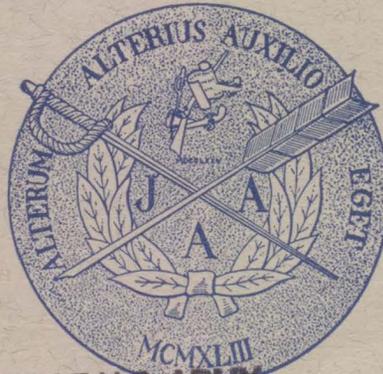


The Judge Advocate JOURNAL



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RICHARD H. LOVE
Washington, D. C.

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The views expressed in articles printed herein are not to be regarded as those of the Judge Advocates Association or its officers and directors or of the editor unless expressly so stated.

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LAW DAY U. S. A. AT THE PENTAGON

With the reading of the President's proclamation by Major General Reginald C. Harmon, The Judge Advocate General of the Air Force, Chairman of the event and spokesman for the military legal community, followed by a Color Presentation by the Joint Armed Forces Color Guard and a resounding rendition of the National Anthem by the world famous U. S. Army Field Band and Chorus, military observance of Law Day U.S.A. was inaugurated at the inner court of the Pentagon on 1 May 1959. In a ceremony reminiscent of an old-fashioned Fourth of July, area members of the various military services and Defense Department employees took a short time out from the business of running the Nation's military establishment to pay tribute to the body of law under which we live.

The program, sponsored by the Institute of Military Law, the Judge Advocates Association and the Pentagon Chapter of the Federal Bar Association, was conspicuously marked by the inspiring address of Associate Justice Stanley F. Reed, of the U. S. Supreme Court. Justice Reed, commenting on the concept of the Rule of Law and of Government under law, took the opportunity to describe significant developments in the rule of law between nations arising out of the United Nations organization. Attention was also drawn to the body of military law which governs our Armed Forces and the role that

the military lawyer plays in that regard. Mr. Justice Reed's address is set forth in full:

Americans gather today in numerous groups, at the suggestion of our civil and military chief, President Eisenhower, to rededicate ourselves "to the principle of Government under Law." It is a satisfaction to have this opportunity to participate in this ceremonial Law Day. It is gratifying to have this reconfirmation that our citizens, civil and military alike, fully realize that we are a people whose Government thus seeks freedom and justice for all under our Constitution. We cherish our liberties as matters of right, not as grants of a benevolent autocracy.

Today our military forces must necessarily be large. We are no longer isolated from the danger of sudden attack. Modern technology has so contracted the world that infractions of our peace, without time for long preparations, are possible. These forces are our protectors, however, with members drawn generally from our families, not a special military clique for enforcement of military rule. Our Founding Fathers felt little need for standing armies and deprecated their establishment for fear that arrogant militarism might get a foothold here and weaken civilian resistance to military usurpations of power. That danger seems imaginary now and will continue to be, so long as the whole people, will to live in ordered liberty under law.

The law we honor today is the body of governmentally enforceable rules controlling the relations of man with his fellows. International law lies outside that definition except as our courts may adopt as their own the recognized practices for adjudging differences between citizens of different states or nations to settle disagreements as to their respective rights. As has been suggested by the Vice President, Mr. Nixon, and the Attorney General, Mr. Rogers, we would further the rule of law if nations, including ourselves, would now grant a wider jurisdiction to the International Court of Justice, of which our representative, Judge Green H. Hackworth—for many years Legal Adviser to the Department of State—is a member.

The American Bar Association is making an effort through its Committee on World Peace Through Law, under the chairmanship of Charles Rhyne, for such an advance. If we are not ready as yet to submit to binding decisions on treaties, as to matters essentially within our domestic jurisdiction, such as immigration or currency value or exports, we could have advisory opinions of such a court which would be useful as coming from an authority least likely to be influenced by ulterior reasons.

Thoughtful men even in the midst of exacerbating controversies over matters from Berlin to Formosa are actively working to extend the domain of the law into the world's international relations. If there can be accomplished a

world-wide mobilization of men of the law throughout the nations, it will mark a true forward step toward a method for the adjustment of the inevitable frictions that arise in international affairs. Such an effort has especial appeal to our citizens.

It is to be hoped that we are seeing the beginning of the extension, as Wilfred Jenks surmizes in his recent work, of international law, relations between nations, to a "common law of mankind." With individuals of separate nations intermingling in world-wide trade, the creation of international organizations and area treaties such as NATO and the European community, the necessity is obvious. From this necessity springs the Declaration of Human Rights, the effort to agree on the seaward limits of national sovereignty, efforts to settle jurisdiction over Antarctica, and rights in outer space. The rule of law approaches new fields.

There was a striking example of the effectiveness of treaties through the creation of the crime of aggressive war, by the Kellogg-Briand Peace Pact of 1928 to which Germany was a party, applied by the allies at Nuremberg to punish the German leaders who violated it.

We have seen the controversies and misunderstandings between our state sovereignties softened and largely satisfactorily adjusted through the use of judicial decisions to settle disputes. From the vantage point of today we see nothing unusual in having courts settle the boundary lines of States. Even

when the Tidelands decision barred the rich oil stores of adjacent waters from exploitation by bordering states, the decision was accepted as binding until congressional action gave these public lands to the adjacent states. How much better to live under a rule of law where, for example, the waters of the Colorado may be equitably divided between the states that it touches, rather than to be appropriated by the strongest or wasted into the sea.

Our laws are not improvisations to meet unexpected situations but the product of generations of experience that reaches through the centuries. Our military law, too, has that background. The Founding Fathers were not unaware that life in the military forces differs from life among civilians even in peace time. Only too well they knew the necessities for rigorous control during war. So it was that the Articles of Confederation provided that "The United States, in Congress assembled, shall have the sole and exclusive right and power of . . . making rules for the government and regulation of the said land and naval forces, and directing their operations." That is practically identical to our present constitutional provision. In fact Mr. Madison's notes show it was "added from the existing Articles of Confederation." If our national forces had been left to the control of the respective states, as No. 4 of the Federalist points out, we would not have had unity of command or absence of rivalry for military power between the States or sections.

This solicitude for the maintenance of a national army in accordance with the disciplines that experience had shown, persisted through the adoption of our Bill of Rights. Therefore the Fifth Amendment, by specific exception, omits the military forces from the requirement of a Grand Jury indictment, and the Sixth Amendment, by construction in *Ex parte Milligan*, from the requirement of a petit jury. Since these exceptions withdraw from the military forces protections from arbitrary action greatly valued by civilians, they have been strictly construed in favor of the individual by the Supreme Court, as the recent cases of *Toth v. Quarles* and *Reid v. Covert* make plain.

Law is dynamic. It gathers "meaning from experience." The scientific advances of the first half of the twentieth century, with its revolutionary introduction of motors, planes, electronics, its chemical discoveries in drugs and plastics, automation and atomic energy has not and will not leave society and economics unchanged. Nor will law be left unchanged. Certainly the field of law has felt the impact of these new forces, as has Government. But however the tornado may toss the sea, it remains the sea. However strong the pressures of change, the basic concepts of justice remain unimpaired and adaptable to changing circumstances.

Momentous days lie ahead for law and lawyers. Our law must adjust itself not only to the advances of science, as it did when

Causby marked for aerial flights a free space for navigation, or when *Reid v. Covert* extended concepts of our constitutional law as to jury trial in capital cases to include American citizens accompanying the armed forces in foreign lands. The lawyers of the armed forces must continue their labors with an open mind, be earnest in their readiness to learn from past errors, and adjust when experience and reflection show a wiser course. Present rules are at best abstractions from the current norms of society. When words such as reasonable, fair, due process, negligence, or equal protection control judicial interpretation, guided by court precedents and legislation, their meaning will vary with ethical and social experience. The earnest efforts of many minds are needed to continue our life under a rule of law. We made a real contribution toward the rule of law when we accepted judicial determination of disputes between the States of our Union, and concerning the powers of Government under our Constitution. Would not that experience induce us to take the lead in submitting at least many of our international disputes to decision by the International Court of Justice at The Hague? Such a step would brighten the prospect of the achievement of mankind's hope of a World Under Law. It might save what Mr. Justice Birkett called the "supreme international crime" a war of aggression Supreme because that crime contains within itself all of accumulated evil.

It is only comparatively recently that it has been recognized that citizens have rights as well as governments have power, and that only under a rule of law both needs could be satisfied. Since in a Republic, "all the citizens, as such, are equal, and no citizen can rightfully exercise any authority over another, but in virtue of a power constitutionally given by the whole community," machinery was necessary to adjudge rights. The seventeenth century philosophers who taught the theory of the inherent rights of man left unnamed the arbiter whose decision would determine when fundamental rights were invaded by government. Obviously each individual cannot decide that for himself. "Fire burns both in Hellas and Persia; but men's ideas of right and wrong vary from place to place." If we are all to have our way, each would have a universal war against everyone—"bellum omnium contra omnes." Everybody would sit in judgment on everybody. We found our answer in judicial review of actions challenged as unconstitutional.

Despite violent reactions against judicial decisions of constitutional problems that have continued since *Marbury v. Madison*, *M'Culloch v. Maryland*, and *Cohens v. Virginia*, no other solution has received general approval. Judicial review as to the validity of legislative or executive action has difficulties in administration but the alternative of unreviewable action has more.

Few governments allow judicial review on the issue of the consti-

tutionality either of legislation or of executive action. The power of courts to pass upon the conformity of such actions with constitutional requirements was an American contribution to the evolution of democracy. Order requires that the power of decision as to constitutionality rest in some body. Our choice has been the courts, which can only in-

terpret after open hearing, with full discussion, and a reasoned opinion.

We lawyers can be proud of the contributions of law to liberty and peace. All of us look forward hopefully to the perpetuation of our Democracy through a fair administration of justice. May each member of our profession contribute his full powers to that high purpose.

In Memoriam

The members of the Judge Advocates Association profoundly regret the passing of the following members whose deaths are here reported, and extend to the surviving families, relatives, and friends deepest sympathy.

Colonel Sam M. Driver of Spokane, Washington. Colonel Driver for some years prior to his death was United States District Judge in Washington State.

Colonel Patrick H. Ford of Los Angeles, California.

Major Joseph K. Grigsby of Decatur, Illinois, who at his death was on

duty as Assistant SJA of American Forces Pacific.

Brigadier General Lawrence H. Hedrick of Coral Gables, Florida.

Commander Norvelle R. Leigh III, who at his death served as Legal Officer for the Commander of Naval Forces in Japan.

Colonel Terry A. Lyon of Fayetteville, North Carolina.

Colonel Charles F. Welch of Washington, D. C.

Major Charles L. Wolfe of Henderson, Texas.



PROPOSED AMENDMENTS TO THE UNIFORM CODE

By Colonel James K. Gaynor *

The Uniform Code of Military Justice has not been amended since its enactment as a part of an act of May 5, 1950, except for minor changes in wording when it became sections 801-940 of title 10 in the enactment, in 1956, of titles 10 and 32 of the United States Code in codified form.

Nevertheless, each year the annual report of the Court of Military Appeals and the Judge Advocates General, required by Article 67(g) to include recommendations for amendments to the Uniform Code which are considered appropriate, has included recommendations for changes.

A proposal which included the recommendations of the Court and the Judge Advocates General was submitted to the 84th Congress by the Department of Defense. It was introduced in the House as H.R. 6583, and hearings were held in 1956 by the Brooks Subcommittee of the House Armed Services Committee. The bill was not enacted into law.

A somewhat similar proposal was submitted to the 85th Congress by the Department of Defense, but it was not introduced in either house

of the Congress. The proposal was retained in the Department of Defense legislative program for the 86th Congress.

Meanwhile, a committee of the American Legion drafted sweeping amendments to the Uniform Code for submission to the Congress. Playing a prominent part in the drafting of the Legion proposal was Brigadier General Franklin Riter, JAGC-USAR, Retired.

The Special Subcommittee on Military Justice of the American Bar Association studied both the Department of Defense proposal and the Legion proposal and reported to the House of Delegates at the February 1959 meeting in Chicago. The committee recommended that the Association support the Department of Defense proposal, and this recommendation was adopted by the house. The committee also recommended that the Association support some of the principles of the Legion proposal, but action upon this recommendation was deferred until the annual meeting of the Association in Miami in August 1959.

* Colonel Gaynor, an Army judge advocate, is Chief of the Legislative Division, Office of the Chief of Legislative Liaison, Office of the Secretary of the Army. All statements and opinions in this article are those of the author and do not necessarily reflect the official position of the Department of Defense.

The Department of Defense proposal was introduced in the Congress on January 26, 1959, by Chairman Carl Vinson (D.-Ga.) of the House Armed Services Committee and became H.R. 3387. The American Legion proposal was introduced the following day by Congressman Overton Brooks (D.-La.) and became H.R. 3455. Congressman Brooks, who was chairman of the subcommittee which held hearings on Uniform Code amendments in 1956, relinquished his membership on the House Armed Services Committee early in 1959 to become chairman of the House Science and Astronautics Committee.

Chairman Vinson appointed a special subcommittee of the House Armed Services Committee to hold hearings on H.R. 3387 and H.R. 3455. Chairman of the subcommittee is Congressman Paul J. Kilday (D.-Tex.). Other members are Congressmen L. Mendel Rivers (D.-S.C.), Richard E. Lankford (D.-Md.), Toby Morris (D.-Okla.), Samuel S. Stratton (D.-N.Y.), William H. Bates (R.-Mass.), William G. Bray (R.-Ind.), Frank Osmer, Jr. (R.-N.J.), and

Frank J. Becker (R.-N.Y.). Counsel of the subcommittee is John R. Blandford, a lieutenant-colonel in the Marine Corps reserve and an experienced and capable lawyer whose World War II service was as a line officer.

From the *Congressional Record*, it is learned that of the nine subcommittee members, five are lawyers. Six of the subcommittee members have been in the military service; two were enlisted men in World War I, three were officers in World War II, and one served as an officer both in World War II and in the Korean conflict.

Chairman Kilday has said that hearings on the bills will not begin until the subcommittee has had an opportunity to make itself fully familiar with the problems involved. It is possible that hearings in the House committee will not be completed until some time in 1960.

The chart on the following pages indicates the provisions of the present law affected by the proposals, and the amending provisions of each of the bills.

The Judge Advocates Association is a national legal society and an affiliated organization of the American Bar Association. Members of the legal profession who are serving, or, who have honorably served in any component of the Armed Forces are eligible for membership. Annual dues are \$6.00 per year. Applications for membership may be directed to the Association at its national headquarters, Denrike Building, Washington 5, D. C.

PRESENT PROVISION

DOD PROPOSAL (H.R. 3387)

AMERICAN LEGION
PROPOSAL (H.R. 3455)

ART 1—10 USC 801—
DEFINITIONS

“Law Officer” defined as an official of a general court-martial

[Although this meaning generally has been understood, such a provision is not presently spelled out.]

Adds new subsection to include a temporary commander, successor in command, and any officer exercising general court-martial jurisdiction within definition of “convening authority”

Adds special court-martial within definition of “law officer”

ART 6—10 USC 806—JUDGE
ADVOCATES AND LEGAL
OFFICERS

Under present law, although not provided in this article, a judge advocate or legal officer is rated for efficiency by his commanding officer, who usually is a line officer.

Provides that judge advocates and legal officers, except when serving on boards of review, shall be rated for efficiency only by their Judge Advocate General (even though performing non-military justice duties).

ART 12—10 USC 812—
CONFINEMENT WITH ENEMY
PRISONERS PROHIBITED

No member of armed forces may be confined with enemy prisoners

Same, but permits confinement in U.S. confinement facilities with

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No member of armed forces may be confined with enemy prisoners

Same, but permits confinement in U.S. confinement facilities with

or other foreign nationals who are not members of the armed forces.

members of armed forces of friendly nations

ART 14—10 USC 814—
DELIVERY OF OFFENDERS
TO CIVIL AUTHORITIES

Secretary may prescribe regulations to permit service member accused of civil offense to be delivered to civil authorities upon request of civil authorities.

Except in time of war, service member accused of civil offense must be delivered to civil authorities for trial on their request.

[There presently is no similar restriction]

Except in time of war, no person shall be tried for murder, homicide, rape, larceny, or other civilian-type offenses if, prior to arraignment, civil authority requests accused for civilian trial for substantially similar offense.

ART 15—10 USC 815—
COMMANDING OFFICER'S
NON-JUDICIAL PUNISHMENT

Officer (but not an enlisted man) can be given forfeiture of half of one month's pay. (Can only be given by an officer with general court jurisdiction.)

Limit increased to one-half of two months' pay.

Pay forfeiture not permissible non-judicial punishment for enlisted person.

Forfeiture of one-half of one month's pay authorized for enlisted person if imposed by field-grade or general officer.

Confinement not permissible non-judicial punishment for enlisted person (unless aboard a vessel).

Confinement of seven consecutive days authorized for enlisted person if imposed by field-grade or general officer.

ART 16—10 USC 816—COURTS-MARTIAL CLASSIFIED

Special court-martial consists of three or more officers.

Special court-martial may consist of a single officer (certified by The Judge Advocate General as qualified), provided the accused requests in writing, before the court is convened but after he has learned the identity of the proposed single-officer court and has been advised by counsel, and provided the convening authority agrees.

A law officer is not now provided for a special court-martial.

Requires a law officer for a special court-martial.

ART 19—10 USC 819— JURISDICTION OF SPECIAL COURTS-MARTIAL

A special court-martial presently may adjudge a bad-conduct discharge, provided a verbatim transcript is made.

[The Army has forbidden this by restricting use of reporter for special court-martial.]

Provides that a special court-martial shall not be authorized to adjudge any form of discharge.

ART 22—10 USC 822—WHO MAY CONVENE GENERAL COURTS-MARTIAL

and

ART 23—10 USC 823—WHO MAY CONVENE SPECIAL COURTS-MARTIAL

If commanding officer is accuser, court shall be convened by superior competent authority, and may in any case be convened by superior competent authority

If commanding officer is accuser (except Pres. of U.S.), court must be convened by a competent authority not subordinate in command or grade to accuser, and may in any case be convened by superior competent authority.

ART 24—10 USC 824—WHO
MAY CONVENE SUMMARY
COURTS-MARTIAL

When only one commissioned officer is with a command or detachment, he shall be the summary court. However, a summary court may be convened by a superior commander when he considers it desirable.

When only one commissioned officer is present with a command or detachment, summary courts martial shall be convened by superior competent authority.

ART 25—10 USC 825—WHO
MAY SERVE ON COURTS-
MARTIAL

Any commissioned officer on active duty may serve on any court-martial

Officer who serves as single-officer special court-martial must be a qualified lawyer and must be certified by The Judge Advocate General as qualified.

Any commissioned officer on active duty may serve on any general or special court-martial.

[This is to prevent the only officer of a command, or one not certified as qualified, from serving as a summary court.]

One is not eligible to serve as member of general or special court-martial if he is the accuser, a witness for the prosecution, or he acted as investigating officer or counsel in that case.

One is not eligible to serve as member of *any* court-martial if he is the accuser, a witness for the prosecution, or he acted as investigating officer or counsel in that case.

Any commissioned officer may serve as a summary court-martial.

Summary court must be a lawyer certified by The Judge Advocate General as qualified to serve as law officer of a general court-martial.

ART 26—10 USC 826—LAW
OFFICER OF A GENERAL
COURT-MARTIAL

A lawyer, certified by The Judge Advocate General as qualified, must be appointed for each general court-martial.

A lawyer certified by The Judge Advocate General as qualified, must be appointed for each general and *special* court-martial.

The law officer of a general court-martial shall not consult with members of the court, other than to assist them in putting the findings in proper form, except in the presence of the accused and both counsel, and the law officer shall not vote with members of the court.

The law officer of a general or *special* court-martial may not consult with members of the court except in the presence of the accused, both counsel, and reporter, and the law officer shall not vote with members of the court.

[The law officer no longer can assist the court in putting the findings in proper form.]

[Presently, the senior member of a court-martial, other than the law officer, presides.]

The law officer shall preside over all proceedings of general and special courts-martial except when closed for deliberation or voting, and shall control and direct the conduct of all proceedings.

ART 27—10 USC 827—DETAIL
OF TRIAL COUNSEL AND
DEFENSE COUNSEL

[Neither trial counsel nor defense counsel presently is provided for a summary court-martial.]

An accused must be provided a defense counsel before a summary court-martial, if he so requests.

ART 29—10 USC 829—ABSENT
AND ADDITIONAL MEMBERS

If new members of a special court-martial are added after evidence has been introduced, transcript of such evidence (or a stipulation as to the evidence) must be read to the court in the presence of the accused and counsel.

Reading of the transcript or stipulation also must be in the presence of the law officer of the special court-martial.

ART 36—10 USC 836—
PRESIDENT MAY PRESCRIBE
RULES

The procedure, including modes of proof, in cases before courts-martial and other military tribunals may be prescribed by the President by regulations.

The rules of procedure in cases before courts-martial may be prescribed by the Court of Military Appeals.

Such regulations shall, as far as practicable, apply principles of law

Such rules of procedure shall apply principles of law and rules

and rules of evidence generally recognized for criminal cases in U.S. district courts, insofar as not contra to the UCMJ.

of evidence applicable to criminal cases in the U.S. District Court for the District of Columbia, insofar as not contra to the UCMJ.

[Presently, there is no comparable provision.]

No rule or regulation applicable to courts-martial shall define, interpret, or set forth the elements of any offense under the UCMJ except a purely military offense not defined by the UCMJ; in this latter case, The Judge Advocates General may jointly prescribe the rule.

[Presently, a change in the rules of procedure—i.e., the Manual for Courts-Martial—is effected by an Executive Order.]

No rule or regulation applicable to courts-martial is effective until adopted by formal order of the Court of Military Appeals and approved by the President.

The procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals may be prescribed by the President by regulations which shall, so far as practicable, apply principles of law and rules of evidence generally recognized by U.S. district courts, insofar as not contra to the UCMJ.

[As indicated above, rule-making power for courts-martial shall be vested in the Court of Military Appeals, using the U.S. District Court for the District of Columbia as the guide; but this bill continues the present law with respect to courts of inquiry, military commissions, and other military tribunals.]

All rules and regulations made under this article shall be uniform insofar as practicable and shall be reported to Congress.

[This provision is continued in effect, but it is to be noted that although the Court of Military Appeals may, with the approval of the President, prescribe rules of evidence and procedure for courts-martial, such rules nevertheless must be reported to Congress.]

[There is no comparable provision on statutory construction. Rules of evidence used in U.S. district courts are to be applied insofar as practicable.]

The provisions of the UCMJ shall be construed and interpreted in accordance with the rules of statutory construction applied in the Federal courts. Except where contrary to or inconsistent with the UCMJ, all questions of evidence in courts-martial shall be applied as in criminal cases in U. S. district courts.

[The second sentence refers to actual application by a court-martial, as distinguished from rules which may be adopted by the Court of Military Appeals with Presidential approval.]

ART 37—10 USC 837—

UNLAWFULLY INFLUENCING
ACTION OF COURT

No court-martial convening authority, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, law officer, or counsel with respect to findings, sentence, or any other judicial function.

Includes, within those who must not censure, reprimand, or admonish, "any officer serving on the staffs thereof."

ART 38—10 USC 838—DUTIES
OF TRIAL COUNSEL AND
DEFENSE COUNSEL

Trial counsel is responsible for preparation of the proceedings of a court-martial under the direction of the court.

Trial counsel responsible for preparation of the proceedings under the direction of the law officer.

Accused has right to defense counsel before a general or special court-martial.

Accused has right to a defense counsel, provided for him, before any court-martial.

If accused has counsel of his own selection and does not desire services of appointed defense counsel, latter shall be excused by the president of the court.

If accused has counsel of his own selection and does not desire services of appointed defense counsel, latter shall be excused by the law officer or the summary court.

ART 39—10 USC 839—
SESSIONS

After a general court has finally voted on the findings, the court may request the law officer (accompanied by the reporter) to go into the closed session and assist in putting the findings in proper form.

Law officer is not permitted to enter closed session of the court for *any* purpose.

All proceedings other than closed sessions, including consultation of court with counsel or law officer, shall be made part of the record and shall be in presence of the accused, both counsel, and in general court cases, the law officer.

[Wording changed to include law officer for a special court-martial.]

ART 40—10 USC 840—
CONTINUANCES

A court-martial may grant continuances as often as appears just.

The law officer or summary court may grant continuances as often as appears just.

ART 41—10 USC 841—
CHALLENGES

Members of a general or special court-martial and the law officer

Members of a general or special court-martial, and the law officer

of a general court-martial may be challenged for cause.

of either court, may be challenged for cause.

The court shall determine the relevancy and validity of challenges for cause.

The law officer shall determine the relevancy and validity of challenges for cause.

ART 51—10 USC 851—VOTING
AND RULINGS

Voting by court on questions of challenge, findings, and sentence shall be by secret written ballot.

[Would remove the court's authority to vote on challenge.]

The junior member of the court shall count the votes and the president of the court shall check the count.

[The senior member of the court, rather than the president, shall check the count.]

The law officer of a general court-martial and the president of a special court-martial shall rule upon interlocutory questions, other than challenges, arising during the proceedings.

The law officer of a general or special court-martial shall rule upon all interlocutory questions arising during the proceedings.

Any ruling made by the law officer of a general court-martial other than a motion for a finding of not guilty or a question of the accused's sanity is final.

Ruling by law officer of general court-martial on motion for finding of not guilty is final.

Ruling by law officer of general or special court-martial on motion for finding of not guilty is final.

The law officer may change his ruling at any time during the trial.

The law officer may change his ruling at any time during the trial except for a motion for finding of not guilty which was granted.

The law officer may change his ruling at any time during the trial except for a motion for finding of not guilty which was granted.

Unless the ruling is final, if any member of the court objects to a ruling, the court shall close and vote.

[It is made clear that the court closes and votes on a ruling of the law officer only if the ruling relates to the accused's sanity.]

Prior to voting on the findings, the law officer of a general court-martial or the president of a special court-martial shall give appropriate instructions to the court.

Prior to voting on the findings, the law officer of a general or special court-martial shall give appropriate instructions to the court.

[A single-officer special court-martial is not presently authorized.]

A single-officer special court-martial shall determine all questions of law and fact and, if the accused is convicted, adjudge the sentence.

[The court presently votes upon challenges; and, if a member objects to the ruling, it votes upon a motion for a finding of not guilty.]

[The court no longer may vote upon challenges or a motion for a finding of not guilty.]

ART 54—10 USC 854—RECORD OF TRIAL

A record of trial shall be kept for each general court-martial, which shall be signed by the president and the law officer. A record shall be kept for each special and summary court-martial which shall include only the matter provided by regulations issued by the President and shall be signed as directed by such regulations. [A verbatim record now is required for each general court-martial, and for each special court-martial if a punitive discharge is adjudged. The Army does not permit verbatim records by special courts, so such courts cannot give bad-conduct discharges.]

A record of trial shall be kept for each court-martial. If the sentence includes a bad-conduct discharge or is greater than could be adjudged by a special court-martial, the record shall be verbatim and shall be signed as directed by regulations. All other records shall contain only such matter as is directed by regulations. [The effect is that unless a bad-conduct discharge is adjudged, a verbatim record need not be kept even for a general court-martial if the sentence is no greater than could have been adjudged by a special court-martial. Furthermore, all records of trial are to be signed as regulations prescribe, rather than according to mandatory provisions.]

A record of trial shall be kept for each general and special court-martial, which shall be signed by the senior member of the court and the law officer. A record shall be kept for each summary court-martial which shall include only the matter provided by regulations issued by the President and shall be signed as directed by such regulations. [The effect of this is to require a verbatim record for special as well as general courts-martial.]

A copy of the record of trial, for each general and special court-martial, shall be given to the accused as soon as authenticated.

[The only change is that if a verbatim record of trial by general court-martial is not required, the accused may buy a verbatim record under such regulations as the President may issue.]

ART 57—10 USC 857—
EFFECTIVE DATE OF
SENTENCES

[Although not presently specifically covered in the UCMJ, it was held in U.S. v. Bigger, 2 USCMA 297, 8 CMR 97 (1953), that a death sentence includes dishonorable discharge.]

When a sentence, as approved, includes both forfeiture of pay and confinement (and the confinement is not suspended), the forfeiture may be applied to any pay or allowances due on or after the action of the convening authority.

ART 65—10 USC 865—
DISPOSITION OF RECORDS
AFTER REVIEW BY THE
CONVENING AUTHORITY

After action by the convening authority in a general court-martial case, the record of trial, action of the convening authority, and review of the staff judge advocate or legal officer shall be sent to The Judge Advocate General.

A sentence to death includes forfeiture of all pay and allowances, and dishonorable discharge.

In a death sentence, the total forfeitures may be applied to all pay or allowances due on or after the action of the convening authority.

The record of trial (including action of the convening authority and review by the staff judge advocate) need be sent to The Judge Advocate General, in a general court-martial case, only when the sentence as approved includes a

bad-conduct discharge or a sentence greater than could have been adjudged by a special court-martial.

If an approved special court-martial sentence includes a bad-conduct discharge (suspended or not), the record shall be sent (1) to the general court-martial convening authority for review by his staff judge advocate or legal officer, or (2) to The Judge Advocate General for review by a board of review. If the sentence still has a bad-conduct discharge (suspended or not) after action by the general court-martial convening authority, the record shall be sent to The Judge Advocate General for review by a board of review.

All reference to review by a board of review is deleted.

This subsection is entirely deleted.

All other special and summary court-martial records shall be reviewed by a judge advocate of the Army or Air Force, a law specialist of the Navy, a law specialist or lawyer of the Coast Guard or Treasury Department, and shall be disposed of as directed by regulations.

With respect to the Navy, the reviewer need not be a law specialist so long as he is a member of the bar of a federal court or highest court of a state; with respect to the Coast Guard, "member of the bar of a Federal court or the highest court of a State" is substituted for "lawyer." Reference to disposition of records is deleted.

[The present provision renumbered because of the above deletion.] The word "other" is deleted, since all special and summary court-martial records would be reviewed under this provision.

ART 66—10 USC 866—REVIEW
BY BOARD OF REVIEW

Each Judge Advocate General shall constitute in his office one or more boards of review, each composed of not less than three commissioned officers or civilians, each of whom must be a member of the bar of a federal court or the highest court of a state.

The Secretary of Defense shall constitute one or more boards of review for the armed forces (Secretary of the Treasury shall constitute for Coast Guard when not serving with Navy). Shall be composed of not less than three officers or civilians, members of bar of a federal court or the highest court of a state. A commissioned officer appointed to a board can be relieved only by the Secretary of Defense, and shall be exempt from 10 USC 3031(c) [limitation on number of officers on Department of Army staff], 10 USC 3031(d) [Department of the Army staff assignment limited to four years of any six-year period], 10 USC 8031(c), and 10 USC 8031(d) [corresponding limitations upon Air Force assignments]. Navy or Marine officer on board of review shall be eligible for promotion without regard to sea duty or foreign service requirements.

[There is no present requirement that boards of review sit in Washington. During World War II, the Army had boards of review in some of the overseas theaters.]

The Secretary of Defense may establish boards of review within or outside the United States.

[Board of review members presently are rated for efficiency or fitness by superiors within the Offices of The Judge Advocates General.]

Officer members of boards of review shall be rated for efficiency or fitness by the Secretary of Defense.

The Judge Advocate General shall refer, for board of review action, every case where the approved sentence affects a general or flag officer; includes death of the accused; involves dismissal of a commissioned officer, cadet, or midshipman; or includes punitive discharge or confinement for a year or more.

Removes, from the cases which must be referred for board of review action, any case where accused entered guilty plea to all offenses of which convicted and signed waiver of board of review action after action by convening authority.

If a board of review orders a rehearing, the case must be returned to the convening authority for rehearing or dismissal of the charges.

The Judge Advocate General may dismiss the charges, after a rehearing has been ordered, if it is determined that a rehearing is impracticable.

ART 67—10 USC 867—REVIEW
BY THE COURT OF
MILITARY APPEALS

The Court of Military Appeals may act only with respect to the findings approved or set aside by the board of review; the Court need act, in a case certified by a Judge Advocate General, only as to certified questions; the Court need act, in a case reviewed on petition of the accused, only as to issues the Court specifies in its grant of review; and the Court is authorized to act only on matters of law.

If the Court of Military Appeals orders a rehearing, and a rehearing is found to be impracticable, it is the convening authority who is authorized to dismiss the charges.

ART 69—10 USC 869—REVIEW
IN THE OFFICE OF THE
JUDGE ADVOCATE GENERAL

Any general court-martial case where there is a finding of guilty and a sentence, which is not required to be sent to a board of review, shall be examined in the Office of The Judge Advocate General.

In an examined case, if any part of the findings or sentence is not supported by law—or if The Judge Advocate General so directs—the case shall be referred to a board of review.

The Judge Advocate General may dismiss the charges if the Court of Military Appeals orders a rehearing and a rehearing is determined to be impracticable.

If a record of trial is forwarded to The Judge Advocate General under Art. 65 [Disposition of records after action by convening authority], and appellate review is not provided by Art. 65 [under the proposed change to Art. 65, the record of trial of a general or special court-martial case must be sent to The Judge Advocate General only if the sentence includes a bad-conduct discharge or greater punishment than a special court-martial can adjudge] or Art. 66 [which specifies the cases requiring board of review action], the record shall be examined in the Office of The Judge Advocate General.

In an examined case, if any part of the findings or sentence is not supported by law, the case shall be referred to a board of review or The Judge Advocate General may affirm in part, order a rehearing, or dismiss the charges.

The Court of Military Appeals may affirm only such findings of guilty as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, the Court may weigh evidence, judge credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

ART 71—10 USC 871—
EXECUTION OF SENTENCE:
SUSPENSION OF SENTENCE

No sentence extending to the dismissal of a commissioned officer (other than a general or flag officer), cadet, or midshipman may be executed until approved by the Secretary concerned, or such Under Secretary or Assistant Secretary as may be designated by him.

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

No sentence which includes a punitive discharge (which has not been suspended), or confinement of a year or more, shall be executed until affirmed by a board of review and, in cases before it, the Court of Military Appeals.

That part of a sentence involving punitive discharge shall not be executed until approved by The Judge Advocate General or affirmed by an board of review (as the case may be), or affirmed by the Court of Military Appeals (in cases reviewed by it).

All other court-martial sentences may be ordered executed by the convening authority when he approves them (unless he suspends the sentence).

All other court-martial sentences *and parts of sentences* may be ordered executed by the convening authority when he approves them (unless he suspends the sentence).

ART 73—10 USC 873—
PETITION FOR A NEW TRIAL

Petition for new trial, where sentence includes death, punitive discharge, or confinement for a year or more, may be submitted to The Judge Advocate General within one year after approval by the convening authority.

Petition for new trial may be submitted within *two years* after approval by the convening authority.

If case is pending before a board of review or the Court of Military Appeals, the petition shall be sent to the board or Court for action; otherwise, The Judge Advocate General shall take the action. [The only remedy is a new trial.]

The board or Court may grant a new trial in whole or in part, or it may take the action it is authorized to take in other cases before it. The Judge Advocate General may grant a new trial in whole or in part, or he may vacate or modify the sentence in whole or in part.

ART 95—10 USC 895—
RESISTANCE, BREACH OF
ARREST, AND ESCAPE

Escape from "custody or confinement" is an offense.

Offense changed to escape from "physical restraint lawfully imposed."

ART 98—10 USC 898—
NONCOMPLIANCE WITH
PROCEDURAL RULES

It is a military offense (1) to unnecessarily delay disposition of a case, or (2) failure to comply with procedural rules.

ART 123a—10 USC 895a—
MAKING, DRAWING, OR
UTTERING CHECK, DRAFT,
OR ORDER WITHOUT
SUFFICIENT FUNDS

[Bad check offenses presently must be prosecuted under Art. 121 (larceny), 133 (conduct unbecoming an officer and gentleman) or 134 (conduct prejudicial to discipline or discreditable to the service). The proposed article is similar to the District of Columbia bad-check statute.]

[A new punitive article.] "Any person subject to this chapter who—(1) for the procurement of any article or thing of value; (2) for the payment of any past-due obligation; or (3) for any purpose with intent to deceive or 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 of insufficient funds of the maker or drawer in the drawee's possession or control, is prima facie evidence of his intent to defraud and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentment. In this section the word 'credit' means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order."

An additional clause specifically makes it a military offense to fail to deliver an accused to the civil authorities as set forth in the change to Art. 14 (10 USC 814) included in this proposal.

PRESENT PROVISION

DOD PROPOSAL (H.R. 3387)

AMERICAN LEGION
PROPOSAL (H.R. 3455)

ART 118—10 USC 918—
MURDER

[There is no limitation as to the place of the murder or whether war or peace time.]

Prohibits trial by court-martial for murder committed in U.S. in time of peace.

ART 120—10 USC 920—RAPE

[There is no limitation as to the place of the rape or whether war or peace.]

Prohibits trial by court-martial for rape committed in U.S. in time of peace.

ART 136—10 USC 936—
AUTHORITY TO ADMINISTER
OATHS AND TO ACT AS
NOTARY

[Various persons are listed who are authorized to administer oaths: All judge advocates of the Army and Air Force, all law specialists, all summary courts-martial, etc.]

Adds, to those authorized to administer oaths or act as notaries, the law officer, trial counsel, and assistant trial counsel of all general and special courts-martial.

The American Legion proposal, H.R. 3455, includes a number of other provisions which do not relate directly to the Uniform Code of Military Justice. A brief summary of these provisions is as follows:

(1) The Judge Advocates General shall not be under the supervision of the Chiefs of Staff or the Chief of Naval Operations, but shall be responsible to the General Counsel of the Department of Defense.

(2) Judge Advocates of the Army and Air Force, and Navy officers designated for "special duty (law)," shall be commanded only by the Judge Advocate General or other judge advocates or law specialists.

(3) Selection boards for the promotion of judge advocates or law specialists shall consist, insofar as practicable, of judge advocates or law specialists.

(4) A distinctive insignia shall be prescribed for judge advocates and law specialists.

(5) Marine Corps officers who are admitted to the bar of the highest court of a state or a federal court may transfer to the Navy for special duty (law).

(6) No Navy officer shall have his designation of "special duty (law)" removed without his consent.

(7) The federal criminal code shall be amended by inserting the following in title 18 as section 1509: "Whoever censures, reprimands, admonishes or endeavors to coerce or

improperly influence, directly or indirectly, any court-martial, court of inquiry, military commission, or any other military tribunal or board or reviewing authority, or any member, law officer, or counsel thereof with respect to the due and proper performance of its or his official duties or functions shall be fined not more than \$5,000 or imprisoned for not more than five years, or both."

In addition to the Department of Defense proposal and the American Legion proposal for amendment of the Uniform Code of Military Justice, four other bills have been introduced in the 86th Congress to amend the Uniform Code. These are as follows:

S. 288, introduced January 14, 1959, by Senator Thurmond (D.-S.C.), would amend Article 46 to require the service of a court-martial process by a United States marshal if the person to be served is within the United States and is not subject to military law.

H.R. 4040, introduced February 4, 1959, by Congressman Philbin (D.-Mass.), would designate the Court of Military Appeals as the Supreme Court of Military Appeals.

H.R. 5081, introduced February 26, 1959, by Congressman Riley (D.-S.C.), is identical to S. 288.

H.R. 6072, introduced March 25, 1959, by Congressman Brewster (D.-Md.), would require a verbatim record of trial for all general and special courts-martial.

SUPREME COURT TO CONSIDER LIMITS OF MILITARY JURISDICTION OF CIVILIANS

In *Reid v. Covert*, 354 US 1, withdrawing, on rehearing, its earlier opinions in *Kinsella v. Krueger*, 351 US 470, and *Reid v. Covert*, 351 US 487, the Supreme Court held that civilian dependents of servicemen could not constitutionally be tried by court-martial for capital offenses.

At its next Term, the Court will consider how far that doctrine extends in a quartet of cases.

In *Guagliardo v. McElroy*, the question concerns the right of the Air Force to court-martial a civilian employee for a non-capital offense. The United States Court of Appeals for the District of Columbia Circuit held that Section 2 (11) UCMJ was not separable and reversed the judgment of the District Court which had denied the employee's petition for habeas corpus 259F 2nd 957. Certiorari was granted on the Government's petition.

In *Kinsella v. Singleton*, the issue is whether a civilian defendant may be tried for a non-capital offense. The Court of Military Appeals sustained the jurisdiction (*U.S. v. Dial*, 9 US CMA 700, 26 CMR 480) but on habeas corpus, the woman was released 164F SUPP 707. The Government took a direct appeal, and the Supreme Court noted probable jurisdiction.

In *Wilson v. Bohlander*, another civilian employee was tried for a non-capital offense. Again, the Court of Military Appeals sustained the jurisdiction (*U.S. v. Wilson*, 9 US CMA 60, 25 CMR 322), but in this instance, relief on habeas corpus was denied 167F SUPP 791 Wilson's petition for certiorari before judgment in the Court of Appeals was granted. One feature of the Wilson Case, not passed on below, is that it also involves the question arising from the circumstance that his offense was committed in the United States zone of Berlin as to whether the occupied territory doctrine of *Madsen v. Consello*, 343 US 341 is involved.

The fourth case, *Gresham v. Taylor*, involves a civilian employee convicted of a capital offense. The Third Circuit refused to follow the D.C. Circuit's ruling in *Guagliardo* 261F 2nd 204, and the Supreme Court granted the employee's petition.

All four cases will be argued during the October, 1959 Term. Col. Frederick Bernays Wiener, former President of the Association, who was counsel in the Covert and Krueger cases in 1957 is representing the relators in the Singleton and Wilson cases in the Supreme Court.

FUNDAMENTAL FAIRNESS IN MILITARY LAW

By Captain Joe H. Munster, USN

Some months ago, Colonel Frederick Bernays Wiener, a distinguished military lawyer, expressed in oral address and in print, some fundamental doubts concerning the concept and efficiency of the system of military justice which is presently in effect in all branches of the armed forces of the United States.¹ He listed three basic mistakes in the drafting of the Uniform Code of Military Justice, which is the statutory foundation for our present system of military justice. Because the writer feels that Colonel Wiener is mistaken in his evaluation of the shortcomings of that controversial subject, military law, he feels it important the contrary view be offered for consideration. That is the purpose of this article.

General Sherman's oft-quoted statement that the objects of military and civilian law are as far apart as the poles, relied upon by Colonel Wiener as his preliminary statement of fundamental principles, is, of course, valid to a certain degree. Thus, that "An army is a collection of armed men obliged to obey

one man" and that "every enactment, every change of rule which impairs this principle weakens the army, impairs its value, and defeats the very object of its existence," are obviously true. General Sherman did not, however, advocate a complete and absolute absence of change, but decried only those changes which impaired the principle of immediate and unthinking discipline. He did, on the other hand, assert that the traditions of civilian lawyers are antagonistic to this principle, which is, at best, a rather sweeping generalization. Certainly, if military law were to be revised to permit unfettered freedom of speech, absolute freedom of selecting a duty assignment, immunity from the necessity of compliance with orders, and the like, which might conceivably be within the "traditions of civilian lawyers", it would destroy the effectiveness of any fighting force. On the other hand, procedural devices which are designed to insure fundamental fairness in adjudging the sanctions against misconduct in a military community would not seem to have such a disastrous effect.

¹ Colonel Wiener addressed the Judge Advocate Association at Los Angeles, California on August 26, 1958. The full text of his remarks was published in 27 JAJ 11. A similar article by the same author appeared in the September 1958 issue of "Army."

All intelligent officers recognize that "discipline", that is, the unquestioning obedience of a military person to the orders and desires of his superior, is not completely the product of the authority of the superior to impose sanctions in the event of disobedience. On the other hand, the effectiveness of a fighting man is affected by such intangibles as the respect which he holds for his superior, his day-to-day morale, his dedication to the aims and principles of his community and his nation, his desires for personal recognition, his military career motivations, and, of course, his desire to stay out of serious trouble. To put it another way, the deterrent effect of the prospect of punishment for breaches of discipline is only one of many factors which make a particular group of men "well-disciplined". This has been more and more recognized in recent years. On the other hand, the greater the personal authority of a commander, the extreme of which would be to possess the personal right to impose punishment to and including death upon an offender, the greater the awe, and perhaps fear, in which such commander will be held by his troops, as well as his immediate subordinates; and this awe or fear will insure, among a certain percentage of prospective miscreants, an alacritous obedience. But such "discipline" may also result in mutinies, demoralization, and clandestine disobedience.

The best possible system would grant to the commander of troops the authority to impose punishment, or to cause punishment to be im-

posed, commensurate with his responsibilities. It would recognize that if the commander concerned has failed to obtain obedience or discipline without the use of severe punishment, the employment of punitive sanction would add little to the effectiveness of his command. Likewise, it would recognize that a substantial factor in the maintenance of discipline is absolute fairness, or at least guarantees of the least possible unfairness. In other words, the best system of military justice is one in which the commander of troops is given the greatest authority possible consistent with the most effective insurance of fairness and impartiality in the imposition of punishment. This is exactly what the Uniform Code of Military Justice sought to accomplish. Instead of the drafters of the Code being ignorant of the principles of discipline, as suggested by Colonel Weiner, the Congressional hearings reveal that they spent many hours and considered most deeply and conscientiously the compromise of the least limitation on the powers of a commander that was consistent with substantial guarantees of fairness.

Despite the possibly desirable end of maintaining the stature and prestige of a commander at the highest level by according him unlimited punishment powers, the fact remains, that it is only when discipline has failed that resort must be made to the judicial, or court-martial process; and, at this stage, identification of the commander with such process can be effective only if potential unfairness is recognized, for

interference with the judicial process can have no other purpose than influence or coercive action. Thus, the long-standing philosophy held by military leaders, that the military judicial system is *only* an instrument of command, defeats by its own terms, the concept of fundamental fairness. This was recognized by the late James Forrestal in his precept to the committee that drafted the Uniform Code of Military Justice, when he made it perfectly clear that the court martial system to be proposed was not to be designed as an instrumentality of the military commander for the enforcement of discipline, but rather as a judicial system as free from the influence of the military commander as practical considerations would permit.

Most readers of the various studies and reports on military justice made after the end of hostilities in World War II will agree that a court-martial system designed as an instrumentality of command, and administered exclusively by the military, as apparently recommended by Colonel Wiener, would not only present the potential of unfairness, but would also present, in far too many cases, the actuality of unfairness. There are reported numerous instances of arbitrary and definitely unfair trials; and, one commander even went so far as to state, "only in rare and complicated cases should a court determine the facts—the commander should determine the facts; the normal function of the court should be attending to a guilty case . . . except perhaps in death cases." Yet, would Colonel Wiener

have us return to the "fairness" of discipline self-administered by the services?

The cases cited by Colonel Wiener as reasons for his desire for a return to discipline self-administered by the services, are unbelievably illogical when cited for that purpose. First, he says that the opinions of the Court of Military Appeals dealing with standards of basic fairness never seem to reach the persons most affected thereby. If standards of basic fairness are understandable to a commander charged with self-administration of discipline, why are they incomprehensible to a commander functioning under the Uniform Code of Military Justice. Further, the great majority of such commanders, . . . those who are most affected by the decisions of the Court of Military Appeals, have lawyers on their staffs to advise and assist them in learning the principles of fundamental fairness. Still further, it appears peculiar that a system should be condemned because (if it is so, which is seriously doubted) judicial opinions promulgated under the system are improperly disseminated or not brought to the attention of those who need to know about them.

In this connection, Colonel Wiener cites several cases of injustice which occurred in trials under the Uniform Code of Military Justice and which were approved by boards of review. All of such cases are cited as involving instances of fundamental unfairness. They were, of course, corrected before too much harm was done. What would have been the

situation in a system of self-administered justice? How many of the facts which revealed the unfairness of the trial would have been disclosed and sprcad upon the record of a self-administered system of discipline?

Colonel Wiener has also characterized, as a group, and without exception, investigative agents of the CID, ONI and OSI as "always inadequate and frequently vicious." The writer feels no need to come to the defense of these people, and will admit that isolated instances of inadequate or overzealous investigations have occurred; but, to tar the whole group with such a brush, while inferring that line officers are, without exception, imbued with an omniscient sense of fairness, is simply ridiculous. By and large, the vast majority of investigators in the services are competent, conscientious and fair individuals who spend a substantial portion of their time seeking evidence to vindicate a suspect as well as to convict. At any rate, the Uniform Code of Military Justice did not create or require the creation of the CID, ONI, or OSI, with the exception of the latter, due to the recent autonomy of the Air Force. Each were in existence long before 1951, the effective date of the Code.

Colonel Wiener recommends simplified procedures, with only sufficient legal participation to eliminate patently inadmissible evidence and to insure the observance of basic standards of decency and fair play. Just how this is to be effected is not stated, except that the Colonel would

discontinue the adversary system of trials. Since we do not know specifically what procedures the Colonel considers useless or disposable, or to what extent the limited legal participation in a trial would be restricted, or in what manner legal participation in a trial would be permitted, effective discussion of his recommendation is of course impossible. At best, his recommendation for less law and more justice and fairness is visionary, and, basically, unrealistic. Certainly the Colonel would not restrict the right of cross-examination, which is the most "effective tool" ever conceived for the ascertainment of the truth; and his objections to the adversary system of conducting trials are objections to a system which similarly has developed out of centuries of experience and judicial thought, and which is universally recognized, in civilized countries, as the best guarantee ever devised against star chamber convictions, arbitrary judicial action, and the capricious deprivation of life or liberty.

It is presumed that the limited legal participation and simplified procedures which Colonel Wiener advocates are similar to those which existed prior to, say, World War I. It is to be remembered, however, that it was just such "paternalistic systems" of justice that resulted in cases of gross injustice—a small percentage, to be sure, but nevertheless present—and which motivated the extensive studies and analyses and reports that culminated in the Uniform Code of Military Justice. Certainly the services, as well as

the civilian community, have inexperienced lawyers and experienced but incompetent lawyers practicing law, but the writer has never heard of any jurisdiction that would scrap the adversary system because the inadvertent or uninformed failures of counsel might result in a waiver binding upon the accused, or because counsel occasionally employ the "imaginative tactics" or "combative techniques" of a Perry Mason. Naturally, if all counsel were extremely well qualified and competent advocates, the certainty of fundamental fairness in military trials would be enhanced; but, in what manner this would even remotely affect the discipline of the services is unclear. It is submitted that the old cliché that it is better to acquit one hundred guilty men than to convict one who is innocent has a special application to the discipline of the armed forces: the disastrous effect of meting out severe punishment to one innocent man in the military services could be destructive of morale, motivation to serve, respect for the commander involved and discipline in general.

Colonel Wiener also suggests, as a means of improving discipline, a restriction of the range of offenses that are within the jurisdiction of courts-martials to only such offenses as affect the military, or to such offenses the trial of which will have a demonstrable bearing on the military effectiveness of the armed forces. This concept was undoubtedly valid in the days of a standing army of only a few thousand men stationed exclusively in the United States or its territories; but with an armed

force of millions, deployed all over the world, the situation is somewhat different. A most important facet of morale and discipline is the knowledge by a man overseas that, if he gets into trouble, he will probably be tried by Americans in American courts. Whether all of the procedures, methods of trial, and judicial concepts in all the countries in which American soldiers, sailors and airmen are stationed would meet the Colonel's definition of fundamental fairness is unknown; but, certainly if the courts-martial of this country did not have jurisdiction over practically all offenses, our servicemen should be subject to trial for those offenses not covered by the jurisdiction of foreign courts. Even in the United States, the administrative difficulties, loss of manhours, restrictions on movement, and difficulties of liaison which would accrue in the event a substantial portion of offenses committed by military personnel had to be tried, if at all, by local state or federal authorities, instead of by courts-martial, would wreck the effectiveness of our fighting forces. For example, the three services conduct over 180,000 trials a year, and if we estimate that only 20% of such trials involve offenses not having a "demonstrable bearing on military effectiveness", exclusion from military jurisdiction of such offenses would mean 36,000 men per year, plus in all probability as many witnesses, would be restricted in the performance of their military duties to the place having venue over the offenses until the civilian wheels of justice had ground out a result. The

impact of such a requirement upon the effectiveness of the military services would certainly be more disastrous than the present practice of subjecting such offenders to trial by courts-martial.

The writer does not mean to give the impression that he considers the Uniform Code of Military Justice as a perfect piece of legislation,¹ or as establishing the best of all possible systems of justice. Certainly, it has areas which need revision, and one of which, in the opinion of the writer, is that the non-judicial powers of responsible commanding officers should be materially increased. On the other hand, however, the writer cannot point to any lessening in the discipline of military men who served in the Korean conflict over that of those who served in World War II; and, even if he could, it would be impossible to attribute such lessened discipline in any degree to the circumstance that the Uniform Code of Military Justice was in effect during the latter hostilities. The writer is also unable to point to a single case in his knowledge which was tried under the Uniform Code of Military Justice where, in his opinion, even a possibility of injustice was ultimately residual in the sentence as finally approved.

Shifting from the Uniform Code of Military Justice to the other matters mentioned by Colonel Wiener, we find that the Colonel considers incentive pay for lawyers indefensible in time of war. That meets no great argument, since he too indicates that it is in time of peace that the services cannot get and *retain* the necessary legally trained personnel.

Much is made of the fact that the incentive pay for doctors resulted from their being subject to the Draft as such. A reading of the Congressional hearings at the time of passage of the incentive pay for medical and dental officers and officers of the Veterinary Corps clearly shows that the services were having difficulty *retaining* officers in those categories and that incentive pay was initially inaugurated in an attempt to *retain* such personnel, an effect which experience has shown has resulted.

In time of war, as has been frequently stated, lawyers are "a dime a dozen" in the military service. It is in time of peace that the difficulty in procurement and retention exists; and, it is then—if the military is to maintain within its organization a trained and dedicated legal group—that incentive pay, if any, should be

¹"Not controlling, but interesting, is the universal recognition of the UCMJ as the most enlightened military code in history and as affording the basic elements of fairness. This is far from unbridled military power over civilians; it is bridled, harnessed, and (hobbled)—as it should be—by explicit congressional acts, and subject to the scrutiny of the United States Court of Military Appeals, composed of civilians, and other United States courts via habeas corpus." (Note 29 to U. S. ex rel Guagliardo v. McElroy (No. 14304) — F2d —, decided 12 Sep 1958). Burger, J.

applicable. This applies, with equal force to the medical as well as to the legal personnel of the services. We are being unrealistic if we think the Draft is not applicable to the young lawyer entering the service. An examination of the reasons for the entry of some fifty young attorneys into the military service in recent months indicates that in practically 100% of the cases the young officer entered the service as a lawyer because he was about to be drafted.

As an alternative to incentive pay, Colonel Wiener proposes a course of study by regular officers at accredited law schools. A recent study conducted by the Judge Advocate General of the Navy indicates that it costs \$27,000 to train a midshipman. This does not take into consideration the numerous other schools that a young naval officer attends subsequent to his commissioning and prior to the completion even of three years' duty at which time he first really becomes an effective, efficient officer. For example, the junior officer normally attends gunnery school, damage control school, communication school, CIC school, and there are many others. By the time a young officer reaches that period in his service career where he would be eligible for postgraduate legal instruction, the Government has invested considerably in excess of \$50,000 on his education as a combat commander. The postgraduate education in law of a Navy officer would add at least another \$26,000 to this cost. The situation in the other services would certainly be comparable.

Upon graduation from law school we would, under Colonel Wiener's suggestion, have an officer trained to be a line officer at considerable government expense, endowed with education in the law at further government expense, and yet an officer with no claim to being either lawyer or combat commander. Three roads would be open to him. He may abandon his combat command training, notwithstanding the fact that the goal of the unrestricted line officer has always been, and remains, qualification for command, not qualification in law. If he abandons his combat command training, the major portion of the funds expended upon his education as such has been wasted. If he abandons the law training and goes back to the unrestricted line, then the major portion of his legal education has been wasted. And the Congress has already indicated that it looks with disfavor upon the system of part-time lawyers who attend to legal duties only on occasional tours of duty. Previous naval experience has indicated that this latter system results in 40% use of the officer as a legal officer. Simple mathematics, therefore, demonstrates that to secure one effective lawyer in the part-time legal service under this system, would cost in excess of \$60,000, not counting the loss of his command training. Further, there is no guarantee that these worthy regular military officers would have an aptitude for the law or would, following their admission to the bar (in the event they pass

the bar), be interested in following the law to the extent of abandoning their careers as combat commanders.

There are cases of record where line commanders trained in the law have never had a legal billet following their graduation from law school. With a proper retention program for military lawyers, whether it be incentive pay in peacetime only, proper credit for constructive service or adjustment in rank, the military can procure and *retain* an adequate number of young attorneys at a much more reasonable expense than by reinstating the postgraduate training program.

Some proper retention practices are recommended by Colonel Wiener. The writer heartily concurs in his comment that the present retirement age factor for attorneys and the application of the standard command pyramid structure to the professions lessens the attractiveness of the military career to lawyers. There is concurrence too with him when he states that with respect to the attorney personnel of the military that "we want those people to be, not battle-ready combat leaders, but able law officers, wise

staff JAs, and knowledgeable advisers to the general staff and to the Secretariat."

In conclusion, the answer to fundamental doubts about the system of military justice cannot be found in turning back the clock to "the good old days," of a paternalistic military society. The modern military picture is too large, too specialized, too dispersed for any such about face. More compelling is the simple fact that the American people would simply not condone it. This country has always been defended and—God willing—will continue to be defended by citizen-soldiers and they—through their elected representatives—demand a more enlightened system, which is precisely what they got with the Uniform Code of Military Justice. No system of justice is better than those that administer it. To secure and retain in the services the qualified lawyers necessary to properly administer the fine judicial system we have, it seems incumbent upon us to provide such incentives as are needed to induce lawyers to seek and follow their profession in a military career.

Use the Directory of Members when you wish local counsel in other jurisdictions. The use of the Directory in this way helps the Association perform one of its functions to its membership and will help you. You can be sure of getting reputable and capable counsel when you use the Directory of Members.

BOOK REVIEWS

COURTS-MARTIAL AND THE BILL OF RIGHTS: THE ORIGINAL PRACTICE

By Frederick Bernays Wiener

Reviewed by Robert F. Maguire *

Every student of military law is well aware of the fact, all too frequently overlooked by the general public, that the administration of military justice in the Armed Forces is such as to cloak an accused person with at least the analogue of every substantial right and protection to which he would be entitled if the Bill of Rights of the Constitution applied to trials by court-martial.¹ An unfortunate consequence of the recognition of this fundamental fact has been the tendency of many military lawyers to treat as purely academic the question of whether these rights exist by virtue of the Constitution or independently thereof. But is this

question purely academic? Let us suppose that some future Congress should amend the Uniform Code of Military Justice to deny to accused persons the right to counsel presently set forth in Article 27 of the Code. Could a convicted accused then successfully claim in a federal court that he had been denied a substantial *Constitutional* right?

In December 1957 the Harvard Law Review published an article by Gordon D. Henderson wherein the author reached the conclusion that at the time of the adoption of the Constitution the "original understanding" of the founding fathers was that the Bill of Rights had full application in the armed forces ex-

* Major, JAGC. Instructor in Military Justice, The Judge Advocate General's School, United States Army. The opinions and conclusions expressed herein are those of the writer, and do not necessarily represent the views of The Judge Advocate General's School or any other governmental agency.

¹ For an excellent discussion of these rights see Solf, *A Comparison of Safeguards in Civilian and Military Tribunals*, 24 JUDGE ADVOCATE JOURNAL 5 (1957).

cept as specifically stated otherwise therein.² Approximately one year later there appeared in the same publication the article which is the subject of this review.

In *Courts-Martial and the Bill of Rights: The Original Practice*,³ the well known appellate advocate and scholar of military law, Colonel Frederick Bernays Wiener, JAGCRES, disputes the validity of Mr. Henderson's conclusion and develops a strong case leading in exactly the opposite direction. The titles selected by the two authors indicate the fundamental difference between their respective approaches to the problem. Mr. Henderson supports his conclusion almost entirely by recourse to the legislative hearings and debates dealing with the drafting and adoption of the Bill of Rights. He devotes but a brief five pages to discussing the actual contemporary practices in courts-martial. Colonel Wiener, on the other hand, believes that a more persuasive indication of the "original understanding" is to be found in the practices actually employed in courts-martial during the period immediately following the ratification of the first ten amendments to the Constitution.

By way of introduction to the development of his thesis, Colonel

Wiener emphasizes the need for viewing the problem from "the requisite perspective." To this end he points out the rather scant attention accorded military law by Congress and the indifference of the general public to the Army and Navy. He then considers the military codes first adopted by Congress during the post-ratification period and concludes that the legislative debates thereon "echo only generalities, and do not mention the Bill of Rights." At this stage of the article it is apparent to the reader that the "legislative history" of the Bill of Rights and the early codes fall far short of demonstrating a prevalent contemporary belief that members of the armed forces were entitled to the ordinary Constitutional guarantees.

The author then embarks upon a comprehensive discussion of the actual contemporary practices as to the right to counsel before courts-martial with a view to ascertaining the then existing belief as to the application of the Sixth Amendment to military trials. After pointing out that the early codes were silent on this matter and that the early treatises on military law expressly denied to the accused any active representation by counsel during a court-martial, Colonel Wiener

² Henderson, *Courts-Martial and the Constitution: The Original Understanding*, 71 HARV. L. REV. 293 (1957).

³ 72 HARV. L. REV. 1, 266 (1958). This article was published in two installments, in November and December 1958.

proceeds to analyze several early cases in which an issue as to the right to counsel was raised either expressly or by necessary implication. This analysis, which includes specific cases reviewed by Presidents Madison, Monroe and J. Q. Adams, individuals who may be charged with intimate knowledge of the contemplated application of the Bill of Rights, compels the conclusion that the right to counsel, in the Constitutional sense, was then not recognized in military law.

This reviewer found this portion of the article unusually interesting. From the vantage point of today it is with wry amusement that we read the language with which in 1809 General Wilkinson, as convening authority, disapproved the proceedings of the court-martial of one Captain Wilson because, *inter alia*, the accused's civilian attorney had had the effrontery to actually participate in the trial. With righteous indignation, General Wilkinson asks "Shall Counsel be admitted on behalf of a Prisoner to appear before a general Court-Martial, to interrogate, to except, to plead, to teaze, perplex and embarrass by legal subtleties and abstract sophistical Distinctions?" and replies "No one will deny to a prisoner, the aid of Counsel who may suggest Questions or objections to him, to prepare his defense in writing—but he is not to open his mouth in Court."

The trial of General William Hull in 1814 on charges of cowardice is perhaps the strongest case in favor of Colonel Wiener's position. The modern military lawyer will read

with sympathy General Hull's impassioned plea, pathetic in its specific recognition that the Constitution does not protect him, imploring the court to "trample upon professional quibblings" and permit his counsel to actually conduct the General's defense. The court responded with the blunt ruling "that the communications by the prisoner's counsel should be made in writing through the accused." Upon review, General Hull's conviction was approved by President Madison who, however, remitted the execution of the death sentence, which the court had adjudged with recommendation for clemency.

Having established that the right to counsel, in the constitutional sense, was not recognized in the post-ratification period, Colonel Wiener then discusses somewhat briefly the other guarantees of the Bill of Rights and their application to courts-martial. He concludes that there is no proof that any of the remaining guarantees were deemed to apply to the administration of military justice by virtue of the Constitution. On the contrary, there are strong indications of a contemporary belief that service members were not accorded the benefit of the provisions respecting freedom of speech, search and seizure, double jeopardy, trial by jury, confrontation of witnesses and the right to bail.

Colonel Wiener points out the possibility of arguing that the denial of the foregoing listed rights is not inconsistent with the proposition that the Bill of Rights was intended

to apply to the armed forces. The argument would be based upon the theory that the Founders intended these guarantees to be applied to courts-martial only insofar as was appropriate and that they must be so interpreted for this purpose. However, the complete and unequivocal denial of the right to representation by counsel cannot be rationalized away even under such a hypothesis. There was nothing so unique about courts-martial as to have rendered it inappropriate for accused persons to be afforded the right to an active defense and the denial of the right can be explained only by assuming a contemporary recognition that the Bill of Rights, as such, had no application to military law.

If then the Founders did not intend that the constitutional guarantees should apply to courts-martial does it necessarily follow that our present service members enjoy the analogues of these fundamental rights solely at the discretion of Congress? Colonel Wiener does not think so. He would start with the assumption that in modern times even service members are entitled to the protection of the "due-process" clause of the Fifth Amendment, recognizing however, that "due process" has a distinct meaning in its application to courts-martial. He would then read into such clause "the substance of the guarantees that have been read into the due-process clause of the fourteenth—guarantees whose substance is presently applicable to military per-

sons—and to work out a line from case to case with due regard to the actualities of the military situation." The adoption by the courts of this approach would confer upon service members the one substantial right which, in the opinion of Colonel Wiener, is now denied them—the right to obtain collateral review of court-martial convictions in the federal courts on the recognized theory that any court may lose jurisdiction if, during the course of a trial, it deprives the accused of substantial constitutional rights.

Few lawyers would disagree with the desirability of Colonel Wiener's proposed solution or take issue with the proposition that service members should be accorded Fourteenth Amendment "procedural due-process" insofar as military exigencies permit. There doubtless are some who will conjure up the spectre of the federal courts being deluged with writs of habeas corpus by inmates of disciplinary barracks and penitentiaries. It should be sufficient to quiet the fear of these alarmists to point out that there were many members of the bench and bar who made similar prophecies when the Supreme Court first established this method of collateral attack upon convictions in the state courts and that such prophecies remain unfulfilled. So long as military law recognizes the existence of the fundamental guarantees of a fair and just criminal prosecution and military justice is so administered as to secure these guarantees to accused persons, we need not fear

to have our records scrutinized by the federal courts. However, if such rights should ever be denied either by an attempted change of the law or through some shortcoming in the administration of military justice, it would indeed be comforting to know that the federal courts were open to pass upon the justice of such a denial.

In the opinion of this reviewer, Colonel Wiener's article should be read by every military lawyer and I would add, if it were not wishing over-much, by those individuals, lawyers and laymen alike, who are constantly bewailing the tyrannical practices of our "drumhead" courts-martial. The casual reader whether or not he agrees with the author's reasoning and conclusions, will find it a fascinating exposition of military justice in the early history of our country. The serious student of military law will find it an illuminating example of the kind of scholarly research of which Colonel Wiener is uniquely capable. A casual glance at the footnotes alone indicates the breadth and depth of his research. He has not only made use of the usual reference materials on Constitutional History but also has explored such varied sources as contemporary writings and pamphlets, records of trial of the early nineteenth century and the biographies and memoirs of individuals participating in such trials.

There is one aspect of this article which cannot be overlooked because it convincingly shows its author to possess that all too rare trait of the true scholar—objectiv-

ity. Colonel Wiener's objectivity is demonstrated beyond any doubt by the fact that shortly prior to the appearance of the Henderson article he had been unsuccessfully urging in the federal courts for a period of over six years that the Sixth Amendment right to counsel applies to trial by courts-martial. Most lawyers in a like situation would find the temptation to agree with Mr. Henderson to be well nigh irresistible if for no other reason than to derive solace from the thought that another scholar concurred in the view of the law which the courts had rejected. Those few lawyers who might overcome this temptation could hardly be expected to do more than to mention their disagreement with the Henderson article to their professional associates. But rare indeed is the man who would, as Colonel Wiener has done, express his disagreement in print.

"Digest—Annotated and Digested Opinions—U.S. Court of Military Appeals" by Richard L. Tedrow, The Stackpole Company, Harrisburg, Pennsylvania: 1959 pages 546. Price: \$6.00.

Richard L. Tedrow has been the Chief Commissioner of the U.S. Court of Military Appeals since the organization of that Court in the summer of 1951. During the last eight years the Court has acted on almost 14,000 cases and has published almost 1,500 opinions. It is immediately apparent that the case load of the three judges of that Court is extremely high, and it could not have been accomplished

except for the tireless, efficient and faithful service of the commissioners. To meet the burden imposed by the Court's docket, Dick Tedrow, in 1953 began to digest and classify all the opinions of the Court under subject matter headings and terse descriptive statements. Since then this digest has been kept current and distributed in mimeograph form to all the Court personnel. This simple, easily used reference quickly became an invaluable working tool of the judges, the commissioners and some others interested in military justice who were lucky enough to come by a copy.

Now, the "Digest" is available, not only to the "lucky", but also

those others that can afford the price charged by the publisher. It is an essential reference book for all lawyers interested in or concerned with military justice.

Under 165 general headings and under multiple subheadings all the decisions of the U.S. Court of Military Appeals up to February, 1959, are classified by brief description of holding and citation. The work is filled with cross references and terse comments. It will surely be kept to date by the author, if not by regularly published supplements, at least by those "informal supplements for intra-Court use" which heretofore, with the main volume, could only be obtained by chance.

JAA Endorses Fitts To Head ABA House of Delegates

Colonel Osmer C. Fitts of Brattleboro, Vermont, was endorsed and recommended for Chairman of the House of Delegates of the American Bar Association by the unanimous resolution of the Board of Directors of the Judge Advocates Association on 6 June 1959.

Colonel Fitts, a member of the Board of Directors of the Judge Advocates Association for over five years, served during World War II from 1942-46 as a J.A. Officer. He was a Foreign Claims Commissioner in the E.T.O.

A member of the bar of Vermont and Massachusetts for over 30 years, he has been most active in bar association work since 1930 both in the Vermont Bar Association and the American Bar Association. He was president of his state bar association

in 1948-49.

Currently, Colonel Fitts is Chairman of the ABA Rules and Calendar Committee of which he had been a member from 1949-52 and 1956-57. Last year, he was Chairman of the ABA's Special Committee on Lawyers in the Armed Forces, on which committee he has served since 1957 to the present time. He was a member of ABA's Board of Governors from 1954-1957 and has served as a delegate in the House of Delegates almost continuously during the last 20 years. Having been so active in ABA affairs, having served on many important committees over the years, and being a good lawyer and a personable leader, it is assured that, if elected Chairman of the ABA's House of Delegates, Ozzie Fitts will turn in an excellent performance of duty.

BERRY ELECTED PRESIDENT UPON WIENER RESIGNATION

The Board of Directors of the Association unanimously elected Colonel Franklin H. Berry of Toms River, New Jersey, as president for the current year. This action was made necessary by the resignation of Colonel Frederick Bernays Wiener on November 10, 1958.

On November 1, 1958, the Board of Directors reaffirmed the Association's position in favor of incentive pay for lawyers. The resolution adopted at that time was set forth in 27 JAJ 36. Colonel Wiener had expressed the view that the Association's position in this matter was "not only unsound, but indefensible" at the annual dinner of the Association in Los Angeles last August. The full text of his remarks on that occasion were set forth in 27 JAJ 11. In his letter of resignation, referring to his remarks at Los Angeles, Colonel Wiener said, "holding those views, it is plainly not possible for me to lead the Association in its campaign". He went on to add, "accordingly, I resign as president of the Judge Advocates Association, and, to the extent that my consequent status as an ex-president may under the by-laws, appear to make me ex officio a member of the Board of Directors; I resign from the Board. This has been a step not lightly taken, nor

without careful thought over a considerable period".

Colonel Berry is the senior member of the law firm of Berry, Whitson, and Berry, which engages in the general practice of law at Toms River. A native of New Jersey, he has engaged in the practice of law for over thirty years. He obtained his degree in law at the University of Pennsylvania. He has been Deputy Attorney General of his State. His practice has been predominantly in the field of Municipal Corporations, Real Estate, and Bank and Mercantile transactions.

Colonel Berry was commissioned second Lieutenant, Infantry Reserve in 1925. He entered upon extended active duty in June, 1941, as a Captain in the Infantry. He was detailed to the Judge Advocate General's Department of the Army in 1942, and rose to the rank of Colonel. During the war, he served as staff Judge Advocate of the Iceland Base Command.

Colonel Berry is a charter member of the Association, and has served several terms as member of its Board of Directors. His position on the Board of Directors, upon his elevation to the presidency, has been filled by the appointment of Colonel Birney Van Benschoten of New York City.

Recent Decisions

of the Court of Military Appeals

CONDUCT OF COUNSEL

**U. S. v. Beatty (Army), 3 April 1959,
10 USCMA 311**

The accused was found guilty of assault with intent to commit rape (Art. 134). In final argument, trial counsel implied that the prosecutrix was a chaste woman, whereas, he knew she was not. Also, in this case, the SJA refused permission to the defense counsel to see either the pre-trial advice or the post-trial review. On petition to CMA, accused asserted that this was prejudicial error. In affirming the conviction, the court through Judge Quinn stated that the trial counsel exceeded the bounds of fair comment in his final argument, but that this misconduct of the prosecutor was not prejudicial error since the evidence of guilt was clear and compelling. Likewise, the court found no prejudicial error in the SJA's denying defense counsel access to the pre-trial advice and the post-trial review. Judge Latimer concurred in the result; and, Judge Ferguson dissented on the ground that accused was prejudiced by the SJA's refusal to permit defense counsel to see the pre-trial advice and the post-trial review.

**U. S. v. Skees (Army) 20 March 1959,
10 USCMA 285**

The accused was convicted of AWOL (Art. 86) and two offenses of disobedience of the first sergeant's and company commander's separate orders to report for K.P. Upon the refusal of the accused to obey the C.O.'s order, he was placed in confinement. The prosecution witness to the accused's refusal to obey the order, mentioned in direct examination a conversation which he had with the accused in which he said he could not comply with the order. The defense counsel on cross examination tried to develop the details of the conversation in order to establish the accused's reasons for not being able to comply with the order, but on objection by trial counsel, the law officer cut off that line of inquiry. Accused did not take the stand. The trial counsel in final argument commented, without objection by defense counsel, that it was for the accused to say why he did not obey. On petition, CMA held trial counsel's statement was an improper comment on the failure of the accused to testify and that as to the offenses to which it related, the failure of defense counsel to objection was not a waiv-

er of the prejudicial error. The court also held the law officer erred in cutting off the cross examination of the prosecution witness. The board of review was reversed and a rehearing or reassessment of the sentence was authorized.

U. S. v. Simpson (Air Force) 20 February 1959, 10 USCMA 229

Accused was convicted of larceny by check (Art. 121), and was sentenced to a bad conduct discharge. In argument on sentence, the trial counsel urged the court to impose a bad conduct discharge and added "any discharge from the service, other than dishonorable, may be wiped off the record by the board for correction of records in Washington". The convening authority suspended execution of the BCD with provision for ultimate remission, and directed that accused be reduced from his grade of technical sergeant to airman first class unless the suspension of discharge be vacated, in which event the accused should be reduced to the lowest enlisted grade without further action. From affirmance by the board of review, accused petitioned for review. CMA reversed the action and authorized a rehearing on sentence. The court held that trial counsel's comment on sentence exceeded the bounds of fair comment in his reference to possible ameliorative action by an administrative agency. With regard to the convening authority's action, CMA held paragraph 126e, MCM 1951, as amended, providing for automatic reduction to

the lowest grade upon approval of a court-martial sentence which includes punitive discharge, was intended to be a part of the review of a sentence adjudged by a court-martial. It cannot be regarded as administrative or as anything but judicial in purpose and effect. Being a judicial act, it improperly operates to increase the severity of the court's sentence. That provision of the Manual was therefore, held to be invalid, and the reduction in grade was set aside. Judge Latimer dissented from the views expressed concerning the invalidity of paragraph 126e of the Manual.

QUALIFICATION OF DEFENSE COUNSEL

U. S. v. Kraskouskas (Army) 19 September 1958, 9 USCMA 607

Accused, at his own request, was represented before a general court-martial by individual military counsel who had not been certified by The Judge Advocates General, and did not possess the qualifications prescribed by Article 27. From convictions affirmed by intermediate appellate agencies, accused petitioned CMA for review, contending that the law officer erred in permitting him to be represented by unqualified counsel. The court held that Congress in prescribing exacting legal qualifications for appointed counsel in Article 27 intended that only a qualified lawyer represent an accused before a general court. Therefore, an accused even at his own insistence, may not be permitted lay

representation before a general court-martial. Judge Latimer dis-sented on the ground that the accused under Article 38 has the implied privilege of waiving his right to qualified counsel. The board of review was reversed, and a rehear-ing authorized.

EXPLANATION OF RIGHTS OF ACCUSED AS A WITNESS

**U. S. v. Endsley (Air Force) 6 March
1959, 10 USCMA 255**

At the close of the prosecution's case, the defense counsel announced that he had explained to the accused his rights as a witness and that the accused elected to remain silent. The law officer then proceeded to advise the accused, in open court, of his rights as a witness. The accused was convicted of twenty specifications under Article 121. On petition, to CMA the accused contended that the law officer committed prejudicial error in his open court explanation of the rights of the accused as witness on the ground that it amounted to a comment upon the accused's failure to take the stand. The court affirmed the conviction holding that the law officer's advice to the accused fell far short of being a comment upon accused's failure to take the stand, and even if error, was not prejudicial. However, the court did criticize paragraph 53h of the Manual which prescribes that such an explanation be given to the accused in open court, on the ground that such a procedure might result in emphasizing in the minds of the court's mem-

bers the accused's failure to testify. Judge Latimer, concurring in the result, disassociated himself from the criticism of the Manual provision.

COURT MAY NOT ADJUDGE A SUSPENDED PUNATIVE DISCHARGE

**U. S. v. Samuels (Navy) 13 February
1959, 10 USCMA 206**

In sentencing the accused, the court specifically noted his seven-teen years of exemplary service, and with the intention of permitting his rehabilitation and the continuation of his Navy career, sentenced him to a reduction in grade, partial forfeiture for thirty-six months and a bad conduct discharge to be sus-pended for three years during good behavior and to be remitted at the end of that period unless sooner vacated. The law officer did not advise the court that its action of suspension was a nullity. The con-vening authority rejected the sus-pension of the bad conduct discharge and otherwise approved the findings and sentence. In essential part, the board of review approved. On pe-tition, CMA held the court-martial could not suspend a sentence and the convening authority's action was within his power if the sentence was otherwise valid. The court went on to hold, however, that the law officer committed prejudicial error in failing to instruct the court on the nullity of the suspension; and, if he had so instructed, the court may well have adjudged a sentence which did not include the punitive dis-

charge. Judge Latimer dissented saying the suspension was a nullity and had the effect of only being a recommendation of clemency.

RECOMMENDATION OF CLEM- ENCY MAKING SENTENCE AMBIGUOUS

U. S. v. Kaylor (Navy) 23 January
1959, 10 USCMA 139

On a guilty plea, accused was found guilty of AWOL and sentenced to a bad conduct discharge, partial forfeiture and confinement for six months. Without defense solicitation and contemporaneous with the sentencing, the president of the special court stated the court's recommendation of clemency; and, at a later time, all of the court members joined in a written recommendation to the convening authority that the bad conduct discharge be remitted. The convening authority suspended, but did not remit the punitive discharge. The board of review affirmed. On petition to CMA, the accused contended that the court's action impeached its sentence. CMA held that the sentence was made ambiguous by the illogical and inconsistent action of the court and reversed the board of review authorizing a rehearing.

CAPITAL OFFENSE NOT TRIABLE UNDER ARTICLE 134

U. S. v. French (Air Force) 6 February
1959, 10 USCMA 171

Among four specifications of violation of Article 134, three alleged

facts set out as conduct to the discredit of the Armed Forces, but the other alleged facts constitute a violation of the Espionage Act. The accused was convicted on all four specifications and the charge. The board of review affirmed the findings of guilty, but reduced the sentence from life to ten years on the ground that was the maximum sentence imposable under Article 134. Accused petitioned CMA contending that the court-martial had no jurisdiction to try him on a specification alleging what constitutes a violation of the Espionage Act, a capital offense, under Article 134. TJAG certified the case on the question of the board's conclusion that the maximum sentence imposable was dismissal, total forfeitures and ten years. The court dismissed the specification which alleged facts constituting a violation of the Espionage Act and affirmed the board of review with regard to the sentence. The court said that Article 134 (3) indicated Congressional intent that no prosecution of a capital offense in a court martial could be had under any guise without specific statutory authority. The allegations of this specification made out a violation of the Espionage Act, a capital offense, and it could not be tried by a court-martial as a violation of Article 134. The court went on to say that the other three specifications spelled out acts that were part and parcel of a single attempt to sell restricted data and this constituted a single offense of discreditable conduct which the board punished in its most serious aspect and

therefore, its judgment as to sentence should stand.

PROSECUTION'S USE OF DEPOSITIONS

U. S. v. Mulvey (Navy) 20 February 1959, 510 USCMA 242

In trial for assault (Article 128), the prosecution introduced numerous depositions without any demonstration that the deponents were unable or refused to testify in person; but, merely made the statement that the depositions would be used in lieu of presenting witnesses "because of the operational commitments of this ship". From a conviction affirmed by intermediate agencies the accused petitioned CMA for review. The court reversed the conviction and authorized a rehearing, holding that the depositions were inadmissible because there was no showing of any inability or refusal of the witnesses, for any reasons stated in Article 49d (2) to appear and testify in person. The court refused to speculate about what "operational commitments of the ship" meant or how it might have furnished a statutory basis for the use of depositions.

FALSE SWEARING OF ACCUSED BEFORE CRIMINAL INVESTIGATOR

U. S. v. Claypool (Army) 27 March 1959, 10 USCMA 302

Accused was found guilty of false swearing in violation of Article 134. A CID agent, in the course of in-

vestigating offenses allegedly committed by accused, after satisfying the requirements of Article 31, interrogated the accused, reduced the result of interrogation to writing, had accused swear to the truth of the written statement and sign it. Later determining that some of accused's answers were false, this prosecution followed. The board of review disapproved the finding of guilty; and, the question of whether a false statement under oath given by a suspect to an investigator constitutes the offense of false swearing under Article 134 was certified to the court. CMA reversed the board of review holding that the false statement by a suspect under oath to an investigator constitutes false swearing. It distinguished *U.S. v. Geib*, 9 USCMA 392 which was a prosecution for making a false statement in violation of Article 107. There, the statement made by the suspect to the investigator was unsworn and the suspect had no independent official duty to make the statement and the court there held there was no violation of Article 107. The court in the instant case said that the offense here does not depend upon the officiality of the statement, but rather on the authority of the CID agent to swear one suspected of crime. The court found the administration of the oath necessary to the performance of an investigator's duty under Article 136. Therefore, it concluded that false swearing under the circumstances was an offense under Article 134. Judge Ferguson dissented.

What The Members Are Doing

Alabama

Colonel John E. Blackstone retired from the Air Force on October 31, 1958, after 29 years of Military Service. Colonel Blackstone, who was former Director of the USAF Judge Advocates School at Maxwell AFB, will make his home in Montgomery. Upon retirement, he was awarded the Air Force Commendation Ribbon by General Robert E. L. Eaton, Commander of the 10th Air Force, for which command Colonel Blackstone served as SJA prior to his retirement.

California

Colonel James C. Hamilton is presently a civilian attorney advisor in the Judge Advocates Office at the Presidio of San Francisco. Colonel Hamilton has recently compiled and edited a work known as "Hamilton's Citer to the United States Court of Military Appeals" which is being published by the American Guild Press of Dallas. The annual subscription to the Citer is \$23.50.

Colonel Hamilton M. Peyton of Carmel, California upon completing his tour of duty as SJA, Fifth U. S. Army was awarded the Army Commendation Ribbon for exceptional meritorious service. Colonel Peyton will assume new duties at the Infantry Training Center at Ft. Ord, California. Colonel Peyton, a native of Minnesota, graduated from

the Military Academy in 1931, and holds his law degree from Stanford University. During World War II, he served in the European Theatre. He also served in Korea.

Colorado

Three regional Staff Judge Advocates of the U. S. Army Air Defense Command conferred at Colorado Springs recently with Colonel Louis F. Shull, Command Staff Judge Advocate. The regional Staff Judge Advocates were Colonel Charles F. Hoult, Fifth Region, USAFADCOM, Ft. Sheridan, Illinois, Major H. C. Kleikamp, Sixth Region, Ft. Baker, California, and Colonel D. L. Lord, First Region, Ft. Totton, New York. Their primary discussions concerned aspects of general courts-martial jurisdiction in Regional Commands.

District of Columbia

Colonel Frederick Bernays Wiener was recently elected a Fellow of the International Academy of Trial Lawyers.

Milton I. Baldinger, World War II Executive Secretary of the Association, recently moved his law offices to 608 13th Street, N.W.

Samuel F. Beach recently announced the removal of his law offices to Suite 207, Tower Building.

Penrose L. Albright recently announced the formation of a partnership for the practice of general

and patent law under the style of Mason and Albright with offices in the Perpetual Building.

Commander Guy E. Milius, Jr., was recently elected President of the Institute of Military Law. Commander Milius, a Reserve Officer, is on extended active duty with the Navy as Special Assistant Legal Counsel in the office of Industrial Relations. The Institute is comprised of civilian and military practitioners in Military Law who have been elected to membership in cognizance of legal, scholarship, and literary contributions to Military Jurisprudence. Other officers elected were Major Noel J. Cipriano, JAGC USA, Vice President; Major Timothy G. O'Shea, USAF, Secretary; Captain R. P. Tomlinson, USA, Treasurer. The Board of Governors is composed of Colonel Alfred J. Clark, USAF, Colonel Edward J. Murphy, USA, Colonel Arthur Averback, USAF, Conrad D. Philos, Esquire, Commander John C. Keatts, USN, and Commander Gale E. Krouse, USN.

JAA Members in the Washington area held a Congressional Reception at the Bethesda Naval Officers Club on 21 April 1959 to honor some of the JAA Members presently serving in the 86th Congress. The Congressional JAA Members attending included Senator Frank Moss of Utah, Mr. Joe Evins of Tennessee, Mr. Lawrence Fountain, North Carolina, and Mr. Alexander Pirnie of New York. Captain William B. Hanback, USAR, Chairman of the DC Chapter of JAA, presided. About one hundred members of the Asso-

ciation from the Washington area and their ladies attended the reception and supper. JAA President, Colonel Franklin H. Berry, and Mrs. Berry from Toms River, New Jersey were among the distinguished company of members and guests.

Colonel Daniel J. Andersen recently announced that Harold O. Lovre, former member of Congress from South Dakota has been associated with him in the practice of law with offices in the Woodward Building.

Florida

Colonel Robert W. Wilson of Tampa, who served in Military Government in Austria from 1945 to 1947 has just returned from a visit abroad. Colonel and Mrs. Wilson spent the winter touring Italy, France, and Austria.

Illinois

Colonel Grenville Beardsley of Chicago was recently appointed Attorney General of Illinois by the Governor of that State. Colonel Beardsley has been First Assistant Attorney General in charge of the Chicago Office since 1953.

Japan

Charles Rhyne, former President of the American Bar Association, recently spoke to Military Lawyers in the Tokyo area. He was greeted in Tokyo by Captain Jack C. Davis, Force Legal Officer for the USN in Japan, Colonel Thomas R. Taggart, Staff Judge Advocate, Fifth Air Force, and Colonel Vernon Rawls, Staff Judge Advocate, U. S. Army, Japan.

Nevada

Frank McNamee of Las Vegas, was recently administered the oath of office as a member of the Supreme Court of the State of Nevada. Frank McNamee has always been a man to get on with the job, and true to form, within a half hour of the swearing in ceremony, he took his seat with the Court to hear arguments of appeals.

Ciel Georgetta of Reno was elected Judge for the Second Judicial District of Nevada on November 4, 1958.

New York

Martin Schenck of Albany, who has been Albany County Judge for the past eight years has followed his hobby of research into Civil War history to the point of writing a biography of the Confederate General, A. P. Hill. The book entitled, "Up Came Hill" will be published by the Stackpole Company of Harrisburg, Pennsylvania. This work should be of considerable interest to the members of the Judge Advocates Association because it is a rare treatise, and because of the full coverage in the book to the difficulties which arose between Stonewall Jackson and A. P. Hill which culminated in Jackson's court-martial charges against Hill.

The members of the 1568th JAGC Training Center held a dinner dance on April 11, 1959 at the Officers' Club, Governors Island, New York in honor of Colonel Arthur Levitt, Comptroller of the State of New York, upon his retirement from the

U. S. Army Reserve. Members of the Army Reserve Unit, members of the Bar, and friends of Colonel Levitt attended this delightful social event.

David George Paston of New York City recently authored an exhaustive and all inclusive text book on Summary Judgment in New York. The book published by the Central Book Company is priced at \$10.00. Although the text book is designed for the New York practitioners, it contains the rules of other states and in the U. S. District Courts.

New York County Lawyers Association held a conference on Military Law on December 10, 1958 with a full schedule of conferences lasting throughout the day, and concluding in the evening with a general Courts-Martial demonstration. Among the conferees were Colonel Marion Smoak, representing the JAG of the Army, Captain George A. Sullivan, representing TJAG of the Navy, Colonel George K. Hughel, for TJAG of the Air Force, Honorable Arthur C. Rosenwasser, representing the General Counsel of the Treasury, Honorable Alfred C. Proulx, representing the Court of Military Appeals, Colonel Alfred C. Bowman, SJA, First Army, Colonel Arthur Levitt, C.O. Army JA Training Center, Captain Frederick W. Read, Jr., C.O. Naval Reserve Law Company, Colonel Noah L. Lord, SJA, First Region USA, DC, Lt. Col. Wm. J. Rooney, Assistant JA NYNG, Judge Arthur H. Schwartz, President New York County Lawyers Association, Robin

Dare, Esquire, Knowlton Durham, Esquire, D. George Paston, Esquire, Emile Zola Berman, Esquire, Earle Q. Kullman, Esquire, Charles G. Stevenson, Esquire.

Colonel Alfred C. Bowman, First Army JA, and Colonel Shelden Elliott, JAA's ABA delegate, plan appropriate ceremonies to be held in New York City this summer honoring the 184th Anniversary of the Army's Judge Advocate General Corps.

Colonel Alexander Pirnie of Utica, was elected in November to the 86th U. S. Congress from the 34th District of New York. Colonel Pirnie a past President of the Association met with political success also last August when he was elected to the Association's Board of Directors.

Colonel Charles G. Stevenson, of Long Island, was recently appointed by Governor Rockefeller to the Office of Adjutant General of the State, and Vice Chief of Staff to the Governor. He will be promoted to Brigadier General. Colonel Stevenson has been a member of the New York National Guard for more than twenty-five years, and has had thirty-six years of service in the armed services. For the past twelve years, Colonel Stevenson has been Staff Judge Advocate of the New York National Guard in which office he worked importantly on the revision of the Military Law of the State of New York. The part of that revision containing a Code of Military Justice is now being proposed as a Uniform State Code of Military Justice in many states.

North Carolina

Major Lawrence Fountain of Tarboro, North Carolina was re-elected to the 86th Congress from the Second District of North Carolina at the November elections.

Oklahoma

Lt. Col. Carl Albert of McAlester was re-elected to the 86th Congress from the Third District of Oklahoma. Colonel Albert is the Democratic Whip in the House of Representatives.

Oregon

A. Q. Clostermann, of Portland, recently argued a case in the Supreme Court of the State of Oregon dealing with issues involving the application of Military Law to Civil Law. The action entitled, Clostermann, Executor vs. The State Land Board, and the Alien Property Custodian was decided by an opinion entered December 10, 1958. The holding of the case resulted in the escheat of a decedent's estate rather than a payment to decedent's legatee on the ground that the term "foreign countries" in the statute relating to decedents' estates means a foreign sovereignty, and not merely a portion of a country temporarily occupied by Military Forces. Prior to surrender of Nazi Germany, no reciprocity existed whereby a German National could take from an estate of an Oregon decedent.

Colonel Benjamin G. Fleischman, 3rd Off. J. A. Class, Past President of the Portland Club, the Retired Officers Association of the United States, was recently elected to the

Board of Directors of the Multnomah County, Oregon Centennial Commission. The Oregon Centennial will run for 100 days, opening June 10th and closing Sept. 17, 1959, to be held in Portland, Oregon.

Tennessee

Colonel Fred Wade, following his retirement from the Air Force about a year ago, undertook with Mrs. Wade, a leisurely around the world tour from which they have just returned. Colonel Wade's home is in Polk County, but at the moment, he is residing in Washington, D. C.

Major Joe L. Evins, of Smithville, was re-elected as a member of Congress from the Third District of Tennessee. This is the sixth consecutive Congress in which Major Evins has served.

Texas

Colonel Ralph W. Yarborough of Austin, Texas, was re-elected in November to the U. S. Senate. Colonel Yarborough was formerly Governor of his State.

Lt. Col. Arthur J. Shaw, Jr., of San Antonio, retired from the Air Force on 24 December 1958. Colonel Shaw continues an active interest in the work of the Association, and his many friends in its membership.

Harry S. Pollard of Austin announces that the recently formed Military Law Section of the Texas State Bar Association will have its first formal meeting at Dallas July 1-4. The Judge Advocates General of the Services have been invited to

attend, and their representation at this meeting is assured.

Utah

Colonel Frank E. Moss, of Salt Lake City, was elected to the U. S. Senate in November. Senator Moss, an Air Force JA reserve, formerly served as County Attorney for Salt Lake City.

Wyoming

Bruce P. Badley of Sheridan, was recently elected Vice Chairman of the Junior Bar Conference for the State of Wyoming.

Virginia

Captain Walter W. Regirer, of Richmond, Virginia, is a lecturer at the Richmond Professional Institute of William and Mary College. At the recent seminar on American Military Policy, the following were panel leaders in various discussions upon the general subject: Colonel Robert N. Fricke, Colonel Jesse M. Johnson, Lt. Col. Irving I. Held, Jr., Cmdr. Jack N. Herod, and Colonel Robert D. Burhans.

Captain Regirer, as a member of the Virginia State Bar Committee on cooperation with foreign bar organizations, spearheaded a successful drive to commemorate the Advent of Common Law in this country. On May 17, 1959, with appropriate ceremonies, a plaque memorializing the event was dedicated by J. Lindsay Almond, Jr. The Governor's proclamation of the "Advent of Common Law—Jamestown 1607 Day" reads as follows:

The common law of England was

the growth of many centuries and its aim was to provide justice and fair dealing. Without such law, the great charters of English constitutional liberties would have offered little protection and a sturdy and independent race of men would have been at the mercy of those who ruled.

In England, the common law was the "law of the land" and the declaration that it would be in full force and effect in the Colony of Virginia was contained in the first charter granted in 1606 to the Virginia Company of London. While other colonists, in time, claimed the common law as a measure of rights and of protection when they migrated to this country, the settlement of Jamestown in 1607 marked the beginning of a fundamental system of laws for this Nation.

The Convention of 1776, which directed the Virginia delegates to the continental Congress to propose a resolution declaring our separation from England, ordained in general convention at Williamsburg on July 3, 1776, that the common law of England and all acts of Parliament made in aid thereof prior to the fourth year of reign of King James I, and which were of a general nature, shall be in full force until altered by the legislature.

This Ordinance of Convention may still be found in the Code of Virginia.

The other original states also adopted the common law and today, except as modified by statute, its principles are in force in all of the states of the Union other than Louisiana.

The Virginia State Bar has planned to commemorate the advent of the common law through Jamestown by erecting a tablet in the Old Church on Jamestown Island at dedication services to be held on May 17, 1959.

NOW, THEREFORE, I, J. Lindsay Almond, Jr., Governor of Virginia, do hereby designate the seventeenth day of May, 1959, as the Advent of Common Law—Jamestown 1607 Day and do call upon the people of Virginia to commemorate this occasion and give thanks for their rich heritage of freedom, long protected and guarded by the common law.

GIVEN under my hand and the lesser seal of the Commonwealth, at Richmond, this 11th day of February, 1959, and the 183rd year of the Commonwealth.

/s/ J. Lindsay Almond, Jr.
Governor

The Directory of Members, 1959, has gone to press and will be distributed in about ten days.

REPORT OF NOMINATING COMMITTEE-1959

In accordance with the provisions of Section 1, Article IX of the By-laws of the Association, the following members in good standing were appointed to serve upon the 1959 Nominating Committee:

Captain William C. Mott, USN,
Chairman

Captain Kenneth Hamilton, USNR
Colonel Fred Wade, USAFR (Ret)
Colonel James S. Cheney, USAF
Lt. Col. Kenneth J. Hodson, USA
Lt. Col. James A. Bistline, USAR
Captain William B. Hanback,
USAR

The By-laws provide that the Board of Directors shall be composed of twenty members, all subject to annual election. It is provided that there be a minimum representation on the Board of Directors of three members for each of the Armed Forces: Army, Navy and Air Force. Accordingly, the slate of nominees is divided into three sections; and, the three nominees from each section who receive the highest plurality of votes within the section shall be considered elected at the annual election as the minimum representation on the Board of that Armed Force; the remaining eleven positions on the Board will be filled from the nominees receiving the highest number of votes irrespective of their arm of service.

Members of the Board not subject to annual election are the three most recent past presidents of the Association. These will be: Colonel Frank-

lin H. Berry, Colonel Thomas King and Colonel Nicholas E. All

The Nominating Committee met and has filed with the Secretary the following report as provided in Section 2, Article VI of the By-laws

Slate of Nominees for Offices

President: Capt. Robert G. Bur
USNR, N.Y.

First Vice President: Col. Allen
Miller, USAFR, N.Y.

Second Vice President: Maj. G
Ernest M. Brannon, USA, D.C.

Secretary: Lt. Cmdr. Penrose
Albright, USNR, Va.

Treasurer: Col. Clifford A. St
don, USAFR, D.C.

Delegate to House of Delegates
ABA: Col. Sheldon D. Elliott, USA
N.Y.

Slate of Nominees for the Two Positions on the Board of Directors

Navy nominees:

Cmdr. Frederick R. Bolton, USN
Mich.

Lt. Walter F. Brown, USN, R.I.

Capt. Mack K. Greenberg, US
D.C.

Col. J. Fielding Jones, USMC
Va.

Cmdr. Fred Kunzel, USNR, Cal

Cmdr. Samuel J. Lee, USNR, T

Capt. William C. Mott, USN, M

Army nominees:

Lt. Col. James P. Brice, USA
Calif.

Brig. Gen. Charles L. Decker, US
D.C.

- Col. Mariano Erana, USAR, Md.
 Col. Osmer C. Fitts, USAR, Vt.
 Col. John H. Finger, USAR, Calif.
 Lt. Col. Edward F. Gallagher,
 USAR, D.C.
 Col. James Garnett, USA, Va.
 Col. Clel E. Georgetta, USAR,
 Nevada
 Maj. Gen. George W. Hickman,
 USA, D.C.
 Lt. Col. Kenneth J. Hodson, USA,
 Md.
 Capt. Edward F. Huber, USAR,
 N.Y.
 Maj. Gen. Stanley W. Jones, USA,
 Va.
 Col. Charles P. Light, USAR, Va.
 Brig. Gen. Robert H. McCaw, USA,
 D.C.
 Col. Joseph F. O'Connell, Jr.,
 USAR, Mass.
 Col. Alexander Pirmie, USAR, N.Y.
 Col. Clio E. Straight, USA, Va.
 Col. Alan B. Todd, USA, D.C.
 Col. Birney M. Van Benschoten,
 USAR, N.Y.
 Col. Ralph W. Yarborough, USAR,
 Texas
- Air Force nominees:**
 Capt. John V. Baus, USAFR, La.
 Col. George Cechmanek, USAF,
 Nebr.
 Maj. William C. Hamilton, USAF,
 Ky.
 Maj. Gen. Reginald C. Harmon,
 USAF, Va.
 Brig. Gen. Herbert M. Kidner,
 USAF, (Ret) Va.
 Maj. Gen. Albert M. Kuhfeld,
 USAF, Va.
 Col. Martin Minter, USAF, D.C.
 Col. Frank E. Moss, USAFR, Utah
 Col. Paul W. Norton, USAF, Eu-
 rope
 Maj. Benoni Reynolds, USAF, D.C.
 Col. Abraham Robinson, USAFR,
 N.Y.
 Col. Sanford M. Swerdlin, USAFR,
 Fla.
 Maj. Gen. Moody R. Tidwell,
 USAF, Ohio
 Col. Fred Wade, USAFR, Ret.,
 Tenn.
- Under provisions of Section 2,
 Article VI of the By-laws, members
 in good standing other than those
 proposed by the Nominating Commit-
 tee shall be eligible for election and
 will have their names included on
 the printed ballot to be distributed
 by mail to the membership on or
 about August 1, 1959, provided they
 are nominated on written petition
 endorsed by twenty-five, or more,
 members of the Association in good
 standing; provided, further, that
 such petition be filed with the Secre-
 tary at the offices of the Association
 on or before 15 July 1959.
- Balloting will be by mail upon
 official printed ballots. Ballots will
 be counted through 24 August 1959.
 Only ballots submitted by members
 in good standing as of 10 August
 1959 will be counted.

A strong Association can serve you better. Pay your annual dues. If you are uncertain as to your dues status, write to the offices of the Association for a statement. Stay active. Recommend new members. Remember the Judge Advocates Association represents the lawyers of all components of all the Armed Forces.

1959 ANNUAL MEETING TO BE HELD AT MIAMI BEACH

The Thirteenth Annual Meeting of the Judge Advocates Association will be held at Miami Beach on August 25, 1959, during the week of the American Bar Association Convention. Colonel Sanford M. Swerdlin, of Miami, Florida, Chairman of the committee on arrangements, has announced that the annual business meeting will convene at 4:00 p.m., Tuesday, August 25, at the Beau Rivage Hotel, 9955 Collins Avenue, Bal Harbour, Miami Beach.

At 7:00 p.m., also on the 25th, the annual reception and dinner of the Association will be held at the

same hotel. Further details concerning this event will be distributed to all members of the Association at a later date with formal reservation blanks. However, all interested members may make their reservations now, if they wish, by writing the National Offices of the Association. The tariff will be \$10 per place.

You really should make it a point to attend the Thirteenth Annual Meeting of the Judge Advocates Association at Miami Beach. The committee has provided arrangements for a wonderful JAG get together.

Statement of Policy

The Judge Advocates Association, an affiliated organization of the American Bar Association, is composed of lawyers of all components of the Army, Navy, and Air Force. Membership is not restricted to those who are or have been serving as judge advocates or law specialists.

The Judge Advocates Association is not a spokesman for the services and has no official relation with the services. It is a group which seeks to explain to the organized bar the disciplinary needs of the armed forces, recalling, as the Supreme Court has said, that "An Army is not a deliberative body," and at the same time seeks to explain to the non-lawyers in the armed forces that the American tradition requires, for the citizen in uniform not less than for the citizen out of uniform, at least those minimal guarantees of fairness which go to make up the attainable ideal of "Equal justice under law."

If you are now a lawyer, if you have had service in the Army, Navy, or Air Force or are now connected with them in any capacity, active, inactive, or retired, and if you are interested in the aims herein set forth, the Judge Advocates Association solicits your membership.

