

ANNUAL REPORT
of the
U.S. COURT OF MILITARY APPEALS



and the
JUDGE ADVOCATES GENERAL
of the
ARMED FORCES
and the
GENERAL COUNSEL
of the
DEPARTMENT OF TRANSPORTATION

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

**For the Period
January 1, 1967, to December 31, 1967**

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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 TRANSPORTATION
and the
SECRETARIES OF THE DEPARTMENTS OF THE
ARMY, NAVY, AND AIR FORCE

PURSUANT TO THE
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For the Period
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JOINT REPORT
of the
U.S. COURT OF MILITARY APPEALS
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JUDGE ADVOCATES GENERAL
OF THE ARMED FORCES
and the
GENERAL COUNSEL OF THE
DEPARTMENT OF TRANSPORTATION

January 1, 1967, to December 31, 1967

The following is the 16th 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 Transportation to meet annually to survey the operations of the Code and to prepare a report to the Committee on Armed Services of the Senate and of the House of Representatives, to the Secretary of Defense and the Secretary of Transportation, 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 Transportation, 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.

S. 2009, "The Military Justice Act of 1967," was introduced in Congress on June 26, 1967, by Senator Sam J. Ervin of North Carolina. This bill incorporated most of the earlier proposals of Senator Ervin discussed in the 1965 and 1966 annual reports. The Department of the Army was assigned the responsibility for reporting the views of the Department of Defense on this bill. This report has been completed and is being staffed through the Department of Defense.

Turning to developments in the House of Representatives, H.R. 226, a bill proposing extensive changes to the Uniform Code of Military Justice, was introduced on January 10, 1967, by Representative Charles Bennett of Florida. The Department of the Army was also assigned responsibility for expressing the views of the Department of Defense on this bill. The report was completed and staffed through the Department of Defense, but there have been no hearings on the bill.

H.R. 12705 was introduced into Congress on August 30, 1967, by Representative Bennett. This bill combined two Department of Defense-sponsored proposals generally known as the "G" and "H" bills which were discussed and attached to our reports for the year 1964. Hearings on H.R. 12705 were conducted before the House Committee on Armed Services on September 14 and October 26, 1967. Maj. Gen. Kenneth J. Hodson, the Judge Advocate General of the Army, testified in favor of the bill on behalf of the Department of Defense at both hearings. The Code Committee also submitted a letter recommending the passage of H.R. 12705. We note that during the 1967 House hearings, H.R. 12705 was endorsed by all witnesses who testified and by most of those who submitted written statements in behalf of a number of civilian bar associations, veterans organizations, and other groups. The Code Committee continues to recommend legislation embodying the substance of those bills and feels there is now some degree of urgency in this regard. While the Uniform Code of Military Justice appears to be working satisfactorily in Vietnam, operations in Vietnam reinforce our belief that enactment of the proposals contained in H.R. 12705, in particular, would have a salutary effect upon the administration of military justice in that area of conflict as well as generally throughout the armed services. Judge Ferguson continues to have reservations, as detailed in our report for the year 1962, concerning the desirability of some aspects of the proposed legislation.

Representative Bennett also introduced H.R. 12910 into the 90th Congress. This bill will establish a Judge Advocate General's Corps in the Navy. The bill has been passed by both Houses of Congress and was approved by the President on December 8, 1967.

On November 28, 1967, S. 2634 was passed by the Senate. This bill was introduced by Senator Pastore of Rhode Island and would greatly enhance the prestige of the U.S. Court of Military Appeals. H.R. 6044 was introduced in the House of Representatives on February 23, 1967,

by Representative Philbin of Massachusetts. H.R. 6044 would provide the judges of the U.S. Court of Military Appeals with tenure during good behavior, a proposal endorsed by this Committee for many years.

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 U.S. Court of Military Appeals.

Respectfully submitted,

ROBERT E. QUINN,
Chief Judge.

HOMER FERGUSON,
Associate Judge.

PAUL J. KILDAY,
Associate Judge.

KENNETH J. HODSON,
*The Judge Advocate General,
U.S. Army.*

WILFRED HEARN,
*The Judge Advocate General,
U.S. Navy.*

ROBERT W. MANSS,
*The Judge Advocate General,
U.S. Air Force.*

JOHN E. ROBSON,
*General Counsel,
Department of Transportation.*

EXHIBIT A

For the Period
July 1, 1966, to June 30, 1967

Court-Martial Cases

Army -----	49,943
Navy -----	31,431
Air Force -----	3,109
Coast Guard -----	281
Total -----	<u>84,764</u>

Cases Reviewed by Boards of Review

Army -----	1,424
Navy -----	3,217
Air Force -----	423
Coast Guard -----	9
Total -----	<u>5,073</u>

Cases Docketed With U.S. Court of Military Appeals

Army -----	370
Navy -----	295
Air Force -----	125
Coast Guard -----	4
Total -----	<u>794</u>

REPORT OF THE U.S. COURT OF MILITARY APPEALS

January 1, 1967, to December 31, 1967

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 U.S. 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, the Secretary of Defense, the Secretary of Transportation, and the Secretaries of the Departments of the Army, Navy and Air Force.

I

During fiscal year 1967, 794 cases were docketed with the Court, as compared to 796 cases during the previous fiscal year. Of that number, 30 were forwarded on certificates of the Judge Advocates General of the Armed Services, an increase of 18 over fiscal year 1966. For the sixth consecutive year, no mandatory appeal involving a death sentence or of a general or flag officer was filed. The court granted 102 petitions or 13.3 per cent, reversing in 67.6 per cent of these cases.

A new reporting category entitled "Miscellaneous Dockets" beginning with January 1, 1967, will be reflected in the statistical report. This is being done in view of an increasing number of varied pleadings being filed with the court seeking relief in cases not falling squarely within the provisions of Article 67 of the Uniform Code of Military Justice. For the period of January 1, 1967, to June 30, 1967, there were 10 cases placed in the Miscellaneous Docket numbered series.

II

Volume 16, containing the decisions of the Court for the balance of the 1965 October term and the beginning of the 1966 October term through April 25, 1967, was released in the fall of the year.

The official decisions of the Court are published by the Lawyers Co-Operative Publishing Co., Rochester, N.Y. They serve as the highest judicial precedents within the field of military jurisprudence and occupy a prominent place in the great body of reported decisions which constitute a vital part of the American legal system.

It is interesting to note that the Office of the Staff Judge Advocate, Air Force Accounting and Finance Center, Denver, Colo., agent for the Department of Defense having prime responsibility for the LITE

(legal information through electronics) system, announced on December 12, 1967, that the full text of all of the Court's decisions to date have been and all future decisions upon release will be integrated into the system. As reported in the printed hearings before a Subcommittee of the Committee on Government Operations, House of Representatives, 90th Congress, first session, dated August 1, 1967, LITE is a total text system, which means that every word of a text base—body of material—is stored on magnetic tape and thus made available for machine processing and retrieval. Words, except for 112 common words which have no search value, are assigned locator codes-numbers. By designating words, singly or in combination with other words, which a researcher deems to be pertinent or to capture a concept, he can search the entire text of the relevant body of material. He does this by having the word or words transcribed to data processing cards.

These cards are processed by a computer which finds all locations of the designated word and, if a combination of words is desired, the locations of the designated combination. The output or usable product is in the form of a full text printout, or key word in context—KWIC—with preceding and following words or merely a citation. A citation is provided in all instances even though the user may also request full text or KWIC.

The advantages of LITE, as well as a discussion of the concepts and developmental effort, appear beginning on page 627, Hearings Before a Subcommittee of Committee on Appropriations, House of Representatives, 89th Congress, second session, part 5, which pertained to the Department of Defense appropriations for 1967. In addition, a complete exposition of LITE appears in the U.S. Air Force JAG Law Review, volume VIII, No. 6, November-December 1966.

In summary, LITE is a total text system; hence, the entire source document is available to the researcher. He is not limited to available indices, which in fact reflect the judgment of the indexer who, however expert, cannot foresee all the methods of searching for a document that will be used. The LITE user needs no index in preparing a search. He can be sure that what he has requested will be the subject of a thorough search, unaffected by the fatigue he would inevitably experience if he were able—and patently he is not—to look through large masses of material within an acceptable time frame. The LITE user can have research done for him by the computer with speed, thoroughness and precision, of which humans are incapable.

For an example of LITE's usefulness, the court posed the following research question, which could not be answered save by reading the full text of each decision of the court since its establishment:

Locate all decisions of the Court of Military Appeals wherein the Court stated it would not reverse a decision as a mere, hollow gesture, or futile act.

The response was speedily received setting forth 14 different citations.

Mr. Alfred C. Proulx, Clerk of the Court, at the invitation of the Judge Advocate General of the U.S. Air Force, attended an executive seminar October 9 to 12, at the Air Force Accounting and Finance Center, for a firsthand view of its operation and as to how the decisions of the Court were placed into a separate data base as part of the availability of military justice research from LITE.

III

While in attendance at the annual meeting of the American Bar Association in Honolulu, Hawaii, Chief Judge Robert E. Quinn participated in the activities of the Judge Advocates Association and held a special admission session in the U.S. District Court, District of Hawaii, Federal Building, Honolulu, at 10 a.m. on August 8, 1967. Thirty-two attorneys were admitted on that occasion, affording those who are unable to travel to Washington, D.C., an opportunity to become members of the Court's bar by taking the oath in open court before a judge of the U.S. Court of Military Appeals. The Rules of the Court do not provide for membership in absentia.

During the year there were admitted to the membership of the bar of the Court 846 practitioners, for an overall total of 13,310 members as of December 31, 1967. Included in the membership are 130 accredited women attorneys. In addition, honorary membership certificates were presented to two attorneys of allied nations, raising this number to 66, from the following countries: Argentina (1); Australia (1); Burma (3); Chile (1); China (5); Indonesia (2); Iran (9); Korea (11); Nicaragua (1); Pakistan (3); Philippines (13); Sweden (1); Thailand (5); and Vietnam (10).

IV

On February 15, 1967, the Court was honored by the visit of Capitan de Corbeta Conrado Osvaldo Vinas of the Argentine Navy. Later in the year on October 17, 1967, Comodoro (Col.) Jorge Damidnovich Oliviera, the Deputy Judge Advocate General of the Argentine Air Force, paid a call upon the judges and was given a tour of the Court's facilities.

V

Chief Judge Quinn addressed the Stanford University Law Forum at Palo Alto, Calif., on April 5, 1967. The following day he visited the U.S. Air Force Academy at Colorado Springs, Colo., and spoke to the assembled cadets. With this visit at the Air Force Academy, he has now addressed cadets and midshipmen at each of the military academies, the U.S. Military Academy, the U.S. Naval Academy, and the U.S. Coast Guard Academy, during his tenure of office. On October 28, 1967, he accepted another invitation to speak to the cadets at the

U.S. Military Academy at West Point through the medium of TV facilities.

Chief Judge Quinn received the 1967 Loyalty Award of the District of Columbia, Department of the Veterans of Foreign War, on April 30, 1967, an award presented annually since 1961 to a leader in the community as an outstanding example of devotion to duty and loyalty to country. Past recipients of the award have included Secretary of State Dean Rusk, and the Director of the Federal Bureau of Investigation, J. Edgar Hoover.

On May 1, 1967, Chief Judge Quinn was principal speaker at the Law Day Luncheon Banquet in Charlotte, N.C., sponsored by the District Bar of the 26th Judicial District of North Carolina, the largest bar association of the State. Later in the month, on May 20, 1967, he spoke at the Fourth Annual New England Trial Judges Conference dinner in Newport, R.I.

During the period of July 17 to 28, 1967, Chief Judge Quinn together with some 30 judges from the U.S. Supreme Court, the U.S. Court of Appeals, and the State Supreme Courts participated in the Appellate Judges Seminar held at New York University School of Law. Of vital interest to him were the discussions on appellate review in criminal cases involving such questions as guilty pleas, necessity of an adequate record, and consequences of improper in-custodial interrogation.

Associate Judge Homer Ferguson, together with Associate Judge Paul J. Kilday, attended the annual Military Law Committee dinner, District of Columbia Bar Association, held at the National Lawyers Club on February 15, 1967.

Associate Judge Ferguson attended the first annual conference of Navy and Marine Corps staff legal officers which was held at the Washington Navy Yard, September 12 to 15, 1967.

On January 26, 1967, Associate Judge Homer Ferguson, Commissioner Cabell F. Cobbs, and Commissioner Benjamin Feld inspected the facilities at the U.S. Marine Corps Schools, Quantico, Va. Judge Ferguson spoke on military justice subjects to a group of Marine Corps attorneys and participated in a subsequent discussion of mutual problems.

Because of the increasing number of men entering the Armed Forces and the corresponding increase in interest in military matters, Chief Judge Quinn and Associate Judge Ferguson appeared on television programs to speak on the Court and the state of military justice in the armed services.

Commissioner Feld was designated to represent the Court at the 47th Annual Convention of the Federal Bar Association, and, in particular, to participate in the military law and justice discussions, held in San Francisco, Calif., July 26 to 29, 1967.

Commissioner Daniel F. Carney, at the invitation of the Judge Advocate General of the Army, addressed the Law Officer Seminar at the Judge Advocate General's School, Charlottesville, Va., on August 9, 1967. At the request of the Commandant of the School, he spoke to the students of the 46th Basic (Special) Class on April 11, 1967, and the Career Officers of the 16th Advanced Class on December 8, 1967. An address was also delivered by Commissioner Carney to the U.S. Naval Reserve Intelligence Division 5-2 on December 12, 1967, at the Navy Yard, Washington, D.C.

VI

Congressman Philip J. Philbin of Massachusetts introduced H.R. 6044 on February 23, 1967, a bill identical to H.R. 3179, 88th Congress, which had been passed by the U.S. House of Representatives on July 9, 1963. S. 1295, a companion bill to H.R. 6044, was introduced in the U.S. Senate by Senator John Pastore of Rhode Island on March 15, 1967. The text of H.R. 6044 and S. 1295 reads as follows:

A BILL

To provide that judges of the United States Court of Military Appeals shall hold office during good behavior, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 867 (a) (article 67(a)) of title 10, United States Code, is amended to read as follows:

"(a) (1) There is a United States Court of Military Appeals, established under article I of the Constitution of the United States and located for administrative purposes only in the Department of Defense. The court consists of three judges appointed from civil life by the President, by and with the advice and consent of the Senate. Not more than two of the judges of that court may be appointed from the same political party, nor is any person eligible for appointment to the court who is not a member of the bar of a Federal court or the highest court of a State. The President shall designate from time to time one of the judges to act as chief judge. Each judge shall hold office during good behavior, and is entitled to the salary, allowances, perquisites, rights of resignation, and retirement benefits provided for judges of the United States courts of appeals, including survivor benefits for widow and dependent children, and shall be similarly excluded from coverage under sections 2251-2267 of title 5, United States Code. The chief judge of the court shall have precedence and preside at any session which he attends. The other judges shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age. The court may prescribe its own rules of procedure and determine the number of judges required to constitute a quorum. A vacancy in the court does not impair the right of the remaining judges to exercise the powers of the court.

"(2) Judges of the Court of Military Appeals may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

"(3) If a judge of the Court of Military Appeals is temporarily unable to perform his duties because of illness or other disability, the President may assign a judge of the United States Court of Appeals for the District of Columbia to fill the office for the period of disability.

"(4) If a judge of the Court of Military Appeals desires to retire for disability, he shall furnish to the President a certificate of disability signed by the chief judge. If a judge of the Court of Military Appeals who is eligible to retire by reason of being permanently disabled from performing his duties does not do so, and a certificate of disability signed by the chief judge of the Court of Military Appeals is presented to the President, and the President finds that such judge is unable to discharge efficiently all the duties of his office by reason of permanent mental or physical disability and that the appointment of an additional judge is necessary for the efficient dispatch of business, the President may make such appointment by and with the advice and consent of the Senate. Whenever any such additional judge is appointed, the vacancy subsequently caused by the death, resignation, or retirement of the disabled judge may not be filled. Any judge whose disability causes the appointment of an additional judge shall, for purpose of precedence, service as chief judge, or temporary performance of the duties of that office, be treated as junior in commission to the other judges of the court."

SEC. 2. The United States Court of Military Appeals established under this Act is a continuation of the Court of Military Appeals as it existed prior to the effective date of this Act, and no loss of rights or powers, interruption of jurisdiction, or prejudice to matters pending in the Court of Military Appeals before the effective date of this Act shall result. A judge of the Court of Military Appeals so serving on the day before the effective date of this Act shall for all purposes, including salary, allowances, perquisites, rights of resignation, and retirement benefits including survivor benefits for widow and dependent children, be a judge of the United States Court of Military Appeals under this Act, and shall serve until the expiration of the term of office for which he was originally appointed: *Provided, however*, That the President, by and with the advice and consent of the Senate may at any time after the effective date of this Act appoint him to hold office during good behavior under section 1 of this Act. Retirement benefits of a judge serving on the effective date of this Act shall accrue from the date of his original appointment, and he may make a written election concerning survivor benefits, in the manner provided by section 376 of title 28, United States Code, within six months of the effective date of this Act.

SEC. 3. Notwithstanding any other provision of this Act, no judge of the United States Court of Military Appeals shall upon resignation, or retirement for disability or length of service, be paid, on account of his judicial service or any other Federal service, a salary or annuity or combination thereof, the total of which exceeds the salary of a judge of the United States Court of Military Appeals.

Both bills were referred to the Senate and House Armed Services Committees, respectively, where they are still pending.

Later in the year, on November 7, 1967, Senator Pastore introduced S. 2634, stating the following on the floor of the Senate:

Mr. President, I send to the desk, for reference to the appropriate committee, the bill with the following explanation. Well over 17 years ago, after careful and thorough analysis of the state of discipline and justice in our Armed Forces, the Congress enacted the Uniform Code of Military Justice. That action was taken in response to the many complaints from all segments of our society about the injustices visited upon our servicemen in the name of military justice. Without retracing painful ground, I believe it is sufficient to observe that the hearings then conducted satisfied the Congress of the essential validity of those complaints.

For the first time in our history, the Uniform Code established a single court-martial system for all of the services and, at the apex of the tribunals there

provided for, it placed the Court of Military Appeals. This court consists of three judges appointed from civilian life by the President, with the advice and consent of the Senate. It reviews the records of trial by courts-martial in the following cases: First, all cases in which the penalty affects a general or flag officer, or extends to death; second, all cases which the Judge Advocate General orders forwarded for review; and, third, all cases which, upon petition of the accused and on good cause shown, the court has granted a review.

Functioning as the supreme court of the military services, the Court of Military Appeals has consistently interpreted the Uniform Code in the spirit in which the Congress enacted it. By insisting upon high professional performance by all personnel involved at all levels of the court-martial system, and upon strict compliance with the Uniform Code, it has eliminated many of the justified grounds for the complaints lodged against the earlier procedures. To a great extent public confidence in the essential fairness of courts-martial has been restored at all levels of our society and, during their tenures of office, a Chairman of the Joint Chiefs of Staff, and an Army Chief of Staff, have declared that under the code, the Army has achieved the highest state of discipline and good order in its history.

Despite the enviable record this judicial tribunal has established, I am shocked to learn that there yet remain pockets of resistance to the objectives of the Uniform Code, and misconceptions of the status of the military's supreme court. If these were mere academic matters, they would not warrant more than passing notice. But the portents of expressed beliefs that the Court of Military Appeals is merely an administrative agency are so fraught with the danger that such beliefs will inspire attempts to circumvent the court's mandates and thus increase the difficulties of its already burdensome responsibilities, that action is required.

This legislation will curb all attempts to revert to a rejected view of the nature and objectives of military justice, and will lay at rest any lingering doubts about the status of the court.

The proposed legislation makes no change in the basic structure or functions of the Court of Military Appeals. Rather, it expressly confirms the original intent of the Congress to establish a legislative court under article I of the Constitution as a necessary and proper means of carrying into execution our constitutionally imposed duty 'To make rules for the Government and regulation of the land and naval forces.' Implicit in this confirmation is the recognition of the effectiveness of the court, and a declaration of our firm resolve to eliminate any obstacle to the continued success of its judicial endeavors.

On November 27, 1967, the bill as amended by the Senate Armed Services Committee was reported out favorably and passed the U.S. Senate on November 28, 1967. The bill as passed reads as follows:

A BILL

To amend section 867(a) of title 10, United States Code, in order to establish the Court of Military Appeals as the United States Court of Military Appeals under article I of the Constitution of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 867(a) (article 67(a)) of title 10, United States Code, is amended to read as follows:

"(a) (1) There is a United States Court of Military Appeals established under article I of the Constitution of the United States and located for administrative purposes only in the Department of Defense. The court consists of three judges appointed from civil life by the President, by and with the advice and consent

of the Senate, for a term of fifteen years. The terms of office of all successors of the judges serving on the effective date of this Act shall expire fifteen years after the expiration of the terms for which their predecessors were appointed, but any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Not more than two of the judges of the court may be appointed from the same political party, nor is any person eligible for appointment to the court who is not a member of the bar of a Federal court or the highest court of a State. Each judge is entitled to the same salary and travel allowances as are, and from time to time may be, provided for judges of the United States Court of Appeals, and is eligible for reappointment. The President shall designate from time to time one of the judges to act as chief judge. The chief judge of the court shall have precedence and preside at any session which he attends. The other judges shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age. The court may prescribe its own rules of procedure and determine the number of judges required to constitute a quorum. A vacancy in the court does not impair the right of the remaining judges to exercise the powers of the court.

"(2) Judges of the United States Court of Military Appeals may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, or for mental or physical disability, but for no other cause.

"(3) If a judge of the United States Court of Military Appeals is temporarily unable to perform his duties because of illness or other disability, the President may designate a judge of the United States Court of Appeals for the District of Columbia to fill the office for the period of disability.

"(4) Any judge of the United States Court of Military Appeals who is receiving retired pay may become a senior judge, may occupy offices in a Federal building, may be provided with a staff assistant whose compensation shall not exceed the rate prescribed for GS-9 in the General Schedule under section 4332 of title 5, and, with his consent, may be called upon by the chief judge of said court to perform judicial duties with said court for any period or periods specified by such chief judge. A senior judge who is performing judicial duties pursuant to this subsection shall be paid the same compensation (in lieu of retired pay) and allowances for travel and other expenses as a judge.

"SEC. 2. The United States Court of Military Appeals established under this Act is a continuation of the Court of Military Appeals as it existed prior to the effective date of this Act, and no loss of rights or powers, interruption or jurisdiction, or prejudice to matters pending in the Court of Military Appeals before the effective date of this Act shall result. A judge of the Court of Military Appeals so serving on the day before the effective date of this Act shall, for all purposes, be a judge of the United States Court of Military Appeals under this Act."

The accompanying Senate Report No. 806 submitted by Senator Richard Russell, Chairman of the Committee, sets forth the purpose and what the bill does :

PURPOSE

The Court of Military Appeals was established by Public Law 81-506, the Uniform Code of Military Justice. The Uniform Code of Military Justice covers both the substantive and procedural law governing military justice and its administration in all the Armed Forces of the United States. The code was designed to provide for uniformity in the administration of military justice, to

assure the accused a fair trial, and to prevent undue control or interference with the administration of military justice.

As a result of the inadequacies, deficiencies, and injustices of the court-martial system as it existed before and during World War II, the Congress created the Court of Military Appeals as the civilian interpreter of military law and as the overseer of the court-martial system.

The congressional intent was that the Court of Military Appeals be a court in every significant respect. Despite this clear intent, there have been contentions that the court is not a court at all but is an instrumentality of the executive branch or an administrative agency within the Department of Defense. Such a contention may have been inadvertently supported by a provision in the law that the Court of Military Appeals is "located for administrative purposes in the Department of Defense." This provision was adopted only to reduce expenditures for the administration of the relatively small staff of the court. The phrase "for administrative purposes" was meant merely to authorize the Department of Defense to furnish such things as telephone services, transportation facilities, and to purchase supplies. The court justifies its own budget and funds are appropriated for its operations with no control exercised by the Department of Defense.

The judges of the court are appointed for terms of 15 years and may be removed by the President "for neglect of duty or malfeasance in office, or for mental or physical disability but for no other cause." The judges are eligible to participate in the Federal civil service retirement system. The bill proposes no change in either the term of office or the retirement benefits of the judges.

Redesignation of the Court of Military Appeals as the U.S. Court of Military Appeals and the declaration in law that the court is established under article I of the Constitution are intended to reaffirm the congressional intent that the court be the civilian supervisor of the administration of military justice and the final interpreter of the requirements of military law.

WHAT THE BILL DOES

The bill provides that the present Court of Military Appeals be redesignated the U.S. Court of Military Appeals. It makes no change in the basic structure or functions of the court. The change in name and the declaration that the court is established under article I of the Constitution, which gives the Congress the power to make rules for the government and regulation of the land and naval forces, are intended to counter contentions that the court is an instrumentality of the executive branch or that it is an administrative agency within the Department of Defense.

The salary and travel allowances of the judges of the U.S. Court of Military Appeals would be assimilated to those of judges of the U.S. courts of appeals. Since the establishment of the Court of Military Appeals in 1950, the salary of the judges has been the same as the salary of judges of the U.S. courts of appeals but the basic law establishing the Court of Military Appeals provides a specific salary and travel allowances for judges of the Court of Military Appeals. To avoid a multiplicity of legislation when judicial salaries and allowances are changed, the assimilation provision in the bill will permit judges of the U.S. Court of Military Appeals to continue to receive the same salary as judges of the U.S. courts of appeals.

In the event of a temporary disability by one of the judges, the bill would permit the President to designate a judge of the District of Columbia circuit of the U.S. Court of Appeals to fill the office during the period of such temporary disability. Since judges of the District of Columbia may be given functions

under article I and article III of the Constitution, this specific designation authority should resolve any possible question about whether a purely article III judge may be designated to perform the duties of a judge of a legislative court under article I.

The bill provides that retired judges of the U.S. Court of Military Appeals may perform judicial duties with their consent and upon the request by the chief judge of the court. Retired judges would be called senior judges and they could occupy offices in a Federal building. They could be provided a staff assistant in a grade not higher than that of the equivalent of GS-9. Since the court is a three-judge court, this provision would make available a retired judge if an active judge becomes disabled or dies or if an increase in workload causes the court's docket not to be current. This provision should also serve to limit the occasions for assignment of a judge of the U.S. Court of Appeals for the District of Columbia to serve during a period of disability.

S. 2634 was forwarded to the U.S. House of Representatives for concurrence and was referred to the House Armed Services Committee. No action was taken prior to the adjournment of the first session of the 90th Congress.

VII

There is attached hereto a detailed analysis of the status of the cases which have been processed by the court since the commencement of its operations in 1951 (exhibit A).

Respectfully submitted,

ROBERT E. QUINN,
Chief Judge.
HOMER FERGUSON,
Associate Judge.
PAUL J. KILDAY,
Associate Judge.

EXHIBIT A
STATUS OF CASES
U.S. COURT OF MILITARY APPEALS
CASES DOCKETED

Total by services	Total as of June 30, 1965	July 1, 1965 to June 30, 1966	July 1, 1966 to June 30, 1967	Total as of June 30, 1967
Petitions (art. 67(b)(3)):				
Army.....	10,096	402	354	10,852
Navy.....	4,213	229	288	4,730
Air Force.....	4,225	150	119	4,494
Coast Guard.....	46	3	3	52
Total.....	18,580	784	764	20,128
Certificates (art. 67(b)(2)):				
Army.....	142	5	16	163
Navy.....	203	5	7	215
Air Force.....	75	2	6	83
Coast Guard.....	6	0	1	7
Total.....	426	12	30	468
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	¹ 37
Total cases docketed.....	19,043	796	794	² 20,633

¹ Flag officer cases: 1 Army and 1 Navy.

² 20,238 cases actually assigned docket numbers. Overage due to multiple actions on the same cases.

COURT ACTION

	Total as of June 30, 1965	July 1, 1965 to June 30, 1966	July 1, 1966 to June 30, 1967	Total as of June 30, 1967
Petitions (art. 67(b)(3)):				
Granted.....	1, 930	112	102	2, 144
Denied.....	16, 199	672	612	17, 483
Denied by memorandum opinion.....	2	0	0	2
Dismissed.....	15	0	3	18
Withdrawn.....	338	6	11	355
Disposed of on motion to dismiss:				
With opinion.....	8	0	0	8
Without opinion.....	40	0	1	41
Disposed of by order setting aside findings and sentence.....	3	2	0	5
Remanded to board of review.....	163	5	0	168
Court action due (30 days) ¹	47	42	80	80
Awaiting replies ¹	20	18	16	16
Certificates (art. 67(b)(2)):				
Opinions rendered.....	413	14	15	442
Opinions pending ¹	2	2	15	15
Withdrawn.....	7	0	0	7
Remanded.....	2	0	0	2
Disposed of by order.....	1	0	0	1
Set for hearing ¹	0	0	0	0
Ready for hearing ¹	0	0	0	0
Awaiting briefs ¹	2	0	2	2
Mandatory (art 67(b)(1)):				
Opinions rendered.....	37	0	0	37
Opinions pending ¹	0	0	0	0
Remanded.....	1	0	0	1
Awaiting briefs ¹	0	0	0	0
Opinions rendered:				
Petitions.....	1, 670	98	97	1, 865
Motions to dismiss.....	11	0	0	11
Motions to stay proceedings.....	1	0	0	1
Per curiam grants.....	36	4	8	48
Certificates.....	364	11	14	389
Certificates and pctitions.....	47	2	1	50
Mandatory.....	37	0	0	37
Remanded.....	2	0	0	2
Petitions for a new trial.....	2	0	0	2
Petitions for reconsideration of:				
Denial order.....	3	2	1	6
Opinion.....	0	1	0	1
Petition for new trial.....	1	0	0	1
Motion to reopen.....	1	0	0	1

See footnotes at end of table.

COURT ACTION—Continued

	Total as of June 30, 1965	July 1, 1965 to June 30, 1966	July 1, 1966 to June 30, 1967	Total as of June 30, 1967
Opinions rendered—Continued				
Petitions in the nature of writ of error coram nobis.....	0	1	1	2
Petition for writ of prohibition.....	0	0	1	1
Total.....	2, 175	119	123	2, 417
Completed cases:				
Petitions denied.....	16, 199	672	612	17, 483
Petitions dismissed.....	15	0	3	18
Petitions withdrawn.....	338	6	11	355
Certificates withdrawn.....	7	0	0	7
Certificates disposed of by order.....	1	0	0	1
Opinions rendered.....	2, 167	119	123	2, 409
Disposed of on motion to dismiss:				
With opinion.....	8	0	0	8
Without opinion.....	40	0	1	41
Disposed of by order setting aside findings and sen- tence.....	3	2	0	5
Writ of error coram nobis by order.....	2	0	0	2
Motion for bail denied.....	0	1	0	1
Remanded to board of re- view.....	164	5	0	169
Total.....	18, 944	805	750	20, 499
Miscellaneous dockets January				
1967 to present:				
Pending.....			5	5
Granted.....			0	0
Denied.....			2	2
Withdrawn.....			0	0
Dismiss.....			2	2
Opinion rendered.....			1	1
Total.....			10	10

See footnotes at end of table.

COURT ACTION—Continued

	Pending completion as of—		
	June 30, 1965	June 30, 1966	June 30, 1967
Opinions pending.....	10	17	32
Set for hearing.....	0	0	0
Ready for hearing.....	1	0	0
Petitions granted—awaiting briefs.....	9	7	4
Petitions—court action due 30 days.....	47	42	80
Petitions—awaiting replies.....	20	18	16
Certificates—awaiting briefs.....	2	0	2
Mandatory—awaiting briefs.....	0	0	0
Total.....	89	84	134

¹ As of June 30, 1965, 1966, and 1967.

² 2,417 cases were disposed of by 2,398 published opinions. 124 opinions were rendered in cases involving 69 Army officers, 30 Air Force officers, 17 Navy officers, 5 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.

**REPORT OF
THE JUDGE ADVOCATE GENERAL OF THE ARMY**

January 1, 1967, to December 31, 1967

The number of persons tried by courts-martial for fiscal year 1967 (average strength total Army, 1,430,009) follows:

	Convicted	Acquitted	Total
General.....	1, 805 (94%)	97 (6%)	1, 902
Special.....	33, 293 (96%)	1, 442 (4%)	34, 735
Summary.....	12, 385 (93%)	921 (7%)	13, 306
Total.....	47, 483 (95%)	2, 460 (5%)	49, 943

Records of trial by general court-martial received by the Judge Advocate General during fiscal year 1967:

For review under Article 66.....	1, 484
For examination under Article 69.....	336
Total	1, 820

Workload of the Army boards of review during the same period:

On hand at the beginning of period.....	207
Referred for review.....	¹ 1, 585
Total	1, 792
Reviewed	1, 424
Pending at close of period.....	368
Total	1, 792

¹ This figure includes 26 cases which were referred to boards of review pursuant to article 69, Uniform Code of Military Justice, and 61 cases on rehearing or reconsideration.

Actions taken during the period July 1, 1966, through June 30, 1967, by boards of review:

Affirmed	931
Sentence modified.....	381
Charges dismissed.....	16
Findings and sentence disapproved in part.....	32
Findings disapproved in part.....	9
Findings approved, sentence disapproved.....	7
Findings and sentence disapproved in part, rehearing ordered.....	41
Findings disapproved in part, rehearing ordered.....	1
Rehearing ordered as to sentence only.....	2
Sentence commuted	4
Total	1, 424

Of the 1,424 accused whose cases were reviewed by boards of review pursuant to article 66 during the fiscal year, 958 (67.3 per cent) requested representation by appellate defense counsel. The records in the cases of 370 accused were forwarded to the U.S. Court of Military Appeals pursuant to the three subdivisions of article 67b. These comprised 26 percent of the number of these cases reviewed by boards of review during the period. Of the mentioned 370 cases, 354 were forwarded on petition of accused and 16 were certified by the Judge Advocate General.

The actions taken by the Court of Military Appeals on Army cases for fiscal year 1967 were as follows:

Opinions on petitions:	
Affirmed -----	18
Reversed -----	28
Certification:	
Affirmed -----	0
Reversed -----	2
Mandatory review:	
Affirmed -----	0
Reversed -----	0
Petitions denied -----	275
Petitions granted -----	59

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.

U.S. ARMY JUDICIARY ACTIVITIES

In July 1967, the U.S. Army judiciary conducted a seminar at the Judge Advocate General's School for mobilization designees assigned as law officers and one officer assigned to the Examination Division. In addition to the nine mobilization designees, six Army active duty law officers and two active duty officers from the Navy trial judiciary attended the seminar.

In October 1967, the U.S. Army judiciary conducted the Army Judge Advocates Judicial Conference at Charlottesville, Va. Twenty-five conferees, including law officers and members of the boards of review, attended the conference.

LEGISLATION AND MILITARY JUSTICE PROJECTS

H.R. 226, a bill proposing extensive changes to the Uniform Code of Military Justice, was introduced on January 10, 1967, by Representative Charles Bennett of Florida. The Department of the Army was assigned the responsibility for expressing the views of the Department of Defense on the bill. The report was completed and staffed

through the Department of Defense, but there have been no hearings on the bill. S. 2009, "The Military Justice Act of 1967," was introduced in Congress on June 26, 1967, by Senator Sam Ervin of North Carolina. The bill incorporated most of the earlier proposals of Senator Ervin discussed in the 1965 and 1966 annual report. The Department of the Army was also assigned the responsibility for reporting the views of the Department of Defense on this bill. This report has been completed and is being staffed through the Department of Defense. H.R. 12705 was introduced into Congress on August 30, 1967, by Representative Bennett. This bill combined two Department of Defense-sponsored proposals generally known as the "G" and "H" bills. Hearings on H.R. 12705 were conducted before the House Committee on Armed Services on September 14, and October 26, 1967. I testified in favor of the bill on behalf of Department of Defense at both hearings.

My office continued to take action to improve the administration of military justice during 1967. A course for young officers in the field and one for prospective special courts-martial counsel has been referred for inclusion in Army Subject Schedule 21-10 in order to further improve the administration of military justice in special courts-martial cases.

PERSONNEL

At the end of fiscal year 1967, after 390 appointments of captains, JAGC, during the year, the total officer strength of the Corps was 1264—528 were Regular Army, 70 career-reservists, and 612 "obligated tour" officers. The Regular Army authorized spaces remain at 786. Regular Army losses numbered 43; Regular Army gains were 75.

The excess leave program is still our largest source of Regular Army input; 36 officers in excess leave status graduated from law school during 1967. It is anticipated that the program will continue to have a total of 105 Regular Army officers in law school, thus providing an input into the Corps of 35 officers per year.

EDUCATION AND TRAINING

During calendar year 1967, the Judge Advocate General's School, U.S. Army, provided resident instruction for 1,100 students. This instruction was presented in 18 courses.

Two cycles of the 11-week basic course were conducted at the school during 1967. The 46th Basic Class of 124 students, including an allied officer from the Republic of Vietnam, was graduated in April. The 47th Basic Class of 109 students, including one student from Korea and one from Iran, was graduated in December. A new Judge Advocate Officer Orientation Course was inaugurated for new members of

the Judge Advocate General's Corps having prior military experience other than ROTC.

The 15th Judge Advocate Officer Advanced Course was graduated from the school in May of 1967. Among its 28 officer-students were one officer from the U.S. Navy and two from the U.S. Marine Corps; the remainder were from the Judge Advocate General's Corps. The 16th Advanced Course began in September 1967 and will graduate from the school in May 1968. It is composed of 32 students, including one officer of the U.S. Navy, two officers from the U.S. Marine Corps, one officer from Iran, and one from the Republic of China.

In addition to the Basic, Orientation, and Advanced Courses, a number of short functional courses were conducted during calendar year 1967. These courses were: Law in Vietnam (two cycles), Procurement Law (three cycles), Civil Law, Military Justice, Military Affairs, Civil Affairs, International Law, the Judge Advocate Refresher Course, the Law Officer Seminar, and a Special Training Program for War Crimes Detachments, USAR. Attendance numbered over 700 students, including representatives from the Navy, Marine Corps, Air Force, Departments of Defense and Interior, Post Office Department, Veterans' Administration, General Accounting Office, General Services Administration, Federal Aviation Agency, Federal Highway Administration, Atomic Energy Commission, and the National Aeronautics and Space Administration.

A new edition of the text on the law of claims, DA Pam 27-162, was published in 1967. Nine issues of the Procurement Legal Service, and the fourth bound compilation of that periodical, DA Pam 715-50-4, were also published.

The annual Judge Advocate General's Conference was held at the school in October. Over 180 conferees were in attendance. The operation of the Uniform Code of Military Justice at all levels of command was discussed along with many other legal subjects.

The school continued to oversee qualification of enlisted personnel as legal clerks and court reporters through preparation and administration of standard qualifying tests requiring knowledge of the Uniform Code of Military Justice.

In the four issues of the Military Law Review published during 1967, articles on military justice topics continued to predominate. Volume 35 was a "UCMJ 15th Anniversary Issue." Included were a foreword by the Judge Advocate General, an article by Chief Judge Robert E. Quinn of the Court of Military Appeals, and articles on the controversy antedating the 1920 Articles of War reforms, the hung jury problem, the law officer's right and duty to comment on the evidence, the then-current "mere evidence" rule, and illegally obtained evidence.

During 1967, 32 issues of the Judge Advocate Legal Service were published, to insure rapid dissemination of recent military justice developments to judge advocates in the field. This newsletter includes digests of all Court of Military Appeals and published Army Board of Review decisions, and selected military affairs opinions and civilian court decisions.

The Judge Advocate General's School's series of common subjects lesson plans on military justice and other military legal subjects was completely revised in 1967. In addition, a new Legal Clerk's Handbook was issued and, for exposure of the general public to the subject of military law, a new Judge Advocate General's Corps display and a full-length feature for nationwide television were prepared. The feature for television was titled "Soldiers at Law" and will be presented on the Army's television series "The Big Picture." The feature portrays the work of a typical judge advocate officer in the field.

READJUSTMENTS TO MEET VIETNAM REQUIREMENTS

The requirements for personnel in Vietnam continued to rise during the year. There are now 104 officers "in-country," an increase of 19 officers from the beginning of the year. Because of the troop buildup in Vietnam, a new judicial area, the IXth, and a new judicial circuit, the Seventeenth, were established in Saigon to cover Vietnam and Okinawa. In October 1967 the law officer strength in Vietnam was increased from two to three. In addition, another board of review was established, and the authorized strength of the judiciary was increased by 14 military and nine civilian spaces.

KENNETH J. HODSON,
Major General, USA,
The Judge Advocate General,
U.S. Army.

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

January 1, 1967, to December 31, 1967

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 1967, contains, unless otherwise indicated, statistical information covering fiscal year 1967.

Courts-martial of all types—general, special, and summary—convened within the Navy and Marine Corps increased from 26,936 in fiscal year 1966 to 31,431 in fiscal year 1967. There was an increase in each type of case, as indicated by the figures set forth below:

Type case	Fiscal year 1967	Fiscal year 1966	Increase	Percent of increase
General court-martial.....	553	355	198	36
Special court-martial involving BCD.....	2, 890	2, 141	749	26
Special court-martial not involving BCD..	14, 633	12, 506	2, 127	15
Summary court-martial.....	13, 355	11, 934	1, 421	11

During fiscal year 1967 Navy boards of review received for review 383 general courts-martial and 2,890 special courts-martial as compared with 249 general courts-martial and 2,141 special courts-martial during fiscal year 1966. Of the 3,273 cases received by boards of review during fiscal year 1967, 1,628 accused requested counsel (50 percent). A more detailed statistical report is attached as exhibit A.

Complying with the requirements of article 6(a), Uniform Code of Military Justice, the Judge Advocate General visited overseas installations in Europe, and the Judge Advocate General, Deputy Judge Advocate General, and senior members of the Office of the Judge Advocate General visited numerous commands within the United States in the supervision of the administration of military justice.

The problems of administering military justice under combat conditions have continued to be the object of study during 1967. These studies indicate that many of the problems can be solved through the passage of legislation presently before the Congress which would amend the Uniform Code of Military Justice.

In 1965 the Secretary of the Navy's Task Force on Military Personnel Retention recommended and the Secretary of the Navy approved the establishment of "law centers" in areas where there are large concentrations of Navy personnel. The concept of these centers is that as many as possible of the Navy lawyers in a particular area will be assigned to a central activity so that the pooling of available talent will make possible greater flexibility of assignment of tasks, more efficient application of experience, improved coordination of services, and, overall, more efficient utilization of the available legal services. The necessity for such centers is to be found in the substantial increase of legal workloads which has occurred in recent years and which promises to develop at an even greater rate in the future.

Pursuant to the Secretary's approval of the concept of law centers, the first of such centers was established on a pilot basis in Norfolk in 1966. Inasmuch as a total of 281,200 active duty naval personnel, retired naval personnel, and dependents of each are located in the Norfolk complex, this location was considered most appropriate as a testing area for the untried organization, procedures, and policies of the new law center. The test period for the Norfolk Law Center proved successful, and it has been established on a permanent basis. A second center has been recommended for San Diego, and feasibility studies are currently in progress with respect to the establishment of law centers in other areas.

As mentioned in my previous reports, an ad hoc committee consisting of representatives of the Judge Advocates General of the Army, Navy, and Air Force has prepared an updated "Manual for Courts-Martial" with a view to having it published in loose-leaf form. The new "Manual for Courts-Martial, United States, 1968" has been approved by the three services and the Secretary of Defense, and is now being staffed by the Bureau of the Budget and the Justice Department for the White House.

The Congress enacted, and the President signed, on December 8, 1967, H.R. 12910 providing for a JAG Corps in the Navy.

In an effort to consolidate ideas as to effective methods of administering the Uniform Code of Military Justice today, a conference of senior legal officers from all major Navy and Marine Corps commands was held in September of 1967 in Washington, D.C. The conference was eminently successful and will prove of help in solving existing problems and in providing ideas for future study and implementation.

The U.S. Naval Justice School 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 2,429 officers and enlisted personnel of all the Armed Forces. Six regular 7-weeks' classes were graduated at the Justice School in Newport, R.I., and one class

was graduated at Camp Pendleton, Calif. Six hundred twenty-five officers of the Navy, Marine Corps, Coast Guard, and one Argentine Navy officer completed the regular nonlawyer courses of instruction offered by the Naval Justice School during the fiscal year. One hundred eighty-nine lawyers of the Navy and Marine Corps completed four 7-weeks' officer lawyer courses. Five hundred fifty-six 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. One hundred three enlisted Navy, Marine Corps, Army, and civilian personnel received training in closed microphone court reporting. Six hundred eighty-nine officers of the Navy, Marine Corps, Coast Guard, Army, Air Force, and foreign officers were given instruction specifically designed to meet the needs of senior officers, and 267 officers of the Navy were given special instruction in military justice by officers of the Naval Justice School staff as part of the course at the Naval Destroyer School.

WILFRED HEARN,
Rear Admiral, USN,
The Judge Advocate General,
U.S. Navy.

EXHIBIT A
Fiscal Year 1967

General courts-martial:	
Received for review under article 66.....	383
Received for review under article 69 and acquittal.....	170
Total	<u>553</u>
Special courts-martial:	
Received for review under article 66.....	2, 890
Received for review under article 65c.....	2
Reviewed in the field.....	14, 631
Total	<u>17, 523</u>
Summary courts-martial:	
Received for review under article 65c.....	0
Reviewed in the field.....	13, 355
Total	<u>13, 355</u>
Total all courts-martial	<u>31, 431</u>
Board of Review actions:	
On hand for review, July 1, 1966.....	122
Received for review during fiscal year 1967.....	3, 273
Total on hand	<u>3, 395</u>
Reviewed during fiscal year 1967.....	3, 217
Pending review on June 30, 1967.....	178
Total	<u>3, 395</u>
Findings modified by boards or review during fiscal year 1967.....	91
Requests for appellate counsel.....	<u>1, 628</u>
Court of Military Appeals actions:	
Petitions forwarded to USMCA.....	288
Cases certified to USMCA by JAG.....	7
Total cases docketed with USMCA	<u>295</u>
Petitions granted by USMCA.....	33
Petitions denied by USMCA.....	<u>218</u>
Total petitions acted upon by USMCA	<u>251</u>

**REPORT OF
THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE**

January 1, 1967, to December 31, 1967

1. During the calendar year, Maj. Gen. Robert W. Manss, the Judge Advocate General, and Brig. Gen. William H. Lumpkin, the Assistant Judge Advocate General, made staff visits to legal offices in the United States and overseas as required by article 6(a), Uniform Code of Military Justice. Generals Manss and Lumpkin also attended various bar association meetings and spoke before numerous civic, professional, and military organizations. The Judge Advocate General hosted a worldwide Major Command Staff Judge Advocates Conference at Headquarters U.S. Air Force in November 1967.

2. *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 1967, is shown in the following table:

Total number records received.....	510
For review under article 66.....	426
General court-martial records.....	163
Special court-martial records.....	263
Examined under article 69.....	84

The boards of review modified the findings and/or sentence in 51 cases.

b. The workload of the boards of review was as follows:

Cases on hand, June 30, 1966.....	55
Cases referred for review.....	426
Total for review.....	481
Cases reviewed and dispatched.....	423
Cases on hand, June 30, 1967.....	58

c. During the fiscal year 70 percent of the accused, whose cases were referred for review under article 66, requested representation by appellate defense counsel before boards of review.

d. The following table shows the number of cases forwarded to the

U.S. 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.....	423
<hr/>	
Number cases forwarded to USCMA.....	125
<hr/>	
Cases petitioned.....	119
Cases certified.....	6
<hr/>	
Percent total forwarded of total cases reviewed.....	29.5
Petitions granted.....	24
Percent grants of total petitioned.....	20.2
Percent petitions granted of total cases reviewed by boards of review....	5.7

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

General courts-martial.....	291
Special courts-martial.....	1,871
Summary courts-martial.....	947
<hr/>	
Total	3,109

3. Reportable article 15 actions, fiscal year 1967

	Number of cases	Percentage of total number of cases
Total cases	26,776	-----
Officers.....	280	1.0
Airmen.....	26,496	99.0
<hr/>		<hr/>
Punishments imposed:		
Officers.....	479	-----
Airmen.....	47,074	-----
<hr/>		<hr/>
Restrictions (over 14 days):		
Officers.....	13	4.6
Airmen.....	5,279	19.9
Quarters arrest/correctional custody:		
Officers.....	3	1.0
Airmen.....	4,701	17.7
Extra duties (over 14 days): Airmen.....	2,412	9.1
Reduction in grade: Airmen.....	17,738	67.0
Forfeiture of pay:		
Officers.....	206	73.6
Airmen.....	15,535	58.6
Detention of pay:		
Officers.....	0	0
Airmen.....	44	.2
Written reprimand:		
Officers.....	257	91.8
Airmen.....	1,365	5.1
<hr/>		<hr/>

	Number of cases	Percentage of total number of cases
Mitigating actions:		
Appeals taken.....	1, 197	¹ 4. 5
Officers.....	19	-----
Airmen.....	1, 178	-----
	-----	-----
Appeals denied.....	1, 029	² 86. 0
Officers.....	16	-----
Airmen.....	1, 013	-----
	-----	-----
Suspension of punishment.....	10, 106	¹ 37. 7
Officers.....	11	-----
Airmen.....	10, 095	-----
	-----	-----
Other action.....	1, 383	¹ 5. 2
Officers.....	4	-----
Airmen.....	1, 379	-----

¹ Of total cases (26,776).

² Of appeals taken (1,197).

4. On April 25, 1967, the Air Force received the decision of the U.S. Court of Military Appeals in *United States v. Tempia*, 16 USCMA 629, 37 CMR 249, an Air Force case which we had previously certified to the Court to determine the effect of *Miranda v. Arizona*, 384 U.S. 336, on military law and on the circumstances of that case. Immediately upon receipt of the decision, the Air Force transmitted to the field a message, advising of the effect of the decision and continuing in effect the previous instructions directing investigators to comply fully with the *Miranda* rules in all interrogations. In August a letter was also sent to the field, stressing the importance of proving detailed compliance with *Miranda* at trial in laying the foundation for the admission of any statement made by the accused during custodial interrogation. Suitable amendments were also made in Air Force Manual 110-5, "Court-Martial Instructions Guide."

5. Publication of the Air Force JAG Law Review, now in its ninth year, was continued. It continues to serve as a potent medium for dissemination of information dealing with important legislative, administrative, and judicial developments in military and related law fields. During the current calendar year, several highly informative articles on matters of contemporary interest in the military justice area were published. For example, "The Implications of *Schmerber v. Cali-*

fornia" appeared in 9 AF JAG L.R. (No. 3), May-June 1967; "The Defense Counsel and the Pretrial Investigation," Blankenship Revisited—Undue Questioning by Court Members," and "Fair Trial and Free Press" appeared in 9 AF JAG L.R. (No. 4), July-August 1967; and "A New Look at Collateral Review of Court-Martial Conviction," "Limitations Upon Prosecution of Offenses Under Article 134," and "Criminal Libel and Slander in the Military" appeared in 9 AF JAG L.R. (No. 6), November-December 1967.

6. The Air Force JAG Reporter, a technical internal publication now published monthly, continues to be a valuable working tool for all the Air Force judge advocates, including those in reserve components. It contains digests of all opinions of the Court of Military Appeals, selected opinions of the boards of review and Federal and State cases containing issues germane to military law. These digests are put on 5- by 8-inch card stock, filed by subject matter, and are readily accessible for research. The judge advocates, therefore, have the latest source of legal thought at their fingertips pending publication of the cases in permanently bound volumes. The Reporter also contains other opinions, notices, and directions for guidance to the judge advocates.

7. The Office of The Judge Advocate General acted as agent for all the armed services in administering a contract with a civilian lawbook publisher for publication of the Court-Martial Reports which contain the decisions of the U.S. Court of Military Appeals and selected decisions of the boards of review of the services. The contract also provided for a separate volume containing a digest of selected opinions of the Judge Advocates General and miscellaneous opinions of civil agencies and tribunals.

8. Recurring error letters and special subject letters were sent to all judge advocates for their guidance in military justice matters.

9. On September 30, 1967, there were 1,239 judge advocates on duty. Of these, 654 were members of the Regular Air Force, 216 were Career Reserve officers (of this number, 75 entered active duty in Career Reserve status and have a 4-year active duty service obligation), and 369 were Reserve officers with established dates of separation. The Regular officer strength decreased by 21 between September 30, 1966, and September 30, 1967.

10. At the close of the period of this report, there were 78 commands exercising general court-martial jurisdiction.

ROBERT W. MANSS,
Major General, USAF,
The Judge Advocate General,
U.S. Air Force.

REPORT OF THE GENERAL COUNSEL OF THE DEPARTMENT OF TRANSPORTATION (U.S. COAST GUARD)

January 1, 1967, to December 31, 1967

On April 1, 1967, pursuant to the provisions of Public Law 89-670, the U.S. Coast Guard became a part of the Department of Transportation. This report is submitted in accordance with article 67(g) of the Uniform Code of Military Justice, 10 U.S.C. 867(g), by the General Counsel of the Department of Transportation.

During the fiscal year which ended June 30, 1967, the number of courts-martial in the Coast Guard continued the steady decline experienced since 1963. All records of trial in the Coast Guard are transmitted to Coast Guard Headquarters either for final review or, if final review has been accomplished in the field, for filing. The table below shows the number of cases received in each of the last 5 fiscal years:

	1967	1966	1965	1964	1963
General courts-martial.....	2	3	1	3	6
Special courts-martial.....	68	95	95	89	139
Summary courts-martial.....	211	212	231	255	448
Total.....	281	310	327	347	593

The Coast Guard Board of Review, which was reconstituted by the General Counsel of the Department of Transportation with the same membership as theretofore existing, considered nine cases during the year, five less than the number reviewed in the previous year. As a result of the Board's action, the findings were modified but the sentence affirmed in three cases; the findings were affirmed but the sentence was reduced in two cases; both findings and sentence were modified in one case; the findings and sentence as approved on review below were affirmed in two cases; and in one case the findings and sentence were set aside, necessitating a retrial. One motion for reconsideration was denied.

In 45 of the 68 special court-martial records examined, the accused was represented by a qualified lawyer. In all but one of the Board of Review's cases the accused had been defended by a lawyer at the trial.

The single exception was a case tried aboard ship in the Antarctic. Lawyers were assigned not only for the accused but also for the Government in every case convened by a district commander.

In the 56 special court-martial cases convened below the level of the district commander, a qualified lawyer was provided for the accused in 33 instances. Twenty-five of these 56 cases were convened by the commanding officer of a ship. Both trial and defense counsel were lawyers in 27 of the 56 trials; additionally, in 11 of the cases, the president of the court-martial was also a lawyer. At three of the trials the only lawyer participating was the president of the court.

The offenses most frequently tried by special court-martial were: Unauthorized absence or desertion, 29 cases; larceny or wrongful appropriation, 14 cases; simple or aggravated assault, 9 cases; possession, use, or sale of marihuana, 9 cases. From the total of 68 special courts-martial, only 11 bad conduct discharges emerged; only one bad conduct discharge survived the appellate process unsuspended.

Of the 211 summary court-martial cases, 105 involved absence offenses. While these cases disposed mainly of minor infractions, occasionally more serious charges were referred for trial by summary court-martial; for example, there were 26 cases of larceny or wrongful appropriation tried by summary courts. One hundred and twenty summary courts were convened aboard ship and 11 others at foreign stations. That the review process benefited the accused who was tried by a summary court is evidenced by the fact that the sentence adjudged was reduced in 97 instances. Twelve of the cases resulted in either acquittal or dismissal of charges.

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