

Lore of the Corps

The Army Court of Military Review: The First Year (1969-1970)

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On October 24, 1968, President Lyndon B. Johnson signed the Military Justice Act of 1968. This legislation, which became effective on August 1, 1969, made revolutionary changes to military criminal law.

At the trial level, judge advocates began serving as trial and defense counsel at special courts-martial; previously these duties were performed by non-lawyer line officers. Additionally, a military judge presided over the proceedings. Also, for the first time in history, it was possible for an accused to elect to be tried by military judge alone. Prior to August 1, 1969, every court-martial was heard by a panel.

At the appellate level, the Military Justice Act likewise resulted in significant changes to the military criminal legal system. In the Army, the Army Boards of Review were renamed the Army Courts of Military Review (ACMR) and the members of the new appellate court were redesignated as military judges. The newly-constituted courts were different from their predecessors in that there was now *one court* with a number of panels rather than a number of separate boards.¹ This change was designed to “foster more consistence and a higher quality of legal decision;” apparently the separate and distinct Boards of Review were not always uniform in their decision-making.²

What follows is a brief history of the first year of the ACMR, and the judge advocates who served on it as appellate judges.

On August 1, 1969, Major General Kenneth J. Hodson, then serving as The Judge Advocate General, appointed a total of twelve jurists to the new ACMR. Colonel (COL) George F. Westerman was appointed as the Chief Judge. The other judges on the court were: COLs Joseph L. Bailey, Joseph L. Chalk, Rodney J. Collins, John S. Folawn, Jacob Hagopian, Winchester Kelso Jr., William W. Kramer, Arthur D. Porcella, Granville I. Rouillard, and Edward L. Stevens. Rounding out the court was the lone lieutenant colonel: Abraham Nemrow.³

¹ When enacted by Congress on May 5, 1950, Article 66, Uniform Code of Military Justice, required The Judge Advocate General (TJAG) to “constitute in his office one or more boards of review.” Under the new Military Justice Act, however, Article 66 was amended so that TJAG “shall establish a Court of Military Review which shall be composed of one or more panels, and each panel shall be composed of not less than three appellate judges.”

² JUDGE ADVOCATE GENERAL’S CORPS, THE ARMY LAWYER 247 (1975).

³ OFFICE OF THE JUDGE ADVOCATE GEN., JUDGE ADVOCATE GEN.’S CORPS (JAGC) PERSONNEL AND ACTIVITY DIRECTORY, at 4 (1969) [hereinafter JAG PUB. 1-1].

Depending on the composition of the three-judge panels, one or more of these colonels might be designated as a “Senior Judge” and cases decided by the new ACMR in August and September 1969 reflect the following served in this capacity: COLs Edward L. Stevens, Joseph L. Chalk, and Arthur D. Porcella.⁴



Members of the United States Army Court of Military Review are shown on August 1, 1970, the first anniversary of the establishment of the Court. Pictured left to right are: First row (seated): Senior Judge Marvin G. Krieger; Chief Judge George F. Westerman; Senior Judge Joseph L. Chalk. Second row (standing): Judge Zane E. Finklestein; Judge John S. Folawn; Senior Judge Winchester Kelso Jr.; Judge Abraham Nemrow; Senior Judge Arthur D. Porcella; Judge Joseph L. Bailey; Judge Rodney J. Collins; Judge I. Granville Rouillard; Judge George O. Taylor Jr.

One of the first cases to be heard by the new ACMR was *United States v. Motes*.⁵ In this case, decided on August 11, 1969, the court ruled that an accused could not plead guilty to, and be convicted of, eight specifications of wrongful sale of military property where those specifications had been “lined through” on the charge sheet.⁶ While this was hardly an earth-shattering decision, it was the first ACMR case to be published in the Court-Martial Reports. It also was the first time that the judge advocates serving on this appellate court signed a published opinion as “Appellate Military Judges.” Prior to August 1, 1969, military lawyers

⁴ *Id.*

⁵ *United States v. Motes*, 40 C.M.R. 876 (A.C.M.R. 1969).

⁶ *Id.* at 879.

serving on the Army Board of Review signed their opinions as “Judge Advocates.”⁷

Between August 1, 1969 and July 31, 1970, the ACMR judges decided some 200 appellate cases, many of which resulted in published opinions. Noteworthy cases included *United States v. Averette*, in which the court ruled that a court-martial had jurisdiction over a civilian employee of a government contractor working in Saigon, Vietnam. The accused, who was the supervisor of an Army motor pool housing vehicles, had been convicted of conspiracy to steal 36,000 motor vehicle batteries.⁸ Averette argued that the court-martial lacked jurisdiction over him as a civilian because the on-going armed conflict in Vietnam did not meet the “in time of war” requirement for the exercise of court-martial jurisdiction over civilians as set out in Article 2, Uniform Code of Military Justice. While the ACMR ruled against Averette in this early decision, he ultimately prevailed when the Court of Military Appeals heard his appeal the next year.⁹

Within the first twelve months of the ACMR’s existence, COLs Hagopian, Kramer, and Stevens left the court. They were replaced by COLs William T. Rogers and Marvin G. Krieger, and LTC Zane E. Finklestein.¹⁰

More than 45 years later, the ACMR continues to perform a key role in the court-martial appellate process, albeit under its new name, the Army Court of Criminal Appeals.¹¹ Scores of senior judge advocates have served on this first-line appellate court during this period and will continue to serve.

World War II JAG School Scrapbooks now on Library of Congress Website

In 1942, the Judge Advocate General's School opened on the campus of the University of Michigan in Ann Arbor, Michigan. Initially, the School was under the leadership of Colonel Edward H. "Ham" Young, who determined the curriculum and put together the initial staff and faculty. When Young departed for a new assignment in late 1944, he was succeeded by Colonel Reginald C. Miller, who served as Commandant until the School closed in 1946. During its operation at the University of Michigan, the School transformed hundreds of civilian lawyers into Army judge advocates. These military lawyers ultimately served as uniformed attorneys in a variety of world-wide locations, including Australia, China, England, France, Germany, India, Japan, and Morocco. These scrapbooks contain photographs, newspaper articles, graduation programs, and other documents related to the operation of the School from 1943 to 1946.

See the scrapbooks here:

http://www.loc.gov/rr/frd/Military_Law/Scrapbooks.html

More historical information can be found at

The Judge Advocate General’s Corps
Regimental History Website
<https://www.jagcnet.army.mil/8525736A005BE1BE>

*Dedicated to the brave men and women who have served our
Corps with honor, dedication, and distinction.*

⁷ See, e.g., *United States v. Coonrod*, 40 C.M.R. 873 (A.B.R. 1969). The *Coonrod* case was decided on July 31, 1969—the last day the Army Boards of Review existed in the military criminal legal system.

⁸ *United States v. Averette*, 40 C.M.R. 891 (A.C.M.R. 1969).

⁹ *United States v. Averette*, 41 C.M.R. 363 (C.M.A. 1970).

¹⁰ JAG PUB 1-1 (1970), at 4.

¹¹ This name change, which was made by legislation effective in October 1994, did not otherwise alter the nature of the institution. See UCMJ art. 66 (2012).