

ANNUAL REPORT
of the
**UNITED STATES COURT
OF MILITARY APPEALS**



and
THE JUDGE ADVOCATES GENERAL
of the
ARMED FORCES
and the
GENERAL COUNSEL
of the
**DEPARTMENT OF THE
TREASURY**

**PURSUANT TO THE
UNIFORM CODE OF MILITARY JUSTICE**

**For the Period
January 1, 1965 to December 31, 1965**

ANNUAL REPORT
SUBMITTED TO THE
COMMITTEES ON ARMED SERVICES
of the
SENATE AND OF THE
HOUSE OF REPRESENTATIVES
and to the
SECRETARY OF DEFENSE
AND SECRETARY OF THE TREASURY
and the
SECRETARIES OF THE DEPARTMENTS OF THE
ARMY, NAVY, AND AIR FORCE

PURSUANT TO THE
UNIFORM CODE OF MILITARY JUSTICE

For the Period
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JOINT REPORT

of the

UNITED STATES COURT OF MILITARY APPEALS

and

**THE JUDGE ADVOCATES GENERAL
OF THE ARMED FORCES**

and

**THE GENERAL COUNSEL OF THE
DEPARTMENT OF THE TREASURY**

January 1, 1965 to December 31, 1965

JOINT REPORT

The following is the 14th annual report of the Committee created by Article 67(g) of the Uniform Code of Military Justice, 10 U.S.C. 867(g). That article requires the Judges of the U.S. Court of Military Appeals, The Judge Advocates General of the Armed Forces, and the General Counsel of the Department of the Treasury to meet annually to survey the operations of the Code and to prepare a report to the Committees on Armed Services of the Senate and of the House of Representatives, to the Secretary of Defense and the Secretary of the Treasury, and to the Secretaries of the Departments of the Army, Navy, and Air Force with regard to the status of military justice and to the manner and means by which it can be improved by legislative enactment.

The Chief Judge and the Judges of the U.S. Court of Military Appeals, The Judge Advocates General of the Army, Navy and Air Force, and the General Counsel of the Department of the Treasury, hereinafter referred to as the Code Committee, have met and conferred at the call of the Chief Judge several times during the period of this report. These conferences included a full consideration of legislative amendments to the Uniform Code of Military Justice consistent with the policy and purpose of this Committee.

Senator Sam J. Ervin, Jr., chairman of the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, introduced 18 bills in the Senate on January 26, 1965. The stated purpose of the bills is to protect the constitutional rights of military personnel. Hearings have been scheduled on these bills early in the second session of the 89th Congress. The Department of Defense has presented its views in writing to the Committee on those bills that pertain to military justice, and it is expected that the Judges of the Court of Military Appeals and The Judge Advocates General will testify at the hearings. Senator Ervin introduced 18 similar bills in the 88th Congress, but due to the press of Congressional business, no hearings were held. As stated in our last two reports, the Department of Defense recommends, as substitutes for certain bills pertaining to military justice, legislative proposals designated as "F", "G", and "H". "G" has been introduced as H.R. 273 (89) and "H" has been

introduced as H.R. 277 (89). "F" has not been formally introduced as a bill.

The Code Committee continues to recommend legislation embodying the substance of the bills denominated "F", "G", and "H", discussed in and attached to our reports for the years 1963 and 1964.

"F" bill would permit convening authorities to order the confinement and forfeiture portions of certain sentences into execution upon approval. At present, a prisoner may complete the service of his term of confinement before his case has been finally reviewed. The distinction required in the treatment of such a prisoner from that accorded a sentenced prisoner complicates the administration of confinement facilities and has, on occasion, created complex administrative problems. "F" bill would eliminate this source of difficulty. The bill would also clarify the lesser punishments included in a death sentence and eliminate a related anomaly in the present law by permitting the imprisonment and forfeiture of pay inherent in a death sentence to be made effective when the sentence is approved by the convening authority.

"G" bill is essentially a combination of the so-called "B" and "D" bills recommended in our report for 1962, with an additional provision that a bad-conduct discharge may not be adjudged unless an accused is represented by a qualified lawyer, or has refused the services of legally qualified counsel. In addition to this requirement for qualified counsel, "G" bill would authorize single-officer special and general courts-martial, and increase the authority of the law officer (or President of the court, in the case of a special court-martial without a law officer). It would provide authority, with necessary safeguards and procedural changes, whereby an accused person could waive a hearing before court members and be tried by the law officer alone—comparable to a trial without a jury in the Federal courts. The bill would also authorize pretrial sessions by a law officer, prior to the time the members are assembled, to consider and dispose of interlocutory questions and other procedural matters. This authority is similar to that contained in the Federal Rules of Criminal Procedure applicable to Federal courts. Various technical provisions are contained in the bill to clarify the status of the law officer in pretrial proceedings and related administrative matters.

Judge Ferguson continues to have reservations, as detailed in our report for the year 1962, concerning the desirability of some aspects of the proposals contained in "F" and "G" bills.

"H" bill would make two desirable changes in the remedies available to an accused who seeks relief after appellate review

in his case has become final. The first change would extend from one year to two years the time within which a new trial may be granted. The other would give The Judge Advocate General specific statutory authority to vacate or modify a conviction or sentence which, not requiring review by a board of review under Article 66, has become final. This authority could be exercised in case of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, of error prejudicial to the substantial rights of the accused. The authority that would be conferred by "H" bill would not affect the power of correction boards within the military departments to correct an error or remove an injustice under 10 U.S.C. 1552.

The sectional reports of the Court and of the individual services outline the volume of court-martial cases subject to appellate review during the reporting period. Exhibit A is attached to recapitulate the number of court-martial cases of all types tried throughout the world, the number of such cases which are reviewed by boards of review, and the number ultimately reviewed by the United States Court of Military Appeals.

Respectfully submitted,

ROBERT E. QUINN,
Chief Judge.

HOMER FERGUSON,
Associate Judge.

PAUL J. KILDAY,
Associate Judge.

ROBERT H. McCAW,
*The Judge Advocate General,
United States Army.*

WILFRED HEARN,
*The Judge Advocate General,
United States Navy.*

ROBERT W. MANSS,
*The Judge Advocate General,
United States Air Force.*

FRED B. SMITH,
*Acting General Counsel,
Department of the Treasury.*

EXHIBIT A

Court-Martial Cases

Army -----	43,456
Navy -----	24,565
Air Force -----	4,821
Coast Guard -----	327
Total -----	<u>73,169</u>

Cases Reviewed by Boards of Review

Army -----	1,261
Navy -----	2,376
Air Force -----	604
Coast Guard -----	9
Total -----	<u>4,250</u>

Cases Docketed with U.S. Court of Military Appeals

Army -----	475
Navy -----	250
Air Force -----	209
Coast Guard -----	1
Total -----	<u>935</u>

**For the Period
July 1, 1964 to June 30, 1965**

REPORT
of the
UNITED STATES COURT OF MILITARY APPEALS

January 1, 1965 to December 31, 1965

UNITED STATES COURT OF MILITARY APPEALS

In compliance with the provisions of the Uniform Code of Military Justice, Article 67(g), 10 U.S.C. § 867(g), the Chief Judge and Associate Judges of the United States Court of Military Appeals herewith submit their report on military justice matters to the Committees on Armed Services of the United States Senate and House of Representatives, to the Secretary of Defense, the Secretary of the Treasury, and the Secretaries of the Departments of the Army, Navy and Air Force.

I

As this report is submitted, the United States Court of Military Appeals is in its fifteenth year of the administration of military justice under the Uniform Code, enacted on May 31, 1950, and put into effect one year later. In June 1951, when the Court, the first civilian judicial body in this Nation's history to sit in final review upon military courts-martial, was constituted, it was immediately faced with an enormous task. Those accustomed to the provisions of the Articles of War and the Articles for the Government of the Navy found its terms revolutionary. Lawyers for the accused and the Government—a law officer who did not deliberate with the court—instructions on the law in open court—verbatim records of trial in all serious cases—a meaningful system of appellate review had, for the first time, been provided for all branches of our Armed Forces by a Congress and Executive determined to uproot the last vestige of evil which flowed from practices under antecedent legislation. But, in the manner of most Codes, these provisions of law supplied only the skeleton of military due process. Their interpretation, pursuant to the intent of Congress, was left to this Court, composed of civilian judges in accordance with the well-tried American tradition of ultimate civilian control over the military, and thoughtfully balanced by devolution upon the Executive of the right to prescribe rules of evidence and procedure as well as limitations upon maximum punishment.

At the outset, the Court was met with hostility on the part of many Armed Forces officers, accentuated by the fact it began its role as a supreme judicial body in the midst of war. Nevertheless, from the beginning, it insisted that rights granted by the Con-

stitution and the Congress not be sacrificed in the face of preconceived and untested notions of guilt and fashioned on the framework of the Code, a sound system of military justice, designed fairly to arrive at a proper verdict and sentence, and proven to be workable both in time of war and peace.

Happily, the initial resentment of the Armed Forces towards the vast changes wrought in their system has with time gradually diminished. The efficiency with which trained attorneys work to dispose of military caseloads has been recognized, and the improved performance of everyone involved in the administration of military justice has become a hallmark of the records of trial brought before us. Typifying this changed attitude is the commendable institution by the Army of its Field Judiciary Program, whereby professional law officers—judges in every sense of the word—are made available in all commands for trial of general courts-martial. In 1962, the Navy, benefiting by the Army's experience, extended the same program to its military justice operations and those in the United States Marine Corps. The Air Force has decided not to participate in this decidedly advantageous procedure, but there is now pending before the Congress legislation, which we warmly approve, that will require adoption of the professional law officer idea by all the Armed Forces.

So, too, have gigantic strides been made in the field of military legal education and the dissemination of legal information to the field by all the Armed Services, so that the Code may be better implemented at its most basic level, i.e., at the point of contact with the potential accused and those with whom he is associated. Training films, technical manuals, law reviews, newsletters and similar publications, are now characteristic of the administration of military justice, just as such tools have, for years, been used in other military specialties and in the civilian legal field.

Thus, we are able to report at the present time that, seemingly, a basic problem under the Uniform Code has been solved. No matter how excellent a law may be, it is useless unless properly administered. We have noticed a growing conviction on the part of the Armed Forces that, given an opportunity, the Uniform Code will work in punishing the guilty and protecting the innocent, in war and in peace. No longer do we find the antipathy and hostility which met its introduction into military law. As this new spirit continues to flourish and pervade the administration of the Code, it is apparent that it will brighten the future of military law and gradually eliminate the righteous anger of

a largely citizen-army by subjection to the uncivilized procedures of another day.

II

In order to maintain its position as the supreme military judicial body and as a United States Court of special appellate jurisdiction, the Court believes it both desirable and necessary that its judges be afforded life tenure. A bill, H.R. 3179, 88th Congress, giving them such tenure was passed by the House of Representatives on July 9, 1963, but was not acted upon by the Senate prior to adjournment. The need for the added stature accompanying service during good behavior has been accentuated by the recent suit filed against the Judges in *Robert G. Gallagher v. Robert E. Quinn, et al.* (U.S.D.C. D.C., Civil Action No. 1359-65), presently pending on appeal before the United States Court of Appeals for the District of Columbia. The petitioner there urges this Court is no more than an instrumentality of the Executive, created under Congress' power to make rules for the government of the land and naval forces. He finds cogent support for his contention in the Judges' limited terms, a feature which does not obtain in other Federal judicial tribunals, though they possess only special jurisdiction.

Originally, Congress sought to provide the Judges with life tenure, but deleted the provision therefor in view of the then highly experimental nature of the vast changes it was enacting in military law. We believe, together with the Armed Services, that the last fourteen years of administration of military justice demonstrate the premanency of the Court as an institution. We respectfully request, therefore, that the Congress again consider the question of extending its Judges tenure, to the period of good behavior.

III

In fiscal year 1965, 935 cases were docketed with the Court. 14 were forwarded on certificates of The Judge Advocates General of the Armed Services. No mandatory appeals, i.e., cases involving death sentences or affecting general or flag officers, were heard, but the Court heard arguments and received briefs on the issue whether the provision therefor in Article 67(b) (1) of the Code, as it applied to a general or flag officer, constituted a denial of due process when considered in light of the burden on the ordinary accused to show good cause in order to have his petition granted. The constitutionality of the statute was upheld in *United States v Gallagher*, 15 USCMA 391, 35 CMR 363.

IV

During calendar year 1965, the Court admitted 664 practitioners to its roll of attorneys, bringing the overall number admitted to 11,826. In addition, certificates of honorary membership to our bar were awarded to 13 attorneys of allied nations, working closely with the Armed Forces of the United States.

V

Chief Judge Robert E. Quinn, having addressed the cadets and midshipmen at the United States Military Academy and the United States Naval Academy in past years, spoke in April 1965 to the midshipmen of the United States Coast Guard Academy at New London, Connecticut. Associate Judge Homer Ferguson represented the Court at the annual meetings of the American Bar Association and Judge Advocates Association in Miami Beach, Florida, during August 1965. Judge Ferguson also participated in the Army's Worldwide Judge Advocates' Conference at Charlottesville, Virginia, in September 1965. Associate Judge Paul J. Kilday joined Chief Judge Quinn and Judge Ferguson in attending the Military Law Committee Dinner, District of Columbia Bar Association, held at the Commissioned Officers' Club, Naval Medical Center, Bethesda, Maryland, on May 26, 1965, and all judges conferred on a number of occasions with The Judge Advocates General and their representatives concerning military justice operations in the field. The Court has thus sought to maintain contact both with those who presently, and will in the future be, charged with the practical administration of military justice at the operating level and the leaders in the civilian legal sphere.

During the year, the Court was honored by a visit from Judge Trevor Rapke, The Judge Advocate General, Royal Australian Navy, as well as other distinguished persons whose interest bespoke the widening concern of the public, both here and abroad, with courts-martial matters. In order to make readily accessible full information concerning the Court's operations, a brief pamphlet was issued describing its history and functions. This is available to all who visit the Courthouse or inquire concerning the nature of the institution which it houses.

VI

In conclusion, the Court reiterates its belief that the improvements in the administration of military justice over the past fourteen years, under the aegis of all the Judges, have fully justified the great experiment which Congress launched in 1951. The present system, subject, of course, to improvements elsewhere

recommended, has been proven in time of war and time of peace. The Court shall continue to strive for as perfect an administration of justice as is humanly possible under the law. Only by immediate appellate check of shortcomings in these serious criminal proceedings can this be attained. We shall go forward in that task, confident of the support of the Congress in seeking for the man in uniform the fair treatment under the law which he and his comrades safeguard for us all.

VII

There is attached to this report a detailed analysis of the status of cases processed by the Court since it began operating in 1951.

Respectfully submitted,

ROBERT E. QUINN,
Chief Judge.

HOMER FERGUSON,
Associate Judge.

PAUL J. KILDAY,
Associate Judge.

EXHIBIT A

STATUS OF CASES
UNITED STATES COURT OF MILITARY APPEALS

CASES DOCKETED

<i>Total by Services</i>	<i>Total as of June 30, 1963</i>	<i>July 1, 1963 to June 30, 1964</i>	<i>July 1, 1964 to June 30, 1965</i>	<i>Total as of June 30, 1965</i>
Petitions (Art. 67(b) (3)) :				
Army -----	9,254	371	471	10,096
Navy -----	3,666	302	245	4,213
Air Force -----	3,845	176	204	4,225
Coast Guard -----	43	2	1	46
Total -----	16,808	851	921	18,580
Certificates (Art. 67(b) (2)) :				
Army -----	135	3	4	142
Navy -----	192	6	5	203
Air Force -----	62	8	5	75
Coast Guard -----	6	0	0	6
Total -----	395	17	14	426
Mandatory (Art. 67(b) (1)) :				
Army -----	31	0	0	31
Navy -----	3	0	0	3
Air Force -----	3	0	0	3
Coast Guard -----	0	0	0	0
Total -----	37	0	0	137
Total cases docketed -----	17,240	868	935	219,043

¹ 2 Flag officer cases ; 1 Army and 1 Navy.

² 18,740 cases actually assigned docket numbers. Overage due to multiple actions on the same cases.

COURT ACTION

	<i>Total as of June 30, 1963</i>	<i>July 1, 1963 to June 30, 1964</i>	<i>July 1, 1964 to June 30, 1965</i>	<i>Total as of June 30, 1965</i>
Petitions (Art. 67(b)(3)):				
Granted -----	1,745	99	86	1,930
Denied -----	14,618	758	823	16,199
Denied by Memorandum Opinion----	2	0	0	2
Dismissed -----	12	2	1	15
Withdrawn -----	327	5	6	338
Disposed of on Motion to Dismiss:				
With Opinion -----	8	0	0	8
Without Opinion -----	40	0	0	40
Disposed of by Order setting aside findings and sentence -----				
	3	0	0	3
Remanded to Board of Review ----	149	4	10	163
Court action due (30 days) ³ ----	57	38	47	47
Awaiting replies ³ -----	21	25	20	20
Certificates (Art. 67(b)(2)):				
Opinions rendered -----	382	19	12	413
Opinions pending ³ -----	2	1	2	2
Withdrawn -----	7	0	0	7
Remanded -----	2	0	0	2
Disposed of by Order -----	1	0	0	1
Set for hearing ³ -----	0	0	0	0
Ready for hearing ³ -----	0	0	0	0
Awaiting briefs ³ -----	2	1	2	2
Mandatory (Art. 67(b)(1)):				
Opinions rendered -----	37	0	0	37
Opinions pending ³ -----	0	0	0	0
Remanded -----	1	0	0	1
Awaiting briefs ³ -----	0	0	0	0
<hr style="border-top: 1px solid black;"/>				
Opinions rendered:				
Petitions -----	1,503	84	83	1,670
Motion to Dismiss -----	11	0	0	11
Motion to Stay Proceedings-----	1	0	0	1
Per Curiam Grants -----	29	1	6	36
Certificates -----	338	15	11	364
Certificates and Petitions -----	42	4	1	47
Mandatory -----	37	0	0	37
Remanded -----	2	0	0	2
Petitions for a New Trial -----	2	0	0	2
Petition for Reconsideration of De- nial Order -----	0	0	3	3
Petitions for Reconsideration of Peti- tion for New Trial -----	1	0	0	1
Motion to Reopen -----	1	0	0	1
<hr style="border-top: 1px solid black;"/>				
Total -----	1,967	104	104	42,175

³ As of June 30, 1963, 1964, and 1965.

⁴ 2,175 cases were disposed of by 2,156 published Opinions. 111 Opinions were rendered in cases involving 65 Army officers, 27 Air Force officers, 15 Navy officers, 4 Marine Corps officers, 2 Coast Guard officers, and 1 West Point Cadet. In addition 19 Opinions were rendered in cases involving 20 civilians. The remainder concerned enlisted personnel.

COURT ACTION—Continued

	<i>Total as of June 30, 1963</i>	<i>July 1, 1963 to June 30, 1964</i>	<i>July 1, 1964 to June 30, 1965</i>	<i>Total as of June 30, 1965</i>
Completed cases:				
Petitions denied -----	14,618	758	823	16,199
Petitions dismissed -----	12	2	1	15
Petitions withdrawn -----	327	5	6	338
Certificates withdrawn -----	7	0	0	7
Certificates disposed of by Order--	1	0	0	1
Opinions rendered -----	1,959	104	104	2,167
Disposed of on Motion to Dismiss:				
With Opinion -----	8	0	0	8
Without Opinion -----	40	0	0	40
Disposed of by Order setting aside findings and sentence -----	3	0	0	3
Writ of Error Coram Nobis by Order -----	0	1	1	2
Remanded to Board of Review ----	150	4	10	164
 Total -----	 17,125	 874	 945	 18,944

	<i>Pending completion as of—</i>		
	<i>June 30, 1963</i>	<i>June 30, 1964</i>	<i>June 30, 1965</i>
Opinions pending -----	15	20	10
Set for hearing -----	0	0	0
Ready for hearing -----	0	1	1
Petitions granted—awaiting briefs -----	9	10	9
Petitions—Court action due 30 days-----	57	38	47
Petitions—awaiting replies -----	21	25	20
Certificates—awaiting briefs -----	2	1	2
Mandatory—awaiting briefs -----	0	0	0
 Total -----	 104	 95	 89

REPORT
of
THE JUDGE ADVOCATE GENERAL
of
THE ARMY

January 1, 1965 to December 31, 1965

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY

COURT-MARTIAL ADMINISTRATION

The number of persons tried by courts-martial (for fiscal year 1965) (Average Strength-Total Army—1,016,832) follows:

	<i>Convicted</i>	<i>Acquitted</i>	<i>Total</i>
General -----	1,463	90	1,553
Special -----	23,757	1,056	24,813
Summary -----	16,106	984	17,090
Total -----	41,326	2,130	43,456

Records of trial by general court-martial received by The Judge Advocate General during fiscal year 1965:

For review under Article 66 -----	1,173
For examination under Article 69 -----	289
TOTAL -----	1,462

Workload of the Army Boards of Review during the same period (Persons Tried):

On hand at the beginning of period -----	100
Referred for review -----	*1,251
TOTAL -----	1,351
Reviewed -----	1,261
Pending at close of period -----	90
TOTAL -----	1,351

*This figure includes 2 cases which were referred to Boards of Review pursuant to Article 69, Uniform Code of Military Justice, and 2 cases on rehearing or reconsideration.

Actions taken during period 1 July 1964 through 30 June 1965 by Boards of Review:

Affirmed -----	849
Sentence modified -----	383
Rehearing ordered -----	9
Charges dismissed -----	6
Findings affirmed, sentence disapproved -----	2
Findings and/or sentence disapproved in part -----	11
Sentence commuted -----	1
TOTAL -----	1,261

Of the 1,261 accused whose cases were reviewed by Boards of Review pursuant to Article 66 during the fiscal year, 950 (75.3%)

requested representation by appellate defense counsel. The records in the cases of 476 accused were forwarded to the United States Court of Military Appeals pursuant to the three subdivisions of Article 67b. These comprised 37.7 percent of the number of these cases reviewed by Boards of Review during that period. Of the mentioned 475 cases, 471 were forwarded on petition of accused and 4 were certified by The Judge Advocate General.

The actions taken by Court of Military Appeals on Army cases for fiscal year 1965 were as follows:

<i>Opinions on Petitions</i>		<i>Certification</i>		<i>Mandatory Review</i>	
<i>Affirmed</i>	<i>Reversed</i>	<i>Affirmed</i>	<i>Reversed</i>	<i>Affirmed</i>	<i>Reversed</i>
24	18	1	3	0	0
<i>Petitions Denied</i>		<i>Petitions Granted</i>			
429		32			

In compliance with the mandate of Article 6(a), Uniform Code of Military Justice, The Judge Advocate General and senior members of his staff inspected numerous judge advocate offices in the United States and overseas in the supervision of the administration of military justice.

UNITED STATES ARMY JUDICIARY ACTIVITIES

In August, 1965, the United States Army Judiciary in conjunction with The Judge Advocate General's School conducted a seminar for mobilization designees assigned as Law Officers to the United States Army Judiciary. In addition to the twelve mobilization designees, two officers newly assigned as Law Officers to the United States Army Judiciary and two Law Officers from the Navy Trial Judiciary attended the seminar.

In September, 1965, The United States Army Judiciary held its Judicial Conference at The Judge Advocate General's School. Twenty-five members of the Judiciary attended. The conference consisted of round table discussion on current problems of confessions, searches and seizures, out-of-court hearings, instructions on sentence, and the Law Officers' attitude toward counsel. In addition the Conference heard reports on proposed legislation and on operations of the United States Army Crime Laboratory. Committees were appointed to revise the current Law Officers' Pamphlet and to report on changes needed in the Manual for Courts-Martial in the event legislation revising the Uniform Code of Military Justice is enacted into law.

LEGISLATION AND MILITARY JUSTICE PROJECTS

Twenty bills pertaining to military justice and administrative discharge proceedings, which were first introduced in the 88th Congress, were reintroduced in the 89th Congress in January 1965 and these bills are now pending before the Senate and House Committees to which they were referred. Eighteen of these bills, introduced by Senator Sam J. Ervin, Jr. of North Carolina, are pending in the Senate as S. 745 through S. 762. Hearings on these bills are scheduled for late January 1966. The other two bills, which were submitted to the Congress by the Department of Defense as substitute measures for five of the Ervin bills, are pending in the House as H.R. 273 and H.R. 277. The Ervin Bills were discussed fully in the 1963 Annual Report and the two substitute bills, denominated the "G" and "H" bills for reference purposes, were discussed in the 1964 Annual Report and appended to the joint report as Exhibits B and C. Hearings on these two bills in the House of Representatives have been postponed pending completion of the Senate hearings on the Ervin bills. The two House bills have been endorsed by the American Bar Association. I reaffirm my belief that these two proposals will accomplish highly desirable changes in the field of military justice and I continue to hope that they will be passed by the 89th Congress.

My office continued to take action to improve the administration of military justice during 1965. For example, Army Regulation 27-12, *Summary and Special Courts-Martial*, published on 15 October 1965, represents a substantial revision of the former Army Regulation 22-145 and should improve the quality of proceedings in summary and special court-martial cases. Among other things, the new regulation requires convening authorities to assure themselves by obtaining certificates or otherwise, that personnel of summary and special courts-martial are currently familiar with the Army publications pertaining to their duties. These publications, which are enumerated in the regulation, are Department of the Army Pamphlet 27-7, *Military Justice Handbook—Guide for Summary Court-Martial Trial Procedures*, Department of the Army Pamphlet 27-10, *Military Justice Handbook—The Trial Counsel and The Defense Counsel*, and Department of the Army Pamphlet 27-15, *Military Justice Handbook—Trial Guide for the Special Court-Martial President*. A revised version of the last-mentioned pamphlet was published in June, 1965, reorganizing the material to make this publication a more useful guide for the special court-martial president.

A comprehensive and detailed study concerning military justice training for officers was conducted during 1965, and recommenda-

tions by my office designed to standardize and improve the scope, content, and accuracy of military justice instruction in the various service schools and in the Reserve Officers Training Corps program are now under consideration in the appropriate Army staff Agencies.

During fiscal year 1965, there were 401,124 punishments imposed as nonjudicial punishment under Article 15 of the Uniform Code of Military Justice upon a total number of 189,608 persons. There were an additional 2,718 persons who refused punishment under Article 15 and were tried by summary court-martial.

PERSONNEL

The number of officers accepting Regular Army commissions continued to climb, with 53 being appointed in Fiscal Year 1965. This compares to 41 commissioned in Fiscal Year 1964. This record gain more than offsets a loss of 43 career officers through death, retirement, and resignation. Although we will continue to have a high career-officer loss rate during the next few years, as officers with World War II service reach mandatory retirement, I am hopeful that these losses will be offset by a high Regular Army input through the excess leave program and an active recruiting program.

The Excess Leave Program, under which Regular Army officers are permitted to attend law school in an excess leave status, has now been in operation for four years. Our experience so far indicates that it will play a very important part in maintaining within the Corps a large number of experienced Regular Army judge advocates. As of September, 1965, 105 officers were enrolled in school under this program. Seventeen officers completed their legal training in 1965, and 36 are scheduled to complete legal training in 1966. By 1967, we expect to have an annual input from this program of 30 to 35 officers.

The Vietnam build-up has resulted in an increased demand for legal services. As of 31 December 1965, 38 judge advocate officers are serving in Vietnam, providing legal services for that area. In addition, it has been necessary to assign additional judge advocates to many of the Training Centers and Service Schools. As a result of these increased requirements, we expect to procure 190 officers during Fiscal Year 1966, an increase of 80 officers over Fiscal Year 1964.

EDUCATION AND TRAINING

During the calendar year 1965, The Judge Advocate General's School, United States Army, provided resident instruction for 883 students. This instruction was presented in 15 courses.

Three cycles of the ten-week Special Course were conducted at the School during 1965. The 41st Special Class of 72 students, including allied officers from the Republic of China, Pakistan, the Philippines, Korea, and Iran, was graduated in February. The 42d Special Class of 50 students, including two students from Vietnam and two from Iran, was graduated in May and the 43rd Special Class of 75 students was graduated in December.

The Thirteenth Judge Advocate Officer Career Course was graduated from the School in May, 1965. Among its 29 officer students were two officers from the United States Navy and two officers from the United States Marine Corps. The Fourteenth Career Course began September, 1965, and will be graduated from the School in May, 1966. It is composed of 31 students, including two officers from the United States Navy, two officers from the United States Marine Corps, two officers from Iran, and one officer from Argentina.

In addition to these two general courses, a number of short functional courses were conducted during the calendar year 1965. These courses were: Procurement Law (two cycles); Civil Law (two cycles); Military Justice; Military Affairs; Foreign Law; International Law; the Judge Advocate Refresher Course; and the Law Officers' Seminar. Attendance numbered over 600 students, including representatives from the Navy, Marine Corps, and Air Force, the Departments of Justice, Commerce, and Post Office, and the General Accounting Office, Federal Aviation Agency, National Aeronautics and Space Administration, National Science Foundation, Small Business Administration, and Atomic Energy Commission.

Two new texts were published during 1965. These were DA Pam 27-160-1, *Foreign Legal Systems (Private Law)*, and DA Pam 27-174, *Military Justice—Jurisdiction*. In addition, two texts were revised. These were DA Pam 27-164, *Military Reservations and Navigable Waters*, and DA Pam 27-6, *Principles Governing Line of Duty and Misconduct Determinations by the Army*. By the end of the calendar year 1965, it is expected that 12 issues of the *Procurement Legal Service* will have been published and distributed.

In February, 1965, the Fourth Annual Judge Advocate General's Reserve Component Training Conference was held in Charlottesville. Both active and reserve component judge advocate officers participated. Conferees included regular Army per-

sonnel from the Office of the Judge Advocate General, Continental Army Command, and the offices of the staff judge advocates of the six continental armies. Reserve component personnel represented the National Guard Bureau, USAR Schools, and troop program units of the Army National Guard and Army Reserve.

The Annual Judge Advocate General's Conference was held at the School in September. Over 150 conferees brought with them up-to-date information on the operation of the Uniform Code of Military Justice at all levels of command.

Enlisted court reporters continued to be tested in non-legal areas requiring knowledge of the Uniform Code of Military Justice by tests prepared at the School.

Four issues of the *Military Law Review* were published during 1965. The Annual Survey of Military Justice was published in the April issue. Additionally, the 1965 Review contained articles, comments, and surveys dealing with the defendant's right to obtain evidence, Article 15, the relationship between judge advocates and Army criminal investigation, military justice in the Philippines, and a comparison of the Turkish and American military systems of nonjudicial punishment.

During 1965, 35 issues of the Judge Advocate Legal Service were published. The Judge Advocate Legal Service continues to insure the rapid dissemination to judge advocates in the field of all recent developments in military justice. In addition to digesting the decisions of the United States Court of Military Appeals and the boards of review, the Judge Advocate Legal Service has included a number of civilian decisions in the area of criminal law. This extensive coverage of all areas of criminal law has been instituted in an attempt to bring more information having bearing on military justice to the attention of judge advocates in the field.

During 1965 the School wrote and distributed common subjects lesson plans on military justice and other matters of concern to all United States Army Service Schools. Additionally, two training films, "The Uniform Code of Military Justice" and "Status of Forces Agreements" were approved by The Judge Advocate General's School.

ROBERT H. MCCAW
Major General, USA
The Judge Advocate General
United States Army

REPORT
of
THE JUDGE ADVOCATE GENERAL
of
THE NAVY

January 1, 1965 to December 31, 1965

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

Following the practice in recent years of having the Code Committee Report reach the Armed Services Committees of Congress shortly after the convening of each new session, this report, although embracing calendar year 1965, contains, unless otherwise indicated, statistical information covering fiscal year 1965.

Courts-martial of all types—general, special and summary—convened within the Navy and Marine Corps totaled 24,565 in FY 1965 as compared to 25,041 in FY 1964. Although not as marked as in the previous two years, the downward trend in courts-martial cases continues. It is believed that the effects of PL 87-648 which increased the nonjudicial punishment authority of commanding officers remain a major factor in the continued decrease. Other factors considered to have an influence upon the reduction in the number of cases are the stress placed upon value of leadership in the Navy; an improvement in quality of personnel in the Navy; and improvements in the administration of discipline and military justice in the Navy.

Navy Boards of Review received for review during FY 1965 264 general courts-martial and 2,158 special courts-martial as compared to 338 general courts-martial and 2,375 special courts-martial during FY 1964. Of the 2,422 cases received for review by Boards of Review during FY 1965, 56% of the accused requested counsel (1,367 cases). A more detailed statistical report is attached as Exhibit A.

The Navy has, over the years, been encouraging officer-lawyer representation of accused before special courts-martial who request such representation to the maximum extent consistent with the performance of other necessary duties of such officers. To determine the extent to which such representation has been accorded during the last two calendar years, substantially all records of trial by special court-martial were reviewed. The following are the results of that review:

	<i>Navy</i>	<i>Marine Corps</i>
Calendar year 1964:		
Percentage of total BCD-cases in which accused was represented by an officer lawyer.....	45.27%	9.68%
Percentage of total non-BCD cases in which accused was represented by an officer lawyer	40.60%	6.96%

Calendar year 1965:		
Percentage of total BCD-cases in which accused was represented by an officer lawyer -----	50.70%	12.18%
Percentage of total non-BCD cases in which accused was represented by an officer lawyer -----	41.14%	9.74%

For many years considerable concern has existed in various areas as to the impact the Uniform Code of Military Justice may have in time of war upon the conduct of combat operations. The present conflict in Vietnam provides a testing ground for many of the procedures and concepts which were new with the Code, and may reveal areas within which changes should be sought for application in time of war. The Navy and Marine Corps are therefore conducting studies to determine whether such areas exist and to identify fields of extreme difficulty that are being encountered in the trial of offenders in combat areas.

As mentioned in my previous report, an Ad Hoc Committee consisting of representatives of the Judge Advocates General of the Army, Navy and Air Force has been preparing an updated Manual for Courts-Martial with a view to having it published in loose-leaf form. A second draft of the revised Manual was completed by the Committee and the individual services have now submitted their comments on this draft. An effort is being made currently to resolve the differences of opinion reflected by the proffered comments. As soon as agreement is achieved, an early publication date for a revised Manual for Courts-Martial is anticipated.

The informal newsletter "Off the Record", mentioned in my previous reports, has been continued with considerable success. The increased benefits which were anticipated as a result of changes in format and enlargement of content have been realized during the past year.

Since one of the most important functions of a president of a special court-martial is properly, fully and correctly to instruct the court in applicable law (which is far from a simple or easy task in even the most routine cases), it was considered imperative that maximum guidance be provided to such functionaries for the most frequently recurring situations. Accordingly, a publication was prepared during this year for use primarily by non-lawyer presidents of special courts-martial, which is intended as a supplement to the Special Courts-Martial Trial Guide for Presidents and Members (NAVPERS 10096.1962) and to provide general guidance to presidents of special courts-martial in performing their instructional function. This publication should be distributed to field commands within the very near future.

I mentioned in my previous report that, for reasons of economy

and more effective performance of court-martial review functions, it was planned to consolidate four small units of the Office of the Judge Advocate General of the Navy and the functions of the West Coast Office into a field branch. On 15 March 1965, the Navy Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, Washington, D. C., was established under an Officer in Charge. The mission of the activity is: To process and review courts-martial cases as required by Article 66b and c of the UCMJ, to provide officers as appellate government counsel and appellate defense counsel as required by Article 70, UCMJ, and to perform such other functions as the Judge Advocate General may direct.

The U. S. Navy-Marine Corps Judiciary Activity, which has been in operation since 1 July 1962, has continued to provide specially selected judiciary officers to sit as law officers on all general courts-martial convened within the naval establishment. During 1965 there has been a reduction in the number of general courts-martial within the Naval Districts of the East Coast of the United States. On the other hand, the case load serviced by the judiciary activity in the Western Pacific has significantly increased. The greatest part of this increase has been due to the military build-up in Vietnam. As a result of this change in work load, there is under contemplation, at the end of 1965, a reduction of one judiciary officer assigned to the East Coast, and the addition of one judiciary officer billet in the Western Pacific.

The program of providing specially selected officers to serve as law officers has continued to work effectively and efficiently. In addition to their work as law officers, judiciary officers have, when their GCM docket permits, served as presidents of special courts-martial, which has also contributed to the improvement in the quality of judicial proceedings in the Navy and Marine Corps.

The U. S. Naval Justice School, operating under the technical supervision of the Judge Advocate General, continued to offer intensive instruction in the fundamental principles of military justice. During the fiscal year the School afforded instruction in military justice, legal clerk duties and court reporting for a grand total of 2,014 officers and enlisted personnel of all the armed forces. Five regular seven-weeks' classes were convened at the Justice School in Newport, Rhode Island, and one class was convened at Camp Pendleton, California. Eight hundred twenty-five line, staff corps and newly commissioned officer lawyers of the Navy, Marine Corps and Coast Guard completed the regular courses of instruction offered by the Naval Justice School during the fiscal year. Four hundred fifty-four enlisted members of the Army, Navy, Air Force, Marine Corps and Coast Guard

were trained to perform legal clerk and court reporting duties for their respective services. Sixty-nine enlisted personnel, principally Army, received training in closed microphone court reporting. Four hundred forty-seven officers of the Navy, Marine Corps and Coast Guard were given instruction specifically designed to meet the needs of senior officers, and two hundred nineteen junior line officers of the Navy were given special instruction in military justice by officers of the Naval Justice School staff as a part of the course at the Naval Destroyer School.

In June 1965 the Naval Justice School began the development of new curriculum for a seven-weeks' officer lawyer course. This course is designed for the new direct appointment lawyers of the Navy. The course was offered for the first time in November 1965 and will be offered thereafter as each class of new officer lawyers reports to the school.

WILFRED HEARN,
Rear Admiral, USN,
The Judge Advocate General,
United States Navy.

EXHIBIT A

FISCAL YEAR 1965

General courts-martial		
Received for review under Article 66 -----	264	
Received for review under Article 69 and acquittals ----	75	
Total -----		339
Special courts-martial		
Received for review under Article 66 -----	2,158	
Received for review under Article 65c -----	1	
Reviewed in the field -----	11,015	
Total -----		13,174
Summary courts-martial		
Received for review under Article 65c -----	1	
Reviewed in the field -----	11,051	
Total -----		11,052
Total all courts-martial -----		24,565
Board of Review actions		
On hand for review 1 July 1964 -----	97	
Received for review during FY 1965 -----	2,422	
Total on hand -----		2,519
Reviewed during FY 1965 -----	2,376	
Pending review on 30 June 1965 -----	143	
Total -----		2,519
Findings modified by boards of review during FY 1965 -----	38	
Requests for appellate counsel -----		1,367
U. S. Court of Military Appeals actions		
Petitions forwarded to USCMA -----	245	
Cases certified to USCMA by JAG -----	5	
Total cases docketed with USCMA -----		250
Petitions granted by USCMA -----	13	
Petitions denied by USCMA -----	245	
Total petitions acted upon by USCMA -----		258

REPORT
of
THE JUDGE ADVOCATE GENERAL
of
THE AIR FORCE

January 1, 1965 to December 31, 1965

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

1. Colonel William H. Lumpkin was promoted to the temporary grade of brigadier general, effective 1 June 1965, and was appointed The Assistant Judge Advocate General, 14 June 1965.

2. Complying with the requirements of Article 6(a), Uniform Code of Military Justice, Major General Robert W. Manss visited overseas bases in the United States Air Forces in Europe, Pacific Air Forces, and numerous bases in the United States. General Lumpkin also inspected the legal activities of bases in the United States. Both Generals Manss and Lumpkin attended Bar Association meetings and spoke before many civic, professional, and military organizations during the year.

3. a. The number of records of trial received in the Office of The Judge Advocate General, for review pursuant to Article 66 and for examination pursuant to Article 69, during fiscal year 1965, is shown in the following table:

Total number records received -----	747
Received for review under Article 66 -----	597
General Court-Martial records -----	251
Special Court-Martial records -----	346
Examined under Article 69 -----	150

The Boards of Review modified the findings and/or sentence in 58 cases.

b. The workload of the Boards of Review was as follows:

Cases on hand 30 June 1964 -----	74
Cases referred for review -----	597
Total for review -----	671
Cases reviewed & dispatched -----	604
Cases on hand 30 June 1965 -----	67

c. During the fiscal year 69.3% of the accused, whose cases were reviewed under Article 66, requested representation by Appellate Defense Counsel before Boards of Review.

d. The table below shows the number of cases forwarded to the United States Court of Military Appeals pursuant to the three subdivisions of Article 67(b); and the number of petitions granted during the period:

Cases reviewed and dispatched by Boards of Review -----	604
Number cases forwarded to USCMA -----	207
Cases petitioned -----	202
Cases certified -----	5
Mandatory Review -----	0
Percent total forwarded of total cases reviewed -----	34.3
Petitions granted -----	33
Percent grants of total petitioned -----	16.3
Percent petitions granted of total cases reviewed by Boards of Review -----	5.5

e. During the fiscal year, the following numbers of courts-martial were convened in the Air Force:

General Courts-Martial -----	406
Special Courts-Martial -----	2,287
Summary Courts-Martial -----	2,128
Total -----	4,821

4. Reportable Article 15 Actions, FY 1965:

		<i>Percentage of total num- ber of cases</i>
TOTAL CASES -----	29,999	
Officers -----	272	0.9%
Airmen -----	29,727	99.1
PUNISHMENTS IMPOSED		
Reduction in grade -----	19,551	65.8%
Forfeiture of pay -----	15,895	53.0
Restriction (over 14 days) -----	4,675	15.6
Correctional Custody/Quarters Arrest -----	4,852	16.2
Extra duties (over 14 days) -----	2,889	9.7
Detention of pay -----	141	0.5
MITIGATING ACTIONS		
Appeals taken -----	268	*0.9%
Officers -----	7	
Airmen -----	261	
Appeals denied -----	257	**95.9%
Officers -----	6	
Airmen -----	251	
Suspension of punishment -----	6,549	*21.8%
Officers -----	7	
Airmen -----	6,542	
Other action -----	1,312	*4.4%
Officers -----	4	
Airmen -----	1,308	

*Of total cases

**Of appeals taken

5. The Judge Advocate General's Office supervised and arranged, on behalf of all of the Armed Services, for the publication of Decisions of the United States Court of Military Appeals and Selected Decisions of the Boards of Review of all the Services in the Court-Martial Reports. The same service was also performed

in regard to publishing legal opinions of the Armed Services and opinions of the Army and Air Force Exchange Service in the Digest of Opinions.

6. On 30 September 1965, there were 1,139 Judge Advocates on active duty. Of these, 687 were members of the Regular Air Force, 184 were Career Reserve officers, and 268 were Reserve officers with established dates of separation. The Regular officer strength, however, increased by 85 between 30 June 1964 and 30 September 1965. These new Regular officers were selected through a central screening process by a board of officers sitting at Headquarters United States Air Force. During the year four selection boards were also convened to consider the applications of 993 individuals seeking direct appointment as Reserve officers with a concomitant three year tour of active duty. Because of vacancy limitations, only 140 of these could be selected and all are expected to be called to active duty by 30 June 1966.

7. At the close of the period of this report, there were 81 commands exercising general court-martial jurisdiction.

ROBERT W. MANSS,
Major General, USAF
The Judge Advocate General
United States Air Force

REPORT
of
THE GENERAL COUNSEL
of
THE DEPARTMENT OF THE TREASURY
(UNITED STATES COAST GUARD)

January 1, 1965 to December 31, 1965

REPORT OF THE GENERAL COUNSEL OF THE TREASURY DEPARTMENT

UNITED STATES COAST GUARD

This report of the General Counsel of the Treasury Department is submitted pursuant to Article 67(g) of the Uniform Code of Military Justice, 10 U. S. C. 867(g).

The number of Coast Guard court-martial cases declined slightly from the 1964 figures. Although there were six more special courts-martial this year, there were two less general courts-martial and 24 fewer summary courts. One case was docketed with the Court of Military Appeals, but the Court denied the petition for grant of appeal.

The following table shows the number of court-martial records received during each of the past five fiscal years:

	1965	1964	1963	1962	1961
General courts-martial -----	1	3	6	4	4
Special courts-martial -----	95	89	139	148	162
Summary courts-martial -----	231	255	448	683	586
Total -----	327	347	593	835	752

Analysis of the 96 principal cases (general and special courts-martial) shows that exactly 50% of the persons prosecuted were represented by qualified lawyers. In the preceding year only 38 of 93 accused (41%) had lawyers. Of the 48 accused who had professional counsel, 44 were defended by Coast Guard lawyers; two of these also had civilian counsel; and there were single instances of representation by a civilian attorney alone, and by lawyers from the Navy, the Marine Corps and the Air Force.

As might be expected, certified counsel was more frequently available in cases tried ashore than in cases convened at sea. Thirty-eight men were tried aboard ship by special courts-martial; 12 of these had lawyers, while 26 did not. Of the 58 tried ashore; 36 had qualified counsel; 22 did not.

There were contests in 42 of the cases; 54 were guilty plea trials. Twenty-three of the uncontested cases were aboard ship. Of the 54 accused who entered guilty pleas, 15 had pretrial agreements. Non-lawyer defense counsel negotiated pretrial agreements in five instances.

Bad conduct discharges were imposed against 13 defendants. Only one man who received an approved sentence to a bad conduct discharge was without a lawyer; and in that one case the convening authority suspended the discharge. Eight of the 13 bad conduct discharges originally adjudged were either disapproved or suspended; only five survived the appellate process unsuspending.

Two cases resulted in acquittals, both being shipboard trials. In six other cases the findings and sentence were completely disaffirmed. In one other case the sentence was set aside but the finding of guilty stood. Reductive action was taken on the sentence in 50 other cases. The sentence as imposed by the court was affirmed without change in 37 instances.

The average confinement adjudged was 3.3 months. Confinement was included in only 62 of the 94 sentences. Twenty-four convicted persons had one or more previous convictions. Seven of the 13 receiving bad conduct discharges had previous convictions.

The table below shows the number of cases, out of 96 examined, in which the listed offenses appeared:

Unauthorized absence -----	51
Larceny -----	24
Insubordinate to petty officer -----	8
Missing ship -----	8
Offense against military property -----	7
Assault; aggravated assault -----	6
Failure to obey an order -----	6
Breaking restriction -----	5
Wrongful appropriation -----	5
Conspiracy to commit larceny -----	4
Drunk; disorderly -----	4
Violation of regulation -----	4
Willful disobedience of order -----	4
Dereliction in duty -----	3
Assaulting commissioned officer -----	2
Desertion -----	2
Escape from custody -----	2
False or fraudulent claim -----	2
Issuing bad checks -----	2
Prohibited use or possession of liquor -----	2
Unlawful entry -----	2
Arson -----	1
False official statement -----	1
Forgery -----	1
Gambling with subordinates -----	1
Graft -----	1
Negligently hazarding vessel -----	1
Offense against private property -----	1
Resisting apprehension -----	1

Decisions written upon appellate review in eight of the 96 cases were published in the Court-Martial Reports. Military justice items published in the *Coast Guard Law Bulletin* during the year continued to cover developments in the law and to offer guidance in court-martial practices. Articles included such matters as: confessions obtained in the absence of counsel—the application of *ESCOBEDO v. Illinois*; procedure when person being interrogated asks for counsel; pretrial discovery rights of the defense; guide for introducing evidence of previous convictions, and a collection of larceny cases tried by summary courts-martial with comments as to the suitability of the forum and adequacy of sentences adjudged.

FRED B. SMITH
Acting General Counsel
Treasury Department