[H.A.S.C. No. 98-9]

United States

HEARING

ON

S. 974

TO AMEND CHAPTER 47 OF TITLE 10, UNITED STATES CODE (THE UNIFORM CODE OF MILITARY JUSTICE), TO IMPROVE THE QUALITY AND EFFICIENCY OF THE MILITARY JUSTICE SYSTEM, TO REVISE THE LAWS CONCERNING REVIEW OF COURTS-MARTIAL, AND FOR OTHER PURPOSES

BEFORE THE

MILITARY PERSONNEL AND COMPENSATION SUBCOMMITTEE

OF THE

COMMITTEE ON ARMED SERVICES

HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

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S. 974—MILITARY JUSTICE ACT OF 1983

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
MILITARY PERSONNEL AND COMPENSATION SUBCOMMITTEE,
Washington, D.C., Wednesday, November 9, 1983.

The subcommittee met, pursuant to call, at 11:40 a.m., in room 2118, Rayburn House Office Building, Hon. Les Aspin, (chairman of the subcommittee) presiding.

Mr. ASPIN. We have one more bill here this morning which hopefully will not take too long. I appreciate the witnesses waiting here this morning. We have a bill before us, the Military Justice Act of 1983.

[S. 974 is as follows:]

I

98TH CONGRESS
1ST SESSION

S. 974

IN THE HOUSE OF REPRESENTATIVES

MAY 4, 1983

Referred to the Committee on Armed Services

AN ACT

To amend chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), to improve the quality and efficiency of the military justice system, to revise the laws concerning review of courts-martial, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; REFERENCES TO THE UNIFORM CODE OF MILITARY JUSTICE

SECTION 1. (a) This Act may be cited as the "Military Justice Act of 1983".

(b) Whenever in this Act (except in sections 10 and 11) an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

DEFINITION OF "JUDGE ADVOCATE"

SEC. 2. (a) Clause 13 of section 801 (article 1(13)) is amended to read as follows:

"(13) 'Judge advocate' means—

"(A) an officer of the Judge Advocate General's Corps of the Army or the Navy;

"(B) an officer of the Air Force or the Marine Corps who is designated as a judge advocate; or

"(C) an officer of the Coast Guard who is designated as a law specialist.".

(b) The first sentence of section 806(a) (article 6(a)) is amended by striking out "and Air Force and law specialists of the" and inserting in lieu thereof "Air Force, and".

(c) Section 815(e) (article 15(e)) is amended by striking out "of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Coast Guard or" and inserting in lieu thereof "or a lawyer of the".

(d) Section 827 (article 27) is amended—

(1) in subsection (b)(1), by striking out "of the Army, Navy, Air Force, or Marine Corps or a law specialist of the Coast Guard,"; and

(2) in subsection (c)(3), by striking out ", or a law specialist,".

(e) Section 842 (article 42) is amended—

(1) by striking out "assistant" before "defense counsel" in the first and third sentences and inserting in lieu thereof "assistant or associate"; and

(2) by striking out ", law specialist," in the first and third sentences.

(f) Section 936(a) (article 136(a)) is amended—

(1) in clause (1), by striking out "of the Army, Navy, Air Force, and Marine Corps"; and

(2) by striking out clause (2) and redesignating clauses (3) through (7) as clauses (2) through (6), respectively.

MATTERS RELATING TO THE MILITARY JUDGE, COUNSEL, AND MEMBERS OF THE COURT-MARTIAL

SEC. 3. (a) Section 816(1)(B) (article 16(1)(B)) is amended by inserting "orally on the record or" before "in writing".

(b) Section 825 (article 25) is amended by adding at the end thereof the following new subsection:

"(e) Before the court assembles for the trial of a case, the convening authority may excuse individual court members from participating in the case. The convening authority may, under regulations prescribed by the Secretary concerned, delegate his authority under this subsection to the staff judge advocate, legal officer, or other principal assistant to the convening authority.".

(c)(1) Section 826 (article 26) is amended—

(A) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) Under regulations of the Secretary concerned, a military judge shall be detailed to each general court-martial and, subject to such regulations, may be detailed to any special court-martial. The military judge shall preside over each open session of the court-martial to which he has been detailed."; and

(B) in the first sentence of subsection (c), by striking out "The military judge" and all that follows through "unless" and inserting in lieu thereof "The military judge of a general court-martial shall be designated by the Judge Advocate General, or his designee, of the armed force in which the military judge is a member for detail in accordance with the regulations prescribed under subsection (a). Unless".

(2)(A) Section 827(a) (article 27(a)) is amended by striking out the first sentence and inserting in lieu thereof the following: "Under regulations of the Secretary concerned, trial counsel and defense counsel shall be detailed for each general and special court-martial. Such regulations shall also provide that assistant trial counsel and assistant and associate defense counsel may also be detailed to such courts-martial.".

(B) Section 827(a) (article 27(a)) is further amended by striking out "assistant" before "defense counsel" in the second sentence and inserting in lieu thereof "assistant or associate".

(d) Section 829(a) (article 29(a)) is amended by striking out "except for" and all that follows through the period and inserting in lieu thereof the following: "unless excused by the military judge as a result of a challenge or for physical disability or for other good cause, or by order of the convening authority for good cause.".

(e)(1) Section 838(b)(6) (article 38(b)(6)) is amended by striking out the second sentence and inserting in lieu thereof the following: "The individual empowered to detail counsel under section 827 of this title (article 27), in his sole discretion, may detail additional military counsel as assistant defense counsel and, if the accused is represented by military counsel of his own selection under paragraph (3)(B), may ap-

prove a request from the accused that military counsel detailed under paragraph (3)(A) act as associate defense counsel.".

(2) Paragraph (7) of section 838(b) (article 38(b)(7)) is amended by inserting after the first sentence the following new sentence: "Such definition may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the one of which the accused is a member.".

(3) Section 838(c) (article 38(c)) is amended to read as follows:

"(c) In any court-martial proceeding resulting in a conviction, the defense counsel may forward for attachment to the record of proceedings a brief of such matters as he feels should be considered in behalf of the accused on review (including any objection to the contents of the record which he considers appropriate), may assist the accused in the submission of matters under section 860 of this title (article 60), and shall, subject to regulations of the President, perform other acts authorized by this chapter.".

PRETRIAL ADVICE AND REFERRAL OF CHARGES

SEC. 4. (a) The second sentence of section 834(a) is amended to read as follows: "The convening authority may not refer a specification under a charge to a general court-

martial for trial unless he has been advised in writing by the staff judge advocate that—

"(1) the specification alleges an offense under this chapter,

"(2) the specification is warranted by the evidence indicated in the report of investigation, if any, and

"(3) a court-martial would have jurisdiction over the accused and the offense.".

(b) Section 834 (article 34) is further amended by redesignating subsection (b) as subsection (c) and inserting after subsection (a) the following new subsection (b):

"(b) The advice of the staff judge advocate required under subsection (a) shall include a written and signed statement by the staff judge advocate expressing the conclusions of the staff judge advocate with respect to each matter set forth in subsection (a) and the action the staff judge advocate recommends that the convening authority take regarding the specification. If the specification is referred for trial, the recommendation of the staff judge advocate shall accompany the specification.".

RIGHT TO APPEAL AND RELATED MATTERS

SEC. 5. (a)(1) Section 860 (article 60) is amended to read as follows:

"§ 860. Art. 60. Action by the convening authority

"(a) The findings and sentence of a court-martial shall be reported promptly to the convening authority after the announcement of the sentence.

"(b)(1) Within thirty days after the sentence of a general court-martial or of a special court-martial which has adjudged a bad-conduct discharge has been announced, the accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. In the case of all other special courts-martial, the accused may make such a submission to the convening authority within twenty days after the sentence is announced. In the case of all summary courts-martial the accused may make such a submission to the convening authority within seven days after the sentence is announced. If the accused shows that additional time is required to submit such matters, the convening authority or other person taking action under this section, for good cause, may extend the period—

"(A) in the case of a general court-martial or a special court-martial which has adjudged a bad-conduct discharge, for not more than an additional twenty days; and

"(B) in the case of all other courts-martial, for not more than an additional ten days.

"(2) In a summary court-martial case the accused shall be promptly provided a copy of the record of trial for use in preparing a submission authorized by paragraph (1).

"(3) In no event shall the accused in any general or special court-martial case have less than a seven-day period after the day on which a copy of the authenticated record of trial has been given to him within which to make a submission under paragraph (1). The convening authority or other person taking action on the case, for good cause, may extend this period for up to an additional ten days.

"(4) The accused may waive his right to make a submission to the convening authority under paragraph (1). Such a waiver must be made in writing and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submission under this subsection shall be deemed to have expired upon the submission of such a waiver to the convening authority.

"(c)(1) Exercise of the authority to modify the findings and sentence of a court-martial is a matter of command prerogative involving the sole discretion of the convening authority. Under regulations of the Secretary concerned, this discretion may be exercised by a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction.

"(2) Action on the sentence of a court-martial shall be taken after consideration of any matters submitted by the accused under subsection (b) and, if applicable, under subsection (d), or after the time for submitting such matters expires, whichever is earlier, subject to regulations of the Secretary concerned. The convening authority or other person taking such action, in his sole discretion, may approve, disapprove, commute, or suspend the sentence in whole or in part.

"(3) Action on the findings of a court-martial is not required. However, the convening authority or other person taking action on the sentence may, in such person's sole discretion—

"(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

"(B) change to an appropriate lesser included offense a finding of guilty to a charge or specification.

"(d) Before acting under this section on any general court-martial case or any special court-martial case that includes a bad-conduct discharge, the convening authority or other person taking action under this section shall consider the written recommendation of his staff judge advocate or legal officer. The convening authority or other person taking action under this section shall refer the record of trial to his staff judge advocate or legal officer and the staff judge advocate or legal officer shall use such record in the preparation

of his recommendation. The recommendation of the staff judge advocate or legal officer shall include such matters as the President may prescribe and shall be served on the accused, who shall have five days from the date of receipt in which to submit any matter in response. The convening authority or other person taking action under this section, for good cause, may extend that period for up to an additional twenty days. Failure to object in the response to the recommendation or to any matters attached thereto waives the right to object thereto.

"(e)(1) The convening authority or other person taking action under this section, in his sole discretion, may order proceedings in revision or a rehearing.

"(2) Proceedings in revision may be ordered when there is an apparent error or omission in the record or when the record shows improper or inconsistent action with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision—

"(A) reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;

"(B) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under

a specification laid under that charge, which sufficiently alleges a violation of some article of this chapter; or

"(C) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

"(3) A rehearing may be ordered by the convening authority or other person taking action under this section if he disapproves the findings and sentence and states the reasons for disapproval of the findings. If such person disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges. A rehearing as to the findings may not be ordered where there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered if the convening authority or other person taking action under this subsection disapproves the sentence.".

(2) The item in the table of sections at the beginning of subchapter IX is amended to read as follows:

"860. 60. Action by the convening authority.".

(b)(1) Section 861 (article 61) is amended to read as follows:

"§ 861. Art. 61. Waiver or withdrawal of appeal

"(a) In each case subject to review under sections 866 (article 66) or 869(a) (article 69(a)) of this title, except a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused may file with the convening authority a statement expressly waiving

the right to appellate review. An express waiver of the right to appellate review shall be signed by the accused and defense counsel. The statement shall be filed within ten days after the action under section 860(c) of this title (article 60(c)) is served on the accused or his counsel. The convening authority, for good cause, may extend that period for not more than thirty additional days.

"(b) Except in a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused, at any time, may withdraw an appeal.

"(c) A waiver or withdrawal of an appeal under this section bars review under section 866 (article 66) or 869(a) (article 69(a)) of this title.".

(2) The item in the table of sections at the beginning of subchapter IX is amended to read as follows:

"861. 61. Waiver or withdrawal of appeal.".

(c)(1) Section 862 (article 62) is amended to read as follows:

"§ 862. Art. 62. Appeal by the United States

"(a) In any trial by court-martial over which a military judge presides and in which a punitive discharge may be adjudged, the United States may appeal any order or ruling that terminates the proceedings with respect to a charge or specification or which excludes evidence that is substantial proof of a fact material in the proceeding, except that no such appeal shall lie from an order or ruling that is, or amounts to,

a finding of not guilty. The trial counsel shall provide the military judge with written notice of appeal from an order or ruling authorized to be appealed under this section within seventy-two hours of such order or ruling. Such notice shall include a certification that the appeal is not taken for the purpose of delay and, when applicable, that the evidence is substantial proof of a fact material in the proceeding. If the United States takes an appeal under this section, appellate counsel shall diligently prosecute the appeal.

"(b) An appeal under this section shall be forwarded by an appropriate means directly to the Court of Military Review and shall, whenever practicable, have priority over all other proceedings before that court. In determining an appeal under this section, such Court of Military Review may take action only with respect to matters of law, notwithstanding section 866(c) of this title (article 66(c)).

"(c) Any period of delay resulting from an appeal under this section shall be excluded in deciding any issue regarding denial of a speedy trial, unless it is determined that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.".

(2) The item in the table of sections at the beginning of subchapter IX is amended to read as follows:

"862. 62. Appeal by the United States.".

(d) Section 863 (article 63) is amended—

(1) by striking out subsection (a); and

(2) in subsection (b)—

(A) by striking out "(b)";

(B) by inserting "authorized under this chapter" after "Each rehearing"; and

(C) by inserting at the end thereof the following: "If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that adjudged lawfully at the initial trial.".

(e) Section 871 (article 71) is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) That part of a court-martial sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit. That part of the sentence providing for death may not be suspended.";

(2) in subsection (b), by striking out the first and second sentences and inserting in lieu thereof the following: "In any case in which the sentence provides for the dismissal of a commissioned officer, cadet, or midshipman, that part of the sentence providing for dismissal may not be executed until approved by the Secretary concerned or such Under Secretary or Assistant Secretary as may be designated by the Secretary concerned. In such a case, the Secretary, Under Secretary, or Assistant Secretary, as the case may be, may commute, remit, or suspend the sentence, or any part thereof, as he sees fit."; and

(3) by striking out subsections (c) and (d) and inserting in lieu thereof the following:

"(c)(1) If appellate review is not waived or withdrawn under section 861 of this title (article 61), that part of a sentence extending to death, dismissal, or a dishonorable or bad-conduct discharge may not be executed until there is a final judgment under this chapter as to the legality of the proceedings (and with respect to death or dismissal, approval under subsection (a) or (b), as appropriate). A judgment as to legality of the proceedings is final in such cases when review is completed by a Court of Military Review and—

"(A) the accused does not file a timely petition for review by the Court of Military Appeals and the case is not otherwise under review by that Court;

"(B) such a petition is rejected by the Court of Military Appeals; or

"(C) review is completed in accordance with the judgment of the Court of Military Appeals and—

"(i) a petition for a writ of certiorari is not filed within the time limits prescribed by the Supreme Court;

"(ii) such a petition is rejected by the Supreme Court; or

"(iii) review is otherwise completed in accordance with the judgment of the Supreme Court.

"(2) If appellate review is waived or withdrawn under section 861 of this title (article 61), that part of a sentence extending to dismissal or a bad-conduct or dishonorable discharge may not be executed until review and action thereon is completed under section 864 of this title (article 64). Any other part of a court-martial sentence may be ordered executed by the convening authority when approved by him.

"(d) The convening authority may suspend the execution of any sentence or part thereof, except a death sentence.".

(f) Subsection (a) of section 857 (article 57(a)) is amended to read as follows:

"(a) No forfeiture may extend to any pay or allowances accrued before the date on which the sentence is approved by the person acting under section 860(c) of this title (article 60(c)).".

(g) Section 876a (article 76a) is amended—

(1) by striking out "864 or 865 of this title (article 64 or 65) by the officer exercising general court-martial jurisdiction" and inserting in lieu thereof "860 of this title (article 60)"; and

(2) by striking out "by the officer exercising general court-martial jurisdiction" the second time it appears and inserting in lieu thereof "under section 860 of this title (article 60)".

(h)(1) The table of subchapters at the beginning of chapter 47 is amended by striking out the item relating to subchapter IX and inserting in lieu thereof the following:

"IX. Post-trial Procedure and Review of Courts-Martial ..... 859 59".

(2) The subchapter heading at the beginning of subchapter IX is amended to read as follows:

"SUBCHAPTER IX—POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL".

RECORD OF TRIAL

SEC. 6. (a) Section 801 (article 1) is amended by adding at the end thereof the following new clause:

"(14) 'Record', when used in connection with the proceedings of a court-martial, means—

"(A) an official written transcript, summary, or other writing relating to the proceedings, or

"(B) an official audiotape, videotape, or similar material from which sound or sound and visual images may be reproduced depicting the proceedings.".

(b) Subsections (d) and (f) of section 849 (article 49) are each amended by inserting after "read in evidence" the following: "or, in the case of audiotape, videotape, or similar material, may be played".

(c) Section 854 (article 54) is amended—

(1) in subsection (a), by striking out the last sentence;

(2) in subsection (b), by striking out "shall contain the matter and";

(3) by redesignating subsection (c) as subsection (d); and

(4) by inserting after subsection (b) the following new subsection:

"(c)(1) A complete record of the proceedings and testimony shall be prepared in all general court-martial cases in which the sentence adjudged includes death, a dismissal, a discharge, or, if the sentence adjudged does not include a discharge, any other punishment which exceeds that which

can otherwise be adjudged by a special court-martial and in all special court-martial cases in which the sentence adjudged includes a bad-conduct discharge.

"(2) In all other cases, the record shall contain such matter as the President may prescribe.".

(d)(1) Section 865 (article 65) is amended to read as follows:

"§ 865. Art. 65. Disposition of records

"(a) In a case subject to appellate review under section 866 (article 66) or 869(a) (article 69(a)) of this title in which such review is not waived or withdrawn under section 861 of this title (article 61), the record of trial and action thereon shall be transmitted to the Judge Advocate General for appropriate action.

"(b) Except as otherwise required by this chapter, all other records of trial and related documents shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.".

(2) The item relating to section 865 in the table of sections at the beginning of subchapter IX is amended to read as follows:

"865. 65. Disposition of records.".

REVIEW OF COURTS-MARTIAL AND RELATED MATTERS

SEC. 7. (a)(1) Section 864 (article 64) is amended to read as follows:

"§ 864. Art. 64. Review by a judge advocate

"(a) Each case in which there has been a finding of guilty that is not reviewed under section 866 (article 66) or 869(a) (article 69(a)) of this title shall be reviewed by a judge advocate under regulations of the Secretary concerned. A person is not eligible to review a case under this subsection if he has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel, or has otherwise acted on behalf of the prosecution or defense. The judge advocate's review shall be in writing and shall contain the following:

"(1) Conclusions as to whether—

"(A) the court had jurisdiction over the accused and the offense,

"(B) the charge and specification stated an offense, and

"(C) the sentence was within the limits prescribed as a matter of law.

"(2) A response to each written allegation of error made by the accused.

"(3) If the case is forwarded under subsection (b), a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

"(b) The record of trial and related documents in cases reviewed under subsection (a) shall be transmitted for action

to the officer exercising general court-martial jurisdiction over the accused at the time the court was convened (or to that officer's successor in command) when—

"(1) the judge advocate who reviewed the case recommends corrective action;

"(2) the sentence approved under section 860(c) of this title (article 60(c)) extends to dismissal, a bad-conduct or dishonorable discharge, or confinement for more than six months; or

"(3) such action is otherwise required by regulations of the Secretary concerned.

"(c)(1) The officer to whom the record of trial and related documents are transmitted under subsection (b) may—

"(A) disapprove or approve the findings or sentence, in whole or in part;

"(B) remit, commute, or suspend the sentence in whole or in part;

"(C) except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, the sentence, or both; or

"(D) dismiss the charges.

"(2) If a rehearing is ordered but the convening authority finds a rehearing impracticable, he shall dismiss the charges.

"(3) If the judge advocate states that corrective action is required as a matter of law and the officer required to take action under subsection (c) of this section does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and action thereon shall be sent to the Judge Advocate General for review under section 869(b) of this title (article 69(b))."

(2) The item relating to section 864 in the table of sections at the beginning of subchapter IX is amended to read as follows:

"864. 64. Review by a judge advocate."

(b) Section 866(a) (article 66(a)) is amended by inserting after the second sentence the following new sentence: "Any decision of a panel may be reconsidered by the court sitting as a whole in accordance with such rules."

(c) Section 866(b) (article 66(b)) is amended to read as follows:

"(b) The Judge Advocate General shall refer to a Court of Military Review the record in every case of trial by court-martial—

"(1) in which the sentence as approved, extends to death; or

"(2) in which—

"(A) the sentence, as approved, extends to dismissal of a commissioned officer, a cadet, or

midshipman, dishonorable or a bad-conduct discharge, or confinement for one year or more; and

"(B) the right to appellate review has not been waived or an appeal withdrawn under section 861 of this title (article 61).".

(d) Section 867(b)(1) (article 67(b)(1)) is amended by striking out "affects a general or flag officer or".

(e)(1) The text of section 869 (article 69) is amended to read as follows:

"(a) The record of trial in each general court-martial that is not otherwise reviewed under section 866 of this title (article 66) shall be examined in the office of the Judge Advocate General if there is a finding of guilty and the accused does not waive or withdraw his right to appellate review under section 861 of this title (article 61). If any part of the findings or sentence is found to be unsupported in law or if reassessment of the sentence is appropriate, the Judge Advocate General may modify or set aside the findings or sentence or both. If the Judge Advocate General so directs, the record shall be reviewed by a Court of Military Review under section 866 of this title (article 66), but in that event there may be no further review by the Court of Military Appeals except under section 867(b)(2) of this title (article 67(b)(2)).

"(b) The findings or sentence or both in a court-martial case not reviewed under subsection (a) or under section 866

of this title (article 66) may be modified or set aside by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence. If such a case is considered upon application of the accused, the application must be filed in the office of the Judge Advocate General by the accused on or before the last day of the two-year period beginning on the date the sentence is approved under section 860(c) of this title (article 60(c)), unless the accused establishes good cause for failure to file within that time.

"(c) If the Judge Advocate General sets aside the findings or sentence, he may, except when the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed. If the Judge Advocate General orders a rehearing but the convening authority finds a rehearing impractical, the convening authority shall dismiss the charges.".

(2) The two-year period specified under the second sentence of section 869(b) (article 69(b)), as amended by paragraph (1), does not apply to any application filed in the office of the Judge Advocate General of the appropriate armed

force on or before October 1, 1983. The application in such a case shall be considered in the same manner and with the same effect as if such two-year period had not been enacted.

CONTROLLED SUBSTANCES

SEC. 8. Chapter 47 is amended—

(1) by inserting the following new section after section 912:

"§ 912a. Art. 112a. Controlled substances

"Any person subject to this chapter who wrongfully uses, possesses, manufactures, distributes, imports, exports, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, marijuana, or any compound or derivative thereof or any other drug or substance that is listed in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), or in any schedule of controlled substances issued by the President, shall be punished as a court-martial may direct."; and

(2) by inserting in the table of sections at the beginning of subchapter X immediately below the item relating to section 912 the following new item:

"912a. 112a. Controlled substances.".

THE CODE COMMITTEE

SEC. 9. (a) Section 867(g) (article 67(g)) is amended—

(1) by striking out "The Court of Military Appeals and the Judge Advocates General" and by inserting in lieu thereof "A committee consisting of the Court of Military Appeals, the Judge Advocates General of the Army, Navy, and Air Force, the Chief Counsel, United States Coast Guard, the Director, Judge Advocate Division, Headquarters, United States Marine Corps, and two members of the public appointed by the Secretary of Defense";

(2) by inserting "at least" before "annually"; and

(3) by inserting at the end thereof the following new sentence: "Each public member of the committee shall be a recognized authority in military justice or criminal law and shall be appointed for a term of three years. The Federal Advisory Committee Act (5 U.S.C. App. I) shall not apply to the committee established under this subsection.".

(b)(1) The Secretary of Defense shall establish a commission to study and make recommendations concerning the following matters:

(A) Whether the sentencing authority in court-martial cases should be exercised by a military judge in all noncapital cases to which a military judge has been detailed.

(B) Whether a military judge and the Courts of Military Review should have the power to suspend sentences.

(C) Whether the jurisdiction of the special court-martial should be expanded to permit adjudgment of sentences including confinement of up to one year, and what, if any, changes should be made to current appellate jurisdiction.

(D) Whether military judges, including those presiding at special and general courts-martial and those sitting on the Courts of Military Review, should have tenure.

(E) What should be the elements of a fair and equitable retirement system for the judges of the United States Court of Military Appeals.

(2) The commission shall consist of seven members, at least three of whom shall be persons from private life who are recognized authorities in military justice or criminal law.

(3) The commission shall prepare a comprehensive report in support of its recommendations on the matters set forth in paragraph (1), and shall also include in such report its findings and comments on the following matters:

(A) The experience in the civilian sector with jury sentencing and judge-alone sentencing, with particular reference to consistency, uniformity, sentence appropri-

ateness, efficiency in the sentencing process, and impact on the rights of the accused.

(B) The potential impact of mandatory judge-alone sentencing on the Armed Forces, with particular reference to consistency, uniformity, sentence appropriateness, efficiency in the sentencing process, impact on the rights of the accused, effect on the participation of members of the Armed Forces in the military justice system, impact on relationships between judge advocates and other members of the Armed Forces, and impact on the perception of the military justice system by members of the Armed Forces, the legal profession, and the general public.

(C) The likelihood of a reduction in the number of general court-martial cases in the event the confinement jurisdiction of the special court-martial is expanded; the additional protections that should be afforded the accused if such jurisdiction is expanded; whether the minimum number of members prescribed by law for a special court-martial should be increased; and whether the appellate review process should be modified so that a greater number of cases receive review by the military appellate courts, in lieu of legal reviews presently conducted in the offices of the Judge Advocates General and elsewhere, especially if the commission

determines that the special court-martial jurisdiction should be expanded.

(D) The effectiveness of the present systems for maintaining the independence of military judges and what, if any, changes are needed in these systems to ensure maintenance of an independent military judiciary, including a term of tenure for such judges consistent with efficient management of military judicial resources.

(4) The commission shall transmit its report to the Committees on Armed Services of the Senate and the House of Representatives and to the committee established under section 867(g) (article 67(g)) of title 10, United States Code, not later than the first day of the ninth calendar month that begins after the date of enactment of this Act. Not later than the first day of the third calendar month that begins after receipt of such report, the committee established under section 867(g) (article 67(g)) of such title shall submit such comments on the report as it considers appropriate to the Committees on Armed Services of the Senate and the House of Representatives and to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of Transportation.

(5) The Secretary shall ensure that the commission is provided with appropriate and adequate office space, together

with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

(6) The Secretary shall ensure that the commission has reasonable access to information relevant to the study.

SUPREME COURT REVIEW

SEC. 10. (a)(1) Chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1259. Court of Military Appeals; certiorari

"Decisions of the United States Court of Military Appeals may be reviewed by the Supreme Court by writ of certiorari in the following cases:

"(1) Cases reviewed by the Court of Military Appeals under section 867(b)(1) of title 10.

"(2) Cases certified to the Court of Military Appeals by the Judge Advocate General under section 867(b)(2) of title 10.

"(3) Cases in which the Court of Military Appeals granted a petition for review under section 867(b)(3) of title 10.

"(4) Cases, other than those described in paragraphs (1), (2), and (3) of this subsection, in which the Court of Military Appeals granted relief.".

(2) The table of sections at the beginning of chapter 81 of such title is amended by adding at the end thereof the following new item:

"1259. Court of Military Appeals; certiorari.".

(b) Section 2101 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(g) The time for application for a writ of certiorari to review a decision of the United States Court of Military Appeals shall be as prescribed by rules of the Supreme Court.".

(c)(1) Section 866(e) (article 66(e)) is amended by striking out "or the Court of Military Appeals" and inserting in lieu thereof "the Court of Military Appeals, or the Supreme Court".

(2) Section 867 (article 67) is amended by adding at the end thereof the following new subsection:

"(h)(1) Decisions of the Court of Military Appeals are subject to review by the Supreme Court by writ of certiorari as provided in section 1259 of title 28. The Supreme Court may not review by such writ of certiorari any action of the Court of Military Appeals in refusing to grant a petition for review.

"(2) The accused may petition the Supreme Court for a writ of certiorari without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.".

(3)(A) Section 870(b) (article 70(b)) is amended by adding at the end thereof the following new sentence: "Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.".

(B) Subsections (c) and (d) of such section are amended to read as follows:

"(c) Appellate defense counsel shall represent the accused before the Court of Military Review, the Court of Military Appeals, or the Supreme Court—

"(1) when requested by the accused;

"(2) when the United States is represented by counsel; or

"(3) when the Judge Advocate General has sent the case to the Court of Military Appeals.

"(d) The accused has the right to be represented before the Court of Military Review, the Court of Military Appeals, or the Supreme Court by civilian counsel if provided by him.".

CORRECTION OF RECORDS; DISCHARGE REVIEW

SEC. 11. (a) Section 1552 of title 10, United States Code, is amended by adding at the end thereof the following subsection:

"(f) With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried after May 4, 1950, the action under subsection (a) may extend only to—

"(1) correction of a record to reflect actions taken by reviewing authorities under chapter 47 of this title; or

"(2) action on the sentence of a court-martial for purposes of clemency.".

(b) Section 1553 of such title is amended by adding at the end of subsection (a) the following new sentence: "With respect to a discharge or dismissal adjudged by a court-martial case tried after May 4, 1950, the action under this subsection may extend only to a change in the discharge or dismissal for purposes of clemency.".

EFFECTIVE DATE; CONFORMING AMENDMENT

SEC. 12. (a)(1) The amendments made by this Act shall take effect on the first day of the eighth calendar month that begins after the date of enactment of this Act, except that the amendments made by sections 9 and 11 shall be effective on the date of the enactment of this Act. The amendments made

by section 11 shall only apply with respect to cases filed after the date of enactment of this Act with the boards established under sections 1552 and 1553 of title 10, United States Code.

(2) The amendments made by section 3(c) and 3(e) do not affect the designation or detail of a military judge or military counsel to a court-martial before the effective date of such amendments.

(3) The amendments made by section 4 shall not apply to any case in which charges were referred to trial before the effective date of such amendments, and proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

(4) The amendments made by sections 5, 6, and 7 shall not apply to any case in which the findings and sentence were adjudged by a court-martial before the effective date of such amendments. The proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

(5) The amendments made by section 8 shall not apply to any offense committed before the effective date of such amendments. Nothing in this provision shall be construed to invalidate the prosecution of any such offense committed before the effective date of such amendments.

(b) Section 7(b)(1) of the Military Justice Amendments of 1981 (95 Stat. 1089; 10 U.S.C. 706 note) is amended to read as follows:

"(b)(1) The amendments made by section 2 shall apply to each member whose sentence by court-martial is approved on or after January 20, 1982—

"(A) under section 864 or 865 (article 64 or 65) of title 10, United States Code, by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983; or

"(B) under section 860 (article 60) of title 10, United States Code, by the officer empowered to act on the sentence on or after the effective date of the Military Justice Act of 1983.".

Passed the Senate April 28 (legislative day, April 26), 1983.

Attest: WILLIAM F. HILDENBRAND,

Secretary.

Mr. ASPIN. Our witness this morning is Will Taft. Welcome this morning, and why do you not proceed with your statement, sir.

STATEMENT OF HON. WILLIAM H. TAFT IV, GENERAL COUNSEL, DEPARTMENT OF DEFENSE

Mr. TAFT. Thank you, Mr. Chairman.

I do not know if I have been joined yet or will be, but there eventually will be in the room the Judge Advocates General of the services, and the Director of the Judge Advocate's Division of the Marine Corps, and the Chief of the Military Justice Division of the U.S. Coast Guard. Here they are; yes, indeed. And we together would be glad to take your questions.

I have a brief statement, which I would like to submit for the record, if I may, and just quickly summarize the position of the Department on the Military Justice Act of 1983, which is before your committee.

This bill, of course, as you know, was passed by the Senate previously, having been reported out after hearings in the Senate Armed Services Committee. In that committee, it enjoyed support from all of the services and the organized bar, which testified there in support of its provisions.

By and large, we think that the military justice system is working well. The bill makes a number of adjustments to it, and we expect to improve the efficiency of it, and will conform it more to the model of the civilian criminal process in a number of instances. But none of these changes that are being proposed would affect any substantial right of the defendant in a criminal case.

Over the years, I think that the tendency in the amendments that the Congress has been considering to the Uniform Code of Military Justice has been to allocate the increasingly complex responsibilities for legal determinations and legal reviews to the lawyers in the system, while relieving the commanders of the burden of those technical reviews, and preserving the commander's essential responsibilities of command, and assuring that he carries those out without being burdened with the legal work.

The other trend has been to conform where possible the protections and scheme of the military justice system to the criminal justice system in the civilian world where that is permitted without adversely affecting the peculiar special nature that the military environment requires.

This bill has a number of provisions in it which will advance those trends. Specifically, it reallocates some functions to the lawyers that are strictly legal in nature that previously the commanders had had to sign off on. We have changes in the provisions relating to the referral of charges for courts-martial, changes related to the designation of courts-martial personnel, serving on the courts-martial or the judges, and whether the commander can delegate his authority in that connection.

And we also have various changes relating to the convening authority post-trial duties of legal review, and how those might be allocated more effectively between him and the staff judge advocate, and the reviewing courts and authorities which are not all well established in law.

There are also other changes proposed in the bill. There is one relating to appellate jurisdiction allowing waivers for the appeal as is done in the civilian side of the criminal process. Also, special treatment for officers and cases involving officers is changed. Their appellate rights would be the same as others. On interlocutory appeals, we would permit the government to appeal as it can from an interlocutory order that is adverse to it in certain circumstances.

Finally, I think the most important provision in this bill is that like all other systems in the country, the bill would make it so that the decisions of the Court of Military Appeals, the highest court in the Uniform Code of Military Justice system, would be subject to review on petition for certiorari to the Supreme Court of the United States. This would put those decisions on a par with other decisions, which interpret the Constitution or statutes passed by the Congress, that in the end they would be subject to direct review where the Supreme Court decided that it wished to hear the case and settle the matter of constitutional interpretation or statutory interpretation.

These are the basic provisions of the bill that I thought that I would highlight here for you. There is more material on them in my statement, which is submitted for the record. I do want to thank the committee for considering this important legislation.

We have worked over several years now through our Code Committee and with the Senate committee, and with the organized bar on these provisions. I think that they are generally and broadly supported, and we would look forward to working with your committee in enlisting your support for them as well.

[The statements of Mr. Taft, Maj. Gen. Hugh J. Clausen, and Maj. Gen. Thomas B. Bruton follow:]

WRITTEN STATEMENT OF HON. WILLIAM H. TAFT, JR.

Mr. Chairman and members of the subcommittee, I am grateful for the opportunity to present the views of the Department of Defense on the Military Justice Act of 1983. I particularly want to express our appreciation to the Chairman for scheduling these hearings and for his strong and continuing interest in military manpower issues, including military justice.

The present system of military justice is working well. There are a number of archaic or redundant procedures, however, that remain from an earlier era in which laymen presided over courts-martial and lay officers served as counsel, with no civilian judicial review. Today, virtually all cases are tried before military judges and qualified attorneys, and the Court of Military Appeals, an independent civilian tribunal, reviews significant cases. The bill makes a number of changes to modernize trial and appellate procedures. None of the amendments will adversely affect fundamental rights guaranteed to servicemembers by the UCMJ.

REFERRAL OF CHARGES

Current law requires the convening authority, a layman, to assess the legality of prospective general courts-material. This burdens busy commanders with the need to make complex legal judgments. The bill requires these judgments to be made by the staff judge advocate to relieve commanders of an unnecessary task while fully protecting the rights of the accused. The convening authority retains the power to decide which case to refer to trial by courts-martial.

DESIGNATION OF COURT-MARTIAL PERSONNEL

Under current case law there is some doubt as to whether the convening authority may delegate the authority to excuse court members prior to trial. Moreover, the convening authority is required personally to detail and approve substitutions of the military judge and counsel, even though the practical responsibility for the assign-

ment of such personnel is exercised through legal channels. Difficulties are caused by the need to seek the personal approval for a substitution (necessitated by illness or similar factors) when busy convening authorities are unavailable because they are involved in military exercises or other important command responsibilities. The current system can produce significant delays in courts-martial, with the attendant waste of time by witnesses, judges, counsel, members, and other court personnel. In a combat environment, these problems would be exacerbated, while the need to excuse members, particularly for last minute exigencies, is likely to be even greater.

The bill permits the convening authority to delegate the power to excuse members, and authorizes the military judge to excuse members for good cause after the court-martial has been assembled. Also, the bill eliminates the requirement that the convening authority personally detail counsel and judges; instead, they will be detailed under rules governing the assignment of legal personnel.

THE CONVENING AUTHORITY'S POST-TRIAL DUTIES

Under current law, the convening authority makes a legal review of the proceedings, which may involve extremely complicated appellate issues. Although advice from the staff judge advocate is required after general courts-martial and after special courts-martial that adjudge punitive discharges, court decisions have significantly encumbered the staff judge advocate's legal review. As a result, it has become a complex document that consumes substantial judge advocate resources, often is too lengthy to be of use to the convening authority, and can constitute an independent source of appellate litigation even when the underlying case is free of error. Moreover, review in the field—which was developed at a time when laymen tried courts-martial without judicial review—is outmoded in view of today's sophisticated appellate process, complete with trained judges, appellate counsel, and civilian review.

The bill retains the requirement that the convening authority act on the case, but emphasizes that this role primarily involves a determination as to whether the sentence should be reduced as a matter of command prerogative (for example, as a matter of clemency) rather than a formal appellate review. The staff judge advocate will continue to play an important role in assembling the materials to be used by the convening authority in exercising this prerogative, and the accused will have an opportunity to submit sentencing materials to the convening authority and to rebut the recommendation of the staff judge advocate.

APPELLATE JURISDICTION

Under current law, every case involving a punitive discharge or confinement for one year or more is submitted to the Courts of Military Review for appellate proceedings regardless of whether the accused wishes to appeal, even when trial defense counsel, appellate defense counsel, and the accused all determine that there are no issues of law to submit on review. To require automatic review of all such cases represents an inefficient use of judge advocate resources, and unnecessarily delays consideration of cases in which the appeal is of importance to the accused or the system in general. Current law also provides special treatment of flag and general officers by requiring appellate review regardless of the severity of the sentence.

The bill permits the accused to waive or withdraw an appeal to the Court of Military Review. It also ends special treatment of flag and general officer cases; appellate jurisdiction of the Courts of Military Review in such cases will be the same as the jurisdiction over all other military personnel. However, the bill retains automatic appeal in death penalty cases, and authorizes and appeal to a Court of Military Review if the sentence includes confinement for one year or more or a punitive separation. Moreover, even if a case is not subject to consideration in a Court of Military Review or if an appeal is waived or withdrawn, the bill ensures a thorough legal review by requiring a judge advocate to review all cases not appealed to a Court of Military Review.

INTERLOCUTORY APPEAL

Under federal civilian law, an interlocutory ruling by the trial judge that excludes evidence or otherwise results in dismissal of charges generally is subject to review at the request of the government. This is not available in military law, and results in dismissal of charges without appellate review. The bill permits interlocutory appeal by the government under standards similar to those applicable in federal civilian law under 18 U.S.C. § 3731.

REVIEW POWERS OF THE JUDGE ADVOCATE GENERAL

When The Judge Advocate General of a military department acts as an appellate authority (over cases that are not subject to consideration by a Court of Military Review), current law limits his review to issues of law; he cannot exercise the powers of a Court of Military Review in terms of review for sentence appropriateness or the authority to order a rehearing. This deprives the accused, in a case reviewed by the Judge Advocate General, of the type of appellate review that is available when more serious cases are before the Courts of Military Review. The bill recognizes that the powers exercised by the Courts of Military Review should be available to the The Judge Advocate General when acting as an appellate authority.

REVIEW OF DECISIONS BY THE COURT OF MILITARY APPEALS

As an idependent tribunal, the Court renders vital decisions on the constitutional rights of servicemembers and the prerogatives of commanders. It has demonstrated a willingness to strike down provisions of the Manual for Courts-Martial and departmental regulations, and to interpret provisions of the UCMJ in a manner that adds to or detracts from procedural requirements or regulations. It regularly applies decisions of the Supreme Court in resolving appellate issues of constitutional import. Although the Court of Military Appeals has held that it has "unfettered powers to decide constitutional issues," at present there is no authority for either party to seek Supreme Court review of decisions by the Court of Military Appeals. The accused may attempt to mount a collateral attack at his own expense, a costly and difficult venture in view of the limited grounds for collateral review; the government has no judicial recourse from adverse decisions. There is no other federal judicial body whose decisions are similarly insulated from Supreme Court review.

The bill authorizes the parties to petition the Supreme Court to review decisions of the Court of Military Appeals through discretionary writs of certiorari. The concept of Supreme Court review has been endorsed by the organized bar. It was approved without dissent by the House of Representatives in the 96th Congress, but the session ended prior to formal Senate consideration. In view of current concerns about the Supreme Court's docket, the legislation has been drafted in a manner that will limit the number of cases subject to direct Court review. Cases in which the Court of Military Appeals declined to grant a petition for review are excluded, and the Supreme Court will have complete discretion to refuse to grant petitions for writs of certiorari. Control over government petitions will be exercised by the Solicitor General. This formulation has been endorsed by the Department of Justice as well as the Department of Defense. We are confident that the impact on the Supreme Court's docket will not be substantial. The Court of Military Appeals will remain the primary source of judicial authority under the Uniform Code of Military Justice.

DRUG ABUSE IN THE ARMED SERVICES

Abuse of controlled substances is one of the most significant disciplinary problems facing the armed forces. In contrast to other offenses, however, criminal use of drugs is not the subject of specific punitive article in the UCMJ. This has led to unnecessary litigation concerning the use of regulations and the general prohibition against disciplinary offenses as the basis for drug-offense prosecutions. The bill corrects this deficiency by establishing a specific punitive article prescribing drug abuse offenses.

Although it is late in this session of Congress, I am encouraged by these hearings and I urge the Subcommittee to press for enactment of this legislation during this session. Military justice deserves to be a high priority item. In many respects, the relationship of these amendments to our national defense is similar to the relationship of operation and maintainance accounts to military readiness. In the past, there has been a temptation to treat O&M as a low priority item. Although individual deficiencies never seemed significant, the cumulative impact of such neglect ultimately had an extremely negative impact on our readiness. Similarly, on an individual basis, none of these amendments will make any fundamental changes in the military justice system. Taken as a whole, however, their impact on the disciplinary process should substantially improve the ability of commanders to employ the court-martial process as a means of promoting the readiness of their troops, especially under combat conditions.

I am accompanied today by the Judge Advocates General of the Military Departments, the Director, Judge Advocate Division of the Marine Corps, and the Chief,

Military Justice Division, United States Coast Guard. We would be pleased to answer any question you might have on this legislation.

WRITTEN STATEMENT OF MAJ. GEN. HUGH J. CLAUSEN, JAGC, USA, JUDGE ADVOCATE GENERAL OF THE ARMY

Mr. Chairman and members of the committee, I am Major General Hugh J. Clausen, the Judge Advocate General, Department of the Army. It is my privilege to provide the views of the Army on S. 974, proposed legislation to revise certain provisions in the Uniform Code of Military Justice and to amend several other statutes in relation to military justice. I appreciate the Committee's interest in this important legislation.

The bill before the Committee is the result of lengthy and careful study within the Department of Defense and by the Code Committee, and of thorough examination and thoughtful revision in the Senate. This bill is an excellent product. It will promote justice and discipline in the armed forces by substantially improving efficiency at the trial level and providing a more modern system of review and appeals. It will conserve resources by eliminating unnecessary paperwork and redundant legal reviews, and by relieving busy commanders of administrative tasks. It will not, however, deprive the accused of any substantial rights. In fact, it will provide the accused with additional, important appellate options. The bipartisan support which the bill enjoyed in the Senate is indicative of its balanced nature.

As important as the measures in this bill would be in peacetime, they are essential in a combat environment. Military justice should reflect the need for good order and discipline in the armed forces in support of the military's mission. My office has conducted over the past year an intensive examination of the Uniform Code of Military Justice, the Manual for Courts-Martial, Army Regulations, and current practice in courts-martial to determine how the system will function in a modern combat environment. We have studied legal issues and modern combat doctrine. As part of this study, several hundred active duty and retired senior commanders and judge advocates were queried concerning the needs of the system. Of course, there is some educated guess work in such a process, since no one can predict with certainty where combat may occur, or what the circumstances will be. Nevertheless, several basic conclusions have emerged from our study. On the whole, military justice is fundamentally sound and is not in need of drastic revision. However, it is overburdened with paperwork and places too many demands on the limited time of commanders. This legislation will be a giant step in solving some of the most serious problems identified. These are addressed in more detail below.

I. ARTICLES 25, 26, 27 AND 29

The amendments of Articles 25, 26, 27 and 29 would remove the requirement that the convening authority personally detail military judges and counsel and personally excuse any members for any reason other than a challenge. The manner of detailing counsel and judges would be provided in Secretarial regulations while the Manual for Courts-Martial would provide detailed guidance and limits for delegation of authority to excuse members.

The requirements that the convening authority personally detail the counsel and judge in each case imposes an unnecessary burden on busy convening authorities and their staffs. It causes trial delays and presents an archaic appearance, insofar as it suggests that the convening authority actually chooses the military judge and the defense counsel. Because of the evolution of the trial judiciary in each service and the independence of military defense counsel, the convening authority's role in detailing those people has become largely ministerial. Moreover, the current requirement adds paperwork to each case and delays cases when the convening authority—who is, after all, the commander of a brigade, division, post, or other large organization—is not immediately available to act on these matters. These problems are burdensome, disruptive, and wasteful in peacetime. In combat they would seriously impede the administration of military justice and could interfere with vital combat missions.

The amendments concerning members in Articles 25 and 29 have a similar purpose. These changes do not remove from the convening authority the responsibility for selecting members. That is a function which must be performed by the commander, as he is in the best position to determine which of his subordinate commanders, staff officers and other personnel can be relieved of other major responsibilities in order to be detailed as court-martial members. Once he has done so, however, it is not necessary that he personally excuse a particular member in a given

case when, for example, the member is ill, or military exigencies arise. Under the proposed legislation, this responsibility could be exercised before assembly by the staff judge advocate or a principal assistant, such as the deputy commander. After assembly the military judge could excuse members. Again, this avoids disruption and delay when there is an obviously sound reason for excusal and the covening authority is not immediately accessible. Inaccessability will be an acute problem in combat when convening authorities are commanding units in battle and minimizing radio and other communications. The need to excuse members then will be even more frequent in combat.

II. ARTICLE 34

The proposed amendment of Article 34 will simplify the procedures for referral of charges to a general court-martial, while better protecting the accused against unwarranted referral of charges. Article 34 currently requires that before charges may be referred for trial by general court-martial, the convening authority—who usually is not a lawyer—must find that each charge states an offense and is warranted by the evidence. Before making that decision, the convening authority must receive legal advice from the staff judge advocate. The staff judge advocate's advice has become a legal brief which can run from a few pages in length in simple cases, to scores of pages in more complicated ones. This takes the time and resources of lawyers, staff, and most importantly, the commander. The amendment of Article 34 removes the requirement that the convening authority examine the charges for legal sufficiency, and puts that burden where it belongs—on the shoulders of the staff judge advocate who is a lawyer. No charge may be referred to a general court-martial, under the proposal, unless the staff judge advocate finds that it states an offense, is warranted by the evidence, and is subject to the jurisdiction of the court-martial. The convening authority retains the final power to decide whether to prosecute by general court-martial, but he can exercise this power only after the staff judge advocate has made the required legal determinations. This is a more appropriate and efficient apportionment of responsibilities.

III. ARTICLE 60

The amendment of Article 60, together with changes to Articles 63 and 64, will remove from the convening authority the responsibility to review the findings and sentence for legal sufficiency. This review by the convening authority is unnecessary in view of the many other layers of review in the system. Similar to the pretrial advice under Article 34, the requirement for legal review by the convening authority, after advice by the staff judge advocate, has resulted in a blizzard of paperwork—staff judge advocate reviews have been know to run into hundreds of pages, and on a few occasions, have been longer than the record of trial. All of this effort is more appropriate at the appellate level. The present system delays post-trial processing of a case, and consumers legal resources and commanders time without substantial benefit to the accused or the Government. The legislation, by eliminating these requirements, would leave legal review of the case to the Courts of Military Review, the Court of Military Appeals, and the Judge Advocates General. At a minimum, however, each case not otherwise reviewed will be reviewed by a judge advocate. Note that the convening authority retains authority to disapprove findings of guilty and to reduce or disapprove the sentence as a matter of command prerogative. Thus, the accused does not lose the benefit of possible favorable action at this level.

IV. OTHER MATTERS

Most of the remaining changes concern the appellate process. While these do not have the same immediate effect on trying cases as do the other changes, they do improve the administration of justice by ensuring that each party has a full opportunity for appellate review and by allowing an accused to waive an appeal he or she does not want taken. This procedure enables our finite appellate resources to be used more economically and efficiently, and at the same time provides important appellate rights for both the government and the accused.

V. CONCLUSION

Enactment of this legislation now would be especially beneficial. The Joint-Service Committee on Military Justice and the Department of Defense are nearing completion of a three year project to revise the Manual for Courts-Martial. If the legislation is passed we would be able to incorporate the necessary changes in the new

Manual. This would save time and money in not having to prepare a second revision after the new Manual is published. It would also permit a single period of training and transition for those who work in military justice. Thus, the timing of this legislation is especially propitious.

Independent of the favorable timing, this legislation is needed on its own merits. It will not alter the philosophical underpinning of the military system; it will not upset the delicate balance of the scales of justice in the direction of either the accused or the prosecution. It will, however, improve efficiency and enhance the prompt and just disposition of cases by courts-martial. It will ensure that both justice and discipline will be maintained more effectively in peacetime and in combat.

WRITTEN STATEMENT OF MAJ. GEN. THOMAS B. BRUTON, JUDGE ADVOCATE GENERAL, U.S. AIR FORCE

Mr. Chairman and members of the subcommittee, I am Major General Thomas B. Bruton, the Judge Advocate General, United States Air Force. I appreciate the opportunity to appear before you in connection with the Military Justice Act of 1983 and offer these remarks for the record.

The Air Force supports the Military Justice Act of 1983 as passed by the Senate on April 28, 1983.

This legislation offers the first significant revision of the Uniform Code of Military Justice since 1969 and includes a number of needed reforms. We note with approval that the legislation does not infringe on any important rights of service members accused of a crime. We are pleased with the flexibility the bill provides the Judge Advocate General in granting relief in those cases which are not entitled to review by a military appellate court. Another welcome provision gives the Government the opportunity to seek appellate relief from an erroneous ruling by a trial judge.

In conclusion, this bill contains provisions which will enhance the utility and effectiveness of the military justice system. The Air Force supports the legislation. Thank you.

Mr. ASPIN. Thank you very much.

Does anybody have any questions?

[No response.]

Mr. ASPIN. Let me say we have two other people here.

Mr. Steven Honigman.

Mr. HONIGMAN. Yes, sir.

Mr. ASPIN. He has a statement for the record, I believe. He is from the Association of the Bar from the State of New York, which is for this bill.

WRITTEN STATEMENT OF STEVEN S. HONIGMAN, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

Mr. Chairman and members of the subcommittee, my name is Steven S. Honigman. I appear on behalf of the Committee on Military Justice and Military Affairs of the Association of the Bar of the City of New York.

For many years, the Committee has maintained an active interest in the military justice system. Among other contributions, the Committee has issued a draft of a comprehensive bill to improve the military justice system, and has submitted written comments and oral testimony regarding bills to amend the Uniform Code of Military Justice (the "UCMJ"), including S. 974 which this Subcommittee is considering today. The Association, the Committee and I appreciate this opportunity to offer our comments regarding the important pending proposals for revising the UCMJ.

We believe that the pending bill merits prompt enactment into law in its entirety.

In our view, two provisions of the pending bill are of particular importance: the availability of direct Supreme Court review of decisions of the Court of Military Appeals through discretionary writs of certiorari, and the addition of two public seats for members of the civilian community to the Article 67 "Code Committee" which evaluates the operation of the UCMJ and considers proposed modifications to it. Each of those amendments will enhance the degree to which the military justice system is, and is perceived to be, subject to the standards of fairness which govern civilian systems of criminal justice, within the context of the military's legitimate special concern with maintaining good order and discipline.

Both the accused, whose right to relief may be more speedily vindicated than through costly and time-consuming collateral attack, and the government, which may succeed in overturning an unfavorable ruling which it is now foreclosed from challenging in any forum, will benefit from the availability of direct review by the Supreme Court of significant decisions of the Court of Military Appeals. In addition, the statute of the Court of Military Appeals and the military justice system should benefit from the availability of Supreme Court review on a basis similar to that now accorded to civilian criminal jurisdictions.

Many members of the civilian bar have a strong professional interest in military justice. Yet such civilian practitioners often find it difficult to join with their military brethren in assessing the operation of the military justice system and in formulating appropriate amendments to the UCMJ. The administration of the military justice system would benefit from participation by the civilian bar on an institutional basis, just as practicing attorneys serve as members of the judicial conferences of the United States Courts of Appeal. Moreover, the public's perception of the military justice system as fundamentally fair would be enhanced through such participation by civilian representatives. We are therefore pleased that the pending bill would provide such an opportunity for civilian participation through the creation of public seats, both on the Code Committee and on the study commission which will consider further proposals for revisions to the UCMJ.

While we endorse the passage of the proposed legislation in its current form without further amendment, we recommend that certain additional improvements to the military justice system be given legislative consideration at an early date in the future.

First, as the pending bill recognizes, promoting the finality and predictability of appellate interpretations of the UCMJ is a desirable objective. A major step toward achieving that goal would be the expansion of the number of judges of the Court of Military Appeals from three to five. The potential that changes in the membership of the Court of Military Appeals will lead to abrupt shifts in the Court's interpretative philosophy, with consequent disorder in the administration of military justice in the field, is especially strong for a three-judge Court of Military Appeals. The unsettling impact of a single judge's replacement would be less pronounced upon a five-judge court.

Second, instead of being personally selected and detailed by the convening authority—the individual who invokes the military justice process by referring charges to trial—the members of a court-martial should be chosen at random from a pool of eligible military jurors.

Finally, the pool of potential military jurors should be expanded. In addition to the commissioned or warrant officers and senior enlisted personnel who in practice comprise the military juries of today, all petty officers or non-commissioned officers above the pay grade of E–3, and who have not themselves been convicted of an offense by court-martial, should be eligible for military jury duty. The Committee believes that random selection of military jurors from such a pool (subject to the current restriction that "where it can be avoided" no member of an armed force will be tried by a military juror who is junior to him in rank or grade) would guarantee that courts-martial would be composed of persons who meet the current statutory criteria of age, education, training, experience, length of service and judicial temperment, while securing to the accused the right to be tried by his military peers.

Such an expansion of the jury pool would realize other important objectives. Jury duty is an activity in which a citizen participates directly in the functioning of his or her society and acts as the personal representative of that society's ethical norms. We believe that the effect upon enlisted morale of the "civic" identification and pride that would flow from the privilege of jury service would be a valuable by-product of the expanded eligibility criteria.

Would expansion of the jury pool lead to unjust acquittals of culpable defendants by sympathetic enlisted members? In our view, it is unreasonable to presuppose that lower-ranking enlisted members of courts-martial will condone lawlessness or prove reluctant to impose an appropriate punishment. The proposed criteria would eliminate those enlisted persons whose shortness of service or demonstrated disregard for military law and discipline would make them unsuitable court-martial members. But there appears to be no compelling reason to consider a twenty-three year-old E–4 service member to be any less fit to render an impartial verdict than his or her counterpart in the civilian community.

Mr. Chairman and members of the subcommittee, this concludes my prepared remarks. I would be happy to answer any questions that you may have.

Mr. ASPIN. Mr. Eugene Fidell of the American Civil Liberties Union is also submitting a statement for the record in support.

Mr. FIDELL. Yes, sir.

Mr. ASPIN. Thank you very much.

WRITTEN STATEMENT OF EUGENE FIDELL, AMERICAN CIVIL LIBERTIES UNION

Chairman Aspin and members of the subcommittee, my name is Eugene R. Fidell, and I am appearing today on behalf of the American Civil Liberties Union. With me at the witness table is Leslie A. Harris, of the ACLU's Washington Office.

The ACLU is very pleased to be participating in this important hearing. We were deeply involved in the evolution of S. 974 in the Senate, and are gratified that that body passed the bill.

S. 974 is a bill we are satisfied with. As our testimony before the Senate Armed Services Committee pointed out, there are aspects to it that we would not have agreed to in themselves. Taken as a whole, however, the measure is a sound one which deserves favorable consideration from this body.

The portion of S. 974 that we feel most strongly about—and which makes the remainder of the measure acceptable from our perspective—is the extension of the Supreme Court's certiorari jurisdiction to certain decisions of the United States Court of Military Appeals. This is a very significant change in the architecture of the system of military justice—a system that affects the lives of over two million of our fellow citizens, or more than the population of 11 states and the District of Columbia. Extension of the certiorari jurisdiction represents a long overdue reform in military law. The pros and cons are set forth in perhaps painful detail in the hearing record developed before the Senate Committee, and I trust the members of this Committee will familiarize themselves with that record when considering the merits of this bill.

Extension of the certiorari jurisdiction is the reason we support S. 974. If, for any reason, this Subcommittee concludes that the certiorari provision is not desirable—something we hope the Subcommittee will not do—we wish the record to be clear that we would see no reason to pass any of the remainder of the bill other than the provisions expanding the membership of the Code Committee and creating the special study commission to be appointed by the Secretary of Defense.

We are very pleased to join in the call for a special study commission. A number of issues have been raised since the last major revision of the Uniform Code of Military Justice in 1968. One such issue involves the question of fixed terms of office for trial and intermediate appellate military judges. The military is the only jurisdiction in this country that relies so completely on a judiciary that lacks any protection from summary removal from the bench. It is high time that this matter was addressed.

Another issue of concern to us is the present narrow scope of appellate review of court-martial convictions. Very few cases tried under the Code today are eligible for review by the courts of military review. Even fewer reach the Court of Military Appeals, and under this legislation only those cases in which that court actually grants discretionary review would, in turn, be eligible for further discretionary review by the Supreme Court. Our view is that there ought to be at least one appeal as of right to some appellate court from any court-martial conviction, and accordingly we welcome this aspect of the study commission's assignment.

In this regard I am constrained to observe that there are in this bill limitations on Supreme Court review that find no analogue in civilian practice. In a perfect universe, military personnel would have precisely the same access to our Nation's highest court as do defendants in state or civilian federal criminal cases. We proceed one step at a time, however, in the expectation that the arrangements (and limitations) inherent in the present proposal will be the subject of periodic reexamination by the Congress with the benefit of the annual reports submitted by the expanded Code Committee.

Expansion of the Code Committee to include public members and the inclusion of public members on the special study commission are both important developments because they indicate a new recognition that members of the public, including particularly the civilian bar, have something of value to contribute to the military justice system. Broadening the base of the Code Committee will increase that body's institutional credibility. Conducting its business in public will also contribute to that important objective. I see no reason why the special study commission should not also meet in public.

This Subcommittee should be aware of one aspect of the evolution of the special study commission provision of this bill as it emerged from the Senate Committee. Although the bill includes provision for civilian members, concern was expressed at the markup on the Senate side that the military membership of the commission include officers responsible for prosecution, defense and judicial functions. This understanding was accepted by Senator Jepsen, see S. Rep. No. 98-53, at 32, and I trust that it will also be reflected in this Committee's report. The military legal community, as anyone familiar with it will confirm, is far from monolithic. This diversity should be reflected on the study commission so that that body does not become polarized between government members, on the one hand, and public members, on the other.

The ACLU is aware that oftentimes, for better or worse, issues relating to the military legal program must take a back seat to other matters competing for this Committee's attention. Mindful of the realities, we urge that greater priority be given to these issues if at all possible as part of the general oversight program. A good illustration of the needs, in this respect, is the substantial narrowing of the right to individual military counsel under an amendment to the Code that was passed several years ago. This important protection was materially eroded by Executive Order, with little attention here or anywhere else. The ACLU strongly recommends that this Committee adopt a more aggressive oversight posture in this area, just as it asserts itself in such matters as hardware procurement, strategic policy and the like. People are as essential an element of the National defense effort as are missiles, tanks, submarines and aircraft; people-oriented issues such as those involved in the present bill deserve careful scrutiny on a continuing basis.

There are also legislative proposals beyond the one currently before you that merit attention and action. One such proposal would provide a firmer foundation for the military legal assistance program.

Mr. Chairman, we are entering what may fairly be described as the third great age of American military justice. The first lasted until enactment of the UCMJ, not much more than 30 years ago. The second age is, in my opinion, drawing to a close. That second age included some momentous developments, such as the maturation of the Court of Military Appeals as an instrument of meaningful civilian review, the emergence of the military judge as a key player in the system, and the increasing willingness of those responsible for administration of the military justice system to look to the civilian federal model for guidance and inspiration, as in the case of the Military Rules of Evidence.

Building on the past, a third age will be inaugurated with passage of this measure. The degree of ferment within the system of military justice is greater now than at any time since the Vietnam War. Public and bar interest is also greater now than it has been in the last 15 years. The ACLU welcomes this renewal of interest, and looks forward to being able to work cooperatively with this Committee and the Department of Defense—as we have in helping to frame this measure—in the interest of shaping a military justice system of which we can all be proud.

LeBoeuf, Lamb, Leiby & MacRae,
Washington, D.C., November 9, 1983.

Re: S. 974—Military Justice Act of 1983.

Hon. Les Aspin,
Chairman, Subcommittee on Military Personnel and Compensation, U.S. House of Representatives, Washington, D.C.

Dear Chairman Aspin: In connection with today's hearing on S. 974, the Military Justice Act of 1983, the American Civil Liberties Union believes that the following observations should be taken into account with respect to the extension of the Supreme Court's certiorari jurisdiction to certain cases decided by the United States Court of Military Appeals.

1. Because the Court of Military Appeals will, as a practical matter, hold the key to the Supreme Court door through its ability to deny a petition for review, we believe the Court of Military Appeals should err on the side of generosity in determining whether to grant review. Among other things, it could alter its internal practices to allow for review if any judge desires to hear a case. The Court of Military Appeals should also be encouraged to articulate (in its rules or elsewhere) the considerations it weighs in deciding whether to grant review. This will benefit litigants and will also aid the Supreme Court by giving that tribunal a better sense of what it means when the Court of Military Appeals grants or denies review. Indeed, that step would make good sense even if the certiorari jurisdiction were not being extended.

2. What standards should the Supreme Court apply when deciding whether to grant certiorari in a Court of Military Appeals case? We believe the answer to be that the Court should apply precisely the same standards as it applies in deciding whether to grant any other certiorari petition. These standards are summarized in the Supreme Court's rules.

3. What standards should the Supreme Court apply when it reviews the merits of a Court of Military Appeals decision once it has granted certiorari? We agree with the Senate's intent that the Court of Military Appeals remain the "primary civilian interpreter" of the UCMJ, but believe that more has to be said. For questions of general federal law, including constitutional questions, decisions of the Court of Military Appeals should be examined with the same approach as the Supreme Court would apply to decisions of a United States Court of Appeals. This is consistent with Congress's long-expressed intent that the Court of Military Appeals be treated as if it were a Circuit Court of Appeals. For questions of military law, where special doctrines may apply, and where its function as a specialized court would most come into play, a somewhat different approach is called for. A useful model for the review of decisions in these areas might be the approach employed by the Supreme Court in reviewing decisions of the District of Columbia Court of Appeals (the highest local court of the District of Columbia). This is summarized in §4.23 of Stern & Gressman's Supreme Court Practice. The rule is that the Supreme Court will decline to follow the local judgment only in "exceptional situations where egregious error has been committed." *Fisher* v. *United States,* 328 U.S. 463, 476 (1946); *Griffith* v. *United States,* 336 U.S. 704, 718–19 (1949). Since even questions of military law ultimately remain questions of federal law, of course Supreme Court review cannot and should not be precluded. And even where issues of military law appear to be in question, if military law basically adopts or replicates civilian doctrines, no special deference would be required.

4. What should be the interaction between review on certiorari and the availability of habeas corpus with respect to military cases? Plainly, the military defendant should have precisely the same access to collateral remedies as is currently enjoyed by any federal or state criminal defendant.

We appreciate the opportunity to work with the Committee and Staff on this important legislation. If you have any questions, please feel free to telephone me.

Very truly yours,

EUGENE R. FIDELL.

Mr. ASPIN. And Hon. Robinson O. Everett, the Chief Judge, U.S. Court of Military Appeals.

Is he here?

Judge EVERETT. Yes, sir.

Mr. ASPIN. And you also support the bill, and have a statement for the record?

Judge EVERETT. Yes, sir.

WRITTEN STATEMENT OF HON. ROBINSON O. EVERETT, CHIEF JUDGE, U.S. COURT OF MILITARY APPEALS

Mr. Chairman and members of the Armed Service Committee, I appreciate the opportunity to appear before you this morning. In view of the limited time available for the hearings, my statement will be brief.

More than a year ago I testified for our Court before the Senate Armed Services Committee with respect to the Senate Bill from which emerged the proposed legislation that you are now considering. At that time I discussed the major features of that Bill; and I shall incorporate by reference what I said then, rather than repeating those remarks. Of course, I shall be happy to answer any of your questions.

At the outset, I should emphasize that, although your Committee has an extraordinarily crowded scheduled at this time, it is especially appropriate for you to be conducting hearings on these amendments to the Uniform Code of Military Justice. Currently, a Revision of the Manual for Courts-Marital is almost ready for promulgation by the President after having been made available for public comment. I think it would be unfortunate if issuance of this Revision were delayed for a long time to await passage of the amendments to the Uniform Code which you are now considering. Also, it would obviously be inefficient and costly if the Revision were promulgated and then had to be subtantially changed in a few months when new military justice legislation was enacted. Thus, the timing of your hearings is excellent—especially if it results in the immediate enactment of legislation.

When I testified before the Senate Armed Services Committee more than a year ago, I pointed to many features of Senator Jepsen's Bill which our Court believed would improve the administration of military justice. Some involved the simplifica-

tion of paperwork and of the procedures for appointing and excusing court members. Authorization of appeals by the Government, like those permitted from United States District Courts, seemed very much in order. Perhaps of special value is the punitive article which would specifically prohibit drug abuse and involvement by servicemembers and so would manifest what our Court has believed to be a strong congressional policy against use of drugs in the armed services.

Many of the concerns which I expressed in my earlier testimony have now been allayed by the proposed establishment of a nine-member Commission to study suggested innovations which our Court thought should be looked at long and hard. Hopefully, that Commission will play a role somewhat like that of the Morgan Committee, which drafted the Uniform Code of Military Justice.

The portion of the proposed legislation which would affect our Court most directly is the revision of Title 28 to authorize review by the United States Supreme Court on writ of certiorari in those cases in which our Court has granted review. Before the Senate Armed Services Committee last year, I attempted to review the pros and cons of this proposal; and I will not repeat that review at this time. With regard to the concern I expressed then about the effect of this proposal on the Supreme Court's caseload, I note that subsequently the Supreme Court—which I assume is fully apprised of the implications for its own docket—has declined to take a position on S. 974 and has left adoption of the Bill to the wisdom of Congress.

I also have observed that, although the authorization for direct review of courts-martial by the Supreme Court would represent a historic change and would involve a significant reallocation of responsibilities, the Department of Defense has been a principal proponent of this change. I assumed that the Department has taken into account the impact of the change on the ability of the armed services to perform their mission. As a matter of fact, most of my worries about the certiorari proposals have now been dispelled by my reflecting on an ancient maxim that I learned long ago in law school: Volenti non fit injuria ("He who consents cannot receive injury", see Black's Law Dictionary, 4th ed. 1968).

I would suggest, however, that, if review by certiorari is to be authorized by the Congress, then the mandate of the nine-member commission to be appointed by the Secretary of Defense should be broadened in one respect. In my view, this Commission also should be directed to consider whether—as an aftermath to the allowance of direct review of court-martial convictions on rit of certiorari, the Court of Military Appeals should also be reconstituted under . rticle III of the Constitution.

On various occasions our authority to accomplish certain important tasks has been questioned on the ground that we are an Article I, rather than an Article III, court. Most recently, this occurred in *United States* v. *Matthews*, 16 M.J. 354 (C.M.A. 1983), where we were concerned with the constitutionality of the death sentence adjudged by an Army court-martial sitting in Europe. The Commission could perform a useful service to Congress by examining the desirability of making us an Article III Court. Indeed, I would hope—and this is only my personal view—that, at some point in the near future, attention might be given to the creation of a Court of Appeals for the Military Circuit, whose jurisdiction would be defined along functional lines, just as has been done recently in the establishment of a Court of Appeals for the Federal Circuit.

Finally, I should emphasize that a great deal of study has been given to many of the proposals now before you. Some of them originated with the Code Committee established under Article 67(g) of the Uniform Code and which heretofore has been composed of the members of our Court and the Judge Advocates General. The Department of Defense, both through the General Counsel's Office and through the Joint-Service Committee on Military Justice has labored long to produce these proposed amendments. Of course, Senator Jepsen deserves special credit for triggering legislative activity in this field when about a year and a half ago he introduced the Bill which was the subject of the Senate hearings in September 1983.

The process of updating and streamlining military justice is an important one. It merits your close and continuing attention because of its impact on the military mission; and on the rights of service members. Our Court thanks your Committee for giving this attention.

Mr. ASPIN. All in favor of the bill, with technical amendments,* say aye.

[A chorus of ayes.]

Mr. HUNTER. Mr. Chairman.

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* See H.A.S.C. No. 98-10, p. 40, for S. 974 as amended.

Mr. ASPIN. Yes; what is the problem?

Mr. HUNTER. I say aye. And I just wanted to recognize General Donovan from the Marine Corps from my district in Camp Pendleton. And I watched him get his start here a couple of months ago, and I just wanted to welcome him to the committee. I just figured that this was a good chance to do that.

Mr. ASPIN. Very good.

Mr. HUNTER. I am in support of the bill.

Mr. ASPIN. That is good.

I am sorry that you do not have a better Congressman, but we welcome you here today. [General laughter.]

All in favor of the bill, say aye.

[A chorus of ayes.]

Mr. ASPIN. Opposed, no.

[No response.]

Mr. ASPIN. The bill is passed. Thank you all very much for coming.

Mr. TAFT. Thank you Mr. Chairman.

[Whereupon at 11:50 a.m. the subcommittee was adjourned.]

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