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, 1962, to December 31, 1962

ANNUAL REPORT

SUBMITTED TO THE

COMMITTEES ON ARMED SERVICES

of the

SENATE AND OF THE

HOUSE OF REPRESENTATIVES

and to the

SECRETARY OF DEFENSE AND SECRETARY OF THE TREASURY

and the

SECRETARIES OF THE DEPARTMENTS OF THE

ARMY, NAVY, AND AIR FORCE

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JOINT REPORT

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

The Chief Judge and the Judges of the United States Court of Military Appeals, The Judge Advocates General of the Army, Navy, and Air Force, and the General Counsel of the Department of the Treasury, hereinafter referred to as the Code Committee, have met and conferred at the call of the Chief Judge several times during the period of this report. These conferences included a full consideration of legislative amendments to the Uniform Code of Military Justice consistent with the policy and purpose of this Committee.

Because of the press of legislative business in the Congress, it had been determined that the so-called Omnibus Bill, discussed in our reports for the years 1959 and 1961, which encompasses detailed legislative changes to the Uniform Code of Military Justice, could not be considered by the Congress in that form. Consonant with the suggestion made to the Code Committee that short individual bills embodying the legislative changes deemed of primary importance to the administration of justice be submitted for the consideration of the Congress, individual bills have been drafted and serially lettered for reference purposes. Each of these proposals deals essentially with a single aspect of the amendments this Committee has previously recommended.

Two of these legislative proposals were enacted by the Eighty-seventh Congress. Public Law 87–385, which proscribes the making, drawing, or uttering of checks, drafts, or orders without sufficient funds, became an effective part of the Code as Article 123a, on March 1, 1962. Public Law 87–648, which provides increased authority

to commanders to impose nonjudicial punishment, was approved by the President on September 7, 1962, and will supersede the former Article 15 of the Code on February 1, 1963. An implementing Executive order has been prepared for submission to the President.

The bills, lettered "B", "D", and "F", have not yet been considered by the Congress. Drafts of each, embodying the substance of this Committee's recommendations, together with detailed statements of purpose and analyses, are attached as Exhibits A through C to this report. Very brief summaries appear below.

The "B" bill provides for single-officer general and special courts-martial, and increased authority of the law officer and the president of a special court-martial. The primary purpose of this bill is to establish courts in which an accused person may, subject to appropriate safeguards, waive his hearing before members of the court, and be tried by the law officer alone. This procedure, comparable to that provided in the Federal courts by the Federal Rules of Criminal Procedure, will both speed and improve the administration of justice. The bill includes the procedural changes necessary to the functioning of such courts, and also eliminates the present anomalous situation in which the law officer's rulings on certain questions of law may be overturned by the legally untrained members of the court.

The "D" bill permits the simplification of court-martial trials by providing for the holding of pretrial sessions by a law officer, before the members are assembled, to consider and dispose of interlocutory questions and other procedural matters. Pretrial disposition of motions raising defenses and objections in the Federal criminal courts is authorized by the Federal Rules of Criminal Procedure. By adopting a similar provision for courts-martial, the continuity of the proceedings before the court members will be improved. A concomitant saving of time and manpower will result, as the members will no longer be required to stand by while questions for resolution solely by the law officer are litigated. The bill includes the necessary technical amendments to clarify the status of the law officer in such proceedings, and related administrative provisions.

The "F" bill provides authority for convening authorities to order the forfeiture and confinement portions of certain sentences into execution upon approval, and clarification of the lesser punishments included in a death sentence. Under the present law, many prisoners complete service of confinement before their cases have been finally reviewed. As such a prisoner, while in confinement, is not subject to the same treatment as a sentenced prisoner, the administration of confinement facilities is unduly complicated. In some instances, complex administrative problems and loss of morale have resulted. Consequently, the proposed legislation provides that at the time he approves a sentence, a convening authority may order executed all

parts of the sentence except that portion involving punitive separation. The bill will also eliminate an anomaly of the present law by permitting the imprisonment and forfeiture of pay inherent in a death sentence to be made effective when the sentence is approved by the convening authority.

The proposed legislation set forth in Exhibits A, B, and C is within the spirit of the Uniform Code of Military Justice. Enactment thereof would be most beneficial to the sound administration of military justice and is recommended. However, Judge Ferguson has strong reservations concerning the desirability of some aspects of the foregoing legislation. Generally, these involve:

a. The system of trying an accused before a law officer alone should not be instituted unless the Army's field judiciary system is made statutory and extended to all the Armed Forces. Otherwise, the local appointment of any certified law officer will revive the dangers occurring under the law member system of the Articles of War. Single-officer courts should also be required to make written findings of fact and law in support of any finding of guilty, in order to provide an appropriate basis for appellate review. Finally, neither consent by the convening authority nor identification of the law officer to the accused in advance should be made conditions of his election to be tried before a single-officer court. These considerations detract from the law officer's judicial stature and will lead inevitably to bargaining between an accused and a convening authority over the reference of his case to a particular judge.

b. While Judge Ferguson favors the institution of pretrial hearings before the law officer in general courts-martial, they should be expressly limited by Congress in scope to the comparable constitutional practice in the United States district courts under the Federal Rules of Criminal Procedure, with the law officer being afforded the full stature and responsibility of a judicial officer.

c. Congress should retain the present system of executing sentences. Most of the delay in appellate processes is attributable to the armed services rather than the accused, who is also denied the remedy of bail. Moreover, there has been no demonstration of complications in the present administration of confinement systems which justify execution of a sentence despite the fact that the case may later be reversed or the nature of the punishment completely altered at appellate levels. Finally, it is contrary to prior experience in the administration of military justice to require an accused to undergo the rigors of the adjudged sentence and thus to eliminate any real relief to him in the event of reversal. This is a matter which was fully considered by the Congress when the Code was enacted, and the system now in effect reflects the best

balance between the needs of military discipline and the rights of a military accused.

d. A better system of authentication of records in the absence of the law officer should be devised, as the provision for the trial counsel to act in this capacity permits one of the parties to the litigation to set the record. Action should also be taken to provide the accused with a statutory right to examine the record on due notice and to endorse any objection thereto on the authentication sheet.

e. Opportunity should be taken at this time to abolish the practice of having the law officer confer in private with the court members on the form of their verdict. The procedure is unnecessary and has led in the past to reversal on frequent occasions. There seems to be no reason why these proceedings cannot take place in open court and in the presence of the accused.

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

Respectfully submitted,

ROBERT E. QUINN,
Chief Judge.

HOMER FERGUSON,
Judge.

PAUL J. KILDAY,
Judge.

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

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

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

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

EXHIBIT A

SECTIONAL ANALYSIS
of a bill ["B"]

To amend chapter 47 (Uniform Code of Military Justice) of title 10, United States Code, by creating single-officer general and special courts-martial, providing for law officers on special courts-martial, and for other purposes.

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

Section 1(2) amends article 16 to provide that a general or special court-martial shall consist of only a law officer if the accused, before the court is convened, so requests in writing and the convening authority consents thereto. However, before he makes such a request, the accused is entitled to know the identity of the law officer and to have the advice of counsel. Although such a procedure has not heretofore been available in any of the armed forces, an analogous method of disposition of criminal cases is provided in the Federal courts by Rule 23 of the Federal Rules of Criminal Procedure, which provides that:

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

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

Article 16 is further amended by providing for a special court-martial consisting of a law officer and not less than three members. The special court-martial with a law officer and members is designed primarily for the trial of cases involving factual and legal problems

which might be considered too difficult for a legally untrained special court-martial president to handle.

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

Section 1(4) amends subchapter V by indicating in the analysis that law officers may be detailed to special as well as to general courts-martial.

Section 1(5) amends article 26(a) to provide that a commissioned officer acting as a single-officer general court-martial must have the qualifications generally specified for a law officer and, in addition, must be certified to be qualified for duty as a single-officer general court-martial by The Judge Advocate General.

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

Section 1(6) amends article 29 by specifically excepting from the operation of subsections (b) and (c) single-officer general and special courts-martial.

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

Section 1(7) amends article 38 by providing in subsection (b) that, if the accused who has individual counsel does not desire that detailed counsel act in his behalf as associate counsel, detailed counsel shall be excused by the law officer instead of by the president when the

trial is by a court-martial which includes, or may consist only of, a law officer. This change is made necessary by the provisions in this bill for single-officer courts-martial.

Section 1(8) amends article 39 to provide that the law officer of a special court-martial as well as the law officer of a general court-martial may be requested to appear before the court to put the findings in proper form.

Section 1(9) amends article 41(a) by specifically providing that the law officer of a special court-martial may be challenged for cause. Further, article 41(a) is amended to provide that when a court-martial includes a law officer, he, rather than the members, shall determine the relevancy and validity of challenges. The effect of this amendment is to conform procedures before courts-martial to procedures in the district courts in which the trial judge rules upon a challenge for cause against a juror.

Section 1(10) amends article 51 to reflect the amendment to article 41 which provides that, when a court-martial includes a law officer, he is the person who rules upon all challenges for cause, and to include specifically in subsection (c) the duty of the law officer of a special court-martial to instruct members of the court. This section further amends article 51 to provide that rulings of the law officer of a special, as well as a general, court-martial on all questions of law and all interlocutory questions other than the accused's mental responsibility are final and that rulings of the president of a special court-martial without a law officer on questions of law other than a motion for a finding of not guilty are also final. The power given to the law officer by this amendment is in accordance with Federal practice, and the power given to the president of a special court-martial to rule finally on questions of law is implicit in the decision of the United States Court of Military Appeals in *United States* v. *Bridges* (12 USCMA 96, 30 CMR 96).

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

Section 1(11) amends article 54(a) to provide for authentication of a record of trial by general court-martial by the signature of the law officer. Under the present law, the record must be authenticated by the signature of both the law officer and the president or, if they are unavailable for one of the reasons specified in the article, by two members. However, neither the president nor other members are present during the many hearings held out of their presence even under present practice, and thus actually are unable to certify to the correctness of a transcription of those proceedings. The section further provides that if the law officer cannot, for one of the specified reasons,

authenticate the record, it shall be authenticated by the signature of the trial counsel or a member. Certification by a member, if the court has members, in this latter case may be a practical necessity despite the absence of the member from hearings conducted by the law officer. If the court has no members, then the record would have to be authenticated by the law officer or, if he was unable to do so, the trial counsel.

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

"B"

A BILL

To amend chapter 47 (Uniform Code of Military Justice) of title 10, United States Code, by creating single-officer general and special courts-martial, providing for law officers on special courts-martial, and for other purposes.

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

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

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

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

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

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

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

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

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

"(A) not less than three members; or

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

"(C) only a law officer, under the same conditions as those prescribed in clause (1)(B); and

"(3) summary courts-martial, consisting of one commissioned officer."

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

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

(4) Subchapter V is amended by striking out the following item in the analysis:

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

and inserting the following item in place thereof:

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

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

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

"(a) The authority convening a general court-martial shall, and the authority convening a special court-martial may, detail as law officer thereof a

commissioned officer who is a member of the bar of a Federal court or of the highest court of a State and who is certified to be qualified for such duty by the Judge Advocate General of the armed force of which he is a member. A commissioned officer who is certified to be qualified for duty as a law officer of a general court-martial is also qualified for duty as a law officer of a single-officer or other special court-martial. A commissioned officer who is certified to be qualified for duty as a law officer of a special court-martial is qualified for duty as a law officer of any kind of special court-martial. However, no person may act as a law officer of a single-officer general court-martial unless he is specially certified to be qualified for that duty. No person is eligible to act as law officer in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case."

(6) Section 829 is amended—

(A) by inserting the words ", other than a single-officer general court-martial," after the word "court-martial" in the first sentence of subsection (b);

(B) by inserting the words ", other than a single-officer special court-martial," after the word "court-martial" in the first sentence, and inserting the words "the law officer, if any," after the words "presence of" in the last sentence of subsection (c);

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

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

(7) Section 838(b) (article 38(b)) is amended by striking out the words "president of the court" in the last sentence and inserting the words "law officer or by the president of a court-martial without a law officer" in place thereof.

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

"§ 839. *Art. 39 Sessions*

"When the members of a court-martial deliberate or vote, only the members may be present. After the members of a court-martial which includes a law officer and members have finally voted on the findings, the president of the court may request the law officer and

the reporter, if any, to appear before the members to put the findings in proper form, and these proceedings shall be on the record. All other proceedings, including any other consultation of the members of the court with counsel or the law officer, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and, in cases in which a law officer has been detailed to the court, the law officer."

(9) Section 841(a) (article 41(a)) is amended—

(A) by amending the first sentence to read as follows:

"The law officer and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court."; and

(B) by striking out the word "court" in the second sentence and inserting the words "law officer or, if none, the court" in place thereof.

(10) Section 851 (article 51) is amended—

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

"Voting by members of a general or special court-martial on the findings and on the sentence, and by members of a court-martial without a law officer

upon questions of challenge, shall be by secret written ballot.";

(B) by amending the first two sentences of subsection (b) to read as follows:

"The law officer and, except for questions of challenge, the president of a court-martial without a law officer shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the law officer upon any question of law or any interlocutory question other than the mental responsibility of the accused, or by the president of a court-martial without a law officer upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court.";

(C) by striking out the words "of a general court-martial and the president of a special court-martial shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court" in the first sentence of subsection (c) and inserting the words "and the president of a court-martial without a law officer shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them" in place thereof; and

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

"(d) Subsections (a), (b), and (c) of this section do not apply to a single-officer court-martial. An officer who is detailed as a single-officer court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence."

(11) Section 854(a) (article 54(a)) is amended to read as follows:

"(a) Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the law officer. If the record cannot be authenticated by the law officer by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or a member."

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

EXHIBIT B

SECTIONAL ANALYSIS

of a bill ["D"]

To amend chapter 47 (Uniform Code of Military Justice) of title 10, United States Code, by providing for certain pre-trial proceedings and other procedural changes, and for other purposes.

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

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

Article 25 is further amended by substituting the word "assembled" for the word "convened" in subsection (c)(1). The term "convened" as used in the present subsection (c)(1) has been considered to be a term of art which has reference to that time in the court-martial proceedings when the members, the law officer, and counsel are sworn. The amendment to article 42 contemplates that, if permitted by regulations of the Secretary concerned, the above personnel will be sworn at some time before their gathering in the courtroom. Accordingly, the term "convened" as used in the above sense might have no application under the amended procedure. Furthermore,

the term "convened" is used elsewhere in the Code to refer to the appointment of courts-martial, and consequently has caused some confusion in this respect. This and other amendments in this bill will obviate this confusion of terms by using the word "assembled" to refer to the gathering as distinguished from the appointment of the court.

Section 1(2) amends article 26(b) to reflect the amendment to article 39.

Section 1(3) amends article 29 to provide that no member of a general or special court-martial may be absent or excused, except for the reasons specified, after the court has been assembled for the trial of the accused. This section further amends article 29 by deleting any reference in subsections (b) and (c) to the oaths of the members so as to make it clear that it is not required that new members take their oaths at the trial. The amendment to article 42 requires that the oath must be taken at some time before a member may perform his duties. The words "at the trial" have been added in the last sentence of subsections (b) and (c) so that only that testimony which has been given before the assembled court must be read to a court to which new members have been detailed.

Section 1(4) amends article 38 by providing in subsection (b) that, if the accused who has individual counsel does not desire that detailed counsel act in his behalf as associate counsel, detailed counsel shall be excused by the law officer instead of by the president when the trial is by a court-martial which includes a law officer. This change is made necessary by the amendment to article 39 which permits the law officer to call the court into session without the presence of the members. In the absence of the amendment to article 39(b), the law officer would not be empowered to excuse counsel at the session.

Section 1(5) amends article 39 to provide that the law officer of a court composed of a law officer and members may call the court into session without the attendance of members for the purpose of disposing of interlocutory motions raising defenses and objections, ruling upon other matters that may legally be ruled upon by the law officer, holding the arraignment and receiving the pleas of the accused if permitted by regulations of the Secretary concerned, and performing other procedural functions which do not require the presence of court members. The effect of the amendment, generally, is to conform military criminal procedure with the rules of criminal procedure applicable in the United States district courts and otherwise to give statutory sanction to pre-trial and other hearings without the presence of the members concerning those matters which are amenable to disposition on either a tentative or final basis by the law officer. The pre-trial disposition of motions raising defenses and objections is in accordance with Rule 12 of the Federal Rules of Criminal Procedure. Other procedural and interlocutory matters will be presented for appropri-

ate rulings by the law officer at pre-trial sessions at his discretion, although he may not abuse that discretion by violating or impairing in these proceedings any substantial right of the accused. This is in accordance with the principles expressed by the United States Court of Military Appeals in *United States* v. *Mullican*, 7 USCMA 208, 21 CMR 334.

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

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

Section 1(6) amends article 40 by making it clear that when the court includes a law officer that official will decide whether or not a continuance will be granted. This has actually been the practice under the Code.

Section 1(7) amends article 41(a) to provide that when a court-martial includes a law officer, he, rather than the members, shall determine the relevancy and validity of challenges. The effect of this amendment is to conform procedures before courts-martial to procedures in the district courts in which the trial judge rules upon a challenge for cause against a juror.

Section 1(8) amends article 42(a) by omitting the requirement that the oath given to court-martial personnel be taken in the presence

of the accused and further by providing that the form of the oath, the time and place of its taking, the manner of recording thereof, and whether the oath shall be taken for all cases or for a particular case shall be as prescribed by regulations of the Secretary concerned. The amendment also contemplates that Secretarial regulations may permit the administration of an oath to qualified legal personnel on a one-time basis as in the case of legal practitioners before civilian courts.

Section 1(9) amends article 45 to allow, if permitted by regulations of the Secretary concerned and if the offense is not one for which the death penalty may be adjudged, the entry of findings of guilty upon acceptance of a plea of guilty without the necessity of voting on the findings. At common law and under the practice in the United States district courts, the court may enter judgment upon a plea of guilty without a formal finding of guilty and the record of judgment entered on such a plea constitutes a judicial determination of guilt. The amendment is intended to conform military criminal procedure with that in civilian jurisdictions, and to delete from military practice the merely ritualistic formality of requiring the assembled court to vote on the findings. The section also deletes reference in subsection (a) to "arraignment before a court-martial" to conform with the changed article 39.

Section 1(10) amends article 49(a) to provide that, when a case is being heard, the law officer or court-martial without a law officer is the appropriate authority to forbid the taking of a deposition for good cause. The intent and purpose of this change is to vest in the law officer, or in the court-martial if it does not include a law officer, the authority to rule on this interlocutory matter after trial has begun.

Section 1(11) amends article 51 to reflect the amendment to article 41 which provides that, when a court-martial includes a law officer, he is the person who rules upon all challenges for cause, and to state specifically in subsection (c) that instructions are given to the *members* of the court. This section further amends article 51 to provide that rulings of the law officer on all questions of law and all interlocutory questions other than the accused's mental responsibility are final and that rulings of the president of a court-martial without a law officer on questions of law other than a motion for a finding of not guilty are also final. The power given to the law officer by this amendment is in accordance with Federal practice, and the power given to the president of a special court-martial to rule finally on questions of law is implicit in the decision of the United States Court of Military Appeals in *United States* v. *Bridges*, 12 USCMA 96, 30 CMR 96.

Section 1(12) amends article 52 to conform with the amendment to article 45 by inserting a provision in subsection (a)(2) whereby

findings of guilty may be entered against a person upon his plea of guilty without the formality of a vote, if permitted by regulations of the Secretary concerned and if the offense is not one for which the death penalty may be adjudged.

Section 1(13) amends article 54(a) to provide for authentication of a record of trial by general court-martial by the signature of the law officer. Under the present law, the record must be authenticated by the signature of both the law officer and the president or, if they are unavailable for one of the reasons specified in the article, by two members. However, neither the president nor other members are present during the many hearings held out of their presence even under the present practice, and thus actually are unable to certify to the correctness of a transcription of those proceedings. The amendment further provides that if the law officer cannot, for one of the specified reasons, authenticate the record, it shall be authenticated by the signature of the trial counsel or a member. Certification by a member in this latter case may be a practical necessity despite his absence from hearings conducted by the law officer. This section further amends article 54 by permitting the president to provide for summarized records of trial in general court-martial cases resulting in acquittal of all charges and specifications or, if they do not affect a general or flag officer, in sentences not involving a discharge and not in excess of a sentence that can otherwise be adjudged by special courts-martial. This amendment corrects an inconsistency which has heretofore existed, since the use of a summarized record of trial is now permitted in special court-martial cases if the sentence does not extend to a bad-conduct discharge. The reasons which justify the employment of summarized records of trial in special court-martial cases are equally applicable to the class of general court-martial cases affected by this amendment, that is, the time, effort, and expense of preparing a verbatim transcript is not justified. It is recognized, of course, that the general court-martial case will have to be fully reported in the first instance, and the amendment deals only with preparation of the record after trial.

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

"D"

A BILL

To amend chapter 47 (Uniform Code of Military Justice) of title 10, United States Code, by providing for certain pre-trial proceedings and other procedural changes, and for other purposes.

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

(1) Section 825(c)(1) is amended—

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

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

(2) Section 826(b) (article 26(b)) is amended by striking out the figures "839" and "39" and inserting the figures "839(b)" and "39(b)", respectively, in place thereof.

(3) Section 829 is amended—

(A) by striking out the words "accused has been arraigned" in subsection (a) and inserting the words "court has been assembled for the trial of the accused" in place thereof;

(B) by amending the last sentence of subsection (b) to read as follows:

"The trial may proceed with the new members present after the recorded testimony of each witness previously examined at the trial has been read to the court in the presence of the law officer, the accused, and counsel."; and

(C) by amending the last sentence of subsection (c) to read as follows:

"The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the testimony of witnesses previously examined at the trial or a stipulation thereof is read to the court in the presence of the accused and counsel."

(4) Section 838(b) (article 38(b)) is amended by striking out the words "president of the court" in the last sentence and inserting the words "law officer or by the president of a court-martial without a law officer" in place thereof.

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

"§ 839. *Art. 39. Sessions*

"(a) At any time after the service of charges which have been referred for trial to a court-martial composed of a law officer and members, the law officer may call the court into session without the presence of the members for the purpose of—

"(1) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

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

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

"(4) performing any other procedural function which may be performed by the law officer under this chapter or under rules prescribed pursuant to section 836 of this title (article 36)

and which does not require the presence of the members of the court.

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

"(b) When the members of a court-martial deliberate or vote, only the members may be present. After the members of a court-martial which includes a law officer and members have finally voted on the findings, the president of the court may request the law officer and the reporter, if any, to appear before the members to put the findings in proper form, and these proceedings shall be on the record. All other proceedings, including any other consultation of the members of the court with counsel or the law officer, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and, in cases in which a law officer has been detailed to the court, the law officer."

(6) Section 840 (article 40) is amended to read as follows:

"§ 840. *Art. 40. Continuances*

"The law officer or a court-martial without a law officer may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just."

(7) Section 841(a) (article 41(a)) is amended by striking out the word "court" in the second sentence and inserting the words "law officer or, if none, the court" in place thereof.

(8) Section 842(a) (article 42(a)) is amended to read as follows:

"(a) Before performing their respective duties, law officers, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulations of the Secretary concerned. These regulations may provide that an oath to perform faithfully duties as a law officer, trial counsel, assistant trial counsel, defense counsel, or assistant defense counsel may be taken at any time by any judge advocate, law specialist, or other person certified to be qualified or competent for the duty, and if such an oath is taken it need not again be taken at the time the judge advocate, law specialist, or other person is detailed to that duty."

(9) Section 845 (article 45) is amended—

(A) by striking out the words "arraigned before a court-martial" in subsection (a) and inserting the words "after arraignment" in place thereof; and

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

"(b) A plea of guilty by the accused may not be received to any charge or specification alleging an offense for which the death penalty may be adjudged. With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the law officer or by a court-martial without a law officer, a finding of guilty of the charge or specification may, if permitted by regulations of the Secretary concerned, be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty."

(10) Section 849(a) (article 49(a)) is amended by inserting after the word "unless" the words "the law officer or court-martial without a law officer hearing the case or, if the case is not being heard,".

(11) Section 851 (article 51) is amended—

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

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

(B) by amending the first two sentences of subsection (b) to read as follows:

"The law officer and, except for questions of challenge, the president of a court-martial without a law officer shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the law officer upon any question of law or any interlocutory question other than the mental responsibility of the accused, or by the president of a court-martial without a law officer upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court."; and

(C) by striking out the words "of a general court-martial and the president of a special court-martial shall, in the presence of the accused and

counsel, instruct the court as to the elements of the offense and charge the court" in the first sentence of subsection (c) and inserting the words "and the president of a court-martial without a law officer shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them" in place thereof.

(12) Section 852 (article 52) is amended by inserting the words "as provided in section 845(b) of this title (article 45(b)) or" after the word "except" in subsection (a)(2).

(13) Section 854(a) (article 54(a)) is amended to read as follows:

"(a) Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the law officer. If the record cannot be authenticated by the law officer by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or a member. If the proceedings have resulted in an acquittal of all charges and specifications or, if not affecting a general or flag

officer, in a sentence not including discharge and not in excess of that which may otherwise be adjudged by a special court-martial, the record shall contain such matters as may be prescribed by regulations of the President."

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

EXHIBIT C

SECTIONAL ANALYSIS OF A BILL ["F"]

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

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

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

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

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

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

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

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

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

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

"F"

A BILL

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

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

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

"856. 56. Maximum limits."

and inserting the following item in place thereof:

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

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

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

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

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

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

"§ 857. *Art. 57. Effective date of sentences*

"(a) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended shall be excluded in computing the term of confinement.

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

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

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

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

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

"That part of a sentence providing for the dismissal, unsuspended, of a commissioned officer

(other than a general or flag officer), 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. He shall approve the dismissal or such commuted form thereof as he sees fit and may suspend the execution of the dismissal as approved by him.";

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

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

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

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

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

EXHIBIT D

679016—63——4

Court-Martial Cases

Army	72,025
Navy	45,529
Air Force	15,429
Coast Guard	835
Total	133,818

Cases Reviewed by Boards of Review

Army	1,418
Navy	3,212
Air Force	934
Coast Guard	27
Total	5,591

Cases Docketed With U.S. Court of Military Appeals

Army	438
Navy	329
Air Force	197
Coast Guard	1
Total	965

For the Period

July 1, 1961, to June 30, 1962

Report

of the

UNITED STATES COURT OF MILITARY APPEALS

January 1, 1962 to December 31, 1962

UNITED STATES COURT OF MILITARY APPEALS

Pursuant to Article 67(*g*), Uniform Code of Military Justice, 10 U.S.C. 867(*g*), the United States Court of Military Appeals submits the following annual report to Congress for the period January 1, 1962, to December 31, 1962.

I

During the fiscal year 1962 the Court reviewed 965 cases. 948 were submitted to the Court upon petition of the accused filed in accordance with Article 67(*b*)(*3*), 17 were certified to the Court by the various Judge Advocates General in accordance with Article 67(*b*)(*2*), and no mandatory cases were filed under Article 67(*b*)(*1*) of the Uniform Code of Military Justice.

II

Chief Judge Robert E. Quinn and Associate Judges Homer Ferguson and Paul J. Kilday continued their practice of making appearances before bar associations, civic organizations, service schools, and similar organizations to acquaint them with the existence of the Code and of the Court. In addition, in August 1962 Chief Judge Quinn visited military installations in the State of Hawaii, meeting and discussing the progress of military justice with Admiral H. D. Felt, USN, CINCPAC, Lieutenant General C. A. Roberts, USMC, CG FMFPAC, Admiral J. H. Sides, USN, CINCPACFLT, General J. F. Collins, USA, CINCUSARPAC, Major General C. R. Hutchison, USA, CG USARHAW, Major General E. F. Easterbrook, USA, CG, 25th Inf. Div., General E. O'Donnell, Jr., USAF, CINCPACAF, Brigadier General J. A. Rouse, USAF, COMPACAF Base Command, and Admiral C. A. Buchanan, USN, Commandant, 14th Naval District. In September 1962, Associate Judge Ferguson visited various military installations in Great Britain and Germany.

III

On February 21, 1962, Chief Judge Quinn and Associate Judges Ferguson and Kilday testified before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate. The Subcommittee under the Chairmanship of Senator Sam J. Ervin, Jr. (North Carolina) held extensive hearings, pursuant to S. Res. 260, 87th Congress, 2d Session, on the constitutional rights of military personnel in the administration of military justice. Correspondence between Senator Ervin and Chief Judge Quinn regarding the Court's cooperation in the study dealing with the rights of military personnel in courts-martial and discharge procedures is set out as follows:

UNITED STATES SENATE
Committee on the Judiciary
Subcommittee on Constitutional Rights
(Pursuant to S. Res. 53, 87th Congress)
September 15, 1961

Honorable Robert E. Quinn
Chief Judge
United States Court of Military Appeals
5th and E Streets, N.W.
Washington, D.C.

Dear Judge Quinn:

The Senate Subcommittee on Constitutional Rights has been considering the desirability of a study and possibly later some hearings concerning the protection of the constitutional rights of service personnel. There are several reasons for our interest in this field at the present time. First, the current increase in military personnel signifies that the rights of service personnel will have great importance to an evergrowing number of American citizens. Secondly, there seems today to be an enhanced recognition of the constitutional rights of the serviceman—including such recognition in the opinions of your Court. Thirdly, we have become aware of some recent Court of Claims decisions suggesting that some of the protections of the Uniform Code of Military Justice, which in some instances parallel protections furnished by the Bill of Rights, have been circumvented through the use of administrative procedures.

Through your judicial opinions, as well as through certain articles by you in legal periodicals, we have been made aware of your strong view that the serviceman is entitled to constitutional rights and of your efforts to safeguard such rights. Also, we have been referred to legislative hearings wherein you have indicated your concern about the use of administrative procedures to bypass trials by court-martial. Therefore, we thought it appropriate to request an expression of views from you as to the desirability of any inquiry by this Subcommittee at the present time in regard to the constitutional rights of service personnel. We would also appreciate your comments with respect to the constitutional rights of service personnel and especially with reference to the administrative discharge problem (including perhaps copies of statements you have made on the subject.)

In the event the Subcommittee should go further in its study of this field, we will seek from you a more detailed expression of your views. However, at the present time, a preliminary statement of your views would be exceedingly helpful to us.

With all kind wishes, I am

Sincerely yours,
[s] Sam J. Ervin, Jr.
SAM J. ERVIN, JR.
Chairman

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UNITED STATES COURT OF MILITARY APPEALS
WASHINGTON 25, D.C.

September 25, 1961

Honorable Sam J. Ervin, Jr.
Chairman, Subcommittee on
Constitutional Rights
United States Senate
Washington 25, D.C.

Dear Senator Ervin:

I have your letter of September 15 requesting a "preliminary statement" of my views on the constitutional rights of persons in the armed forces and I am glad to comply therewith.

Without attempting to analyze the basis of my conviction which includes a study of the opinions, old and recent of the United States Supreme Court, I firmly believe that accused persons in the military services "are entitled to the rights and privileges secured to all under the Constitution of the United States, unless excluded directly or by necessary implication, by the provisions of the Constitution itself." I set out that view as a controlling principle of my judicial conduct in my dissent in United States v. Sutton, 3 USCMA 220, 228, 11 CMR 220. More recently, writing not as a judge but merely as a member of the great confraternity of the legal profession, I said: "it is anomalous to say that aliens residing in the United States are entitled to constitutional guarantees, but that citizens of the United States in the service of their country are deprived of those rights simply because they wear the uniform of one of its military departments." The United States Court of Military Appeals and Individual Rights in the Military Service, 35 Notre Dame Lawyer 491, 493 (August 1960). To that I might add the question: "If sentenced felons are not deprived of constitutional rights and protection (see Fulwood v. Clemmer, Court of Appeals, D.C. Circuit, August 1, 1961) surely the men and women wearing the uniform in defense of the United States are not deprived of those rights and protections?"

Should you decide to conduct hearings on the matters raised in your letter, I shall be glad to submit to your subcommittee a compilation of pertinent United States Court of Military Appeals opinions and other of my public statements on those matters.

With every good wish for continued physical and spiritual strength in the discharge of your monumental responsibilities in these difficult times, I am

Very sincerely yours,

[s] Robert E. Quinn

ROBERT E. QUINN
Chief Judge

UNITED STATES SENATE

Committee on the Judiciary
Subcommittee on Constitutional Rights
(Pursuant to S. Res. 53, 87th Congress)
January 5, 1962

Honorable Robert E. Quinn
Chief Judge
U.S. Court of Military Appeals
5th and E Streets, N.W.
Washington, D.C.

Dear Chief Judge Quinn:

As you know, this Subcommittee has been studying military discharges and military justice generally. With a considerable number of Americans in the Armed Services, it seems especially important at the present time to protect the rights of military personnel.

In light of your unique experience and your interest in this field, we invite you to testify at the hearings on military justice which we plan to hold late this month or in early February. If you are able to appear, I shall notify you at an early date of the exact time set for the hearings.

We have found in the past that frequently it is easier for the Subcommittee's members to follow the testimony and ask meaningful questions if a witness can furnish us a written statement a few days before he appears. If this proves convenient for you, we would be pleased to receive such a statement prior to your testifying.

To give you an idea of some of the points to which the Subcommittee's attention is being directed, I enclose a copy of a questionnaire which we recently sent to Secretary McNamara.

We are very grateful for your assistance in our study.

With all kind wishes, I am

Sincerely years,
[s] Sam J. Ervin, Jr.
SAM J. ERVIN, JR.
Chairman

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QUESTIONNAIRE

1. What are the discharge figures, by type—i.e., honorable, general, undesirable, bad conduct, and dishonorable—with respect to each Armed Service for each year beginning with 1950?
2. Are trends evident with respect to different types of discharges and what are the explanations of these trends?
3. In your view are administrative discharges being used, as the Court of Military Appeals has indicated, to bypass procedures for discharge by court-martial?
4. To what extent is there uniformity in the Armed Services with respect to discharge procedures?
5. What are the criteria in each Armed Service for issuance of a general discharge instead of an honorable discharge?
6. What inducements, if any, are given to a serviceman to persuade him to waive a board hearing with reference to a projected discharge? Is he given reason to anticipate more favorable action if he waives a board hearing?
7. In instances where board hearings are held with respect to possible discharge or revocation of an officer's commission, to what extent does the action ultimately taken by the Service generally conform to the recommendations of the Board?
8. To what extent are lawyers made available to represent respondents in board hearings on discharge?
9. What is the workload of the Discharge Review Boards and the Boards for the Correction of Military (or Naval) Records? What is the average or median time for review of cases by these Boards?
10. In what percentage of cases do these Boards grant relief to the applicant? And in what percentage of cases does a Board for Correction of Military Records provide relief previously denied by a Discharge Review Board?
11. What is the procedure utilized by each Service in requiring officers to "show cause" why they should be retained in the Service or should retain their commission?
12. To what extent have undesirable discharges been based on alleged misconduct for which a serviceman has requested, but been denied a trial by court-martial? Is there any provision for allowing a serviceman to request a court-martial to vindicate himself with respect to alleged misconduct which he anticipates will be made the basis of proceedings leading to an undesirable discharge?
13. Could the Subcommittee be furnished with brief summaries of the facts and legal issues involved in some of the typical cases from each Service with respect to the validity or legality of administrative discharges?
14. To what extent does the Army utilize a soldier's conviction by special court-martial as the basis for a subsequent undesirable discharge? To what extent does the Army make counsel available to an accused soldier whose case has been referred to a special court-martial?
15. To what extent are legally-trained counsel made available to accused servicemen whose cases are referred to summary or special courts-martial?
16. What are the effects on a serviceman's career of conviction by summary or special court-martial?
17. To what extent has the Navy, by use of dockside courts and otherwise, tried to provide for the use of lawyers as trial and defense counsel in its special courts-martial?

18. Has the Army's specialized law officer plan been successful? If so, to what extent has it been adopted by the other Services?
19. Under the Army's specialized law officer plan what steps are taken to assure the independence of the law officer? How is the independence of the law officer assured in the other Services?
20. Under the Army's specialized law officer plan, would it be feasible to provide that service as law officer would not be limited to officers on active duty, but could also be performed by qualified civilian employees of suitable maturity and experience?
21. What instances have there been in recent years of "command influence" with respect to members of courts-martial, including the trial and defense counsel of special or general courts-martial?
22. Has the practice of negotiated guilty pleas used by the Army and Navy been successful? If so, why is it not used by the Air Force?
23. What are the percentages of guilty pleas for each type of court-martial—summary, special and general—for each Service for each year since 1950?
24. What are the percentages of convictions for each type of court-martial—summary, special, and general—for each Service for each year since 1950?
25. What are typical or "average" sentences in each Service for some of the more frequent violations of the Uniform Code, such as unauthorized absence, desertion, failure to obey, larceny, and assault?
26. To what extent are civilians used on the Boards of Review operating under the Uniform Code of Military Justice?
27. What is the average tour of duty on these boards and what provision, if any, is made to assure the independence of these Boards?
28. With respect to each Service and for each year since 1951, what is the percentage of cases in which Boards of Review have disapproved findings? In what percentage of cases have they reduced the sentence?
29. To what extent have convening authorities and/or the officers exercising general court jurisdiction acted either to disapprove findings or reduce sentences in cases which they reviewed?
30. Has the Air Forces's Amarillo Retraining Group been successful? If so, have the other Services undertaken similar retraining projects? Could excess capacity at Amarillo feasibly be used for rehabilitation of personnel from the other Services?
31. In view of the unavailability of a bail procedure under military law, what steps have been taken by the three Services to minimize pretrial confinement?
32. When a serviceman is subject to trial in either a Federal District Court or a court-martial, what are the criteria for determining which court shall exercise jurisdiction? Are these criteria satisfactory?
33. Under circumstances where a serviceman's alleged misconduct violates both the Uniform Code of Military Justice and the law of some State under what circumstances, if any, is the serviceman tried by court-martial if he has already been tried by a State court?
34. In situations where State authorities have indicated their willingness to relinquish jurisdiction over a serviceman if the Armed Services will prosecute him, under what circumstances is prosecution undertaken by the Armed Services?
35. Is legislation needed to give the Federal District Courts jurisdiction over misconduct overseas by civilian dependents and employees accompanying the Armed Services in peacetime?
36. Is jurisdiction needed to give the District Courts jurisdiction over violations of the Uniform Code by ex-servicemen while they were on active duty?

UNITED STATES COURT OF MILITARY APPEALS
WASHINGTON 25, D.C.

January 9, 1962

Honorable Sam J. Ervin, Jr.
Chairman, Subcommittee on
Constitutional Rights
United States Senate
Washington 25, D.C.

Dear Senator Ervin:

Thank you for your letter of January 5, 1962 regarding the proposed hearings by the Subcommittee on Constitutional Rights on military discharges and military justice.

To assist the Subcommittee in its important work, I will be pleased to present in advance of the hearings a statement of cases of the United States Court of Military Appeals and my personal views on some aspects of the subjects under inquiry and to appear as a witness.

With warm regards, I am

Sincerely yours,
[s] Robert E. Quinn
ROBERT E. QUINN
Chief Judge

UNITED STATES SENATE

Committee on the Judiciary
Subcommittee on Constitutional Rights
(Pursuant to S. Res. 53, 87th Congress)
January 23, 1962

Honorable Robert E. Quinn
Chief Judge
U.S. Court of Military Appeals
5th and E Streets, N.W.
Washington, D.C.

Dear Chief Judge Quinn:

In continuation of my letter of January 5, concerning the hearings which this Subcommittee will hold on military discharges and military justice generally, I should like to renew the Subcommittee's invitation to you to appear as a witness.

The hearings will take place during the entire week of February 5, 1962 in Room 357 of the Senate Office Building. Subject to your convenience, we have reserved the afternoon session of Tuesday, February 6, to hear testimony from you and your two colleagues on the Court. I shall appreciate your advising me if this time will be satisfactory for you.

With all kind wishes, I am

Sincerely yours,

[s] Sam J. Ervin, Jr.
SAM J. ERVIN, JR.
Chairman

SJE:eg

UNITED STATES COURT OF MILITARY APPEALS
WASHINGTON 25, D.C.

January 25, 1962

Honorable Sam J. Ervin, Jr.
Chairman, Subcommittee on
Constitutional Rights
United States Senate
Washington 25, D.C.

Dear Senator Ervin:

Referring to your notification of January 23d of the hearings before the Subcommittee on Constitutional Rights on February 6th, please be advised I shall be present at the time and place indicated.

In accordance with my letter of January 9, 1962, I am enclosing a list of cases decided by the United States Court of Military Appeals, which the Subcommittee might find helpful. The essence of my personal views on some of the matters under inquiry by the Subcommittee is set out in my letter of September 24, 1961. I shall be pleased to enlarge upon them in direct testimony before the Subcommittee.

In anticipation of our early meeting, I am

Sincerely yours,
[s] Robert E. Quinn
ROBERT E. QUINN
Chief Judge

Enclosure

SOME BASIC RIGHTS OF PERSONS IN THE ARMED FORCES

A. Freedom of Speech

(1) United States v. Voorhees, 4 USCMA 509, 16 CMR 85. The Court of Military Appeals held that the right of a military superior to impose silence on his subordinates is not absolute. In part, the principal opinion by Chief Judge Quinn is as follows:

> "Plainly AR 360–5 imposes restrictions on the free expression of ideas by Army personnel. The question then is whether those limitations set out in the regulation constitute an illegal departure from the Constitutional prohibition on legislation 'abridging the freedom of speech,' which is contained in the First Amendment.
>
> "The right to free speech is not an indiscriminate right. Instead, it is qualified by the requirements of reasonableness in relation to time, place, and circumstance. Schenck v. United States, 249 US 47, 63 L ed 470, 39 S Ct 247. Thus, there is no doubt that restraints which reasonably protect the national interest do not violate the Constitutional right of free speech. See Dennis v. United States, 341 US 494, 95 L ed 1137, 71 S Ct 857. With these principles for our frame of reference, we proceed to inquire into the legality of the regulation."

(2) United States v. Wysong, 9 USCMA 249, 26 CMR 29. The Court of Military Appeals held that an order by a commanding officer to a subordinate to refrain from talking to other persons under any and all circumstances for an indefinite period of time was an illegal and unenforceable restraint on the subordinate's freedom of speech.

B. Right of Privacy

(1) United States v. Adams, 5 USCMA 563, 18 CMR 187. The Court of Military Appeals defined the nature of a serviceman's "home", the place in which he had a right to be free from the uninvited and unauthorized intrusion of others.

> "A dwelling house is not a mere physical structure of a particular kind; it is a place in which human beings live. It may be a hotel room, an apartment, an entire building, as in the case of a single family residence, or a tent. State v. Holbrook 98 Or. 43, 188 Pac. 947. Cf. United States v. Love, 4 USCMA 260, 15 CMR 260. Generally a military person's place of abode is the place where he bunks and keeps his few private possessions. His home is the particular place where the necessities of the service force him to live. This may be a barracks, a tent, or even a foxhole. Whatever the name of his place of abode, it is his sanctuary against unlawful intrusion; it is his castle.' And he is there entitled to stand his ground against a trespasser to the same extent that a civilian is entitled to stand fast in his civilian home. No reason in law, logic or military necessity justifies depriving the men and women in the

armed forces of a fundamental right to which they would be entitled as civilians. Consequently, when the accused retired to his own tent, he retreated as far as the law demands. The law officer erred in failing to make that clear to the members of the court."

(2) United States v. Milldebrandt, 8 USCMA 635, 25 CMR 139. The Court of Military Appeals held a commander could not compel a member of the command to disclose information of his financial actions during leave when such actions were not related to military duty or discipline. In a separate concurring opinion Chief Judge Quinn said:

"Persons in the military service are neither puppets nor robots. They are not subject to the willy-nilly push or pull of a capricious superior, at least as far as trial and punishment by court-martial is concerned. In that area they are human beings endowed with legal and personal rights which are not subject to military order. Congress left no room for doubt about that. It did not say that the violation of any order was punishable by court-martial, but only that the violation of a lawful order was. Article 92, Uniform Code of Military Justice, 10 USC § 892."

C. Military Due Process

(1) The Right to Confrontation of Witnesses.

United States v. Jacoby, 11 USCMA 428, 29 CMR 244. The Court of Military Appeals held that a deposition could not be admitted into evidence against an accused over his objection if he, or his counsel, was not accorded the opportunity to cross-examine orally the witness at the time of the taking of the deposition.

(2) Right to a Fair Hearing.

United States v. Littrice, 3 USCMA 487, 13 CMR 43. The Court of Military Appeals condemned a lecture to court-martial members before trial as constituting an attempt to influence their decision. See also: United States v. Rinehart, 8 USCMA 402, 24 CMR 212; United States v. Kitchens, 12 USCMA 589, 31 CMR 175.

(3) Right to Counsel.

United States v. Gunnels, 8 USCMA 130, 23 CMR 354. The Court of Military Appeals held that an accused could not be deprived of the right to consult a lawyer when he is held for interrogation by law enforcement agents.

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UNITED STATES SENATE

Committee on the Judiciary
Subcommittee on Constitutional Rights
(Pursuant to S. Res. 53, 87th Congress)
February 8, 1962

Honorable Robert Quinn
Chief Judge
U.S. Court of Military Appeals
5th and E Streets, N.W.
Washington, D.C.

Dear Judge Quinn:

The Subcommittee has rescheduled its hearings on the Constitutional Rights of Military Personnel for February 20 and 21, and March 1, 2, and 6.

Subject to your convenience, the Subcommittee invites you to appear as a witness at 2:00 p.m., Wednesday, February 21, 1962, in Room 457 Old Senate Office Building, Washington, D.C. If it is not convenient for you to be present at this time, please advise us.

With all kind wishes, I am

Sincerely yours,
[s] Sam J. Ervin, Jr.
SAM J. ERVIN, JR.
Chairman

SJE:grl

UNITED STATES COURT OF MILITARY APPEALS

WASHINGTON 25, D.C.

February 13, 1962

Honorable Sam J. Ervin, Jr.
Chairman, Subcommittee on
Constitutional Rights
United States Senate
Washington 25, D.C.

Dear Senator Ervin:

The rescheduling date of February 21st is most satisfactory and I will be pleased to appear before your Subcommittee at 2:00 p.m. in Room 457, Old Senate Office Building, on that date.

With warm regards, I am

Sincerely yours,
[s] Robert E. Quinn
ROBERT E. QUINN
Chief Judge

The hearings have been printed and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington 25, D.C.

IV

On March 5, 1962, Chief Judge Quinn testified before a Special Subcommittee of the Committee on Veterans' Affairs, House of Representatives, on H.R. 849, 87th Congress, 1st Session, at the invitation of Honorable Horace R. Kornegay, Chairman of the Subcommittee. Correspondence between the Chairman and the Chief Judge is set out as follows:

HOUSE OF REPRESENTATIVES, U.S.

Committee on Veterans' Affairs
Washington, D.C.
February 28, 1962

Honorable Robert E. Quinn
Chief Judge
United States Court of Military Appeals
Fifth and E Streets
Washington, D.C.

Dear Judge Quinn:

Thank you for accepting our invitation to appear before the Special Subcommittee on Judicial Review of decisions of the Administrator of Veterans' Affairs. We have scheduled your appearance for Monday, March 5, at 10:00 a.m., and will call you as the first witness so that it will not be necessary for you to await the disposition of other witnesses.

The Committee has engaged in a rather extensive study of this problem for a period of several years. In the 86th Congress, a bill was reported by the Full Committee, but was not considered on the Floor. I am enclosing a copy of the report of the Committee which explains the viewpoint of the Committee at that time. I believe you will find the portion of the report, under the heading, "Background of the Bill", contains a rather clear explanation of the problems with which we are confronted. I am also enclosing a copy of H.R. 775 by Mr. Saylor of Pennsylvania and a copy of H.R. 849 by Mr. Teague of Texas, the Chairman of the Full Committee. For all practical purposes, these bills are identical and conform to the views expressed by the Committee in the 86th Congress. There are other bills on this subject pending in the Committee which would provide for judicial review in the existing Federal Court system. The Committee previously concluded that the volume of claims is so great that judical review by existing Federal Courts would be impossible, and this view has been approved by the Judicial Conference of the United States. It, therefore, appears that a special court must be established if judicial review is to be provided.

My knowledge of the history of the Court of Military Appeals is quite limited, but I believe objections made at the time of its establishment were to the effect that civilian judges should not interfere in the administration of military justice. I believe many of the objections now being made to the establishment of a Court of Veterans' Appeals are similar to objections made at the time the Court of Military Appeals was established. It, therefore, appears that it would be helpful to the Committee if you could cover in your testimony this aspect of the history of your Court. I shall also appreciate it if you can provide our Committee with statistical information for the most recent year available as to the number of cases reversed or affirmed on appeal, together with the number of unanimous opinions, specially concurring opinions, and dissenting opinions.

Thank you again for accepting our invitation and if you require further information, please contact Mr. Downer of the Committee staff on CApitol extension 3527.

Respectfully yours,

[s] Horace R. Kornegay
HORACE R. KORNEGAY, Chairman
Special Subcommittee for Judicial Review

UNITED STATES COURT OF MILITARY APPEALS
WASHINGTON 25, D.C.

March 5, 1962

Honorable Horace R. Kornegay
Chairman
Special Subcommittee for Judicial Review
Committee on Veterans' Affairs
House of Representatives
Washington 25, D.C.

Dear Congressman Kornegay:

At your request, I am pleased to forward the following enclosures to supplement the statement of Chief Judge Robert E. Quinn, who appeared before your subcommittee this morning in conjunction with the hearings being conducted on H.R. 849 and companion bills:

(1) Ten Year Chronology of the United States Court of Military Appeals (1951–1961).

(2) Status of cases filed with the United States Court of Military Appeals since its establishment in 1951 through Fiscal Year 1961.
Note: Of the 1,727 published opinions contained in 12 Volumes, 723 or approximately 45% were decided by the Court to the benefit of the accused.

(3) Breakdown of the 133 opinions published during Fiscal Year 1961, indicating the individual actions taken by the three Judges.

(4) Rules of Practice and Procedure of the Court, revised as of January 1, 1962.

(5) Copy of the Annual Report of the Court and The Judge Advocates General of the Armed Forces and the General Counsel of the Department of the Treasury submitted to the Congress for the period January 1, 1960 to December 31, 1960. The 1961 Annual Report is now in the hands of the printer.

If the Court can be of further assistance in this or in any other matter, please do not hesitate to call upon us.

With kindest personal regards.

Sincerely,
[s] Alfred C. Proulx
ALFRED C. PROULX
Clerk of the Court

ACP:vbs

V

In August 1962, Chief Judge Quinn and Judge Ferguson attended the Annual Meeting of the American Bar Association in San Francisco, California. In conjunction with this Annual Meeting, a special admission session was held in a courtroom of the United States District Court in San Francisco for the purpose of admitting 94 civilian and military lawyers in the West Coast area. The bar of the Court now consists of 9,762 members, who come from every State of the Union.

VI

On January 1, 1962, the latest revision of the Rules of Practice and Procedure was promulgated:

UNITED STATES COURT
OF MILITARY APPEALS

RULES OF PRACTICE AND PROCEDURE

Revised January 1, 1962

UNITED STATES COURT OF MILITARY APPEALS

CHIEF JUDGE

HON. ROBERT E. QUINN

ASSOCIATE JUDGES

HON. HOMER FERGUSON
HON. PAUL J. KILDAY

CLERK

ALFRED C. PROULX

Fifth and E Streets NW.
WASHINGTON 25, D.C.

UNITED STATES COURT OF MILITARY APPEALS
RULES OF PRACTICE AND PROCEDURE

These RULES OF PRACTICE AND PROCEDURE prescribed pursuant to Article 67 of the Uniform Code of Military Justice, Act of May 5, 1950 (64 Stat. 129, 10 U.S.C. 801), to which Code reference should be made for all Articles cited herein, issued July 11, 1951, revised March 1, 1952, May 31, 1953, and January 1, 1959, are hereby further revised as of January 1, 1962.

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GENERAL

Rule 1. Name

The Court adopts "United States Court of Military Appeals" as the title of the Court.

Rule 2. Seal

The seal of the Court is of the following description:

In front of a silver sword, point up, a gold and silver balance supporting a pair of silver scales, encircled by an open wreath of oak leaves, green with gold acorns; all on a grey blue background and within a dark blue band edged in gold and inscribed "UNITED STATES COURT OF MILITARY APPEALS" in gold letters. (E.O. 10295, September 28, 1951, 16 F.R. 10011; 3 CFR 1951 Supp.)

Rule 3. Jurisdiction

The Court will review the record in the following cases:

(*a*) *General or flag officers; death sentences.* All cases in which the sentence, as affirmed by a board of review, affects a general or flag officer, or extends to death;

(*b*) *Certified by The Judge Advocate General.* All cases reviewed by a board of review which The Judge Advocate General forwards by Certificate for Review to the Court; and,

(*c*) *Petitioned by the accused.* All cases reviewed by a board of review in which, upon petition of the accused and on good cause shown, the Court has granted a review, except those reviewed under Article 69.

Rule 4. Scope of Review

The Court will act only with respect to the findings and sentence as approved by the convening or reviewing authority, and as affirmed or as set aside as incorrect in law by a board of review. In those cases which The Judge Advocate General forwards to the Court by Certificate For Review, action need be taken only with respect to the issues raised by him. In a case reviewed upon petition of the accused, action need be taken only with respect to issues specified by the Court in the grant of review. The Court may, in any case, however, review other matters of law which materially affect the rights of the parties. The points raised in the Court will involve only errors in law.

Rule 5. Quorum

Two of the judges shall constitute a quorum. The concurrence of two judges shall be required for the rendition of a final decision or the

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allowance or denial of a Petition for Grant of Review. In the absence of a quorum, any judge may make all necessary orders relating to any matter pending before the Court relative to the filing of papers or preparatory to a hearing or decision thereon. If, at any time, a quorum is not present on any day appointed for holding a hearing, any judge present may adjourn the Court from time to time, or, if no judge is present, the Clerk may adjourn the Court from day to day.

Rule 6. Process

All process of the Court, except mandates, shall be in the name of the President of the United States, and shall contain the given names as well as the surname of the parties.

Rule 7. Parties

The accused will be deemed to be the appellant in all cases except those in which The Judge Advocate General has certified a decision of a board of review in which a finding of guilty is set aside. In such cases, the United States shall be deemed the appellant.

CLERK'S OFFICE

Rule 8. Clerk

(*a*) *Location of office.* The Clerk of the Court shall keep the office at the seat of the National Government, Washington, D.C.

(*b*) *Restriction on incumbent.* He shall not practice as attorney or counsellor in any court while he continues in office.

(*c*) *Oath of office.* Before he enters on the execution of his office, he shall take an oath in the form prescribed by 28 U.S.C. 951, which reads:

> "I, * * *, having been appointed * * *, do solemnly swear (or affirm) that I will truly and faithfully enter and record all orders, decrees, judgments, and proceedings of such Court, and will faithfully and impartially discharge all other duties of my office according to the best of my abilities and understanding. So help me God."

(*d*) *Custodian of records.* He shall not permit an original record, pleading, or other paper relative to a case to be taken from the courtroom or from the office without an order from a judge of the Court.

(*e*) *Hours.* The office of the Clerk will be open from 9 a.m. to 5 p.m. every week-day except holidays and Saturdays.

Rule 9. Docket

(*a*) *Maintenance of docket.* The Clerk shall maintain in his office a docket, in which shall be entered the receipt of all pleadings or other papers filed, and any action by the Court relative to a case. Entries in the docket shall be noted chronologically on the page or pages assigned to the case, showing briefly the date, the nature of each pleading or other paper filed, and the substance of any action by the Court.

(*b*) *Docket number.* Upon receipt of either the Petition for Grant of Review, the Certificate for Review, or the Assignment of Errors, the case shall be assigned a docket number. All pleadings or other papers subsequently filed in the case shall bear this number.

(*c*) *Notice of docketing.* The Clerk shall promptly notify The Judge Advocate General of the service concerned, and the accused or his appellate counsel, of the receipt and docketing of the case, including the docket number assigned.

ADMISSIONS

Rule 10. Professional Requirements

It shall be requisite to the admission of an attorney or counsellor to practice in this Court that he be a member of the bar of a Federal court or of the highest court of a State, Territory, Commonwealth, or Possession.

Rule 11. Application Form

In order to appear before the Court, an application shall be filed with the Clerk on a form supplied by him, which form shall be available upon request.

Rule 12. Certificate

(*a*) *Of good standing.* Together with the application form the applicant shall file a certificate from the presiding judge or clerk of the proper court that the applicant is a member of the bar and that his private and professional character appear to be good.

(*b*) *Original and current.* The certificate of good standing must be an original and current, dated within 1 year of the date of application.

(*c*) *Member of an Armed Service.* A member of an Armed Service need not submit a certificate of good standing if the application form is certified by The Judge Advocate General of his respective service.

Rule 13. Oath

Upon being admitted, each applicant shall take in open court the following oath or affirmation, viz:

> "I, * * *, do solemnly swear (or affirm) that I will support the Constitution of the United States; and, that I will demean myself, as an attorney and counsellor of this Court, uprightly, and according to law."

Rule 14. Motions

Admissions will be granted upon motion of the Court or upon oral motion by a person admitted to practice before the Court, on any day the Court holds a regular session. No motion for admission in absentia will be entertained.

APPEARANCE AND ASSIGNMENT OF COUNSEL

Rule 15. Entry of Appearance by Counsel

(*a*) *In writing.* Civilian and military appellate counsel shall file an entry of appearance in writing before participating in a case.

(*b*) *Filing of pleading or other paper.* The filing of any pleading or other paper relative to a case which contains the signature of counsel will constitute an entry of appearance for such counsel.

Rule 16. Assignment of Counsel

Whenever a record of trial is forwarded by The Judge Advocate General for review, he shall immediately designate appellate Government counsel, and shall immediately designate appellate defense counsel, unless he has been notified that the accused desires to be represented before the Court by civilian counsel.

APPEALS

Rule 17. Methods of Appeal

Cases shall be appealed to the Court by one of the following methods:

(*a*) *Cases under Article 67(b)(3).* All cases under Article 67(*b*)(3) shall be appealed by a Petition for Grant of Review, and such petition shall be substantially in the form provided in Rule 18.

(*b*) *Cases under Article 67(b)(2).* All cases under Article 67(*b*)(2) shall be forwarded by The Judge Advocate General by a Certificate for Review, and such certificate shall be substantially in the form provided in Rule 19.

(*c*) *Cases under Article 67(b)(1).* All cases under Article 67(*b*)(1) shall be forwarded by The Judge Advocate General accompanied by an Assignment of Errors urged by appellate counsel for the accused substantially in the form provided in Rule 20.

Rule 18. Form of Petition for Grant of Review

The Petition for Grant of Review under Article 67(*b*)(3) shall be substantially in the following form:

IN THE UNITED STATES
COURT OF MILITARY APPEALS

UNITED STATES,		
Appellee		PETITION FOR GRANT OF REVIEW
v.		Board of Review No. ------
----------,		Docket No. ----------
Appellant		

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF MILITARY APPEALS:

1. The accused having been found guilty of a violation of the Uniform Code of Military Justice, Article ____, and having been sentenced to _____, on _____, at _____, by _____, and said sentence having been approved by the convening authority and affirmed by a Board of Review on _____, hereby petitions the United States Court of Military Appeals for a grant of review of the decision of the Board of Review, pursuant to the provisions of the Uniform Code of Military Justice, Article 67(*b*)(3).

2. Insert either (A) or (B), whichever is applicable:

(A) (*If accused desires counsel appointed by The Judge Advocate General*)

"The accused requests appellate defense counsel be designated by The Judge Advocate General to represent him in processing this Petition for Grant of Review, and during the review, if the same be granted by the United States Court of Military Appeals."

(B) (*If accused desires to retain other counsel*)

"The accused requests appellate defense counsel be designated by The Judge Advocate General to represent him, in association with his privately retained counsel, named below, to the extent such privately retained counsel may desire. Name and address of privately retained counsel _____
_____."

3. The accused claims error on the following questions of law: (Here set forth separately and particularly each error assigned upon which accused relies, including such points and authorities as may be desired.)

Note. Claim of "insufficiency of the evidence" as an assigned error shall set out with particularity exactly in what respect the evidence is lacking with record references, if available.

4. The accused was notified of the decision of the Board of Review on the _____ day of _____, 19____, and placed his request to petition the Court in military channels or in the mail on the _____ day of _____, 19_____.

_____
(Accused) or (Appellate Counsel for Accused)

_____
Address

Petition was received in the Office of The Judge Advocate General of the _____, on the _____ day of _____, 19_____.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed or delivered to Appellate Government Counsel on the _____ day of _____, 19_____.

_____
Name

_____
Address

Rule 19. Form of Certificate for Review

The Certificate for Review under Article 67(*b*)(2) shall be substantially in the following form:

IN THE UNITED STATES
COURT OF MILITARY APPEALS

UNITED STATES, (Appellee) (Appellant) *v.* (Appellant) (Appellee)	CERTIFICATE OF REVIEW Board of Review No._____ Docket No._____

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF MILITARY APPEALS:

1. Pursuant to the Uniform Code of Military Justice, Article 67(*b*)(2), the record of trial, and decision of the Board of Review, United States _____, in the above-entitled case, are forwarded for review.

2. The accused was found guilty of a violation of the Uniform Code of Military Justice, Article _____, was sentenced to _____, on _____, at _____, by _____. The sentence was approved by the convening authority and affirmed by a Board of Review on the _____ day of _____, 19____.

3. It is requested that action be taken with respect to the following issues:

_____

The Judge Advocate General

Received a copy of the foregoing Certificate for Review this _____ day of _____, 19____.

_____

Appellate Government Counsel

_____

Address

_____

Appellate Defense Counsel

_____

Address

Rule 20. Form of Assignment of Errors in Mandatory Cases

The assignment of Errors under Article 67(*b*)(1) shall be substantially in the following form.

IN THE UNITED STATES
COURT OF MILITARY APPEALS

UNITED STATES, Appellee *v.* Appellant	ASSIGNMENT OF ERRORS Board of Review No. _____ Docket No. _____

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF MILITARY APPEALS:

1. The accused having been found guilty of a violation of the Uniform Code of Military Justice, Article _____, and having been sentenced to _____, on _____, at _____, by _____, and said sentence having been approved

by the convening authority and affirmed by a Board of Review on _____ hereby presents an Assignment of Errors directed to the decision of the Board of Review, pursuant to the provisions of the Uniform Code of Military Justice, Article 67(*b*)(1).

2. The accused claims error on the following questions of law: (Here set forth separately and particularly each error assigned upon which accused relies, including such points and authorities as may be desired.)

Note. Claim of "insufficiency of the evidence" as an assigned error shall set out with particularity exactly in what respect the evidence is lacking with record references, if available.

3. The accused was notified of the decision of the Board of Review on the _____ day of _____, 19____.

_____
(Appellate Counsel for Accused) or Accused

_____
Address

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed or delivered to Appellate Government Counsel on the _____ day of _____, 19____.

_____
Name

_____
Address

Rule 21. Reply to Petition for Grant of Review

(*a*) *Time requirement.* Within 15 days after the filing of a Petition for Grant of Review by an accused under Article 67(*b*)(3), appellate Government counsel shall file a reply to the Petition stating his views with respect to the merits of the errors of law raised in the Petition and why he believes the Petition should not be granted.

(*b*) *Form.* This reply shall be similar in form to the Petition, and brief of the accused, should one be filed, except that if the appellate Government counsel disagrees with the statement of facts, or desires to supplement it with additional facts, he shall start his reply with new information. If a claim of insufficiency of evidence is contested, the reply shall set forth affirmatively, with particularity, wherein it is claimed the evidence is sufficient, with record references. See also Rule 40.

Rule 22. Reply to Certificate for Review

See Rule 41.

Rule 23. Reply to Assignment of Errors in Mandatory Cases

See Rule 42.

TIME REQUIREMENTS FOR FILING APPEALS, PLEADINGS OR OTHER PAPERS

Rule 24. Petition for Grant of Review (Article 67(b)(3) Cases)

(*a*) *Time requirement.* The accused shall file a Petition for Grant of Review within 30 days after receipt of the decision of a board of review in cases appealed to the Court under Article 67(*b*) (3).

(*b*) *Postmark; deposit in military channels.* A petition for Grant of Review shall be deemed to have been filed upon the date postmarked on the envelope containing the petition, or upon the date when the petition is deposited in military channels for transmittal.

(*c*) *Forwarded through The Judge Advocate General.* A Petition for Grant of Review may be forwarded through The Judge Advocate General of the service concerned, and such Judge Advocate General will thereafter cause the same to be filed with the Court within 30 days of receipt thereof.

Rule 25. Certificate for Review (Article 67(b)(2) Cases)

The Judge Advocate General shall file a Certificate for Review within 30 days after receipt of the decision of a board of review in cases forwarded to the Court under Article 67(*b*) (2).

Rule 26. Assignment of Errors (Article 67(b)(1) Cases)

The accused or his appellate counsel shall file an Assignment of Errors within 30 days after receipt of the decision of a board of review in cases forwarded to the Court under Article 67(*b*) (1).

Rule 27. Pleadings or Other Papers

All pleadings or other papers relative to a case, transmitted by mail or other means for filing in the office of the Clerk, shall not be deemed to have been filed until received in his office. (For exception relative to the filing of a Petition for Grant of Review see Rule 24.)

Rule 28. Computation of Time

In computing any period of time prescribed or allowed by these Rules, by order of Court, or by any applicable statute, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

Rule 29. Enlargement

When by these Rules or by notice given thereunder, or by order of Court, an act is required or allowed to be done at or within a specified time, the Court for cause shown may at any time in its discretion:

(*a*) *Before expiration of period prescribed or extended.* With or without motion or notice, order the period extended if request therefor is made before the expiration of the period as originally prescribed or as extended by previous order, or

(*b*) *After expiration of specified period.* Upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect, but the time for filing a Petition for Grant of Review as prescribed in Article 67(*c*) and Rule 24 will not be extended.

Rule 30. Motions

(*a*) *Must state relief sought and grounds therefor.* All motions, unless made during the course of a hearing, shall state with particularity the relief sought and the grounds therefor.

(*b*) *Opposition.* Any opposition to a motion shall be filed within 5 days after receipt by the opposing party of service of the motion.

(*c*) *For leave to file.* Any pleading not required by these Rules shall be accompanied by a motion for leave to file such pleading.

Rule 31. Additional Time When Service Is by Mail

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice, pleading, or other paper relative to a case when such service is made upon him by mail, 3 days shall be added to the prescribed period if the party upon whom the service is made is within the continental limits of the United States, and 15 days shall be added thereto if the party is located outside those limits.

Rule 32. Continuances and Interlocutory Matters

The Court may extend any times prescribed by these Rules, may grant continuances and postponements from time to time, and may take such other action the Court considers necessary for a full, fair, and expeditious disposition of a case.

PROVISIONS APPLICABLE TO PLEADINGS OR OTHER PAPERS FILED

Rule 33. Filing

All pleadings or other papers relative to a case shall be filed in the office of the Clerk.

Rule 34. Copies

An original and four legible copies of all pleadings or other papers relative to a case shall be filed.

Rule 35. Style

All pleadings or other papers relative to a case shall be printed or typewritten.

(*a*) *If printed.* They shall be in such form and size that they can be conveniently bound together.

(*b*) *If typewritten.* They shall be double-spaced on legal cap white paper securely fastened at the top.

Rule 36. Record References

All record references shall show page numbers and any exhibit designations.

Rule 37. Signature

All pleadings or other papers relative to a case shall bear an original signature and shall show the name and address of the person signing, together with his military rank, if any, and the capacity in which he signs the paper. Such signature shall constitute a certificate that the statements made therein are true and correct to the best of the knowledge, information, and belief of the person signing the pleading or paper, and that the pleading or paper is filed in good faith and not for the purpose of unnecessary delay.

Rule 38. Service

(*a*) *In general.* Prior to the filing of any pleading or other paper relative to a case in the office of the Clerk, service of a copy of the same shall be made on all counsel of record. In the case of a Certificate for Review, service of a copy thereof shall be made on appellate Government counsel and the accused or his appellate counsel.

(*b*) *By mail.* Any pleading or other paper filed relative to a case may be served on all counsel of record by mail. When service by mail is used a certificate shall be included in the original pleading or other paper filed substantially in the following form:

CERTIFICATE OF SERVICE ON ALL COUNSEL OF RECORD

I certify that a copy of the foregoing was mailed to all counsel of record on the _____ day of _____, 19____.

_____
Name

_____
Address

BRIEFS

Rule 39. Form of Brief

All briefs shall be substantially in the following form:

IN THE UNITED STATES
COURT OF MILITARY APPEALS

UNITED STATES, (Appellant) (Appellee)	BRIEF ON BEHALF OF (ACCUSED) (UNITED STATES)
v.	
_____ (Appellee) (Appellant)	Board of Review No. _____ Docket No. _____

Index of Brief

(Omit index if brief is less than ten pages)

Statement of Facts

(Set forth a concise statement of the facts of the case material to the issues concerning which any error is assigned. Portions of the record of trial and other matters of evidentiary nature shall not be included in this statement. Pertinent portions of the statement of facts in briefs of appellate counsel or the decision of the Board of Review may be quoted.)

Assignment of Errors

(Here set forth each error assigned in the Petition for Grant of Review, or each issue raised in the Certificate for Review, or each error assigned in the Assignment of Errors, or each issue specified by the Court.)

Argument

(Discuss briefly the points of law presented, citing and quoting such authorities as are deemed pertinent.)

Conclusion

Insert (A), (B) or (C), whichever is applicable:

(A) "For the reasons stated the accused is entitled to a grant of review under the provisions of the Uniform Code of Military Justice, Article 67(*b*)(3)."

(B) "This brief is submitted under the provisions of the Uniform Code of Military Justice, Article 67(*b*)(2)."

(C) "This brief is submitted under the provisions of the Uniform Code of Military Justice, Article 67(*b*)(1)."

Signature of Counsel

Address

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed or delivered to appellate (Defense) (Government) counsel on the _____ day of _____, 19_____.

Name

Address

Rule 40. Brief in Support of Petition for Grant of Review (Article 67(b)(3) Cases)

(*a*) *By appellant.* If desired, a brief may be filed in support of a Petition for Grant of Review. If a brief is to be filed, it shall accompany the Petition.

(*b*) *By appellee.* Appellee's brief shall be filed within 15 days of the filing of appellant's brief.

Rule 41. Brief in Support of Certificate for Review (Article 67(b)(2) Cases)

(*a*) *By appellant.* A brief shall be filed by appellant in support of a Certificate for Review within 20 days of the filing of such certificate.

(*b*) *By appellee.* Appellee's brief shall be filed within 20 days of the filing of appellant's brief. If appellant fails to file a brief, appellee may file his brief within 20 days after expiration of the time allowed for the filing of appellant's brief.

Rule 42. Brief in Support of Assignment of Errors (Article 67(b)(1) Cases)

(*a*) *By appellant.* A brief shall be filed by appellant in support of an Assignment of Errors within 30 days of the filing of such Assignment.

(*b*) *By appellee.* Appellee's brief shall be filed within 20 days of filing of appellant's brief. If appellant fails to file a brief, appellee may file his brief within 20 days after expiration of the time allowed for the filing of appellant's brief.

Rule 43. Brief in Support of Petition Granted

A brief in support of a petition granted shall be filed on issues raised by parties or specified by the Court, unless said brief is waived by the Court.

(*a*) *By appellant.* A brief shall be filed by appellant within 30 days of the entry of the order of the Court granting review.

(*b*) *By appellee.* Appellee's brief shall be filed within 20 days of filing of appellant's brief. If appellant fails to file a brief, appellee may file his brief within 20 days after expiration of the time allowed for the filing of appellant's brief.

Rule 44. Amicus Curiae Brief

A brief of an amicus curiae may be filed only by permission of the Court.

HEARINGS

Rule 45. Petition for Grant of Review

Except when ordered by the Court, oral argument will not be permitted on a Petition for Grant of Review.

Rule 46. Motions

Except when ordered by the Court, oral argument will not be permitted on motions.

Rule 47. Oral Argument

Oral argument will be heard after briefs have been filed in accordance with Rules 41, 42 or 43.

(*a*) *Presentation.* The appellant shall be entitled to open and close the argument; in the event both parties desire a review of a decision of a board of review, the accused shall be entitled to open and close.

(*b*) *Number of counsel.* Not more than two counsel for each side shall be heard in oral argument unless the Court otherwise orders.

(*c*) *Time.* Not more than 30 minutes on each side shall be allowed for oral argument unless the time is extended by leave of Court.

(*d*) *Failure of counsel to appear.* If counsel fail to appear at the time set for oral argument the Court may consider the case as having been submitted without argument or, in its discretion, continue the case until a later date.

(*e*) *Failure of counsel for one party to appear.* If counsel for one party fails to appear the Court may hear oral argument from the counsel appearing or, in its discretion, continue the case until a later date.

(*f*) *Waiver of oral argument.* A case may be submitted on briefs without oral argument with permission of the Court.

Rule 48. Notice of Hearing

The Clerk shall give at least 10 days' notice in writing of the time and place for any hearing.

PETITION FOR REHEARING, MODIFICATION, OR RECONSIDERATION

Rule 49. Filing

(*a*) *Time requirement.* A petition for rehearing, modification, or reconsideration shall be filed within 5 days from receipt of notice of entry of an order, decision, or opinion by the Court.

(*b*) *Reply.* Any reply to a petition shall be filed by the opposing party within 5 days after receipt of service of the petition.

Rule 50. Contents

The petition for rehearing, modification, or reconsideration shall state briefly and directly its grounds and be supported by a certificate of counsel to the effect that it is presented in good faith and not for delay.

Rule 51. Oral Argument

Except when ordered by the Court, oral argument will not be permitted on a petition for rehearing, modification, or reconsideration.

PETITION FOR NEW TRIAL

Rule 52. Filing

A petition for new trial shall be filed with The Judge Advocate General of the service concerned.

Rule 53. Notice of Reference

Upon receipt from The Judge Advocate General of a petition for new trial (original and four copies) in a case pending before the Court, the Clerk shall notify all counsel of record of such receipt.

Rule 54. Additional Investigation

The Court on considering a petition for new trial may refer the matter to a referee to make further investigation, to take evidence and to make such recommendations to the Court as he deems appropriate.

Rule 55. Answer

Appellee shall file an answer to a petition for new trial within 10 days after receipt of notification by the Clerk of the docketing of the petition.

Rule 56. Briefs

(*a*) *By appellant.* Any brief in support of a petition for new trial shall be filed within 10 days of appellee's answer. If appellee fails to file an answer, appellant may file a brief within 10 days after the expiration of the time allowed for the filing of appellee's answer.

(*b*) *By appellee.* Appellee's brief shall be filed within 10 days of filing of appellant's brief. If appellant fails to file a brief, appellee may file his brief within 10 days after the expiration of the time allowed for the filing of appellant's brief.

Rule 57. Oral Argument

Except when ordered by the Court oral argument will not be permitted on a petition for new trial.

MANDATES

Rule 58. Issuance

Mandates shall issue after the expiration of 12 days from the day the opinion of the Court is filed with the Clerk, unless a petition for rehearing, modification or reconsideration is filed, or the time is shortened or enlarged by order of the Court, or unless the parties stipulate that it be issued sooner.

Rule 59. Petition Denied

No mandate shall issue upon the denial of a Petition for Grant of Review. Whenever a Petition for Grant of Review is denied, the Clerk shall enter an order to that effect and shall forthwith notify The Judge Advocate General of the service concerned and counsel of record.

OPINIONS

Rule 60. Filing

All opinions of the Court shall be filed with the Clerk for preservation.

Rule 61. Reproduction and Distribution

The reproduction, printing and distribution of all opinions shall be pursuant to the direction of and under the supervision of the Clerk.

VII

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

Respectfully submitted,

ROBERT E. QUINN,
Chief Judge.

HOMER FERGUSON,
Judge.

PAUL J. KILDAY,
Judge.

EXHIBIT A

STATUS OF CASES

UNITED STATES COURT OF MILITARY APPEALS

CASES DOCKETED

Total by Services	*Total as of June 30, 1960*	*July 1, 1960 to June 30, 1961*	*July 1, 1961 to June 30, 1962*	*Total as of June 30, 1962*
Petitions (Art. 67(b)(3)):				
Army	8,099	371	431	8,901
Navy	2,745	330	323	3,398
Air Force	3,196	252	193	3,641
Coast Guard	39	1	1	41
Total	14,079	954	948	15,981
Certificates (Art. 67(b)(2)):				
Army	111	11	7	129
Navy	174	7	6	187
Air Force	43	6	4	53
Coast Guard	6	0	0	6
Total	334	24	17	375
Mandatory (Art. 67(b)(1)):				
Army	31	0	0	31
Navy	3	0	0	3
Air Force	2	1	0	3
Coast Guard	0	0	0	0
Total	36	1	0	[1] 37
Total cases docketed	14,449	979	965	[2] 16,393

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

[2] 16,131 cases actually assigned docket numbers. 110 cases counted as both Petitions and Certificates. 5 cases Certified twice. 137 cases submitted as Petitions twice. 2 Mandatory cases filed twice. [5] Mandatory cases filed as Petitions after second Board of Review Opinion. 2 cases submitted as Petitions for the third time.

COURT ACTION

	Total as of June 30, 1960	July 1, 1960 to June 30, 1961	July 1, 1961 to June 30, 1962	Total as of June 30, 1962
Petitions (Art. 67(b)(3)):				
Granted	1,442	114	101	1,657
Denied	12,212	842	799	13,853
Denied by Memorandum Opinion	2	0	0	2
Dismissed	9	1	2	12
Withdrawn	299	8	14	321
Disposed of on Motion to Dismiss:				
With Opinion	7	1	0	8
Without Opinion	36	2	1	39
Disposed of by Order setting aside findings and sentence	3	0	0	3
Remanded to Board of Review	115	23	5	143
Court action due (30 days) [3]	77	57	88	88
Awaiting briefs [3]	19	25	25	25
Certificates (Art. 67(b)(2)):				
Opinions rendered	311	37	16	364
Opinions pending [3]	10	2	3	3
Withdrawn	6	0	1	7
Remanded	1	0	1	2
Set for hearing [3]	0	0	0	0
Ready for hearing [3]	1	1	0	0
Awaiting briefs [3]	6	1	0	0
Mandatory (Art. 67(b)(1)):				
Opinions rendered	35	1	1	37
Opinions pending [3]	1	0	0	0
Remanded	1	0	0	1
Awaiting briefs [3]	0	1	0	0
Opinions rendered:				
Petitions	1,228	91	95	1,414
Motions to Dismiss	10	1	0	11
Motion to Stay Proceedings	1	0	0	1
Per Curiam grants	22	4	1	27
Certificates	272	34	15	321
Certificates and Petitions	37	3	1	41
Mandatory	35	1	1	37
Remanded	2	0	0	2
Petition for a New Trial	1	0	1	2
Petition for Reconsideration of Petition for New Trial	1	0	0	1
Motion to Reopen	1	0	0	1
Total	1,610	134	114	[4]1,858

[3] As of June 30, 1960, 1961, and 1962.

[4] 1,858 cases were disposed of by 1,841 published Opinions. 101 opinions were rendered in cases involving 60 Army officers, 21 Air Force officers, 14 Navy officers, 3 Marine Corps officers, 2 Coast Guard officers, and 1 West Point Cadet. In addition 19 opinions were rendered in cases involving 20 civilians. The remainder concerned enlisted personnel.

COURT ACTION—Continued

Completed cases:	*Total as of June 30, 1960*	*July 1, 1960 to June 30, 1961*	*July 1, 1961 to June 30, 1962*	*Total as of June 30, 1962*
Petitions denied	12,212	842	799	13,853
Petitions dismissed	9	1	2	12
Petitions withdrawn	299	8	14	321
Certificates withdrawn	6	0	1	7
Opinions rendered	1,603	133	114	1,850
Disposed of on motion to dismiss:				
With opinion	7	1	0	8
Without opinion	36	2	1	39
Disposed of by Order setting aside findings and sentence	3	0	0	3
Remanded to Board of Review	115	23	6	144
Total	14,290	1,010	937	16,237

	Pending completion as of—		
	June 30, 1960	*June 30, 1961*	*June 30, 1962*
Opinions pending	38	16	19
Set for hearing	1	0	0
Ready for hearing	0	1	0
Petitions granted—awaiting briefs	9	17	14
Petitions—Court action due 30 days	77	57	88
Petitions—awaiting briefs	19	25	25
Certificates—awaiting briefs	6	1	0
Mandatory—awaiting briefs	0	1	0
Total	150	118	146

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Report

of

THE JUDGE ADVOCATE GENERAL

of

THE ARMY

January 1, 1962 to December 31, 1962

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY

There was a slight decrease in the total court-martial rate per thousand strength for fiscal year 1962 over that for fiscal year 1961. Although the number of general court-martial trials decreased for the ninth successive year, there were approximately 8,500 more inferior court-martial trials than in the preceding fiscal year. This increase may be attributed partially, at least, to the rapid buildup of Army strength and related circumstances. The number of court-martial trials for fiscal year 1962 (Average Strength—Total Army—1,053,706) follows:

	Convicted	*Acquitted*	*Total*
General	1,762	114	1,876
Special	25,254	1,353	26,607
Summary	41,694	1,848	43,542
Total—All courts-martial	68,710	3,315	72,025

Records of trial by general court-martial received by The Judge Advocate General during fiscal year 1962:

For review under Article 66	1,424
For examination under Article 69	452
Total	1,876

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

On hand at the beginning of period	94
Referred for review	*1,435
Total	1,529
Reviewed	1,418
Pending at close of period	111
Total	1,529

*This figure includes 11 cases which were referred to boards of review for examination under Article 69, Uniform Code of Military Justice.

Actions taken during period 1 July 1961 through 30 June 1962 by boards of review:

Affirmed	1,107
Sentence Modified	282
Rehearing Ordered	5
Charges Dismissed	5
Findings Disapproved in part/sentence approved	6
Findings and/or sentence disapproved in part	13
Total	1,418

Of the 1,418 accused whose cases were reviewed by boards of review pursuant to Article 66 and completed in accordance with Article 71 during the fiscal year, 1,073 (75.7 percent) requested representation by appellate defense counsel before boards of review. The records in the cases of 437 accused were forwarded to the United States Court of Military Appeals pursuant to the three subdivisions of Article 67*b*. These comprised 30.3 percent of the number of such cases reviewed by boards of review during the period. Of the mentioned 437 cases, 430 were forwarded on petition of accused and 7 were certified by The Judge Advocate General.

The action taken by the Court of Military Appeals on Army cases for fiscal year 1962 was as follows:

Petitions denied	371
Petitions granted	43
Certified cases affirmed	1
Certified cases reversed	5
Total	420

During the past year, Congress enacted Public Law 87–648, which amended Article 15 of the Uniform Code of Military Justice to provide commanders with more effective nonjudicial punishment authority. This represents only the third amendment to the Code in its 11 years of operation—the other 2 consisting of insertions of 2 new articles, Article 58*a* and Article 123*a*, the so-called "bad check" article. As I indicated in my last report, I am convinced that further amendments to the Code are not only vital to the effective operation of an Army in wartime but are essential to the proper administration of military justice at the present time.

At the request of the Code Committee, established to prepare recommendations for amendments to the Code under Article 67*g*, my office has drafted legislative proposals to amend the Code for presentation to the 88th Congress. These proposals include substantially all of the provisions of the "B" Bill, drafted in April of 1961 and set out in the Annual Report of the United States Court of Military Appeals, The Judge Advocates General, and the General Counsel of the Department of the Treasury for the period 1 January 1961 to 31 December 1961. Its purpose is to revise the court structure under the Uniform Code of Military Justice to provide for single-officer courts-martial in certain cases, and to provide for appointment, under certain conditions, of a law officer to a special court-martial. Unlike the former "B" Bill, the new draft does not abolish the summary court-martial. Additional amendments which my office has drafted would provide specific statutory authority for pretrial sessions and for other changes in court-martial procedures, waiver of review by a board of review in cases in which the accused has pleaded guilty to all offenses of which

he has been found guilty, and authorization for timelier execution of certain court-martial sentences, thus relieving the "unsentenced prisoner" problem.

Additional changes to the Code should also be given consideration. Experience strongly suggests a need to speed the formal pretrial procedures conducted pursuant to Article 32 of the Code. To accomplish this and at the same time insure that no injury is done to the rights of the accused, the formal pretrial investigation should be conducted by a lawyer who may be the trial counsel if the charges are referred to a general court-martial, accompanied in the investigation by a lawyer who will represent the accused during the investigation and any subsequent trial. An advantage of this procedure is that the activity of the investigating officer and the defense counsel would constitute, in large measure, their preparation for trial. Such a procedure would be expeditious, efficient, and equitable and promote the interests of justice and discipline.

On 1 October 1962, the reorganization of the Field Judiciary Division as the United States Army Judiciary, a Class II activity of my office, was announced. This is a further step in the evolution of a completely independent Army judicial system which began in 1958 with the establishment of the Field Judiciary. The Field Judiciary, now designated the Trial Judiciary, consists of 23 specially selected judicial officers who perform as law officer for cases tried by general court-martial. In this recent step, I have provided that the Army Judiciary embrace not only law officers and board of review members, but also appellate counsel, both for the Government and for the accused. The new organization includes also the Examination and New Trial Branch, formerly a part of the Military Justice Division, where appellate review of general court-martial cases pursuant to Article 69 is provided and certain petitions for new trial are processed. The Assistant Judge Advocate General has been designated the Coordinator of the United States Army Judiciary and made responsible for its activities. The Chief Judicial Officer, who reports directly to the Assistant Judge Advocate General, serves as the administrator of the United States Army Judiciary, with overall responsibility for its organization and functioning.

The administration of the Army's military justice system, and the execution of other military legal responsibilities of the Judge Advocate General's Corps, continue to make the overall attrition of experienced judge advocates a matter of primary interest. The "Berlin Buildup," the "Cuban Crisis," and the reorganization of the Department of the Army have intensified the need for experienced judge advocates and, as well, demonstrated the talent, experience, and dedication which the uniformed lawyer brings to his job. These qualities have marked the performance of the Corps and have made the suc-

cessful performance of our missions possible for the present. However, there is a clear and present danger of substantial impairment of our ability to perform adequately unless the Corps' personnel procurement problems are resolved.

Readily answering the emergency call, at considerable personal inconvenience, about 50 judge advocate Reserve officers were called to duty during the "Berlin Buildup," serving from about October 1961 to August 1962. Almost all of these officers have returned to civilian life. However, their collective performance during the period was a tribute not only to their unselfish and patriotic spirit but to their professional preparation as military lawyers and the effectiveness of the Reserve training program long conducted by this Corps.

The increased need for capable career officers, induced only in part by the activities of this past year, has served to heighten the uncertainty of our ability to meet our personnel needs and relieve the threat to the capability of the Corps to accomplish its mission. Of the approximately 1,100 judge advocates now on active duty, 520 are Regular Army officers and 86 are Reserve officers who are making a career of military service. The remainder are young Reserve officers recently graduated from law school and obligated to serve a relatively short period of active duty before returning to civilian life. The authorized Regular Army strength of the Corps is 786, or some 266 more than the actual number of Regular Army officers on duty. Only about 55 percent of the officers of the Corps have legal experience of more than 3 years. In 1962, about 250 officers, or more than 20 percent of the Corps' total strength, were commissioned and entered on active duty for the first time. The need for career officers, then, is critical.

I have long since recognized this problem area. Anticipating the mandatory losses of experienced officers within the next ten years, every reasonable solution has been explored and every effort expended to increase the Regular Army input, retention rate, and experience level of the Corps. There are certain solutions which I believe would provide adequate incentives to qualified attorneys to remain on active duty with the Corps. However, none of these have been placed in effect, although the problem area was recognized and incentives were recommended by a Board of General Officers and the Secretary of the Army as long ago as 1960. It has not been possible thus far to obtain extra pay on any of the various bases suggested, and Congress has thus far continued to prohibit legal training of career officers at Government expense, although experience factors indicate this course provides the highest quality of legal services at the lowest overall cost to the Government.

The Corps again this year expended every effort to solve its personnel needs. Extensive recruiting effort brought 27 officers in the Regular Army during fiscal year 1962, but losses through retirement, resig-

nation, death, and other causes involved 30 Regular officers. Again, approximately 120 accredited law schools were visited for personnel procurement purposes; position vacancies have been publicized to local, State, and national bar associations and to other interested groups; advertisements have been placed in legal periodicals; and aggressive procurement and retention programs have been formulated and pursued. Qualified officer attorneys in the Women's Army Corps have been detailed to the Corps.

The principal source of Regular officers for The Judge Advocate General's Corps, since suspension of the program in 1954 which permitted Regular Army officers to be sent to law schools at Government expense, is from among the many (about 180 per year) young officers called to duty to perform obligated service. In fiscal year 1962, there were about 25 young officers from this source. The continual flow in and out of the service of such large numbers of officers is an expensive method of obtaining trained military lawyers.

It is my opinion that immediate action is needed to improve the experience level of Army lawyers, to reduce the annual training expenditures, and to insure the Corps adequate experienced personnel to fulfill its missions in war or peace. I am of the opinion this can be most effectively and economically achieved by making legal training at Government expense available for career officers.

During the calendar year 1962, The Judge Advocate General's School, United States Army, provided resident instruction for 1,011 military lawyers and civilians employed by the Government. Four Procurement Courses, two International Law Courses, two Judge Advocate Refresher Courses, a Civil Affairs Course, a Military Affairs Course, a Military Justice Course, a Contract Termination Course, and a Law Officers' Seminar were conducted.

The School conducted two cycles of the 10 week Special Course. Among the 251 military lawyer graduates of these courses were officers from Thailand, Vietnam, and Korea.

The Tenth Judge Advocate Career Officers' Course, of 35 weeks' training duration, had 18 members, including one Navy legal specialist and one officer from Burma, and was completed on 25 May 1962. The Eleventh Career Officers' Course, now in residence, began instruction on 10 September 1962. This class includes 15 Army judge advocate officers, one Navy legal specialist, and one Turkish military lawyer.

The following texts were prepared and published as Department of the Army Pamphlets: Claims; Military Justice—Initial Review; International Law, Volume 2—The Law of War; and Selected Cases and Materials on the Soldiers and Sailors Civil Relief Act.

During 1962, the School provided nonresident training in military justice and other military legal subjects for more than 2,600 Army judge advocate Reserve officers. The School continued its support of

the United States Army Reserve school program with the preparation and distribution of instructional material to 74 United States Army Reserve schools. Instructional material was also prepared for approximately 500 Reservists assigned to Judge Advocate General Service Organization (TOE 27-500D) teams and for 600 officers assigned to judge advocate sections of Troop Program Units.

During the period 24–27 September 1962, a conference of judge advocates representing the courts-martial jurisdictions throughout the world was held at The Judge Advocate General's School. It was attended by approximately 175 judge advocate officers who were privileged to hear outstanding authorities speak on military law and related topics.

Four issues of the *Military Law Review* were published during this period. These volumes contained articles, comments, surveys, and book reviews of interest to judge advocates. The October 1962 issue was devoted entirely to procurement law and featured articles by both civilian and military experts in the field of government contracts. The annual survey of decisions of the Court of Military Appeals appeared in the April 1962 issue.

Twenty-eight issues of the Judge Advocate Legal Service were published, insuring a rapid dissemination to the field of the latest developments in military law and allied subjects.

A new training film entitled "Legal Assistance" was completed during this period. It is designed to inform Army commanders and personnel of the legal assistance services that are available to them. In my opinion the preventive law aspects of the Legal Assistance program enhance morale and promote discipline and good order. The script for a new training film to be entitled "Nonjudicial Punishment," explaining Public Law 87–648, was also prepared.

A 4-hour common subject course of instruction on the legal aspects of counterinsurgency was developed for incorporation into the curricula of career courses of all other Army service schools. A team of officers from The Judge Advocate General's School presented this instruction to selected groups for evaluation at the Quartermaster School, the Special Warfare School, the Infantry School, and The Provost Marshal General's School.

In accordance with Article 6*a*, The Assistant Judge Advocate General and I inspected judge advocate offices in the United States and overseas. These inspections, together with the information obtained during the annual Judge Advocate General's Conference, have convinced me that, although certain amendments to the Code are necessary, Army judge advocates and their commanders are carrying out their military justice duties in an exemplary manner. I would be remiss in my responsibility if I failed to mention the consistently high

quality of our Army commanders and the commendable judicial impartiality with which they are carrying out their responsibilities under the Code. They are unanimous in their approval of the amendment to Article 15, not merely because they believe that the judicious use of their increased nonjudicial powers will enable them to maintain a high standard of discipline, but principally because they will be able to maintain that standard without stigmatizing the minor offender with a court-martial conviction.

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

Report

of

THE JUDGE ADVOCATE GENERAL

of

THE NAVY

January 1, 1962 to December 31, 1962

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

Following the practice in recent years of having the Code Committee Report reach the Armed Services Committees of Congress shortly after the convening of each new session, this report, although embracing calendar year 1962 contains, unless otherwise indicated, statistical information covering fiscal year 1962.

Courts-martial of all types convened within the Navy and Marine Corps charging servicemen with offenses—military and civil; misdemeanor and felony—totaled 45,529 in fiscal year 1962 as compared to 45,042 in fiscal year 1961, an overall increase of 487 cases. General courts-martial for fiscal year 1962 totaled 495 cases, as compared to 500 cases in fiscal year 1961. In last year's report, I noted a trend away from the general courts-martial in favor of the lesser courts-martial. This trend seems to have continued into the year just past inasmuch as special and summary courts-martial accounted for the 487 case increase in workload. We expect a downward trend in the overall 1963 caseload due to the increased nonjudicial punishment authority resulting from Public Law 87-648. Special courts-martial for fiscal year 1962 totaled 15,782 as compared to 15,589 in fiscal year 1961. Summary courts-martial totaled 29,252 in fiscal year 1962 as compared to 28,953 in fiscal year 1961. A more detailed statistical report is attached as enclosure (1).

Navy Boards of Review during fiscal year 1962 received for review 386 general courts-martial and 2,783 special courts-martial. The pending cases at the end of the fiscal year were 93 as compared to 136 at the commencement of the year. Boards modified findings of 88 cases reviewed, and modified the sentences in 336 cases. Fifty-four percent of the accused whose cases were received for review by Boards of Review requested representation by appellate defense counsel. During the fiscal year 315 petitions were acted upon by the United States Court of Military Appeals. Of this total 277 petitions were denied, and review was granted in 38 cases. The Judge Advocate General certified seven cases to the Court during this period.

Public Law 87-648, amending Article 15, UCMJ, was enacted into law during the year with an effective date of 1 February 1963. An Executive Order, drafted by the service JAG's after consultation with their respective services and after consultation with the Coast Guard,

is being cleared through channels for presidential approval. In the words of the Secretary of the Navy:

> "The primary objective of the new law is to provide greater latitude in correcting the offender for his minor breaches of discipline without the stigma of a court-martial conviction. The increased punishment authority under the new law in the hands of command leaders will be an effective tool for the promotion of discipline with justice."

This new Article 15, now a "fait accompli", is the first major change in the Code. The enactment of this new statute parallels, among other things, promulgation of the Navy's new "United States Navy Leadership Manual"—thus reflecting converging Navy efforts designed to improve leadership programs, discipline, morale, and "esprit".

The Assistant Judge Advocate General (Military Justice) continues to issue, periodically, an informal communication to all Navy law specialists advising them of new developments in the law, calling their attention to errors frequently committed, and pointing out pitfalls that are apt to be encountered. It was of significant assistance to the field in providing advance information on the development of the new Article 15.

The JAG Task Forces (East and West Coast), although depleted in strength, continued, within their numerical capabilities, to respond to requests for special services whenever and wherever required. Since the Task Force units are now so small, it has been necessary, on occasion, to utilize the services of officers assigned permanent duties in other units of the office. Be it as counsel for a court of inquiry, for a party, as trial or defense counsel, or special lecturer on military justice, they were available.

Last year I reported on the Navy's pilot judiciary program. I am pleased to report that in May 1962, the Secretary of the Navy authorized the establishment of the judiciary program on a servicewide basis. A headquarters office has been activated at Washington, D.C. Branch offices have been established at Norfolk, Va.; Camp Lejeune, N.C.; Great Lakes, Ill.; San Diego, Camp Pendleton, and San Bruno, Calif.; Pearl Harbor, Hawaii; and Yokosuka, Japan. Each office provides law officer services to all GCM convening authorities (Navy and Marine Corps) within its assigned geographic area. Costs of travel and per diem are borne by my office. The employment of well-seasoned and experienced law officers in all general courts-martial cannot help but improve the quality of judicial proceedings.

The Military Justice Division of my office has developed a new special court-martial trial guide, which is now being issued to the field. The purpose of this guide is to provide assistance to the special

court-martial, where, normally, nonlawyers serve as counsel and members of the court. The guide will be particularly valuable in the procedural field. It was prepared with the idea of incorporating the "instructional" requirements that are imposed by law upon presidents of special courts-martial and incorporating other new material which has become necessary because of changes in the Manual for Courts-Martial, 1951. This trial guide should be an extremely useful tool in the hands of nonlawyer counsel and presidents of special courts-martial.

There is need for legislation to enhance the status of the law officer by permitting him to rule with finality on all questions of law as well as all interlocutory questions other than the mental responsibility of the accused. Concomitant therewith, some of the courtroom procedures need modernization. A form of pretrial conference where preliminary motions and pleas can be acted upon without the necessity of requiring the presence of the court members would provide for a more orderly trial. Such a legislative proposal is now under active consideration by the service JAG's. Additionally, there is a continuing and pressing need to enact other provisions of the Omnibus amendments previously forwarded to the Congress as part of the DoD legislative program. Legislative proposals designed to effect a more orderly administration of military justice are under active consideration by the service JAG's.

I have previously spoken on the need to rewrite the Manual. The changes brought about by Article 123A enacted last year; the changes in the immediate offing by virtue of the new Article 15; and the changes brought about by decisional law all attest to the need to rewrite the Manual—in a loose-leaf form, I hope. We can no longer delay this important task. I am pleased to report that sister service JAG's have agreed to a feasibility study as a first step.

While on the subject of rewritting the Manual, I have long been concerned with the outmoded presentencing procedures used by the military. At the present time the Manual limits the Government to records of previous convictions and to matters in aggravation of the offense involved. On the other hand, the accused may offer any material in mitigation or extenuation and, where he makes an unsworn statement, he is not subject to cross-examination. In civilian criminal trials a full presentencing report is made available to the court. Judicial decisions, such as the Supreme Court case, *Williams* v. *Oklahoma*, 358 US 576, have indicated that punishment is individual, and should be fitted not only to the offense but also to the offender.

Therefore, for the court to arrive at an appropriate sentence, it should have available to it the "whole picture", not just part of it, for then and only then can a sentence be meaningful. I, therefore, urge that immediate steps be taken to amend the Manual in order to permit

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realistic presentencing procedures such as have been found workable in our Federal and State courts.

The personnel problem has improved slightly during the year. The procurement of new lawyers in the rank of Lieutenant (junior grade) has kept pace with overall billet requirements; however, all of the new officers are Reserves who are merely serving their obligated service. Retention and augmentation of career lawyers remains acute. The loss of experienced law specialists through release to inactive duty after completion of obligated service and the loss of senior experienced law specialists through voluntary retirement is posing an acute personnel problem this year, and it is expected to become very serious in the future.

The U.S. Naval Justice School, which is under the technical supervision of the JAG, continues to offer intensive courses of instruction in the fundamental principles of military justice and procedures under UCMJ. In October, the graduation of the 100th class was noted with appropriate ceremony.

While the primary mission of the school is to train line and staff corps officers of the Navy and Marine Corps, newly commissioned Navy lawyers secure their training in military justice and procedures at the school. As a secondary mission and as part of the continuing program for common specialist training of armed forces personnel, the school trains enlisted personnel of the Army, Navy, Air Force, and Coast Guard in closed microphone court reporting and military justice. The school's faculty, while predominantly Navy, has Marine, Army, and Air Force personnel assigned. During fiscal year 1962, 1,629 students were graduated. Additionally, 448 military personnel received special lectures.

Last year I reported on the status of the DoD sponsored JAG Corps legislation. Unfortunately, the Bill (H.R. 12347—87th) was never referred to subcommittee for hearings and, with the end of the 87th Session it expired. The need to establish a JAG Corps in the Navy remains acute. The Navy needs an organizational envelope for its lawyers—not only to identify them but to provide them with professional prestige and status.

W. C. Mott,
Rear Admiral, USN,
Judge Advocate General.

Enclosure (1)

FISCAL YEAR 1962

General courts-martial:		
Received for review under Article 66	386	
Received for review under Article 69 and acquittals	109	
Total		495
Special courts-martial:		
Received for review under Article 66	2,783	
Received for review under Article 65c	2	
Reviewed in the field	12,997	
Total		15,782
Summary courts-martial:		
Received for review under Article 65c	0	
Reviewed in the field	29,252	
Total		29,252
Total all courts-martial		45,529
Board of review actions:		
On hand for review 1 July 1961	136	
Received for review during FY 1962	3,169	
Total on hand		3,305
Reviewed during FY 1962	3,212	
Pending review on 30 June 1962	93	
Total		3,305
Supplemental reviews, such as petitions for reconsideration, USCMA mandates, rehearing, interlocutory decisions, etc	82	
Findings modified by boards of review during FY 1962	88	
Requests for appellate counsel	1,707	
U.S. Court of Military Appeals actions:		
Petitions granted	38	
Petitions denied	277	
Total petitions acted upon		315
Cases certified to USCMA by JAG		7

Report

of

THE JUDGE ADVOCATE GENERAL

of

THE AIR FORCE

January 1, 1962 to December 31, 1962

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

1. *a.* The number of records of trial received in the Office of The Judge Advocate General, for review pursuant to Article 66 and for examination pursuant to Article 69, during fiscal year 1962, is shown in the following table:

Total		1,085
Referred to Boards of Review pursuant to Article 66		912
General Court-Martial records	296	
Special Court-Martial records	616	
Examined pursuant to Article 69		173

The Boards of Review modified findings of guilty in 44 cases.

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

On hand 30 June 1961	86	
Referred for review	912	998
Reviewed and dispatched	934	
Pending 30 June 1962	64	998

c. From 1 July 1961 through 30 June 1962, 59 percent of the accused whose cases were reviewed in the Office of The Judge Advocate General, pursuant to Article 66, requested representation by Appellate Defense Counsel before Boards of Review.

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

Cases reviewed and dispatched by Boards of Review		934
Cases forwarded to USCMA		198
Number cases based on petitions	194	
Number cases certified by TJAG	4	
Percent total forwarded of total cases reviewed		21.2
Petitions granted		17
Percent petitions granted of total petitioned		8.8
Percent petitions granted of total cases reviewed by Boards of Review		1.8

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

General Courts-Martial	483
Special Courts-Martial	3,257
Summary Courts-Martial	11,689
Total	15,429

2. *a.* At the close of the period of this report there were 84 commands exercising general court-martial jurisdiction.

b. The Secretary of Defense, by virtue of the authority delegated to him by the President in Executive Order 10428, empowered the following officers to convene general courts-martial and to refer for trial by courts-martial the cases of members of any of the armed forces assigned to or on duty with their respective commands:

(1) Commander in Chief, United States Strike Command

(2) Commander, Joint Task Force Eight

c. The Secretary of the Air Force concurred in requests by the Secretary of the Navy for authorization of a Navy command to appoint Air Force officers as law officers in two trials by general courts-martial of the Navy.

3. Legislation increasing the authority of designated commanders under Article 15 was introduced in the 87th Congress as H.R. 7656. Following hearings in the House of Representatives, a clean bill (H.R. 11257) was introduced and subsequently enacted as Public Law 87-648 on 7 September 1962. This Act will become effective on 1 February 1963.

4. During the calendar year period, Major General Albert M. Kuhfeld, The Judge Advocate General, and Major General M. R. Tidwell, Jr., the Assistant Judge Advocate General, made staff visits to approximately 75 legal offices in the United States and overseas as required by Article 6(a) of the Uniform Code of Military Justice. Generals Kuhfeld and Tidwell also attended various bar association meetings and spoke before numerous civic, professional and military organizations.

5. On 1 January 1962 there were 1,343 judge advocates on active duty in the United States Air Force; on 31 December 1962 there were approximately, 1,316 judge advocates on active duty. The change in the overall strength of The Judge Advocate General's Department reflects a loss of 167 judge advocates by reason of completion of obligated tours of duty, retirements, and resignations; and a gain of 138 judge advocates from ROTC, direct appointments, and recall sources. Approximately 21 judge advocates were recalled with their Reserve units during the "Cuban build-up" and served about one month on extended active duty prior to release.

6. During this period two motion pictures were produced and distributed. One, "The General Court-Martial," is a basic explanation and illustration of court-martial procedures. The other, "Counselor in Uniform," serves to inform all members of the Air Force of the legal services available to them, and to acquaint persons outside the Air Force with some of the varied facets of the judge advocate's work. Production has been nearly completed on an additional film, "Uniform Code of Military Justice—Financial Responsibility," which will

be available for distribution in January 1963. A training film explaining the newly amended Article 15 has been initiated and is expected to be available in the latter part of 1963.

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

ALBERT M. KUHFELD,
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, 1962 to December 31, 1962

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 USC 867(g).

The number of court-martial records received for appellate review or filing during the fiscal year 1962 was moderately higher than in the previous year, but only slightly more than the number received in the two preceding fiscal years. The following table shows the type and number of courts-martial for each year since 1959, when the fiscal year method of reporting was adopted.

	1962	*1961*	*1960*	*1959*
General courts-martial	4	4	6	3
Special courts-martial	148	162	158	187
Summary courts-martial	683	586	666	643
Total	835	752	830	833

It may be noted that the one-officer summary court-martial accounts entirely for the current increase in volume. This is of some interest because, after February 1, 1963, when the new Article 15 becomes effective and commanding officers will be able to exercise punishing power approximately equivalent to that of a summary court, the volume of such courts should decline markedly. Since summary courts constitute about 80 percent of the total volume in the Coast Guard, a decrease in the total may also be expected.

The number of special courts-martial was the smallest since the inception of these reports. Of the 148 special courts-martial, 94 were reviewed and acted upon in the field by an officer exercising general court-martial jurisdiction as supervisory authority, and were final when received. The General Counsel of the Treasury Department acted as supervisory authority for 31 other special courts-martial. The remaining 23 were referred to the Board of Review pursuant to the requirements of Article 65(b) of the Code.

The Board of Review, in addition to its 23 special court-martial cases, also reviewed 4 general courts-martial. In all but one of these cases, appellate review by a Board of Review was mandatory because the sentence as approved by an officer exercising general court-martial

jurisdiction included a punitive discharge. The one exception was a general court-martial case referred to the Board pursuant to Article 69 of the Code. Including one decision on remand from the Court of Military Appeals, and one on a motion for reconsideration, the Board of Review wrote 29 decisions in its 27 cases.

Of the 26 punitive discharges in the Board of Review cases, 8 had been conditionally suspended by action of the convening authority prior to referral to the Board. The Board set aside four of the unsuspended discharges, and two of those which had been suspended. Upon recommendation of the Board, the General Counsel granted probation as to one bad conduct discharge. In one other case, the Board commuted the bad conduct discharge to a pay forfeiture. In summary, of the 26 punitive discharges adjudged, only 12 survived the appellate process unsuspended.

The sentences in all but three of the Board of Review cases included a term of confinement. The average special court-martial confinement adjudged was 4.85 months; the average general court-martial confinement was 11.5 months. The periods of confinement adjudged in four of the summary courts-martial and in three of the general courts-martial were subsequently reduced either by the convening authority or by the Board of Review. The Board of Review set aside the findings and the sentence and ordered a rehearing in one general court-martial case. The charges in this case were subsequently dismissed, pursuant to Article 66(e) of the Code.

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

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