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by

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At the request of the Judge Advocates General of the Army, Navy and Air Force, there has been introduced into the 84th Congress a Bill to amend the Uniform Code of Military Justice[1] that took effect on May 31, 1951. Significantly, the bill lacks the support of the Court of Military Appeals (COMA), the Secretary of the Treasury who heads the Coast Guard, and the Civilian Court Committee appointed by COMA and headed by Whitney North Seymour, the distinguished New York attorney. In the judgment of many people, the bill contains provisions which will turn the clock back and destroy many reforms, won at the close of World War II.[2]

It was in the last hectic days of a session that the Uniform Code of Military Justice was enacted. Senator Pat McCarran, fought gallantly in the Senate to refer it to the Senate Judiciary Committee for a study, and report to the Armed Services Committee within a limited period of time. The American Bar Association, the American Legion and others had pointed out serious faults in the Code that should be corrected. The Senator wanted the lawyers on the Senate Judiciary Committee to point out to the Armed Services Committee the needed corrections. By about ten votes the motion to refer the bill to Judiciary for this purpose failed and the Code with all its flaws became law. With the coming of peace, the Congress has not had the time or political urge to consider courts martial again.

Now would seem an appropriate time for a Senator to ask that the Senate Judiciary Committee study not only this bill but also the objections which were made to the Code when it was so hastily enacted. A Congressman should make a similar motion to refer it to the House Ju-

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[1] From a jurisprudential point of view there is a great deal to be said against Codes. The provisions become too rigid. It would seem advisable so far as procedure is concerned that the Congress create the suggested Advisory Council and allow it to suggest rules of procedure to replace procedural code provisions to COMA and allow COMA to promulgate rule changes as deemed necessary. COMA could report the rules to Congress as the Supreme Court does.

[2] Admiral Halloway in testimony before the Brooks Committee said that the Code "has contributed immeasurably to the public confidence in the execution of military discipline and justice" (p. 52). Moreover, the Congress is said to be greatly relieved from pressing demands of parents by the creation of COMA. And Judge Latimer testified before the Brooks Committee that the Code has worked well under combat conditions and its evils are more imaginary than real. If all this be so then the only amendment worthy of consideration is one to strengthen it, not weaken it.

diciary Committee. The Armed Services Committees of both Houses would then have the benefit of a study by the Committees upon which most lawyers sit.

There are glaring weaknesses in the Code that cry for correction. These were known at the time of its adoption. The military, splendid officers and gentlemen as they are always, are resentful of any suggestions by civilians for the reform of what they regard as their court-martial system. Their approach has been to weather the storm of civilian criticism that follows every war and when the hue and cry dies down, to return to the old ways. The bill introduced in the 84th Congress is their first legislative attempt to go backwards since the Code was enacted at the close of World War II.

1. CONGRESS SHOULD CREATE A PERMANENT PAID PART-TIME CIVILIAN ADVISORY COUNCIL.

The principal weakness in the Code of Military Justice is its failure to provide for a paid part-time Civilian Advisory Council to study continuously the operation of the Code and make its own independent recommendations to the Armed Services and Judiciary Committees of the Congress. The General Court-Martial Sentence Review Board of the United States Navy of which the author was President, Felix Larkin, Esq., a draftsman of the Code of Military Justice, Vice-President, Professor Robert Pasley of Cornell Law School, Research Director, and Frank Cotter, Esq., Staff Director, foresaw that we would not obtain the reforms we felt were needed, that some reforms might not work well and would need correction, that in certain areas such as discharge and officer cases more study and investigation was required. Accordingly, the Board consisting not only of the civilians, above-named, but also of Admiral C. P. Snyder, Captain Hunter Wood, Jr. and Commander A. W. Dickinson, Jr. of the Navy, Captain Clifford G. Hines of the Navy's Medical Corps., Captain John A. Glynn of the Coast Guard and Colonel E. H. Murray of the Marine Corps, unanimously asked that the Congress create a permanent Civilian Advisory Council. That little read and unpublished report said then:

> Many states have created such advisory bodies to aid their civil courts and their performance has been highly satisfactory. [Sunderland, The Judicial Council as an Aid to the Administration of Justice, (1941) Am. Pol. Sci. Rev. 933.] Mr. Justice, Benjamin L. Cardozo, the principal advocate of their creation, in a celebrated law review article, explains the reason for their existence:
> The duty must be cast on some man or group of men to watch the law in action, observe the manner of its functioning, and report the changes needed when function is deranged. . . . Recommendations would come with much greater authority, would command more general acquiescence on the part of legislative bodies, if those who made them were charged with the responsibilities of office. . . . Such a board would not only observe for itself the workings of the law as administered day by day. It would enlighten

itself constantly through all available sources of guidance and instruction; through consultation with scholars; through study of the law reviews, the journals of social science, the publications of the learned generally; and through investigation of remedies and methods in other jurisdictions, foreign and domestic. . . . Reforms that now get themselves made by chance or after long and vexatious agitation, will have the assurance of considerate speedy hearing. Scattered and uncoordinated forces will have a rallying point and focus. [Cardozo, A Ministry of Justice (1921) 35 Harv. L. Rev. 113, 114-125.]

As a result of the recommendations of Judge Cardozo and other prominent members of the legal profession, the New York State Law Revision Commission was created to advise the New York Legislature on suggested changes in substantive law and the Judicial Council was created to advise that legislature on matters of procedure. [For a detailed study of the purpose and objective of these New York agencies, see: Report of the Commission of the Administration of Justice in New York State (1934), Legislative Document No. 50, pp. 36 and 53; Saxe, the Judicial Council of the State of New York; Its Objectives, Methods, and Accomplishments (1941) 35 Am. Pol. Sci. Rev. 933.]

. . . The recent revision of the procedural law of the federal courts, both civil and criminal, has been similarly accomplished with the aid of such an advisory committee appointed by the Supreme Court.

A similar board established by the Navy could recommend changes in the court-martial system from time to time, based on its observation of the practicability and workability of the court-martial system in operation and based on its appraisal of current trends in civilian criminology. If the legislatures of New York and other states and the Supreme Court of the United States have found such advisory bodies helpful, there is every reason to believe that the Secretary of the Navy and the Congress would find such an advisory committee of great value in passing on proposals for the reform of the naval court-martial system.[3]

Speaking of the composition of such a permanent Advisory Council, the Board said:

The composition of such an Advisory Committee with respect to the naval court-martial system, warrants careful study. In general, the composition can be patterned after the above-mentioned successful advisory bodies. It would seem wise to have membership made up partly of persons outside the regular navy service, so as to bring to their task an independent outside view, and of course, a representative of the Judge Advocate General, a representative of the Bureau of Naval Personnel, and at least one officer with general line experience. It would also be advisable to have on such committee both a penologist and a psychiatrist.

It is believed that such a Board will serve a twofold purpose:

1. It will be in a position to make a complete examination of the naval court-martial system;
2. It will provide a means of keeping the naval court-martial system up-to-date and obviate the necessity of a periodic comprehensive reform every twenty-five or fifty years.[4]

In a piece written on the eve of the passage of the code by the Senate it was said:

We have seen the best of administrative agencies disintegrate for lack of disinterested civilian criticism. In court-martial procedure governing civilian soldiers and sailors, the armed services should welcome the creation of a strong civilian advisory council. Wasn't it Roscoe Pound who long ago pointed out that codes are rigid, codify errors and make changes more difficult? The only hope for improvement is to condition passage of the Code upon the appointment of an advisory council—and this is what was sug-

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[3] REPORT OF GENERAL COURT-MARTIAL SENTENCE REVIEW BOARD 3-4 (1946-47).
[4] *Id.* at 4-5.

> gested by the Navy's General Court Martial Sentence Review Board in 1947. Such a body can be relied upon to follow this court-martial reform to the bitter end. In its permanent advisory capacity it can do all the things article 67 (g) only hints at and considerably more.
> The opponents of reform rely upon the present pressure easing and civilian lawyers losing interest. The stakes are too high. Let us hope that the Senate will establish such a council. True reform lies that way.[5]

Article 67 (g) of the Code to which reference is made is the provision which directs COMA to meet once a year with the Judge Advocates General and report to Congress. As predicted, the Judges at COMA have been too busy to do the necessary research and their present disagreement with the Judge Advocates General as to needed reforms indicates that if the Code is to be changed, a body such as an Advisory Council must be created by the Congress to do it.[6]

Not many people are aware how hard and conscientiously the Committees of our Congress work. Senators and Congressmen by and large work round the clock. They are subject to pressures that would kill lesser men. Day by day and in the closing of each session, they are forced to vote with respect to the most complicated statutes that affect the well-being of all of us. However important we regard courts martial, this is but one subject of many of paramount public interest. The services have their lobby at public expense. To counteract that lobby there should be a permanent paid, part-time and independent Civilian Advisory Council. The bill introduced by the services does not provide, as it should, for a Civilian Advisory Council as the Navy Board requested.

2. CONGRESS SHOULD NOW INVESTIGATE THE CONDUCT OF OUR KOREAN COURTS MARTIAL.

Almost ten years have passed without civilian study of courts martial except for the trickle of cases that can be heard for legal technicalities each year by COMA. Meanwhile, we have had the Korean War and from the evidence available, it seems likely that the abuses in the courts of World War I and II were still present in the Korean courts. Since Congress failed to establish the Civilian Advisory Council there seems to be no way now to achieve the needed reforms and review of Korean cases, except through a Congressional inquiry. It may be that courts martial in Korea were well conducted. If so, the services have nothing to fear. If the Courts were not well conducted, then their conduct should be exposed to public view.

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[5] Keeffe and Moskin, *Codified Military Injustice,* 35 Cornell L.Q. 151, 170 (1949).

[6] This is evident from the 1956 hearings before the Brooks Committee, (Subcommittee No. 1, House Armed Services Committee, 84th Cong., 2nd Sess., hereinafter cited Brooks Committee) where in their testimony Chief Judge Quinn and Judge Latimer indicated there were many points of military law and practice on which they could not express an opinion without further study. For instance, neither the court nor its Code Committee has studied discharges (p. 357).

The author was able to study the complete court-martial record in only two Korean cases, one which will be referred to as "Doe" and the other as "Roe." The trial in each case was inexcusably conducted. The suspicion that these two cases were typical caused the author to ask permission of COMA to study the records in other Korean cases. An amazing situation was revealed. It is the practice of the Judge Advocates General and the Secretary of the Treasury to send to COMA the original court-martial jacket in each case, and to require COMA to return each after its decision. But when permission to examine these original records was requested, it was refused.[7]

As a result, study of the Korean courts has been confined to the written opinions of COMA and the two cases above-mentioned. From this research, a selection of sentences has been made and appears in the appendix. From this cursory examination, there is reason to believe that what passed for justice in our Korean courts may not have been the real thing. This circumstantial evidence calls for a Congressional investigation.

3. In How Many Korean Courts Was Defendant Denied A Lawyer?

In one of his early opinions Judge Brosman said:

> We would be deaf, indeed, if we did not recognize that a major fault found with military practice during the recent war was the allegedly recurrent failure to provide accused persons with legally trained counsel.[8]

The General Court-Martial Sentence Review Board of the Navy in 1946 reviewed a murder case defended by a layman, and a desertion in battle case defended by a dentist.[9] When Judge Brosman said this was a major fault in World War II courts martial, he understated the matter. One of the few real reforms won in the Code of Military Justice was a requirement that law officers, prosecution and defense counsel, be lawyers. Now, after all the criticism that led to this provision in the new Code, even though it did not take effect until May 31, 1951, one would think that the Army in May 1951, in Korea would see to it that in its general courts the defendant was represented by a lawyer.

It was not so. Doe's trial record shows he was tried in May, 1951, in Korea and was represented by an officer who was not a lawyer. Doe swears this officer advised him not to take the stand and, though available,

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[7] The letters of refusal of the Judge Advocates General and the Secretary of the Treasury appear verbatim in the appendix.

[8] *United States v. Bartholomew*, 1 U.S.C.M.A. 307, 310, 3 C.M.R. 41, 44 (1952).

[9] Report of General Court-Martial Sentence Review Board 86-87 (1946-47). Bertram Schwartz testified before the Brooks Committee that in World War II he tried a murder case overseas where the defendant was represented by a dress goods salesman (p. 230). He also calls attention to H.R. 7646 that has passed the 84th Congress and is now Public Law 777. It provides lawyers free to our service men tried abroad under the Status of Forces Agreement.

failed to call a key witness. The record itself is unintelligible. It consists of the contradictory testimony of the Chinese and Korean witnesses. Not one American testified against Doe. For a charge of stealing 32 cases of C Rations, Doe was sentenced to five years imprisonment and a Dishonorable Discharge (D.D.). Doe's case was not the only one. The cases of Phillips and Bartholomew in which Judge Brosman made his above-quoted comment are two others.[10]

4. Were The Sentences Of Our Korean Courts Martial Too Severe? Why Change D.D. To *B.C.D.*?

Like many other World War II veterans in 1956, years after Korea, Doe will find that he cannot obtain G.I. benefits, public employment, state or federal, nor any job with America's large corporations because of his D.D. It is a permanent tattoo equivalent to civil death. Realizing the magnitude of this sentence, the General Court-Martial Sentence Review Board refused to participate in the discharges given by the Navy. Instead, it urged that the proposed Civilian Advisory Council study what should be done about discharges. During World War II, the Army gave many different types of discharges, but the effects of each were difficult to determine. At least the Navy had only two, the Dishonorable (D.D.) and the Bad Conduct Discharge (B.C.D.).

When the General Court-Martial Sentence Review Board was requested to recommend that the discharge of a prisoner be changed from a Dishonorable Discharge to a Bad Conduct Discharge, it inquired what consequences were attached to a B.C.D. which were not attached to a D.D. No one who was asked knew, yet for years, under the guise of leniency, naval clemency boards had been changing D.D. to B.C.D. After proposing that naval discharges be studied and the distinction between the D.D. and B.C.D. be abolished, it was a considerable surprise to find that without the requested study, the Army adopted the two discharges of the Navy. It must be that the Army discharges were in a sorry state if the Army thought the Navy's made sense. This illogical practice, masquerading as clemency, persists today under the Code.

The study made by the General Court-Martial Sentence Review Board revealed that for all practical purposes there is no difference between a D.D. and a B.C.D. The consequences are almost identical[11] so that, except for the sound of the label, no mercy is given to a prisoner by changing his D.D. to a B.C.D., but to this day every military man seems to believe that the change means something. Were it not so tragic for so

[10] *United States v. Bartholomew*, 1 U.S.C.M.A. 307, 310, 3 C.M.R. 41, 44 (1952); *United States v. Phillips*, 1 U.S.C.M.A. 316, 3 C.M.R. 50 (1952).

[11] Report of General Court-Martial Sentence Review Board 318-19 (1946-47).

many youngsters, the adoption of this system of the Navy by the Army and in the Code would be comical indeed.

5. THE SPECIAL COURT SHOULD BE ROBBED OF ITS POWER TO GIVE A B.C.D. AND ALL SERVICES SHOULD BE DEPRIVED OF THE RIGHT TO GIVE AN UNDESIRABLE DISCHARGE OR ANY SIMILIAR ONE WITHOUT A GENERAL COURT MARTIAL.

Realizing the severity of a B.C.D. in its effect upon the man's future life, the General Court-Martial Sentence Review Board asked that its proposed Advisory Council study whether the special (then called Summary) court martial "should continue to have the power to impose it".[12]

Before the Code was adopted, it was pointed out that under it, the special court could grant a B.C.D. Unlike the general court, counsel of a special court need not be lawyers. Any court that gives a B.C.D. should have all the safeguards of a general court. The point was made that "either the power to award bad conduct discharges must be taken from special courts, or the safeguards necessary to granting of full justice must be provided."[13]

As above-stated, section 67 (g) of the Code directs the Judges of the Court of Military Appeals and the Judge Advocates and the Secretary of the Treasury to report each year as to needed changes. The reporting group is called the "Code Committee." In its first report they recommended "that legislation be enacted prohibiting special courts-martial from adjudging bad conduct discharges." [14] In support of their recommendation the Code Committee said:

> Experience has shown that the exercise of the power to adjudge punitive discharges by special courts has impaired the efficient administration of military justice. This impairment falls into two main categories, namely; considerable expense to the United States not commensurate with the results obtained, and inadequate protection of the rights of the United States and the accused at the trial level. Specific impediments to proper administration are: (1) Unavailability of and lack of requirement for legally trained personnel as court members or counsel. The absence of legally trained personnel from the trial of cases results in a high percentage of records replete with error requiring reversals, rehearings, proceedings in revision and other corrective action. The trial standards which should be required before a punitive discharge penalty is assessed cannot be reached in the absence of attorneys and counselors at law. (2) The paucity of court reporters, particularly in overseas commands. This results in expensive time lags in the processing of cases. (3) Before special court-martial sentences involving bad conduct discharges may be carried into execution the same appellate procedures required for general court-martial cases must be accomplished and in addition the action of another headquarters is involved. Since the maximum time of confinement which may be imposed by a special court-martial is 6 months and the actual time served under such a sentence, with time off for good behavior, is 5 months, many accused have served their time and

[12] *Id.* at 322.

[13] Keeffe and Moskin, *Codified Military Injustice,* 35 Cornell L.Q. 151, 157, 168 (1949).

[14] ANNUAL REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS AND THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES 4 (1952).

> have been released from confinement before appellant review is complete. Thus, many men under sentence of a punitive discharge are on a quasi-duty status; a situation which results in tremendous housekeeping and pay problems.[15]

Strange as it may seem, no bill appears to have been introduced to carry out this recommendation, and in its second annual report, COMA says:

> As a final recommendation, the Court invites attention to the one it sponsored in the initial Annual Report, to the effect that the jurisdiction of a special court-martial under Article 19 of the Code be limited so that a bad-conduct discharge may not be adjudged as part of a sentence. While this recommendation does not have the unanimous approval of the Services, the reasons for its enactment are still cogent and will not be repeated. No significant improvement in the trial tactics and techniques in cases before special courts-martial has been observed during the additional period of time covered by this report. Accordingly, the Court adheres to its original recommendation.[16]

During the interval between the first and second annual reports, no doubt realizing how impossible it was to make the comprehensive study envisaged by 67 (g) of the Code, COMA appointed its Court Committee under the Chairmanship of Whitney North Seymour, Esq. The other members are Ralph B. Boyd, Henry T. Dorrance, Felix E. Larkin, Joseph A. McClain, Jr., George A. Spiegelberg, Arthur E. Sutherland and Donald L. Deming. In its report to COMA, the Court Committee speaking of this recommendation said:

> The Committee agreed that the recommendation previously submitted to the Congress and the Judge Advocates General of the Army and the Air Force in their last Annual Report to eliminate the bad-conduct discharge from the competency of special courts-martial was entirely sound and should be renewed and supported.[17]

Despite the failure to carry it out in the pending bill[18] there is a provision permitting one officer instead of three to conduct a special court-martial, providing the officer is a lawyer and the accused so requests in writing upon the advice of counsel. The Court Committee[19] supports this provision and so does COMA.[20] One cannot help but note that this would empower one officer to give a B.C.D., for there is no change in the bill prohibiting special courts from giving a B.C.D. Unless the recommendation of the First Code Committee be followed and the right of a special court to give a B.C.D. be removed, the provision is dangerous and should not be enacted.

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[15] ANNUAL REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS AND THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES 4-5 (1952).

[16] ANNUAL REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS AND THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES 19-20 (1953).

[17] *Id.* at 24.

[18] S. 2133 and H.R. 6583, 84th Cong., 1st Sess. (1955).

[19] ANNUAL REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS AND THE STAFF JUDGE ADVOCATES GENERAL OF THE ARMED FORCES 24-25 (1953).

[20] ANNUAL REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS AND THE STAFF JUDGE ADVOCATES GENERAL OF THE ARMED FORCES 5 (1954).

This position was supported before the Brooks Committee by Bertram Schwartz, Esq., representing the Queens County and New York States Bar Associations.[21] Mr. Schwartz lectures on military law at New York University and states he favors command control of courts martial. Nevertheless in his testimony before the Brooks Committee, he came out flatly against permitting any special court, even of one officer, to give a B.C.D. Charles E. Lofgren, National Secretary of the Fleet Reserve Association, also testifying before the Brooks Committee, said that only a general court should give a punitive discharge. His Association views the increasing number of discharges as a growing social problem.

Moreover, Mr. Schwartz calls attention to the fact that in response to the demand for general courts martial, the services have been giving "Undesirable Discharges". Administratively and for all practical purposes such a discharge is the equivalent of a B.C.D. or a D.D. Mr. Schwartz believes no man should be given an "Undesirable Discharge" against his request for a general court. This appears to be a minimum position and fairness would compel a general court. Our past experience indicates that men in trouble are not in a position to judge the permanent consequences of such consent. Also, the action of Secretary Wilson in giving dishonorable discharges without a hearing to the prisoners who refused to leave Red China, indicates there is need to check the entire Defense Department from giving any punitive discharge to anyone without a hearing.

In a recent decision Judge Edelstein, in the United States District Court for the Southern District of New York, had occasion to consider the power of the services to give an undesirable discharge for conduct that took place in civilian life before induction. He said the issuance of such a discharge was a denial of due process of law.[22]

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[21] For the testimony of Bertram Schwartz see the transcript of the hearings of the Brooks Committee (p. 221 et seq.).

[22] The decision of Judge Edelstein is said to have been in the case of the so-called *Useless Eight.* See the transcript where the opinion appears in full, and File C-103-331 in the Southern District under the title *Bernstein, Inductees in the Army of the United States v. Lieutenant General Thomas W. Herrien, Commanding General of Fort Jay.* The discharges were pursuant to Army Regulation 604-10 and have been the subject of study by the Hennings Constitutional Rights Committee of the Senate in both sessions of the 84th Congress. Mr. Schwartz states that Senator Hennings wants the services to decide as to pre-service conduct before induction. The excuse for giving draftees an "Honorable Separation" seems to be that afterwards they serve up to seven years in the reserve but as Mr. Schwartz says they should be recalled—not separated—after an honorable discharge. Mr. Schwartz testified that men bat at his door asking to have their bad discharges changed. And he says for a service man a punitive discharge, "hangs around his neck like an albatross" (p. 219). In the case of the Undesirable Discharge he says it "has not had real true process of law". Apparently the accused is not represented by a lawyer before the boards that give the Undesirable Discharge (p. 228). And other due process guarantees appear to be absent. Mr. Schwartz discusses the Queens Bill at pp. 221-22; undesirable discharges at pp. 223-26 and Wilson's action with respect to our non-returning POW's on p. 259. In this connection Congressman Bray stated that a

The subject has interested the Queens Bar Association for a long time and one of its Congressmen in a prior Congress introduced a bill to require a trial before any discharge other than honorable can be given. This seems to be an admirable way to phrase an amendment to the Code since draftees, after their two years hitch, receive an "Honorable Separation" instead of an "Honorable Discharge". From the above it can be seen that the discharge problem today is worse than when the General Court-Martial Sentence Review Board studied it in 1946. Study by an Advisory Council is overdue.

6. THE STATUTE UNDER WHICH A DESERTER LOSES HIS CITIZENSHIP OUGHT TO BE CHANGED.

When a man in service goes "over the hill," he can be convicted of either "Absence Without Leave," called in military parlance "AWOL," or "Desertion," depending on whether he intended to return. The fact patterns are close and not even COMA has been able to agree always in distinguishing "AWOL" from "Desertion". More confusing, however, is why the Congress should have a special federal statute depriving the deserter of his citizenship when the same penalty is not given to the rapist or the murderer. As presently constituted, COMA cannot review every case[23] and the result is that now, as in the past, many a lad will be discharged as deserter, causing him to lose his civil rights when his crime was "AWOL". The General Court-Martial Sentence Review Board called attention to the problem for study by its proposed Advisory Council, but with no Advisory Council there has been no study or change.[24]

7. THE MILITARY SHOULD STOP CUTTING OFF FAMILY ALLOWANCES OF CONVICTED SERVICEMEN.

The heaviest burden resulting from military discipline falls upon the innocent family of the Offender. The practice in general courts is to cut the pay of the accused on his conviction. And no civilian objection to this or any other disciplinary measure can be offered after the services give the offender a proper hearing. Punishing him is one thing; but a pay cut as in Doe's case, above-mentioned, and in other cases cuts off that part of the man's pay that is being sent home as a family allotment. With the bread winner incarcerated the hardship suffered by his family at home is beyond the comprehension of anyone but the local Community

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bill in 1949 permitted the President to give a D.D. without a hearing; and it was not until the bill reached the floor that the provision was knocked out (p. 259). For the testimony of Charles Lofgren on behalf of the Fleet Reserve Association see p. 313 of the transcript of the Brooks Committee. The illegality of the action of Secretary Wilson is demonstrated by Professor Robert S. Pasley in "Sentence First—Verdict Afterwards: Dishonorable Discharge Without Trial by Court Martial?" in 41 Cornell Law Quarterly 545 (Summer, 1956).

[23] See Point 9 *infra.*

[24] REPORT OF GENERAL COURT-MARTIAL SENTENCE REVIEW BOARD 321 (1946-47).

Chest, the local Red Cross Chapter, the Salvation Army, and the family priest, rabbi or minister. No matter what the man's crime, wreaking vengeance on his dependent and innocent family at home has no place in American life. The Congress should put a stop to it. The services' point of view is that pressure from home will make the man behave and, if we had a professional army, one could admit they have a point. But we have a civilian army; and men are taken involuntarily to serve, making their families at home dependent on their military pay for existence. It is a small price to pay for this civilian force, to require the military to refrain from punishing the innocent family whom the draftee leaves at home while he reluctantly serves.

8. THE SENTENCES RENDERED BY OUR KOREAN COURTS MARTIAL WERE TOO LONG.

Guilt or innocence aside what is to be gained by giving a sentence of five years in jail, a dishonorable discharge and a loss of pay for the crime of stealing 32 cases of C rations? Making every allowance for the necessities of discipline, a sentence of five years for such an offense is too long. When you add to it the permanent, life-long stigma of a D.D., with its loss of G.I. benefits, the loss of his own pay and the cutting off of that part of his pay that goes home to support his family, we see in full perspective how much more severe a military court-martial sentence like Doe's is than the civilian, for the comparable crime.

Another Korean trial is the case of Richard Roe who shipped out of Tokyo for Korea. Before departing he had complained that one testicle pained him. The medical people mistakenly advised him he was all right. He went to Korea. He fought gallantly in combat, his testicle hurting all the while. He complained again to the medical outfit. He was told to forget it. The battle over, the pain intense, Roe took off "over the hill" and went many miles south to the nearest base hospital. After being locked up for being AWOL, Roe after a day or two was admitted to the hospital. Surgery, rarely necessary, was exercised to correct his ailment and he was then returned to his outfit. His superior officers did not let him return to combat where he was needed. Instead, he was court-martialled and sentenced to 25 years—this for a combat soldier who goes to a base hospital for surgery!

A glance at the Korean sentences listed in the Appendix and drawn from the few opinions of COMA available, indicates that far from being exceptional, sentences of this length for comparatively insignificant offenses were rather common in our Korean courts. When one member of Roe's court was interviewed, he had no recollection of the case. Explaining his failure to remember so unusual a case, he said every sentence of the court the month or so he was a member of it was fifteen to twenty-five

years. Under these circumstances how could he be expected to remember anyone. More important, how could he be expected to exercise any judgment as to the justness of the sentence?

Roe's case establishes that, despite all the criticism of the practice after World War II, the Judge Advocate General of the Army in Korea had established permanent courts. Permanent courts can become callous. To insure just sentences courts must be selected *ad hoc*. During World War II the Army had permanent courts and the Judge Advocates liked them but in reporting their love of them, they confessed there was an opposite point of view.

> *Permanent courts.* Some commands utilized relatively permanent courts when and where it was possible to do so and report that the procedure contributed to a better administration of military justice. *The system is criticized by some, for it is said that such courts are inclined to become callous and impose unconscionable sentences. This was true in some cases.* The sentences imposed by a court in Western Base Section for trial of First U.S. Army and other combat troops shortly before D-Day (6 June 1944) were so severe that almost all of them were reduced at least 50 percent by the reviewing authority. Relatively permanent courts appointed by the Commanding General, Seine Section, Communications Zone and sitting in Paris, France, imposed death penalties for desertion, none of which were executed on 11 accused between 8 March 1945 and 27 April 1945. Nevertheless, the great majority of judge advocates who expressed an opinion favor permanent courts.[25]

It is obvious that there is nothing in the Code of Military Justice to prevent the establishment of permanent courts and, despite the criticism of them, the Judge Advocate General of the Army set them up in Korea just as he tried cases as late as May, 1951, without providing the defendants with lawyers. The resulting outrageous length of the Korean sentences would seem to be his responsibility.

9. Should COMA Have The Right To Reduce Sentences?

Curiously, a reading of the opinions of COMA will reveal that no provision has been made in the Code of Military Justice for COMA to review a sentence except for illegality. To meet the difficulty, in a number of cases COMA has sent the case back to the Judge Advocate General (JAG) and asked him to consider reducing it. This is admirable under the circumstances but where the sentence in the opinion of COMA is out of proportion to the offense, whether legal or not, COMA should be empowered to correct the injustice and not have to rely on a JAG to do so.

When it is appreciated that, as above indicated, the average court-martial sentence is much more severe than the average comparable civilian counterpart, and has a permanent punishment that follows the recipient to his grave, it becomes a national necessity that the Court of

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[25] Report of the General Board, United States Forces, European Theater on *Military Justice Administration in Theaters of Operations* as quoted in Report of General Court-Martial Sentence Review Board 65-66 (1946-47).

Military Appeals be given the right to supervise sentences and change them when it feels they are overly severe. This Court, whose record has been so outstanding, is the institution to which the Congress and the parents of America look for protection from too severe military sentences. It should not have to ask the Judge Advocates General to reduce such sentences. The Congress should see to it that the Court has the power to change any military sentence in any way it sees fit.

10. THERE SHOULD BE A TOP CLEMENCY BOARD.

When other efforts to free Doe from his sentence failed, he sought clemency. But he was told his counsel could not appear either before the local prison board or the highest one in Washington. The result was that the application Doe made for restoration to duty was passed on completely in secret by a board that refused even to identify itself to Doe's counsel or hear him. This is not calculated to inspire confidence in the judgment of the military prison boards. Realizing fully the permanent stigma of a D.D. or a B.C.D., Doe counted on a fair, open and public hearing of his application for restoration to duty. To him it was civil life or death. His right to join the American Legion; to march in the Fourth of July parade; to buy a house, all were at stake. When so brutal a sentence is meted out our Government prison boards should hear counsel for the prisoner and identify themselves by name in a public decision that can be reviewed before a top clemency board, just like COMA.

The General Court-Martial Sentence Review Board had a lot to do with clemency. It reviewed sentences for clemency and made suggestions for the substantive reform of courts martial; and was the only civilian board to do both after World War II. Since most courts-martial prisoners are guilty, students of military justice recognize that the clemency or rehabilitation problem is important. For this reason the General Court-Martial Sentence Review Board asked that its proposed Advisory Council consider setting up a Top Clemency Review Board having equal standing with COMA, and compel it to make an annual report to the Armed Services Committees of the Congress.[26] But the Congress failed to create such a Board and Doe had none to which he could appeal. An established independent board whose decisions and files were public like COMA would view Doe's application differently. But even if it did not, Doe might have felt better about their adverse decision.

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[26] *Id.* at 230-233. In testimony before the Brooks Committee Chief Judge Quinn favored giving COMA power to review a sentence. Judge Latimer opposed it. Judge Ferguson took no position. Both Quinn and Latimer thought that if a court gave life for one day of AWOL they would call the sentence unconscionable and set it aside; but both doubted that COMA had the power to do this now. Latimer reasons that if COMA has the power to change a sentence clemency will be thrust upon it, which would involve matter other than law. In this he has a point. That is why a Top Clemency Board equal in dignity and standing to COMA must be established (pp. 345-46-47 et seq.).

11. Provision Should Be Made So That World War II And Korean Discharges Can Be Changed.

For some time now the American Legion has had under consideration a proposal that men discharged from service with a D.D. or B.C.D. might apply to an appropriate board and on a showing of good behavior in civilian life apply to have their discharges changed to honorable. A Top Clemency Review Board could perform this valuable service. Not too long ago a young marine applied to the administrative discharge board of the Navy to change his discharge from dishonorable to honorable. After fighting gallantly in the Pacific, in almost the last month of his enlistment, he stole about two hundred dollars from a marine PX. His predecessor had been doing it when there was an "overage." The "overage" he supposed was there, turned out to be an "underage."

No one could quarrel with his sentence. He deserved to go to jail despite his combat record. But after serving two-thirds of his sentence, he applied for restoration to duty. He was refused and discharged with a B.C.D. His applications to change this discharge were refused by both the Navy's administrative board and by the Assistant Secretary of the Navy. He was told that no matter what the circumstances the marines will never restore a thief to duty. It was the same attitude the General Court-Martial Sentence Review Board encountered, but fortunately James Forrestal was then Secretary of the Navy and on the Board's recommendation the Secretary restored to duty youngsters with good records who made the mistake of stealing once. The problem is reducible to the conflict between exercising mercy on the individual and admitting to military service only those who never make a mistake. For professional soldiers, sailors and marines, this may be all right, but for civilian armies and navies, it is all wrong. Confirmed thieves should not be restored to duty nor should we now change their discharge to honorable. But young boys, who fought so well when we all needed them and made the sad mistake of stealing once and serving time for it, should now receive an honorable discharge. In reviewing courts martial for the Navy the General Court-Martial Sentence Review Board found that the Bureau of Naval Personnel had the same attitude about hiring as a large corporation. When a lad gets into court-martial trouble, he is usually guilty of something. If the services can obtain by enlistment or draft a man whose record is unblemished, why should they restore to duty a man convicted by court martial?

This attitude is understandable, misguided though it be. The services want to do a good job. They want the best men. It is hard for them to understand our civilian viewpoint, that these are not professionals. They are the sons and daughters of the American people that, as civilians, the

services have drafted and to whom they owe a duty. That duty is, if they make a mistake, to exercise charity and mercy.

In my judgment there is no hope of achieving charity for first offenders who steal, unless a top independent civilian clemency board be established. The Congress should do it and investigate thoroughly the clemency methods now used, starting at the prisons, which though they needed it, escaped any investigation following World War II. Of course, it is obvious no Congressional Committee can do all there is to be done, but if it sets up a Civilian Advisory Council, that body can complete the job. We cannot leave the question of restoration to duty to the services when their judgment is so oppressed by such a genuine conflict of interest. The last person to decide on restoration is the commander of the outfit where a lad gets into trouble. But even he is better than civilians charged with administration. An independent body, like COMA, is needed.[27]

Perhaps, the principal reason that led to the enactment of the Uniform Code of Military Justice was the disparity in sentences for the same offense. Admiral Tausig, the beloved head of the Naval Clemency Board during World War II pointed out that the Navy had one Admiral at San Francisco who gave a 25 year sentence for the same offense that the Admiral at San Diego gave 5 years. The General Court-Martial Sentence Review Board found that the Admiral at Norfolk seemed to have a standard 15 year sentence, no matter the offense. Since the Navy executed Phillip Spencer, the nephew of the then Secretary of War, by stringing him to the yardarm of the brig Somers in 1842, it has yet to administer the death penalty to any sailor or officer. During World War II, the Army had over 100 executions, mostly of negroes. It was a source of great embarrassment to the Army and the Navy's policy abolishing capital punishment was a source of pride to it.

But from the point of view of the parent, an abolition of capital punishment in one service and its practice in another was most disturbing. We are fortunate indeed that with one exception most of the Army executions seem to have been more than justified. But the fact remains the General Court-Martial Sentence Review Board saw cases where execution was equally justified and only Navy policy stopped it.

Despite all this experience in World War II and before, observe the sentences listed in the appendix. They seem helter, skelter, without rhyme

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[27] In pointing out that only a general court with its safeguards should give the D.D., the B.C.D. or the U.D., Mr. Schwartz, in his testimony before the Brooks Committee, attacked the hearings before the boards that gave Undesirable Discharges. He contended that they are secret, and give the accused a hearing without a lawyer (pp. 224-30). The experience of Schwartz before the Naval Board for Discharges and Dismissals convinces him that no punitive discharge will ever be changed except for a gross miscarriage of justice. As a practical matter, then, review of discharges before such boards is worthless (p. 226). Nor says Schwartz have the Judge Advocates General changed such discharges (p. 227).

or reason. There is no consistency. The same hit or miss method of sentencing remains. To give a sentence that is fair is a difficult art. A Top Clemency Board can come close to civilian crimes and establish near uniform service policies. The General Court-Martial Sentence Review Board of the Navy demonstrated this in a special unread, unpublished report analyzing sentences. Time has come for the Top Clemency Board it requested.[28]

12. THE WORST FAULT IN THE COURT-MARTIAL SYSTEM, IS THAT THE COMMANDER SELECTS THE COURT, REALLY THE CIVILIAN JURY, AND PASSES ON THE FITNESS OF THE STAFF JUDGE ADVOCATE.

There is something fundamentally wrong with any system of justice which, after the criticism it received in World Wars I and II, would in the Korean conflict sentence Doe and Roe to five and twenty-five years, with loss of pay and family allotments, and the permanent stigma of the D.D. or the B.C.D. The basic fault is that the commanding officer picks the members of the court martial, which is the military equivalent of the civilian jury, and the staff judge advocate who has charge of courts martial on the post serves under his direction. The commanding officer is a layman but under the system he passes on the conduct of his staff judge advocate. If this officer is to be promoted, his conduct must please his commander, called in court-martial language, the convening authority. The staff judge advocate and the accused's immediate unit commander prepare the charges against the accused and then the commander selects the members of the court that are to try him. In making the selection the staff judge advocate is free to keep a record of how court-martial panels voted in the prior courts on which they sat, and advise him. It is as if the district attorney in civilian life were permitted by law to select the jurors who would try the persons accused. Sometimes the commander picks a permanent court which becomes callous and careless. Even then, if a court-member's vote displeases him the commander can replace him with a Bloody Jeffries. However, even in a court selected *ad hoc* the commander is free to select whom he wants. Commenting on this power of the commander to select the members of the courts martial, Professor Morgan, the draftsman of the Code of Military Justice, said:

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[28] "The Army executed over 100 men in World War II. The Navy has not executed a man since 1842, the year in which Midshipman Philip Spencer and two others were hanged at sea for conspiracy to mutiny. Midshipman Spencer was a nephew of the Secretary of War, John C. Spencer. He was a graduate of Hobart and when Andrew D. White, the first President and co-founder of Cornell University, entered Hobart, he took his room." Today he is best remembered in the Chi Psi fraternity drinking song. Keeffe and Moskin, *Codified Military Injustices,* 35 Cornell L.Q. 151, 152 n.6 (1949).

> The control of the appointing and other superior military authority over the court and its findings is to the civilian the most astonishing characteristic of the court-martial system. The number of officers, between the statutory maximum and the statutory minimum, to be detailed to a general or special court is determined by the appointing authority whose decision thereon is final . . . thus the membership of the court, both as to numbers within statutory limits and as to personnel, is entirely within the control of the appointing or superior military authority at all times.[29]

Comparing the powers of the commander to pick the members of the court to the attempt of President Franklin Roosevelt to pack the Supreme Court of the United States, Professor Max Rheinstein of the University of Chicago commented:

> In court-martial proceedings we have already seen that the court is not a permanent institution but is convened *ad hoc* for every single case. Thus the convening officer determines the composition of the court. . . . When in 1937, the President of the United States asked Congress to enable him to appoint new judges to the Supreme Court, his proposal was denounced as an attempt to 'pack the Court' and as a monstrous scheme to subvert one of the most sacred principles of Anglo-American Justice. Under his bill the President would not have the power of determining *ad hoc* the composition of the Supreme Court for every single case; still less would he have been able to change the personnel of a federal court during the pendency of a trial. Yet both these powers pertain to a commanding general in the Army. Naturally, these provisions have been criticized and, if military law had met with the greater interest among lawyers and the public of this country, the criticism would probably have been more outspoken.[30]

To remedy this situation Senator Chamberlain in his bill following World War I, proposed that the commander designate a panel of officers from whom the staff judge advocate should select a court.[31] The bill stipulated that the staff judge advocate was to be independent of the commander; but even this insufficient reform was defeated,[32] and the Code of Military Justice makes no change in selection.

The court-martial system permits the commanding officer to select the members of the court which is to try the accused and it requires him also to pass on the fitness of his staff judge advocate. The staff judge advocate that fails to jump through the hoops for the commander risks his future career. This is not to say there are not staff judge advocates that do stand up to the commanders, nor commanders who do give their staff judge advocates freedom to do as they think best. But the commanding officer who orders a general court naturally and honestly thinks the accused deserves it. Human nature and lawyers being what they are, if the commander feels that discipline demands a conviction for camp example, as is so often the case, some commanders are bound to resent an acquittal of the particular accused ordered for trial.

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[29] REPORT OF GENERAL COURT-MARTIAL SENTENCE REVIEW BOARD 63-64 (1946-47) quoting from Morgan, *The Existing Court-Martial System and the Anzell Articles,* 29 Yale L.J. 52, 60 (1919).

[30] *Id.* at 63 citing Rheinstein, *Military Justice* in WAR AND LAW 167 n. 97.

[31] The power to select a court cannot be delegated to a staff judge advocate without amending the Code and Manual for Courts Martial. See recent case p. 73 this number.

[32] REPORT OF GENERAL COURT-MARTIAL SENTENCE REVIEW BOARD 65 (1946-47).

When the civilian jury is drawn, the array is selected by the Jury Commissioner from the wheel containing the names of eligible jurors in the county. Under the Constitution there cannot be any systematic exclusion from the list of eligible jurors. From the array, thus indiscriminately selected, trial counsel select 12 jurors good and true and the Court allows counsel challenges both peremptory and for cause. The military does not follow this procedure. In a murder case, where the jury is selected indiscriminately, a civilian lawyer gets 20 peremptory challenges. But under the Code, where the convening authority is free to pick the court members, the defense gets one peremptory challenge.

If there be need to assign an officer to be "Officer of the Day," the selection is by lot and indiscriminate. So is the selection for many other post duties. But not so for court-martial duty. The commander is free to select for his general courts those officers who will regularly return a long sentence, and exclude defense-minded officers by keeping a record of how selected panels vote. This is unfortunate. At the trial level there should be a requirement that members of courts martial be selected by lot, or names of all available officers be drawn from a wheel.

13. THE CONDUCT OF THE TRIAL SHOULD NOT BE UNDER THE STAFF JUDGE ADVOCATE. THERE SHOULD BE A PROSECUTION JUDGE ADVOCATE AND A DEFENSE JUDGE ADVOCATE WHOSE FITNESS REPORTS SHOULD BE UNDER SIMILAR JUDGE ADVOCATE GENERALS IN WASHINGTON.

At the trial level the prosecuting staff judge advocate should be under the direction of a Prosecuting Judge Advocate General in Washington and there should be a defense staff judge advocate under the direction of a Defense Judge Advocate General in Washington. The one should have his fitness report judged by a Prosecution Judge Advocate General and the other by a Defense Judge General in Washington. Neither would then be subject to the commander.

Even if the military will not give up the right of the commanding officer to accuse and then judge the conviction for both legality and clemency, at least then the system would permit the commander to hear both the prosecution and the defense. It would not require one staff judge advocate to represent both points of view and try to please the commander, too. Moreover, then the defense counsel on the trial would be selected by the Defense Judge Advocate and owe responsibility only to him. As it is now he is responsible to the man that the commander counts upon to enforce camp discipline, much like the civilian chief of police or district attorney. The American Bar Association, the American Legion, Senator Chamberlain from Oregon, (after World War I), this writer and many others struck at this feature of the court-martial system at the close

of World War II. It is the jugular vein of the court-martial system and until there is a change the court-martial system is bound to be fundamentally unsound and unjust.

14. LONG TRIAL SENTENCES ARE INEVITABLE UNDER THE PRESENT COURT-MARTIAL SYSTEM.

The inevitable consequence of this court-martial system at the trial level is to cause the packed court to return a long sentence and leave the fixing of a proper sentence to the commander who ordered the trial and made the charges. This would not be so bad if the commander were there to hear and see the defendant and the witnesses, and hear the argument of counsel for the prosecution and the defense. But his many duties prevent this. The results are long sentences by trial courts, such as the two meted out to Doe and Roe. In their cases, however, the commander did not reduce them.

When the trial ends the case is reported to the commanding officer by the staff judge advocate in a document called the *Staff Judge Advocate's Review.* The commander, too busy to attend the trial, decides on the basis of this statement to approve or disapprove the court-martial conviction and whether to exercise or withold clemency. This is the Achilles heel of the system. The commanding general who ordered the trial, but did not attend it, sits in judgment of the conviction, not only for legality but also for clemency. And his own staff judge advocate, who is also absent from the trial, advises him. It is as if, after conviction, the civilian judge called the district attorney to his chambers for a probation report and personal advice, except that in this instance the staff judge advocate, being subject to the commander, lacks the independence of the civilian district attorney.

15. THE "STAFF JUDGE ADVOCATE'S REVIEW" IS NOT EVEN EXHIBITED TO DEFENSE COUNSEL, BUT IT IS SHOWN TO THE COMMANDER AND COMA.

Viewing courts martial as primarily for discipline, the staff judge advocate who handles them for the commanding officer is very much a prosecutor. Like every prosecutor when he brings a case he wants a conviction. *Staff Judge Advocate's Reviews'* treatment of convictions are in the nature of things, affected with the prosecutor's zeal. And some have been known to include camp gossip and unverified hearsay. This is why the document is so dangerous. False statements can be made in it that ruin the accused's chance for clemency or rehabilitation. But not only is the *Review* in danger of being colored by the bias of the prosecutor, it is written by the staff judge advocate to his commander, reporting to him on

how well officers under his command carried out his orders. It advises the commander who made the accusation whether the staff judge advocate's staff duly executed his command. To write it, a staff judge advocate must have three capacities: judge, district attorney and defense counsel.

Significantly the trial records of both Doe and Roe do not contain the *Staff Judge Advocate's Review.* On appeal of Doe's case his counsel requested a copy of the *Staff Judge Advocate's Review,* but the Judge Advocate General of the Army refused to furnish it. Yet the opinions in COMA indicate that this same Judge Advocate General furnishes to COMA *Reviews* which he refuses to supply to Defense Counsel.[33] It must be that the jackets the JAGS send to COMA and so quickly retrieve and secret in their offices away from public inspection contain *Staff Judge Advocate Reviews.* Since Doe's case went to COMA, it may well be the jacket in his case that was refused his counsel went to COMA. This is a very important matter that the Congress should investigate thoroughly.

16. THE BOARDS OF REVIEW IN THE OFFICES OF THE JUDGE ADVOCATES GENERAL ARE A WASTE OF TIME AND MONEY AND PRODUCTIVE OF INJUSTICE.

Before the Code was enacted this was said as to the Boards of Review it proposed:

> In any event, review by Boards of Review as constituted by this Code seems to be an unnecessary step and a waste of time and money. It cannot be expected that such boards, appointed by the Judge Advocate General, will give the disinterested impartial review necessary. Just as the trial court has been shown to be under the domination of the convening authority, so too, will the boards of review come under the domination of the Judge Advocate General. The Judge Advocate General is not, and by the nature of his office and appointment cannot be, an impartial judicial officer. He is to enforce discipline and he is to give defense.
> In an effort to resolve this conflict the English have separated the prosecution and defense sides of the office of their Judge Advocate General. They have further provided that the Judge Advocate be a civilian appointed on the recommendation of the Lord Chancellor and be responsible to him. Thus, the English reforms have freed the Judge Advocate General from the control of the Secretaries for State and Air. This is in sharp contrast to the American reforms which have served only to compound the inherent infirmity in the department.[34]

This prediction seems to have come to pass. Witness the failure of the Boards of Review to correct sentences like Doe's and Roe's, and their giving approval to the many long sentences listed in the Appendix to this article. When the Boards of Review are under the control of the Judge Advocate General they cannot be expected to work well. In many ways they are more powerless than the trial courts. The Judge Advocate Gen-

[33] *United States v. McCrary,* 1 U.S.C.M.A. 1, 1 C.M.R. 1 (1951).
[34] Keeffe and Moskin, *Codified Military Injustice,* 35 Cornell L.Q. 151, 163 (1949).

eral combines in one person the dual function of district attorney and defense counsel; and like the staff judge advocate, he, too, is subject to the chief of staff. Officers sitting on these Boards of Review can be hired or fired, promoted or demoted by the Judge Advocate General. To expect these Boards to decide cases according to their conscience is being entirely optimistic.

If a sentence seems too rough and the Judge Advocate General might be adversely criticized for its handling by COMA, he is free to use Boards of Review to sweep it under the rug. This can be done in many ways that save face, such as reducing the sentence to the point where it is unwise for the man to appeal further. Considering the expense involved, the Congress should carefully investigate how these Boards of Review have conducted themselves and whether the time of the officers thus engaged would not be more profitably spent at the trial level preparing cases for direct appeal to COMA and in interviewing prisoners. Granted that elimination of the Boards of Review would increase the work-load of COMA and require that its Judges be increased to at least 9 or perhaps 15 and oblige them to sit in panels, the character of their review is of such an infinitely higher standard as to be worth the cost. In comparison money spent to keep these Boards of Review under the domination of a single Judge Advocate General is money wasted.

17. The Pending Bill Strikes A Death Blow To The Very Limited And Insufficient Appeal Jurisdiction That COMA Now Has.

Before the Code was enacted, the following comment was made as to the provisions under which you can appeal to COMA from the Board of Review.

> As has been suggested above, to all intents and purposes there is no difference between the Judge Advocate General and a District Attorney in civilian life. Yet, despite this basic conflict of interests, subdivision (b) (2) provides that the Judge Advocate General may order forward to the Court of Military Appeals for review such cases as he pleases. *Under this provision, only if your case interests the Judge Advocate General can you hope to have an appeal.* But there is another way. If you have been sentenced to death or are an admiral or a general, subdivision (b) (1) gives you an unqualified right to bring your case before the Court of Military Appeals. To state this provision is to show its injustice. Everyone, *regardless of rank, should have his case automatically heard before this top civilian court.* There is a third way in which a case can be reviewed by the Court of Military Appeals. Subdivision (b) (3) provides that upon petition of the accused and on good cause shown, the Court of Military Appeals can grant a review. The Code significantly does not tell us who is to make this petition. Experience has shown that the great majority of defendants in court-martial cases are far from mental giants. They are primarily very young men, and in most cases very poorly educated men. They are men who are in trouble largely because of poor home environment. They are the children of divorced parents, and the real poor and neglected in America. These men, if they are to exercise the right to file such a peti-

tion, will have to have assistance. The only ones who will not require assistance are the wicked and the well-connected. *This method of providing an appeal by petition will result in the wrong kind of cases going to the Court of Military Appeals and the right kind being buried in the Board of Review in the Office of the Judge Advocate General.*[35]

This prediction also has come true and it is shocking to see the services propose that this inadequate right to appeal to COMA be further restricted.

Moreover, before the Code was enacted, attention was called to the fact that COMA's right to review was narrowly limited to questions of law only whereas the country and the Congress were being led to believe that COMA would pass on all aspects of a court-martial sentence.

> Another defect in Article 67 is that it limits the Court of Military Appeals to review of questions of law and chains this body to the facts as found by command. Not even busy civil courts are limited to a review of the law in criminal cases. If the task of reweighing the evidence should become too arduous the Court can always be expanded. It is worth the added expense if as a result even one innocent American boy is spared the vilification of an unjust sentence.
> Nor is it ever desirable to throw any court's jurisdiction into the controversy inherent in the metaphysical distinctions between fact and law. For example, is the obtaining of a confession by torture a question of fact or a question of law? Cases of that sort are bound to be difficult to review and the statute should be drawn so that the Court of Military Appeals has an unlimited right to review questions of law. Can we be sure that the Code, as it is now written guarantees review of tragedies like the "Sugar Cane Rape Cases"?[36]

Study of the opinions by COMA will reveal that the Court has had to devote unnecessary hours in trying to decide what is fact and what is law. The services knew this and the provision was specifically designed to limit the complete civilian review which Congress wanted.

With COMA unable to question the facts found below or change the sentence in the absence of a legal technicality and no independent clemency board of a standing comparable to COMA, the services have unfettered control. Civilians should review both the facts and the sentences so as to prevent their civilian sons and daughters drafted into the services from being given a B.C.D. or a D.D. for life, unless their crime was so heinous as to deserve it, and unless they are beyond rehabilitation.

Through no fault of its own, as the draft reached the bottom of the barrel in World War II, the Armed Services found themselves with civilian misfits: bums, taken from the park; confirmed criminals, gaining a suspended sentence on condition they join the Army or the Navy. In all the services there were dangerous psychopaths whom the prison psychiatrists had no trouble identifying.

One unforgettable case was argued before the General Court-Martial Sentence Review Board of the Navy. The prisoner as a young man fell

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[35] *Ibid.*
[36] *Id.* at 164.

in love with a young Jewish girl whose parents refused to allow her to marry him. The poor lad's mind became affected. In naval service on our west coast he brutally assaulted, raped and almost murdered one young Jewish girl after another. The staff reviewing lawyer who presented this case to the Board asked that his sentence of 25 years be reduced as recommended by the prison. To the Board's credit, it refused to reduce this sentence one day in the absence of proof that the lad's mind had been cured. What was there to gain in releasing him uncured, to prey upon the civilian population? Congress should investigate how the services are handling this problem. This is another reason why we must have a Top Civilian Clemency Board, equal in dignity, standing and ability to COMA, reporting directly to the Armed Services Committees of both houses.

What does the pending bill provide as to the right of a convicted person to appeal to COMA?

Here it is:

> (w) Article 67 (b) (3) is amended to read as follows:
> "(3) All cases reviewed by a board of review in which, upon petition of the accused and on good cause shown, the Court of Military Appeals has granted a review; but the court must consider a petition for a grant of review only if—
> "(A) counsel who represented the accused at his trial or before the board of review;
> "(B) appellate defense counsel appointed by the Judge Advocate General if the accused was not represented by counsel before the board of review; or
> "(C) civilian counsel retained by the accused, certified that in his opinion, a substantial question of law is presented and that the appeal is made in good faith."[37]

Observe, this bill would relieve COMA from hearing any appeal where defense counsel did not certify "that in his opinion a substantial question of law is presented and that the appeal is made in good faith." The Seymour Court Committee considered this proposal and rejected it, saying:

> The Committee was definitely opposed to the proposal that the Court only consider Petitions for Grant of Review when accompanied by a certificate of merit from counsel. In this connection, it should be added that the Committee gave serious consideration to many other proposals that would reduce the workload of the Court by cutting down its present heavy workload. Except as set forth elsewhere in this report, we do not now favor placing restrictions on appeals to the Court.[38]

And COMA, itself, is opposed to it.

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

[37] S. 2133, 84th Cong., 1st Sess. (1955).

[38] ANNUAL REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS AND THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES 26 (1953).

proposal and recommendation is undesirable and, therefore, support the position of the Court Committee.[39]

Let me document why the proposal is so undesirable by reference to what happened to Doe. The undesirability of this proposal becomes obvious by looking at the brief submitted on behalf of Doe by defense counsel assigned by the Judge Advocate General to represent him on his appeal to COMA. That brief was three lines long, and said merely "Doe appeals"!

Why was this? The answer is that the assigned defense counsel was working with the unintelligble trial record in Washington when he should have been talking to Doe at the prison. Had he done so, he would have known that Doe was not represented by a lawyer, that a key witness had not been called and that Doe claimed he had been advised by his lay counsel not to take the stand.

No defense counsel, however competent, could be expected to do on this basis the job that is called for. As might be expected, the brief, to COMA is no brief at all. The appeal is no appeal at all. Defense counsel goes through the motions. Moreover, had the defense counsel had the benefit of an interview with the prisoner, he would doubtless have made a motion for a new trial before time to appeal to COMA had expired. Civilian counsel for Doe had to move before the Judge Advocate General and had the miserable experience of being refused not only the *Staff Judge Advocate's Review,* but also evidence that was taken at public expense in Korea—evidence not shown to defense counsel though used by a special court of three Generals to deny Doe a new trial. Should appeal to COMA have to depend upon a certification by counsel appointed by the Judge Advocate General?

The judges at COMA confirm the experience of Doe. His insufficient COMA brief was not an isolated instance. Chief Judge Quinn told the Brooks Committee that 33 per cent of appellate errors are found by COMA when the judges with the aid of their Commissioners make an independent examination of the record.[40]

In the case of Roe's appeal, there was an interesting development. Before his defense counsel filed his brief in COMA, civilian counsel were able to note their appearance. At that point the case had been affirmed by a Board of Review in the JAG and the unjust sentence of 25 years had been reduced to a mere ten years. Thereafter, Roe was restored to duty and the appeal seemed to become pointless as he would then be free to earn an honorable discharge. This illustrates the worst weakness in the appeal system. The Judge Advocate General has discretion in allowing appeals. Only cases involving a death sentence, or officers of flag

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[39] *Id.* at 18.

[40] See testimony of Chief Judge Quinn p. 344 transcript of Brooks Committee.

rank are appealable as of right. To avoid such favoritism, the General Court-Martial Sentence Review Board recommended that *all* cases be appealed to COMA. This should be done even if COMA has to be increased in the number of judges, and, has to sit in panels.

As matters stand, under the Code the Judge Advocates General can ask or refrain from asking that an appeal be heard. Their Boards of Review in the offices of the JAG can catch the bad cases as they come from the field and hide them from COMA. The prison can order the man restored to duty, as was done in Roe's case. It may well be that Roe's restoration to duty was routine. It may be that other sentences are reduced and that appeals are not requested in routine manner. But many feel that the JAGS do not bring all the cases to COMA that should be brought there. The JAGs have refused the writer permission to study the records of any cases and the Congress has failed to establish a permanent Civilian Advisory Council as asked. Under the circumstances Congress should investigate and ascertain the facts. Moreover, it is a very dangerous proposition to consider relieving COMA from hearing the petition for permission to appeal of a convicted G.I. when his counsel certify there is nothing to appeal.

18. ADOPTION OF THE REFORM URGED BY THE HOOVER COMMISSION OUGHT TO BE FOLLOWED BY HAVING ONE PROSECUTION JUDGE ADVOCATE GENERAL IN EACH SERVICE. OTHER NEEDED REFORMS: ENLISTED MEN SHOULD SERVE ON COURTS; THERE SHOULD BE INVESTIGATIONS CONCERNING FOREIGN SENTENCES UNDER STATUS OF FORCES AGREEMENTS AND THE COMPARATIVE PUNISHMENT OF OFFICERS WITH ENLISTED MEN.

1. During the year 1955, the Second Hoover Commission made its valuable report on the legal procedures of the Federal Government. At its mid-winter meeting in Chicago, the American Bar Association considered this report and adopted after debate and hearing Admiral Ira Nunn, the Judge Advocate General of the Navy speaking in opposition, the following resolution:

> RESOLVED, That, in order to accomplish desired improvements in the organization and legal services within the Department of Defense, the American Bar Association recommends:
>
> (a) That, within the Department of Defense and its constituent military departments, professional responsibility over the entire legal staff, and for all legal services, should be vested in a General Counsel retaining the present rank of Assistant Secretary of Defense.
>
> (b) That a career service for civilian legal personnel should be developed and supervised by a Civilian Legal Personnel Committee within the Department of Defense.
>
> (c) That professional responsibility over the entire legal staff, and for all legal services, in the three military departments, subject to the professional supervision of the Department of Defense General

Counsel, should be vested in the General Counsel of the Army, the Navy, and the Air Force, each to have the rank of Assistant Secretary.

(d) That the Army, the Navy, and the Air Force should each have a Judge Advocate General's Corps or Department, under the direction of a Judge Advocate General with the rank of Lieutenant General or Vice Admiral.[41]

Under this proposal the entire responsibility for courts martial will ... placed in the Civilian Counsel For Defense and the Services but there would be created in the Navy, a Judge Advocate's Corps of equal rank and duties as in the Army and Air Force. As good as this suggestion is, it leaves one Judge Advocate General to direct courts martial in each service. Following the English pattern it would be better to split each service department down the center by having a Prosecution Judge Advocate General for the Navy and three similar ones in the Army, the Air Force and the Coast Guard. The ideal solution would be one Prosecution JAG and one Defense JAG for all services but so long as we maintain our present defense establishment presumably we would have to let each service have its own Judge Advocate General.

The same evils will persist in the Code so long as one Judge Advocate General conducts courts martial. He cannot be a prosecutor and a defender. Before we proceed to create one Navy JAG, should we not consider splitting prosecution from defense, by having in each service a Prosecution Judge Advocate under the Civilian General Counsel directing prosecution and a Defense Judge Advocate directing defense?

2. Bertram Schwarz called attention in his testimony before the Brooks Committee to a serious mistake in drafting the provision permitting the accused to elect to have an enlisted man on his court. Article 25 should be amended as Mr. Schwarz suggests to require that any enlisted man appointed be of at least equal or lesser rank to the accused. The bill of Senator Chamberlain that first suggested this has a provision that merits study. Perhaps also the law officer should be given the appointing power or a name should be drawn by lot.[42]

3. Time has come for the Congress to investigate all cases of American service men tried before foreign courts abroad.[43] What were their offenses? What were their sentences? Do we have status of forces

[41] REPORT OF THE SPECIAL COMMITTEE ON LEGAL SERVICES AND PROCEDURE TO THE 1956 MID-YEAR MEETING OF THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION 56. And see *New York Times*, Feb. 21, 1956, p. 17, col. 1.

[42] See p. 269 transcript Brooks Committee.

[43] In his testimony before the Brooks Committee, Bertram Schwartz called attention to the need to give free counsel to service men tried in foreign courts under the Status of Forces Agreement. The bill that does this (H.R. 7646) has passed the House and the Senate in the 84th Congress and has become Public Law 777.

Congressman Brooks stated (p. 137) he favored a provision against trial of our service men in foreign courts but Admiral Nunn opposed this view and agreed to submit to the Committee a brief on the law. This came about when Generals Kuhfeld and Caffey took the view that treaties are the supreme law of the land and under *Missouri v. Holland* any law of the Congress modifying a treaty would be unconstitutional. This

executive agreements with countries not party to the North Atlantic Treaty? If so, what countries are these and what service men, if any have been tried in their courts? It may well be that in some countries, such as Turkey and Morocco, a prisoner can be tortured or given life sentences for minor offenses. The Congress should demand a full disclosure from the services of all trials abroad. Only a thorough Congressional investigation will satisfy those of us who are disturbed about this unusual procedure.

4. The recent deaths of six marines in boot training and the scheduled court martial on July 14, 1956, of Sergeant McKeon raises the ugly question whether the services punish officers on a parity with enlisted men. One can take vindictive satisfaction in seeing this problem rise from the ashes of World War II. One entire chapter of the Report of the General Court-Martial Sentence Review Board was devoted to this question and it was one of the principal reasons why that Board asked that the Congress create a permanent Advisory Council to study the problem. The General Court-Martial Sentence Review Board reviewed the general court martial of every man in a naval prison. Over 2000 cases were reviewed but, of these, only three were officers. One cannot rashly reach the conclusion that officers are favored against enlisted men. Dismissal is a most severe punishment to an officer; more severe than incarceration is to an enlisted man, because at the end of the sentence it is possible to merit restoration to duty through a clemency board.

A study of officer cases is long overdue and there is even more need for it today than in 1947 when the General Court-Martial Sentence Review Board asked for it in vain. Congress should do it now, starting with the officer commanding Sergeant McKeon.

19. The Congress Should Scrutinize The Bill Introduced By The Judge Advocate General Without Approval Of COMA Or The Seymour Court Committee Most Carefully. Congress Should First Enact The Reforms Rejected When The Code Was So Hurriedly Passed.

There is not time and space enough to comment at length as to the bill introduced at the request of the three Judge Advocates General,[44] but this can be said:

1. The proposed amendment to Article I to redefine "convening authority", so that cases can be referred to officers of equal as well as

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seems to beg the real question, namely, whether any treaty subjecting our service men involuntarily to a trial in a foreign court is constitutional. The Committee on Foreign Affairs of the House of Representatives has before it the Joint Resolution (H.J.Res. 309, 84th Cong., 1st Sess.) of Representative Frank T. Bow of Ohio. Two printed volumes of testimony before the Committee of which James P. Richards of South Carolina is Chairman are available.

[44] S. 2133 and H.R. 6583, 84th Cong., 1st Sess. (1955).

superior rank, is unwise as the present provision affords some small protection to the accused in that a "convening authority" of higher rank may be more free to refuse to bring charges or, in bringing them, to modify them. Moreover, both the Seymour Court Committee and COMA disapproved this provision.[45]

2. The section of the bill that amends Article 12 to permit confinement of our servicemen with those of friendly foreign nations, was opposed by Judge Elbert P. Tuttle, when General Counsel of the Treasury, as politically unwise for the services.[46] The Seymour Court Committee did not take a position on it but felt that further study was necessary, and the Court agreed with this thought. It would seem unwise unless a positive showing can be made before Congress of its desirability and need.

3. It is proposed in various sections of the bill to permit the increase in the powers of the commanding officer to confine or reduce pay of both officers and enlisted men.[47]

In the Code there is a provision permitting the Navy to put a man in the brig of a ship on bread and water for three days, which is cruel and unusual punishment.[48] The Judge Advocate General of the Navy in his bill[49] suggested seriously that the summary court be permitted to put a man on bread and water for 20 days[50] and a general court for 30 days[51] on land or sea.

There was a storm of criticism[52] and apparently all that now survives of the Admiral's suggestion in the present bill is that men on land as well as at sea can be put in confinement for seven days. Article 55 of the Code bans cruel and unusual punishment and so does the Bill of Rights. The bread and water provision should be torn out by the roots. Increasing the power of the commander to cut pay, raises at once the need to protect allotments of dependents at home. There seems to be no protection in the bill for this, and as in Doe's case it is unjust to hurt dependents at home when the bread winner is in the service. And, of course, before any changes in Article 15 are considered, the unanimous recommendation[53] of the Joint Committee barring the special court from giving

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[45] ANNUAL REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS AND THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES 18, 26 (1953). Before the Brooks Committee General Jones, the Assistant Judge Advocate of the Army cited the case of General Swing as indicating the need of amendment of Articles 22 and 23 (p. 124).

[46] *Id.* at 35.

[47] See amendments proposed in bill to Article 15 of the Code.

[48] Keeffe and Moskin, *Codified Military Injustice,* 35 Cornell L.Q. 151, 156 (1949).

[49] ANNUAL REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS AND THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES 32-42 (1954).

[50] *Id.* at 34 (Article 20).

[51] *Ibid.* (Article 19).

[52] St. Louis Post-Dispatch, June 12, 1955, Brigadier General Thomas R. Phillips.

[53] ANNUAL REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS AND THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES 4 (1952).

a B.C.D. should be enacted. From the civilian point of view the military should have the disciplinary powers they need provided (a) only a general court can give a permanent bad mark, such as a B.C.D. or D.D.; and (b) no court has the power to cut off family allotments.[54]

4. A one officer special court is provided in the bill[55] when the accused requests it in writing, the convening authority consents, the officer is a lawyer and known to the accused in advance. For reasons discussed elsewhere in this article, this provision is most unwise. One officer should not be allowed to give a B.C.D. nor should special courts. The judgment of three officers is needed: they are a jury.

But wholly apart from the severity of a bad conduct discharge there is much force in what Judge Elbert P. Tuttle, on the Fifth Circuit Court of Appeals, said, as General Counsel to the Treasury, in dissenting from this recommendation:

> One-officer general and special courts-martial. This recommendation appears to be contrary to the theory incorporated in the Code under which the judgment of one officer is deemed adequate with respect to minor offenses, the judgment of at least three officers is deemed necessary in cases of more serious offenses involving more serious punishments, and the judgment of a still broader cross-section is deemed desirable for the most serious cases involving the most stringent penalties.
> Presumably the reason for the recommendation is that the "existing system requires the services of large numbers of line officers who could be more profitably employed in their normal duties." If this is the reason, the board appears to have underestimated the importance of the function of military justice and the pressures behind the enactment of the Code in the first place. Just as in the civilian judicial scheme jury service is one of the highest duties of citizenship, so in the system of miliary justice service on a court is one of the most important duties an officer can perform. Defendants are very often young men under their majority whom the laws of most jurisdictions will not permit to exercise the franchise. They are away from their home surroundings and the people to whom they would normally turn for advice and help in reaching a decision that may be of utmost importance to their future lives. In addition, the very nature of the necessary military relation between enlisted man and officer is such as to make it most difficult for the former to make the decision which will best protect his interests on a matter of this kind when a particular course is suggested by an officer, regardless of how objective and fair the latter may try to be in so doing. For these reasons I believe that the request of the accused for a one-man court-martial will not, in many cases, be made with the insight and judgment called for in such an important exception to the basic theory of the Code. I would not, therefore, favor the submission of this recommendation to the Congress.[56]

At least three members are needed to consider the important clemency factors. Experienced officers, as jurors, can understand them much better than one officer, however good a lawyer he may be. The proposal for one officer is fundamentally wrong, as it proceeds on the assumption

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[54] ANNUAL REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS AND THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES 9 (1954) (Articles 16, 25, 51 and 52).

[55] *Ibid.*

[56] ANNUAL REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS AND THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES 34 (1953).

that since the accused is guilty and willing to take the legal punishment, or if not guilty because the single officer is a lawyer, that is all that is required. It is because most accused are guilty that we need the judgment of three officers—not one lawyer alone—as to his punishment. This provision is dangerous. Instead of it, the Code should be amended not only to require a law officer on special courts but also to deprive such courts of power to give a B.C.D., or cut off family allowances. There will be little need to review any special courts in COMA if this change is substituted.

5. One of the worst provisions in the bill is the proposed amendment to Article 26 and 39 permitting the law officer to confer with the court as to the form of the findings. Both the Seymour Committee and COMA oppose it.[57] Without repeating again all said elsewhere it should be pointed out that until the Code the Navy never had a law officer. The Army obtained one in 1920 and he was supposed to be a lawyer but the Army did not always find it "practicable" to have one. The law officer is the civilian judge; the court members, the civilian jury. Whoever heard of the Judge going into the jury room to help decide the case? This is what the Army law officer did. Even though he is a lawyer it seemed unwise, so the Code made him conduct the trial, and decide only legal points. This is as it should be.[58]

6. The amendment to Article 37 to extend to staff officers the prohibition against reprimanding courts, is highly desirable and approved by the Seymour Committee.[59]

One of the most unjust accusations made by the military against the Code has been that it forces commanders to order either special or general courts. The only objection that the civilian can legitimately have to disciplinary punishment, which is not cruel and inhuman and does not

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[57] *Id.* at 18, 27.

[58] Testifying before the Brooks Committee with respect to the desirability of this provision Admiral Nunn had a hard time. Asked to redraw the provision so as to require the law officer to meet with the general court after it reached its decision in open court in the presence of the defense counsel, Admiral Nunn and Mr. Nicander of the staff of the House Armed Services Committee came up with this re-draft: "After a general court has finally voted on the findings or the sentence, the court may request the law officer and the reporter to appear before the court to put the findings or sentence as the case may be in proper form and such proceedings shall be on the record." Observe this excludes the defense counsel and leaves the reporter and law officer alone with the court at a critical moment. Despite an extended discussion (pp. 188-193 and 193-194) the Committee did not reject the re-draft as being unsatisfactory. During the course of the discussion Admiral Nunn argued that a law officer is "no different actually from a district attorney in civilian life who may one day be advanced to the bench" (p. 195). At one point in his testimony Bertram Schwartz suggested that to avoid having a law officer in the role of counsel one day and judge the next day the Code should provide for a definite term (p. 217).

[59] ANNUAL REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS AND THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES 26 (1953); ANNUAL REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS AND THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES 7 (1954).

fall on innocent dependents at home, is permanent punishment such as the D.D., the B.C.D. and the Undesirable Discharge. Non-judicial punishment should of course be limited, but the special court should be free to give greater punishment of a disciplinary character thus reducing the number of general courts. This does not force an officer to give a court to a guilty man. The Code does not obligate any officer to charge any one with crime if in his conscience he does not feel that charges should be brought.

Apparently the services have forced a commander to bring charges under the Code. His failure to do so is said to affect adversely his promotion. This indicates the need for a course in Military Justice obligatory on all officers. Congress should not leave it at that. It should amend Article 37 so that the decision of a commander whether to prefer charges shall not be considered with respect to his promotion. As matters now stand officers erroneously believe that the Code robs them of their discretion. Like members of the court martial, commanders should be free to act according to their conscience.

7. The amendment to Article 41 (b) is not supported by COMA, does not appear to have been considered by the Seymour Committee, and seems unwise. Before any change is made in the special court, take away its power to give the B.C.D.[60]

8. Article 54 seems to be proper if it carried out the intent of the Joint Committee.[61]

9. The amendment to Article 57 (b) does not appear to have the approval of either the Seymour Committee or COMA.[62] On its face it raises a grave question concerning Congress' grant to the President of powers to increase punishment, such as were exercised by both Presidents

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[60] Admiral Nunn testified before the Brooks Committee that the lowest enlisted pay is now $78. The present bill would permit extra-judicial punishment of an enlisted man by cutting his monthly pay one-half. In this case, to $39 (see p. 70). But the Admiral assured the Committee this cut would have no effect on family allotments (p. 114). (See also the testimony of Albert Pratt before the Brooks Committee.) Despite the assurances of Admiral Nunn, there is a desperate need that the Congress provide in the Code against any cut at any time in family allotments.

[61] ANNUAL REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS AND THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES 10 (1954).

[62] Admiral Nunn discussed this provision before the Brooks Committee (pp. 205-07), as did General Kuhfeld. Their explanation for its need does not appear convincing. General Jones testified that on October 1, 1954, President Eisenhower increased the penalties under the Code by providing that if a man had three or more convictions during the previous year (the possible maximum for each being less than a D.D.), then henceforth he could be given a D.D., a T.F. and a year in jail. Both Admiral Nunn and General Kuhfeld discuss the need with reference to a lad who breaks out of the camp stockade and steals a car and is prosecuted by civilian authorities. The services should accept what the civil courts do without trying the lad for breaking arrest or anything else upon his return to his post. Rather than permit the President, *ex parte,* to increase statutory penalties, the Congress should repeal such power as he now has, specifically outlawing double jeopardy in any case. The constitutionality of the present Code provisions under which the Congress purports to delegate this power to the President is questionable.

Truman and Eisenhower. If sentences for crimes are to be lengthened from the periods in the Code in peace or war, the Congress should do it, no matter who is counsel. Moreover, the Code in Article 57 dates the sentence from the day it is approved instead of when the man is put in jail[63] To correct this injustice the sentences should be made to run from the date of confinement and neither the President nor anyone else should be allowed to stop their running.

10. Article 65 (a) does not have the support of either the Seymour Committee or COMA. It should be noted that it mentions the record as containing "the opinion or opinions of the staff judge advocate or legal officer. . . ." This emphasizes the point made in the discussion of the Doe case. The *Staff Judge Advocate's Review* should be abolished and no official recognition of such document should be given by the Congress. Prepared in secret, containing unchecked hearsay denied to civilian defense counsel it is calumnious. Congress should do what is suggested elsewhere, namely, provide for both a Prosecution and Defense JAG at the trial level and let both appear and give their opinion to the convening authority. The district attorney should not be permitted to be heard alone in secret. In addition, a transcript should be made of what is said, for all to read.[64]

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[63] Keeffe and Moskin, *Codified Military Injustice,* 35 Cornell L.Q. 151, 160 (1949).

[64] Before the Brooks Committee came Admirals Nunn and Holloway for the Navy, General Kuhfeld for the Air Force, Couser for the Coast Guard, Assistant Judge Advocate Jones for the Army and Albert Pratt, Assistant Secretary of the Navy. All testified in favor of the bill. Nunn said "in the main" the Code of Military Justice was "a splendid one" (p. 110). And he frankly stated "the great majority of the offenses for which we punish personnel in the Armed Services are not crimes at all in the civil life" (p. 60). Some 73% he said were absent offenses and some 8% more purely military offenses for which there is no counterpart in civilian life (p. 61). But the Admiral admitted that unlike the General Court-Martial Sentence Review Board, the Navy has not made any comparison of its sentences with civilian sentences (p. 68). Nor should it. This is the job of a Top Clemency Board and a Civilian Advisory Council. It seems the bill was cleared not only by the Defense Department but also by the Justice Department (p. 54), but the Navy is the "executive agent within the Department of Defense for presenting the bill (p. 54). From the time of arrest to the point when a case reaches the desk of the Judge Advocate General takes an average of 91.5 days in the Navy and 30 more, or 121.5 days to get it through the Boards of Review. Nunn says the Code cost the Navy 52 million dollars in 1953. Spent otherwise the funds would have paid for 30,000 enlisted men and 300 training aircraft (p. 58). Presumably it would have bought a lot of postage stamps; but with or without a Code, discipline problems have to be handled. In a total military budget of over 80 billion dollars, 52 million dollars is minimal. At another point Admiral Nunn said: "our criminal problem can be likened most accurately to the problem of juvenile delinquency in civilian life" (pp. 60-61). But do we give permanent black character marks such as the Bad Conduct Discharge, the Dishonorable Discharge and the Undesirable Discharge to juvenile delinquents in civilian life? Admiral Nunn (p. 162) and General Kuhfeld (p. 159) gave the following courts-martial figures for the Navy and Air Force, respectively.

	Number of Trials Per 1000	
Year	Navy	Air Force
1949	117.2	44.27
1950	131.9	66.96
1951	62.0	43.32
1952	68.0	53.57

11. The proposed amendments of Articles 65, 66, 67 and 69 concern review.[65] The principal proposal is in Article 67 to relieve COMA from considering applications to appeal when not certified by defense counsel. For reasons stated elsewhere it is most unwise. See particularly the discussion of the brief for Doe in COMA. Moreover, the Seymour Committee and COMA oppose the provisions,[66] and, as indicated, what is needed is a radical revision of the review procedures. The boards of review are a waste of time and money and should be abolished and every case should be appealed to COMA.[67] There should be a Chief Defense Counsel[68] or a Prosecution Judge Advocate General and a Defense Judge Advocate General in each service reporting to the Civilian General Counsel who would in turn report to the General Counsel of the Defense Department. More important, there should be a review from COMA to the Supreme Court of the United States. Review in the federal courts by habeas corpus is well-nigh impossible.[69] Appeal to the Supreme Court, if it can be legally obtained, is essential. Three classes of cases decided by COMA

1953	76.5	53.59
1954	83.7	42.78
1955		39.46

It will be observed that this indicates the Air Force has been doing a much better job than other services than the Coast Guard. General Kulfeld attributes the low Air Force rate to the Air Force's 3320 Retraining Center at Amarillo, Texas. Restorations to duty at Amarillo are reported at a high percentage figure. Albert Pratt disclosed that from July 1 to December 3, 1954, the Navy's retraining command discharged 3352 of whom it restored only 863 of these 560 were making the grade. Pratt could say nothing about the 2489 discharged. Pratt's job is to review officer cases, administrative discharges and cases decided by the Naval Clemency Board. Jones made the following report to the Brooks Committee of Army trials (p. 160):

Year	*Number of Trials Per 1000*
1946	90.4
1947	183.0
1948	228.0
1949	127.0
1950	174.0
1951	40.0
1952	97.0
1953	115.6
1954	102.3
1955	99.0

In 1955 there were 9,436 Army General Courts, 49,000 specials and 75,000 summaries. If permitted to confine for 7 days, the Army would use this punishment at regimental level (not company) to cut down its summary courts.

[65] One provision in the bill relieves COMA of reviewing cases where the accused pleaded guilty. Chief Judge Quinn favors this amendment (p. 347). But the American Legion rightly opposes it (p. 409). The experience of the General Court-Martial Sentence Review Board was that some of its worst cases arose after pleas of guilty. The present provision in the Code is based on good experience. We must remember these prisoners are young men, "juvenile delinquents" to quote Admiral Nunn, and may be very ill-advised in pleading guilty.

[66] ANNUAL REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS AND THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES 18, 26 (1953).

[67] Keeffe and Moskin, *Codified Military Injustice,* 35 Cornell L.Q. 151-165 (1949).

[68] *Id.* at 165.

[69] *Id.* at 166-67.

appear to have been contrary to Supreme Court decisions, namely the catheter, the treason, and the camp follower cases,[70] upon each of which there is a note in this issue. Unless the Supreme Court can take by certiorari cases from COMA as it does from the Court of Claims there will be many more such conflicts developing. It may be that the Supreme Court can only hear an appeal from an Article III Court but since appeals from the Court of Claims are heard, legislation that is constitutional, perhaps, can be drawn. If it can, Supreme Court review should be provided.[71]

12. Even though COMA[72] approves the amendment to Article 71 cutting off the pay of one sentenced to die, the family allowance should be maintained at least until one year after execution.

13. The amendment to Article 71 (d) appears to be opposed by Judge Tuttle for the Treasury,[73] by the Seymour Committee[74] and by COMA.[75] COMA suggested certain safeguards but it does not appear that the bill contains them. Judge Tuttle's point that the accused cannot judge for himself because while he is in jail he longs to get out and will accept a punitive discharge when he should not, deserves Congressional consideration.

14. Article 72 should not be amended until the right of a special court to give a B.C.D. is removed.

15. The two-year new trial provision is desirable. But Article 73 should include a provision allowing COMA for two years hence to review a case such as Doe's—discussed in the text—where it is too late to appeal to COMA. Moreover, a provision for appeal by way of writ coram nobis should be written into Article 73. An appeal can be taken to our federal courts by writ of coram nobis, why not to COMA under the same limits?

16. The amendment to Article 95 lacks the support of COMA and its merits cannot be judged. Rather than comment on it, attention is called to the failure of the Code to abolish double jeopardy, and that a man who breaks arrest usually does a civilian wrong. If the civilian court tries him, the military should not be able to do so.[76]

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[70] See also *United States v. Sutton*, 3 U.S.C.M.A. 220 (1953) (admissability of depositions).

[71] Colonel Dietrich, before the Brooks Committee on behalf of the Reserve Officers Association, opposed a reduction in appeal time to COMA from 30 to 15 days on the ground that this would hurt a lad overseas who might want to communicate with his family at home as to the conduct of the appeal (p. 288). If 33 per cent of the appellate errors are discovered by COMA, consideration should be given by the family to the employment of a civilian lawyer. The American Legion by John Finn, Esq., opposed also any reduction in appeal time to COMA (p. 410).

[72] ANNUAL REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS AND THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES 7 (1954).

[73] ANNUAL REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS AND THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES 34 (1953).

[74] *Id.* at 26.

[75] *Id.* at 17, 18.

[76] Keeffe and Moskin, *Codified Military Injustice*, 35 Cornell L.Q. 151, 154-56 (1949).

17. For reasons discussed elsewhere, the bill for a Navy Judge Advocate General Corps[77] should not be enacted until provision is made for a Prosecution Judge Advocate General and a Defense Judge Advocate General. The conflict of interest now in each Judge Advocate General must be eliminated.

18. The bill of Senator Hennings[78] to set up an Article III Court to try Toth should be extended if it can be, so as to try camp followers, and civilians in the trust territories of the Pacific. The provisions in Article 106 under which ordinary civilians face trial should be removed from the Code.[79]

19. Last but most important of all is that Congress pass the Brooks' Bill[80] to increase COMA to five judges and give all life terms. COMA has done a magnificent job. Its members should have life terms so they can afford to be independent of the JAGS. The present disagreement as to the pending bill between COMA and JAG illustrates the need that the Court be protected by the security of life tenure, the way our federal court judges are.

The failure of Congress to give the judges at COMA life tenure has risen to haunt them in the administration of the forty-two employees of the Court. Civil Service has asserted jurisdiction over them even though Felix Larkin once expressed the view that it had no jurisdiction over the Court. Indeed, the Civil Service Commission has ruled that though created by the Congress under Article I, Section 8, of the Constitution, COMA is part of the executive branch. Also the three judges at COMA cannot retire on the judicial pension given to other judges. This is a serious personal matter. Since they get the pay and rank of a United States Circuit Judge the Congress should give them equal pension rights.

John Marshall at the Virginia Constitutional Convention in 1828 put the case for an independent judiciary in a way that cannot be contradicted. He said:

> Advert, sir, to the duties of a judge—he has to pass between the Government and a man whom that Government is prosecuting; between the most powerful individual in the community and the poorest and most unpopular—the Judicial Department comes home to every man's fireside; it passes on his property, his reputation, his life, his all. Is it not to that last degree important that he should be rendered perfectly and completely independent with nothing to influence or control him but God and his conscience? You do not allow a man to perform the duties of a juryman or a judge, if he has one dollar interest in the matter to be decided: and we will allow a judge

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[77] S. 2527 and S. 2502, 84th Cong., 1st Sess. (1955).

[78] S. 2791, 84th Cong., 1st Sess. (1955).

[79] Keeffe and Moskin, *Codified Military Injustice,* 35 Cornell L.Q. 151, 152-53, 167 (1949). Bertram Schwartz testifying before the Brooks Committee asked also that the Hennings bill be broadened to cover offenses (like Icardi and Lo Dolce) alleged to have been committed prior to the enactment of the Code of Military Justice and therefore subject to the Articles governing the Navy or the Articles of War (p. 276).

[80] H.R. 2555, 84th Cong., 1st Sess. (1955).

> to give a decision when his office may depend on it? When his decision may offend the powerful and influential man . . . if they may be removed at pleasure will any lawyer of distinction come upon your bench? No, Sir, I have always thought, from my earliest youth till now, that the greatest scourge an angry heaven ever inflicted upon an ungrateful and sinning people was an ignorant, a corrupt or dependent judiciary.[81]

What Marshall said of the ordinary federal judge is doubly true of the judges at COMA. They must stand between the military and the service man. We need judges of the greatest competence and courage to do that. In Chief Judge Quinn and Judges Latimer, Brosman and Ferguson we have been fortunate indeed. All have asked for life tenure as the original bill provided. Only in this way can the average citizen be sure that the Court will attract the right kind of lawyer and remain independent and fearless.

COMA has been doing an outstanding job. It has reviewed 8500 cases in 5 years or an average of 1800 per year. It hears an average of 150 appeals per month and in one month heard 228. Nevertheless, the Court is up to date in its work which is more than can be said for the ordinary federal district courts. See Judge Quinn's testimony before the Brooks Committee (pp. 344, 355).

20. COMA divided 2 to 1 on the validity of the section of the Code that permits the use in a court-martial of a deposition. Chief Justice Quinn, greatly to his credit, takes the view that the entire Constitution of the United States, including the Bill of Rights applies to courts martial under the Code of Military Justice. His opinion was opposed by Judge Brosman and Judge Latimer who take the position that the absence or death of a witness should prevent a criminal trial, civil or military. Yet the Sixth Amendment to the United States Constitution provides for the confrontation of the accused by the witness against him and it is difficult to believe that the constitutional provision is satisfied when the accused is not even present to see and hear the witness give his deposition.

On the motion for a new trial in Doe's case an even more unconstitutional use was made of depositions by the Judge Advocate General. He took depositions at public expense in Korea. He would not even exhibit these to defense counsel. Moreover, in hearing counsel on the motion for a new trial, three Generals sat in stoic silence and the Government made no argument oral or written as to its position on the motion. It must be that the JAG's trial counsel communicated his views secretly to the court because defense counsel never received them. The court of three Generals, however, denied the motion for a new trial on the basis of

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[81] I am indebted to Deans Fordham and Husted of the University of Pennsylvania Law School for this quotation from Marshall, *John Marshall and the Rule of Law,* 104 U. of Pa. L. Rev. 60 (1955).

these secret affidavits taken abroad.[82]

21. Consideration should be given to amending Article 46 of the Code either to compel the trial judge advocate to list with the defense judge advocate the names and addresses of his witnesses in advance, or to relieve the defense judge advocate of having to apply to the trial judge advocate before subpoenaing his witnesses.[83]

22. Apparently the 1951 Manual in Chapter 26 provides that neither the Navy nor the Coast Guard may demand court martial in lieu of punishment under Article 15. The Fleet Reserve Association calls attention to its inapplicability to the Army or Air Force.[84]

23. The Congress should consider enacting a statute to declare that except as the Constitution otherwise provides, the Bill of Rights protects our service men. This would in effect codify the dissenting opinion of Chief Judge Quinn in *United States v. Voorhees,* 4 U.S.C.M.A. 509 (1954). It would also make clear that any serviceman treated unjustly is free to write his family, his local newspaper, his Congressman, his Senator or the President. Men have been court-martialled for complaining in this manner, instead of proceeding through "channels" and it is not fair to civilian draftees. It may be all right for West Pointers or Annapolis men.

20. The Only Hope For Reform Lies In The Creation By Congress Of A Permanent, Paid, Part-Time Civilian Advisory Council.

The only hope for the civilian parent that his offspring will be dealt with fairly, if he makes a mistake and does something wrong when in the service, is for the Congress to establish a Civilian Advisory Council. It should be appointed by the President. It should be paid because nothing is more obvious in this world of ours than that you get what you pay for. It should be part-time and for a limited number of staggered terms, not over 5 or 6 in length, so no governmental bureaucracy will develop. It should have a paid full-time staff placed at its disposal by the Department of Defense. It should have access to all courts-martial files and all prison

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[82] Bertram Schwartz asked the Brooks Committee to ban depositions entirely where a D.D. and T.F. (Total Forfeiture of Pay) was to be the penalty. And he referred to a case in Tokyo where the chief witness who gave the deposition was in an insane asylum (pp. 270-71). Charles E. Lofgren, National Secretary of the Fleet Reserve Association (pp. 307-08), testified that "the attorneys for the Fleet Reserve Association" say "there is no more unfair provision in the code so far as they are concerned." They take the position of Chief Judge Quinn that the use of depositions is unconstitutional. For a discussion of this point and *United States v. Sutton,* 3 U.S.C.M.A. 220 (1953), by Chief Judge Quinn, see pp. 361-62.

[83] Bertram Schwartz wants Article 46 amended so that without giving notice to the trial judge advocate the defense counsel may serve his own subpoenas (p. 272). But Judge Latimer makes a good point when he asks that Article 46 be amended so as to require notice to the other side before either the trial judge advocate or defense counsel subpoena any witness, thereby avoiding surprise (pp. 360-65).

[84] See pp. 307-08 of the transcript of the Brooks Committee.

files and authorized to investigate every nook and cranny. Annually, this Civilian Advisory Council should be compelled to report to the Armed Services Committees of the House and Senate. Give the American people this protection and, perhaps, the need for Congressional investigation of courts martial in the future will diminish. Today we need a thorough Congressional investigation by the Judiciary Committees and the Armed Services Committees of the administration of military courts martial in Korea by the Judge Advocate Generals to lay a proper and informed basis for new legislation.*

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* In the writing of this piece the author acknowledges the assistance of the editor-in-chief of the Review, Emidio Spurio of Philadelphia, and a careful editing by Dean Vernon X. Miller. Neither Mr. Spurio nor Dean Miller are responsible for the views expressed. They are the author's own.

APPENDIX

S.2133

IN THE SENATE OF THE UNITED STATES

A BILL

To amend the Uniform Code of Military Justice.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Uniform Code of Military Justice (sec. 1, Act of May 5, 1950; 64 Stat. 107; 50 U. S. C. 551 and the following) is amended as follows:

(a) Article 1 is amended by changing the period at the end thereof to a semicolon and inserting a new clause (15), as follows:

"(15) 'Convening authority' shall be construed to refer to the officer who convened the court, an officer commanding for the time being, a successor in command, or any officer exercising general court-martial jurisdiction."

(b) Article 12 is amended to read as follows:

"ART. 12. Confinement with enemy prisoners prohibited

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

(c) Article 15 (a) (1) (C) is amended by deleting the words "one month" at the end thereof and substituting therefor the words "three months".

(d) Article 15 (a) (2) (E) is amended by deleting the words "if imposed upon a person attached to or embarked in a vessel,".

(e) Article 15 (a) (2) is amended by (1) changing the period at the end of clause (F) to a semicolon and inserting immediately thereafter the word "or", and (2) inserting a new clause (G), as follows:

"(G) forfeiture of not to exceed one-half of one month's pay."

(f) Article 16 (2) is amended to read as follows:

"(2) Special courts-martial, which shall consist of any number of members not less than three, except that a special court-martial may consist only of a law officer, if prior to the convening of the court, the accused has so requested in writing, upon advice of counsel, and the convening authority has consented thereto, and the identity of the law officer is known to the accused in advance of the date of trial."

(g) Articles 22 (b) and 23 (b) are amended to read as follows:

"(b) When any such officer is an accuser, the court shall be convened by a competent authority not subordinate in command and grade to the accuser, and may in any case be convened by a superior competent authority when deemed desirable by him."

(h) Article 25 (a) is amended by inserting the following new sentence at the end thereof: "However, to be eligible for appointment as a special court-martial, the officer shall have the qualifications specified for a law officer in article 26 (a)."

(i) Article 26 (b) is amended to read as follows:

"(b) The law officer shall not consult with the members of the court, other than on the form of the findings and the sentence as provided in article 39, except in the presence of the accused, trial counsel, and defense counsel, nor shall he vote with the members of the court."

(j) The first sentence of article 37 is amended to read as follows: "No authority convening a general, special, or summary court-martial, nor other commanding officer, nor any officer serving on the staffs thereof, shall censure, reprimand, or admonish such court or any member, law officer, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceedings."

(k) The second sentence of article 39 is amended to read as follows: "After a general court-martial has finally voted on the findings or the sentence, the court may request the law officer and the reporter to appear before the court to put the findings or the sentence, as the case may be, in proper form, and such proceedings shall be on the record."

(l) Article 41 (b) is amended to read as follows:

"(b) Each accused and trial counsel shall be entitled to one peremptory challenge, but the law officer and an officer appointed as a special court-martial shall not be challenged except for cause."

(m) Article 51 is amended by inserting at the end thereof the following:

"(d) The foregoing provisions of this article shall not apply to a special court-martial consisting of only one officer. Notwithstanding any other provision of this code, the officer who is appointed as such a court-martial shall determine all questions of law and fact arising during a trial by such court and shall, in the event of conviction of the accused, adjudge an appropriate sentence."

(n) The second sentence of article 51 (b) is amended to read as follows: "Any such ruling made by the law officer of a general court-martial upon any interlocutory question other than the question of the accused's sanity shall be final and shall constitute the ruling of the court, but the law officer may change any such ruling at any time during the trial."

(o) Article 52 is amended by inserting at the end thereof the following:

"(d) This article shall not apply to a special court-martial consisting of only one officer."

(p) Article 54 is amended to read as follows:

"ART. 54. Record of trial

"(a) Each court-martial shall keep a separate record of the proceedings of the trial of each case brought before it. A record of trial in which the sentence adjudged includes a punitive discharge or confinement at hard labor in excess of six months or forfeiture in excess of two-thirds pay per month for six months shall contain a complete verbatim account of the proceedings and testimony before the court, and shall be authenticated in such manner as may be required by regulations which the President may prescribe. All other records of trial shall contain such matter and be authenticated in such manner as may be required by regulations which the President may prescribe."

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

(q) Article 57 (b) is amended by inserting at the end thereof the following new sentence: "The President may prescribe other periods during which a sentence to confinement may be interrupted and such periods shall be excluded in computing the service of the term of confinement."

(r) Article 65 (a) is amended to read as follows:

"(a) When the convening authority has taken final action in a general court-martial case and the sentence as approved by him includes a bad-conduct discharge or exceeds a sentence that could have been adjudged by a special court-martial, he shall forward the entire record, including his action thereon and the opinion or opinions of the staff judge advocate or legal officer, to the appropriate Judge Advocate General. All other general court-martial records shall be transmitted and disposed of as the Secretary of the Department may prescribe by regulations."

(s) Article 65 (b) is amended by deleting the words "to be reviewed by a board of review" wherever appearing therein.

(t) Article 65 (c) is amended to read as follows:

"(c) All other special and summary court-martial records shall be forwarded to the officer exercising general court-martial jurisdiction over the command, or such other authority as may be designated by the Secretary of the Department, for review by a judge advocate of the Army or Air Force, a law specialist or lawyer of the Navy, or a law specialist or lawyer of the Coast Guard or Treasury Department. In addition to returning such records to the convening authority with a direction that certain action be taken, the officer exercising general court-martial jurisdiction, or the authority designated by the Secretary of the Department, may take the same action with respect to such records as is authorized for the convening authority. Such records shall be transmitted and disposed of as the Secretary of the Department may prescribe by regulations."

(u) Article 66 (b) is amended to read as follows:

"(b) The Judge Advocate General shall refer to a board of review the record in every case of trial by court-martial in which the sentence, as approved, affects a general or flag officer, or extends to death, or to the dismissal of an officer, cadet, or midshipman. He shall also refer to a board of review the record in every case of trial by court-martial in which the sentence, as approved, extends to dishonorable or bad-conduct discharge, or to confinement for one year or more, unless such dishonorable or bad-conduct discharge, or confinement for one year or more, was adjudged in a case where the accused pleaded guilty to each offense of which he was found guilty, and has affirmatively stated that review by a board of review is not desired."

(v) Article 66 (e) is amended to read as follows:

"(e) The Judge Advocate General may discuss the charges whenever the board of

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

(w) Article 67 (b) (3) is amended to read as follows:

"(3) All cases reviewed by a board of review in which, upon petition of the accused and on good cause shown, the Court of Military Appeals has granted a review; but the court must consider a petition for a grant of review only if—

"(A) counsel who represented the accused at his trial or before the board of review;

"(B) appellate defense counsel appointed by the Judge Advocate General if the accused was not represented by counsel before the board of review; or

"(C) civilian counsel retained by the accused, certifies that in his opinion a substantial question of law is presented and that the appeal is made in good faith."

(x) Article 67 (c) is amended to read as follows:

"(c) The accused shall have fifteen days from the time he is notified of the decision of a board of review to petition the Court of Military Appeals for a grant of review, but such petition shall not deprive the board of review of jurisdiction over his case until the petition or other document is received in the Court of Military Appeals. The court shall act upon such a petition within thirty days of the receipt thereof."

(y) Article 67 (f) is amended to read as follows:

"(f) After it has acted on a case, the Court of Military Appeals may direct the Judge Advocate General to return the record to the board of review for further review in accordance with the decision of the court. The Judge Advocate General may dismiss the charges whenever the Court of Military Appeals has ordered them dismissed or whenever the court has ordered a rehearing and he finds a rehearing impracticable. Otherwise, the Judge Advocate General shall, unless there is to be further action by the President or the Secretary of the Department, instruct the convening authority to take action in accordance with the decision of the court. If the court has ordered a rehearing and the convening authority finds a rehearing impracticable, he may dismiss the charges."

(z) Article 69 is amended to read as follows:

"ART. 69. Review in the Office of the Judge Advocate General

"Every record of trial by court-martial, in which there has been a finding of guilty and a sentence, the appellate review of which is not otherwise provided for by articles 65 and 66, shall be examined in the Office of the Judge Advocate General. The Judge Advocate General may refer any such record to a board of review for review in accordance with article 66. If any part of the findings or sentence is found unsupported in law, the Judge Advocate General shall either refer the record to a board of review for review in accordance with article 66 or take such action in the case as is authorized for a board of review under article 66 (c) and (d). If the record is reviewed by a board of review, there shall be no further review by the Court of Military Appeals except pursuant to the provisions of article 67 (b) (2). The Judge Advocate General is not required to affirm a finding of guilty or a sentence found correct in law and fact."

(aa) Article 71 is amended to read as follows:

"ART. 71. Execution of sentence; suspension of sentence

"(a) No court-martial sentence extending to death or involving a general or flag officer shall be ordered executed until approved by the President. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence or any part of the sentence, as approved by him, except the death sentence. After the approval of a sentence extending to death by the convening authority, an accused shall accrue no pay or allowances unless such sentence is set aside or disapproved and a sentence extending to death is not imposed upon a new trial or rehearing.

"(b) Except as provided in (d) below, no sentence or portion of a sentence extending to the dismissal of an officer (other than a general or flag officer), cadet, or midshipman shall be ordered executed until approved by the Secretary of the Department, or such Under Secretary or Assistant Secretary as may be designated by him. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of any part of the sentence as approved by him. In time of war or national emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person who is so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

"(c) Except as provided in (d) below, no sentence or portion of a sentence extending to dishonorable or bad-conduct discharge shall be ordered executed until approved by the Judge Advocate General or affirmed by a board of review, as the case may be, and, in cases reviewed by it, the Court of Military Appeals.

"(d) All court-martial sentences and portions of sentences not involving dismissal or dishonorable or bad-conduct discharge may be ordered executed by the convening authority when approved by him. The convening authority may suspend the execution of any sentence, except a death sentence."

(bb) Article 72 (a) is amended to read as follows:

"(a) Prior to the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of a general court-martial sentence which as approved includes a bad-conduct discharge or exceeds a sentence that could have been adjudged by a special court-martial, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. At such hearing the probationer shall be represented by counsel if he so desires."

(cc) Article 73 is amended to read as follows:

"ART. 73. Petition for a new trial

"At any time within two years after approval by the convening authority of a court-martial sentence which extends to death, dismissal, dishonorable or bad-conduct discharge, or confinement for one year or more, the accused may petition the Judge Advocate General for a new trial on grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a board of review or before the Court of Military Appeals, the Judge Advocate General shall refer the petition to the board or court, respectively, for action. The board of review or the Court of Military Appeals, as appropriate, shall determine whether a new trial, in whole or in part, should be granted, or shall take appropriate action under article 66 or article 67, respectively. Otherwise, the Judge Advocate General may grant a new trial in whole or in part, or may vacate or modify the findings and sentence in whole or in part."

(dd) Article 95 is amended to read as follows:

"ART. 95. Arrest and physical restraint

"Any person subject to this Code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court-martial may direct."

(ee) The following is inserted as article 123a:

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

"Any person subject to this Code who—

"(1) for the procurement of any article or thing of value, or

"(2) for the payment of any past-due debt or other obligation, or

"(3) for any purpose with intent to defraud, makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in or credit with the bank or other depository for the payment of that check, draft, or order in full upon its presentment, shall be punished as a court-martial may direct. The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in its possession or control, shall be prima facie evidence of his intent to defraud and of his knowledge of insufficient funds in, or credit with, that bank or other depository, if the maker shall not have paid the holder thereof the amount due thereon within five days after receiving notice in person, or writing, that the check, draft, or order has not been paid. The word 'credit', as used herein, shall be construed to mean arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order."

SEC. 2. This Act shall become effective on the first day of the tenth month after approval of this Act.

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

April 12, 1954

Arthur John Keeffe, Esquire
School of Law
New York University
Washington Square
New York 3, New York

Dear Mr. Keeffe:

This will acknowledge receipt of your letter postmarked April 7, 1954, concerning the availability of the docket files of the Court.

I'm sorry that I was not in my office on the occasion of your recent visit. However, Mr. Hanlon, the Deputy Clerk, informs me that he spoke to you about this same subject matter. As he mentioned to you, the docket file in each individual case, filed with this office pursuant to Article 67 of the Uniform Code of Military Justice, is considered a public record which can be examined at any time during the working hours of the Court. In addition, the original records of trial, if not classified for security purposes, are also available for public inspection. It may be noted, however, that such records are in this office only while under review by members of the Court. As soon as final action is taken on a record, it is immediately returned to the Office of The Judge Advocate General concerned. Allied papers, including Staff Judge Advocate reports, are attached to the original court-martial records and, as such, are also returned to the appropriate service.

There is enclosed a copy of the Annual Report, which was recently forwarded to the Congress.

Very truly yours,

ALFRED C. PROULX
Clerk of the Court

Encl.
1 - Annual Report.

DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON 25, D. C.

JAG J 1954/3937

13 APR 1954

Professor A. H. John Keeffe
New York University School of Law
Washington Square
New York 3, New York

Dear Professor Keeffe:

Receipt is acknowledged of your letter dated 5 April 1954 in which you request that records of my office be made available to you or your representative.

Disciplinary records of military personnel are considered to be confidential in nature and cannot be made available under the circumstances outlined in your letter.

Sincerely yours,

Eugene M. Caffey

EUGENE M. CAFFEY
Major General, USA
The Judge Advocate General

DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON 25, D. C.

IN REPLY REFER TO

13 APR 1954

Professor Arthur John Keeffe
New York University
School of Law
Washington Square
New York 3, N. Y.

Dear Professor Keeffe:

I have received your letter of April 5, 1954, and an enclosed copy of a letter to the U. S. Court of Military Appeals, wherein you express the desire to study courts-martial cases since World War II, particularly courts during the Korean conflict, with the object of suggesting any needed reforms or changes in the system. You requested assurance that records in my office would be available to you or your representative for use in connection with the study.

I appreciate your interest in the subject, and your motive in undertaking the study, however, I am constrained to advise that under existing laws and regulations the courts-martial records of officers and enlisted men in the naval service may not be disclosed to you.

Accordingly, you are advised that I am not permitted to comply with your request.

Yours truly,

IRA H. NUNN
Rear Admiral, USN
Judge Advocate General

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON 25, D. C.

OFFICE OF THE JUDGE ADVOCATE GENERAL

14 APR 1954

Professor Arthur John Keeffe
New York University
School of Law
Washington Square
New York 3, N. Y.

Dear Professor Keeffe:

Your letter of 5 April 1954 addressed to The Judge Advocate General concerning your request to make available for study court-martial records of trial involving Air Force personnel who were tried during the Korean conflict period has been referred to me for reply.

I appreciate your interest in the administration of military justice and realize that your request was prompted by a desire to make constructive and remedial suggestions with respect thereto, if warranted. However, it has long been the policy of the Air Force to refrain from disclosing details of the proceedings of trial by court-martial of the members of the military service to persons having no official connection therewith. As you can understand, this policy does not restrict the release of newsworthy information to news agencies nor is it based upon any desire for secrecy concerning the administration of military justice, but rather has proved necessary in the interest of economy, to preserve privileged communications, for the protection of individuals whose duties require them to participate in the trial of such cases, and of the persons tried.

Aside from the foregoing, I am sure you will realize the impracticability of permitting a general inspection of all of these numerous records. To do so would seriously hamper the normal activity in the performance of official duties in the Office of The Judge Advocate General.

I accordingly regret to advise you that I am unable to comply with your request.

Sincerely yours,

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

TREASURY DEPARTMENT

WASHINGTON

APR 16 1954

Dear Mr. Keeffe:

This will acknowledge your letter of April 5, 1954, requesting assurance that records of this Department will be made available to you in connection with any study of courts-martial that you make.

I regret that I must advise you that it is not the policy of this Department to disclose records of courts-martial.

Very truly yours,

Secretary of the Treasury

Mr. Arthur John Keeffe
School of Law
New York University
Washington Square
New York 3, New York

CASE	OFFENSE	SENTENCE	CA	B/R	COMA
1 U.S.C.M.A. (1951)					
United States v.					
Masusock, p. 32	absent 66 days	D.D., T.F., 10 yrs.	aff.	aff.	aff.
Clements, p. 39 (presumably a Korean case)	4 absences from Nov. '50 to Mar. '51, length not stated	D.D., T.F., 20 yrs.	aff.	reduced to 10 yrs.	aff.
Slozes, p. 47	rape	D.D., T.F., 20 yrs.	aff.	aff.	aff.
Brooks, p. 88	desertion with intent to avoid hazardous duty	dismissal, T.F., 15 yrs.	aff.	aff.	aff.
DeCarlo, p. 91	unpremeditated murder	D.D., T.F., 25 yrs.	aff.	aff.	aff.
Davis, p. 102	AWOL—length not stated	D.D., T.F., 25 yrs.	aff.	reduced to 10 yrs.	aff.
Goodman, p.	premeditated murder	D.D., T.F., life impr.	aff.	aff.	aff.
Williams, p. 186	AWOL—115 days	D.D., T.F., 4 yrs.	aff.	aff.	rehearing: erroneous instr. by law officer.
Branch, p. 189	AWOL—46 days	D.D., T.F., 5 yrs.	aff.	aff.	aff.
Jackson, p. 190	AWOL—66 days	D.D., T.F., 10 yrs.	aff.	aff.	aff.
Rhoden, p. 193	behaving with disrespect toward a superior officer, willfully disobeying a lawful command of a superior officer, and assault with intent to do bodily harm	D.D., T.F., 6 yrs.	aff.	aff.	reversed
Jacobs, p. 209	robbery	D.D., T.F., 5 yrs.	aff.	aff.	aff.
Williams, p. 231	assault with intent to commit murder	D.D., T.F., 15 yrs.	aff.	aff.	reversed
Roman, p. 244	unpremeditated murder	D.D., T.F., 15 yrs.	aff.	aff.	aff.
McCrory, p. 274	willful disobedience of a superior officer	D.D., T.F., 2 yrs.	aff.	aff.	reversed
Jones, p. 302	AWOL—73 days	D.D., 25 yrs.	reduced to 12 yrs.	reduced further to 10 yrs.	aff.
Bartholomew, p. 309	voluntary manslaughter, assault with intent to commit rape	D.D., T.F., 25 yrs.	aff.	aff.	aff.
Phillips, p. 316	theft	D.D., T.F., 4 yrs.	aff.	aff.	aff.
Jenkins, p. 331	desertion: 12 days	D.D., T.F., 5 yrs.	aff.	aff.	reduced to 2½ yrs. by Sec. of Army

Moynihan, p. 333	desertion	D.D., T.F., 20 yrs.	aff.	reduced to 15 yrs.	aff.
Jarvis, p. 368	unpremeditated murder	D.D., T.F., 20 yrs.	aff.	aff.	aff.
Plummer, p. 373	rape, and assault with a dangerous weapon	D.D., T.F., life impr.	aff.	reduced to 25 yrs.	reversed as to rape....
Norton, p. 411	AWOL—24 hrs., assault with knife	D.D., T.F., 1 yr.	aff.	aff.	aff.
Cooke, p. 421	desertion with intent to avoid hazardous duty	D.D., T.F., 20 yrs.	aff.	reduced to 15 yrs.	aff.
Keith, p. 442	misbehavior before the enemy	D.D., T.F., 5 yrs.	aff.	aff.	rev.
Horst, p. 452	willful disobedience of a lawful command and cowardly conduct in the presence of the enemy	D.D., T.F., 3 yrs.	aff.	aff.	rev.
Ginn, p. 453	voluntary manslaughter	D.D., T.F., 10 yrs.	aff.	aff.	aff.
Gilbertson, p. 465	misbehavior before the enemy	D.D., T.F., 15 yrs.	aff.	aff.	rev.
Goddard, p. 475	desertion	D.D., T.F., 18 mos.	aff.	aff.	rev.
Banks, p. 479	assault with intent to murder; assault with a dangerous weapon	D.D., T.F., 10 yrs.	aff.	aff.	rev.
Shephard, p. 487	desertion (90 days); robbery; stealing a Govt. vehicle, and selling it; impersonating an officer; false preparation of official orders, possessing false official orders	D.D., T.F., 30 yrs.	aff.	reduced to 25 yrs.	

1 U.S.C.M.A. (1951)

United States v. Minor, p. 497	AWOL—1/18-3/4/51; failure to obey	D.D., T.F., 25 yrs.	disapproved: failure to obey and reduced to 8 yrs.	aff.	JAG ARMY suspended D.D. until release from confinement.

CASE	OFFENSE	SENTENCE	CA	B/R	COMA
Walker, p. 501	ran away from his squad while before the enemy and returned to the rear area	D.D., T.F., 20 yrs.	reduced to 10 yrs.	aff.	aff.
McConnell, p. 508	sleeping on post	D.D., T.F., 10 yrs.	suspended the execution of the punitive discharge	aff.	rev.
Smith, p. 531	rape	D.D., T.F., life impr.	aff.	aff.	rev.
Johnson, p. 537	desertion (7½ mos.)	D.D., T.F., 10 yrs.	aff.	aff.	rev.
Cirelli, p. 569	desertion with intent to remain away permanently	D.D., T.F., 15 yrs.	reduced to 10 yrs.	aff.	aff.
Wingert, p. 574	sleeping on post	D.D., T.F., 10 yrs.	aff.	aff.	rev.
Florence, p. 621	theft ($70)	D.D., T.F., 5 yrs.	aff.	aff.	rev. improper sentence
Stout, p. 640	willful disobedience of an order of a superior officer	D.D., T.F., 5 yrs.	aff.	aff.	aff.
Kubel, p. 645	larceny and sale of Govt. prop. ($648.80); AWOL	D.D., T.F., 10 yrs.	aff.	aff.	aff.
Sperland, p. 661	AWOL, misbehavior before the enemy	D.D., T.F., 40 yrs.	reduced to 20 yrs.	aff.	aff.
Dupree, p. 665	wrongful possession of an opium derivative	D.D., T.F., 4 yrs.	aff.	aff.	aff.
Quisenberry, p. 670	unpremeditated murder	D.D., T.F., 10 yrs.	aff.	aff.	aff.
Yarborough, p. 678	conspiracy to malinger; malingering; misbehavior before the enemy	D.D., T.F., 10 yrs.	aff.	aff.	rev.
2 U.S.C.M.A. (1952)					
Bodenheimer, p. 131	AWOL and theft of a Govt. motor vehicle.	D.D., T.F., 15 yrs.	aff.	aff.	aff.
Squirrel, p. 146	desertion with intent to avoid hazardous duty	D.D., T.F., 10 yrs.	aff.	aff.	aff.
Floyd, p. 133	assault and battery and assault with the intent to commit murder	D.D., T.F., 10 yrs.	reduced to 7 yrs.	aff.	rev.
Smith, p. 197	misbehavior before the enemy	D.D., T.F., 7 yrs.	aff.	aff.	aff.

Mitchell, p. 200	premeditated murder, assault with intent to murder	D.D., T.F., life impr.	aff.	aff.	aff.
Woods, p. 203	rape	D.D., T.F., 15 yrs.	aff.	aff.	rev.
Cook, p. 223	desertion with intention to avoid hazardous duty	D.D., T.F., 10 yrs.	reduced to 5 yrs.	aff.	aff.
Benavides, p. 226	premeditated murder	D.D., T.F., life impr.	aff.	aff.	aff.
Wilson, p. 248	premeditated murder	death	reduced to D.D., T.F., life impr.	aff. death	rev.
Allen, p. 266	rape and robbery	D.D., T.F., 5 yrs.	aff.	aff.	rev.
Furney, p. 271	unpremeditated murder	D.D., T.F., 27 yrs.	aff.	reduced to 15 yrs.	rev.
Jester, p. 280	willful disobedience of a non-com. officer	D.D., T.F., 5 yrs.	aff.	rev.	rev.
Truss, p. 283	AWOL—4 days	D.D., T.F., 10 yrs.	aff.	reduced to 5 yrs.	rev.
Bigger, p. 297	premeditated murder	death	aff.	reduced to unpremeditated murder: D.D., T.F., and life impr.	
Isenberg, p. 349	desertion with intent to remain away from the service permanently	D.D., T.F., 30 yrs.	reduced to 20 yrs.	aff.	rev.
King, p. 397	cowardly conduct in the presence of the enemy	D.D., T.F., 15 yrs.	aff.	aff.	rev.
2 U.S.C.M.A. (1952)					
United States v. Day, p. 416	murder; assault with a deadly weapon with intent to do great bodily harm	death	aff.	aff.	aff.
Clark, p. 437	rape	D.D., T.F., 15 yrs.	aff.	aff.	aff.
Young, p. 470	willful disobedience of an order given by a superior officer; desertion with intent to avoid hazardous duty	D.D., T.F., 20 yrs.	reduced to 10 yrs.	aff.	aff.

CASE	OFFENSE	SENTENCE	CA	B/R	COMA
Horner, p. 478	desertion with intent to avoid hazardous duty	D.D., T.F., 10 yrs.	aff.	aff.	aff.
Niolu, p. 513	endangering the safety of United Nations Troops in the presence of the enemy	D.D., T.F., 25 yrs.	aff.	reduced to 10 yrs.	rev.
McIntyre, p. 559	desertion with intent to avoid hazardous duty	D.D., T.F., 15 yrs.	aff.	aff.	rev.
Wallace, p. 595	willful disobedience of a lawful order of a superior officer and cowardly conduct	D.D., T.F., 20 yrs.	aff.	reduced to 15 yrs.	rev.
Majia, p. 616	willful disobedience of a superior officer	D.D., T.F., 8 yrs.	reduced to 5 yrs.	aff.	aff.
Benders, p. 620	willful disobedience of a superior officer	D.D., T.F., 10 yrs.	aff.	aff.	aff.
Felton, p. 630	premeditated murder	life impr.	aff.	aff.	aff.
3 U.S.C.M.A. (1953)					
Vansant, p. 30	willfully disobeying an order of a warrant officer	D.D., T.F., 18 yrs.	reduced to 15 yrs.	reduced to 10 yrs.	aff.
Corbin, p. 99	murder, AWOL, application of Government property to his own use.	D.D., T.F., 99 yrs.	reduced to 66 yrs.	aff.	aff.
Hattley, p. 114	left post before being properly relieved.	D.D., T.F., 2 yrs.	suspended D.D.	aff.	aff.
Gaza, p. 168	disobeyed an order to leave kitchen supply tent; striking a superior non-commissioned officer.	D.D., T.F., 30 yrs.	the reviewing authorities reduced the period of confinement to thirty years.		
Bunch, p. 186	violating general orders	B.C.D., 2 mos.	supervisory authority suspended, B.C.D.		
Amdahl, p. 199	premeditated murder	D.D., T.F., life impr.	jag army reduced per. of confinement to twenty years.		
Sutton, p. 220	malingering, arising out of a charge of shooting himself in the hand to avoid service.	B.C.D., T.F., 3 yrs.	reduced to 1 yr.	set aside some of the findings and reduced F. to $50. per mo. for 4 mos. and CONF. for 4 mos.	aff.

Castner, p. 466	violated a lawful general regulation; drunken driving, and involuntary manslaughter	B.C.D. F. of $75. per mo. for 2 yrs. and demotion to seaman recruit	reviewing authorities reduced the confinement to one year.		
Cavallaro, p. 653	cowardly conduct in refusing to accompany a fire team beyond the main line of resistance; disobeying an order of a superior non-commissioned officer.	D.D., T.F., reduced to private and 12 yrs.	reduced to 10 yrs.	aff.	aff.
4 U.S.C.M.A. (1954)					
United States v.					
Christensen, p. 22	assault with intent to commit murder, and offering violence to a superior officer while in the execution of his office.	D.D., T.F., 20 yrs.	aff.	aff.	referred to B/R for possible reassessment of sentence
Perruccio, p. 28	negligent homicide	B.C.D., T.F., 1 yr.	suspended sentence for 6 mos., at which time in the absence of a vacation of the suspension, the entire sentence to be remitted.	aff.	aff.
Sandoval, p. 61	unpremeditated murder, failure to obey a lawful curfew order, and an order prohibiting the carrying of a weapon	D.D, T.F., 20 yrs.	aff.	aff.	aff.
William, p. 69	sleeping on post	D.D., T.F., 10 yrs., accused has 2 prior convictions	aff.	aff.	aff.
Carey, p. 112	misbehavior before the enemy	B.C.D., T.F., 3 yrs.	aff.	aff.	aff.

CASE	OFFENSE	SENTENCE	CA	B/R	COMA
Tilton, p. 120	deserting with the intent to avoid hazardous duty	D.D., T.F., 10 yrs.	suspended D.D.	aff.	JAG, ARMY, reduced confinement to 5 yrs. COMA reduced charge to AWOL and remanded for sentence
McDonald, p. 130	unpremeditated murder	D.D., 25 yrs.	aff.	aff.	aff.
Hamilton, p. 383	wrongful failure to perform duty in the presence of the enemy	D.D., T.F., 5 yrs.	aff.	aff.	aff.
Marriott, p. 390	larceny	dismissal from the service, T.F., 5 yrs.	reduced confinement to 2 yrs.	reduced further to 1 yr.	aff.
Brumfield, p. 404	making five false statements during an investigation, and larceny of $46 and 50 pr. wool trousers	dismissal, T.F.	aff.	aff.	aff.
5 U.S.C.M.A. (1954)					
United States v.					
King, p. 3	cowardly conduct in face of the enemy	D.D., T.F., 10 yrs.	reduced to 5 yrs.	aff.	remanded for new trial
Burke, p. 56	sleeping on post	D.D., forfeiture of $40 per mo. for 24 mos., reduction to Private, and 2 yrs.	pursuant to a request for clemency, per. of conf. and F. reduced to 10 mos., and B.C.D. WAS substituted for D.D.	aff.	aff.

CASE	OFFENSE	SENTENCE	CA	B/R	COMA
Williams, p. 197	grand larceny	D.D., T.F., 3 yrs.	aff.	aff.	aff.
Turner, p. 445	unpremeditated murder	D.D., T.F., 30 yrs.	aff.	aff.	aff.
Williams, p. 406	possession of narcotics	D.D., T.F., 5 yrs.	reduced the period of conf. to 3 yrs.	aff.	aff.
Seeser, p. 472	sleeping on post	D.D., T.F., 10 yrs., on retrial: D.D., T.F., 8 yrs.	aff.	reduced to 5 yrs.	aff.
Adams, p. 563	murder	D.D., T.F., 25 yrs.	aff.	reduced to 15 yrs.	rev.
Jackson, p. 584	assault with the intent to commit murder	D.D., T.F., 10 yrs.	aff.	aff.	aff.
Latsis, p. 596	willful disobedience of the command of a superior officer	D.D., forfeiture of $40. per mo. for 5 yrs., and conf. for 5 yrs.	aff.	reduced to D.D. forfeiture of $40. per mo. for 3 yrs. and confinement at 3 yrs.	
Schreiber, p. 602	premeditated murder and conspiracy to murder	D.D., T.F., life impr.	approved but reduced the period of confinement to five yrs. and changed punitive discharge to dismissal.	approved the modifications.	aff.
Allen, p. 626	sodomy, attempt to commit sodomy	D.D., T.F., 5 yrs.	aff.	aff.	aff.
Gopaulsingh, p. 772	communicating obscene language by telephone	B.C.D.	aff.	aff.	aff.