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TABLE OF CONTENTS

	Page
Results of Uniform Code Questionnaire	1
Notes from the Office of the JAG	26
Points Toward Retirement	27
Awards of Merit	28
Training, Points and Retirement—Correspondence	29
Nominating Committee	32
Civilian Military Government Courts in Germany	33
The JAG's Statement to the Senate Armed Services Committee	38
What the Members Are Doing	48
Annual Meeting at St. Louis	52

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Results of Questionnaire Concerning
"Uniform Code Of Military Justice"

On March 4, 1949, the Association distributed to its members a copy of S. 857 and HR. 2498, identical bills to establish a "Uniform Code of Military Justice," together with a questionnaire soliciting the views of the membership on particular questions raised by the proposed law as well as general comments upon the whole subject matter.

After extensive hearings conducted by the Sub-Committee on Military Justice of the House Armed Forces Committee, the proposed law, substantially unchanged, was reported to the House as HR. 4080 which bill was approved by voice vote by the United States House of Representatives on 5 May, 1949.

Thereafter the Sub-Committee on Military Justice of the Senate Armed Forces Committee conducted hearings at which the Association presented the tabulated results of the questionnaire. Typical comments from members, pro and con, on various features of the proposed Uniform Code were also submitted for the consideration of the Sub-Committee. The Sub-Committee has concluded its hearings and at the time of this writing is considering its findings and will shortly report the Bill to the full Senate. It is very likely that the Committee will report the bill on the floor in a very similar condition to that which it received it

from the House.

For the information and interest of all members, there follows the tabulated results of the questionnaire and a collection of typical comments from the membership. 2190 questionnaires were distributed of which 645 were returned in time for tabulation. Since that time perhaps a dozen more questionnaires have been received but a survey of the answers there contained follow a pattern established by the following tabulation.

Questionnaire

1. Are you basically in favor of a Uniform Code for the three services?

YES 586 NO 51

2. If so, would you adopt it now, or so far as the Army and Air Force are concerned, would you give the new court martial system established by the Elston Act, Public Law 759, 1948, effective February 1, 1949, and under which they are now operating, a reasonable tryout? EXPLAIN.

Adopt Uniform Code

Now 298

Try Elston Act first 221

3. Do you believe, if a Uniform Military Code is adopted, it should substantially depart from the principles of the Elston Act above referred to?

YES 98 NO 434

4. Proposed AW 2(3) gives

courts martial jurisdiction over reserve personnel on inactive duty training. Are you in favor of this?

YES 211 NO 416

5. *Proposed AW 16, 26, 39 and 51 give the "law officer" the right to rule on interlocutory matters but deprive him of any vote on the findings and sentence, and exclude him from the deliberations of the Court. Are you in favor of this?*

YES 85 NO 512

6. *Proposed AW 51c requires the instructions of the law officer as to the elements of the offense and the rule as to reasonable doubt to be made part of the record for Appellate Review. Will this be of practical value?*

YES 343 NO 179

7. *Proposed AW 17 permits a court of one armed force to try a member of another, but provides that Appellate Review shall reside in the Armed Force of which the accused is a member. Are you in favor of this?*

YES 330 NO 298

8. *Proposed AW 27b requires trial counsel and defense counsel to be lawyers. As the law officer must also be a lawyer (AW 26) and there are in peacetime around 100 Army G.C.M. jurisdictions, this will require at least 300 additional lawyers. Is this practicable?*

YES 445 NO 171

9. *Proposed AW 31 excludes a confession forced by military*

personnel but not one forced by outsiders such as police authorities. Do you think this adequately protects the privilege against self-incrimination?

YES 74 NO 547

10. *Proposed AW 27 and 38 abolish Trial Judge Advocates and substitute Trial Counsel. Are you in favor of this?*

YES 322 NO 232

11. *Proposed AW 58 permits confinement in the penitentiary for any offense no matter what the length of the sentence, by what court adjudged, and whether or not it includes dishonorable discharge. Are you in favor of this?*

YES 93 NO 540

12. *Proposed AW 66 provides for a Board of Review, who may be civilians, with final power, in ordinary cases, to hold records good or bad on any ground. In either event the the Judge Advocate General has no power to do anything except refer the case to the Judicial Council, composed of three civilians. Are you in favor of this?*

YES 158 NO 468

13. *Proposed AW 66 gives the B/R final power to reduce sentences, with no review at all in the Judge Advocate General, the Judicial Council (see AW 67d), the Secretary or any one. Are you in favor of this?*

YES 118 NO 500

14. *Proposed AW 67 makes it*

mandatory that the Judicial Council (The Supreme Court of the new system) be composed of civilians only, appointed without the advice and consent of the Senate and holding office for no definite term, but solely at the will of the President. Are you in favor of this set-up?

YES 67 NO 563

15. The proposed Code (AW 74) deprives the Judge Advocate General of all clemency powers now exercised by him under the present AW 51. Are you in favor of this?

YES 52 NO 570

16. The proposed Code, in providing a disciplinary system without a responsible head, in depriving the Judge Advocate General of all power to differ with B/R as to legality of records of trial (limiting him to the right to send the case to the all-civilian Judicial Council) and in making the B/R supreme as to sentences, appears to take ultimate disciplinary control away from the military authorities and put it into the hands of civilians. Are you in favor of this?

YES 93 NO 504

17. Viewing the proposed Code as a whole, do you think it sets up a workable system?

YES 270 NO 291

18. Have you had military justice experience while in the Service?

YES 598 NO 37

Comments from Members of Judge Advocates Association on Questionnaire

No Civilian Control

"I believe the tendency of post-war reform efforts has been to go too far in taking ultimate control in military justice from the military and placing it in civilian hands. Discipline is still absolutely essential to military effectiveness and I believe the military authorities should remain in control of military justice administration with a *minimum* of restriction necessary to prevent injustice."

COL., Spokane, Wash.

* * *

"The Judge Advocate General should be given more authority and responsibility instead of less. There is no place for civilians in military justice procedure. If we get our military justice and civil justice mixed up we have no military discipline. Military justice is a means instead of an end, anyway. It's too bad we have to have it at all and if we ever have lasting world peace we can abolish it all. But until we reach that state of security, let's keep our military establishments military and not let them get mixed up with lofty concepts of democracy. Let's just admit that the military can't do as good a job of justice as the civil authorities, but the military can do a better job of fighting and since military justice is a necessary part of the fighting machine we have to keep it. I recommend more cooperation, more simplicity,

less competition between the services and that the national welfare be substituted for individual ambition."

LT. COL., *Oklahoma City, Okla.*

* * *

"We have gone about far enough in protecting the basic rights of an accused. We must retain some authority in the military, who knows its problems best, or we will lose all control over the personnel. We will end up being busier protecting individual rights than fighting the enemy."

LT. COL., *Kansas City, Mo.*

* * *

"Any attempt to put the CM system on a par with the civilian's concept of justice is going to react very unfavorably on the efficiency of the services and arms involved. I believe that the services are no more than the name implies—arms and services; they are the good right arm of the executive, and their mission must not be hindered in its performance by a mistaken emphasis upon individual justice. The individual is entitled to justice, certainly, and the Elston Act gives it to him. This new code, however, makes the administration of military justice so cumbersome that it places justice ahead of the mission of the service involved. The enemy, we may be certain, will not be so encumbered, if and when we engage him."

1ST. LT., *Jennings, Mo.*

* * *

"Generally speaking, the proposed code is contrary to military

principles. If we want civilians to run the judicial side of the services, then we should use our regular civilian procedures. Obviously this is too slow and cumbersome. In my opinion, the proposed changes would completely destroy our present system of military justice and would seriously imperil the discipline of the various commands. Such changes should be most strenuously opposed."

CAPT., *Los Angeles, Calif.*

* * *

"The power to command must remain with the military forces if we expect to have an efficient and well disciplined military. The power to command depends upon discipline, discipline depends upon the power to punish. If we take the power to punish away from the military we will destroy discipline, and eventually the power to command. The proposed code, except for minor offenses, takes away from the military the power to punish, and vests it in a civilian board of review, which will have dictatorial power over valid and legal sentences of courts martial."

LT. COL., *Charleston, W. Va.*

* * *

"The sob sisters seem to be placing us in a position where military law and rules will be as ineffective as our civilian rules against traitors."

2ND. LT., *Pontiac, Mich.*

* * *

"My only concern is for an armed force with appropriate discipline. I will not vote to turn over

our armed force discipline to a group of unmilitary, undisciplined cry babies for this will create the mob the U.S.S.R. wants us to have for an armed force."

MAJOR, *Port Clinton, Ohio.*

* * *

"There is an unnecessary emphasis on civilian influence—to such an extent that it is a misnomer to call it a code of military justice. With all the additional safeguards that have been provided by the Elston Act, I see no need for the tremendous civilian authority interjected into the proposed system."

COL., *Toms River, N. J.*

* * *

"This is a code obviously drawn by some fuddy-duddy who never saw a day in the field with troops and certainly no combat, and resembles Federal District and Appellate Court procedure—too technical to work. Of what possible disciplinary value could a sentence have with the four reviews (causing a year's delay) to intervene? Especially in a mutinous situation in a far off field? What experience in war would qualify civilians to judge military officers as a supreme judicial counsel? Who controls promotions, efficiency reports, etc. of Judge Advocates and Board of Review Members?"

COL., *Dallas, Tex.*

* * *

"I feel, after examining the proposed bills in the Senate and the House, that a Uniform Code of Military Justice for the three services is greatly needed and would

be for the mutual benefit of all concerned. However, the proposed bill is not what is needed. It attempts to make military justice civil justice, and such is absolutely not feasible. Civil law and military law have a different aim in view. A soldier is not a civilian and a civilian is not a soldier, and never the twain shall meet."

CAPT., *Atlanta, Ga.*

* * *

"Civilians — particularly those legislators without military experience—should some day realize that when they try to deprive the military of those disciplinary powers which rightly and peculiarly belong to the military, the system evolved will *not* be successful."

1ST. LT., *Phillipsburg, N. J.*

* * *

"The code gives every evidence of preparation by a person or persons who are attached to the "adversary" system and have little appreciation of its deficiencies. It would destroy some of the most outstanding merits of military justice as compared with criminal justice in general. It represents a retrograde movement from the advanced position reached under the Articles of War. I believe it would prove unworkable and harmful to the State and the Army in time of war. It not only is not an improvement—it would be highly dangerous to the public interest if enacted."

BRIG. GEN., *Washington, D. C.*

* * *

"I see no reason for further interference by Congress in the mat-

ter of military justice. I have always believed and do now, that most of the so-called "safeguards" which are set up in the Articles of War are really so only to the poor soldier, the man who either makes no effort to do right or who deliberately does wrong. Thus they discriminate against the good soldier who tries to perform his whole duty. The idea of turning any part of military justice over to civilians is repugnant to all principles of discipline. If those men are competent to take charge of the most important feature of an army, its discipline, then they should be made generals."

1st. Lt., *Clay, W. Va.*

* * *

"The system embodied in the proposed code would prove to be cumbersome in practice. If it should be enacted into law and a national emergency should occur, it is possible that the whole system of military justice would break down. Many people fail to realize that military justice is a field within itself and that the rules applicable to civilian practice are not always precedents. The fact is that the former Articles of War on the whole constituted a fair system. It was the human element rather than the system which gave rise to the abuses in the last war. The real remedy is to be found in the proper orientation of officers, particularly general officers, rather than attempting to increase participation by civilian elements in the administration of military justice." COL., *Jacksonville, Fla.*

"I cannot take time to examine the matter fully. However, no code should lose sight of the fact that discipline is and must be the primary object. Civilian considerations of presumed innocence must sometime give way to the exigencies of war just as civilian considerations of personal comfort and independence must also give way. The system must not be weak and it must not be cumbersome. Justice above all must be prompt. Provisions to insure fairness must not be the counsel of perfection, but they can be adequate without interfering with the main object which is to win a war. A peace-time army, to be of value must be mentally adjusted to war-time necessities. It has to be the cadre and pass its philosophy to the new recruit. It can't do that on a basis of diverse disciplinary responsibility in time of war if a "soft" counsel. Appointment should be from candidates proposed by Army, A.F. and Navy."

MAJOR, *Kankakee, Ill.*

* * *

"I am violently opposed to inserting civilian personnel into our system. The military system has more protections for an accused than does any other system of justice of which I know. If the military cannot conduct its own system of justice, based on laws passed by the Congress, I don't see how it can be given the job of protecting this nation from aggression. Let's give the new system a trial—I believe it will work more effi-

ciently, and with more justice to an accused, than do any of our civilian tribunals."

LT. COL., *San Francisco, Calif.*

* * *

"The main defect is the lack of service control, by reason of the civilian (and political) Judicial Council. This council should be service personnel, or if civilians are desirable, then composed of a board of five, two civilians and three appointed from the respective services."

COL., *San Francisco, Calif.*

* * *

"In my opinion a civilian board should not have final review. Unless they have military background they cannot know problems of military essential to proper review. As a division J.A. for 5 years, I feel that concepts of civilian procedure must give way to military expediency, at a final point."

LT. COL., *Walla Walla, Wash.*

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"Civilians with no military service do not know problems of armed service—even limited experience is insufficient."

1ST. LT., *Memphis, Tenn.*

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"I particularly object to placing ultimate supervision and control in civilian hands. There is no discipline better than self discipline. The military (or Naval) problem is sufficiently unique to warrant letting each discipline itself. There seems to me to be no excuse for conceding that these services must abandon time-honored practices and customs in favor of novel ones

that in effect imply that the Army, Navy and Air Force personnel are ultimately incompetent to administer justice of their own.

"I say, give the Judge Advocate's Corps (and the corresponding sections of the other services) sufficient personnel, qualified to properly administer justice at the trial level, leave them with a system as good as that provided by the Elston Act, and far better results will be obtained than by the proposed novel system."

LT. COL., *Oklahoma City, Okla.*

* * *

"I cannot understand nor accept, the idea of appointing civilians to the all important position of being a "Supreme Court" for the Armed Forces, unless it is desired to create some patronage." My reaction to such an idea is: it is a reflection on the personnel of the various services, particularly the Judge Advocate General's Department of the various branches of the service. It almost amounts to an expression of lack of confidence in such personnel, and seriously questions the caliber and integrity of such personnel. Under no circumstances would I endorse or support such a proposal. If there must be a "supreme court," then the members of same should be drawn in equal numbers from the Army, Navy and Air Force."

MAJOR, *San Francisco, Calif.*

* * *

"I particularly object to reviews by civilian boards. I believe that officers with general court martial jurisdiction approved dishonorable

discharges only when clearly justified. I do not favor having civilians review the type of discharge given in time of war. The War Department through the Judge Advocate's Office offers the best protection for the civil rights of our young men. It is non political. It has no interest except to administer justice."

LT. COL., *Cedar Rapids, Iowa.*

* * *

"My principal objection is to civilian board of review, and machinery and provisions regarding their tenure and power. If the whole proceeding is to be subject to a civilian board I think the make-up of the Board should include someone who has served in armed forces and someone who has legal training. Otherwise it would be like making a Supreme Court decision reviewable by a coroner's jury."

* * *

"Question 16 puts its finger on the crux of the entire problem since the agitation for a new code is primarily an attempt toward the "taking away of ultimate disciplinary control" from military authorities. It seems to me that such expressions should be avoided in discussing these problems with Congressional representatives. Courts Martial are only one means of exercising disciplinary control. I even doubt if it can properly be said that because the Judicial Council was composed of civilians, that ultimate disciplinary control would be completely lost to the services except in very few cases,

comparatively speaking. Permitting the Boards of Review to be composed of civilians is another matter. These should be officers of the services for the reasons already set forth in Paragraph 9 hereof. These reasons appear to be a far better argument against appointing civilians than the "losing of ultimate disciplinary control," and more likely to be listened to and understood."

COL., *Philadelphia, Pa.*

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Civilian Review Desirable

"I see considerable merit in some civilian participation."

CAPT., *Blanchester, Ohio*

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"Civilian review at the top seems desirable. Persons with long military experience tend to think in terms of "discipline." Punishment for disciplinary reasons is not always just. The JAG has enough administrative duties."

Los Angeles, Calif.

* * *

"I served both as Assistant SJA and SJA during World War II, also TJA and Law Member. While I happened to serve under a C. O. who used common sense, I know that others were not so fortunate. I, therefore, believe that justice would be better served by leaving the ultimate power in the hands of a civilian body whose justice would not be colored by military precepts."

MAJOR, *Salinas, Calif.*

* * *

"I would make the system more judicial (i. e., run by lawyers as

courts) and less military (i. e., less by direction of line officers as an instrument of policy or whim). Our military services are now composed of a broad cross-section of our population and will be at least for some years. Some of these persons will not be serving voluntarily, that is, they will be selectees. For these reasons we need a broadened Code of Military Justice with all the safeguards and protections that a citizen receives in civilian life in his courts of law. Our courts martial must not be subject to criticism for harshness, lack of deliberation, lack of qualification of counsel and law member, inadequate appeal, etc."

MAJOR, *Salt Lake City, Utah*

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"The Uniform Code appears to me to have some features that are of particular value. There is no doubt in my mind that isolationists, pacifists, opponents of preparedness, propagandists against our form of government, and even many sincere individuals, who are interested only in the welfare of the nation, have unjustifiably used the administration of military justice to bolster their contentions. If the ultimate power in courts martial cases is vested in a Judicial Council composed of civilians with proper qualifications, I feel that these protestants or opponents will be deprived of their main argument. They will not be able to criticize the Army or any other armed force for the conclusions reached by judges in no way under the control or influence of

the armed forces."

COL., *Baton Rouge, La.*

* * *

"Ultimate recourse should be civilian, because the ultimate government and ultimate law of the land are civilian. Soldiers, as such, do not lose their citizenship. Citizenship is a civilian capacity and would not be impaired with ultimate civilian supervision."

1ST. LT., *Delaware, Ohio*

* * *

"I do not share the fear implied in Q. 16 that the disciplinary control is being taken away from the military. The B/R is appointed by the JAG from *officers* or civilians; I imagine it will usually be a board of officers. If it isn't it is the JAG's fault. The Judicial Council's review is limited to matters of law (Art. 67d), and on law matters I am in favor of having a review by civilians."

CAPT., *Centralia, Ill.*

* * *

"I spent approximately 2 years in Military Justice work in Europe. I became convinced that choice between military and civilian influence in military justice is a choice between two alternatives, neither of which is entirely satisfactory. It was my own experience that the military influence should be excluded. I think the gravity of the offense, its special seriousness in a particular case, its significance to the military commander should be shown *after* guilt is established and *before* sentence is pronounced. For the rest, I would rely on civilians." CAPT., *Cleveland, Ohio*

* * *

"I go further than any of the present proposals. Military justice should be handled as a quasi-civilian function with the same guarantees. There is no reason why the civilian soldier in the Army against his will should be subjected to any atrophied or hyphenated system of justice except when required by the tactical presence of the enemy forces. In that event, commanders should be limited to referring the offender to a civilian agency which would accompany the Army in the field and give prompt justice on the spot. We spare no expense or thought taking care of the physical needs of our soldiers. Why cannot we display the same ingenuity and zeal in furnishing them with a system of precise justice rather than the primitive system incorporated in the Elston Act or the proposals of the Uniform Code? I am for the Uniform Code even though it is a single, faltering, inadequate step—yet it is a movement in the right direction."

2ND. LT., *Utica, N. Y.*

* * *

Preserve Powers of TJAG

"Am in favor of the changes made in trial procedure and make-up of court and counsel but oppose system of civilian review as an absolute. Think that B/R should be subject to some control by J.A.G."

1ST. LT., *Seattle, Wash.*

* * *

"The administration and appellate review of military justice

should be retained under the control and jurisdiction of the Judge Advocate General. The administration of military justice involves more than the punishment of an accused in the light of civil administration procedures. Inasmuch as it affects discipline and morale in the service, it can be best coped with by individuals serving full-time with men in the service.

"I believe that the system is workable. However, I am not in favor of placing the appellate jurisdiction out of the Judge Advocate General's Department."

MAJOR, *Seattle, Wash.*

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"It is my opinion that the personnel of the B/R and of the Supreme Court should be members of Regular Army or reserves ALWAYS, and that they should be attorneys. Retired officers should be made available."

COL., *Rock Ford, Ill.*

* * *

"The efforts of AW 66, 67, etc. are a step in the right direction, but they go too far. The same benefits could be accomplished by making a final review, together with clemency, etc., the power of the Judge Advocate General. His knowledge of Military necessity, through experience and training would be the tempering factor, but he in his department *definitely* should be divorced from all responsibility to any other part or personnel of the Military System, even as pertains to influencing factors."

CAPT., *Corfu, N. Y.*

"The Judge Advocate General's Department should be constituted as a part of the Department of Defense with overall direction and appellate review for all services. If uniformity is desirable then there should be a unifying point at the top. Personnel should come from the most able of all three services."

LT. COL., *Oklahoma City, Okla.*

* * *

"If a Judicial Council is to be adopted, it is suggested that it consist of five or seven members: One member from the Army; one member from the Navy; and one member from the Air Force; and the balance, civilian members."

MAJOR, *N. Y., N. Y.*

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"I believe that the General Court should be appointed by The Judge Advocate General rather than the Military Commander."

CAPT., *Akron, Ohio*

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TJAG Powers Should Be Strengthened Not Weakened

"Military Justice is the primary business of the Judge Advocate General and his position in this matter should never be weakened in any way, shape or form whatever."

COL., *Great Neck, N. Y.*

* * *

"I am now and always have been against a uniform code for the three services. It takes the powers away from the J.A.G., making him a figurehead of the department. It will create too

much confusion in the appellate branch. I believe the Army has sufficient qualified personnel to handle its Justice department, and not leave it in the hands of civilians."

LT. COL., *Jersey City, N. J.*

* * *

"The J.A.G. should not be "pushed out of the picture" like he has. I do not think such unqualified and unrestricted judicial power should be granted civilians. Military men understand military justice more than a civilian could ever comprehend."

LT. COL., *Los Angeles, Calif.*

* * *

"The Judicial Council idea is fine, but there should be more on it. The power of the J.A.G. should not be reduced. Certainly final clemency action should not rest alone with B/R."

COL., *South Weymouth, Mass.*

* * *

"The proposed Code weakens, rather than strengthens, the Judge Advocate General's Department. It reduces the Judge Advocate General to a purely administrative officer and takes from him all judicial functions and all opportunity for mitigation, reduction or suspension of sentences. This, in my opinion, is not desirable."

"It provides for a civilian judicial council possessing the powers of a Supreme Court. This not only serves no useful purpose, but is a definitely hampering appendage. It is subject to the same objection as stated in the previous answer and in addition serves only

to delay and make cumbersome the administration of military justice. It is a useless, wasteful, cumbersome appendage and should be dispensed with."

COL., *Omaha, Nebr.*

* * *

"I believe that a larger and more complete JAGD during the last war would have done much to eliminate many of the injustices. The JAGD should be operational in lower levels of command and should be the sole administrator of justice. This would require more members and thus more lawyers. Why not include in the new code that all qualified lawyers be commissioned directly into the JAGD and assigned only to JAGD duties in the same way that doctors and dentists are *commissioned* and assigned to Medical and Dental Corps. Why have lawyers driving trucks when there is such a dearth of legal personnel?"

1ST. LT., *Miami, Fla.*

* * *

"As the JAG Dept. is generally charged with the administration of Military Justice and procedures thereunder, it would appear that the JAG's authority should supersede that of any Civilian Council or personnel in the administration and enforcement of the proposed Code."

CAPT., *Shaker Hgts., Ohio*

* * *

"Naturally I am opposed to this Section (AW 74). I believe The Judge Advocate General should have his powers of clemency increased rather than decreased.

Such powers have never been abused. The powers of clemency of the AG should be given to The Judge Advocate General in so far as possible.

"This Section seems unreasonable. There must be a responsible head for any disciplinary system and it has always been The Judge Advocate General. I am not in favor of this Section as it now stands but I do believe there should be some check on reviews so that we will not be met with the criticism of civilian courts of appeal in those cases where opinions are 'Affirmed, no opinion'."

COL., *Rochester, N. Y.*

* * *

"The proposal appears to ignore the value of an integrated group, such as the JAGD, to run the military justice system. I doubt seriously that a three man civilian "Supreme Court" will be an adequate substitute though I am in sympathy with the general idea, particularly in the event of mobilization of our 'civilian army.' I would propose an amalgamation of the two ideas."

CAPT., *Chicago, Ill.*

* * *

"In reference to questions 12, 13, 14 and 15, it is believed that there are so many questions which are unique to the Service that men with some military training should handle or participate in review as a Court. Further, civilians are likely to be as responsive to public pressure as officers of the service are to pressure from within the service. It seems risky to relieve

the JAG of his authority of review as a court."

1ST. LT., *Elba, Ala.*

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"I am in favor of the J.A.G. retaining most of the powers given him by the law now in effect."

LT. COL., *Holbrook, Ariz.*

* * *

"Proposed system would weaken the JAG, superimpose an agency entirely out of military channels and one which does not have the checks upon it presently prevailing in the case of Federal judges and other appointees in positions of less responsibility and power than in the proposed positions."

LT. COL., *San Francisco, Calif.*

* * *

"I do not favor the civilian personnel of having any jurisdiction over the military in the administration of military justice. It is my confirmed belief that The Judge Advocate General should always exercise clemency powers, and that military boards, courts and jurisdiction should never be relinquished to civilians in any way or form if the high, just and efficient administration of Military or Naval Justice is to be maintained, all for the best interest of discipline of the members of the services or armed forces. The administration of military justice is to my mind integral to the military establishments alone."

MAJOR, *Spearfish, S. Dak.*

* * *

"I am opposed to civilians participating in any way in a court martial. This is an affront to the

JAG Dept. The JAG should be the last word in all appeals, except by intervention of the Sec. of War and the President. The JAG should be a separate command responsible only to the Sec. of War and the President."

LT. COL., *Meriden, Conn.*

* * *

"The proposed code injects many needed amendments from a civil standpoint, but it fails to take in consideration that military justice must have the elements of the military, otherwise it will fail completely. I dislike the failure to have the JAG as the responsible head of this system and feel civilians ought not be on the council. Civilians are not acquainted with the Army or services. The proposed new code is just a mess."

LT. COL., *Mt. Vernon, N. Y.*

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"The proposed B/R, as is now the case, is to be constituted by TJAG in his office. It should, therefore, function as *part* of his office and be composed entirely of military personnel. It should act more in an advisory capacity, with the power to take action on its findings and recommendations resting in TJAG. On the legality of records, but not clemency, if TJAG does not concur with B/R, the matter should go to the Judicial Council for decision, if it would not otherwise have to any way." LT. COL., *Newark, N. J.*

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"While code seems to establish a workable system, the method of review should be changed to give

more power to Judge Advocate General, and less to B/R's. Judicial Council is good innovation if members appointed for five year terms with advice of Senate."

CAPT., Cedar Grove, N. J.

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If Top Positions are for Civilians No Incentive to Military Lawyers

"If the top judicial positions are not open to military personnel, the present difficulty in securing and retaining competent lawyers in the Judge Advocate General's Corps will be aggravated."

LT. COL., Columbia, Mo.

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"While in Service, I had a wide and varied experience in Military Justice, i. e. Staff J. A., TJA and Defense Counsel in many cases of charges against officers and enlisted men. I was a Law Member in more than 500 GCM cases, without one single reversal or criticism by the Reviewing Authority. It is my opinion, that the "UNIFORM CODE OF MILITARY JUSTICE" (H.R. 2498) as proposed, is a dangerous instrument; that it certainly does not adequately protect the substantive rights of the accused; that it provides for ways and means to inflict undue, harsh and inhuman sentences or penalties and it is a glaring insult and personal "stab" not only to the Legal Profession, but to every member of the J.A.G. Corps, from top to bottom. Should this Bill become law, every officer, both Regular and Reserve, should seek transfer to another Branch or Arm, and if this could not be

accomplished, resign their Commissions. Congress would never attempt to place civilians over the Medical Corps, Engineers or Chemical Services."

LT. COL., Lewisville, Ky.

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Should Be Only One TJAG

"Why cannot there be one Judge Advocate General? I perceive no reason, if unification is to receive no more than lip service, for a uniform code unless it is to be uniformly administered. In my opinion, that cannot be done with several JAG's."

LT. COL., New Orleans, La.

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"The establishment of this supreme Judge Advocate General's Department would enable the uniform maintenance and operation of military justice procedure as well as the training of personnel to function in the respective branches. The judicial council could then operate as a part of such department under the new Judge Advocate General and should be advisory to the General.

"With reference to 17, the system might work, but I question the effect on maintenance of discipline. The position of the JAG should not be weakened. As his should be the responsibility of the operation and effect of military justice in his branch, he should have the powers appurtenant to such responsibility. Otherwise a supreme JAGD should be created supervising military justice over all branches of the armed services." Lt. COL., Stillwater, Minn.

"The main objective is that of separation of functions of Military Justice from command and to obtain administration thereof on a uniform basis throughout the Services by an integrated independent Judge Advocate General."
Santa Monica, Calif.

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"Should be only one JA Corps, not 3."

MAJOR, *Alexandria, Va.*

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Judicial Council Should be Composed of Three TJAG's

"In my opinion the logical head of any uniform code for all the Armed Forces is the Secretary of Defense, and that he should have ultimate and final decision in all matters which do not require confirmation by the President. (I mean, of course, all matters which have to go beyond the initial reviewing agencies.) My suggestion is that the Judicial Council should consist of The Judge Advocates General of the Army, Navy, and Air Force. As before indicated, I do not think the Coast Guard should come under the military code except when it is attached to the Navy. Let the General Counsel of the Treasury Department administer justice for the Coast Guard (see proposed Article 1(4)) under their present laws, until they come under the Navy, then the Secretary of the Navy can take care of them. The plan I have outlined here is more or less a "snap" proposition on my part, but it seems to me that The Judge Advocates General of the three

Armed Forces, each of which is responsible for the administration of military justice in his Department, constitute the logical tribunal to sit in judgment for all, under the Secretary of Defense."

COL., *Williamsville, Vt.*

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The Judge Advocate General Should Assign Judge Advocate General Department Personnel

"Under the old law assignment of J.A. officers was by the J.A.G. Under the new bill assignment is by G-1 with approval of the J.A.G. This is a bad change."

COL., *Washington, D. C.*

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"It is also my conviction that members of the J.A.G.C. should be completely removed from the influence and control of the C.O. to the same extent as are officers of the M.C."

CAPT., *Hoboken, N. J.*

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The Judge Advocate General Department Should Select Courts

"Take the selection of personnel to comprise all types of C.M. from Command and place it under the officers of the J.A.G.D. and you will remove a good portion of the complaints. Have the J.A.G.D. select personnel with no influence by Command and most of the enlisted personnel will have more confidence in the system. In other words, separate your executive and judicial branches."

CAPT., *Laurens, S. Car.*

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Only the Judge Advocate General

*Should Rate Judge Advocate
General Department Officers*

"The commanding officer should never have power to rate a Staff Judge Advocate. One of my Commanding Generals gave me two V. S. ratings and put me out of the army on W.D. Circ. 485 (1944s), simply because I said "No" to him! My previous ratings, my G.C.M. records and recommendation for promotion were all ignored because of his personal displeasure. This condition should not be tolerated. I'd be willing to be rated on my professional record by the J.A.G. Staff J.A., for a sadistic commander, is the "hot-test" job in the army, now."

MAJOR, *Kansas City, Mo.*

Uniform Code Desirable

"I am not in favor of certain proposals of this Uniform Code. I am convinced, however, that the need for such a code is so great that it is better to accept the Code "as is", if necessary, rather than risk the defeat of the proposal attempting to iron out all its details. I strongly urge that our association lend its hearty support to the approval of the measure."

LT. COL., *Grand Island, Mich.*

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Try Elston Act First

"I think there is nothing substantially wrong with the present Articles of War and Court Martial procedure. Whatever mistakes were made during World War II were due almost entirely to faulty administration by untrained personnel due to the rapid expansion."

BRIG. GEN., *Tuscaloosa, Ala.*

"Personally I am in favor of the Elston Act and against this new so-called Uniform Code. It is quite obviously a part of the "drive" to amalgamate the Army, the Navy and the Air Force. Amalgamate them first (if that can be done) and then talk about a Uniform Code, but meanwhile don't monkey with the administration of Military and, or, Naval Justice."

LT. COL., *Santa Fe, N. Mex.*

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"Having participated in one capacity or another (Trial Judge Advocate, Law Member, or reviewing the case for the Reviewing Authority) in over 200 G.C.M. cases, I believe that the old system worked much better than most people believe. Changes were necessary, but it is my opinion that much was accomplished by the Elston Act, and that improvement should come gradually. Too much change is likely to lead to confusion, especially if the change comes too rapidly. Perhaps in time there should be a Uniform Code, but I don't believe there is any real necessity for it yet, and I don't feel that the one proposed is the one that should be accepted if one is. A study of the proposed code leads me to believe that the matter should have a great deal more study."

CAPT., *Bakersfield, Calif.*

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"In my opinion, it is much too early to attempt to work out a Uniform Code for the three services. Give P.L. 759 a chance for a few years; many of its provisions

are good; many may, in the light of experience, have to be dropped.

"I am afraid many of our Congressmen are losing sight of the fact that the basic aim of Military Justice is to promote discipline for the furtherance of the war effort in time of conflict and *not* to provide a substitute for civilian courts." CAPT., *Chicago, Ill.*

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"In view of all of the work in preparing the present Manual for Courts' Martial, and in view of the fact there is no immediate emergency or reason for speed in making further extensive changes. Furthermore, the Congress should be made to realize that the Army Court Martial system is not entirely comparable with other judicial systems and should not build up a cumbersome complicated court system, especially in these days when we are trying to simplify court procedure; the primary purpose of courts' martial being to maintain discipline. A system which would weaken the discipline of the armed forces might be disastrous, especially in time of war."

COL., *Media, Pa.*

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"I favor proceeding with the 1949 Manual and making changes slowly from experience. I favor civilian participation, but *not* to the exclusion of the military. It should be joint participation. Let us try the changes effective 1 February, 1949 and work from them toward more changes as deemed necessary."

CAPT., *Rockford, Ill.*

"Until provisions of the Elston Act have been worked with for a reasonable length of time, there is no justification for a so-called Uniform Code. In attempting to correct injustices in the old system of Military Justice, it is very easy to swing too far in the other direction."

LT. COL., *Tulsa, Okla.*

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"1. The art of a good code is the possible and the workable, not the ideal. Such, I believe, has been the Manual for Courts' Martial, 1928, and such is the MCM, 1949.

"2. The Uniform Code is a striving for an unworkable, ideal system, colored, I feel certain, by civilian concepts of the ideal justice, deviating from the workable MCM, yet trying to resemble it.

"3. I recommend:

a. A thorough study of the proposed code by the American Bar Ass'n in the same manner as the MCM was studied.

b. A fair try-out of MCM, 1949.

c. No rushing into a new, unstudied manual and code."

LT. COL., *Washington, D. C.*

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"Although a Uniform Code might be advisable, the discarding of the system set up by the Elston Act, which was exhaustively considered and which remedied the defects of the old system, without a reasonable try-out, seems to me, hard to justify."

MAJOR, *Washington, Mo.*

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"The effort to establish a judge

and jury segregation is not desirable because of the exigencies of military trials. The present system should be tried for a while before such another radical departure is inaugurated."

LT. COL., *Yakima, Wash.*

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"As indicated in answer to No. 2, I am not satisfied that Public Law 759, 1948 was a wise revision. It appears to have failed to distinguish between Military Justice as a command function, and the mere mechanics of trial procedure, and in seeking to improve the latter, has weakened the power of the officer having G.C.M. jurisdiction in exercising his function of maintenance of discipline. Public Law 759 was too strongly influenced by civilians or at least by those who, if members of the military, had little or no field experience. Until it has functioned sufficiently to indicate whether or not the changes it has effected are good or bad for the service, I believe further revision, particularly along the lines indicated of increasing civilian participation and influence with the concurrent weakening of command functions of the military, is premature, dangerous and should not now be considered.

"Furthermore, both S.B. 857 and H.R. 2498 appear principally concerned with removing disciplinary power from the hands of those charged with the responsibility of maintaining discipline, and only secondarily with uniformity between the services."

COL., *Denver, Colo.*

Opposed to Uniform Code

"I am unalterably opposed to a unified code. There are enough material differences in the physical structure of the several services, particularly the Navy, as distinguished from the Army and Air Force, to cause any attempted "mother-hubard" sort of a cover-all code to be unwieldy and unworkable. Such matters as are common to the different services can be cared for by uniform or near uniform provisions in the Articles of War and the Articles of Government."

LT. COL., *Atlanta, Ga.*

* * *

Code Should be Designed for War

"Any code should be drawn with the mind focused directly and only on conditions to be met in time of war, in foreign countries, with all three forces involved and command in a member of any one of them (even in relatively small commands as a small task force). So drawn, it may then be amended by additions to provide for conditions to be met in time of peace at home or in foreign countries and at home at any time."

COL., *Richmond, Va.*

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New System Would Work in Peace, Not in War

"The proposed code would be complicated and difficult to administer in wartime. The civilian commission and the limitation of the power of the Judge Advocate General would weaken the administration of justice, remove responsibility, create delay and might se-

riously impair the war effort. While the administration of military justice during the war was, in general, very fair to the accused and much more just than the civil criminal courts, the changes made by the Elston Act should further protect all accused against the miscarriage of justice."

COL., *Long Beach, Calif.*

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"This seems to be an attempt to set up a new branch of the Federal judiciary. It would work all right in times of peace and in the zone of the interior, but it is impractical during war-time operations overseas. I was with the 3rd Army in France and know how necessary it is to the maintenance of discipline to have prompt trials and speedy execution. We cannot afford the luxury of civil criminal trials in the armed forces during war any more than we can permit the practice of democracy by allowing soldiers to elect officers. In my opinion, the theatre commander should have complete authority (subject to the approval of his J.A.) over Military Justice in his area. No one thinks anything of it when a fine soldier is sent to his death in battle for the good of his command, but let some noisy, no good eight-ball get a G.C.M. and then Congressmen and the papers howl."

MAJOR, *Stockton, Calif.*

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"I do not know who originated or proposed the idea of a Judicial Council, but it impresses me as a

very inane proposal. From long experience, including eight years as a District Attorney, I do not think a Judicial Council is in anywise necessary to protect individual rights. Such a Council would be more duplication, and added expense to a debt-ridden Government. Even a casual study should show any interested persons there now exists adequate provisions for the protection of individual rights in the service.

"I do think that in times of peace, or when not engaged in actual hostilities, that it might be advantageous to have a competent civilian lawyer to sit as a member of the Board of Review, i. e., have one civilian and two service men upon each Board of Review. There is precedent for this in the Conseil de Guerre of the Belgian Army."

Montgomery, Ala.

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"This proposed code would be most impractical in war-time. Civilians do not realize the problems of command. There is neither equality nor justice when a good soldier can be committed to action and at the same time extend every courtesy and safeguard to a felon. The Articles were bad enough; the Elston Act no better. They should be streamlined rather than incumbered, at least for use in the field in time of war."

CAPT., *Sioux City, Iowa*

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"The proposed system of review I believe to be too complicated, particularly in war-time. With a trained legal staff the J.A. de-

partments or corps of each of the services should be fully competent to handle all the Military Justice matters, and it must not be overlooked that in times of war a very large percentage of them will be reserve officers, i. e., civilians on temporary military duty, and will in consequence bring into the service, to a large extent, civilian viewpoints." COL., *Atlanta, Ga.*

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Would Work in War, Not in Peace

"In my opinion, the mistakes in military justice during the war were primarily due to lack of training and not to faults of the system. In peace-time, officers are sufficiently trained to properly perform the duties of T.J.A. and Defense Counsel of courts martial. The proposed plan might work in war-time when many lawyers are available. In peace-time it would be very costly, and in my opinion a waste of money which might be better spent in the interests of national defense."

COL., *West Point, N. Y.*

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Law Member Should Vote

"Depriving the Law Officer of a vote seems to be a feeble attempt to create a "Judge and Jury" procedure. But the "Jury" may be as few as four persons who not only find facts but impose sentence. The Law Officer's value in the "closed" session is much too great to be eliminated. Too many members of a court lack the necessary experience to be unguided finders of fact, particularly when the accused has just about no choice in their selec-

tion. It seems to me that the possibility of a "Star Chamber" becomes far too great."

1ST. LT., *Miami, Fla.*

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"The Law Officer definitely should be a member of the court and it is of the utmost importance that he participate in the discussions and deliberations of the court on all questions of findings and sentence. He should be there to properly guide the court to see that the findings are legally sufficient and especially in questions of finding an accused guilty of a lesser included offense. In his absence a legally insufficient sentence might be announced by the court or an improper lesser included offense. That can only be then corrected by a review, necessitating a new trial or rehearing, a waste of time and a miscarriage of justice. Once the error or damage has been done, the law officer is powerless to correct it. If permitted to discuss the matter in the court deliberations, he could prevent such mistakes."

MAJOR, *Brooklyn, N. Y.*

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"To place the Law Member in the position of a judge instructing a jury in the limited manner prescribed, would place the balance of the court in the position of mere jurors and deprive them of an experienced counsellor during deliberations which is one of the valuable adjuncts of the present system."

CAPT., *Minneapolis, Minn.*

"The Law Member should deliberate and vote with the rest of the court to insure legal findings and sentence and to save time."

CAPT., *Clearwater, Fla.*

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"I believe the limitations of powers and duties of Law Member very dangerous."

LT. COL., *Washington, D. C.*

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"I believe justice to the accused will be more nearly obtained by giving the 'law officer or member' the same authority he now has. My experience has been that the Law Member is the 'balance wheel' of the court."

CAPT., *Muskogee, Okla.*

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"The 'law officer' should have all the rights and privileges of all other members of the court. This will prevent other members from losing sight of issues in a case."

MAJOR, *Fairbanks, Alaska*

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"To have a Law Officer sit without a vote is like letting a jury decide questions of law as well as fact, leaving the judge a mere arbiter of order and decorum. Such a provision would, for example, deprive a Law Member of the right to vote on a motion for acquittal, on the ground of insufficiency of the evidence. This is to leave what is purely a matter of law in the hands of persons who have no legal background or training. Apparently the idea behind this provision is the fear that the legal officer would tend to sway the court to too great an extent."

"In the first place, he could easily do this without a vote. In the second place, voting is by secret written ballot, so that the vote of the Law Member or Legal Officer cannot sway other members of the court. It makes the post of too little importance in the eyes of the very court to whom he is legal adviser.

"Errors committed by a court will more often than not be found because the court failed to heed the advice of the Law Member, or because the Law Member was not present at the trial. To require him to be present, to require him to advise and instruct the rest of the court, and to prevent him from voting is anomalous."

COL., *Philadelphia, Pa.*

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"I agree with Article 26(b) only on the condition that the Law Member is empowered to direct a finding of "not guilty" for lack of evidence or to submit the case to the court on a lesser included offense. Also and most important, I would authorize the Law Member to comment on the evidence *on record*, so that the board of review will have a basis upon which to weigh the evidence appearing in the "cold" record of trial. This writer has tried hundreds of cases as the Trial Judge Advocate of the general court and has had occasion to discuss most of these cases with the Law Members of the court after finding and sentence. As I now recall those cases, it is startling how many of those cases would have resulted in a finding of

not guilty were it not for the presence of the Law Member; the reason being that so many of the court missed the point of the case completely and proceeded to make their decisions upon immaterial collateral issues. For example, in a recent robbery case the accused stated that he struck the complaining witness because of alleged indecent advances by such complaining witness. The co-accused denied such advances were made by the complaining witness, yet during the deliberation, some members of the court were willing to justify the assault on that basis and thereby completely lost sight of the fact that there was a robbery charge to be decided."

CAPT., Ft. Riley, Kansas

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"In the past six years I have been the Law Member of a number of general courts. WITHIN THE LAST TWO YEARS I have observed a decided tendency on the part of members of courts when in closed session to go off on a tangent in so far as the actual elements of the offense charged were concerned in applying the evidence that was introduced. If the Law Member is removed from the closed session deliberations, we are going to have a number of "Lesser Included Findings" that cannot be sustained and some findings of "Not Guilty" when the evidence would sustain and warrant a finding of guilty. It is not necessary he have a vote—but he darned sure better be in these closed sessions."

LT. COL., Ft. Riley, Kansas

"I feel strongly that the "law officer" should vote on the findings and sentence as his experience and specialized training are of great value to the lay members of the court."

LT. COL., Providence, R. I.

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Favors District Court Review

"In lieu of the 'Judicial Council,' it should be provided that the records of trial of ALL general courts' martial involving sentences of a year or more; a dishonorable or bad conduct discharge; death; and/or confinement in other than a military or naval stockade or Disciplinary barracks, shall be reviewed by a U. S. District Court before such sentence shall be finally executed. Such relief has *always* been available to the rich or influential members of the armed forces through the medium of a habeas corpus proceeding. In a Democracy such as ours I feel that it should be equally available to the humble soldier and officer as well. A new Article should be added setting up a Civilian Clerk of Courts' Martial Records of Trial, making those records of trial public records and available to the same extent as are the records of trial in any criminal proceeding of a U. S. District Court. It is the elements of '*secrecy*' which to a large extent account for the disgraceful results of our system of military justice in two World Wars.

"In NO instance, for even as long as an hour, should any member of the armed forces be con-

fined in a Federal or State penitentiary or reformatory, except upon conviction of a *felony*, and even then not until the record of trial has been *finally* reviewed and found legally sufficient by a U. S. District Court. The stigma of such confinement cannot be erased by any subsequent action and is obviously far different from that suffered by confinement in a Military or Naval stockade or Disciplinary Barracks, which does not *imply* commission of a felony."

LT. COL., *Carmel, Calif.*

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"It seems to me that the military authorities headed by a Judge Advocate General or some responsible officer or board should have authority to handle each case to a conclusion with a tribunal consisting of constitutionally appointed United States Judges having the power of appellate review. I do not believe that the Executive or any Executive or Administrative officer or body should have the final word in any controversy between a citizen and the state regardless of whether the offense was alleged to have been committed by the citizen as a civilian or as a soldier."

CAPT., *Richmond, Va.*

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*Should Have Senate Approval
For Judicial Council*

"Present setup of a judicial council is vicious. It should be removed from politics. Members are removable at will of President. The Chairman of judicial council should be appointed for life, as

are Judges of Federal courts, and should be required to have had at least two years military service and two years of judicial experience on some court of record, State or Federal. The other two members should be appointed for definite terms, say at least six years, one of whom should have had some judicial experience. Should have Senate approval as with Federal Judges."

COL., *Mt. Clemens, Mich.*

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"The members of the judicial council should be appointed in the same manner as our other Federal Judges and they should hold office during good behavior."

CAPT., *Salinas, Kansas*

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*Don't Change Name of Trial
Judge Advocate*

"It is my personal opinion that the office of Trial Judge Advocate should be retained as to name for the reason that that office carries with it certain duties and functions which are well known and well understood. Many of these duties and functions do not appear in writing in any particular code."

MAJOR, *Lansing, Mich.*

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*Reserve Personnel Should
Not be Tried*

"I am absolutely against reserve personnel being tried as now contemplated, particularly while on inactive duty. And what is most evil is the right of a continuing jurisdiction over personnel although their active service is ter-

minated. I view this with alarm."

LT. COL., *Harvey, N. Dak.*

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*Good Summary and Special Courts
Are the Heart of the Problem*

"So far as I am concerned, none of the proposals reach what I consider to be the real problem. I consider the summary and special courts and AW 104 to be the real problem children. The abuses which I observed while in the Army, both as an E.M. and an officer were at that point. AW 104 was so flagrantly abused by one C.O. that I marvel he kept his health. Anyone resents a forfeiture or confinement if it is unjustly imposed. It does little good for a reviewing officer on specials or summaries to order the record expunged because the E.M. has already been punished and he is bitter about the experience. T.J.A.'s should be retained, removed from the pressure of command, and made responsible for the inferior courts in an attempt to make these courts work properly."

2D LT., *Madison, Wis.*

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Coercion by C.O.'s

"The old M.C.M. was not bad; in fact it was good if properly administered. The trouble during the war was too much interference and dictation, and often coercion from above. With proper administration, I believe the new M.C.M. is satisfactory."

LT. COL., *Columbus, Neb.*

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"In my experience, most of the

evils complained of during World War II were attributable to the whims, foibles, caprices and prejudices of certain commanders exercising general courts martial jurisdiction, sometimes aggravated by the "rat-race" policies for a time encouraged by the War Department. These evils, the Elston Act, formulated after exhaustive investigation and study by experts, was designed to correct. It should not be substantially changed without a fair try-out."

COL., *Waynesboro, Ga.*

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"The thing in which I am vitally interested is the elimination in so far as possible, of the possibility of a C.O. bringing any pressure whatsoever upon those engaged in the administration of military justice. I am in favor of enacting whatever laws may be necessary to insure a fair and impartial trial without pressure from any source."

LT. COL., *Bloomington, Ind.*

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*Staff J.A.'s Opinion on Law
Should Be Binding on C.O.'s*

"I feel the Staff Judge Advocates opinion on questions of law should be binding on the convening or confirming authority. I have seen clear cases COMPLETELY disregarded by Commanding Officers and one man hanged when he was clearly guilty of nothing more than manslaughter."

COL., *Columbia, S. Car.*

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A. W. 58 Great Improvement

"After considerable Military Justice experience: six years as-

signment in the Army's Correctional System, and one year's experience in teaching military law, I am convinced that the incorrigible military prisoner is a barbed thorn in the side of the military establishment.

"The antiquated, prohibited provisions of AW 42, which make it impossible to transfer a general prisoner, for whom a Disciplinary Barracks has been designated as the place of confinement, to a U. S. Penitentiary under the sentence, has always been a source of untold trouble in the Army's Correctional System. The Navy has no such prohibition in its Articles for Government of the Navy, and readily transfers its bad actors to a U. S. Penitentiary. As a result the Navy does not have the resultant unfavorable publicity, custodial headaches, and blighted military careers that have saddled the Army for all of these years.

"In view of these facts, I am constrained to say that even with its defects, the proposed AW 58 is a great improvement over our present AW 42, as far as the Department of the Army is concerned."

LT. COL., Petersburg, Va.

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"I entertain the point of view that military justice should be separated from command even more than in the proposed bill. In general, the type of mind suited for command, is not the type which

can supervise or administer impartial justice. As far as possible, this should be in the hands of competent civilians.

"I disagree with the premise of military men that command must also exercise military justice in order to compel men to fight and to sustain morale by making examples of violators. The services should put forth as much effort on weeding out the cowards and misfits before they reach combat as it does in trying to compel them to fight after they get there. I am, therefore, strongly in favor of Art. 58 which makes it possible to commit a soldier to a correctional institution for discipline and treatment even for a minor offense. Many, particularly among the young, may be improved and returned to service."

CAPT., Colmar, Iowa

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Right Personnel is the Solution

"The people who are tinkering with the disciplinary system don't seem to understand fundamentals. The Court Martial system as of the end of World War II, was *on paper* near to perfection. It was a good disciplinary system, not a code of jurisprudence. If it had been administered by trained soldiers—lawyers, it would have produced discipline with justice. This was rarely tried. It should be tried now. *Personnel* is the problem."

CAPT., Dankery, Conn.

The Association announces the removal of its offices from the Tower Building to the Denrike Building, 1010 Vermont Avenue, N.W., Washington 5, D. C.

Notes From The Office Of The JAG -- Army

1. An active Reserve officer of the Judge Advocate General's Corps is entitled to and should have received his copy of the new Manual for Courts-Martial, United States Army, 1949, which includes the changes made necessary by the amendments to the Articles of War which became effective 1 February 1949. In addition to the distribution of the Manual, the Judge Advocate General's Office has also made the necessary arrangements to provide each active Reserve officer of the Corps with a copy of the bulletin of The Judge Advocate General which is published quarterly. Each officer so entitled to receive the Bulletin should obtain his copy at periodical intervals as the same is published.

2. Recall of Judge Advocate Reserve officers for extended active duty is now limited to those in the grade of first lieutenant. However, short tours of duty for training purposes are open to Reserve officers of all grades, but any application for such training tour must be forwarded through the Army area in which the Reserve officer resides, or, in the event he resides in the Military District of Washington, such application must

be forwarded through that Headquarters.

3. The revised extension courses made necessary by the amendments to the Articles of War are now in the process of being prepared and a provisional division within the office of The Judge Advocate General has been established for this purpose. It is anticipated that the first of these extension courses will be available in August of this year or in the early Fall.

4. Direct appointments from civilian life in the Judge Advocate General's Corps Reserve are limited to appointments in the grade of first lieutenant and the applicant must not have reached his 33d birthday.

5. All Reserve Judge Advocate officers will be interested to learn that Reserve JAG training units may now be formed by six or more Reserve Judge Advocates. Application for the formation of such unit should be made to their respective Army headquarters, which command may approve and establish the formation of the unit. The TO or TD for the unit will be approved by the Army headquarters."

A strong Association can serve you better. Pay your annual dues. Stay active. Recommend new members. Remember the Judge Advocates Association represents the lawyers of all components of all the Armed Forces.

The House of Representatives passed the Senate approved S.213 granting death and disability benefits to reserves on less than 30 days active duty tours and including inactive duty training on 6 June 1949.

Points Toward Retirement

By Col. John P. Oliver, JAGC—Res.

To qualify for retirement under Title II, Public Law 810, 80th Congress, a Reserve Officer must have completed twenty or more years of satisfactory service.

Prior to June 29, 1948, each year of service as a member of an active Reserve component is deemed to be a year of satisfactory service and 50 points per year will be credited for such service, other than active Federal service. One day will be credited for each day of active Federal service including active duty training.

Subsequent to June 28, 1948, a year of satisfactory service shall consist of any year in which a person earns a minimum of 50 points, including 15 points earned for membership in an active Reserve component. One point is credited for each day of Federal service including active duty for training.

Special Regulations 140-60-1, Department of the Army, dated December 28, 1948, provides the following method for obtaining point credit for a year of satisfactory service.

1. One point for each day of active Federal service.
2. 15 points will be granted for membership in an active Reserve component other than active Federal service.
3. One point per calendar day will be credited for: authorized participation in field

training; attendance at training assemblies; equivalent training, instruction, duty or appropriate duties; performance of administrative functions; for suitable duties performed by specialists, scientists, or individuals having D/A mobilization assignments. When any of these are attended or participated in for a minimum of two hours unless otherwise designated, one point will be credited.

One point will be credited to the instructor of classes of troop or group schools; however, to compensate for the necessary time spent in preparation, there will be credited for the day or days used in the preparation, credits not to exceed 2 points.

Points will be credited at the rate of one point for each three rated hours of Army Extension Courses, and on the anniversary date of each year, points will be credited for work satisfactorily completed even though the series has not been completed at that time.

Other types of duties and services are likewise rewarded by these valuable points.

No limit will be imposed as to the number of inactive duty periods attended in any "year" but not more than 60 points per year, including the 15 points credited

for membership in the active Reserve component, may be credited for inactive duty in a "year."

Only those persons who are members of the *active* Reserve components are qualified to earn points.

If a member of any Reserve component fails to conform to the standards and qualifications for retention in an active Reserve component, he will be transferred to

an inactive Reserve status or retired *without pay* if qualified for such retirement, or his appointment shall be terminated.

This action will terminate such persons' retirement benefits under the Act, however, reinstatement in an active section of a Reserve component will renew an individual's eligibility to accrue credits toward retirement and will constitute a re-entry.

COL. OLIVER AND LT. COL. KING PRESENTED WITH AWARDS OF MERIT

Upon the recommendation of Gen. Franklin Riter, Salt Lake City, Utah, reporting as Chairman of the Committee on Awards, Col. Wm. J. Hughes, Jr., President, has made presentation of duly executed Awards of Merit to Col. John P. Oliver of Van Nuys, California, and Lt. Col. Thomas H. King of Washington, D. C.

The certificates of award contain the following citation:

"This is to certify that John P. Oliver, Col., JAGC-Res, and Thomas H. King, Lt. Col. JAGC-Res, have been duly selected, under rules approved by the Board of Directors of the Judge Advocates Association, to receive this Award of Merit for their most outstanding and constructive work toward the sound development of the law relating to the Armed Forces and their legal and judicial systems during the year 1948."

Col. Oliver was a member of the Board of Directors of the Association for the year 1947-48 and was designated by the President and Board of Directors to fill the unexpired term of General John M. Weir upon his death in November, 1948. Col. Oliver is Legislative Counsel of the Reserve Officers Association and was extremely active in assisting Congress in matters of military judicial reform and is entitled to large credit for the enactment of the Elston Bill as an amendment to the Selective Service Act of 1948.

Col. King, who is engaged in private practice in Washington, D. C., has interested himself actively in military judicial reform and has performed valuable services to the Congress, the Association and the Armed Services toward the securing of necessary legislation.

Training, Points and Retirement

From the letters received from the members, it is patent that training, points and retirement are important subjects in the minds of J.A. reserves. It is equally clear that the answers to the problems raised have not been satisfying. Col. Hughes, President of the Association, recently posed a few questions to the Director of Organization and Training. The exchange of correspondence is set forth for your information.

312 Denrike Bldg.
Washington, D. C.
15 April 1949

Director
Organization & Training Division
Dept. of The Army General Staff
The Pentagon
Washington 25, D. C.
Dear Sir:

Some 2000 members of the Judge Advocates Association are keenly interested in the reserve training requirements of Public Law 810. I think these officers represent a patriotic cross section of the community. I am, therefore, disturbed at the mounting complaints as to their difficulties in obtaining credits under the Department of the Army program. For the most part, it seems impossible for them to obtain the necessary thirty-five points, notwithstanding the efforts they make.

Public Law 810 is a plain mandate from Congress that the vast trained body of former officers and enlisted personnel be encouraged

to obtain and maintain an ORC status. In fact, it might be said that the ORC is considered by Congress to be the most important element of our defense program at the present time. In spite of this, many of our members feel that there is a present lack of a program designed to provide a practical and liberal means of earning the requisite ORC points. Some of them point to the successful Navy program as being in striking contrast.

I hope you will understand that this letter is not written in any spirit of criticism. The fact is, that after investigation, I have come to the conclusion that there is considerable merit to these complaints. I am beginning to feel that unless something is done, the present program will have a definitely adverse effect on the average patriotic reserve officer, and defeat the ORC program as contemplated by Congress. You must visualize his viewpoint when, enthusiastic about the reserve program embodied in Public Law 810, he finds, after months of effort, there is no prospect whatever for his attaining the necessary points under the program.

In making the above statement, I am aware of the fact that in so far as the Judge Advocate General's Corps is concerned, training units are rapidly being formed. But these training units will not get into operation until after 1

July next, so far as I can ascertain.

In this situation, I make the following specific recommendations:

1. That the dead-line for earning thirty-five points for the fiscal year 1 July 1948—1 July 1949 be extended until 31 December 1949, and that points earned between 1 July 1949 and 31 December 1949 apply to both fiscal years.
2. That the point value for extension courses be increased to five points for each course and five points for passing an examination successfully.
3. That each J.A.G. officer be given a credit of five points for the study of each issue of the J.A.G. Bulletin and for successfully passing an examination on the matters of law covered by these bulletins at the end of each fiscal year.
4. Finally, I suggest that both hours and points be earned during the same year, fiscal or calendar as the case may be. Having one in the calendar year and the other in the fiscal year is needlessly confusing.

It seems to me that some such liberalization of the point system must be adopted. After all, so far as the J.A.G. Corps is concerned, the man the Army is primarily interested in is the successful lawyer, not the marginal one. The successful lawyer is primarily a busy man and cannot give too much time to training. It is, how-

ever, in the interest of the Reserve Corps to have him keep up his interest and maintain up-to-date contact with developments in Military law. Increasing the point value for legal military training as I have suggested will have this effect.

As to obtaining points by giving instructions, it is obvious that all cannot be instructors.

I would appreciate your considering the above and giving me an answer some time before 1 May 1949, if possible. The reason I mention that date is that I wish to deal with this subject in the May issue of the Judge Advocate Journal.

Very truly yours,
WILLIAM J. HUGHES, JR.
President

Mr. William J. Hughes, Jr.
President
Judge Advocates Association
312 Denrike Building
Washington, D. C.

Dear Mr. Hughes:

I appreciated your letter of 15 April 1949 concerning your interest in the Organized Reserve Corps. I assure you that the Department of the Army is vitally interested in the Organized Reserve Corps Program.

With regard to your recommendation concerning the deadline for earning retirements, the "year" from 29 June to 28 June following applies only to persons who were members of a Reserve Component on 29 June 1948. For other personnel, the "year" begins on the

date of entry or re-entry into a Reserve Component. These dates and requirements were established by legislative action and cannot be changed by Department of the Army administrative procedure. However, House Resolution 3039, dated 28 February 1949, was introduced on the floor of the House on 26 April 1949. This bill, if enacted, will change the date for earning retirement points from 29 June 1948 to 1 July 1949. This in effect will credit automatically each member of the Active Reserve with 50 points for the period 29 June 1948-1 July 1949.

Since Army Extension Courses range generally from five (5) to thirty (30) hours with some including as many as one hundred (100) hours, it would not be practicable to award one student five retirement points for five (5) hours of work and another student the same number of points for one hundred (100) hours. I believe our present method of awarding one retirement point for each three (3) hours of study required is a sound system.

Reference your recommendation concerning the award of points for study of the J.A.G. Bulletin, the Department of the Army, as you know, must look at matters from a National Defense viewpoint to insure that we support in our policies the best interests of the Government as well as the individual. When recommendations are received concerning one branch or arm of the Service, they must be considered from an over-all

viewpoint, including their effect on other branches and agencies of the Department. If retirement points were awarded for studying the J.A.G. Bulletin as you suggest, other branches would be justified in claiming points for studying articles in such publications as the Infantry Journal and the Medical Journal. It is my opinion that the intent of the Reserve Retirement Act was to reward and to provide a goal for those personnel who actively participate in the Reserve Component programs. The liberalization of the requirements for earning retirement points for those individuals who, for various reasons, cannot actively participate in the established Reserve program is not considered justified.

I agree with your recommendation that both hours of credit for retention in the Active Reserve and retirement points be earned during the same year and action is being taken at this time to accomplish this.

Again, thank you indeed for your interest in the Organized Reserve Corps. I hope this letter gives you a better understanding of our problems.

H. R. BULL
Major General, GSC
*Director of Organization
and Training*

EDITORS NOTE: There have been 3 identical bills introduced in the Congress, HR 3039, S.1698 and S. 1939 to establish a new "cut off" date for Civilian Component Retirement purposes. The date designated in these bills is 1 July 1949 and all service prior to that date

will be deemed "satisfactory federal service" within the meaning of PL 810—80th Congress. The intention is to remedy the injustice resulting from inability of many reserves to secure satisfactory service during the period 29 June 48 to 28 June 49 because of the

Services' want of an adequate training program. Growing Congressional interest is being raised in these bills but no committee hearings have been held up to this time, and considerable effort will be required to get an enactment this session.

NOMINATING COMMITTEE

The President, Col. Wm. J. Hughes, Jr., upon the advice of the Board of Directors has designated Thomas E. Sands, Jr., of Minneapolis, Minnesota as Chairman of the Nominating Committee for the annual 1949 election of officers and directors. The following have been designated to serve as members of the Nomination Committee: John H. Hendren of Jefferson City, Missouri; Henry C. Clausen of San Francisco, California; Max R. Traurig of Waterbury, Connecticut; Frank Brockus of Kansas City, Missouri; F. J. Lotterhos of Jackson, Mississippi; Mason Ladd, University of Iowa, Iowa City; Martin W. Meyer of Washington, D. C.; Clarence G. Strop of St. Joseph, Missouri; Richard E. Kyle of St. Paul, Minnesota; Henry C. Todd of San Francisco, California; and David G. Geffner of Providence, Rhode Island.

The Nominating Committee, as provided by Article IX, Section 1 and Article VI, Section 2 of the By-laws, shall not less than sixty days prior to the annual meeting of the members of the association file with the Secretary a list of candidates to be elected to the offices of the association and Board of Directors at the ensuing annual meeting. Regular members of the association, other than those proposed by the Nominating Committee, shall be eligible for the election provided that any such nomination shall receive the written endorsement of not less than twenty-five members of the association in good standing, and such nomination shall be received by the Secretary not less than forty-five days prior to the annual meeting.

Twenty-five days prior to the annual meeting ballots containing the names of all nominees shall be distributed to all members. Voting will be by secret ballot and tabulations will be made in time for announcement of the results of the election at the annual meeting by a Board of Tellers.

D. C. LAWYERS AND DOCTORS GET TOGETHER

Members of the Judge Advocates Association, JA Chapter ROA, D. C. and Medical Chapter ROA, D.C., were guests of Dr. Dan Suttentfield at his beautiful Forestville, Virginia, estate on June 25th to participate in a joint medical-legal operation. The mission was to have an enjoyable time in typical outing fashion. There were swimming, badminton, horseshoes and other active sports as well as medical and legal bull sessions accompanied by sociable "elbow bending." The liquid refreshment was excellent and sufficient, and the solid nourishment, beyond compare. The mission was very pleasantly accomplished by the forty lawyers and doctors attending.

Civilian Military Government Courts In Germany

By Eli E. Nobleman*

During the past 100 years, the United States Government has engaged in a number of military occupations. In every instance, the occupying forces of the United States have maintained law and order in the areas under their control by means of Military Courts. Prior to World War II,

these Courts were staffed by Army Officers and were generally of two types: 1) Military Commissions and 2) Provost Courts. The former tried more serious violations of the laws of war or of the occupant's proclamations, laws, ordinances or directives. The latter were concerned only with minor infractions.

*EDITORS' NOTE: Mr. Nobleman is Counsel to the Senate Subcommittee on Relations With International Organizations, Committee on Expenditures in the Executive Departments. He was formerly Chief of the German Courts Branch and Military Government Courts Branch of the Legal Division of the Office of Military Government for Bavaria. He has served on many Military Government Courts as Law Member and President. He also assisted in the reorganization and supervision of the German Judicial System. For a complete description of United States Military Government Courts in Germany, prior to August 1948, see Nobleman, *The Administration of Justice in the United States Zone of Germany*, VIII, Fed. Bar J., (October 1946). Problems relating to procedure and evidence will be found in Nobleman, *Procedure and Evidence in American Military Government Courts in the United States Zone of Germany*, VIII, Fed. Bar J., 212 (January 1947). See also Nobleman, *Military Government Courts: Law and Justice in the American Zone of Germany*, American Bar Association Journal, August, 1947 issue. Mr. Nobleman is active in the ORC and holds the rank of 1st Lt., JAGC—Res.

The procedures followed by these Courts were derived from and based entirely upon the Articles of War and the Manual for Courts-Martial, and they lacked, of necessity, many of the safe-guards of the Anglo-American system of justice to which we are accustomed. For the most part, these tribunals were concerned with the protection of the security of the armed forces of the occupant. Violations of local laws by inhabitants of the occupied areas were generally left to the indigenous courts, which under international law, were permitted to function.

During World War I, the United States Army established the customary Military Commissions and Provost Courts in occupied Germany. As in the past, the Military Commissions were concerned with serious offenses. Superior Provost Courts had authority to sentence persons convicted by them to a maximum term of imprisonment of six months and \$1,000 fine. Inferior Provost Courts were limited to sentences of one month and

maximum fines of \$100.

During World War II, a major development occurred with respect to Military Courts. As the first American troops entered Germany, a new court system was established. Appointed by Army Commanders during combat, these new tribunals, which were known as Military Government Courts, were of three types: Summary Courts; Intermediate Courts; and General Courts. They were established by Military Government Ordinance No. 2 and were given jurisdiction over all offenses committed by inhabitants of the occupied areas, with the exception of members of the armed forces of the Allied Nations and the enemy. Because the German judicial system had ceased to exist, their jurisdiction over offenses extended not only to all violations of Military Government legislation, but to all offenses against German law as well.

The procedures followed by these courts were a combination of the Courts-Martial, German and Anglo-American systems. This innovation was necessary, in order that the personnel staffing them, as well as the persons appearing before them, would be able to understand the nature of the proceedings.

Between the fall of 1944, when they began to function, and July, 1945, when combat ended and the permanent occupation phase began, 343 Military Government Courts had tried over 15,000 cases. By the end of 1946, there were 250 Courts functioning. By August, 1948, over 360,000 cases had been tried.

Although these Courts functioned effectively from a standpoint of protecting the security of the occupying forces, procedures laid down were not always followed and many convictions lacked sufficient evidence to warrant them. In addition, sentences were sometimes unduly harsh and without justification. Opinions were not required, and when written, were not published. The situation constituted an anachronism in view of the fact that one of the fundamental war aims and occupation objectives of the United States was the preparation of Germany for a democratic way of life.

In an attempt to meet this situation, the Office of Military Government for Germany (OMGUS) issued a directive on July 16, 1947, setting forth certain fundamental principles to be observed and adhered to in the trial of cases by Military Government Courts. This directive stated, in part, that it was desired that Military Government Court proceedings "conform in all essential points to the traditional procedures of American Law which apply whenever the life, liberty, or property of an individual are subjected to penal procedure. The sole function of Military Government Courts is to give justice in every case before it, according to the law and the evidence."

This directive had the effect of putting all Military Government Court personnel on notice that fundamental rights had to be observed and respected in all cases

tried. However, a number of the judges and prosecutors staffing the Courts were not attorneys and, many who were, lacked the experience necessary to enable them to perform their work properly. An additional stumbling block in the way of the observation of democratic practices lay in the fact that all Court personnel were appointed and supervised by the Chief Legal Officer of the Land (State) in which the Court was functioning. Thus, the same individual, who was responsible for the appointment of prosecutors and judges, reviewed the cases on appeal. No regular appellate procedure existed. Instead, a system of administrative review was in effect, which was discretionary in some cases and mandatory in others. Finally, a serious shortage of qualified legal personnel further weakened the entire system.

During the summer of 1948, plans were made to effect a complete civilianization of Military Government Courts in the United States area of control. This was in accordance with the policy of our Government to civilianize Military Government as completely as possible. However, even more compelling was the desire to eliminate existing injustices and undemocratic practices which had crept into the system over a four-year period. Accordingly, on August 18, 1948, OMGUS issued General Order No. 33, announcing the reorganization of the Military Government Court system in the United States Control Area, with

the expressed purpose of bringing it into closer conformity with the judicial system of the United States.

To effectuate this new system, O M G U S promulgated Military Government Ordinances No. 31, 32 and 33, which set up, for the first time, an integrated, zone-wide court system, as a separate unit of OMGUS, entirely divorced from the Land (State) Offices of Military Government. In addition, the prosecution function was separated from the judicial function by the creation of the Office of the Chief Attorney, consisting of the Chief Attorney and District Attorneys, as part of the Legal Division of OMGUS. A further feature was the establishment of regular appellate procedure.

Ordinance No. 31 divided the United States Area of Control into 11 Judicial Districts with District Courts, District Judges and Magistrates in each District. The administrative chief of the entire system is the Chief Judge of the Court of Appeals, who is the highest judicial authority in the United States Control Area. District Courts, consisting of three District Judges or two District Judges and one Magistrate, correspond generally to the old General Courts. The authority of the District Judges is similar to that formerly possessed by the Intermediate Courts and the Magistrates possess powers similar to the old Summary Courts. Thus, the District Court has jurisdiction to impose any lawful sentence, in-

cluding death; District Judges can impose any sentences up to 10 years imprisonment and \$10,000 fine and Magistrates have authority to impose sentences up to one year imprisonment and \$1,000 fine. Where a death sentence is imposed by a District Court, the decision must be unanimous.

The District Courts and the District Judges also have civil jurisdiction. However, at present that jurisdiction is exercised only with respect to actions for damages arising out of automobile accidents, not involving United States Government vehicles, between Germans and United Nations nationals, and certain cases arising out of navigation on the Rhine River. Consideration is being given to extending this jurisdiction to other types of civil litigation.

The criminal jurisdiction of these Courts extends to all persons in the United States Area of Control, except military or naval personnel. This would include German nationals, United Nations displaced persons, and dependents of United States occupation personnel. Persons subject to the Military Law of the United States, such as civilian employees of the Department of the Army, can be tried by these Courts only when such trial has been authorized by the Military Governor.

With respect to offenses, these Courts have jurisdiction over all violations of legislation of the Allied Control Council, Military Government legislation and offenses against German law in force in

the Judicial District in which the Court is located.

A complete system of judicial review has been established, replacing the prior practice of administrative review. Convictions by a Magistrate may be appealed to a District Judge; convictions by a District Judge or a District Court may be appealed to the Court of Appeals which consists of a Chief Judge and six Associate Judges. The Court of Appeals has original jurisdiction to act upon applications for release from confinement when the person confined has been sentenced by a District Court. Its appellate jurisdiction includes both questions of law and fact, except that in criminal cases, the Court can only set aside the decision of a District Court if the evidence does not support a finding of guilt beyond a reasonable doubt.

The Court is required to grant leave to appeal in any case involving a sentence of death or imprisonment for ten years or more; in any case where it appears that a conflict exists between the decision of two District Courts or a District Court and the Court of Appeals; where it appears that there has been a denial of due process; where an important question of law is presented; or where the rights of the appellant appear to have been substantially prejudiced. In cases involving the death sentence, review by the Court of Appeals is mandatory, whether or not a petition for appeal has been filed. Furthermore, the Court may review any cases in which it ap-

appears that the rights of a defendant may have been substantially prejudiced, even though no petition for appeal has been filed.

Ordinance No. 32 sets up a Code of Criminal Procedure which is substantially similar to our own and contains all of the fundamental safeguards which are found in the Anglo-American legal system. Ordinance No. 33 establishes a Code of Civil Procedure which is also in conformity with the American system.

The Chief Attorney represents the Military Government before the Court of Appeals. In addition, he is responsible for the supervision and direction of all District Attorneys. Provision has been made for a District Attorney and one or more Assistant District Attorneys to be stationed in each Judicial District.

Although this new system has been functioning only a short time, the results are notable. All of the Judges and District Attorneys are experienced lawyers and many of the Judges are professional jurists who have served in State Courts in various parts of the United States. The Chief Judge of the Court of Appeals, William Clark, formerly a United States Court of Appeals Judge for the Third Circuit, has had many years of experience on the Federal Bench in the United States. Those Judges who have not had judicial experience in the United States, prior to their ap-

pointments, have had considerable experience in that capacity, with the Military Government Courts in Germany.

The Courts are now required to write opinions which are published and a regular system of *stare decisis* is being followed. As a result, an interesting and important body of law is being built up. Furthermore, the Court of Appeals has been writing decisions which have finally settled many complicated points of law which faced the Judges of the old Courts and to which no satisfactory answers could be found.

Another important feature of the new system is that calendars, which were formerly overcrowded, as a result of lack of sufficient legal personnel and lack of proper supervision, have been brought up to date. There are now 67 Judges and 32 District Attorneys for the entire United States Area of Control, whereas previously, there were 68 Judges and Prosecutors for the State of Bavaria alone.

The civilianization of Military Government Courts in Germany has gone a long way toward teaching democracy and the democratic system to the German people. All of the democratic safeguards mean absolutely nothing in the absence of impartial courts to protect fundamental rights. It has been correctly stated that the true administration of justice is the firmest foundation of good government.

H. R. 4080

STATEMENT OF

Major General Thomas H. Green, The Judge Advocate General of the Army, Before the Committee on Armed Services of the Senate

Mr. Chairman and Gentlemen of the Committee:

I appreciate this opportunity of appearing, at your request, to express my opinions as to H.R. 4080. At the outset I would like to make it clear that I am not speaking for the Department of the Army. I am merely expressing my own views, which, however, also represent the considered opinion of many of the officers of the Judge Advocate General's Corps who have devoted many years to the study and practice of military justice.

I am in favor of a uniform code of military justice and so advised the Armed Services Committee of the House of Representatives in 1947 when it considered the amendments to the Articles of War which were enacted by the last Congress. I could not agree with any principles of uniformity which involves backward steps in the insurance of essential justice or deprives the three services of their own basic disposition of their individual disciplinary problems.

The object of a code of military justice must be to further the mission of the armed forces, which is to fight and win wars. In its operation it must be both military and just. If it is not military it will be an impediment to the force which it is intended to support. If

it is not just, it will have a deleterious effect on morale and thus tend to destroy the fighting effectiveness of an army. The Articles of War which were enacted in 1920 and amended in 1948 have been calculated to attain these objectives. The provisions of the present Articles of War have been the result of an evolutionary process of study, administration, trial and error over many hundreds of years. I believe they have attained a harmonious combination of procedural and substantive law which is military and which preserves to the soldier every constitutional safeguard of due process. In most respects military due process accords to an accused person more safeguards than he would have in a civil court. As far as the effectiveness of our system of justice is concerned I would like to quote from the report of the War Department Advisory Committee on Military Justice which recommends the substantial changes made by the last Congress:

“* * * the Army system of justice in general and as written in the books is a good one; that it is excellent in theory and designed to secure swift and sure justice; and that the innocent are almost never convicted and the guilty seldom acquitted.”

The Committee found certain

defects in the operation of the system, however, the most important of which pertained to the improper influence of commanders upon courts primarily with respect to the severity of sentences. These defects have been corrected by the Elston Bill or Kem amendment and by the Manual for Courts-Martial. Commanders are expressly forbidden to censure, reprimand, admonish, or unlawfully influence a court or any member thereof with respect to its or his judicial functions. The Manual expressly enjoins courts to exercise their own judgment with respect to sentences and not rely upon the reviewing authority to cut down a sentence which the court itself believes to be excessively severe.

I think our present statute is an excellent one, and the entire army is cooperating to the fullest extent in its operation—I hope you will let us keep it long enough to prove its worth.

The proposed code has many excellent features. It is logically organized and preserves many of the desirable features of the present Articles of War. In particular I would like to commend the draftsmen for their improvement and clarification of Article 2 (11) which deals with jurisdiction over persons serving with and accompanying the armed forces in the field in time of war; Article 4 which deals with the right of officers dismissed by the President to trial by court-martial and provides for a constitutional disposition of such cases; Article 32(d)

which provides that minor defects in pre-trial investigations are not jurisdictional and thus anticipated the view of the Supreme Court recently expressed in the case of *Humphrey v. Smith*; Article 52 which removes ambiguities of the present AW 43; and Article 74 which clarifies the remedial action to be taken as the result of a new trial in which the former sentence is not sustained.

But the code has many defects. I will not take the time of the committee at this juncture to discuss in detail each of the provisions which in my opinion will not only impair the functions of military justice but also diminish the substantial rights of accused persons. With the permission of the committee I would like to furnish a more detailed analysis. I would like, however, to dwell on some features which I regard as fundamental. These are:

1. The sweeping extension of military jurisdiction over civilians (Arts. 2, 3).
2. The limitations on the powers of the law member (Arts. 26, 39).
3. The mandatory requirement that the officers conducting the prosecution and the defense shall be lawyers certified as qualified by The Judge Advocate General (Arts. 27, 38).
4. Wide extension of the powers of Board of Review with respect to nonlegal matters.
5. The creation of a civilian Court of Military Appeals.

mans, Congress has been very zealous to preserve civilian jurisdiction.

In so far as Army and Air Force personnel are concerned, Articles 2 (3) and 3 (a) of the code extend military jurisdiction over persons not now subject to it. I believe this is unnecessary and the inevitable result will be public revulsion against its exercise. It has been my experience that, no matter how just and fair the system of military justice may be, if it reaches out to the civilian community, every conceivable emotional attack is concentrated on the system. This is as it should be. The framers of the Constitution recognized that civilians should be tried by civilian courts and they established a military system of courts for the Army and Navy. I recognize that reservists on inactive duty training may commit offenses, perhaps serious ones. I also recognize that many serious offenses committed by persons sub-

committed an offense against the code, punishable by confinement of five years or more and for which he cannot be tried in a Federal or state court while in a status in which he was subject to the code, shall not be relieved from amenability to trial by courts-martial. The question as to whether he can be tried by a Federal or state court for the offense becomes a jurisdictional one. It may be hard to decide. In *U. S. v. Bowman*, 260 U.S. 94, the Supreme Court held that any offense directly injurious to the Government for which Congress provided no territorial limitation may be tried by a District Court no matter where the offense is committed. Whether a particular offense comes within this limited category is a fit subject for debate among lawyers. It may not be settled except by the Supreme Court. It is not a proper subject for determination by a court-martial. If you expressly confer jurisdiction on the Federal courts to

the court as to the presumptions of innocence, and assist the court in preparing the formal findings after the actual findings have been made, but he is deprived of his vote and excluded from the closed sessions of the court. This results in the loss of legal experience and learning during the most critical stage of the proceedings and deprives the court of legal guidance at a time when it most urgently requires such guidance. The requirement of the Kern amendment that a law member be a lawyer and that he participate in all proceedings of a court-martial is regarded by all who have had experience in the administration of military justice as the most significant improvement since automatic appellate review. The limitation on the effectiveness of the law member will result in miscarriages of justice both to the detriment of accused persons as well as to the detriment of the interests of the Government.

The only argument for the

line charge which he gives them will be on the record—everything that he gives in open court will be on the record. When they go back to deliberate they are like a jury and there is no particular record with reference to that.

“The law member, when he retires with the court, may make any kind of statement to them. And it has been stated—I would not say on how good authority—that frequently when he went back there why he said, ‘Of course the law is this way but you fellows don’t have to follow it.’” (Hearing on H.R. 2498, p. 607).

I doubt if any lawyer law member ever said a thing like that. The presence of the law member in the closed sessions is infinitely more likely to prove a deterrent against the expression of such a sentiment by anyone.

The analogy between the proposed law officer and a civilian judge is more apparent than real. For example, he rules subject to objection by any member of the court on the question of a motion

for a finding of not guilty under Article 51. Suppose that he has ruled, as a matter of law, that the prosecution has not proved a prima facie case and a member objects to his ruling. Under the proposed code the court closes—excludes the law officer, and votes on this legal question. The law officer cannot explain his ruling, defend it, or vote to sustain it. Although under AW 31 such a ruling by the present law member is also subject to objection at least he can defend his ruling against the argument of a member who may not be well versed in the law. I don't believe this change which makes the law member a mere figure-head is defensible.

3. Mandatory requirement for legal qualification of counsel.

Article 27 requires that the trial counsel and defense counsel of each general court-martial must be a qualified lawyer and certified to be competent to perform his duties by The Judge Advocate General. If their assistants are to perform in any capacity other than in a merely clerical one, they too must be so qualified under Article 38.

AW 11 of the Kem amendment now provides that if the trial judge advocate is a lawyer, the defense counsel must also be a lawyer. This is a fair rule and corrects many of the defects in the former system justly criticized by the public and the legal profession. In the Army we now have approximately 6000 general court-martial cases per year. In time of war we

have many more. I would say that fully 70% of these cases involve extremely simple issues which can be adequately and fairly tried by line officers. I would like them tried by lawyers, it is true, but the difficulty of procurement of sufficient lawyers to provide at least three for every one of 6000 general court-martial cases is enormous. If I am to certify each one as qualified I will have to satisfy myself that he is qualified to try any kind of a general court-martial case, not just a simple AWOL or desertion case which rests on a morning report. I can't just certify every lawyer no matter what his trial experience or criminal law background may be. If bar membership were the only qualification necessary, why would Congress require me to certify the lawyer's qualifications? Where can I find lawyers so qualified in sufficient numbers to try 6000 cases a year? Unless I find them, the few lawyers I have will have to try the cases, simple and difficult, to the exclusion of all other duties which may be more important to the Government than the trial of simple cases which could as effectively be tried by line officers—or lawyers learning military justice. The inevitable result will be long delays in the disposition of cases pending the procurement of three lawyers at the right time and place. Some cases are long and difficult. While a team of three lawyers is trying a case which takes weeks to try—many accused whose cases could be disposed of in

an hour or less will be waiting in a guardhouse until their cases can be reached. I don't think this is the result you want to attain. I don't think it's necessary because there will be a trained and experienced law member on the court to see that the rights of the accused are protected in even a simple case. In addition, the review of the staff judge advocate and automatic appellate review will protect the accused's substantial rights against the errors of counsel. The practical difficulties of the article could be ameliorated if you gave the accused, at his option, the right to be defended by a lawyer provided by the appointing authority even though the trial judge advocate is not a lawyer. I would also have no objection if the requirement of the proposed Article 27 were limited to cases in which the death penalty or confinement in excess of 10 years might be adjudged.

4. *Powers of the Board of Review*

Article 66 (c) provides in part that the Board of Review

"* * * shall affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved."

Under Articles 66 and 67 the determination of the Board of Review is final as to any matter other than a question of law. The latter is subject to appeal to the Civilian Court of Military Appeals either by The Judge Advocate General or the accused. This in effect author-

izes the Board to disapprove or mitigate legal sentences which have been approved by responsible senior commanders. It authorizes them to consider other than legal matters in determining what part of a finding or the sentences, should be approved. For example, a Board may consider that a given order which an accused is charged with having violated is unwise, and that therefore, on the basis of the entire record, a finding should be disapproved. This makes possible an unwarranted invasion of the command prerogative and would authorize the Board of Review to substitute its judgment on military policy for that of the commander in the field. This determination under the proposed bill would be absolutely final. I could not appeal that case to the Court of Military Appeals because the Board's determination would not be based on a question of law.

Under the present case load in my office I have six Boards of Review. I may soon need more. Under the proposed bill I would need even more. The members are bright, well qualified and conscientious military lawyers. They have experience both as soldiers and as lawyers. Many of them are relatively young. They function well in determining legal sufficiency of records and in weighing evidence. They have not all, however, attained the wisdom in matters of policy which comes with experience and age nor have they all at-

tained the instinctive familiarity with military matters which comes with many years of experience with troops. The powers which Article 66 gives them have heretofore been exercised by the confirming authority, i. e., the President, the Secretary or the Judicial Council and The Judge Advocate General—all of whom have far greater responsibility with respect to the accomplishment of the military mission than do the Boards of Review. I believe it unwise to entrust such sweeping powers to such relatively younger officers or civilian employees (as authorized by the code). I must use younger officers on these boards—because I can't concentrate all my older and wiser heads in Washington. Some of them are needed in the overseas theaters and other commands where difficult military legal problems arise. And even in Washington I have to use senior officers to head my Claims, Military Affairs, Contracts, Procurement, and Patent Divisions. Under the proposed Article 70 I would have to provide an undetermined number of my ablest appellate officers as appellate Government and Defense Counsel to represent the Government and the accused before Board of Review and before the Court of Military Appeals. In spite of the fact that the proposed bill will increase somewhat the number of cases to be examined by a Board of Review, The Judge Advocate General will have to reduce the number of boards because of the especially high qualifications

these extended powers will demand and because the increased demand for the services of my most qualified officers to fill other positions. This too will delay the disposition of cases.

The bill proposed by Professor Morgan's committee had a remedy for this provision—it authorized The Judge Advocate General to refer a case to another Board of Review if he was dissatisfied with its holding. This was somewhat unjudicial and the House committee struck it out—wisely, I think. It did, however, point out the extremely critical problem. Some judicial remedy should be provided. I urge you to leave the power to commute and consider nonlegal matters with a confirming authority and to authorize The Judge Advocate General to dissent with the Board and refer any case to a higher confirming authority or a *Military Court of Military Appeals*. This brings me to my final major point of disagreement.

5. *Civilian Court of Military Appeals*

At the outset I would like to state that I am in accord with the underlying principle of Article 67g which provides for a continuing study of military justice matters to be conducted by a body of eminent jurists in conjunction with The Judge Advocates Generals of the services and annual report to the responsible Secretaries and the Congress. The remarkable accomplishment of the Vanderbilt Committee clearly demonstrates the usefulness of such a study. It pro-

vides helpful liaison with the legal profession. It would ultimately lead to further perfection of the system of military justice.

But with respect to a wholly civilian court of military appeals I cannot agree. Military justice is a field of the law which requires not only a thorough familiarity with criminal law—but also experience and training in military matters. You would not entrust a complicated patent problem to a tax lawyer who was not thoroughly familiar with the engineering or other technical matters involved no matter how good a tax lawyer he might be. The capstone of the system of military justice should consist of those military lawyers who are most highly experienced and trained both from a military and a judicial viewpoint; both as soldiers and as judges. The legal services of the Army, Navy, and Air Force have produced such judges and are ideally organized to produce more such judges. This requirement can't be met merely by providing that the Civilian Court of Military Appeals will consider only questions of law. Every lawyer knows that questions of fact and questions of law cannot be separated in airtight compartments. Military law in itself embodies hundreds of complicated problems of status arising out of customs of the service as well as statute and regulation.

In the files of my office there is a case of a Corps Artillery Group Commander who was tried for the willful disobedience, before the

enemy, of a division commander's orders to go into a particular position with his battalions and stay there. In the heat of the battle his group left that position. He contended that he was going to an alternate position from which he could more effectively accomplish his mission. Among the issues in the case was the question of whether he was attached to the division or merely supporting it. This involved both a question of fact and of military law. If he was merely supporting the division, to what extent did the division commander have authority to order him to stay in a position which he considered poor; if he was attached, to what extent did the group commander have discretion in exigent circumstances to leave a position given him by the division to go to another one of his own choosing?

These are all problems which required a thorough and detailed knowledge of tactical organization, the legal effect of a Corps Standing Operating Procedure, and customs of the service in general. What special qualifications do civilians without extensive military experience have to determine such questions? I can cite you many such cases. For instance, is an air base several hundred miles from a target "Before the enemy?" And consider the purely military legal problems presented by *Wade v. Hunter* as to whether military exigency constituted imperious necessity with respect to former jeopardy. These are problems which

ultimately would be resolved by the Court of Military Appeals.

Is there a need for such a court? Has the administration of military justice broken down at the appellate level? I submit that there has been no such failure. The opinions and holdings of the Boards of Review since their creation in 1920 constitutes one of the most comprehensive bodies of criminal reports in the United States, reports which compare favorably with those of both Federal and state appellate courts. The remarkable success of the military appellate system is attested to by the fact that, out of more than 200 habeas corpus cases arising since World War II only one accused has been released from confinement as the result of final court action on his petition. The grounds upon which the one exception was released was overruled by the Supreme Court of the United States two weeks ago in *Humphrey v. Smith*. I am proud of that record.

Under our present system the most serious cases such as those involving death sentences, life imprisonment, cases involving general officers, and cases extending to dismissal of officers go automatically to the Judicial Council created by the Kem amendment for confirming action. Other cases where either The Judge Advocate General or the Board of Review believes that confirming action should be taken in the interest of justice may also be referred to the military Judicial Council. The case load is sufficient to keep the

Council busy but not enough to create a bottleneck. Under the proposed bill only death cases and cases involving general officers will go to the Court of Military Appeals automatically but each accused will have a right to petition for review by that court. I think it has been estimated that in peacetime in 85 per cent of 14,000 cases, or in almost 12,000 cases, the accused will have a right to petition the Court of Military Appeals for review. I think it fair to assume that a substantial percentage of those 12,000 accused will exhaust their remedy. Although only a small percentage of those cases may result in review, the task of considering the petitions themselves will be enormous. If the Court of Military Appeals of three judges gives the consideration which each petition deserves it is self-evident that substantial and deleterious delays will occur.

I think I have demonstrated that there is no need for further review for legal sufficiency of records after military appellate review. Under the uniform code there is unquestionably a need for uniformity of sentences and uniform interpretation. Our present system is working well in the Army, and as far as I know, in the Air Force. It can be extended, with modification perhaps, to fit the needs of the other services. It preserves to each service the control of individual cases within the service. I recommend that our system be preserved. In order to provide for uniformity of sentences and of

interpretation I would suggest that there be established in the National Military Establishment a military Court of Military Appeals composed of The Judge Advocate Generals of the services. Their function, together with a civilian advisory body, should be to recommend uniform policies of punishment and improvements in the administration of military justice. To provide for uniformity of interpretation, each Judge Advocate General should be empowered to certify any case for legal determination by the entire Court of Military Appeals whenever uniform legal interpretation is required.

The proposal I make would preserve the advantage of completely automatic appellate review for all cases of the same class—which is perhaps the most important right of an accused in the military service and which is not accorded him by civil jurisdictions. It also preserves to all appellate agencies the power to weigh evidence and determine controverted questions of fact which are powers not generally exercised by civil appellate courts and which afford to an accused person rights which no other judicial system does. It would preserve the significant reforms in

the administration of military justice made since 1920. Finally, by retaining the military judicial council created by the Kem amendment it would provide a career incentive which will attract able lawyers to the military service to perform the many functions which the bill requires.

There are other provisions of the proposed code with which I cannot concur. The right against self-incrimination provided by the code (Art. 31) abridges the right which persons subject to military law now have under Article of War 24; provision is made in Article of War 43 for virtually doing away with the statute of limitations; many of the punitive articles are inartfully drawn. With respect to the punitive articles the House committee has corrected a few of the glaring errors by amending Article 77 (Principals) and Article 119 (Manslaughter—but larceny (Art. 121) and robbery still require careful consideration. With your permission I should like to submit an analysis of my objections and to submit for your consideration pertinent amendments. I again wish to tell you that I appreciate the opportunity to present my views. I thank you.

We are presently undertaking to compile a new "Directory of Members" to include new members and corrections in addresses. It is extremely important to the success of any directory that the addresses contained are correct. You are strongly urged to advise us of your correct address if there is any error in the address under which we are carrying you indicated on the envelope containing your copy of the Journal. If you know of members who are complaining of not receiving material from the Association, pass this word on to them and perhaps a "Change of Address Notice" will correct this situation.

What The Members Are Doing

ALASKA

Lt. Col. Franklin W. Clarke, S.J.A., Headquarters, U. S. Army, Alaska, advises that both the Army and Air Force Alaskan Commands have been conducting schools on the new military justice system and that the changes brought on by the "Manual for Courts Martial," 1949 have been effected very smoothly and with good results. Col. Clarke is expecting to return to the Z.I. in September. He has recently received in his office 1st Lt. E. M. Chandler, member of the Bar of Tennessee, formerly assigned to Hq., Sixth Army. Capt. Joseph J. Crimmins of his office was recently promoted to the rank of Major.

CALIFORNIA

Lt. Col. James P. Brice, JAGC—Res., reports the establishment of a very active JA organization in Los Angeles composed of approximately twenty members. Their local organization met on March 31 in response to the Association's recent questionnaire on the "Uniform Code of Military Justice" and very effectively conducted full discussion, study and report on the results.

Col. Charles Richardson, Jr., State Chairman for California, reports from Carmel on many persons from many places:

San Francisco—Captain Henry C. Todd, 11th OFF who served through the European Campaign

as Assistant Staff J.A. of the 80th Inf. Div., formed a law partnership for general practice with his father, under the firm name "Todd and Todd."

Stockton—Major Edwin Mayall, 7th OFF who was Staff J.A. of the Second Armored Division, returned from Germany in 1946 and has resumed private practice.

Major James DeMartini who served as a J.A. in the Aleutian Islands and who formerly practiced law in San Francisco, has become a partner in the Stockton Law Firm, Mazzera, Snyder & DeMartini.

Chico—Capt. Jean Morony, 6th OCS at Ann Arbor after his separation from the service in 1946 returned to Chico and formed a law partnership with Grayson Price under the firm name, "Price and Morony." He says: "If any Jags pass through this part of the country, I certainly hope they will drop in and say hello."

Capt. Matthew Marsh, 6th OCS at Ann Arbor is back in private practice and is counsel for the Diamond Match Corporation which operates a large plant in Chico. More important still, he has become the proud "papa" of a fine baby boy.

Santa Monica—Lt. Col. Richard K. Gandy formerly District Judge Advocate, Central District, A.T. S.C. for which he received the Legion of Merit is back in private

practice. He is presently serving as a member of the Military Justice Committee of the American Bar Association.

Arcadia—Capt. David T. Sweet, 10th OFF was appointed City Judge of Arcadia in October of 1947 and has been doing considerable informal speaking to service clubs and organizations about the War Crimes Trials in Japan.

Los Angeles—Lt. Col. George W. Tackabury, 6th OFF who was Chief of the Reservation Division of the Judge Advocate General's Office and active in plant seizures for the Army, has, since separation from the service, become a partner of the law firm, "Newlin, Sandmeyer & Tackabury."

Lt. Col. Randolph Karr was recently elected President of the Los Angeles Electric Club, which is an active organization composed of several hundred prominent representatives of the electrical industry.

Lt. Col. Gerald G. Kelly, 13th OFF, formerly Ninth Service Command J.A. and Service Command J.A. at the Presidio of San Francisco, is a Deputy County Counsel of Los Angeles County. He has been conducting the prosecution of many important cases and recently brought to a successful conclusion a test case titled "Steiner vs. Darby" involving the legality of requirement by the County Board of Supervisors that officers and employees under its jurisdiction to take an oath of allegiance to the State and Federal Constitutions

and to answer on oath whether they advocate the overthrow of the Government by force.

Maj. John M. Davenport who was formerly associated with Col. Karr in general practice, is now associated with the law firm, "Newlin, Holley, Sandmeyer, & Tackabury" in general practice.

Lt. Col. Brenton L. Metzler, 8th OFF, formerly an assistant trial attorney before the War Department Board of Contract Appeals, and later served at the Presidio of San Francisco as representative of the tax division JAGO for the western states, is now in general practice as a partner of the law firm of "Lawler, Felix & Hall," Standard Oil Building, Los Angeles.

Maj. Robert W. Anderson has been appointed Deputy City Attorney in the Los Angeles City Attorney's Office and is doing a splendid job there.

OTHER STATES

OHIO

Pomeroy—Lt. Col. Cedric Clark, 11th OFF, formerly Judge of the Court of Common Pleas and Staff Judge Advocate at Camp Roberts, California, is now back in private practice at Pomeroy.

NEVADA

Las Vegas—Lt. Col. Frank McNamee, 8th OFF, is now Judge of the Eighth Judicial District of Nevada at Las Vegas. He visits Los Angeles frequently and renews his associations with Jags there.

DISTRICT OF COLUMBIA

Col. Berryman Green, former Chief of the Tax Division of the Judge Advocate General's Office and now a member of the Tax Division of the Department of Justice argued a case in the District Court of Appeal at Los Angeles in January, 1949 involving the right of the county to tax as solvent credits, funds advanced by the Federal Government to contractors and held in restricted bank accounts. He obtained judgment upholding the Government's position.

Members of the Association in the Washington area have conducted monthly dinner meetings during the past year in concert with the J.A. Chapter, ROA, D. C. These meetings have provided an excellent forum for discussion of the Uniform Code of Military Justice and have been well attended by the members, active duty personnel of the Services, professional advisers of the Secretary of Defense and Congress and members of both Houses of Congress.

Major Richard H. Love announces the removal of his law offices from the Woodward Building to the Denrike Building, 1010 Vermont Avenue, N.W., Washington 5, D. C.

Col. Oliver Gasch has been recently elected to the presidency of the D. C. J.A. Chapter, ROA, for the year 1949-50.

The 2913 J.A. Trng. Gp. commanded by Col. F. B. Wiener recently staged a production "Murder on the Yukon" to dramatically

present procedural changes in the trial of General Court Martial Cases under the Manual for Courts Martial, 1949. The moot trial was presented in the Department of Interior auditorium to a capacity house of reserve officers of the Military District of Washington. Majors Paul Davis, James Bistline and Richard H. Love prepared the scenario and leading roles were: President of the Court, Col. McMurray; Law Member, Major Bistline; Accused, Lt. Col. Fields; T.J.A., Major Davis; Defense Counsel, Major Love; Individual Counsel, Col. Gaguine.

FLORIDA

Capt. Alfred M. Franklin of Miami, Florida, has joined the firm of "Blackwell, Walker and Gray" with offices in the First Federal Building.

INDIANA

Vern W. Ruble, State Chairman for Indiana, has been taking active steps toward the organization of the Indiana members of the Association with the view of conducting local programs as an incident of Annual State Bar Conventions. The Indiana JAG's will meet at Richmond on July 9th.

KANSAS

John C. McCall, State Chairman, called a meeting of the Kansas Jags at the May meeting of the State Bar Association at Topeka. 21 members of the Association were present at the banquet-meeting. This will be an annual event hereafter and 1950 plans for a meeting at Wichita are in the hands of Judge Wm. J. Wertz.

Max Hall has resumed practice at Anthony, Kansas.

KENTUCKY

Ben T. Cooper, Benton, Ky., is Assistant U. S. Attorney for the Western District of Kentucky.

C. C. Wilson is practicing law at Glasgow, Ky.

John A. Keck, Sandy Hook, is now Commissioner of the Kentucky State Highway Department.

Kentucky State Chairman of the J.A. Association is Martin R. Glenn, who practices law in Louisville (Suite 1912-24 Kentucky Home Life Building). Glenn is also President of the Louisville Chapter of the Reserve Officers Association.

William D. Becker, Louisville, is Juvenile Judge of Jefferson County and Commander of the Louisville Chapter of the Military Order of World Wars.

Francis P. Hargett is City Prosecutor at Maysville, Ky.

Clifton J. Waddill is engaged in practice at Madisonville, Ky.

MINNESOTA

Leslie L. Anderson has been recently appointed by the Supreme Court of Minnesota to serve as Chairman of the State Bar Review Panel. He has also been appointed by Gov. Youngdahl as head of the Governor's Citizen Mental Health Committee for the improvement of conditions in State mental hospitals. Anderson has been largely responsible for the Governor's interest in this project and the results of the Committee's work have been credible. Mr. Anderson is President of the Commonwealth

Club of Minneapolis and is a member of the firm of "Stinchfield, Mackall, Crouse & Moore" in Minneapolis.

MISSOURI

Maj. Omer H. Avery, from Troy, wishes to be remembered to the members of the 5th officers class and the staff of the first class at Ann Arbor.

NEW JERSEY

Col. Frank A. Verga, State Chairman from Jersey City, reports:

Col. Frank Berry, JAG Reserve, is practicing law in Toms River, New Jersey, and since he returned to private practice, has been appointed Assistant Attorney General of New Jersey.

Col. Frel Hauser, since his return to private practice in Hoboken, New Jersey, has been appointed to the State Legislature of our State where he is serving with honor and distinction. He is rendering every effort to have a State bonus passed.

Col. Isadore Hornstein is now practicing law in Jersey City, and since his return to private practice in 1946, he has had two 60 day tours of duty in the Judge Advocate Office Headquarters, 1st Army.

NEVADA

Col. Clel Georgetta, State Chairman engaged in practice in Reno, reports that Richard R. Hanna is engaged in practice at Carson City, that Ryland G. Taylor is a member of the firm of "Taylor and Gubler" practicing at Las Vegas, and that Gordon W. Rice is a member of the firm of Rice and

He was recently elected to honor Streeter engaged in practice at Reno. Frank McNamee, Jr., is the Judge of the Eighth Judicial District at Las Vegas.

NEW YORK

Norman Roth recently announced the formation of the law partnership of Olcott & Jackson of which he is a member. The firm has offices in New York City.

Col. David George Paston has recently reopened his law offices at 220 Broadway, New York City.

NORTH DAKOTA

Everett E. Palmer, State Chairman, has been elected President of the North Dakota State Elks Association. Palmer is engaged in general practice and is the City Attorney of Williston.

TENNESSEE

Col. Benjamin Axleroad has reopened his law offices at Winchester, Tennessee.

VIRGINIA

Col. Charles P. Light, Jr., is Professor of Law at Washington and Lee University Law School.

orary membership in Phi Beta Kappa. Capt. Laughlin is serving as Associate Professor of Law at Washington and Lee. Col. Light and Capt. Laughlin are active members in the 2303d Military Government Training Group at Lexington. Col. Joe T. Mizell is engaged in practice at Richmond, Col. D. Gardner Tyler is Assistant Attorney General assigned to the Division of Motor Vehicles, Capt. William S. Moffett, Jr., 20th OC, is engaged in practice at Staunton. Rudolph Bumgardner, Jr., is also engaged in private practice at Staunton and is Group Commander of the 2304th Military Government Training Group. Capt. Earl W. Wingo is Assistant to the Commonwealth Attorney at Lynchburg and is Assistant S.J.A. of the 2399th Infantry Training Division—ORC. Douglas A. Robertson is the S.J.A. of that training division and has resumed the practice of law with his firm, "Williams, Robertson and Sackett" at Lynchburg.

ANNUAL MEETING AT ST. LOUIS

The annual meeting of the Association will be held coincident with that of the American Bar Association, which is to meet at St. Louis, Missouri, in September. Our program will be very similar to that followed in former years. Details as to the exact dates of the social function and business meeting will be published in the near future. The period, however, to be kept in mind for St. Louis is September 5th to 8th. Information

concerning travel and accommodations has no doubt come to your attention through the American Bar Association's releases and will be more fully covered in the July issue of the "American Bar Journal." It will be helpful to the Convention Committee, of which Maj. Philip A. Maxeiner, 408 Olive St., St. Louis, Mo., is Chairman, if you will indicate your tentative plans on the post card enclosed with your copy of the "Journal."

