

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, 1963, to December 31, 1963

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 12th annual report of the Committee created by Article 67(g) of the Uniform Code of Military Justice, 10 U.S.C. 867(g). That article requires the Judges of the U.S. Court of Military Appeals, The Judge Advocates General of the Armed Forces, and the General Counsel of the Department of the Treasury to meet annually to survey the operations of the Code and to prepare a report to the Committees on Armed Services of the Senate and of the House of Representatives, to the Secretary of Defense and the Secretary of the Treasury, and to the Secretaries of the Departments of the Army, Navy, and Air Force with regard to the status of military justice and to the manner and means by which it can be improved by legislative enactment.

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

No legislation directly relating to military justice was enacted during the 1st session of the 88th Congress. The new article 15, pertaining to commanders' nonjudicial punishment powers, enacted as Public Law 87-648, became effective on February 1, 1963, as did corresponding changes in the Manual for Courts-Martial, United States, 1951, which were promulgated by Executive Order No. 11081, January 29, 1963, 28 Fed. Reg. 945. Although in effect less than 1 year, the new article 15 has already reduced the court-martial rates in the Armed Forces substantially. Most minor offenses are now appropriately punished nonjudicially without imposing the stigma of criminal convictions.

Following hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, U.S. Senate, the Honorable Sam J. Ervin, chairman of the subcommittee, on August 6, 1963, introduced in the Senate 18 bills, their stated purpose being to protect and enhance the constitutional rights of military personnel. On September 25, 1963, the Honorable Victor Wickersham introduced identical bills in the House of Representatives, and other Senators and Representatives have joined in the sponsorship of these proposals. Each bill was referred to the appropriate committee of the Congress, but no hearings were held during the period of this report. Several of these proposals, if enacted, would affect the administration of justice in the Armed Forces.

It is clear that the general objective of the sponsors of the Ervin-Wickersham bills, to improve the administration of justice in the Armed Forces, is identical with that of this Committee. Many of the specific proposals in the field of military justice have previously been proposed by this Committee. Others have received the endorsement of one or more of the individual judges or Judge Advocates General. In view of the broad scope of these bills, and the fact that the Code Committee has not yet had the opportunity to study the views and comments of other interested parties and agencies—including those of the military departments and the Department of Defense, which in some instances were not wholly formulated during our reporting period—the Committee does not deem it appropriate to discuss the several bills in detail in this report.

Recognizing that the press of its other business has for some years prevented the Congress from considering any all-inclusive change in the military justice system, the Code Committee has from time to time recommended enactment of short bills, each dealing with particular aspects of the Uniform Code of Military Justice appearing to be most urgently in need of revision. Two such bills were enacted by the 87th Congress as Public Law 87-385 and Public Law 87-648 dealing with worthless check offenses and nonjudicial punishment, respectively. The Code Committee continues to recommend legislation embodying the substance of the bills denominated “B,” “D,” and “F,” discussed in and attached to our report for the year 1962.

The “F” bill, which was discussed in the last previous report, remains unchanged as a legislative recommendation. If enacted, it would permit convening authorities to order the confinement and forfeiture portions of certain sentences into execution upon approval. At present, many prisoners complete the service of their term of confinement before their cases have been finally reviewed. The distinction required in treatment of such a prisoner from that accorded a sentenced prisoner unduly complicates the administration of confinement facilities and has, on occasion, created complex administrative problems. This bill would eliminate this source of difficulty, without acting to the substantial detriment of the prisoners involved. The bill would also clarify what lesser punishments are included within the death sentence, and would eliminate a related 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.

In addition, the Code Committee is of the opinion that two other areas of the Uniform Code similarly require legislative correction. First, neither the Constitution nor the Uniform Code requires that counsel before a special court-martial be a qualified lawyer. Although a record of trial by special court-martial in which a bad-conduct dis-

charge is adjudged may receive even greater review than a general court-martial, certain errors and omissions of counsel are not always capable of correction on review. In view of the gravity of the penalty of bad-conduct discharge, the Code Committee recommends that legislation be enacted to provide that a bad-conduct discharge may not be adjudged unless an accused has been represented by a qualified lawyer, or has refused the services of such a lawyer. Legislation to this effect has previously been recommended individually by each of the judges, The Judge Advocates General, and the Senate Subcommittee on Constitutional Rights.

To facilitate the Congress' consideration of the Ervin-Wickersham proposals and our recommendations, we further recommend that the proposal for qualified counsel before special courts-martial be combined with the "B" and "D" bills in a single bill here denominated the "G" bill. In addition to the proposal for counsel, the "G" bill incorporates the provisions of the "B" bill for single-officer general and special courts-martial, and increased authority of the law officer and of the president of a special court-martial. It provides authority, with necessary safeguards and procedural changes, whereby an accused person could waive hearing before court members and be tried by the law officer alone, comparable to a trial without a jury in Federal courts. It also gives the law officer authority to rule with finality on certain matters of law on which legally untrained members may now reverse him. From the the "D" bill, the "G" bill incorporates the provisions for pretrial sessions by a law officer, before the members are assembled, to consider and dispose of interlocutory questions and other procedural matters. This is similar to provisions of the Federal Rules of Criminal Procedure. Linked with this are technical provisions to clarify the status of the law officer in these proceedings and related administrative matters.

The "G" bill is set out as exhibit B with an accompanying statement of its purpose and principal features. The Code Committee is of the opinion that the "G" bill, in addition to its intrinsic merit, may properly be adopted as a single substitute for several of the individual bills relating to military justice matters included in the Ervin-Wickersham proposals.

Judge Ferguson continues to have reservations, as detailed in our report for the year 1962, concerning the desirability of some aspects of the foregoing legislation.

The second additional area in which we recommend amendment of the Uniform Code relates to expanded authority for granting relief in cases in which appellate review has become final. The attached "H" bill (exhibit C) would make two desirable changes in the remedies available to an accused in these circumstances. One would extend the time within which a new trial may be granted

from 1 year to 2 years. The other would give The Judge Advocate General, because of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused, specific statutory authority to vacate or modify a conviction or sentence which, not requiring review by a board of review under article 66, has become final. The "H" bill would not interfere with the powers of the correction boards to correct an error or remove an injustice under section 1552 of title 10, United States Code.

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

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

Respectfully submitted,

ROBERT E. QUINN,
Chief Judge.

HOMER FERGUSON,
Judge.

PAUL J. KILDAY,
Judge.

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

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

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

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

EXHIBIT A

“F”

A BILL

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

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

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

7 “856. 56. Maximum limits.”

8 and inserting the following item in place thereof:

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

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

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

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

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

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

1 “§ 857. *Art. 57. Effective date of sentences*
2 “(a) Any period of confinement included in a sen-
3 tence of a court-martial begins to run from the date
4 the sentence is adjudged by the court-martial, but
5 periods during which the sentence to confinement is
6 suspended shall be excluded in computing the term of
7 confinement.
8 “(b) All other court-martial sentences and parts
9 thereof are effective on the date ordered executed.
10 No forfeiture may extend to any pay or allowances
11 accrued before the date the forfeiture is ordered
12 executed.”
13 (4) Section 871 (article 71) is amended—
14 (A) by striking out the first sentence in sub-
15 section (a) and inserting the following in place
16 thereof:
17 “A court-martial sentence involving a general
18 or flag officer and that part of a court-martial
19 sentence providing for death may not be executed
20 until approved by the President.”;
21 (B) by striking out the first two sentences in
22 subsection (b) and inserting the following in place
23 thereof:
24 “*That part of a sentence providing for the dis-*
25 *missal, unsuspended, of a commissioned officer*

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

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

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

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

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

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

SECTIONAL ANALYSIS
OF
A BILL ["F"]

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

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

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

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

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

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

proval under this article, he may, when he acts on the dismissal, also exercise his powers under article 74 to remit or suspend any part or amount of the sentence which remains unexecuted at that time.

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

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

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

EXHIBIT B

“G”

A BILL

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

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

6 follows:

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

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

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

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

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

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

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

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

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

1 “(B) a law officer and not less than three
2 members; or
3 “(C) only a law officer, under the same con-
4 ditions as those prescribed in clause (1) (B); and
5 “(3) summary courts-martial, consisting of one
6 commissioned officer.”

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

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

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

14 “A bad-conduct discharge may not be adjudged unless a
 complete
15 record of the proceedings and testimony has been made and
 the

16 accused was represented or afforded the opportunity to be
17 represented at the trial by counsel having the qualifications
18 prescribed under section 827(b) of this title (article 27(b)).”

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

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

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

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

1 item in the analysis:

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

3 and inserting the following item in place thereof:

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

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

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

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

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

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

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

22 person may act as a law officer of a single-officer general
23 court-martial unless he is specially certified to be qualified
24 for that duty. No person is eligible to act as law officer in
25 a case if he is the accuser or a witness for the prosecution or
26 has acted as investigating officer or as counsel in the same
case."

1 (8) Section 826(b) (article 26(b)) is amended by striking
2 out
3 the figures "839" and "39" and inserting the figures "839(b)"
4 and
5 "39(b)", respectively, in place thereof.

6 (9) Section 829 is amended—

7 (A) by striking out the words "accused has been ar-
8 raigned"

9 in subsection (a) and inserting the words "court has been
10 assembled for the trial of the accused" in place thereof;

11 (B) by inserting the words ", other than a single-officer
12 general court-martial," after the word "court-martial" in the
13 first sentence of subsection (b); and by amending the last
14 sentence of subsection (b) to read as follows:

15 "The trial may proceed with the new members present after
16 the recorded evidence previously introduced before the
17 members of the court has been read to the court in the
18 presence of the law officer, the accused, and counsel.";

19 (C) by inserting the words ", other than a single-officer
20 special court-martial," after the word "court-martial" in the
21 first sentence of subsection (c); and by amending the last
22 sentence of subsection (c) to read as follows:

23 "The trial shall proceed with the new members present
24 as if no evidence had previously been introduced at the
25 trial, unless a verbatim record of the evidence previously
introduced before the members of the court or a stipulation
thereof is read to the court in the presence of the law
officer, if any, the accused and counsel."; and

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

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

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

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

23 (11) Section 838(b) (article 38(b)) is amended by striking
24 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

26 a law officer” in place thereof.

1 (12) Section 839 (article 39) is amended to read as follows:
2 "§ 839. *Art. 39. Sessions*
3 "(a) At any time after the service of charges which
4 have been referred for trial to a court-martial composed of
5 a law officer and members, the law officer may, subject to
6 section 835 of this title (article 35), call the court into
7 session without the presence of the members for the purpose
8 of—
9 "(1) hearing and determining motions raising
10 defenses or objections which are capable of determina-
11 tion without trial of the issues raised by a plea of
12 not guilty;
13 "(2) hearing and ruling upon any matter which may
14 be ruled upon by the law officer under this chapter,
15 whether or not the matter is appropriate for later con-
16 sideration or decision by the members of the court;
17 "(3) if permitted by regulations of the Secretary
18 concerned, holding the arraignment and receiving the
19 pleas of the accused; and
20 "(4) performing any other procedural function which
21 may be performed by the law officer under this chapter
22 or under rules prescribed pursuant to section 836 of this
23 title (article 36) and which does not require the presence
24 of the members of the court.
25 These proceedings shall be conducted in the presence of the
26 accused, the defense counsel, and the trial counsel and shall
be made a part of the record.

1 “(b) When the members of a court-martial deliberate or
2 vote, only the members may be present. After the members of
3 a court-martial which includes a law officer and members have
4 finally voted on the findings, the president of the court may
5 request the law officer and the reporter, if any, to appear
6 before the members to put the findings in proper form, and
7 these proceedings shall be on the record. All other proceed-
8 ings, including any other consultation of the members of the
9 court with counsel or the law officer, shall be made a part
10 of the record and shall be in the presence of the accused,
11 the defense counsel, the trial counsel, and, in cases in which
12 a law officer has been detailed to the court, the law officer.”

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

14 § 840. *Art. 40. Continuances*

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

19 (14) Section 841(a) (article 41(a)) is amended—

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

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

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

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

2 “(a) Before performing their respective duties, law
3 officers, members of general and special courts-martial,
4 trial counsel, assistant trial counsel, defense counsel,
5 assistant defense counsel, reporters, and interpreters
6 shall take an oath to perform their duties faithfully. The
7 form of the oath, the time and place of the taking thereof,
8 the manner of recording the same, and whether the oath shall
9 be taken for all cases in which these duties are to be per-
10 formed or for a particular case, shall be as prescribed in
11 regulations of the Secretary concerned. These regulations
12 may provide that an oath to perform faithfully duties as a
13 law officer, trial counsel, assistant trial counsel, defense
14 counsel, or assistant defense counsel may be taken at any
15 time by any judge advocate, law specialist, or other person
16 certified to be qualified or competent for the duty, and if
17 such an oath is taken it need not again be taken at the time
18 the judge advocate, law specialist, or other person is
19 detailed to that duty.”

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

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

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

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

1 offense for which the death penalty may be adjudged.
2 With respect to any other charge or specification to
3 which a plea of guilty has been made by the accused
4 and accepted by the law officer or by a court-martial
5 without a law officer, a finding of guilty of the charge
6 or specification may, if permitted by regulations of the
7 Secretary concerned, be entered immediately without vote.
8 This finding shall constitute the finding of the court
9 unless the plea of guilty is withdrawn prior to announce-
10 ment of the sentence, in which event the proceedings shall
11 continue as though the accused had pleaded not guilty.”
12 (17) Section 849(a) (article 49(a)) is amended by inserting
13 after
14 the word “unless” the words “the law officer or court-martial
15 without
16 a law officer hearing the case or, if the case is not being heard,”.
17 (18) Section 851 (article 51) is amended—
18 (A) by amending the first sentence of subsection
19 (a) to read as follows:
20 “Voting by members of a general or special court-martial
21 on the findings and on the sentence, and by members of a
22 court-martial without a law officer upon questions of
23 challenge, shall be by secret written ballot.”;
24 (B) by amending the first two sentences of subsection (b)
25 to read as follows:
26 “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

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

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

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

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

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

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

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

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

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

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

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

SECTIONAL ANALYSIS
OF
A BILL ("G")

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

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

Section 1(2) amends article 16 to provide that a general or special court-martial shall consist of only a law officer if the accused, before the court is convened, so requests in writing and the convening authority consents thereto. However, before he makes such a request, the accused is entitled to know the identity of the law officer and to have the advice of counsel. Although such a procedure has not heretofore been available in any of the armed forces, an 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 article 19 by providing that before a special court-martial may adjudge a bad-conduct discharge the accused must be represented or afforded the opportunity to be represented at the trial by counsel who is legally qualified in the sense of article 27(b). The offered representation, of course, will be at no expense to the accused. This amendment does not limit or otherwise affect any right the accused may have to obtain counsel of his own selection under article 38(b). Also, the accused may decide not to avail himself of the opportunity to be represented by counsel qualified under article 27(b).

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

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

Article 25 is further amended by substituting the word "assembled" for the word "convened" in subsection (c) (1). The term "convened"

as used in the present subsection (c) (1) has been considered to be a term of art which has reference to that time in the court-martial proceedings when the members, the law officer, and counsel are sworn. The amendment to article 43 contemplates that, if permitted by regulations of the Secretary concerned, the above personnel will be sworn at some time before their gathering in the courtroom. Accordingly, the term "convened" as used in the above sense might have no application under the amended procedure. Furthermore, the term "convened" is used elsewhere in the code to refer to the appointment of courts-martial, and consequently has caused some confusion in this respect. This and other amendments in this bill will obviate this confusion of terms by using the word "assembled" to refer to the gathering as distinguished from the appointment of the court.

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

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

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

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

Section 1(9) amends article 29 to provide that no member of a general or special court-martial may be absent or excused, except for the reasons specified, after the court has been assembled for the trial of the accused, and by specifically excepting from the operation of subsections (b) and (c) single-officer general and special courts-martial. This section further amends article 29 by deleting any reference in subsections (b) and (c) to the oaths of the members so as to make it clear that it is not required that new members take their oaths at the trial.

The amendment to article 42 requires that the oath must be taken at some time before a member may perform his duties. The words "evidence previously introduced before the members of the court" have been inserted in place of the present language so that only that evidence which has been introduced before the members of the court must be read to the court to which the new members have been detailed and so that all evidence, not just "testimony", will be included.

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

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

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

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

sanction to pretrial and other hearings without the presence of the members concerning those matters which are amenable to disposition on either a tentative or final basis by the law officer. The pretrial disposition of motions raising defenses and objections is in accordance with Rule 12 of the Federal Rules of Criminal Procedure. Other procedural and interlocutory matters will be presented for appropriate rulings by the law officer at pretrial sessions at his discretion, although he may not abuse that discretion by violating or impairing in these proceedings any substantial right of the accused. This is in accordance with the principles expressed by the United States Court of Military Appeals in *United States v. Mullican*, 7 USCMA 208, 21 CMR 334.

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

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

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

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

Section 1(14) amends article 41(a) by specifically providing that the law officer of a special court-martial may be challenged for cause. Further, article 41(a) is amended to provide that when a court-martial includes a law officer, he, rather than the members, shall determine the relevancy and validity of challenges. The effect of this amendment is to conform procedures before courts-martial to procedures in the district courts in which the trial judge rules upon a challenge for cause against a juror.

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

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

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

Section 1(18) amends article 51 to reflect the amendment to article 41 which provides that, when a court-martial includes a law officer, he is the person who rules upon all challenges for cause, and to include specifically in subsection (c) the duty of the law officer and president of a court-martial without a law officer to instruct the *members* of the court. This section further amends article 51 to provide that rulings of the law officer of a special, as well as a general, court-martial on all questions of law and all interlocutory questions other than the ac-

cused's mental responsibility are final and that rulings of the president of a special court-martial without a law officer on questions of law other than a motion for a finding of not guilty are also final. The power given to the law officer by this amendment is in accordance with Federal practice, and the power given to the president of a special court-martial to rule finally on questions of law is implicit in the decision of the United States Court of Military Appeals in *United States v. Bridges* (12 USCMA 96, 30 CMR 96).

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

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

Section 1(20) amends article 54(a) to provide for authentication of a record of trial by general court-martial by the signature of the law officer. Under the present law, the record must be authenticated by the signature of both the law officer and the president, or, if they are unavailable for one of the reasons specified in the article, by two members. However, neither the president nor other members are present during the many hearings held out of their presence even under the present practice, and thus actually are unable to certify to the correctness of a transcription of those proceedings. The amendment further provides that if the law officer cannot, for one of the specified reasons, authenticate the record, it shall be authenticated

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

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

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

EXHIBIT C

“H”

A BILL

To amend chapter 47 (Uniform Code of Military Justice) of title 10, United States Code, by authorizing the Judge Advocate General to grant relief in certain court-martial cases, by extending the time for petitioning the Judge Advocate General for new trials from one to two years, and for other purposes.

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

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

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

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

22 SEC. 2. The amendment made by the first subsection of sec-
23 tion 1 of

24 this Act is effective upon the date of its enactment. The amend-
ment made
by the second subsection of section 1 of this Act is effective with
respect
to a court-martial sentence approved by the convening authority
on and
after, or not more than two years before, the date of its enactment.

SECTIONAL ANALYSIS
OF
A BILL ("H")

To amend chapter 47 (Uniform Code of Military Justice) of title 10, United States Code, by authorizing the Judge Advocate General to grant relief in certain court-martial cases, by extending the time for petitioning the Judge Advocate General for new trials from one to two years, and for other purposes.

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

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

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

EXHIBIT D

Court-Martial Cases

Army.....	60,607
Navy.....	39,033
Air Force.....	12,850
Coast Guard.....	593
Total.....	113,083

Cases Reviewed by Boards of Review

Army.....	1,465
Navy.....	3,208
Air Force.....	762
Coast Guard.....	27
Total.....	5,462

Cases Docketed With U.S. Court of Military Appeals

Army.....	359
Navy.....	273
Air Force.....	213
Coast Guard.....	2
Total.....	847

For the Period
July 1, 1962, to June 30, 1963

Report
of the
UNITED STATES COURT OF MILITARY APPEALS
January 1, 1963, to December 31, 1963

UNITED STATES COURT OF MILITARY APPEALS

Pursuant to Article 67(g), Uniform Code of Military Justice, 10 U.S.C. 867(g), the U.S. Court of Military Appeals submits the following annual report to Congress for the period January 1, 1963, to December 31, 1963.

I

During the fiscal year 1963 the court reviewed 847 cases; 827 were submitted to the court upon petition of the accused filed in accordance with Article 67(b) (3), 20 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, as a representative of the court, attended the annual meeting of the American Bar Association held in Chicago, Illinois, during the month of August 1963. In conjunction with the American Bar Association he participated, together with the Judge Advocates General of the services, in the 17th annual meeting of the Judge Advocates Association, by reporting on the status of the court's work during the past year. In the course of the discussion at the business meeting of the Judge Advocates Association on the 18 bills filed in the Senate by Senator Sam J. Ervin, Jr., of North Carolina on August 6, 1963 (S. 2002 to S. 2019), 88th Congress, 1st session, on the constitutional rights of military personnel, the Chief Judge gave special commendation to William Creech and Robinson O. Everett, staff members of the Subcommittee on Constitutional Rights of the Committee on the Judiciary, U.S. Senate.

III

There was printed in the latter part of 1963 a report by the Subcommittee on Constitutional Rights of the Committee on the Judiciary, U.S. Senate, based on hearings held in 1962. This report summarized the most significant opinions expressed during the hearings and the recommendations of the subcommittee. Included therein is a section on the Court of Military Appeals taking particular note of the role played by the court in the administration of military justice and the protection of the constitutional rights of service personnel.

IV

The Committee on Armed Services of the House of Representatives to which was referred the bill H.R. 3179 to provide that judges of the U.S. Court of Military Appeals shall hold office during good behavior and for other purposes, having considered the same, reported favorably thereon without amendment and recommended that the bill do pass. Report No. 413 was filed on June 18, 1963.

The purpose of the proposed legislation is to amend existing law with regard to the tenure of office of the judges of the Court of Military Appeals. In accordance with the provisions of existing law, the judges are appointed for terms of 15 years. Their salaries are fixed at a stated rate, which is, in fact, the same as that received by the judges of the U.S. Courts of Appeals.

The proposed legislation makes no change in the basic structure or functions of the U.S. Court of Military Appeals. It restores the life tenure provision originally approved by the House Armed Services Committee and passed by the House of Representatives during the 81st Congress. Implicit in this restoration is the recognition of the effectiveness of the U.S. Court of Military Appeals as the civilian overseer of the system of courts-martial contemplated by the Uniform Code of Military Justice. It affords the judges the same retirement privileges and survivor benefits as are provided for judges of the U.S. Courts of Appeal. However, it limits the total of retirement pay for the judicial service or any other Federal service of a judge to an amount which does not exceed his salary as a judge of the U.S. Court of Military Appeals.

The proposed amendment will accomplish these results as well:

(1) Accord the court the judicial position demanded by its important functions and its many and heavy responsibilities.

(2) Free the judges from the danger of political and other pressures.

(3) Fully assimilate the bench of the U.S. Court of Military Appeals to that of a U.S. Court of Appeals, thereby bringing the administration of military criminal law closer to complete accord with that obtaining in Federal civilian courts.

(4) Assure for the future personnel equal in professional capacity and standing to those recruited as judges of other Federal courts.

(5) Eliminates all contentions that the court is an "instrumentality of the Executive" by confirming its identity as a legislative court established under article I of the Constitution. This result is in no way diminished by the location of the court in the Department of Defense "for administrative purposes only." The phrase "for administrative purposes only" encompasses the rendition, by the Department, of such housekeeping services as the processing of

security clearances, personnel record-keeping, purchases of supplies, health and welfare services, administrative assistance in the preparation of the budget, switchboard and telephone service, the furnishing of transportation facilities, and the like. The court is in no way subject to the Department's directions in the exercise of either its administrative requirements or its judicial functions. The text of H.R. 3179 reads as follows:

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 867 (a) (article 67(a)) of title 10, United States Code, is amended to read as follows:

“(a) (1) There is a United States Court of Military Appeals, established under article 1 of the Constitution of the United States and located for administrative purposes only in the Department of Defense. The court consists of three judges appointed from civil life by the President, by and with the advice and consent of the Senate. Not more than two of the judges of that court may be appointed from the same political party, nor is any person eligible for appointment to the court who is not a member of the bar of a Federal court or of the highest court of a State. The President shall designate from time to time one of the judges to act as chief judge. Each judge shall hold office during good behavior, and is entitled to the salary, allowances, perquisites, rights of resignation, and retirement benefits provided for judges of the United States Courts of Appeals, including survivor benefits for widows and dependent children, and shall be similarly excluded from coverage under sections 2251-2267 of title 5, United States Code. The chief judge of the court shall have precedence and preside at any session which he attends. The other judges shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age. The court may prescribe its own rules of procedure and determine the number of judges required to constitute a quorum. A vacancy in the court does not impair the right of the remaining judges to exercise the powers of the court.

“(2) Judges of the Court of Military Appeals may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

“(3) If a judge of the Court of Military Appeals is temporarily unable to perform his duties because of illness or other disability, the President may assign a judge of the United States Court of Appeals for the District of Columbia to fill the office for the period of disability.

“(4) If a judge of the Court of Military Appeals desires to retire for disability, he shall furnish to the President a certificate of

disability signed by the chief judge. If a judge of the Court of Military Appeals who is eligible to retire by reason of being permanently disabled from performing his duties does not do so, and a certificate of disability signed by the chief judge of the Court of Military Appeals is presented to the President, and the President finds that such judge is unable to discharge efficiently all the duties of his office by reason of permanent mental or physical disability and that the appointment of an additional judge is necessary for the efficient dispatch of business, the President may make such appointment by and with the advice and consent of the Senate. Whenever any such additional judge is appointed, the vacancy subsequently caused by the death, resignation, or retirement of the disabled judge may not be filled. Any judge whose disability causes the appointment of an additional judge shall, for purpose of precedence, service as chief judge, or temporary performance of the duties of that office, be treated as junior in commission to the other judges of the court."

"SEC. 2. The United States Court of Military Appeals established under this Act is a continuation of the Court of Military Appeals as it existed prior to the effective date of this Act, and no loss of rights or powers, interruption of jurisdiction, or prejudice to matters pending in the Court of Military Appeals before the effective date of this Act shall result. A judge of the Court of Military Appeals so serving on the day before the effective date of this Act shall for all purposes, including salary, allowances, perquisites, rights of resignation, and retirement benefits including survivor benefits for widow and dependent children, be a judge of the United States Court of Military Appeals under this Act, and shall serve until the expiration of the term of office for which he was originally appointed: *Provided, however,* That the President, by and with the advice and consent of the Senate, may at any time after the effective date of this Act appoint him to hold office during good behavior under section 1 of this Act. Retirement benefits of a judge serving on the effective date of this Act shall accrue from the date of his original appointment, and he may make a written election concerning survivor benefits, in the manner provided by section 376 of title 28, United States Code, within six months of the effective date of this Act.

SEC. 3. Notwithstanding any other provision of this Act, no judge of the United States Court of Military Appeals shall upon resignation, or retirement for disability or length of service, be paid, on account of his judicial service or any other Federal service, a salary or annuity or combination thereof, the total of which exceeds the salary of a judge of the United States Court of Military Appeals." The House of Representatives passed the bill on July 9, 1963.

V

On April 29, 1963, Senator Sam J. Ervin, Jr., of North Carolina, chairman of the Senate Subcommittee on Constitutional Rights, was sworn in as the 10,000th member of the bar of the U.S. Court of Military Appeals. The court has now admitted 10,414 practitioners to its membership, an increase of 652 during calendar year 1963.

VI

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

<i>Total by services</i>	<i>Total as of June 30, 1961</i>	<i>July 1, 1961, to June 30, 1962</i>	<i>July 1, 1962, to June 30, 1963</i>	<i>Total as of June 30, 1963</i>
Petitions (Art. 67(b)(3)):				
Army.....	8,470	431	353	9,254
Navy.....	3,075	323	268	3,666
Air Force.....	3,448	193	204	3,845
Coast Guard.....	40	1	2	43
Total.....	15,033	948	827	16,808
Certificates (Art. 67(b)(2)):				
Army.....	122	7	6	135
Navy.....	181	6	5	192
Air Force.....	49	4	9	62
Coast Guard.....	6	0	0	6
Total.....	358	17	20	395
Mandatory (Art. 67(b)(1)):				
Army.....	31	0	0	31
Navy.....	3	0	0	3
Air Force.....	3	0	0	3
Coast Guard.....	0	0	0	0
Total.....	37	0	0	1¹ 37
Total cases docketed.....	15,428	965	847	² 17,240

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

² 16,965 cases actually assigned docket numbers. 1 case originally not docketed—given Docket No. 15,200-A when opinion was rendered on motion to dismiss. 115 cases counted as both petitions and certificates. 5 cases certified twice. 144 cases submitted as petitions twice. 2 mandatory cases filed twice. 5 mandatory cases filed as petitions after second Board of review opinion. 3 cases submitted as petitions for the third time.

COURT ACTION

	<i>Total as of June 30, 1961</i>	<i>July 1, 1961, to June 30, 1962</i>	<i>July 1, 1962, to June 30, 1963</i>	<i>Total as of June 30, 1963</i>
Petitions (Art. 67(b)(3)):				
Granted.....	1, 556	101	88	1, 745
Denied.....	13, 054	799	765	14, 618
Denied by memorandum opinion.....	2	0	0	2
Dismissed.....	10	2	0	12
Withdrawn.....	307	14	6	327
Disposed of on motion to dismiss:				
With opinion.....	8	0	0	8
Without opinion.....	38	1	1	40
Disposed of by order setting aside find- ings and sentence.....	3	0	0	3
Remanded to Board of Review.....	138	5	6	149
Court action due (30 days) ³	57	88	57	57
Awaiting replies ³	25	25	21	21
Certificates (Art. 67(b)(2)):				
Opinions rendered.....	348	16	18	382
Opinions pending ³	2	3	2	2
Withdrawn.....	6	1	0	7
Remanded.....	1	1	0	2
Set for hearing ³	0	0	0	0
Ready for hearing ³	1	0	0	0
Awaiting briefs ³	1	0	2	2
Mandatory (Art. 67(b)(1)):				
Opinions rendered.....	36	1	0	37
Opinions pending ³	0	0	0	0
Remanded.....	1	0	0	1
Awaiting briefs ³	1	0	0	0
Opinions rendered:				
Petitions.....	1, 319	95	88	1, 502
Motions to dismiss.....	11	0	0	11
Motion to stay proceedings.....	1	0	0	1
Per curiam grants.....	26	1	3	30
Certificates.....	306	15	17	338
Certificates and petitions.....	40	1	1	42
Mandatory.....	36	1	0	37
Remanded.....	2	0	0	2
Petitions for a new trial.....	1	1	0	2
Petition for reconsideration of petition for new trial.....	1	0	0	1
Motion to reopen.....	1	0	0	1
Total.....	1, 744	114	109	1, 967

³ As of June 30, 1961, 1962, and 1963.

⁴ 1,967 cases were disposed of by 1,950 published opinions. 106 opinions were rendered in cases involving 63 Army officers, 22 Air Force officers, 15 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

	Total as of June 30, 1961	July 1, 1961, to June 30, 1962	July 1, 1962, to June 30, 1963	Total as of June 30, 1963
Completed cases:				
Petitions denied.....	13,054	799	765	14,618
Petitions dismissed.....	10	2	0	12
Petitions withdrawn.....	307	14	6	327
Certificates withdrawn.....	6	1	0	7
Certificates disposed of by order.....	0	0	1	1
Opinions rendered.....	1,736	114	109	1,959
Disposed of on motion to dismiss:				
With opinion.....	8	0	0	8
Without opinion.....	38	1	1	40
Disposed of by order setting aside find- ings and sentence.....	3	0	0	3
Remanded to Board of Review.....	138	6	6	150
Total.....	15,300	937	888	17,125

Pending completion as of—

	June 30, 1961	June 30, 1962	June 30, 1963
Opinions pending.....	16	19	15
Set for hearing.....	0	0	0
Ready for hearing.....	1	0	0
Petitions granted—awaiting briefs.....	17	14	9
Petitions—court action due 30 days.....	57	88	57
Petitions—awaiting replies.....	25	25	21
Certificates—awaiting briefs.....	1	0	2
Mandatory—awaiting briefs.....	1	0	0
Total.....	118	146	104

Report
of
THE JUDGE ADVOCATE GENERAL
of
THE ARMY
January 1, 1963, to December 31, 1963

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY

During fiscal year 1963, there was a decrease in the overall court-martial rate per thousand strength relative to that for fiscal year 1962. Court-martial statistics for fiscal year 1963 reflect that the number of general court-martial trials decreased for the tenth successive year and that there was a slight decrease of 0.6 percent over the preceding fiscal year in the number of special court-martial trials. There was a sharp reduction in summary court-martial trials, from 43,542 last year to 32,316, or approximately 30 percent. This decrease can be attributed primarily to the amended article 15 of the Uniform Code of Military Justice, which was in effect during 5 months of the reporting period, and which provided commanders with more extensive and effective nonjudicial punishment authority.

The number of court-martial trials for fiscal year 1963 (average strength, total Army, 1,015,142) follows:

	<i>Convicted</i>	<i>Acquitted</i>	<i>Total</i>
General.....	1,762	81	1,843
Special.....	25,147	1,301	26,448
Summary.....	30,939	1,377	32,316
Total.....	57,848	2,759	60,607

Records of trial by general court-martial received by The Judge Advocate General during fiscal year 1963:

For review under Article 66.....	1,407
For examination under Article 69.....	377
Total.....	1,784

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

On hand at the beginning of period.....	111
Referred for review.....	*1,464
Total.....	1,575
Reviewed.....	1,465
Pending at close of period.....	110
Total.....	1,575

*This figure includes 8 cases which were referred to boards of review pursuant to Article 66, Uniform Code of Military Justice, and 7 cases involving rehearing or reconsideration.

Actions taken during period 1 July 1962 through 30 June 1963 by boards of review are as follows:

Affirmed.....	1, 122
Sentence modified.....	307
Rehearing ordered.....	9
Charges dismissed.....	7
Findings disapproved in part/sentence approved.....	1
Findings and/or sentence disapproved in part.....	18
Returned to field for New SJA Review and C/A action.....	1
<hr/>	<hr/>
Total.....	1, 465

Of the 1,465 accused whose cases were reviewed by boards of review pursuant to article 66 during the fiscal year, 1,002 (68.4 percent) requested representation by appellate defense counsel. The records in the cases of 358 accused were forwarded to the U.S. Court of Military Appeals pursuant to the 3 subdivisions of article 67(b). These comprised 24.4 percent of the number of these cases reviewed by boards of review during the period. Of the mentioned 358 cases, 352 were forwarded on petition of accused, and 6 were certified by The Judge Advocate General.

The actions taken by the Court of Military Appeals on Army cases for fiscal year 1963 were as follows:

<u>Opinions on petitions</u>		<u>Certification</u>		<u>Mandatory review</u>	
<i>Affirmed</i>	<i>Reversed</i>	<i>Affirmed</i>	<i>Reversed</i>	<i>Affirmed</i>	<i>Reversed</i>
23	19	4	3	0	0
		<i>Petitions denied</i>	<i>Petitions granted</i>		
		336	33		

Following extensive hearings held during the latter part of February and the early part of March 1962 before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, U.S. Senate, 18 bills were introduced in the Senate on 6 August 1963. Identical bills were introduced in the House of Representatives on 25 September 1963. Six of these bills pertain to the issuance of administrative discharges under conditions other than honorable; two relate to the exercise of command influence on boards and courts-martial and to the preparation of efficiency reports on officers serving on administrative boards, courts-martial, and boards of review; one provides for the establishment of a Judge Advocate General's Corps in the Navy; two grant jurisdiction to U.S. district courts to try civilians for offenses committed in oversea areas; one establishes a board for the correction of military records at Department of Defense level; and the remainder pertain to the administration of military justice.

The Department of the Army has forwarded its comments on the legislation to the Department of Defense. However, as of the date of the preparation of this report, the position of the Department of Defense has not been crystalized on the proposals.

The Department of the Army did not oppose in principle the bills relating to the exercise of command influence and those providing for civil court jurisdiction over civilians in oversea areas, but it recommended that certain changes be made in the phraseology of the proposals. The enactment of the bills relating to the establishment of a board for the correction of military records at Department of Defense level and those pertaining to the administrative discharge of servicemen under conditions other than honorable was vigorously opposed. The Department of the Army interposed no objection to the proposed enactment of legislation designed to establish a Judge Advocate General's Corps in the Navy and proposed substitute legislation for practically all of the bills relating to the administration of military justice.

Lack of space forbids the discussion of the provisions of each of the 18 bills in detail. However, the six bills designed to regulate the issuance of administrative discharges under conditions other than honorable impose an elaborate and complicated system of hearings and appellate review which is closely analogous to the court-martial system. The rights extended by the proposals to a respondent who is being considered for administrative discharge for misconduct include, but are not limited to, advice by Government-furnished legally qualified counsel with respect to his decision concerning waiver of a hearing, the right to have his case heard by a board which not only possesses the power of subpoena but over which a law officer having the qualifications prescribed for general court-martial duty will preside, the right to be represented at the hearing by Government-furnished legally qualified counsel, the right to demand trial by special or general court-martial in lieu of board proceedings, and the right to appeal to the U.S. Court of Military Appeals with representation by Government-furnished legally qualified counsel from any unfavorable action by the discharge review board, the board for the correction of military records, or both. The increase in the burden of judge advocates in providing legal services in these administrative cases would be huge. Indeed, because of the increased personnel requirements alone, it is not improbable that enactment of the proposals would put an end to the use of the undesirable discharge. If this should happen, it would result in the discharge of all personnel, other than as a result of court-martial sentence, by the issuance of a certificate reflecting honorable service. In my opinion, to issue discharges under honorable conditions to individuals whose conduct has reflected gross discredit on the Armed Forces would be an injustice to the millions of brave and dedicated men who have been discharged in the past under honorable conditions for honest and faithful service.

It will be recalled that I earlier mentioned that one of the legislative proposals created a board for the correction of military records at the Department of Defense level which would replace existing

boards at the military departmental level. The proposal would also grant to the board the authority to set aside a conviction by court-martial in any case not reviewed by a board of review. In addition, another of the proposals extended the time within which a petition for new trial could be submitted from 1 to 2 years and extended the application of the right to petition for a new trial to "any court-martial sentence." The Code now limits the right to submit a petition for a new trial to cases in which the sentence extends to death, punitive discharge, or confinement for 1 year or more.

The Department of the Army has agreed that, except for the proposal to extend the time within which petitions for new trials may be submitted, the above proposals should be opposed. The creation of a board for the correction of military records within the Department of Defense in lieu of the boards which now operate at the military departmental level and the proposal to grant this board the authority to expunge the fact of conviction from the record in every court-martial case not reviewed by a board of review, which would include all cases tried by summary and special courts-martial, do not appear sound.

The present system of separate service boards is working well, and while the promise of any uniformity which might be obtained by a unified board may be considered desirable, we are more interested in obtaining justice and equity in a particular case. The very nature of the regulations, policies, grades, terminology, and customs inherent in each of the services are so dissimilar that any unified board would have to be compartmentalized within a brief period in order to function with any efficiency. The result would be that its operation would be no different than now exists with separate service boards. Furthermore, any further uniformity that is considered to be desirable may be obtained under existing law by virtue of the authority granted to the Secretary of Defense to supervise the boards.

Insofar as the proposal would authorize the board to set aside the findings of a court-martial is concerned, it is observed that it proposes to grant to an administrative board what is essentially a judicial function. Although some specific statutory power should exist to provide relief in cases not reviewed by a board of review in which there are new trial grounds or in which there has been substantial prejudicial error, I believe this power would be better exercised by the Judge Advocate General. Legislation, denominated the "H" bill, has been drafted which is designed to effect this purpose and which has been approved by the Department of the Army. This legislation appears as exhibit C to the joint report. As those familiar with the administration of military justice in the Army know, my office has for many years been granting relief in deserving inferior court-martial cases on rather broadly based jurisdictional grounds.

With respect to the remaining legislative proposals in the field of military justice, it is the position of the Department of the Army that the portions thereof with which the Army concurs in principle are better reflected in the provisions of the "G" bill, a copy of which appears in exhibit B to the joint report. The "G" bill is essentially a combination of the "B" and "D" bills, which were approved by the Code Committee in its annual report for 1962. In addition, a provision was added prohibiting the imposition of a bad-conduct discharge by a special court-martial unless the accused was represented or afforded the opportunity to be represented by counsel qualified to act as counsel before general courts-martial. In this connection, it might be remembered that each member of the Court of Military Appeals expressed his sympathy with such a change in the law in *United States v. Culp* (No. 16,906), 14 USCMA 199, 33 CMR 411 (5 Sep 63). This change, plus the provisions in the "G" bill permitting the detail of law officers on special courts-martial, would allow the Army to use the special court-martial as a forum for offenses of medium severity where a bad-conduct discharge might seem appropriate. The "G" bill, I believe, accomplishes all of those objectives in the field of military justice sought in the bills introduced in Congress which are desirable and justifiable.

The "G" bill, unlike one of the bills under discussion, does not eliminate the summary court-martial. The elimination of this court was proposed on the grounds that the provisions of the new article 15 of the Uniform Code of Military Justice had made the summary court-martial extraneous to the needs of military justice. However, in view of the need for a court to which minor infractions could be referred in those instances in which individuals demanded trial for offenses for which punishment under article 15 by a company grade officer was proposed, I consider the elimination of the court inappropriate, at least until we have had more experience with the new article 15.

Another proposal in the field of military justice which the Department of the Army opposed was the extension of the subpoena power to article 32 investigating officers. If this bill should become law, allegations of arbitrary and capricious rulings of the investigating officer in refusing to subpoena witnesses would give rise to extensive litigation, without providing any real benefit to the accused. After all, the purpose of the pretrial investigation is merely to determine whether there is sufficient indicated (see art. 34(a)) evidence to warrant trial and to obtain a recommendation concerning the level of the court-martial which should try the case, and, of course, the convening authority is not bound by the findings and recommendations of the investigating officer. Consequently, it would hardly seem worth while from the standpoint of either the Government or the accused to turn the pretrial investigation into a sort of preliminary

trial of the case through the grant of the subpoena power to the investigating officer.

Another bill provides for the redesignation of the Board of Review as the "Court of Military Review" and the appointment of as many "three-judge panels" of the court as the Secretary concerned deems necessary. The bill also provides that at least one civilian "who is not a retired member of any armed forces" [*sic*] and who has had "not less than six years' experience in the practice of military justice" must sit on each panel of the court and that the chief judge of the court shall be a civilian. Civilian members "shall serve during good behavior," but military members "shall be appointed for a term of three years, and shall be eligible for reappointment." The "Court of Military Review" has the authority to suspend all or any part of a sentence.

I consider that the proposal to require civilians to sit on each panel of the board and the stipulation that only civilians could serve as chief judge is an unwarranted, unsubstantiated, and undocumented attack on the integrity and ability of Army boards of review which are and always have been composed entirely of officers. Officers of The Judge Advocate General's Corps have always looked upon an appointment to a board of review as being a signal honor to which they might someday aspire. However, the provision requiring the appointment of civilians to the Court of Military Review and granting them what amounts to life tenure, while limiting members of the Corps to 3-year terms with eligibility for reappointment, would not only eliminate motivation for officers to serve on the court but would be a personal affront to their ability and integrity. Inasmuch as there would be few civilians, if any, who had practiced in the field of military justice for a period even roughly equivalent to that of most senior members of The Judge Advocate General's Corps, military members of the court would be apt to find themselves serving alongside or under the supervision of civilian members who were their inferiors in both knowledge and experience. Furthermore, evidence available to me (see exhibit A) forcibly demonstrates that when the records of the Army boards of review are compared with the records of boards of review composed in part of civilians, the Army boards of review are vastly and clearly superior.

The first months of experience with the operation of the new Article 15, Uniform Code of Military Justice, indicates that the powers granted by the article are being employed with discretion and that a beneficial effect on discipline has resulted. Of more importance is the fact that the drastic reduction in the number of cases tried by summary courts-martial is due primarily to the use of the powers granted by the new article. During the last quarter of fiscal year 1963, the only period for which I have complete statistics, the authority granted by the new article was used by commanders on

51,683 occasions. No information is available with respect to the number of times the powers granted under the former article 15 were employed in the last quarter of the previous fiscal year. However, during that quarter, 11,143 cases were tried by summary court-martial, while only 4,419 cases were tried by that forum in the last quarter of fiscal year 1963. The summary court-martial rate per thousand dropped from 9.96 in the last quarter of fiscal year 1962 to 4.39 in the last quarter of fiscal year 1963. There was, however, no significant change in the special court-martial rate during the same periods.

The manner in which the authority under the new article 15 was used in the last quarter of fiscal year 1963 is reflected in exhibit B.

Since present stocks of the *Manual for Courts-Martial, United States, 1951*, are practically depleted, The Judge Advocates General of the three services decided that a revised edition should be prepared for publication early in fiscal year 1965. After a number of meetings on the subject, it was determined that this would not be a major revision but would generally reflect only those changes which have been clearly delineated by statutory and decisional law. An interservice committee has been working on the revision since 16 August 1963 and has already made significant progress. The new manual is expected to be in looseleaf form to facilitate the insertion of future changes and whatever notes judge advocates might desire to keep.

The U.S. Army Judiciary, activated 1 October 1962 as a class II activity of my office, made further significant progress in the evolution of a completely independent Army judicial system which began with the establishment of the Field Judiciary in 1958. The Army boards of review were organized into the Appellate Judiciary, consisting of the Office of the Chief (to which are assigned two commissioners) and the boards of review (now four in number), and supported by the Clerk of the court.

The Chief of the Appellate Judiciary serves also as Chairman of Boards of Review Nos. 1 and 4. He acts as the coordinator for the boards of review, directs the activities of the commissioners, and is responsible for the training of the Mobilization Designees to the Appellate Judiciary. The nine-member Board of Review No. 4 is, in a sense, an en banc Board of Review, consisting of all of the members of the other three boards. The following cases are referred to it:

- (1) Those involving a sentence to death;
- (2) Those in which the sentence affects a general officer;
- (3) Those which involve an issue upon which Army boards of review reached divergent conclusion in recent decisions;
- (4) Any other case specifically referred to it by The Judge Advocate General.

The commissioners are a new concept in military appellate review, as is the Office of the Clerk of Court. The commissioners make the initial administrative review of all general courts-martial records of trial referred to the boards of review, take steps to obtain any appropriate corrective action required, perform research in detail and depth for the boards of review, and serve as deputy clerks of court.

The Office of the Clerk of Court was established on 1 April 1963. The Clerk's office performs for the Appellate Judiciary all of the normal functions of the clerk's office in a civilian court of appeals. His office provides the central docketing agency for the boards of review, the central file agency for all pending cases prior to being brought to issue, and the Clerk or one of his deputies acts as bailiff for the boards of review. The Clerk of Court is the official custodian of court-martial records and, under the supervision of the Chief Judicial Officer, is charged with the complete responsibility for the administrative control and processing of court-martial cases during appellate review. The activation of his office is another logical step in the evolution of the independent Army Judiciary.

The Trial Judiciary continued to render outstanding service, although with a further reduction of two judicial officers. During May through July 1963, to expedite general court-martial trials, members of the Appellate Judiciary and the Chief Judicial Officer served as law officers in several instances. This practice is particularly valuable to prevent unnecessary delays in general court-martial trials and to keep all judicial officers in close touch with problems at the trial level by periodic exposure to them.

The Defense and Government Appellate Divisions continued to provide brilliant representation for their respective clients before appellate tribunals, despite the relative lack of prior courtroom experience of the younger counsel. In furtherance of my policy to insure effective and experienced representation of those convicted of crime, I have instituted a continuing program of alternating judge advocates between defense and Government representation. This program has proved most successful. It provides better trained counsel, and the public knows that the quality on both sides is as nearly even as is possible.

I have long recognized that joint participation of members of the Army Judiciary with their civilian counterparts is worth while, resulting in helpful exchanges of information and ideas. In continued implementation of this policy, during the past year both appellate and trial judicial officers have provided representative attendance at 17 meetings and seminars of civilian judicial conferences and groups, particularly the State and Regional Judges' Seminars sponsored by the Joint Committee for the Effective Administration of Justice.

During calendar year 1963, The Judge Advocate General's School, U.S. Army, provided resident instruction for 925 military lawyers and

civilians employed by the Government. Courses in Procurement Law (3 cycles), Civil Law, Civil Affairs Law (Phase I), Military Justice, International Law, Military Affairs, a Law Officer Seminar, and a Judge Advocate Refresher Course were conducted.

The School also conducted two cycles of the 10-week Special Course. Among the 202 military lawyer graduates of these courses were officers from Korea, Vietnam, and the Republic of China.

The 11th Judge Advocate Career Officers' Course was completed on 25 May 1963 with 17 officer graduates, one of whom was a Navy legal specialist and another a Turkish officer. The 12th Career Class began its course of instruction on 3 September 1963 and will be graduated on 15 May 1964. It is made up of 32 officers, including 2 naval legal specialists and 4 allied officers, 1 from the Philippines, 2 from Turkey, and 1 from Thailand.

A text, Department of the Army Pamphlet 27-187, *Military Affairs*, was published in May 1963, and a 3-year compilation of the *Procurement Legal Service* was published in June 1963 as Department of the Army Pamphlet 715-50-3. At the time of this writing, 12 issues of the *Procurement Legal Service* have been published and it is expected that at least 5 more will be completed by the end of the year.

During 1963, the School provided nonresident instruction in Military Justice and other military legal subjects for over 3,500 Army reservists and members of the Army National Guard. The School supported the U.S. Army Reserve school program by preparing and distributing material to 76 U.S. Army Reserve schools. Specifically, the School provided material for an Officer Career Course, a Staff Judge Advocate Operations Course, and a New Developments Course. The Officer Career Course was by far the largest with 958 students and 143 instructors. Instructional material was also prepared for the approximately 500 officers and 475 enlisted men who are currently members of the Judge Advocate General's Service Organizations and for the approximately 450 Reserve and National Guard officers assigned to troop program units. An extension course program provided instruction for about 1,350 officers and enlisted men.

During the period 9-12 September 1963, a conference of judge advocates representing the court-martial jurisdictions throughout the world was held at The Judge Advocate General's School. It was attended by approximately 180 judge advocate officers who heard outstanding speakers on military law and related topics and attended informative seminars on military justice and other phases of military law.

Four issues of the *Military Law Review* were published during this period. These volumes contained articles, comments, and surveys in areas of interest to judge advocates. Among these were articles dealing with pretrial advice under Article 34, Uniform Code of Military

Justice; relationships between individual and appointed defense counsel; commutation of military sentences; the general article in Anglo-Saxon Military Law; the finality of judicial determination; and foreign legal systems, particularly the Netherlands, Denmark, Sweden, Belgium, Switzerland, and Spain. The annual survey of decisions of the Court of Military Appeals appeared in the April 1963 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. All decisions of the U.S. Court of Military Appeals for 1963 were digested in the Legal Service.

Additionally, the School published the *Staff Judge Advocate Handbook*, which provides standing operating procedures for judge advocate officers in Military Justice matters and other office operations.

A new training film entitled "Nonjudicial Punishment" was made during the year. Final editing of the film is now underway.

The School revised the ROTC Manual 145-85, *Military Law and Boards of Officers*. The revised manual, together with a revised subject schedule, should make current the teaching of Military Justice to ROTC students.

In the personnel area, the year has been marked by intensified efforts to raise professional experience levels within the Corps and to increase the number of professional personnel retained on a career basis. Moderate success has been achieved in some areas, and the special efforts in Regular Army recruiting resulted in a new high for recent years—29 new Regular Army judge advocate officers. These improvements are not yet of great magnitude, however, and the retention of personnel remains a major problem. Despite the recruiting effort, there was a net loss of Regular Army strength, 39 officers having left the Corps during the year through death, retirement, and resignation. Retention has long since been recognized by The Judge Advocates General of the Armed Services as our primary personnel concern.

Adequate numbers of noncareer lawyers were recruited during 1963 to fill our ranks on a temporary basis. Most of these officers will serve but 3 years, and we will continue to experience the inefficient short-range turnover. We decline to compromise high professional quality for poor or mediocre quantity, recognizing that such a compromise might temporarily aid career recruiting but would have long-range effects far more adverse than personnel shortage. Rather, we have expanded and intensified our efforts toward procurement and retention of the highest caliber of lawyers. Many of our programs were described in the report for 1962. Certain new personnel actions were initiated, aimed at individualized career management and broad dissemination of career information. An informal Corps Newsletter was established; an improved JAGC Personnel and Activity Directory was distributed; a career management pamphlet was published de-

scribing concepts, programs, and opportunities available for career enhancement; and markedly improved record systems, procedures, interview techniques, and personalized practices were implemented.

The program which is most promising of recruitment and retention of highly qualified and motivated personnel is The Judge Advocate General's Excess Leave Program. Selected Regular Army officers are permitted to pursue their legal education at their own expense and without military pay and allowances. Some personal hardship is experienced among the 58 participants presently enrolled, but their dedication and successes are marked. This program must remain within limited proportions and cannot be viewed as the full solution to the major problem. It is expected, however, to ameliorate the adverse trend of losses.

Another program which I strongly endorse is the return to the prewar practice of initial appointment of officers of The Judge Advocate General's Corps in the grade of captain. This would equate the initial grade to the responsibility of the lawyer, make comparable his military grade with that of his colleagues who entered military service when he began the study of law, and in some small measure reimburse him for the costs of education he had to bear personally, affording the military services the benefits of his new qualifications without expense, but which for other professions are borne by the Government. In my opinion, the present inequity is patent.

The true solution to retention difficulties, it is believed, lies with a return to the program permitting pursuit of legal education while entitled to military pay and allowances. This, of course, will require congressional action. Removal of the prohibitive rider to the appropriations act was vigorously attempted this year under the auspices of Department of Defense recognition of the shortages of career legal personnel and approval of such educational endeavors. These efforts were not successful, but I have strongly recommended and endorsed commencement of the congressional committee recommendation for a Department of Defense study (see H.R. Rept. 439, 88th Cong., 1st sess., p. 65 (1963)), seeking solutions.

Certain further matters of significant import as to recruitment and retention must be noted. Those officers who first entered service during World War II are now reaching retirement eligibility, and increasing losses must be anticipated. The pressure of the draft has been seriously reduced by virtue of the exemption of married men. It may be expected that the numbers of short-term volunteers will diminish. Recognizing our great reliance upon the young noncareer officers who make up approximately 45 percent of the Corps, we have greatly intensified our recruiting efforts. Of a Regular Army authorized strength of 786, there are presently on duty only 512. There are 145 career Reserve personnel, and the remainder are short-term members.

I do not view our personnel picture with alarm or pessimism. Our extensive and vigorous efforts on all fronts reflect promise. We will continue these actions and exploit new opportunities.

This, my terminal report before retirement from military service, cannot be considered complete without comment upon a matter I consider to be of major importance to the proper administration of the law within the armed services. Because of my retirement, there is no element of self-serving. The Judge Advocate General of each armed service should be of lieutenant general or equivalent grade. While the grades of other senior members of the staffs have increased over the years, that of The Judge Advocate General has not, to the seeming diminution of the importance and value attributed to the legal advisers. The worth of the legal services cannot be disputed—in recent years it has increased immeasurably—and the very symbol thereof must continue apace.

Summation

As I observed earlier, my retirement is imminent. It has been over 30 years since I first participated in a court-martial case. A few constructive observations drawn from experience may be helpful.

First, the substance and procedure of the law and the quality of those who administer the law are of equal importance. Neither can be subordinated to the other; both must be sufficient.

In the past, much time has been spent on discussions of improvement of substantive and procedural law. There has been substantial improvement—the greatest single improvement has been the enactment of article 15, which has provided for the correction of young soldiers by their commanders. No permanent stain is left on the soldier's record. Long since, the officers of the Army have dropped the concept of the pseudo-exemplary sentence, the unfairly heavy punishment designed to scare potential offenders. With a few scattered exceptions, military men realize that, except for those who must be kept away from society indefinitely, punishment should be directed toward correction and rehabilitation. Article 15 provides small corrective dosages for expeditious administration. Normally, the soldier is not removed from his fellows and his training, thereby eliminating problems of restoration to the community after confinement. This simple provision for expeditious correction draws us closer to basic and universal concepts of good justice, because it creates a neighborhood consciousness of good order and discipline. The principle of neighborhood responsibility and keeping the administration of justice close to the community is admirably demonstrated in the use of this article. This underlying principle should be put to use in the civilian community.

In the last two decades, there has been a tendency to make the administration of justice mechanistic—to remove it from community

participation—and thereby to remove from the citizen an awareness of his own responsibility for law and order. This tendency can have a particularly unfortunate effect on the military community. Give to a young commander, commissioned or noncommissioned, the feeling that he can turn his disciplinary problems over to someone else and, on occasion, he will try to do so. Regarding himself basically as a budding strategist and logistician, he will turn over this “administrative aspect” of the command function to “the lawyers.” Experience has proved, time and again, that morale and discipline are responsibilities of the commander. There should always be some training in the judicial process for commanders at all levels, as well as some participation. Article 15 supplies some of the requisite responsibility. I am of the opinion that participation by the younger line officers in all parts of special court-martial work is salutary. Proper supervision by judge advocates can insure substantial compliance with law.

During the past 15 years, we have had one particularly searching and careful study of the substance and procedure of the Uniform Code of Military Justice. The study was made by a board of officers composed of a majority of general officers of the line, headed by Ambassador Powell, shortly before he became Commanding General of the Continental Army Command). The objectivity and moderation of the board is clear, and I observe that the line generals who served on the board have since been elevated to high and important positions. This report of this board I would commend to anyone interested in further betterment in substance and procedure.

Diverting briefly to the subject of inquiries into the operation of the administration of military justice, in my opinion only one truly outstanding inquiry has been made by persons outside the service into the administration of military justice during over 32 years of service. That inquiry was made by a committee of eminent members of the bar headed by the late Chief Justice Arthur Vanderbilt.

Looking back on the Vanderbilt Committee and comparing it with other groups, at least two distinguishing characteristics are manifest—one in the makeup of the committee, the other in the scope of the inquiry. As to the makeup of the committee, the members were men who were remote from recent connection with the administration of military justice, there was a wealth of judicial experience among the committee members, and the average age of the members was substantial. Although I recognize that this is an era of youth, it may well be that this kind of committee work offers a way to use the senior citizen to substantial advantage. Sixty and senility are not synonymous. It could be said that such men have a wider background, a greater reservoir of experience, and a deeper perspective. Such men are less likely to give rise to thoughts that they pursue personal convictions or lean toward any particular group. The scope of in-

quiry of the Vanderbilt Committee covered all sources of information, those charged with the administration of justice, the commanders, community leaders who had lived in close proximity to the troops, those who had been tried by military courts, and those who had complaints. The cross section provided a scope that gave a balanced base from which to draw conclusions. I think the Vanderbilt Committee avoided a common and human tendency to overweigh complaints. Complaints should be weighed and they should be corrected; however, if the complainants constitute only a scintilla of the individuals subject to the processes of justice, they should be weighed in perspective. We strive for a perfect administration of justice, but in every jurisdiction there have always been mistakes. A sound and simple administration of justice should not be made into a burdensome and slow one because of a few justified complaints—it is safe to hazard a guess that there will be some unfairness due to human error for eons to come. Unfairness or mistakes quickly corrected fit better than cumbersome restudies ad infinitum.

Turning now to the quality of those who administer the law in the Army, I suggest that there has been a clear failure to make provision for securing and providing an adequate organization of military lawyers of high competence and quality, and I reiterate that the quality of justice will never be higher than the quality of the lawyers who administer the law.

To secure and retain military lawyers of high quality, there must be an appropriate organization; there must be an adequate number to share all assignments; and there must be a sufficient career attraction.

As to organization, we are fortunate in the Army to have a Judge Advocate General's Corps, to have statutory provision for general officers, and to have a statutory definition of the duties of The Judge Advocate General, as well as the statutory provisions relating to the administration of military justice common to all three services.

The relationship existing among the judge advocates and the commanders, the Army Staff, and the appointed officials, up to and including the Secretary of the Army, are efficient, wholesome, friendly, and pleasant. The relationship shows that a separate professional Corps works well. Comparative statistics with civilian jurisdictions and the other armed services, together with the high repute accorded the Corps by the civilian bench and bar, further are strongly persuasive of the propriety of the organization. However, there is one area in which the Corps is not used as it should be. This is the area of investigations. Investigations of serious fact situations and of all crime should be conducted under legal supervision, and at the top of the Army investigative body should be a sturdy structure of military lawyers responsible for the propriety of such investigations—

this recommendation follows an organizational plan long proved successful in the Department of Justice. The top investigators themselves should be military lawyers. I would exclude from this office investigations in which the possibility of espionage or other threats to the Nation's security were concerned—such investigations should be conducted by intelligence personnel who are trained primarily to learn quickly of any situation hazardous to the country. On the other hand, intelligence investigators should limit their activities to the class of cases mentioned and should not be permitted to act in any others. Intelligence investigators should be kept to a minimum. I believe that an investigational unit of the kind I have described should be set up in the office of each judge advocate general and should be headed by a general officer. Personnel would be saved because legal direction and control would render the operations far more efficient, and the investigational activities of the inspectors general as well as a part of the directional activity in the Office of the Provost Marshal could be eliminated.

Another feature of organization which would lend to the good repute and efficiency of the administration of military justice in the services would be in the establishment of an independent and separate judiciary in each service, similar to the U.S. Army Judiciary. The independent judiciary, with its own judicial conference which works with civilian conferences, has resulted in a higher degree of efficiency, fewer reversals, and sets an example of quality in its judges, both as scholars and as men who know and understand the community over which they exercise jurisdiction. The fact that they themselves are subject to military law gives them a fellow-citizen relationship with the rest of the soldiers and qualifies them the better to reweigh evidence and review sentences, as well as to consider errors of law. Turning again to the suggestion that civilians serve on boards of review, the fundamental malignancy in the proposition is that the civilian is not subject to the law which he administers—it is a step backward toward the decay which has ruined civilizations in the past—a step toward the master-and-slave philosophy. Our Army is an army of citizens; I believe it wise to retain the principle of equality between the judges and the judged—by so doing we may avoid the rising of a Spartacus at some future date. It is for the foregoing fundamental reason that I advise strongly against civilians on boards of review; the fact that boards of review with civilian members have turned in a record on the law alone that is markedly inferior to boards of review composed of Army judge advocates is only a secondary reason. Some may observe that the Court of Military Appeals is composed of civilians not subject to military law—the answer is that the Court of Military Appeals passes only on questions of law. The very essence of our system of law—the peer system—is that both the judges and the judged must answer to the same law.

Turning to the size of the Corps, we have only 650-plus career judge advocates at the present time. We know a shortage of over 250 Regular Army judge advocates. However, the vacancies are preferable to mediocrities. The quality of the justice meted out to our soldiers and officers must be of the best. The legal advice on which the spending of the taxpayers' dollars turns must be accurate. The legal advice on which commanders act in dealing with representatives of other countries must be correct, as well as the direct dealings that our Army judge advocates have with representatives of other countries. I hazard the guess that Army judge advocates give more advice on international affairs and deal more frequently with lawyers of other countries than does any other group. This brief recitation of the demands on judge advocates demonstrates why the United States cannot afford to take lesser lawyers into the ranks of the Armed Forces.

The proper strength of The Judge Advocate General's Corps of the Army should equal 1½ percent of the officer strength of the Active Army, divided among components as nearly as possible as the officer strength of the Active Army is divided among components.

In my opinion, the officer-lawyer will best serve the Army and the commanders if the lawyers are on a separate promotion list. Fine lawyers, now passed over for promotion, would be retained for the service. Provision could be made for the retention of splendid judge advocates to age 60 without lessening the opportunities of promotion to the line officer. One vital provision of law that leads to harmonious relations with our brother officers of the line is the statutory provision for five general officers for our Corps. This eliminates thought on the part of the line officer that general officer vacancies are diverted from the line to "a specialty." There are not enough general officer positions for the Corps, however. I recommend that eight general officer positions be established for The Judge Advocate General's Corps of the Army. These positions should be established by statute and should not be weighed in calculating the general officer positions otherwise needed for the Army. The statute should so state. Such a provision should eliminate rancor on the part of officers of the line. The eight general officers should consist of:

1 Lieutenant General—The Judge Advocate General

1 Major General—The Deputy Judge Advocate General

1 Major General—Chief Judge, U.S. Army Judiciary

5 Brigadier Generals:

Assistant Judge Advocate General for Military and International Law

Assistant Judge Advocate General for Civil Law

Theater Judge Advocate, Europe

Director, Office of Investigations

Commandant, The Judge Advocate General's School

A comparison of the cost over a man-life of service with the cost of a man-life of service for civilian lawyers used in comparable positions throughout the Government will demonstrate that the investment is both actually and comparatively an economical one.

As is well known the civilian bar is placing increased emphasis on the continuing legal education of lawyers. The recent conference of distinguished leaders of the legal profession at Arden House, New York, directed its attention to improving both the professional competence and professional responsibility of all lawyers. This permits me to single out with considerable pride the accomplishments of The Judge Advocate General's School at Charlottesville, Va. There is no single facet of continuing legal education now in existence or being considered by the civilian bar which has not been fully observed by the School for some years. The results have been outstanding and the quality of legal service which is now being provided in the Army is traceable to this continuing effort on our part to keep our military practitioners prepared to render complete legal service to their commanders. At the same time, there is one aspect of the matter which has not been fully satisfactory. I refer to the fact that, while The Judge Advocate General's School has been and is open to further the education of military lawyers of our sister services, this opportunity has not been seized upon to the extent which might be expected. There is no other facility in the United States which can offer the type of advanced schooling provided by The Judge Advocate General's School. The benefit which could be realized by judge advocates of the Navy and Air Force is, I believe, beyond question. I should not like these remarks to be interpreted as indicating a complete lack of participation by the Navy and Air Force in the activities of The Judge Advocate General's School, because this is not the case. It is a fact, however, that the great preponderance of students at the School are from the Army. For example, in fiscal year 1963 only 37 Navy and 44 Air Force attorneys graduated from courses at the School, whereas 651 Army attorneys graduated. It is highly desirable, in my opinion, for the other military services to provide a substantially equal participation and contribution to the operation of the School. The quality of legal service throughout the Department of Defense will undoubtedly benefit by this action. It is hoped the other military departments will see their way to avail themselves of the clear invitation extended to them.

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

EXHIBIT A

**ANALYSIS OF DISPOSITION OF COURT-MARTIAL CASES FORWARDED
TO UNITED STATES COURT OF MILITARY APPEALS**

During the period 1 March 1958-30 April 1963 (Volumes 9-13, USCMA), analysis of the cases reported discloses the following:

	<i>Army*</i>	<i>Navy</i>	<i>Air Force*</i>
Cases forwarded to CMA.....	2, 337	1, 638	1, 636
Denials.....	2, 018	1, 408	1, 401
Opinions.....	319	230	235
Affirmed.....	184	90	122
Reversed.....	135	140	113
Percent of reversals to total cases.....	5. 77	8. 54	6. 90
Percent of reversals to grants.....	42. 3	60. 8	48. 0

*Civilians not used on boards of review.

EXHIBIT B

ARTICLE 15 ACTIONS FOR PERIOD OF 1 APRIL 1963-30 JUNE 1963

		<i>Percentages of total number of cases within numbered items</i>	<i>Percentages of total number of cases</i>
1. Total cases.....	52, 447		
2. Reduction in grade:			
From E-4 or lower.....	11, 113	92. 5	
From E-5 or higher.....	902	7. 5	
Total.....	12, 015		22. 9
3. Forfeiture of pay:			
Of \$74 or less.....	18, 528	93. 4	
Of \$75 or more.....	1, 298	6. 6	
Total.....	19, 826		37. 8
4. Detention of pay:			
Of \$149 or less.....	711	84. 5	
Of \$150 or more.....	130	15. 5	
Total.....	841		1. 6
5. Correctional custody:			
7 days or less.....	72	39. 3	
8 days or more.....	111	60. 7	
Total.....	183		0. 3
6. Extra duties:			
14 days or less.....	22, 285	92. 8	
15 days or more.....	1, 728	7. 2	
Total.....	24, 013		45. 8
7. Restriction:			
14 days or less.....	22, 127	90. 6	
15 days or more.....	2, 288	9. 4	
Total.....	24, 415		46. 6
8. Written Adm or Rep.....	1, 253		2. 4
9. Oral Adm or Rep.....	7, 258		13. 8

ARTICLE 15 ACTIONS FOR PERIOD OF 1 APRIL 1963—30 JUNE 1963—

Continued

		<i>Percentages of total number of cases within numbered items</i>	<i>Percentages of total number of cases</i>
10. Mitigating actions:			
On appeal.....	439	13.5	-----
Without appeal.....	2,821	86.5	-----
Total.....	3,260	-----	6.2
Suspensions.....	2,705	83.0	5.2
—Vacated.....	267	¹ 9.9	-----
Other mitigation.....	555	17.0	1.1
Appeals.....	1,625	-----	3.1
—Denied.....	1,186	² 73.0	-----

¹ Of suspensions.

² Of appeals.

Report
of
THE JUDGE ADVOCATE GENERAL
of
THE NAVY
January 1, 1963, to December 31, 1963

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 1963, contains, unless otherwise indicated, statistical information covering fiscal year 1963.

Courts-martial of all types—general, special, and summary—convened within the Navy and Marine Corps totaled 39,033 in fiscal year 1963 as compared to 45,529 in fiscal year 1962. This represents an overall decrease of 6,496 cases, or 14.2 percent. Since service strengths have remained relatively unchanged, a decrease in courts-martial case-load may be attributable to Public Law 87-648 which increased the Article 15, UCMJ, nonjudicial punishment authority of commanding officers. The new article 15 has received universal command approval, with many noting an improvement in discipline. Despite the relatively short period of time that the new article 15 has been in effect, it is apparent that not only are we saving many of our people from criminal records, but discipline and morale are being enhanced.

Navy Boards of Review received for review during fiscal year 1963, 420 general courts-martial and 2,806 special courts-martial, as compared to 386 general courts-martial and 2,783 special courts-martial during fiscal year 1962. Again, as during the preceding year, in over half—55 percent of the cases reaching Board of Review, the accused requested representation by appellate defense counsel. A more detailed statistical report is attached as exhibit A. Boards of Review continue to modify sentences as is their statutory right, but without benefit of the personal observations and studies available to brig authorities and clemency boards. The sentence as adjudged by the court and approved by the convening authority who has the accused as well as his service record available, and the sentence as approved by the Board of Review which normally has only the record of trial before it, is often difficult to reconcile. This is but another aspect to the sentencing problem I made reference to in last year's report and which needs continuing study.

Despite the slight increase in the number of cases over the preceding year, the trend away from general courts-martial continues. The reluctance on the part of command to refer a particular case to a general court-martial may be attributable to the requirements of the article 32 pretrial investigation, which often assumes the proportions of a full-scale trial. As such, it is time consuming as well as costly.

Trial by special courts-martial obviates the need for the article 32 investigation. The sentence differential is not significant, or at least not significant enough, since the punitive discharge by either court effectively separates the individual from the service. As a result many felony-type offenses are being tried at the special court-martial level and with nonlawyer counsel. Notwithstanding the legality of assigning nonlawyer counsel at special courts-martial [confirmed by the landmark case of *U.S. v. CULP*, decided 23 September 1963, reported in 14 USCMA 199, 33 CMR 411], the use thereof accounts for more reversible error than any other single cause. In fact, this one factor accounts for the high incidence of reversal in Navy special courts-martial. In addition to providing an accused before a special court-martial with qualified counsel when he requests it, and for which legislation is currently pending, there is need to restudy article 32 of the Code.

The Navy-Marine Corps Judiciary Activity, activated on 1 July 1962, with its principal office headquartered in Washington and branch offices geographically located around the world, provided specially selected Judiciary Officers to sit as law officers on general courts-martial convened within the Navy and Marine Corps. When requested, and as their general court-martial docket permits, they are available to serve as presidents of special courts-martial. As a result of the Judiciary Program there has been a marked reduction in reversals due to law officer error, with a concomitant saving in man-hours and money as well as an improvement in the quality of justice administered in the Navy. The experience under the Judiciary Officer Program has shown that the objectives which led to its adoption are being realized.

My Assistant Judge Advocate General for Military Justice continues to issue his informal newsletter to all Navy and Marine lawyers in order that justice be better served throughout the Naval Establishment. His timely comments on the current state of the law as well as his suggestions for procedural improvements have been well received in the field. He recently provided all Navy and Marine lawyers with an instructional guide for presidents of special courts-martial covering the more commonly encountered offenses and their usual affirmative defenses.

Amendments to the Uniform Code of Military Justice discussed at prior Code Committee meetings and made part of last year's annual report have been overtaken by events. In August 1963, Senator Ervin, joined by other Senators on both sides of the aisle, introduced 18 bills, each aimed at amending the Uniform Code of Military Justice. The proposed legislation was the aftermath of extensive hearings held by Senator Ervin as chairman of the Subcommittee on Constitutional Rights of the Committee on the Judiciary of the U.S. Senate, in February and March of 1963. The Military Justice Division has been

deeply involved in helping to formulate a Navy, and ultimately the Department of Defense position on the proposed legislation. The legislation as a whole is aimed at strengthening the due-process safeguards of military law.

Last year I reported that the services had agreed to a feasibility study in connection with rewriting the Manual for Courts-Martial. This year I am pleased to report that an Ad Hoc Committee consisting of representatives of the Army, Navy, and Air Force JAG Offices are updating the present Manual with a view to having it published in looseleaf form.

The U.S. Naval Justice School, which is under the technical supervision of the Judge Advocate General, continues to offer intensive courses of instruction in the fundamental principles of military justice and procedures under UCMJ. Six regular classes are convened at the Justice School in Newport and one class is convened at Camp Pendleton, Calif., each year.

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 do Coast Guard officers. 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, Marine Corps, and Coast Guard in closed microphone court reporting and legal clerkship duties. The School's faculty, while predominantly Navy, has Marine, Army, and Air Force personnel assigned. During fiscal year 1963, 2,153 students were graduated, an increase of some 30 percent over the number trained during 1962. Additionally, 597 officers received instruction especially tailored to meet the needs of senior officers.

For many years now I have advocated a Judge Advocate General Corps in the Navy. Legislation introduced in prior sessions of Congress after clearing the Department of Defense and the Bureau of the Budget have died in Congress without hearing. The need to provide an organizational envelope for the Navy lawyers in order to afford them professional prestige and status as well as identification remains acute. One of Senator Ervin's bills would provide for a Navy Judge Advocate General Corps. Early passage of this bill should have the support of all concerned. In the foreseeable future our seasoned lawyers will be leaving by reason of statutory retirement and the like. There is therefore urgent need to improve the retention rate now in anticipation of the future need throughout the Navy for legal services. Enactment of Corps Legislation will go far towards improving the existing situation.

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

EXHIBIT A

FISCAL YEAR 1963

General courts-martial		
Received for review under article 66.....	420	
Received for review under article 69 and acquittals.....	133	
Total.....		553
Special courts-martial		
Received for review under article 66.....	2, 806	
Received for review under article 65c.....	10	
Reviewed in the field.....	12, 908	
Total.....		15, 724
Summary courts-martial		
Received for review under article 65c.....	1	
Reviewed in the field.....	22, 755	
Total.....		22, 756
Total all courts-martial.....		39, 033
Board of review actions		
On hand for review 1 July 1962.....	93	
Received for review during fiscal year 1963.....	3, 226	
Total on hand.....		3, 319
Reviewed during fiscal year 1963.....	3, 208	
Pending review on 30 June 1963.....	111	
Total.....		3, 319
Findings modified by boards of review during fiscal year 1963.....	65	
Requests for appellate counsel.....	1, 832	
U.S. Court of Military Appeals actions:		
Petitions granted.....	21	
Petitions denied.....	255	
Total petitions acted upon.....		276
Cases certified to USCMA by JAG.....		5

Report
of
THE JUDGE ADVOCATE GENERAL
of
THE AIR FORCE
January 1, 1963, to December 31, 1963

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 1963, is shown in the following table:

Total.....	959
<hr/>	
Referred to Boards of Review pursuant to article 66.....	792
General Court-Martial records.....	315
Special Court-Martial records.....	477
Examined pursuant to article 69.....	167
The Boards of Review modified the findings and/or sentence in 70 cases.	

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

On hand 30 June 1962.....	64
Referred for review.....	792
	<hr/>
Reviewed and dispatched.....	856
Pending 30 June 1963.....	94
	<hr/>
	856

c. During the fiscal year, 67 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.....	762
Cases forwarded to USCMA.....	214
Number cases based on petitions.....	205
Number cases certified by TJAG.....	9
Percent total forwarded of total cases reviewed.....	28.1
Petitions granted.....	34
Percent petitions granted of total petitioned.....	16.6
Percent petitions granted of total cases reviewed by Boards of Review.....	4.5

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

General Courts-Martial.....	492
Special Courts-Martial	2,809
Summary Courts-Martial.....	9,549
	<hr/>
Total.....	12,850

2. a. At the close of the period of this report there were 82 commands exercising general court-martial jurisdiction.

b. The Secretary of the Air Force concurred in the request of the Secretary of the Navy for authorization of the appointment of an Air Force officer to serve as defense counsel of a Navy special court-martial.

3. During the last several months of 1963 a project has been underway with participation of Army, Navy, and Air Force, to revise the Manual for Courts-Martial on the basis of statutes, Executive orders, and case law which have intervened since the publication in 1951. It is anticipated that a draft will be ready for Presidential consideration early in 1964.

4. The new article 15 increasing the authority of designated commanders became effective 1 February 1963. An Executive order, signed 29 January 1963, promulgated the necessary procedural rules in a new chapter XXVI, MCM, 1951. Instructions prescribing rules and procedures for imposing nonjudicial punishment were published and distributed. Production is near completion on training film TF-5582, "The Uniform Code of Military Justice, Article 15—Non-Judicial Punishment." This film will inform Air Force personnel of the background of the new article 15 and will portray examples of its possible use and appropriate administration.

5. Maj. Gen. M. R. Tidwell, Jr., the Assistant Judge Advocate General, retired during this year and Brig. Gen. Robert W. Manss succeeded him. Maj. Gen. Albert M. Kuhfeld, The Judge Advocate General, and General Manss made staff visits to numerous Staff Judge Advocate offices in the United States and overseas as required by Article 6(a), Uniform Code of Military Justice. Generals Kuhfeld and Manss also attended various bar association meetings and spoke before numerous civic, professional, and military organizations.

6. On 30 June 1963, there were 1,286 Judge Advocates on active duty in the U.S. Air Force. Of these, 584 were members of the Regular Air Force, 268 were Career Reserve officers, and 431 were Reserve officers with an established date of separation. The overall loss of officers in The Judge Advocate General's Department during 1963 was almost double the gains. During the year, a selection board was convened to consider 686 applications for direct appointment as Reserve officers. Due to strength limitations, only 110 of these could

be selected, and all will be called to active duty during fiscal year 1964. In December 1963, another selection board was convened to consider the records of 468 Judge Advocates serving on active duty for appointment in the Regular Air Force. The board automatically considered the records of all eligible Judge Advocates with less than 10 years' service and those selected will be tendered a Regular commission without application. This is the first time The Judge Advocate General's Department has used this method of procurement for Regular officers. The number of officers who elect to accept or decline the appointments will not be known for several months.

7. *a.* Distribution was made of training film TF-5538, "Uniform Code of Military Justice—Financial Responsibility." This film portrays to Air Force personnel the importance of conducting their financial affairs in a responsible manner and emphasizes the provisions of the worthless-check law incorporated in Article 123a, Uniform Code of Military Justice.

b. Production is underway on training film TF-5581, "The Soldiers' and Sailors' Civil Relief Act." This film depicts a sequence of legal problems in the affairs of several airmen and the applicability of the Soldiers' and Sailors' Civil Relief Act. It also contains an explanation of the general provisions of the act.

c. The Judge Advocate General's office supervised and arranged, on behalf of all of the armed services, for the publication of Decisions of the U.S. 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. KUHFIELD,
Major General, USAF,
The Judge Advocate General.

Report
of
THE GENERAL COUNSEL
of
THE DEPARTMENT OF THE TREASURY
(UNITED STATES COAST GUARD)
January 1, 1963, to December 31, 1963

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

This report of the General Counsel of the Treasury Department is submitted pursuant to article 67(g) of the Uniform Code of Military Justice, 10 U.S.C. 867(g).

The sharpest decrease in total court-martial volume since 1954 was recorded for the fiscal year 1963. The decline in courts reflected the influence of the amended article 15 which increased the powers of commanding officers to impose punishment for minor offenses without recourse to a court-martial. Although in effect for only the last 5 months of the fiscal year, the new law brought about an immediate decline in summary courts.

The following table shows the type and number of court-martial records received during each of the past 5 fiscal years:

	1963	1962	1961	1960	1959
General courts-martial.....	6	4	4	6	3
Special courts-martial.....	139	148	162	158	187
Summary courts-martial.....	448	683	586	666	643
Total.....	593	835	752	830	833

For the whole year there were approximately 18 courts-martial for every 1,000 persons in the Coast Guard, with summary courts still accounting for three-quarters of the total.

Of the 139 special courts-martial, final action was taken in 33 cases by the General Counsel as supervisory authority and in 85 cases by an officer exercising general court-martial jurisdiction as supervisory authority. The remaining 21 cases involved sentences to a bad-conduct discharge and required submission to the Board of Review, pursuant to article 65(b) of the Code.

Review by the Board of Review was accomplished in 27 cases. The Board reviewed 6 general courts-martial in addition to the 21 special courts-martial. The accused in 12 of these cases requested and was furnished representation by appellant defense counsel. Four of the general courts-martial were automatically referred to the Board of Review pursuant to article 66, while the remaining two, which did not involve punitive discharges, were referred for review pursuant

to article 69. On petition of the accused the records in two cases were forwarded to the U.S. Court of Military Appeals for grants of review. The court denied the petition in one case and granted it in the other, which was subsequently affirmed.

A total of 25 punitive discharges reached the Board of Review. Of the four discharges adjudged by general courts-martial, two were dishonorable discharges and two were bad-conduct discharges. Both dishonorable discharges were mitigated to bad-conduct discharges, and as such were executed. Neither of the other two general courts-martial discharges were executed, one having been conditionally remitted by the convening authority and the other by the Secretary. Of the 21 bad-conduct discharges imposed by special courts-martial, 6 were suspended on probation by the convening authority; 2 were set aside by the Board of Review; 2 were remitted by the General Counsel, 1 outright and the other on probation; and 3 were disapproved by the Secretary of the Treasury. In summary, out of a total of 25 punitive discharges, only 10 survived departmental review; and in one of these the accused has a petition pending before the Court of Military Appeals. Fewer than one in every 3,000 persons of the Coast Guard received a finally approved punitive discharge.

The average general court-martial confinement imposed was 13.1 months. The average special court-martial confinement adjudged in Board of Review cases was 4.5 months. Appellate review authorities or the convening authority reduced the periods of confinement adjudged by three of the general courts-martial and eight of the special courts-martial. Of the 27 cases referred to the Board of Review, the findings and the sentence in only 6 were unchanged after departmental review had been completed.

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