast Guard	34	0	4	38
Total	10,110	1,639	1,347	13,096
Certificates (Art. 67(b)(2)):				
Army	77	9	19	105
Navy	129	11	11	151
Air Force	26	6	4	36
Coast Guard	5	0	1	6
Total	237	26	35	298
Mandatory (Art. 67(b)(1)):				
Army	30	1	0	31
Navy	0	1	1	2
Air Force	1	0	0	1
Coast Guard	0	0	0	0
Total	31	2	1	[1] 34
Total cases docketed	10,378	1,667	1,383	[2] 13,428

[1] Two flag officer cases; one Army and one Navy.

[2] 13,229 cases actually assigned docket numbers. Eighty-two cases counted as both Petitions and Certificates. Three cases Certified twice. 108 cases submitted as Petitions twice. One mandatory case filed twice. Four mandatory cases filed as Petitions after second Board of Review opinion. One case submitted as Petition for the third time.

COURT ACTION

	Total as of June 30, 1957	July 1, 1957, to June 30, 1958	July 1, 1958, to June 30, 1959	Total as of June 30, 1959
Petitions (Art. 67(b)(3)):				
Granted	856	314	148	1, 318
Denied	8, 919	1, 168	1, 282	11, 369
Denied by Memorandum Opinion	0	0	1	1
Dismissed	5	4	0	9
Withdrawn	170	70	39	279
Disposed of on motion to dismiss:				
with opinion	7	0	0	7
Without opinion	30	2	4	36
Disposed of by Order setting aside findings and sentence	2	0	0	2
Remanded to Board of Review	30	24	53	107
Court action due (30 days) [3]	64	153	67	67
Awaiting briefs [3]	59	66	29	29
Certificates (Art. 67(b)(2)):				
Opinions rendered	219	32	31	282
Opinions pending [3]	12	6	6	6
Withdrawn	4	1	0	5
Set for hearing [3]	0	0	0	0
Ready for hearing [3]	0	1	0	0
Awaiting briefs [3]	3	1	6	6
Mandatory (Art. 67(b)(1)):				
Opinions rendered	31	0	2	33
Opinions pending [3]	0	2	0	0
Remanded	1	0	0	1
Awaiting briefs [3]	0	0	1	1
Opinions rendered:				
Petitions	669	289	157	1, 115
Motions to Dismiss	9	0	1	10
Motion to Stay Proceedings	0	0	1	1
Per Curiam grants	21	1	0	22
Certificates	192	28	25	245
Certificates and Petitions	26	4	5	35
Mandatory	31	0	2	33
Remanded	1	0	48	49
Petition for a New Trial	1	0	0	1
Petition for Reconsideration of Petition for New Trial	1	0	0	1
Motion to Reopen	0	1	0	1
Total	951	323	239	[4] 1, 513

[3] As of June 30, 1957, 1958, and 1959.

[4] 1,513 cases were disposed of by 1,452 published opinions. Eighty-two opinions were rendered in cases involving 51 Army officers, 17 Air Force officers, 11 Navy officers, 2 Coast Guard officers, and 1 West Point Cadet. In addition 19 opinions were rendered in cases involving 20 civilians. The remainder concerned enlisted personnel. The Court remanded 47 cases in fiscal year 1959 by Order.

	Total as of June 30, 1957	July 1, 1957, to June 30, 1958	July 1, 1958, to June 30, 1959	Total as of June 30, 1959
Completed cases:				
Petitions denied	8,919	1,168	1,282	11,369
Petitions dismissed	5	4	0	9
Petitions withdrawn	170	70	39	279
Certificates withdrawn	4	1	0	5
Opinions rendered	944	323	192	1,459
Disposed of on motion to dismiss:				
With opinion	7	0	0	7
Without opinion	30	2	4	36
Disposed of by Order setting aside findings and sentence	2	0	0	2
Remanded to Board of Review	31	24	51	106
Total	10,112	1,592	1,568	13,272

	Pending completion as of June 30, 1957	June 30, 1958	June 30, 1959
Opinions pending	91	86	30
Set for hearing	0	0	0
Ready for hearing	2	2	1
Petitions granted—awaiting briefs	35	28	15
Petitions—Court action due 30 days	64	153	67
Petitions—awaiting briefs	59	66	29
Certificates—awaiting briefs	3	1	6
Mandatory—awaiting briefs	0	0	1
Total	254	336	149

Report

of

THE JUDGE ADVOCATE GENERAL

of

THE ARMY

January 1, 1959, to December 31, 1959

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY

The proposed changes to the Uniform Code of Military Justice found in Exhibit A to the Joint Report continues as a part of the Department of Defense legislative program.

Many commanders in the field have evidenced increasing lack of confidence in the present system of military justice because of its growing complexity and difficulty of administration. Many commanders are of the opinion that the system would be inadequate to maintain the necessary degree of disciplinary control over members of the Army in the event of a serious emergency or under conditions of modern warfare. Complaints from the field and reports of inspecting officers indicate a growing concern over lack of stability in the law, burdensome and duplicative procedures, multiplicity of adversary proceedings, and lack of authority on the part of commanders to dispose of minor offenses without resort to courts-martial.

In order to evaluate the effectiveness of the present system of military justice, the Secretary of the Army appointed a board of general officers to study the present system of military justice and its impact on the administration of discipline in the Army as well as the essential fairness of the Uniform Code of Military Justice both to the accused and to the Government. The findings and recommendations of this board should be of considerable value in determining the need for remedial legislation in addition to the proposed changes to the Uniform Code of Military Justice found in Exhibit A to the Joint Report.

Appellate court decisions within the last year have made several major changes in military justice by overturning, in some instances, well established rules of military law. A brief survey of some significant decisions indicative of the trend is as follows:

(1) *Extension of the Holt and Varnadore Rule. United States* v. *Smith*, 10 USCMA 152, 27 CMR 227, and *United States* v. *Jobe*, 10 USCMA 276, 27 CMR 350, represent an enlargement of the precedent established in the *United States* v. *Holt*, 9 USMCA 476, 26 CMR 256, and *United States* v. *Varnadore*, 9 USCMA 471, 26 CMR 251, cases which were discussed in the preceding Annual Report. In *Smith* the Court of Military Appeals held invalid a provision in the Manual that an "officer may not be sentenced to hard labor without confinement unless the sentence includes dismissal, nor may he be sentenced to hard labor without confinement in any case." The *Jobe* case overrules that portion of the Manual which provided that a court could not impose forfeiture of more than two-thirds pay per month without also

adjudging a punitive discharge. In describing this trend in recent cases the dissenting judge in the *Jobe* case said: "One by one, many of the time-honored and service-accepted limitations set by the President to circumscribe a court-martial's authority to combine different forms of punishment in one sentence have been stricken from military law." This is one of the areas in which the need for remedial legislation is becoming more and more urgent.

(2) *President's Authority to Provide for Reduction in Grade as a Consequence of Court-Martial Sentence. United States* v. *Simpson*, 10 USCMA 229, 27 CMR 303, invalidated a Presidential Executive Order which provided for the reduction in grade of enlisted persons whenever the convening authority approved a sentence including either a punitive discharge, confinement, or hard labor without confinement whether or not suspended, even though reduction was not expressly included in the sentence. Subsequent to this decision the Comptroller General of the United States held that pursuant to this Executive Order members of the service should be paid at the rate of pay applicable to the reduced grade pending a decision by the Court of Claims in the case of *Johnson* v. *United States*, The Comptroller General stated that the "President, as Commander-in-Chief of the Armed Forces, has an inherent right to determine standards of conduct to which members of the service are expected to conform. His authority to reduce to the lowest pay grade, a noncommissioned officer who has been convicted of an offense of a serious nature is not open to question."

(3) *Authority of Commanders to Issue General Orders.* Under Article 92(1), Uniform Code of Military Justice, general orders and regulations are considered to have the force and effect of law and, thus, the long-established civilian rule of "ignorance of the law is no excuse" is applicable to violations of such orders. Recent appellate decisions, however, have severely limited the type of commanders authorized to issue general orders or regulations within the meaning of Article 92(1). In *United States* v. *Keeler*, 10 USCMA 319, 27 CMR 393, the Court of Military Appeals held that the commanding officer of an air base did not have the authority to issue an Article 92(1) order and, therefore, it was necessary to prove that the accused had actual knowledge of the base regulation which he had violated. In *United States* v. *Ochoa*, 10 USCMA 602, 28 CMR 168, the same result was reached with respect to regulations issued by the commanding officer of a naval air training center. It is important to realize that regulations governing military installations are in many respects similar to ordinances of towns and cities. The necessity of proving actual knowledge of each "ordinance" of a military in-

stallation makes law enforcement most difficult, rewards ignorance rather than penalizing it, and makes the worst class of persons the most privileged.

(4) *Suspension of Punitive Discharges.* Prior to April 1959 the Department of the Army policy encouraged convening authorities to suspend most sentences to punitive discharge "until completion of appellate review or the accused's release from confinement whichever is the later date." This procedures authorized the execution of the punitive discharge when the above contingencies occurred unless it appeared that the accused had demonstrated that he should be restored to duty. However, in *United States* v. *May*, 10 USCMA 358, 27 CMR 432, and *United States* v. *Cecil*, 10 USCMA 371, 27 CMR 445, the Court of Military Appeals held that such suspensions create a probationary status and hence the suspension cannot be vacated without an article 72, Uniform Code of Military Justice, vacation of suspension hearing relative to an alleged violation of probation. It is interesting to observe that for the period of November 1958 through March 1959, 62.26 percent of all sentences to punitive discharge were suspended by convening authorities whereas only 9.1 percent were suspended for the period of July 1959 through November 1959.

(5) *Commanding Officer's Authority to Search Persons under His Command.* In *United States* v. *Brown*, 10 USCMA 482, 28 CMR 48, the accused and nine other soldiers in South Korea went on pass. Six of the ten soldiers had been suspected of using narcotics, and the accused's commanding officer had received information that 1 of the 10 had borrowed 10 dollars before going on pass. Also included in the group was one individual, not the accused, who reputedly had been caught with narcotics but had never been tried because of a difficulty in the chain of custody. Acting upon his suspicions, the commanding officer arranged for a search of the 10 men upon their return. They all returned on the same truck and upon reaching the unit they were apprehended and searched. Two bottles of heroin were found on the accused and this evidence was introduced at his trial. The Court of Military Appeals held that the search of the accused was illegal because it was "exploratory in nature and wholly lacking in reasonable cause." The dissenting opinion states, "To deny a commanding officer the right to search men returning to their units after being exposed to drug peddlers in foreign countries is to cripple the services in their endeavor to protect their men and maintain peak combat efficiency."

The number of records of trial received in the Office of The Judge Advocate General for review pursuant to article 66 during the fiscal year 1959 follows:

	1 July 1958 through 30 June 1959
Total	1,751

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

	1 July 1958 through 30 June 1959
Total	514

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

	1 July 1958 through 30 June 1959
On hand at beginning of period	241
Referred for review	[1] 1,759
Total	2,000
Reviewed	[2] 1,853
Pending at close of period	147
Total	2,000

[1] This figure includes 8 cases which were received for review pursuant to article 69 and referred to Boards of Review.
[2] There were 1,931 accused involved in this figure.

Of the 1931 accused whose cases were reviewed by Boards of Review pursuant to article 66, from 1 July 1958 through 30 June 1959, 75.2 percent requested representation by appellate defense counsel before the Boards of Review.

The records in the cases of 616 accused 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); this represents 31.9 percent of the number of accused whose cases were reviewed by Boards of Review during the period.

The Field Judiciary Division, created by DA GO 37, 13 November 1958, as a class II activity under the direct supervision and control of the Judge Advocate General was activated on 1 January 1959. By 1 November 1959, all 8 contemplated Judicial Areas and all 19 Circuits were fully operational with a total personnel of 31 officers and 1 warrant officer assigned. Although some minor adjustments in circuits have been dictated by a reduction in case loads in some areas, no major change in the judicial program is contemplated at this time. A preliminary study of the first 6 months of 1959 indicates that appellate reversals caused by law officer errors have been cut from a 1957 figure of 2½ percent to 0.7 percent.

The personnel field continues to be a problem area. During fiscal year 1959, 14 lawyers from civilian sources accepted Regular Army

commissions. Although this was the largest annual input from civilian sources for a number of years, the gain did not offset the loss of 28 career officers during the same period. Thus, the attrition of experienced officers continued. Considering only mandatory losses and assuming no improvement of the comparatively high fiscal year 1959 procurement rate, 208 (or one-third) of the Regular Army spaces will be vacant by 1 July 1964. In addition, under existing law, the Corps will lose 67 (or more than one-half) of its career reserve officers by the same date. In view of the loss of experienced personnel, it is most difficult for the Corps to maintain a proper career development program. The Corps has continued to conduct an extensive recruiting program in an effort to alleviate the personnel shortage. A recruiting film, entitled "The Most Rewarding Law," has been produced. It will be used in our Regular Army recruiting program. Nevertheless, unless the present trend can be reversed, by 1 July 1964 more than one-half of the Corps will consist of law school graduates who are satisfying their military obligation by serving short tours of duty as first lieutenants. If the Corps is to execute its mission, drastic and immediate action, including legislation, is necessary to create an incentive for lawyers to seek a career as judge advocates in the Army.

During the calendar year 1959, The Judge Advocate General's School, U.S. Army, provided resident instruction for 635 military lawyers and civilian attorneys employed by the Government. Two cycles of the 11-week basic course were completed during the year, and a third cycle began on 23 November. A total of 206 military lawyers attended these courses, including 6 officers from the Republic of Korea, 3 officers from Vietnam, 2 officers from the Philippines, and 1 officer from Free China.

The 22 members of the Seventh Advanced Class completed 35 weeks of resident study on 29 May. The Eighth Advanced Class, which began on 14 September 1959, consists of 23 Army judge advocates, 4 Navy legal specialists, 1 Marine officer, and 1 Burmese officer.

The revised program of instruction recognizes the importance of scholarly research and writing by placing greater emphasis on the preparation of a graduate-level thesis. These theses are reproduced and distributed to field jurisdictions, and many have been used as the basis of scholarly articles appearing in various legal periodicals.

In February 1959, 30 judge advocates of the active Army attended a 3-week course designed to provide advanced instruction in the duties and responsibilities of the law officer. During the first week of July seven judge advocates selected for duty as full-time law officers participated in a seminar concerning their new duties and recent trends in military justice.

In May and early June 1959, 70 judge advocates of the Army and Air National Guard attended a 2-week refresher course. Imme-

diately thereafter 46 judge advocates of the Army Reserve not on active duty attended a 2-week refresher course. These courses are conducted on a continuing basis to afford such reservists an opportunity to keep abreast of current developments in military law.

Nonresident training was provided in military justice and other military legal subjects to more than 2,000 reserve judge advocates. The School continued its support to the USAR School Program with distribution of instructional material to 82 judge advocate branch departments. These departments conducted 117 classes in connection with the Associate Judge Advocate Company and Advanced Officer Courses. Approximately 1,100 reservist lawyers were enrolled. During the school year 1958–59, nearly 8 tons of legal texts and material were shipped to the USAR School Reserve duty and active duty training sites and to more than 900 students enrolled in judge advocate correspondence courses.

A significant event during this period was the activation of units of the Judge Advocate General Service Organization under TOE 27–5000. These units have the mission of performing functions in excess of the capacities of organic judge advocate personnel of many units and of providing augmentation for variable strength organizations. Directives issued pursuant to the TOE provided for the activation in the Army Reserve of 12 judge advocate general detachments (two in each continental Army area) comprised of 216 teams to be staffed by 504 officers, 12 warrant officers, and 199 enlisted men. The TOE authorizes detachment headquarters, claims service, war crimes, general court-martial trial, legal assistance, and procurement law teams. Team training consists of 48 training assemblies during the Reserve duty training period concluded by a 15-day active duty for training period. The first active duty for training for these detachments was conducted at Fort Carson, Colo., and Fort Gordon, Ga., in the summer of 1959. Instruction was provided by representatives of The Judge Advocate General's Office and The Judge Advocate General's School. Fort Sheridan, Ill., has been designated as the active duty for training site for 1960.

The publication, *A Chronicle of Recent Developments in Military Law of Immediate Importance to Army Judge Advocates*, was superseded by the *Judge Advocate Legal Service.* The *Judge Advocate Legal Service* is a Department of the Army pamphlet distributed to all judge advocate officers on active duty, JAGC officers of the USAR, and National Guard judge advocates. Its purpose is to disseminate as rapidly as possible to active Army judge advocates new developments in military law and allied subjects as found in the decisions of the various military and civilian tribunals; administrative opinions of The Judge Advocate General, Comptroller General, and Commissioner of Internal Revenue, departmental policy letters; Army

regulations; and similar materials. It also serves as an important medium to keep reserve judge advocate personnel informed of new developments and supplements their inactive duty training in this regard, thereby eliminating the need for more than periodic revisions of nonresident instructional material.

The Judge Advocate General's School continued to publish the Military Law Review, a quarterly devoted to articles of concern and interest to judge advocates, both active and reserve. Recent issues have included contributions from many sources—distinguished civilians and foreign officers as well as members of the corps itself—and thus has made possible a valuable exchange of insights and a wide variety of subject matter.

The manuscript for the 1960 edition of the Cumulative Pocket Part to the Manual for Courts-Martial has been completed and approved and is currently at the printers. This edition of the Cumulative Pocket Part has been compiled and edited with emphasis on making it more useful as a source of information and guidance for personnel without legal training.

Thirty-six enlisted personnel were trained in the closed microphone system of court reporting. Through a cross-servicing arrangement with the United States Navy, this activity was transferred to the United States Naval School (Naval Justice), Newport, R.I., as of 1 November 1959.

George W. Hickman, Jr.
Major General, USA,
The Judge Advocate General.

Report

of

THE JUDGE ADVOCATE GENERAL

of

THE NAVY

January 1, 1959, to December 31, 1959

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

In 1958 it was suggested that the Code Committee report would be of greater value if it could reach the Armed Services Committees of the Congress shortly after the convening of each new session. To assist in accomplishing this purpose, the following report will reflect statistics which were collected at the close of the last fiscal year. The report itself, however, continues on the calendar year basis.

Courts-martial convened within the naval service charging servicemen with crimes of every nature—military and civil, misdemeanor and felony—numbered 46,703 during fiscal year 1959. General court-martial cases received by the Office of the Judge Advocate General for review totaled 1,064. Of this figure 864 were reviewed by Boards of Review under article 66, UCMJ. Special court-martial cases in which the sentence as approved included a bad conduct discharge and hence required review by a Board of Review under article 66, UCMJ, numbered 3,239. Less serious cases received by the Office of the Judge Advocate General for review under article 65(c) totaled 92. Over 42,000 non-BCD special courts-martial and summary courts-martial were reviewed other than in the Office of the Judge Advocate General.

There was a 32 percent reduction in the number of general court-martial cases and a 27 percent reduction in the number of special court-martial cases tried throughout the Navy and Marine Corps during fiscal year 1959. In contrast, there was a 10 percent decline in the number of summary court-martial cases tried during the same period. Numerous factors have combined to produce such unusual figures, especially unusual in light of recently released FBI statistics which show a great increase in juvenile crime.

One of the most important contributing influences in this reduction is the more effective naval leadership program instituted by the Secretary of the Navy in General Order 21 of 17 May 1958. This Order called for a revitalization of traditional naval leadership, with special emphasis on the morale aspects of leadership development. A current, continuing and intensive program to carry out General Order Number 21 now permeates the Navy. From the youngest petty officers to our most senior leaders, a new personal interest is thus being directed toward the young men in the Navy as individuals. Since the beginning of this revitalization of traditional naval leadership, unauthorized absence cases have been reduced by 17.3 percent and desertion cases by 30 percent.

In spite of an 18 percent reduction in the number of overall service-wide courts-martial, as compared to the prior fiscal year, a large number of serious felonies of violence were still tried by naval courts-martial. During a period of 6 months, from 1 January to 30 June 1959, more than two major felonies were committed each day by young men in the Navy. Many of these were crimes of violence. They included 11 cases of rape, murder, and manslaughter; 49 cases of burglary, housebreaking and unlawful entry; 29 cases involving the use of drugs and marijuana; and 57 cases of assault involving the use of dangerous weapons or the infliction of serious injuries. Notwithstanding these unfortunate statistics, there has been a decrease in major felonies from a corresponding period in the last fiscal year.

Stripping away military offenses through the exercise of good leadership, the results of the Navy-wide efforts to improve and speed-up military justice by Operation Tapecut, the Negotiated Plea, and The Post-Trial Interview have all helped cause a drastic reduction in prisoner confinement—a reduction which has saved defense manpower and tax dollars. Not only has there been a saving in the amounts of pay accruing to an offender from the date of pretrial confinement until forfeitures adjudged by a court-martial, but there has also been a curtailment in the loss of both manpower and monies associated with prisoner management and care.

Savings have also resulted from the "new look" at clemency procedures and their more active use by convening and supervisory authorities and by the Judge Advocate General. Post-trial interviews and a continuing emphasis on the importance of post-trial reports, especially where a punitive discharge has been a part of the sentence, have been found to be important to this clemency review. Because of these reports, which contain matter which does not appear in the record of trial and include the results of the post-trial interview, a better judgment of "restorability" has been possible and the "successes" of those restored to duty have been greater.

The Judge Advocate General, under the authority delegated to him by the Secretary of the Navy, pursuant to article 74(a), in considering 4,299 court-martial cases during the past fiscal year, has been able to take 204 mitigating actions which include the remitting of 14 punitive discharges, the suspending on probation of 94 punitive discharges, and the reducing of the period of confinement or forfeitures in 96 instances. Recent reports from the Retraining Command show that of their prisoners restored to duty during the first 10 months of fiscal year 1959 by the clemency action of the Judge Advocate General, 68 percent have already been evaluated as "successful."

Unfortunately, our present law specialist personnel shortage has prevented the Navy-wide adoption of the "post-trial" interview practice which has proved so eminently valuable and necessary to probation judgments. Thus, the "probation technique" in conjunction with

available effective naval leadership has not been fully exploited. How to best capture this potential of salvaging many young men who are now put out of the service and returned to their communities with a prison record, a punitive discharge or both, is under study. For the present, however, post-trial interviews are being conducted on a selected basis within the limits of the law specialist personnel resources.

Military justice, especially in the more serious cases, continues to demand a high percentage of the legal services of the law specialists within the Navy. Two hundred and eighty-two regular law specialists together with 183 active duty Reserve law specialists must perform the major part of the Navy's legal services which include matters pertaining to Administrative Law, Civil Law, International Law, and Litigation as well as the traditional Admiralty and Military Justice. With a marked increase in demand for legal advice in all areas, the limited numbers of law specialists available to meet the needs of the service has been a continuing problem. The problem can be understood with striking simplicity by comparing the total ceiling of 465 law specialists on active duty with the figure submitted in the last report the Judge Advocate General of the Army and the Judge Advocate General of the Air Force. The former reported 1,011 Judge Advocates on active duty, the latter reported 1,203 Judge Advocates on active duty.

For the foreseeable future the present demand for legal services by the Navy will continue at the same or a higher level. To meet this responsibility, young, able lawyers must be encouraged to enter upon a career in the Navy. Such encouragement, however, has not been possible. Vacancies in the regular list must occur before new career officers can be brought into the Navy. Present ceilings on law specialist numbers permitted only nine young lawyers to be integrated into the regular Navy during fiscal year 1959. This is an insignificant number for an acceptable career development program. The Navy continues to find its junior ranks of law specialists occupied by inexperienced legal talent—a talent which in the aggregate never becomes experienced because of the loss in the constant turnover of young lawyers who understandably reflect little enthusiasm in remaining on active duty as naval reserves with minimal opportunity for integration. The large numbers of reserves who serve the Navy's legal needs for but one full tour of duty is not only costly and inefficient but severely handicaps the rendering of adequate legal services. Continuation of low input into the regular law specialist group can, in the foreseeable future, cause a sudden deterioration in the Navy's law program. The major part of the Navy's present law specialists entered the service during World War II and will leave the service by normal retirement at approximately the same year. At that time there must be experienced lawyers available and ready

to assume their responsibilities if the Navy's legal needs are to be met.

During the period of this report the Navy Department has given extensive study to the need for career military lawyers. The personnel posture of the law specialist organization has been at issue. After a thorough consideration of the problem, the Navy Department has decided to recommend legislation to establish a JAG Corps for the Navy. As proposed, this bill will correct many of the deficiencies which have historically hampered the Office of the Judge Advocate General and prejudiced the quality of legal services available. A deteriorating personnel picture should improve with the enactment of this important legislation. In fact, anticipation of its enactment has already significantly improved the morale of the Navy law specialists.

Within the calendar year a number of "landmark" decisions have emanated from the U.S. Court of Military Appeals. The *Simpson* case held that regulations regarding automatic reduction upon conviction were illegal. (This case has no direct application to the Navy, but is important in that the present procedure of the Navy is now considered the only legal one.) The *Spann* case approved the present procedure used by the Navy in "gold seal" desertion cases. The *Samuels* case held that an investigating officer may not consider unsworn statements during an article 32, UCMJ, investigation. The *May* and *Cecil* cases held that "technical suspensions" created a probationary status where any portion of the sentence was ordered executed. The *Jemison* case held that the staff legal officer should clearly outline the duties of the convening authority in connection with his review. The *Bennie* case further extended the requirements of the staff legal officer's review, so that in addition to summarizing the evidence and stating his opinion on sufficiency, he must now give his reasons for that opinion. The *Brown* case held that a personal search of an accused may be directed by his commanding officer only if he has a reasonable belief that the accused has committed an offense. The *Ochoa* case held that general orders and regulations may be issued only at departmental level or by major commanders, that is, those occupying a substantial position in effectuating the mission of the armed forces. The *Wheeler* case held that article 3(a), UCMJ, which was ruled unconstitutional as to a discharged soldier by the U.S. Supreme Court, is constitutional as to an airman who was released to inactive duty and who voluntarily returned to active duty for trial. These decisions are indicative of the constant evolution and growth of military law which today, as in the past, requires much of the professional attention and time of the military lawyer.

With 65 percent of all activities having authorization for lawyers being manned by but one law specialist, it is evident that an insufficient number of lawyers is available to handle unpredictable surges in crime. To relieve unacceptable delays in courts-martial and to buttress the

available number of lawyers, the Navy Department established a traveling nucleus of legal talent (a JAG Task Force) to meet the changing demands for lawyers in military justice as these demands arose throughout the Navy. The period of this report has demonstrated the effectiveness of this administrative solution in helping relieve personnel shortages.

In the 1958 Report, it was noted that the Army law officer program, inaugurated on 1 January 1958 in "pilot areas" had demonstrated that specialization by law officers had resulted in a higher standard of performance, fewer errors, and less reversals by appellate tribunals. As a result of this experience in the Army, an informal survey was conducted in the Navy to determine what percentage of Navy cases contained errors committed by law officers. The result of this spot survey indicates that there is a need for a more comprehensive study of this area of concern and such a study is planned for the forthcoming year. If the results of this study warrant such action, the Judge Advocate General will consider recommending a program for Navy law officers similar to that inaugurated within the Army.

The U.S. Naval School (Naval Justice), staffed by law specialists and under the technical supervision of the Judge Advocate General, continues to afford an opportunity for the nonlawyers of the naval service to become familiar with the working requirements of the Uniform Code of Military Justice. With a staff of 15 officers and 8 enlisted instructors, the following was accomplished during 1959:

	Officers	*Enlisted*
Regular 7-week Course	639	371
Court Reporting Course		300
Senior Officer's Short Course	65	
Special Course Naval War College	94	
Reserve Training Course	144	
Special 7-week Course at Camp Pendleton	83	46
Limited Duty Officers	251	
Law reserve Seminars:		
New Orleans	72	
San Francisco	70	
Total	1,418	717

In addition to its normal teaching duties, the School continues to prepare *unofficial* changes to those sections of the Manual for Courts-Martial which have been modified, held invalid, or rendered inaccurate by Executive Orders, Federal court decisions or U.S. Court of Military Appeals decisions. As these changes are prepared they are published in the JAG Journal, an official publication of the Navy Department, and thereby become available to the entire naval service.

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

Report

of

THE JUDGE ADVOCATE GENERAL

of

THE AIR FORCE

January 1, 1959, to December 31, 1959

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

1. The proposed amendments to the Uniform Code of Military Justice were introduced in the first session of the 86th Congress as H.R. 3387 and it is expected that hearings on this bill will be held before the appropriate House Armed Services Subcommittee sometime during the second session of the 86th Congress.

2. In the case of *United States ex rel. Guagliardo* v. *McElroy et al.*, referred to in my report for calendar year 1958, the Supreme Court granted the Government's petition for writ of certiorari on 24 February 1959 (359 U.S. 904). The case was docketed in the Supreme Court as No. 21 October Term, 1959 and on 21 October 1959 the case was argued before the Court. For the purposes of briefing and argument, the *Guagliardo* case was joined with *Kinsella* v. *United States ex rel. Singleton*, No. 22; *Wilson* v. *Bohlender*, No. 37; and *Grisham* v. *Hagan*, No. 58, three cases arising out of Army courts-martial of civilians.

3. On 1 July 1958, there were 1,193 Judge Advocates on active duty with the United States Air Force; on 30 June 1959, there were 1,220 Judge Advocates on duty. During this period 195 Judge Advocates were gained while 168 were separated from active duty. Approximately one-half of the Judge Advocates on active duty with the Air Force Judge Advocate General's Department are young lawyers recently out of law school who possess a minimum of experience. If these young officers leave the Air Force they must be replaced by recent law school graduates who, in turn, serve their obligated period of service and return to civilian law practice. This continued personnel turnover is not conducive to the administration of the Uniform Code of Military Justice with the high degree of professional competence which Congress intended. This Department has taken many administrative steps to provide incentives for these young officers to become career Judge Advocates, among which is an extended forecast assignment system whereby an officer may know of his next assignment as early as one year prior to the date of that assignment. Even with such administrative improvements additional incentives which can only be provided by congressional action are essential.

4. In the field of Reserve activities, the concept of giving mobilization assignees within Headquarters United States Air Force "on the job" training has been continued and has resulted in considerable

assistance to the active duty force. Plans are now in preparation to extend the concept to all Judge Advocate offices in the various commands and stations within the Air Force. This plan, to be called RESERVE AUGMENTATION, will provide much needed assistance to active duty Staff Judge Advocates. Reservists, under this plan, will provide legal services for personnel in isolated units in the reservist's local area.

5. During fiscal year 1959 Major General Reginald C. Harmon, the Judge Advocate General, and Major General Albert M. Kuhfeld, the Assistant Judge Advocate General, made staff visits to legal offices in the United States and overseas as required by article 6(a) of the Uniform Code of Military Justice. Generals Harmon and Kuhfeld also attended various bar association meetings and spoke before numerous civic, professional, and military organizations.

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

	1 July 1958 to 30 June 1959
Total	*1,907

*684 by general court-martial; 1,223 by special court-martial.

The board of review modified findings of guilty in 45 of these cases. In addition, the following table shows the number of records of trial received in the Office of The Judge Advocate General for examination pursuant to article 69 during the same period:

	1 July 1958 to 30 June 1959
Total	177

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

		1 July 1958 to 30 June 1959
On hand at beginning of period	75	
Referred for review	1,907	
		1,982
Reviewed	1,888	
Pending at close of period	94	
		1,982

c. From 1 July 1958 to 30 June 1959, in those cases reviewed in the Office of The Judge Advocate General pursuant to article 66, 55 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 this period, 24.2 percent were forwarded to the United States Court of Military Appeals pursuant to the three subdivisions of the Uniform Code of Military Justice, article 67(b). Of the total cases

forwarded, all except three were based upon petitions of the accused for grant of review by the Court of Military Appeals. Three cases during the period were certified by The Judge Advocate General. Petitions were granted by the Court of Military Appeals during the period in 12.2 percent of the cases which were petitioned, or 0.3 percent of the total number of cases reviewed by the boards of review.

e. During the period of this report, there were 24,035 courts-martial convened in the Air Force.

7. At the close of the period, there were 82 commands in the Air Force exercising general court-martial jurisdiction.

8. As in previous years the office of The Judge Advocate General supervised and arranged for the publication of decisions of the United States Court of Military Appeals and selected decisions of the boards of review of all the services in the Court-Martial Reports. It also performed the same service with regard to publishing legal opinions of the Armed Services as well as the opinions of the Army and Air Force Exchange Service in the Digest of Opinions. The Military Justice Course offered by the Extension Course Institute of the Air University was replaced with a current edition prepared in the Office of The Judge Advocate General. A Military Justice Course was also prepared for use in the Reserve Officer Training Program of Continental Air Command. Air Force Manual 110–8, Military Justice Guide, and Air Force Manual 110–6, Legal Research Guide, both of which are designed to serve as desk references, were prepared during the year. In addition, a complete revision of Air Force Manual 110–5, Court-Martial Instructions Guide, was prepared for use of law officers. In March of the year, the Office of The Judge Advocate General introduced a bimonthly publication, the JAG Bulletin, resembling the style of law reviews and which is designed to afford a media for discussion of current legal problems of interest to service and civilian lawyers alike. Thus far, five issues have been published. The birth of this publication necessitated the renaming of a former publication of the same name. Reference is made to the Air Force JAG Reporter which was given that name during the year. Twenty-two issues of the Air Force JAG Reporter published throughout the year continued to furnish digests of current United States Court of Military Appeals and Air Force board of review decisions, together with legal opinions and other subjects of interest to judge advocates.

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

Report

of

THE GENERAL COUNSEL

of

THE DEPARTMENT OF THE TREASURY

(UNITED STATES COAST GUARD)

January 1, 1959, to December 31, 1959

REPORT OF THE GENERAL COUNSEL OF THE TREASURY DEPARTMENT

UNITED STATES COAST GUARD

This report of the General Counsel of the Treasury Department is submitted pursuant to the mandate of article 67(g) of the Uniform Code of Military Justice, 10 U.S.C. 867(g). The report represents figures for the fiscal year ending June 30, 1959, instead of for the calendar year in response to the suggestion of the Code Committee contained in the last annual report.

The following table shows the type and number of Coast Guard court-martial cases as determined by the number of trial records received for filing during the period covered by this report:

General Courts-Martial	3
Special Courts-Martial	187
Summary Courts-Martial	643
Total	833

The above total compares with the average number of 831 courts per year for the calendar years 1954–58.

The number of cases docketed with the Treasury Department Board of Review during the period of this report was 53 involving 55 defendants. Appellate counsel appeared in 23 of these cases. In 4 cases, the accused petitioned the United States Court of Military Appeals to grant review of the decision of the Board of Review. The petitions were denied in each instance. A fifth case, *United States* v. *Braud*, was sent to the Court of Military Appeals by order of the General Counsel for review pursuant to article 67(b)(2), Uniform Code of Military Justice. The Court's decision is pending in this case.

It is noted that of the 53 cases reviewed by the Board of Review, over 80 percent were guilty plea cases. Nevertheless, as in previous years, the Board found that remedial action to set aside legally insufficient statements of offenses and to modify sentences was as necessary in the uncontested cases as in those which were contested. Board action affected both findings and sentence in four cases, the findings alone in two cases, and the sentence alone in nine cases. The Board set aside seven punitive discharges, it recommended probation in one case which the General Counsel granted; and following the Court

of Military Appeals decision in *United States* v. *Cecil*, it modified what the Court had declared to be illegal suspension actions so as to provide for the conditional remission of three additional punitive discharges.

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WM. S. FULTON