

The Judge Advocate JOURNAL



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JUDGE ADVOCATES ASSOCIATION

An affiliated organization of the American Bar Association, composed of
lawyers of all components of the Army, Navy, and Air Force

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JUDGE ADVOCATES ASSOCIATION

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Executive Secretary and Editor

RICHARD H. LOVE
Washington, D. C.

Bulletin No. 17

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Publication Notice

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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Report of

The Nominating Committee—1954

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 1954 Nominating Committee:

Lt. Col. Francis A. Brick, Jr., JAGC-USAR, New York City, Chairman

Col. R. C. Van Kirk, JAGC-USNG, Kansas

Col. John E. Curry, USMC-Ret., Washington, D. C.

Col. Victor A. Sachse, JAGC-USAR, Louisiana

Lt. Col. James P. Brice, JAGC-USAR, California

Major Perry H. Burnham, USAF-Res., Utah

Captain Hugo Sonnenschein, Jr., USAF-Res., Illinois

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: Navy, Army, and Air Force. Accordingly, the slate of nominees for membership on the Board of Directors is divided into three sections; and, the three nominees from each section with the highest plurality of votes within the section shall be considered elected upon the annual election as the 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 Judge Advocates General of each of the Armed Forces and the three most recent past Presidents of the Association. These will include for the year 1954-55 Major General Eugene M. Caffey, USA, Admiral Ira H. Nunn, USN, and Major General Reginald C. Harmon, USAF, and Col. John Ritchie, III, JAGC-USAR, General Oliver P. Bennett, JAGC-USNG, and Col. Joseph F. O'Connell, Jr., JAGC-USAR.

The Nominating Committee has conferred and has submitted the following report which has been filed with the Secretary of the Association as provided in Section 2, Article VI of the By-laws.

SLATE OF NOMINEES FOR OFFICES OF THE ASSOCIATION

- Col. Gordon Simpson, JAGC-USAR, Dallas, Texas—President (1)
 Col. Vern W. Ruble, USAF-Res., Bloomington, Indiana—1st Vice-President
 Captain Robert G. Burke, USNR, New York, N. Y.—2nd Vice-President (2)
 Col. Frederick B. Wiener, JAGC-USAR, Washington, D. C.—Secretary (2)
 Lt. Col. John W. Ahern, JAGC-USAR, Washington, D. C.—Treasurer
 Col. Joseph F. O'Connell, Jr., JAGC-USAR, Boston, Massachusetts—Delegate to the House of Delegates, A. B. A. (3)

Note:

- (1) Presently serving as 1st Vice-President.
- (2) Presently a member of the Board of Directors.
- (3) Presently serving as President of the J. A. A. All nominees for offices of the Association are engaged in private law practice.

SLATE OF NOMINEES FOR THE TWENTY POSITIONS ON THE BOARD OF DIRECTORS

Navy nominees:

- Capt. George W. Bains, USN, Alabama (1) (2)
 Cmdr. J. Kenton Chapman, USNR, Washington, D. C. (3)
 Lt. Col. J. Fielding Jones, USMCR, Virginia (4)
 Capt. William C. Mott, USN, Illinois (5)
 Capt. S. B. D. Wood, USN, Hawaii (1) (6)

Note:

- (1) Incumbents.
- (2) On duty at Charleston, S. Car.
- (3) Engaged in private law practice.
- (4) Civilian attorney in the National Defense Establishment (D. C.).
- (5) On duty at Great Lakes, Ill.
- (6) Asst. TJAG, Navy, on duty in Washington, D. C.

Army nominees:

- Col. Joseph A. Avery, JAGC-USAR, Virginia (1) (3)
 Col. Edward B. Beale, JAGC-USAR, Maryland (2) (4)
 Col. William H. Beck, Jr., JAGC-USAR, Georgia (4)
 Capt. Ralph E. Becker, JAGC-USAR, District of Columbia (4)
 Major James A. Bistline, JAGC-USAR, Virginia (6)
 General Ralph G. Boyd, JAGC-USAR, Massachusetts (1) (4)
 Col. Charles L. Decker, JAGC-USAR, Virginia (1) (5)
 Lt. Col. Reginald Field, JAGC-USAR, Virginia (1) (3)

- Col. Osmer C. Fitts, JAGC-USAR, Vermont (1) (4)
Lt. Col. Hugh T. Fullerton, JAGC-USNG, California (4)
Lt. Col. Edward F. Gallagher, JAGC-USAR, District of Columbia
(1) (4)
Col. Abe McGregor Goff, JAGC-USAR, Idaho (7)
Col. George H. Hafer, JAGC-USAR, Pennsylvania (1) (4)
Col. John C. Herberg, JAGC-USAR, Maryland (8)
Capt. Edward F. Huber, JAGC-USAR, New York (1) (4)
Col. William J. Hughes, Jr., JAGC-USAR, District of Columbia (1) (4)
Col. Leon Jaworski, JAGC-USAR, Texas (4)
Col. Donald M. Keith, JAGC-USAR, California (4)
Col. Arthur Levitt, New York (1) (4)
Lt. Col. Harry L. Logan, Jr., JAGC-USAR, Texas (4)
Col. Michael Leo Looney, JAGC-USAR, District of Columbia (4)
Col. Alexander Pirnie, JAGC-USAR, New York (1) (4)
Col. Mastin G. White, JAGC-USAR, District of Columbia (4)
Lt. Col. Clarence L. Yancey, JAGC-USAR, Louisiana (4)

Note:

- (1) Incumbent.
- (2) Presently serving as treasurer.
- (3) Civilian members Armed Services Board of Contract Appeals (D. C.).
- (4) Engaged in private law practice.
- (5) Commandant, Army JAG School, Charlottesville, Va.
- (6) Counsel, Southern Railway.
- (7) Solicitor, US Post Office Department (D. C.).
- (8) Legislative counsel, US Senate.

Air Force nominees:

- Lt. Col. Nicholas E. Allen, USAF-Res., Maryland (1) (3)
Lt. Col. Louis F. Alyea, USAF, Illinois (1) (4)
Lt. Col. Daniel J. Andersen, USAF-Res., District of Columbia (3)
Major Marion T. Bennett, USAF-Res., District of Columbia (5)
Col. Andrew B. Beveridge, USAF-Res., Maryland (3)
Lt. Col. Ely R. Katz, USAF-Res., Florida (3)
Col. Thomas H. King, USAF-Res., Maryland (2) (3)
Col. Frank E. Moss, USAF-Res., Utah (3)
Lt. Col. W. Clyde O'Brien, USAF-Res., New York (3)
Col. Allen W. Rigsby, USAF, Nebraska (1) (6)
Lt. Col. Barney Samelstein, USAF-Res., New York (3)
Col. Douglas Sharp, USAF-Res., New Mexico (3)
Col. Clifford A. Sheldon, USAF-Res., California (3)
Major Thomas E. Stanton, Jr., USAF-Res., California (3)
Major Sanford M. Swerdlin, USAF-Res., Florida (3)
Col. Fred Wade, USAF-Res., Tennessee (1) (7)

Note:

- (1) Incumbents.
- (2) Presently serving as secretary.
- (3) Engaged in private law practice.
- (4) On duty, MATS, Andrews AFB, Md.
- (5) Commissioner U. S. Court of Claims (D. C.).
- (6) On duty, SAC, Offutt AFB, Nebr.
- (7) On e/a/d at Olmsted AFB, Pa., as SJA, MAAMA.

Under provisions of Section 2, Article VI of the By-laws, regular members other than those proposed by the Nominating Committee 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 July 20, 1954, provided they are nominated on written endorsement of twenty-five, or more, members of the Association in good standing; provided, further, that such nomination be filed with the Secretary at the offices of the Association on or before July 5, 1954.

Balloting will be by mail upon official printed ballots. Ballots will be counted through August 17, 1954. Only ballots submitted by members in good standing as of August 17, 1954, will be counted.

Nominees are asked to advise the Executive Secretary of any errors in spelling of names, military rank, branch and component of service, state of residence and other matters appearing in the above report so that the forthcoming printed ballot may be correct.

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 their surviving families and relatives deepest sympathy:

Col. Joseph H. Davis, formerly of Muncie, Indiana, and more recently of Arlington, Virginia, died May 16, 1954.

Col. Herman J. Goldberg of Wilkes-Barre, Pennsylvania.

JOINT REPORT

of the

United States Court of Military Appeals and The Judge Advocates General of the Armed Forces and the General Counsel of the Department of the Treasury *

The following is the second Report of the Committee created by Article 67 (g) of the Uniform Code of Military Justice, 50 U. S. C. 551-736 which requires that the Judges of the United States Court of Military Appeals, The Judge Advocates General of the Armed Forces, and the General Counsel of the Department of the Treasury meet annually for the purposes of surveying the operations of the Code and preparing a report to the Committees on Armed Services of the Senate and of the House of Representatives, to the Secretary of Defense, and to the Secretaries of the Departments, concerning the number and status of pending cases, and to submit appropriate recommendations for amendments to the Code, and for other purposes. The report covers the period from June 1, 1952, through December 31, 1953, which is in excess of 1 year, but the report is being submitted at this time pursuant to the recommendation made in the first Annual Report submitted for the period covering May 31, 1951, to May 31,

1952, to the effect that reports be submitted thereafter on a calendar year basis.

Pursuant thereto, the Judges of the Court, The Judge Advocates General, and the General Counsel of the Department of the Treasury, hereinafter referred to as the Code Committee, have had various meetings and conferences during the period covered by this report. In addition to those conferences, The Judge Advocates General and the General Counsel of the Department of the Treasury appointed a Committee of military personnel, hereinafter referred to as the Service Committee, for the purpose of considering and recommending changes in the Uniform Code of Military Justice, and the Court appointed a Committee of civilian attorneys,¹ hereinafter referred to as the Court Committee, for the purpose of studying and making recommendations which it believed would improve the workings of the Code. The Service Committee had various meetings and considered recommendations received

* Submitted to the Committees on Armed Services of the Senate and of the House of Representatives and to the Secretary of Defense and the Secretaries of the Departments of the Army, Navy, Air Force, and Treasury.

¹ Whitney North Seymour, *Chairman*, Ralph G. Boyd, Henry T. Dorrance, Felix E. Larkin, Joseph A. McClain, Jr., George A. Spiegelberg, Arthur E. Sutherland, Donald L. Deming, *Secretary*.

from the Services and thereafter filed a report containing recommendations which formed the basis of the report of The Judge Advocates General and the General Counsel of the Department of the Treasury, dated August 20, 1953. . . .² In carrying out its duties, the Court Committee met from time to time and, upon occasion, the members of the Court, The Judge Advocates General, and the General Counsel of the Department of the Treasury participated in the meetings. The Court Committee made its report and recommendations on the 21st day of December 1953. . . .³

The problems and questions considered and discussed by the various committees have covered almost the entire field of military justice. They have included procedural questions, expansion of the system in time of emergency, the removal of inconsistencies between the Code and the Manual, adequacy of representation, the necessity for a Judge Advocate Corps in all Services, the legality of sentences, elimination of some of the delays encountered in appellate procedure, the simplification of some phases of trial procedure, restriction of the right of appeal in guilty plea cases, and the desirability for amendments and changes.

Many of the above mentioned problems will require further study and additional testing under the Code before any worthwhile recommendations can be submitted. However, the period of operational experience since the first report has established to the satisfaction of the undersigned re-

porting parties that there are certain requirements now prescribed by the Code which result in a substantial loss of time and an excessive expenditure of money without any real benefit to an accused. It is believed that they can be simplified or eliminated without materially prejudicing any right of one accused of committing a crime.

The following recommendations are unanimously supported by the reporting parties for consideration by the Congress.

FIRST: Experience has shown that a number of accused persons plead guilty at the time of trial; however, under present provisions of the Code, it is necessary to convene a court-martial composed of several officers before a plea may be entered. This increases substantially the cost of the trial to the Government and unnecessarily wastes the time and efforts of the officers who are required to meet, hear the plea and impose sentence. This has been a procedure which is peculiar to the military system and it is not used in civilian practice generally and the Federal practice in particular. If there is any benefit to the accused from this procedure, it is indiscernible and so unimportant that a change in this particular is considered desirable. **THEREFORE,**

It is *recommended* that in general court-martial cases, where the accused with the consent of his counsel requests and the convening authority approves, a one-officer court, whose identity must be known to the accused

² Set out as Exhibit D in the official report.

³ This report appears as Exhibit B in the official report.

in advance, be permitted to accept a plea of guilty and adjudge a sentence in all, except capital, cases. This officer should have the qualifications of a law officer, must be certified as competent for that particular duty by The Judge Advocate General of the Service concerned, and have the rank of at least lieutenant colonel or commander.

SECOND: Under the Code, there is no requirement that any member of a special court-martial be a graduate of an accredited law school or a member of the bar. In many instances, the accused would prefer to have his case heard by a special court-martial composed of one officer, qualified under the provisions of Article 26 (a) of the Code, rather than by the present three-officer special court-martial. A provision permitting the accused such an election would result in improved administration of justice, less expensive proceedings, and better utilization of the time and talents of officers now required to sit on special courts-martial: THEREFORE,

It is *recommended* that where the accused, with the consent of his counsel, requests, and the convening authority approves, and where the identity of a one-officer court is known to the accused in advance, such officer be permitted to accept pleas of guilty, to conduct the trial of contested special court-martial cases, and to adjudge sentences. It is *further recommended* that The Judge Advocate General of the Service concerned be required to certify the officer to be competent to perform the duties in question.

THIRD: Under the present provisions of Article 51 (b) of the Code, the ruling by the law officer on a motion for a finding of not guilty can be overruled by the members of the court. This provision is not in accord with Federal practice, tends to make court-martial procedure unnecessarily cumbersome, and can be eliminated without prejudice to the parties. The difficulty with the present provision is in the fact that it permits a complex, predominantly legal question to be determined by a group of officers untrained in the law. If the law officer must explain to the court-martial members the legal standard by which such a motion must be measured, it appears somewhat unusual to permit them to overturn his ruling which is presumably measured by the same standards. Moreover, the Code was drafted with an intent to move closer to civilian practice. To bring about that result, the law officer should decide questions of law and the court-martial members should be limited to deciding factual issues. We believe it is fair to say that a motion for a finding of not guilty often presents one of the most difficult problems which a law officer is called upon to resolve. Yet in some instances rulings rightly in favor of an accused have been overruled by the court-martial members. To permit them to pay no attention to a law officer on such a question of law has a tendency to cause them to ignore his other ruling: THEREFORE,

It is *recommended* that Article 51 (b) of the Code be amended to provide that the ruling of a law officer on a motion for a finding of not guilty be final.

FOURTH: Under the present procedure, cases where the accused pleads guilty receive the same appellate review as those cases where the accused pleads not guilty. It is felt that the review by a board of review should not be automatic when an accused has pleaded guilty. In that event, if he desires to raise errors on appeal, which should be limited to questions of law, including legality of sentence, he should file a notice of appeal to a board of review within 5 days from the date sentence is adjudged. In the absence of such notice of appeal, review will be under Article 69 of the Code only. *Provided*, that at the time of sentence he and his counsel are advised of his limited right of appeal. THEREFORE,

It is *recommended* that in cases involving pleas of guilty before a special or general court-martial, there be no review by a board of review of the same; that in such cases the accused be required within 5 days from the date sentence is adjudged to file a notice of appeal to a board of review. *Provided*, that the same be limited to questions of law, and that it affirmatively appears of record that the accused was advised of his appellate rights at the time of sentence.

FIFTH: As enacted, Article 65 (c) of the Code provides that special and summary court-martial records, where a punitive discharge has not been adjudged, must be reviewed by a judge advocate of the Army or Air Force, a law specialist of the Navy, or a law specialist or lawyer of the Coast Guard or of the Department of the Treasury. We believe it would be desirable to permit the review of these

records by lawyers as well as judge advocates and law specialists in each of the services and not be limited to the Coast Guard or the Department of the Treasury. It would permit a wider use of the abilities of those lawyers in the service who are not now judge advocates or law specialists, and also permit the use of civilian lawyers for the purpose, in commands where such a use might be feasible. THEREFORE,

It is *recommended* that Article 65 (c) of the Code be amended so that the records of trials by summary and special courts-martial could be reviewed by lawyers as well as judge advocates and law specialists in each of the Services.

SIXTH: Article 37 of the Code forbids the censuring of courts-martial by the convening authority or any commanding officer. It is true that in legal contemplation staff officers act only in the name of their commanders. Nevertheless, to avoid any possible misconception, it is believed desirable to extend this Article to include staff officers, serving convening authorities or other commanding officers. THEREFORE,

It is *recommended* that Article 37 of the Code, in regard to its prohibition of the censuring, reprimanding, or admonishing of courts, be amended to include the staff officers serving convening authorities and commanding officers.

SEVENTH: Many vexing problems have developed with respect to the administration of accused persons who were convicted at trial but whose appellate review has not yet been

completed. These individuals at the present time must be classified as unsentenced prisoners and segregated for administrative purposes. Special treatment, not all of it for the benefit of the man himself, is now required. This additional administrative burden is excessive and costly, and could be eliminated without detriment to the accused. Other complications in regard to pay and allowances are caused by this peculiar status. Because finance officers and paymasters are personally liable for their disbursements of public funds, they need to know with certainty the effective dates of pay and allowance forfeitures, as well as the precise sums involved. THEREFORE,

It is *recommended* that Article 71 of the Code be amended to provide that a convening authority should be empowered to order all parts of a sentence into execution when approved by him except that portion involving dismissal, or a dishonorable or a bad-conduct discharge. This recommendation is not intended to affect sentences involving death or a general or flag officer.

EIGHTH: It is a curious feature of the Code that a person under sentence of death may accrue pay and allowances. If the theory is that pay and allowances are the consideration given for services rendered, there can be no justification for such a situation. THEREFORE,

It is *recommended* that the Code be amended by providing that in the case of a prisoner in confinement under sentence of death, no pay and allowances would accrue to him as a matter of law after the date the conven-

ing authority approves such sentence, subject, of course, to his rights under Article 75 in the event such sentence is disapproved or set aside.

NINTH: The distinction between custody and confinement drawn by Article 95 of the Code has led to considerable difficulty. In the relatively short length of time that the Code has been in effect, boards of review have been presented with a good many cases which have required them to distinguish between the two terms. Because some factual situations are difficult of resolution in this regard, some otherwise valid prosecutions have failed because the draftsman of the specification picked the wrong alternative. There need not be any distinction between the two terms for the alleged act of the accused person is essentially the same in each instance. In essence he escaped from lawful authority in whose hands he reposed. The administration of justice in such a case should not be made to depend upon a lucky selection by the author of the charges. THEREFORE,

It is *recommended* that Article 95 of the Code be amended to eliminate all distinctions between custody and confinement.

TENTH: General court-martial cases which result in a finding of guilty and the imposition of a sentence which does not extend to a punitive discharge or confinement for 1 year or more are now reviewed in the offices of the respective Judge Advocates General under Article 69 of the Code. If an error is found, the Article requires that the case must be referred to a board of review. This referral

with its attending burdens, seems to add an unnecessary step to the proceedings. The caseloads of boards of review are increased, the same record must be considered a second time, and the length of time required to dispose of the case becomes greater. **THEREFORE,**

It is *recommended* that in cases covered by Article 69 of the Code, The Judge Advocate General of the appropriate service be given authority to take such corrective action as boards of review now exercise under the authority granted to them by Article 66 of the Code.

ELEVENTH: Where a case is reversed and a rehearing ordered or the charges are dismissed by the United States Court of Military Appeals under Article 67 of the Code or a board of review under Article 66 of the Code, the convening authority in the field must carry the administrative burden of disposing of the charges. This results in needless delay and duplication of effort. **THEREFORE,**

It is *recommended* that The Judge Advocate General of the appropriate service should have the authority to dispose of a case ordered dismissed by the United States Court of Military Appeals or a board of review, or to dismiss a case wherein a rehearing has been directed by either appellate body but he finds that such rehearing is not practicable.

TWELFTH: Experience has shown that the 30-day appeal period provided for by Article 67 (c) of the Code has caused some unnecessary delays, as well as other difficulties in the handling of cases, and in the as-

signments to penal institutions, and has added other administrative duties without any consequent advantages to an accused. **THEREFORE,**

It is *recommended* that Article 67 (c) of the Code be amended to reduce the period during which a petition for grant of review may be filed to 15 days.

THIRTEENTH: Article 73 of the Code now provides that an accused may petition for a new trial during a 1-year period which begins on the date of the convening authority's approval of the sentence. It is believed desirable to amend this Article so as to cause it to conform to the present Federal enactment. **THEREFORE,**

It is *recommended* that Article 73 of the Code be amended so that the time within which a petition for a new trial may be filed be extended to 2 years from the date of imposition of sentence. This will be in accord with the present Federal practice.

FOURTEENTH: Under Article 73 of the Code, there is substantial uncertainty in the services as to whether a new trial is required for an entire case involving multiple offenses even though the petition for a new trial may attack only one, or less than all, of the findings of guilty, while the unassailed findings would legally support the approved sentence. In such cases it would appear expeditious and desirable to provide authority to permit the dismissal of the particular findings attacked and thereafter permit appropriate sentence reduction on the review level without being required to direct a retrial on valid findings. **THEREFORE,**

It is *recommended* that Article 73 of the Code be further amended to provide that in all cases involving a petition for new trial, authority be given to order a new trial, in whole or in part, or to take corrective action as provided for under Article 66 (c) and (d) of the Code, and to extend similar authorization to The Judge Advocates General in those cases acted upon by them under the Article in question.

FIFTEENTH: At the present time the services have difficulty in prosecuting offenses involving bad checks because of the lack of any real guidepost to follow. This has led in those cases to inept specifications, failure of proof, improper instructions, and divergent standards of proof required as between the several services. **THEREFORE,**

It is *recommended* that an additional punitive statute having provisions similar to the District of Columbia bad-check law be added to the Code to meet the particular needs of the Services.

SIXTEENTH: Under the present provisions of Article 15 of the Code a commanding officer is not permitted to impose any pay loss on an enlisted man, nor is he allowed to sentence him to any confinement unless the offender is attached to or embarked upon a vessel. These provisions so restrict the authority of the commanding officer that when the necessity for discipline requires a small fine or a short period of confinement a trial by court-martial is required. That procedure is unnecessarily expensive and cumbersome, and results in a permanent and unfavorable entry

in the service record of an accused. Neither the Government nor the accused person can be benefited by requiring formal trials when the issue can be settled satisfactorily by summary proceedings.

In the cases of officers the present permissible punishment for loss of pay is limited to the loss of one-half of 1 month's pay when imposed by an officer exercising general court-martial jurisdiction. Again, these restrictions on the authority of a commanding officer sometimes result in trials by courts-martial that otherwise might be disposed of administratively by the imposition of a non-judicial punishment. A broadening of the power to permit the imposition of a slightly greater punishment would be a benefit both to the Services and to the accused.

Under paragraph (d) of this Article, an accused has the right of appealing any sentence imposed to superior authority so that any real injustice could be corrected. **THEREFORE,**

It is *recommended* that the Congress give consideration to increasing the permissive punishments imposable under Article 15 of the Code, the maximum not to exceed the forfeiture of one-half of 1 month's basic pay per month for a period of 2 months in the case of officers, and the loss of one-half month's pay for a period of 1 month, or confinement up to 7 days, in the cases of enlisted personnel.

SEVENTEENTH: The provisions of Article 54 of the Code and the regulations thereunder now require that verbatim records of trial be prepared in all general court-martial cases.

This provision does not exclude those cases where a sentence of confinement for 1 year or less and not including a punitive discharge is imposed, and those cases where the accused is acquitted. Unquestionably, this requirement results in a waste of time, money, and effort, and unnecessary utilization of court reporters with little or no consequent benefits to the accused or the Government.

Present procedure provides that where a special court-martial does not impose a punitive discharge, a summarized record of trial may be prepared in accordance with the regulations prescribed by the President under the terms of Article 54 (b) of the Code. It is believed that general court-martial cases of the type herein referred to could be processed under the same provision. **THEREFORE,**

It is *recommended* that Article 54 of the Code be amended to include general court-martial cases where the accused is acquitted, or the proceedings otherwise terminate in his favor, or where the sentence does not extend to death, dismissal, dishonorable or bad-conduct discharge, or to confinement for 1 year or more. *Provided*, that appropriate provision be made whereby an accused may, at his own expense, obtain a verbatim record of such trial.

Consideration has been given to many other proposals and recommendations but either because the Code Committee as a whole was not unanimous, or because some of the problems were not common to all departments, or, in some cases, because it was felt there had not been a sufficient trial period to develop the vices or virtues of a particular subject, no other joint recommendations are presented to the Congress at this time. However, the lack of action at this time is not intended to be an expression of approval or disapproval of any other considered subject. Some may be supported and others not considered appropriate by individual members of the Code Committee. Any expressions on the merits of those will be included in the sectional reports by the Services sponsoring their consideration.

To present to the Congress the size, importance and workload of military justice, it should be noted that approximately 457,000 courts-martial of all types were held throughout the world for the 19-month period, from May 31, 1951, to December 31, 1952. In addition, the following general information is extracted from the combined reports as to the workload of the statutory boards of review and the Court, and presented in a recapitulated form:

	May 31, 1951 to Dec. 31, 1953		May 31, 1951 to Dec. 31, 1953
1. Total number of cases reviewed by the boards of review	48,406	4. Total number of published opinions rendered by the United States Court of Military Appeals	421
2. Total number of cases wherein the findings were modified by the boards of review	1,933	5. Total number of published opinions wherein the decisions of the boards of review were modified by the United States Court of Military Appeals	226
3. Total number of cases docketed with the United States Court of Military Appeals	4,232		

Respectfully submitted,

ROBERT E. QUINN,
Chief Judge.

GEORGE W. LATIMER,
Judge.

PAUL W. BROSMAN,
Judge.

E. M. BRANNON,
*The Judge Advocate General,
United States Army.*

IRA H. NUNN,
*The Judge Advocate General,
United States Navy.*

REGINALD C. HARMON,
*The Judge Advocate General,
United States Air Force.*

ELBERT P. TUTTLE,
*General Counsel,
Department of the Treasury.*



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.

Court of Military Appeals Will Convene Special Session at Chicago

The Judge Advocates Association has arranged with the judges of the United States Court of Military Appeals for a special ceremonial session of the Court to be convened at the United States Court House in Chicago at 3:00 p. m. on August 17, 1954, during the week of the American Bar Association Annual Meeting. The Court will entertain motions for admission to the bar of the Court at this special session.

A member of the bar of any Federal Court or of the highest court of any State may apply for admission to the bar of the United States Court of Military Appeals by filing with the Clerk an application, the form for which will be supplied on request made to the Clerk of the Court, together with a certification of the proper court of the applicant's membership in good standing at the bar. Admissions are granted on oral motion in open court. There are no fees charged for admission or certificates.

Interested persons should write to Alfred C. Proulx, Clerk, United States Court of Military Appeals, Washington 25, D. C., for the form application for admission. Filing of applications with certification of bar membership if to be presented at this special session may be filed directly with the clerk with a notation "Chicago Session" or by mailing to the Judge Advocates Association, 1010 Vermont Avenue, N. W., Washington 5, D. C., which organization will provide sponsors to make the oral motion in open court and will coordinate the arrangements for the special ceremonial session in Chicago with the Judges and Clerk of the Court.

The Journal is your magazine. If you have any suggestions for its improvement or for future articles, please bring them to the attention of the Editor. We invite the members of the Association to make contributions of articles for publication in the Journal. Publishability of any article submitted will be determined by the Editor with the advice of a committee of the Board of Directors composed of Lt. Col. Reginald Field, Col. William J. Hughes, Jr., Col. Charles L. Decker, USA, Capt. George Bains, USN, and Col. Louis F. Alyea, USAF.

The back pages of this issue contain a supplement to the Directory of Members, July, 1953, which should be used with the supplements previously published in issues 15 and 16 of the Journal.

JAA FAVORS PROPOSED UCMJ CHANGES

On February 18, 1954, the Board of Directors of the Association appointed a committee to consider the annual Article 67 (g) report of the United States Court of Military Appeals and The Judge Advocates General and to report to the Board its conclusions and recommendations concerning the proposals of that report and other suggested amendments to the Uniform Code of Military Justice. Col. William J. Hughes, Jr., was designated Chairman of the committee composed of Capt. Robert G. Burke, USNR, Col. Frederick B. Wiener, JAGC-Res., Lt. Col. Nicholas E. Allen, USAF-Res., and Maj. Richard H. Love, JAGC-Res. The annual report was made available to the committee about May 1, 1954, and after study, the following report was prepared and submitted to the Board of Directors at its meeting on May 22, 1954:

The Committee on the Annual Article 67 (g) Report of the United States Court of Military Appeals and The Judge Advocates General of the Armed Forces for the period June 1, 1952 to December 31, 1953, beg to report as follows:

The recommendations in the Report are as follows:

1. To authorize single-officer GCM's for certain non-capital, plea-of-guilty cases.

2. To authorize single-officer SCM's for certain cases.

3. To make final the law officer's ruling on motion for finding of not guilty.

4. To limit appellate review of GCM and SCM plea-of-guilty cases to those appealed by accused within five days of sentence.

5. To authorize legal review of GCM and SCM records by other lawyers as well as by JAG's.

6. To enlarge prohibition against censure of courts-martial by commanders to include their staff officers.

7. To eliminate stay of execution of sentences pending appellate review except sentences of death, dismissal, dishonorable discharge or bad conduct discharge.

8. To eliminate pay and allowances for persons under sentence of death during appellate review.

9. To eliminate distinction between custody and confinement with regard to escape cases under Article 95.

10. To substitute JAG corrective action for Board of Review examination and action in GCM cases which do not involve punitive discharge or confinement for one year or more.

11. To authorize JAG to dismiss cases pursuant to decision of COMA or Board of Review requiring dismissal or rehearing.

12. To reduce from 30 days to 15 days the period for filing petition for review.

13. To extend from one year to two years the period for filing petition for new trial.

14. To authorize dismissal of particular findings and modification of sentences in appropriate cases in lieu of directing new trial on entire cases.

15. To add a bad-check article to the Code.

16. To increase authorized maximums for non-judicial punishments.

17. To eliminate typing of verbatim transcripts of GCM cases resulting in acquittal or sentence of confinement of one year or less and no punitive discharge.

All of the above recommendations are, in the opinion of your Committee, desirable, and it therefore urges that the Judge Advocates Association support those recommendations as made, without diluting that support by reservations or amendments. For the same reason your Committee is of the opinion that no useful purpose would be served by present analysis of recommendations from the respective services or from the Court Committee which have not been adopted in the above seventeen recommended changes. The avoidance of controversy in this way is not to say that the individual members of your Committee do not have preferences which would vary the Joint Report recommendations as an original proposition. Your Committee, however, feels that the changes proposed constitute such distinct improvements over the

present Code that the Committee is unanimous in urging that the Association go on record as favoring them.

Your Committee has two additional recommendations for amendments to the Code.

First, the Committee is of opinion that, in order to secure uniformity in sentences, and at the same time to avoid efforts at sentence coordination which might be subject to misinterpretation, the power over sentences now vested in the several boards of review by virtue of Article 66 (c) of the Code should be withdrawn from the Boards and vested in the Judge Advocate General of the service concerned, such power to be exercised after the record has been reviewed by the board of review.

Second, in order to assist the Court of Military Appeals in reaching its goal of "substantial justice" (*United States v. Fisher*, 4 USMA 152, 156, 15 CMR 152, 156, decided 9 April 1954), the Committee believes that the Court of Military Appeals should be given additional power to review questions of fact, in the terms under which such power is now vested in boards of review by Article 66 (c); and, further, that the Court of Military Appeals should be given a discretionary power over sentences similar to that now exercised by boards of review, and paralleling that hereby proposed to be given to The Judge Advocates General.

The Board of Directors adopted the report in its entirety.



Announcement

of 1954 Annual Meeting

The Judge Advocates Association will hold its Eighth Annual Meeting at Chicago, Illinois, August 17-18, 1954, during the week of the American Bar Association convention. Col. Howard Brundage of the Chicago bar, Chairman of the Annual Meeting Committee, recently announced a very interesting two day program.

On August 17th at 3:00 p. m., the United States Court of Military Appeals will convene an extraordinary session of that court in the United States Court House at Chicago for the purpose of entertaining motions for admission to the bar. This ceremonial session of the Court has been arranged by the Association through the kind cooperation of the Clerk of the Court and the gracious assent of the Judges so that members of the Association, as well as other qualified lawyers from all over the United States attending the A. B. A. convention in Chicago, may be admitted to the high court of the military bar. Further instructions concerning applications for admission to the Court are included in this issue.

Also, on August 17th, the Association will hold its annual banquet at the University Club with reception and cocktails beginning a 6:00 p. m. Col. Brundage, in planning for this annual social event, has secured the finest facilities, has arranged an excellent menu, and will produce an interesting program with a speaker of national prominence.

The annual business meeting will be held on Wednesday, August 18th, beginning at 4:00 p. m. This meeting will be conducted in the Chicago Bar Association Building. The program will include a brief round table discussion upon the relative value of uniformed and civilian lawyers in the Defense Establishment conducted by members of a subcommittee of the Hoover Commission studying the use of lawyers in the Government service. In addition, there will be brief reports by The Judge Advocates General of each of the services and by a representative of the Court of Military Appeals.

Because of the fact that the new American Bar Center will be dedicated this year, Col. Brundage believes that the A. B. A. convention will be especially worthwhile. The Chief Justice of the United States will deliver the dedicatory address and other Justices of the Supreme Court are expected to participate in the ceremony. The local Illinois and Chicago Bar Associations as hosts have arranged entertainment and other affairs of interest for the visiting lawyers and their wives. Because facilities are limited and a large number of members have already indicated their intention to attend our banquet, reservations will be accepted on a basis of "first come, first served". It is a rare opportunity to attend these two outstanding conventions, and members are urged to make their decision to attend without further delay.

Reservations for the annual banquet are priced at \$10 per cover. Members are invited to use the enclosed postal card so that the Annual Meeting Committee may anticipate the expected attendance. Tickets may be obtained by sending your check to either Col. Howard Brundage, 111 W. Washington Street, Chicago 2, Illinois, or to the national offices of the Association in Washington.



Former JAG's With U. S. A. A.

Col. Charles E. Cheever, U. S. Army, Retired, formerly Third Army Judge Advocate throughout that Army's operation in Europe during World War II, is a member of the Board of Directors, General Manager and Secretary-Treasurer of the United Services Automobile Association at San Antonio, Texas. The Association is an outstanding insurance group engaged in providing automobile insurance at reduced rates to officers of the Federal services. Col. Robert E. Joseph, JAGC, USA, Ret., a member of the Judge Advocates Association, is General Counsel of the United Services Automobile Association.

SOVIET MILITARY LAW

By Lt. Col. James K. Gaynor, JAGC-USA *

Military law in the Soviet Union is found in the penal codes of the republics which constitute the union, and in the *Disciplinary Code of the Red Army of Workers and Peasants*. The latter gives broad power in the administering of nonjudicial punishment, which may be imposed upon an individual of any grade, including a general officer. A typical Soviet penal code is that of the Russian Soviet Federal Socialistic Republic. Article 193 (sections 1 through 31) of this code deals with military law, and the provisions of the article have been enacted into the codes of the other constituent republics of the union.

The court-martial is a special court in the Soviet system of justice. Another example of such a special court is the railway and water transport line court, which has jurisdiction over crimes endangering the safety and proper functioning of transportation. Court-martial procedure is similar to that followed in non-military courts.

The highest court in the Soviet Union is the Supreme Court of the USSR, which is the only Soviet federal court. Other courts enforce both federal and local law. The Supreme Court includes a court-martial division, which has supervisory functions with relation to the entire court-martial system. Although the Supreme

Court is an appellate body, its court-martial division has trial jurisdiction over a limited category of cases, among these being high treason. Such offenses as treason, espionage, and subversive activity are tried by military courts, even though the offenders may be civilians.

Soviet military law describes offenses and prescribes maximum punishment, as do the military codes of other countries; literal translations of permissible punishments—"lack of freedom" and "the highest measure of punishment"—sound strange in their terminology, but convey the desired meaning.

Professor Chkhikvadze, author of the leading treatise on Soviet military law, divides military offenses into nine categories: those of a treasonable nature, those in avoidance of military service, those against discipline (or insubordination), those involving military property, those violating rules of interior guard duty or other similar duty, military duty offenses, military offenses connected with security (or security violations), military offenses committed in combat areas, and those acts violative of international conventions.

Offenses of a treasonable nature include espionage, corresponding with the enemy, and plunder. Within the

* Formerly Executive Secretary, Institute of Military Law. Considerable research and translation assistance in the preparation of this article was given by Captain Reuben Efron, USAR.

category of aiding the enemy are surrendering implements of war by a commander without necessity, destruction of implements of war to aid the enemy, and willful deviation in the execution of battle orders.

Among the military duty offenses listed by Professor Chkhikvadze are exceeding one's authority, omission or negligence on the part of a commander, actions or orders of a commander which prevent subordinates or their families from taking advantage of rights and privileges established by law, and the use by a commander of subordinates for the rendering of personal services.

The doctrine of analogy is applicable in Soviet military law; that is, a person may be punished for a socially dangerous act which is not directly prohibited by law if the act corresponds generally to a military crime, is not covered by some other specific provision of law, and the act is similar to an act proscribed by the code. For example, a soldier who steals from a wounded comrade who is being transported to the rear would be guilty of an offense which may be analogized to stealing from the dead or wounded on the battlefield.

Obedience to orders is emphasized, so the soldier who obeys an illegal order will not be liable, although the one who gives an illegal order may be punished for exceeding his authority.

The Disciplinary Code of the Red Army provides the maximum penalties which may be imposed in the administering of nonjudicial punishment, with different maximum penalties according to the grade of the

offender; reprimand is permissible for all grades, soldiers may be confined or given extra detail, noncommissioned officers and officers may forfeit a portion of their pay or may be demoted, a general officer may be removed from command or given a partial forfeiture or placed in retirement, to give a few examples. It would appear that officers may not be confined without resort to trial, although noncommissioned officers may be confined in the course of nonjudicial punishment.

Nonjudicial punishment must be imposed within five days after the offense, and it must be executed within a month. The only complaint allowed the accused is that the one who imposed the punishment exceeded his authority; if such a complaint is found meritorious, the superior is subject to punishment. An officer superior to the one who imposes the punishment may increase the penalty if he considers it insufficient.

The right to impose nonjudicial punishment rests with each echelon of command, beginning with the squad leader, who may reprimand, assign one extra detail, or deprive a soldier of one regular permit to leave quarters. A company commander may restrict to quarters for a month, assign five extra details to a private or three to a noncommissioned officer, confine a private up to ten days or a noncommissioned officer up to five days or a warrant officer up to three days, or order strict confinement of a private for four days or a noncommissioned officer for two days.

The 1946 revision of the Disciplinary Code provides that the serviceman who discovers plunder or spoil-

age of military equipment, or the illegal use of funds, is required to report the matter, and if such a report results in correction of the abuse, the soldier shall be rewarded. If a soldier makes a false report, he shall be held responsible, but any commander who commits an apparent injustice toward one who has made such a report likewise shall be responsible.

The Disciplinary Code provides for rewards as well as punishments. Those who display conscientious and industrious attitudes to their service duties, safeguard weapons and property, and show extraordinary achievement in combat and political training, may be rewarded by an expression of personal appreciation (which may be before assembled troops), may be granted extra leave, may be given a valuable present or monetary reward, may have a previous disciplinary penalty removed, may be decorated, or may be promoted.

A unique feature found in the Red Army is the Officers' Court of Honor, instituted "for the protection of the dignity and honor of the officers' rank," which has jurisdiction over "offenses unworthy of the rank of officer which infringe military honor

or are not compatible with moral rules." This court is under the jurisdiction of a regimental or higher commander, and consists of five members and two deputies elected annually by secret ballot. No officer may judge another officer of higher rank, and a case is given to the Court of Honor only after an investigation. Punishment may include admonition, reprimand, recommendation for demotion or postponement of promotion, or recommendation for transfer or retirement.

REFERENCES: *Court-Martial Law of Soviet Russia, Germany, Italy, Switzerland, and Japan and the Disciplinary Code of Soviet Russia* (mimeographed pamphlet prepared by the Law Division staff of the Library of Congress, 2d edition, 1944); Gsovski, *Soviet Civil Law* (University of Michigan Law School, 1948); Chkhikvadze, *Soviet Military-Criminal Law* (Ministry of Justice, USSR, 1948), untranslated; Berman and Kerner, "Soviet Military Discipline" and "Soviet Military Crimes," portions of a forthcoming book, *Soviet Military Justice*, published in the June and July 1952 issues, respectively, of the *Military Review* of the Command and General Staff College.

Your professional success, important cases, new appointments, political successes, office removals, and new partnerships are all matters of interest to the other members of the Association who want to know "What The Members Are Doing." Use the Journal to make your announcements and disseminate news concerning yourself. Send to the Editor any such information that you wish to have published.

Lt. Col. Thomas E. Rhodes Retires-

Lt. Col. Thomas E. Rhodes was retired from the military service on April 1, 1954, after having served for thirteen years in the Judge Advocate General's Corps. For many years Col. Rhodes handled the complicated and important business of the Legislative Claims Division of the Army and in that capacity earned the high praise of many members of the Congress, as well as the admiration and respect of judge advocates.

The Richmond USAR School has been designated to operate JAG training for Second Army Schools at Ft. George G. Meade, Maryland, 15-29 August 1954. The instructors detailed for the program include many members of the Association, among whom are Col. Walter H. E. Jaeger, Lt. Col. George F. Hall, Maj. Julian S. Egge, Maj. Charles V. Laughlin, Col. Joe T. Mizell, Col. Charles P. Light, Lt. Col. Manning E. Case, Jr., Maj. Sidney Wickenhaver, and Capt. Walter Regirer.

The Annual Meeting of the Association will be held August 17-18, 1954, at Chicago, Illinois. The program includes a ceremonial session of the U. S. Court of Military Appeals in the United States Court House at 3:00 p. m. on August 17th, the Annual Banquet at the University Club beginning at 6:00 p. m. on August 17th, and the annual business session of the Association at the Chicago Bar Association Building beginning at 4:00 p. m. on August 18th.

Former members of the Third Army are being solicited for contributions for the erection of a monument at Fontainebleau, France, in commemoration of General George S. Patton. Major General Hobart R. Gay, Commanding General, III Corps, Fort Hood, Texas, is in charge of the program assisted by Colonel Charles E. Cheever, JAGC, USA, Ret.

Be sure to read the Nominating Committee's Report in this issue.

GENERAL PROMOTIONS—ARMY JAG

During the month of May, 1954, Gen. Claude B. Mickelwait was promoted to the grade of Major General and Colonels George W. Gardes and George W. Hickman were promoted to the grade of Brigadier General. The following short biographical statements concerning these officers are set forth so that the members of the Judge Advocates Association will be better acquainted with these officers.

Major General Claude Mickelwait, USA

General Mickelwait was born in Iowa on 29 July 1894. He later moved to Twin Falls, Idaho, and graduated from the University of Idaho in 1916.

After being commissioned a first lieutenant on 27 November 1917, he served with the 21st Infantry at San Diego and Camp Kearney where he was stationed when promoted to Captain in 1918.

After appointment in the Regular Army in 1920, he served successively at Alcatraz, California, at Schofield Barracks, Hawaii, with the 19th Infantry, and at Fort Benning with the 29th Infantry and The Infantry School. After graduation from the Infantry School in 1928 he served with the 30th Infantry at the Presidio at San Francisco and the 20th Infantry at Ft. Francis E. Warren in Wyoming.

Thereafter he attended the University of California School of Jurisprudence graduating with the degree of

LL.B. in 1935. After serving as assistant judge advocate, Ninth Corps Area, he was transferred to the Office of The Judge Advocate General in Washington, D. C., in 1938. Later he attended the Army Industrial College graduating in 1940. Upon re-assignment to the Office of The Judge Advocate General he soon became Chief of the Military Affairs Division.

With the invasion of North Africa in 1942, he was stationed in Casablanca as Judge Advocate of the Atlantic Base Section until January 1943 when he became the first Judge Advocate of the Fifth Army with which he served in North Africa and Italy until March 1944. He then became Acting Theater Judge Advocate of the North African Theater of Operations. In June 1944 he became Judge Advocate of the First U. S. Army Group in England and a month later was designated as Judge Advocate of the 12th U. S. Army Group in France.

In August 1945 he was appointed Deputy Theater Judge Advocate of the U. S. Forces in the European Theater and the following May became Theater Judge Advocate of those forces, which position he occupied until April 1947 when he returned to the United States to become Assistant Judge Advocate General.

General Mickelwait has been awarded the Distinguished Service Medal, Legion of Merit with one Oak Leaf Cluster, and the Bronze Star Medal. His foreign decorations in-

clude the Luxembourg Couronne de Chene and Croix de Guerre, the Order of the British Empire, the French Legion of Honor and Croix de Guerre with Palm, the Czechoslovakian Order of the White Lion, the Belgium Order of Leopold, and the Italian Military Valor Cross.

He is a member of the American Bar Association, Federal Bar Association, Society of International Law, and Judge Advocates Association.

On 7 May 1954, General Mickelwait was promoted to the grade of Major General and appointed to the position of The Assistant Judge Advocate General of the Army.



**Brigadier General George W.
Gardes, USA**

Brigadier General George W. Gardes was born at Norfolk, Virginia. He was commissioned as a second lieutenant in the Engineers in 1928. He entered on extended active duty in November 1940 and was subsequently promoted to Colonel, in the Army of the United States in October 1944.

After being appointed in the Regular Army in 1946 he served in the Office of The Judge Advocate General until 1951. During this period his main assignments were as Chief of the Patents and of the Procurement Divisions. He became judge advocate of Sixth Army on 26 October 1951 and served in that capacity until 14 June 1953. He served as assistant judge advocate, United States Army, Europe, from 8 August 1953 until he was promoted to Brigadier General with date of rank from 27 May 1954.

General Gardes received his Bachelor of Science degree in Civil Engineering from the Catholic University of America in 1928. He received his LL.B. degree from Georgetown University in 1933. He was employed as a Patent Examiner in the U. S. Patent Office from 1929 to 1937 and from 1937 to 1940 he was employed as a Patent Attorney by the United Shoe Machinery Corporation in Boston, Massachusetts.

During World War II General Gardes served 26 months overseas in the Mediterranean and European Theater of Operations, participating in 7 campaigns. His decorations include the Legion of Merit and the Bronze Star Medal.

General Gardes was admitted to the bar of the District of Columbia in 1932 and to the Massachusetts bar in 1940.

He is married and has 2 children.



**Brigadier General George W.
Hickman, Jr., USA**

Brigadier General George W. Hickman, Jr., Assistant Judge Advocate General for Civil Law, was born at Calhoun, Kentucky.

He graduated from the United States Military Academy and was commissioned a second lieutenant of Infantry on 12 June 1926. He served at various posts in the United States and Hawaii prior to the outbreak of World War II. He graduated from The Infantry School in 1932 and the Command and General Staff School in 1940.

General Hickman attended Harvard Law School during 1940-1942. Dur-

ing World War II he served as Staff Judge Advocate, 98th Infantry Division and XIII Corps. He was detailed in 1943 to the War Department General Staff and served as chief of the Mobilization Branch of G-3. He was transferred to GHQ, Army Forces, Pacific, and served as a Division Chief in the G-1 Section. In 1946 he was assigned as Executive Officer, Staff Judge Advocate's Office, GHQ, Far East Command.

General Hickman graduated from Harvard Law School in 1948 and that same year transferred to The Judge Advocate General's Department. He served as Chief of the Claims and Litigation Division in the Office of The Judge Advocate General prior to his transfer to Japan in early 1949 where he served as Command Staff Judge Advocate, Far East Command.

He served in Korea in connection with the peace negotiations there from July, 1951, to June, 1952, when he returned to the Office of The Judge Advocate General and was assigned to duty as Chairman of a Board of Review. He was appointed Executive Officer in the Office of The Judge Advocate General in October, 1952. He was promoted to Brigadier General on 28 May 1954.

General Hickman's decorations include the Legion of Merit with two Oak Leaf Clusters and Bronze Star Medal.

General Hickman was admitted to the bar of the U. S. District Court and U. S. Court of Appeals for the District of Columbia in 1948 and to the Supreme Court in 1954.

He is married and has three children.



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 neither a spokesman for the services nor for particular groups or proposals. It does not advocate any specific dogma or point of view. 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.

HIGH COURT RECOGNIZES WIENER'S WORK ON RULES

Col. Frederick B. Wiener of the District of Columbia Bar, a Director of the Judge Advocates Association, received special thanks of the Supreme Court of the United States on April 12, 1954, upon the promulgation of the new Rules of that Court, which become effective July 1, 1954. In the Order spread upon the Journal of the Court, there is expressed high appreciation of the services of a group of eight members of the Bar, which includes Col. Wiener, in furnishing a general idea of the Bar's appraisal of the needs and possibilities for changes

in the form and content of the Rules.

The Court stated: "Their expert knowledge and painstaking collaboration have aided the Court in the formulation of rules designed to promote the simplification of procedure in this Court." The Court went on to state: "Special mention must be made of the services of Mr. Wiener who, for more than a year, as Reporter to the Committee of the Court on the Revision of the Rules, devoted himself to the preparation of drafts for the Committee."



Please advise the headquarters of the Association of any changes in your address so that the records of the Association may be kept in order and so that you will receive all distributions promptly.

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.

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, payable January 1st, and prorated quarterly for new applicants. Applications for membership may be directed to the Association at its national headquarters, 312 Denrike Building, Washington 5, D. C.

BOOK REVIEWS

PRIVATE SLOVIK'S EXECUTION *

The Only Death of Its Kind Since the Civil War Asks How Much Can the U. S. Demand From a Citizen

By Brig. Gen. Franklin Riter, JAGC (Ret.)

THE EXECUTION OF PRIVATE SLOVIK (William Bradford Huie. Duell, Sloan and Pearce and the New Library of World Literature.)

Private Eddie D. Slovik, formerly Company G, 109th Infantry, 28th Infantry Division, as a penalty for desertion was shot to death by a firing squad on January 31, 1945, at Ste. Marie aux Mimes, France. He was charged with and tried before a court martial of the 28th Infantry Division for violation of the 58th Article of War (Code 1920).

The 58th Article of War denounced the crime of desertion by a member of the armed forces. It was an act of Congress governing the Army and was not a regulation of the War Department. He was found guilty by a general court martial constituted and appointed by Maj. Gen. Norman D. Cota who then commanded the 28th Infantry Division.

The trial was held on November 11, 1944, in Rotgen, Germany. The court sentenced Slovik to be executed by being shot to death. The method of execution bespoke an offence of a military nature and not a civil crime. Military personnel committing civil

crimes, the penalty for which was death, were executed by hanging. There were 90 American soldiers executed in France, England, Belgium and Germany for murder and rape.

Slovik was the only American soldier or officer executed for desertion since 1865 when Abraham Lincoln as Commander in Chief of the Army and Navy of the National forces confirmed a death sentence of a soldier and ordered execution of sentence. The fact that the United States had since engaged in the Spanish-American War and World War I without executing a deserter has not only impelled interest in the Slovik case but also has caused questions to be raised as to military justice procedure.

It is necessary that the reader understand clearly the judicial procedure operative during World War II as prescribed by Congress. A general court martial was appointed under proper authority by the commanding general of the combat division.

The trial proceedings very closely resembled the trial of criminal offences in civil courts.

Each authority having power to appoint a general court-martial had as

* Reprinted from the editorial page of the DESERET NEWS, Salt Lake City, Utah, May 22, 1954, with permission of the editor and the author.

a member of his special staff a staff judge advocate. The Judge Advocate General of the Army selected these men with great care. In World War II the vast majority of them were reserve officers or men who had been commissioned directly from civil life, and they were judges or lawyers with substantial experience. The record of trial when completed and certified was delivered to this staff judge advocate whose duty it was to review and study it and make his written report to his commanding general who had appointed the trial court. These reports were no casual affairs. Painstaking care was exercised in the preparation of them. The staff judge advocate pointed out to the commanding general errors in the trial, if any, which substantially affected the rights of the accused. While the commanding general was not absolutely bound by his recommendations, it was almost universal practice of general to accept them.

Early in spring of 1942 Pres. Roosevelt by executive order created the branch office of the Judge Advocate General with the European Theater of Operations and constituted an original board of review therein. The writer was the chairman of this original board of review and his associates were Col. Elwood W. Sargent, a practicing lawyer of Boston, Mass., and Maj. (now Lt. Col.) Edward L. Stevens, Jr., a practicing attorney in New York City. The entire personnel of the board of review were reserve officers with essentially civilian backgrounds.

At the time the Slovik case arose the assistant judge advocate general in charge of the branch office of the

Judge Advocate General with the European Theater of Operations was Brig. Gen. Edwin C. McNeil, now retired and living in Washington, D. C. He was considered by Regular Army personnel and by the civilian legal profession familiar with military justice matters as the outstanding Regular Army legal expert, possessing an unusual knowledge and skill in this science.

In order to give the commanding general of the Army in the field (in this case Gen. Eisenhower) proper legal advice not only as to military justice matters but also as to the many complicated legal questions arising out of the presence of the American Army in Europe, there was appointed on his staff a theater judge advocate. Brig. Gen. Edward C. Betts, now deceased, was appointed to that important position. His background also was essentially civilian. Gen. Betts surrounded himself with men of outstanding ability. They were not amateur lawyers but men who possessed professional standing equal or superior to that of members of a large metropolitan law firm. Many of them today are law school professors of distinguished reputation and general counsel for large corporations. It was this legal department which Gen. Eisenhower consulted in all legal matters. Gen. Betts was a close personal friend of the writer and the writer has knowledge of the fact that in handling military justice matters for Gen. Eisenhower there was the closest of cooperation between the two generals.

Where the sentence of the court required the dismissal of an officer or the imposition of a death sentence,

and the appointing authority (in this instance Gen. Cota) approved the sentence, it was his duty to forward the record of trial with the staff judge advocate's report and recommendations to Gen. Eisenhower as commanding general of the Army in the field. In practice the record went to Gen. Betts' office where it was assigned to the military justice section. Here commenced the second appellate review of the record.

In the Slovik case the record of trial shows that the recommendations of Gen. Betts were the result of the consolidated efforts of several of his office lawyers of outstanding reputation for ability and integrity. It was their duty to make a careful review of the record to determine if prejudicial errors existed. Finally the report of these officers was placed before Gen. Betts who in turn was authorized to recommend to Gen. Eisenhower complete disapproval of the sentence or, on the other hand, to confirm it.

Gen. Eisenhower had authority to confirm a sentence, set it aside completely or mitigate it by substituting imprisonment for the death sentence. In the Slovik case he confirmed the sentence of death. An examination of the record will clearly show that such decision was not a mere haphazard cursory decision but the result of deliberate, fearless and honest action of Gen. Eisenhower.

It was then the duty of Gen. Eisenhower to forward the record of trial with the recommendations of the staff judge advocate and of Gen. Betts to the branch office of the Judge Advocate General with the European Theater of Operations. The Slovik record

when it reached the branch office went directly to the undersigned as chairman of the board of review and he assigned it to Lt. Col. Stevens for the original study and review. After long study, Lt. Col. Stevens' opinion that the sentence was legal was unanimously adopted as the opinion of the board of review.

The board had no authority over the sentence if it were legal; neither did the assistant judge advocate general.

The record with the reviews of the staff judge advocate and the theater judge advocate and the opinion of the board of review then was placed before the assistant judge advocate general, Gen. McNeil, for his action. Gen. McNeil in his endorsement was the first to invite attention to the fact that if this death sentence were executed it would be the first death sentence for desertion since the days of Abraham Lincoln. Even at that point Gen. Eisenhower had the right to extend clemency and mitigate the sentence. He chose to do otherwise and the record of trial containing Gen. Eisenhower's confirmation of sentence was returned to Gen. Cota as the appointing authority for execution.

The writer ventures the opinion (and he has always been positive in this thought) that there was no error in the trial and conviction of Slovik. Slovik received treatment equal to or even superior to that of a civilian sentenced to death in federal court. The entire appellate procedure was characterized by earnestness and sincerity and those officers who held the record of trial legally sufficient to support the sentence did so after deliberate and well informed action.

There is at least an implication in the Slovik book that the military justice processes are subject to criticism. Mr. Huie has been unusually fair in his treatment of this facet of the case. As a matter of fact he gives full credit for the conscientious efforts of the appellate reviewers. On the other hand a layman reading this book might immediately conclude that here is another example of the miscarriage of justice in military jurisprudence unless he has before him the foregoing explanation. The writer believes that the trial, conviction and appellate review in the Slovik case complied strictly with the law of Congress and was fair, just and honest.

The real question which Mr. Huie raises revolves about the fact that there were several hundred, even thousands of convictions for desertion and cowardice on the battle field in both world wars wherein the deserters and cowards did not receive the death sentence. The writer would be guilty of an unjustified assumption if he attempted to explain the reasons for Gen. Eisenhower's decision to allow the death sentence to stand in the Slovik case. He will not attempt to do so.

However, in justice to all concerned there are certain facts involved in the Slovik case which in the writer's opinion justified the death sentence. When Slovik went into the line as a replacement the American Army was engaged in a life and death struggle. Casualty lists were heavy, and at this stage of the war the Germans were proving themselves effective and powerful fighters. Slovik's desertion occurred before the Bulge, but the 28th Infantry Division, to which he

was assigned, was desperately engaged in its drive against the Germans. It was short of personnel. It was notorious that there existed at this time a tremendous number of battle line desertions and of cases involving cowardice before the enemy. Gen. Eisenhower was literally "scraping the bottom of the barrel" to find replacements and there was no assurance that he could replace all of the casualties.

Slovik's desertions came at this critical time. The evidence shows that he advisedly and deliberately made up his mind that he would not engage in combat. His written confession was a voluntary act on his part. It was not coerced. He had twice by his company commander been considered AWOL and the last time he wanted to be sure he would be charged with desertion. He inquired of his company commander if he would be charged as a deserter. Slovik's confession is one of the most perfidious documents in military annals. It was the cold blooded action of a coward. It would well have served his purpose to have been sentenced to life imprisonment at Lewisburg. There he would have had good food and warm and comfortable quarters.

Had Gen. Eisenhower mitigated the death sentence in favor of life imprisonment he would have done exactly what Slovik planned and intended. In a situation of this kind where the fate of the American Army was at stake, some type of iron discipline became a necessity; otherwise the Army would become a mob. The great obligation of the general was to the brave and fearless fighters who carried the battle line forward to vic-

tory. He would have been guilty of gross sentimentality had he ignored the fact that thousands of better men than Slovik had given their lives and were dying each day. There was not only an obligation to the living battle soldier but also to the memory of those who had died.

There are some of us who believe that if a man is not willing to offer his life in defense of his American citizenship he is not worthy to possess it.

Mr. Huie also emphasizes the civilian record of Slovik as being the cause of imposing the death penalty upon him. His civilian record was a bad one but it did not have the influence attributed to it by the author. Rather Mr. Huie presents a more difficult question which has bothered the writer for a number of years.

There is no question but what the Selective Service System is a fair, just and democratic system of recruiting an Army. It has its defects, but two major wars have proved its worth. It must never be forgotten, however, by its processes in World War II good, bad and indifferent men were gathered into the ranks. Brought into uniform were thousands of men of the caliber of Slovik who were moral and physical cowards; they had no conception of the obligations of citizenship; they sought only their own pleasures and conveniences and knew nothing of the gospel of sacrifice. They were no good either as soldiers or men. Great numbers of them jumped the boats at either Glasgow or Liverpool and immediately went into the underworld where they became the companions of criminals and prostitutes. Their journey

to Europe only afforded them greater opportunity for extension of their latent criminal tendencies.

This class of men brought into the service by the Selective Service Act cost the American citizens millions of dollars.

The Army would have been glad to be rid of them. From the standpoint of combat they should never have been recruited.

I am quite well aware of the problem this presents to fair minded American citizens. It is grossly unfair that such a man be allowed a 4-F classification. He should be in the battle line. Otherwise the decent citizen is penalized. A certain number of them have been reclaimed by the Army and made fairly decent citizens, but the vast majority of them were petty criminals when they put on the uniform and were absolutely worthless as soldiers. Many of them became vicious criminals when they found criminal contacts in the slums of European cities. Others of them remained as they were, petty criminals who possessed no moral qualities and were fundamentally cowards. Most of them became deserters and cowards.

Mr. Huie's book is a fine book if it is read and understood against the factual background above described, and if in particular the reader will sense the fundamental problem that it propounds. Shall we put petty criminals, worthless and lazy individuals possessing no moral values into the uniform along with the decent, brave soldier? Confessedly I do not know the answer, but I know that in another war the problem will become more acute than ever.

AN ESTATE PLANNER'S HANDBOOK

By Shattuck and Farr

Little Brown and Company, 1953, second edition

To general practitioners, handbooks are most useful when they contain both checklists for use in negotiations and conferences and forms for guidance in drafting. For these purposes, AN ESTATE PLANNER'S HANDBOOK is of practical value to most, if not all, lawyers in general practice, whether new to, or experienced in, "estate planning."

Here in one volume is a competent analysis of the common problems involved in the prudent management of family affairs over a lifetime, or for a generation or two. Simply and quite effectively, the authors describe the techniques available to those who would fulfill a testator's desire to "control," "conserve," and "continue" his business and financial interests and to "care" for the individuals in his family. These techniques are examined cautiously for their advantages and limitations and illustrated imaginatively. Consequently, their utility is patent throughout this book and free of the usual, but unnecessary, ambiguity and doubt often found in "scholarly" texts.

Life insurance, gifts, powers of appointment, and trusts-revocable and irrevocable, inter vivos and testamentary—these techniques are viewed in human terms as well as in administrative terms. Each technique, moreover, is scrutinized for its principal

tax consequences under current federal income, estate and gift tax law.

Helpful as this sophisticated integration of the law of taxation, real estate, insurance, domestic relations, business organization, wills, and trusts can prove to be, even more helpful to the practicing lawyer are the illustrative forms of wills, trusts, and business agreements which are intelligibly explained, provision by provision. Indeed, this is a book which, I believe, could profitably be read from the back to the front cover, examining the forms and comments in the appendix before reference to the text. A proud draftsman, overlooking the facetious, may appreciate the point of this suggestion.

"Estate planning" is, of course, not new, but, into the complexity of business and family life today, a "new look" is required of all lawyers who are called upon to advise their clients in the planning and management of their family affairs. This book, fortunately, is designed for this purpose. In family affairs, this book serves as a dictionary, an encyclopedia, and as an atlas in helping to keep the lawyer informed of *what* to do, *why*, and *where* to do it. And, moreover, it shows him *how*.

SHERMAN S. COHEN,*

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* Major Cohen is a member of the bar of New York and the District of Columbia and engages in the private practice of law with offices in Washington, D. C.

What the Members Are Doing

District of Columbia

On the evening of May 31, 1954, Col. Mariano A. Erana (5th Off.) had a reception and cocktail hour for members of the Association in the Washington area at his home, 11 West Bradley Lane, Chevy Chase, Maryland. About 175 persons attended the reception and enjoyed thoroughly the hospitality of Colonel and Mrs. Erana. Among those present were Maj. Gen. and Mrs. Caffey, Maj. Gen. and Mrs. Mickelwait, Gen. Kuhfeld, Gen. McNeil, Gen. Dillon, Capt. and Mrs. Wood, Judge Quinn, Judge and Mrs. Latimer, and Judge and Mrs. Brosman.

Illinois

Stuart B. Bradley (10th Off.) recently announced the change of the name of his firm for the practice of law to Bradley, Pipin, Vetter & Eaton. The firm has offices at 135 South La-Salle Street, Chicago 3.

Maryland

Lt. Ira S. Siegler, formerly of the Litigation Division, JAGO, has recently completed a tour of extended active duty and is presently counsel to Judge M. J. Harron of the United States Tax Court.

Massachusetts

Gen. Ralph G. Boyd recently announced that he has withdrawn from the firm of Nutter, McClennen & Fish and continues the practice of law

with offices on the seventh floor of the 75 Federal Street Building, Boston.

Lt. Col. Thomas L. Thistle was recently appointed Regional Attorney for New England by Secretary of Labor James P. Mitchell. Col. Thistle retired as Mayor of Melrose in January, 1954, after holding the office for six years.

The New England Chapter of the Judge Advocates Association had its annual meeting at the Reserve Officers Club in Boston on April 9, 1954. Judge Paul W. Brosman of the United States Court of Military Appeals was the principal speaker on the occasion.

New Jersey

Lt. Col. Bernard Verney (3 CT and S&F) is engaged in the practice of law at 1060 Broad Street, Newark. Col. Verney is presently detailed as instructor in the JAGC section of the 1028th USAR School at Kearny.

New York

John B. Coman (11th Off.) was recently named Assistant General Counsel to the Tishman Realty and Construction Company, Inc. Mr. Coman's office is at 445 Park Avenue, New York City.

Robert E. Delany, attorney, with offices at Thirty-seven Wall Street, New York City, was recently promoted to the rank of Colonel.

James M. Heilman (15th Off.) recently announced the formation of a

partnership with his brother, W. O. Heilman, for the practice of patent, trade mark, copyright and unfair competition law, with offices at 501 Fifth Avenue at 42nd Street, New York City. Mr. James M. Heilman is a graduate in engineering from Lehigh University and a graduate of George Washington Law School. He has been Director of Legal and Patent Department of the United States Plywood Corporation until the recent formation of his law firm.

Sidney A. Wolff (9th Off.), who practices law with offices at 527 Fifth Avenue, New York City, was recently re-elected to another three year term as a director of the New York County Lawyers Association—the largest bar association in the world (9,000 members). Mr. Wolff is also Chairman of the Association's Committee on Military Justice.

North Carolina

Clarence W. Hall (6th Off.) of Durham is Judge of the Superior Court of Durham County, sitting at Durham. The Superior Court is the trial court of general jurisdiction for the trial of both criminal and civil cases. Judge Hall sends his greetings to the Ann Arbor "commandos" of his class and hopes to see them at Chicago in August.

Texas

Col. Charles E. Cheever, one time Judge Advocate, Third Army, and presently Secretary-Treasurer and

General Manager of United Services Automobile Association, recently announced the appointment of Col. Robert E. Joseph as Counsel and Director of Public Relations for the Association. Col. Joseph, a lawyer for more than thirty years, was prior to his military service Chief of Public Relations for the Federal Bureau of Investigation.

Tom D. Glazner recently announced the opening of offices for the general practice of law at 608 Radio Building, Wichita Falls. Mr. Glazner, a graduate of Baylor University, was admitted to the bar in 1950 and served thereafter for 17 months as trial counsel and assistant staff judge advocate in the Air Force. Mr. Glazner is Secretary of the Wichita County Bar Association.

Coincident with the Texas State Bar Association meeting in San Antonio, Col. Gordon Simpson is arranging for a meeting of Texas JAG's for breakfast on July 2, 1954, in the Walnut Room of the Plaza Hotel. It is expected that Gen. Caffey, The Judge Advocate General of the Army, will be present.

Wisconsin

Lt. Col. John H. Sweberg, recently retired under provisions of Section 402 IV, Public Law 351, is engaged in the private practice of law in the law firm of Sweberg & Kruschke with offices at 67-A South Stevens Street, Rhinelander.



SUPPLEMENT TO DIRECTORY OF MEMBERS JULY, 1953

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