

**REPORT OF THE JUDGE
ADVOCATE GENERAL U. S.
ARMY TO THE SECRETARY
OF WAR; JUNE 30, 1920**

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Report of the Judge Advocate General U. S. Army to the Secretary of War; June 30, 1920 by
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ADVOCATE GENERAL U. S.
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OF WAR; JUNE 30, 1920**

ANNUAL REPORTS, WAR DEPARTMENT
FISCAL YEAR ENDED JUNE 30, 1920

U.S. Judge-advocate-general's dept (Army)

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REPORT OF THE
JUDGE ADVOCATE GENERAL
U. S. ARMY

TO THE SECRETARY OF WAR

1920



WASHINGTON
GOVERNMENT PRINTING OFFICE
1920

REPORT OF THE JUDGE ADVOCATE GENERAL, UNITED STATES ARMY.

SIR: I submit the following report of the Judge Advocate General's Department for the year ended June 30, 1920:

FUNCTIONS OF THE JUDGE ADVOCATE GENERAL'S DEPARTMENT.

The Judge Advocate General is the official legal adviser of the Secretary of War, the Chief of Staff, the War Department and its several bureaus, and the entire Military Establishment. He advises concerning the legal correctness of all military administration, all disciplinary action, and all matters affecting the rights and mutual relationship of the personnel of the Army. It is his duty to advise the Secretary of War and the Commander in Chief upon all legal questions arising in the course of military administration and whether military trials and other proceedings are lawfully conducted.

The rights and obligations of every man in the Army, from private to general, are well defined and established by laws enacted by Congress, or by the common law. Every offender against the military code is subject to trial by court-martial according to a definite procedure prescribed by law. All this procedure is safeguarded by law, and no soldier can be punished except according to the law. Sentences awarded by general courts-martial are not effective until approved by a superior commander who has upon his staff as a legal adviser a judge advocate, and sentences to death, dismissal, or unsuspended dishonorable discharge are not carried into execution until the records of trial have been examined in the Office of the Judge Advocate General.

The functions of the department include not only those of the Judge Advocate General, and of his office in Washington, but also those of judge advocates serving as staff officers at the headquarters of army, department, corps, and division commanders.

COMMISSIONED PERSONNEL

On July 1, 1919, the commissioned personnel of the Judge Advocate General's Department consisted of 373 officers. Of this number, those actually commissioned in the department comprised 1 major general, 2 brigadier generals, 21 colonels, 78 lieutenant colonels, 147 majors, 42 captains, and 29 first lieutenants; total, 320; while those commissioned in other branches of the service and detailed to the department comprised 2 colonels, 1 lieutenant colonel, 7 majors, 20 captains, 20 first lieutenants, and 3 second lieutenants; total, 53. These officers were distributed as follows: On duty in the Office of the Judge Advocate General, 167; on duty in other branches of the War Department at Washington (principally with claim adjustment

agencies), 48; on duty in the Office of the Acting Judge Advocate General for the American Expeditionary Forces in Europe, 21; on duty with the Army at large, 137.

At the close of business on June 30, 1920, the commissioned personnel of the department consisted of 170 officers, of which number those actually commissioned in the department comprised 1 major general, 13 colonels, 31 lieutenant colonels, 61 majors, 13 captains, and 4 first lieutenants; total, 123; while those commissioned in other branches of the service and detailed to the department comprised 5 lieutenant colonels, 11 majors, 18 captains, 10 first lieutenants, and 3 second lieutenants; total, 47. These officers were distributed as follows: On duty in the Office of the Judge Advocate General, 81; on duty in other branches of the War Department at Washington (principally with claim adjustment agencies), 24; on duty with the Army at large, 65.

ENLISTED PERSONNEL.

The enlisted personnel provided for in Section 2 of the Selective Service Act of May 18, 1917, and in Section XII, General Order 27, War Department, 1918, as amended by Section IV, General Order 66, War Department, 1918, and Section IV, General Order 83, War Department, 1918, was made up very largely of drafted men who were lawyers or court reporters in civil life. On June 30, 1920, all except five of these men had been separated from the service and their places filled by civilian employees.

CIVILIAN PERSONNEL.

The regular (statutory) roll of the Judge Advocate General's Department consists of 22 clerical and 4 subclerical positions. On July 1, 1919, the additional roll consisted of 85 clerical and 18 subclerical positions. During the year inadequacy of appropriations has compelled a more rapid reduction in the civilian personnel than was warranted by any diminution in the current work of the department which has, in some measure at least, suffered in consequence. Thus, on June 30, 1920, the additional roll consisted of 26 clerical and 6 subclerical positions; and on the same date the detailed roll consisted of 19 clerical positions and 1 subclerical position.

GENERAL PLAN OF ORGANIZATION.

At the head of the department, and of its principal office, is the Judge Advocate General. Immediately subordinate to him is an officer designated as Assistant to the Judge Advocate General. This assistant cooperates with the Judge Advocate General in the performance of his duties as head of the department and, in his temporary absence, becomes the Acting Judge Advocate General.

ORGANIZATION OF THE OFFICE OF THE JUDGE ADVOCATE GENERAL.

The office of the Judge Advocate General is divided into three main divisions, and those divisions are subdivided into sections, as follows:

DIVISION I.—MILITARY JUSTICE:

Board of Review No. 1.

Section 1. Capital, Dismissal, and Penitentiary Cases.

DIVISION I.—MILITARY JUSTICE—Continued.

- Section 2. Disciplinary Barracks Cases.
- Section 3. Retained in Service Cases.
- Section 4. Clemency and Restoration.
- Section 5. Miscellaneous Matters.

DIVISION II.—ADMINISTRATIVE LAW:

- Board of Review No. II.
- Section 6. Contracts and Claims.
- Section 7. Military Affairs.
- Section 8. Statutory Construction and Legislative Drafting.
- Section 9. Reservations and Titles.
- Section 10. Civil Affairs.
- Section 11. Admiralty and Maritime Affairs.

DIVISION III.—EXECUTIVE:

- Section 12. Personnel, Records, Property, and Bonds.
- Section 13. Statistics.
- Section 14. Library and Publications.

MILITARY JUSTICE DIVISION.

This division passes upon, in an advisory capacity, questions that arise in the administration of courts-martial, courts of inquiry, and military commissions. The more serious offenses committed by the officers and men comprising our Army and other persons subject to military law are tried by general courts-martial in the United States, in our possessions, and in foreign countries, and the records of trial in all such cases are sent to this division for examination and review. There were, during the fiscal year ended June 30, 1920, more than 6,000 such trials. They involve offenses against the State, such as murder, arson, robbery, burglary, larceny, bigamy, and other serious crimes, as well as purely military offenses in violation of the Articles of War. The duties of the division include such work as corresponds in general with that of State and Federal appellate courts in criminal cases. The division aims, by its recommendations, to safeguard every substantial right of the accused and to bring about a corrective discipline and punishment in the Army that shall be at once just, swift, and uniform.

To those ends and in order carefully and promptly to review the large number of cases presented to it for consideration a staff of experienced officers has been assembled from lawyers of standing in the Army and in civil life.

Chief of Division.—At the head of the division is the Chief of Division, who is responsible for the proper performance of the important duties pertaining to the division.

Board of Review No. I.—The Board of Review of the Military Justice Division is composed of three specially qualified officers of the division, in addition to the Chief of Division who is *ex officio* a member of the board. The work of examining, modifying, and revising written reviews of general court-martial records and all other opinions prepared by the various sections or officers of the Military Justice Division devolves upon the Board of Review. In certain instances also the board itself prepares such reviews and opinions. The members of the board also act generally as advisers to the Judge Advocate General in matters relating to the administration of military justice.

The division is divided into sections as follows:

Section No. 1. Capital, Dismissal, and Penitentiary Cases.—This section formally reviews in writing the records of trial in all cases in which the sentence adjudged includes the death penalty, the dismissal of an officer, or confinement in a penitentiary. Records of trials of officers who receive less punishment than a sentence to dismissal, and of those who are acquitted are examined in this section.

Section No. 2. Disciplinary Barracks Cases.—This section reviews records of trials in which the sentences include dishonorable discharge, whether or not suspended, and also records of trials of general prisoners confined in the disciplinary barracks, except those in which sentences to confinement in a penitentiary are adjudged.

Section No. 3. Retained in Service Cases.—This section reviews the records of trials by general courts-martial in all cases except those reviewed in other sections of the Military Justice Division.

Section No. 4. Clemency and Restoration.—This section considers from the standpoint of clemency the cases of men convicted by general courts-martial and sentenced to confinement in disciplinary barracks and penitentiaries, and, in all proper cases, recommends the extension of clemency, including the restoration to duty of men sentenced to dishonorable discharge. Mitigating circumstances attending the commission of the offense, good conduct of the prisoner prior and subsequent to the offense, his prior civil and military record, mental and physical deficiency, and dependency of family or relatives, are among the more frequent grounds for clemency.

In February, 1919, there was created in the Office of the Judge Advocate General a special clemency board. This board, without application therefor, considered, from the standpoint of clemency, the more serious cases involving confinement in disciplinary barracks and penitentiaries, while the less serious cases were given the same consideration by the same agency, or by the Clemency and Restoration Section. The work of these two agencies was coordinated, and all war-period cases were reviewed for clemency at least once. On September 2, 1919, the work of these agencies was consolidated, and the functions and work of both were assumed and continued by the clemency and restoration section.

A statement showing the results of recommendations made by clemency agencies in the Office of the Judge Advocate General during the period from February 27, 1919, to June 30, 1920, inclusive, is contained in Table XXV of the Statistical Appendix hereto attached. The results shown by that table do not imply that the sentences involved were generally considered to have been too severe when adjudged, but that the return of conditions approximating those of peace made possible an amelioration of the rigors of punishment required in war time, and that the reformatory effect of the confinement served seemed to warrant reduction.

Section No. 5. Miscellaneous Matters.—This section prepares opinions on points of law and procedure which arise in the administration of military justice, and examines the papers incident to, makes recommendation concerning, and prepares charges against offenders in special cases. This section also considers legal questions raised by complaints concerning the administration of military justice in particular cases.

ADMINISTRATIVE LAW DIVISION.

This division is charged with the duty of preparing opinions on all legal questions referred to the office, except those connected with the administration of military justice. The work of the division consists primarily of (a) that incident to passing upon the rights and relations that exist between the Government, on the one hand, and officers and soldiers, on the other hand, and upon those that exist between the latter *inter sese*; and (b) that incident to passing upon the rights and relations that exist between the War Department and the Army and its members, on the one hand, and governments and the agencies of governments, other than the United States Government, and private individuals and private concerns, on the other hand. During the fiscal year ended June 30, 1920, more than 8,000 papers, mainly legal opinions, were prepared by this division.

Chief of Division.—At the head of the division is the Chief of Division, who is responsible for the proper performance of the comprehensive duties pertaining to the division.

Board of Review No. II.—The Board of Review of the Administrative Law Division is composed of three capable and experienced officers on duty in the division. As in the Military Justice Division, the coordinating efforts of the Board of Review and the Chief of Division are necessary in order that the work of the various sections of the division, which cover an extraordinarily wide range, may result in a consistent and harmonious body of opinions.

Section No. 6. Contracts and Claims.—The work of this section has embraced, in general, questions arising in connection with the making of contracts for military supplies and their execution; questions pertaining to claims both for and against the Government, including those arising out of damage to private property by troops, and of damage to Government property; all questions in which pay or allowances to either the military or civilian personnel is involved, retirements, discharges, leaves of absence, travel allowances, quarters, heat and light; all questions concerning the applicability of appropriations; questions pertaining to operations of Government agencies, such as post exchanges, company funds, etc., and questions arising out of the relations with the military forces of the Red Cross, the Young Men's Christian Association, and other similar institutions. In short, this section handles the many questions coming before this office arising out of contract, tort, and the exercise of authority conferred by the emergency legislation for the acquisition of supplies and real property required for the various purposes of the War Department and the Army; questions relative to the pay of the Army and the expenditure of appropriations in general; and questions concerning property responsibility.

Section No. 7. Military Affairs.—This section passes upon all questions concerning persons in the military service, and other related matters. There are included questions of military status, appointment, rank, promotion, assignment, questions pertaining to command, wearing of uniform, badges, ribbons, and many other subjects of a general character.

Section No. 8. Statutory Construction and Legislative Drafting.—This section prepares opinions upon questions involving the construction of statutes, army regulations and orders; when so directed, drafts

bills which the War Department desires to transmit to the Congress for its consideration, and such new or amended army regulations and orders as involve technical legal consideration; collaborates with other branches of the War Department in the study of proposed legislation and proposed changes in army regulations and orders; studies pending bills which are referred by the various committees of the Congress to the War Department for an expression of its views; and prepares responses to calls made by Members of Congress upon the Judge Advocate General for information with respect to statutes affecting the War Department and the Army and for aid in the drafting of legislative projects.

Section No. 9. Reservations and Titles.—This section considers all questions of title and jurisdiction arising in connection with lands held by the Government for military purposes; prepares leases and licenses and other instruments affecting those lands; and, during the war period, has examined abstracts and approved the titles to lands acquired under the several suspensions and provisions of Section 355 of the Revised Statutes.

Section No. 10. Civil Affairs.—This section considers and reports upon the legal questions submitted by the Bureau of Insular Affairs; those arising under the civil administration of the War Department, including river and harbor administration; prepares and argues certain insular cases in which the interests of the Government or the insular possessions are involved; and assists the Department of Justice in the conduct of litigation in which the War Department is interested, or in which the official acts of members of the Military Establishment are brought into question in the civil courts. To this section also are referred all questions of constitutional and international law.

Section No. 11. Admiralty and Maritime Affairs.—This section considers and reports upon questions relating to vessels and vessel property, such as collisions, stranding, breakdowns, salvage, seamen's wages, towage, pilotage, cargo damages, wharfage, general average, marine insurance, seizure of vessels under orders of courts, interpretation and construction of charter parties, bills of lading and other contracts of carriage of goods by sea, stevedoring contracts, contracts for repairs to vessels, etc.; and questions arising with reference to the surveying and inspection of vessels preparatory to their turnback to owners, charter to the War Department, or under United States Shipping Board requisition charter, and with reference to the amount of compensation to be paid to the owners for reconditioning, damages, and detention.

EXECUTIVE DIVISION

This division has immediate charge of all matters involving internal office administration, and is charged also with the duty of maintaining contact with the various bureaus and services of the War Department, to the end that the business of the office may be transacted as expeditiously as practicable.

Chief of Division.—At the head of the division is the Chief of Division, who is responsible for the proper performance of the duties pertaining to the division.

Section No. 12. Personnel, Records, Property, and Bonds.—This section keeps the personal records of all officers and enlisted men of the