

XX

March 14, 1949

Gentlemen:

In accordance with the request made of me by your Chairman and Vice-Chairman, I enclose herewith suggested amendments to H.R. 2498. You will undoubtedly remember that the chief reform advocated by the American Bar Association among other groups is the checking of command control of courts-martial so as to prevent domination of and dictation to the court by the commander. The enclosed proposed amendments will, I believe, effect the result desired.

The enclosed amendments divorce command from control of the court only with respect to general courts-martial. While it would be desirable to effect the same reform with respect to special courts-martial the practical difficulties of so doing at this late date seem to make it advisable to postpone such action, leaving it to the Judicial Council to effect the amendments should they seem necessary or desirable.

You will undoubtedly note that there are quite a substantial number of amendments but I do not believe that any can be omitted with safety.

It is also necessary for me to point out that the amendments are based upon the "Uniform Code of Military Justice" rather than on the bill introduced into the House. References are therefore to the articles rather than to the sections.

Whatever defects appear in the enclosed I feel sure you will attribute to the shortness of time permitted.

Yours very truly,

/s/ George A. Spiegelberg

Subcommittee No. 1  
Messrs. Overton Brooks, Chairman  
L. Mendel Rivers  
Philip J. Philbin  
Arthur Winstead  
Porter Hardy, Jr.  
Edward DeGraffenried

GAS  
es  
Enclosure

Joseph R. Farrington  
Paul W. Shafer  
W. Sterling Cole  
Jack Z Anderson  
Leon H. Gavin  
Walter Norblad

Amendments to Uniform Code of Military Justice (Introduced as H.R. 2498) suggested by the Committee on Military Justice of the American Bar Association to free general courts from command domination.

Article 1. Definitions. Add two new definitions to be numbered and read as follows:

"(15) 'Appointing Authority' shall be construed to refer to a commanding officer authorized to appoint a summary court or a panel of military personnel from whom shall be designated the members of general or special courts-martial.

(16) 'Convening Authority' shall be construed to refer to those persons and officers authorized to designate the military personnel to serve as members of general or special courts-martial. Wherever in these articles reference is made to an officer exercising general or special court-martial jurisdiction, such reference shall be construed to mean the convening authority with power to designate the members of such court-martial."

Article 6, subdivision (b), first word "convening" to read "appointing."

Article 15. Commanding Officers' Non-Judicial Punishment, subdivision (a) (1) (C), strike present paragraph and revise to read:

"(c) if imposed by an officer authorized to exercise appointing authority with respect to general

courts-martial, forfeiture of one-half of his pay per month for a period not exceeding three months."

Article 15 (a) (2) (G), strike paragraph and substitute the following:

"(G) if imposed by an officer authorized to exercise appointing authority with respect to special courts-martial, forfeiture of one-half of his pay for a period not exceeding one month."

Article 22. Who May Convene General Courts-Martial. Subdivision (a) (3) (4) (5) (6) (7), strike paragraphs and substitute the following:

"(3) the senior member of the Judge Advocate General's Corps attached or assigned to a territorial department, an army group or an army, and such other member of the Judge Advocate General's Corps as may be designated by such senior member;

(4) the senior legal specialist attached or assigned to a fleet or to a naval station or larger shore activity of the navy beyond the continental limits of the United States;

(5) the senior Judge Advocate attached or assigned to an air command or an air force, and such other Judge Advocate as may be designated by such senior Judge Advocate;

(6) such other members of the Judge Advocate General's Corps, legal specialist or Judge Advocate as may be designated by the appropriate secretary of a department; or

(7) any other member of the Judge Advocate General's Corps, legal specialist or the Judge Advocate in any

of the armed forces when empowered by the President."

Subdivision (b) to read:

"(b) when any such convening authority is an accuser, the court shall be convened by superior competent authority and may in any case be convened by such authority when deemed desirable by him."

Article 23 (a) (3) (4) to read:

"(3) the commanding officer of an army corps, a division, a brigade, a regiment, detached battalion or corresponding unit of the army;

(4) the commanding officer of an air division, a wing, group or separate squadron of the air force;"

Article 25, title which now reads:

"Who may Serve on Courts-Martial"

changed to read:

"Qualifications and Appointment of Members of Courts-martial."

Article 25, subdivision (c), last sentence which now reads:

"Where such persons cannot be obtained, the court may be convened and the trial held without them but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained."

shall be amended to read as follows:

"Where such persons cannot be

obtained the court may be convened and the trial held without them, but the appropriate commanding officer, whether the appointing authority or the convening authority, shall make a detailed written statement, to be appended to the record, stating why they could not be obtained."

Article 25 (d) (2) should be amended to read as follows:

"(2) The President of the United States, the Secretary of a Department, and commanding officers, shall appoint as members of courts-martial, and of panels from which general and special courts-martial shall be designated, such persons as, in their opinion, are best qualified for the duty by reason of age, education, training, experience, length of service and judicial temperament. No person shall be eligible to sit as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case."

Add at end of Article 25 a new subdivision (e) to read as follows:

"(e) the commanding officers enumerated in subdivisions (2) (3) (4) (5) and (6) of Article 23(a) shall appoint qualified military personnel in their commands available for service as members of general and special courts-martial and shall forward a list of such personnel to the convening authority having general court-martial jurisdiction of their command, and such personnel shall constitute a panel from which the convening authority shall from

~~time to time designate the members of general and special courts-martial. Such commanding officers may withdraw names from such lists and may substitute others therefor, subject to the provisions of article 29(a)."~~

Article 27(a) to be omitted and in place thereof the following to be substituted:

"(a)(1) for each general court-martial the authority convening the court shall appoint a defense counsel together with such assistants as he deems necessary or appropriate. Each appointing authority, or if the court be convened by the President of the United States or the secretary of a department, then such person, shall appoint a trial counsel together with such assistants as he deems necessary or appropriate, who shall prosecute the charges originating in his command;

(2) for each special court-martial the authority convening the court shall appoint a trial counsel and a defense counsel, together with such assistants as he deems necessary or appropriate;

(3) no person who has acted as investigating officer, law officer, or court member in any case shall act subsequently as trial counsel, assistant trial counsel or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution shall act subsequently in the same case for the defense, nor shall any person who has acted for the defense act subsequently in the same case in the prosecution."

Article 33 shall be amended to read as follows:

"When a person is held for trial by general court-martial, the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the appointing authority for the command. If the same is not practicable, he shall report to such officer the reasons for delay."

Article 34(a) to be amended to read as follows:

"(a) before directing the trial of any charge by General Court-Martial the appointing authority for the command shall refer it to his Staff Judge Advocate or legal officer for consideration and advice. The appointing authority shall forward the charge to the convening authority, who shall thereupon refer the charge to the trial counsel appointed by such appointing authority, for prosecution before a general court-martial designated by the convening authority. The convening authority shall not refer a charge to a general court-martial for trial unless it has been found that the charge alleges an offense under this code and is warranted by evidence indicated in the report of investigation."

Article 37, last sentence, shall be amended to read as follows:

"No person subject to this code shall attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any appointing, convening, approving, or reviewing authority with respect to his judicial acts."

C  
O  
P  
Y

Article 60 after title should be amended to read

as follows:

"(a) after every trial by a general court-martial, and after every trial by a special court-martial convened by a member of the Judge Advocate General's Corps, a legal specialist, or a Judge Advocate, the record shall be forwarded to the convening authority, and action therein shall be taken by him or by his successor. The convening authority shall, unless he shall disapprove the sentence or order a rehearing, forward the record, and if the record be of a trial by general court-martial, then with his written opinion and review thereof, to the appointing authority who forwarded the charge to him, or to such officers successor in command, and the latter may litigate, remit or suspend the whole or any part of the sentence;

m

(b) after every trial by a court-martial except as specified in subdivision (a) the record shall be forwarded to the convening authority and action thereon may be taken by the officer who convened the court, an officer commanding for the time being, a successor in command, or by any officer exercising general court-martial jurisdiction."

JAG

Article 61 - omit entirely first sentence which

now reads:

"the convening authority shall refer the record of every general court-martial to his Staff Judge Advocate or legal officer, who shall submit his written opinion thereon to the convening authority."

Balance of Article 61 as it now is.

Article 65, subdivisions (a) and (b) to be amended

to read as follows:

"(a) when the convening authority and the appointing authority have taken final action in a general court-martial case, the appointing authority shall forward the entire record, including the action and the opinion and review of the convening authority, and any order which the appointing authority may have made pursuant to Article 60(a) to the appropriate Judge Advocate General;

(b) where the sentence of a special court-martial as approved by the convening authority includes a bad conduct discharge, whether or not suspended, and such discharge shall not have been remitted by the appointing authority, the record shall be forwarded to the officer exercising general court-martial jurisdiction over the command to be reviewed in the same manner as a record of trial by general court-martial or directly to the appropriate Judge Advocate General to be reviewed by a Board of Review. If the sentence as approved by an officer exercising general court-martial jurisdiction includes a bad conduct discharge, whether or not suspended, the record shall be forwarded to the appropriate Judge Advocate General to be reviewed by a Board of Review.

Article 72, the word "officer" appearing in line 4 of subdivision (a) should be amended to read "commanding officer."

The first sentence of Article 72 subdivision (b) should be amended to read:

"the record of the hearing and the recommendations of the commanding officer having special court-martial jurisdiction shall be forwarded for action to the commanding officer exercising general court-martial appointing authority for the command."

C  
O  
P  
Y

-9-

The remaining two sentences of Article 72 sub-  
division (b) to remain as now.

March 14, 1949  
GASpiegelberg