

# From the Regimental Historian and Archivist

## ***Our history: The Origins of the Uniform Code of Military Justice***

Prior to 1950, all military justice matters in the Army were governed by the Articles of War. Why these were discarded---and replaced by the Uniform Code of Military Justice (UCMJ)---is a fascinating story.

When the Army was created in 1775, it used the British military justice system with which colonial Soldiers were familiar. While Congress made minor modifications to these Articles of War in the 19th and early 20th centuries, courts-martial did not change much.

The huge influx of draftees from 1942 to 1945---there were eight million men and women in the Army by the end of the World War II---brought with it a desire for a more fair and democratic judicial process. The Army conducted some 1.7 million courts-martial in World War II---nearly one court-martial for every four Soldiers---and many GIs were unhappy with their personal experiences with the Articles of War. Substantial numbers of Soldiers who had never been in trouble with the law in civilian life served time in military jails, or received less than honorable discharges, or both; and there were many complaints about unlawful command influence and stories of unfairness, arbitrariness and misuse of authority.

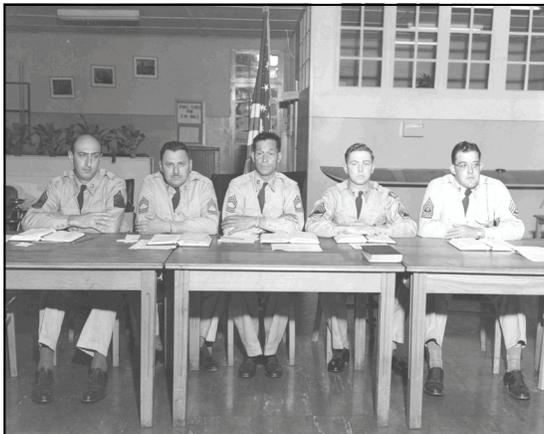
More than anything else, Soldiers returning to civilian life complained that commanders had too much control over the courts-martial system.

By 1947, prominent members of the House and Senate were determined to infuse civilian procedures into the military justice system and in 1948, Congress revised the Articles of War. But this reform legislation was short-lived, since it was quickly overtaken by a new initiative in Congress to enact a "uniform" criminal military code---uniform in that would be the same for the Army, Navy and newly created Air Force. At the time, the Navy and Marine Corps had a separate military justice regime, called the Articles for the Government of the Navy; the new Air Force was going to adopt the Articles of War. But many in Congress believed that since all the armed forces were now part of a unified Department of Defense (DoD), there should be one criminal code applicable to all Soldiers, Sailors, Airmen and Marines.

The end result was that Congress enacted a UCMJ, which President Harry S. Truman signed into law on May 5, 1951. The new criminal code took effect on May 31, 1951, and ushered in the most sweep-

ing changes ever made to the military criminal justice system.

For the first time in history, commissioned officers were no longer the only military personnel involved in the process. This is because enlisted Soldiers were now afforded the right to have a jury more representative of the Army as a whole. While an enlisted Soldier was entitled to have his case heard by a panel of only officers, he could also elect a mix of offi-



The first all-enlisted court-martial panel was convened in France in July 1953. From left to right are: MSG Handsman, MSG Polichina, MSG Court (court president, center), MSG Holloway, 1SG Hart. Enlisted members on court-martial panels was a major innovation in the UCMJ.

cers and at least one-third enlisted Soldiers. The only caveat was that the enlisted court members had to be senior in rank to the accused.

Another major development was the requirement for the convening authority to appoint an investigating officer to conduct "a thorough and impartial investigation" before any charges could be referred to trial by general court-martial. The intent of this so-called "Article 32 investigation" was to protect an accused since a Soldier was entitled to present evidence at the investigation and cross-examine witnesses.

Article 31, UCMJ, also extended a Soldier's privilege against self-incrimination and guaranteed that he had a right to have counsel present during any official questioning.

For the first time, commanders were prohibited from appointing a court-martial if they had a "personal interest" in the case. Another important provision in the UCMJ prohibited a convening authority from reprimanding, censuring or admonishing any court member or counsel with respect to the finding or sentence. The convening authority also was forbidden to attempt to coerce or, by any unlawful means, influence the action of a court-

martial. Such unlawful command influence was now a criminal offense.

Another first under the UCMJ was that every general court-martial had to have a "law officer" appointed by the convening authority. The law officer was to be a judge in many respects---and he had to be certified for duty by The Judge Advocate General. The law officer instructed the court on the elements of the offense, on the presumption of innocence, and on the burden of proof. He also ruled on interlocutory questions of law. But the law officer did not control the court-martial, and there was no such thing as trial by military judge alone. On the contrary, all courts-martial were panel cases, and the senior officer of the court panel continued to preside at the trial as the president of the court. He carried out many quasi-judicial functions. For example, the president decided the place and time of trial; he conducted the trial and administered oaths to counsel; he presided over closed sessions of court; and he recessed or adjourned the court. But the role of the law officer was an important one---and a key development in the creation of the office of military judge that occurred with the enactment of the Military Justice Act of 1968.

Another major development was the creation of a civilian appellate court to review courts-martial. This was another historical first as prior to this time; court-martial appeals were decided by Boards of Review consisting of senior Judge Advocate officers. Now, for the first time in history, a civilian appellate court was at the apex of the military justice system---the three-member Court of Military Appeals. (It continues to exist today as the five-member Court of Appeals for the Armed Forces).

When the UCMJ came into effect, the Army was in the middle of tough fighting on the Korean peninsula---the Korean War having started in June 1950. But Judge Advocates working under the direction of then COL (later MG and TJAG) Charles L. "Ted" Decker wrote a new Manual for Courts-Martial, and it was published in 1951 and adopted by all DoD services and the Coast Guard.

Today, the UCMJ still governs the military justice system and the basic provisions of the code, as enacted in 1950, are the same. Significant amendments were made in 1968 and 1983, but the story of those changes is better left to another day.

*By Mr. Fred Borch, Regimental Historian, TJAGLCS, Charlottesville, VA*