

**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, 1969 to December 31, 1969**

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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**  
**UNIFORM CODE OF MILITARY JUSTICE**

**For the Period**  
**January 1, 1969 to December 31, 1969**

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JUDGE ADVOCATES GENERAL OF THE ARMED FORCES AND THE  
GENERAL COUNSEL OF THE DEPARTMENT OF TRANSPORTATION**

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PORTATION (U.S. COAST GUARD)**

**JOINT 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**  
**January 1, 1969 to December 31, 1969**

The following is the 18th 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 Army, Navy, and Air Force with regard to the status of military justice and 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 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.

On August 1, 1969, the Military Justice Act of 1968 took effect. It represented improvements in military justice long advocated by the Code Committee. The provisions of the act have proved workable and have improved the efficiency and fairness of the military justice system. Certain problems, however, have been noted in the operation of the changes to articles 69 and 73 of the Uniform Code of Military Justice (10 U.S.C. 869 and 873). Respectively, these provisions authorize the Judge Advocate General of a service to review the findings and sentence of a court-martial not reviewed by a Court of Military Review and to grant a new trial upon petition of the accused in any court-martial case. Consideration has been given to recommending legislation which would permit these actions to be accomplished by either the Judge Advocate General or his flag, or general officer designee. The volume of work generated by these amendments is too large for the personal consideration of each Judge Advocate General. Authorizing action by either the Judge Advocate General or his flag, or general officer designee would permit these applications for relief to be considered and resolved more rapidly.

The committee noted that bills governing the issuance of administrative discharges have been reintroduced in both houses of Congress, S. 1266 and H.R. 943, 91st Congress. The Code Committee continues to recommend enactment of legislation that would establish minimum statutory standards for the issuance of administrative discharges and that would correct some of the abuses that have occurred in this area. A majority of the court and the other members of the Code Committee oppose the review by the Court of Military Appeals of administrative discharges under other than honorable conditions. Such a review could hardly be accomplished by the court without enlarging its size and staff and interfering with its efficient administration of military justice.

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 Courts of Military

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.*

WILLIAM H. DARDEN,  
*Associate Judge.*

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

JOSEPH B. McDEVITT,  
*The Judge Advocate General,*  
*U.S. Navy,*

JAMES S. CHENEY,  
*The Judge Advocate General,*  
*U.S. Air Force.*

JAMES A. WASHINGTON, JR.  
*General, Counsel,*  
*Department of Transportation.*

**EXHIBIT A**

**For the Period  
July 1, 1968 to June 30, 1969**

*Court-Martial Cases*

Army -----	76,820
Navy -----	30,246
Air Force-----	2,789
Coast Guard-----	301
<hr/>	
Total -----	109,656

*Cases Reviewed by the Courts of Military Review*

Army -----	2,150
Navy -----	3,555
Air Force-----	377
Coast Guard-----	19
<hr/>	
Total -----	6,101

*Cases Docketed with U.S. Court of Military Appeals*

Army -----	501
Navy -----	365
Air Force-----	144
Coast Guard-----	0
<hr/>	
Total -----	1,010

**REPORT OF THE  
U.S. COURT OF MILITARY APPEALS**

**January 1, 1969 to December 31, 1969**

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 U.S. 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.

**NOMINATION AND CONFIRMATION OF  
JUDGE WILLIAM H. DARDEN**

On January 9, 1969, President Lyndon B. Johnson forwarded to the U.S. Senate the nomination of Judge William H. Darden, of Georgia, to be a member of the U.S. Court of Military Appeals for the remainder of the term of the late Judge Paul J. Kilday, expiring on May 1, 1976. The Committee on Armed Services of the U.S. Senate unanimously reported approval of the nomination on January 14, 1969. Without objection, the nomination was confirmed by the U.S. Senate on the same date. Judge Darden had been serving as a judge since November 13, 1968, under a recess appointment.

**CASES DOCKETED**

During fiscal year 1969, there were docketed 1,010 cases, an increase of 59 cases over fiscal year 1968. Certified cases forwarded to the Court by the Judge Advocates General of the Armed Services totaled 9 as compared with 18 in the previous fiscal year. For the eighth consecutive year, no mandatory appeal involving a death sentence or of a general or flag officer was filed. The court granted 164 petitions of the 1,010 docketed, or 16.3 percent, and released 114 written opinions; and, in 47.3 percent of these cases, the court reversed the decisions of the boards of review in whole or in part.

The "miscellaneous docket" series, established for petitions seeking extraordinary relief outside of the regular appellate procedures,



showed an increase from 22 docketed in fiscal year 1968 to 38 in fiscal year 1969.

### BAR MEMBERSHIP

With an increase of 965 new members during the calendar year, the membership of our bar totals 14,942 as of December 31, 1969. Included in the increase were the 102 attorneys of the Nassau County Bar Association, New York, sponsored by Associate Justice Michael M. D'Auria of the Supreme Court of the State of New York, who were admitted at a special session of the court on May 26, 1969.

Honorary membership certificates were presented to 11 foreign attorneys: seven from the Republic of Vietnam; two from Thailand; one from Israel; and one from Korea.

### ACTIVITIES OF JUDGES AND STAFF MEMBERS

Chief Judge Quinn was invited and attended a Criminal Justice Conference on January 17-18, 1969, sponsored by the Federal Bar Association in cooperation with the Sears Roebuck Foundation and held in the Supreme Court of Rhode Island in Providence. The Conference, spearheaded by U.S. District Judge Raymond J. Pettine, the chairman, Federal Bar Association's Advisory Committee on Criminal Law, and Chief Justice Thomas H. Roberts of the Rhode Island Supreme Court, brought together on common ground in the war on crime the largest concentration of State Supreme Court Justices, State judges, trial and appellate judges of the Federal judiciary, civilian and military, attorneys general, chiefs of police, and members of the bars of the New England States.

Chief Judge Quinn was the keynote speaker on May 1, 1969, at the Ninth Annual celebration of Law Day at Fort Devens, where Central and Northern Massachusetts law enforcement officials were gathered. The chief judge told his audience that "we must dedicate ourselves to the rule of law today more than ever before." He added that "thugs, gangsters, and narcotic pushers are the scourge of our society." He cited cases of riots and other disturbances in many cities throughout the country and the complete disrespect for authority. In concluding, he commented "We must either have a community of law and order or we will have a community of chaos."

Chief Judge Quinn's article entitled "*Some Comparisons Between Courts-Martial and Civilian Practice*," which appeared in the University of California (UCLA) Law Review, volume 15, No. 4, June 1968, was reproduced in the *Military Law Review*, 46 MIL L. REV. 77-97 (1969) (DA Pam 27-100-46, 1 October 1969).

In addition, the chief judge authored an article, "*Military Law: A*

*Twenty-Year Metamorphosis*" for the Cornell Law Forum's special issue on Military Justice, volume 22, No. 1, Fall 1969.

Judge Homer Ferguson addressed a dinner audience of approximately 700 persons in Flint, Mich., on the court's operations in conjunction with Law Day activities in that city on April 24, 1969.

Judge Ferguson also delivered the commencement address to the first class of Military Judges at the Judge Advocate General's School in Charlottesville, Va., on May 24, 1969.

Judge William H. Darden was guest speaker at the regular monthly luncheon meeting of the Pentagon Chapter of the Federal Bar Association on Tuesday, March 11, 1969, at the Bolling Air Force Base. On this occasion he was presented an honorary membership in the Chapter by the Federal Bar Association President-elect Paul E. Treusch.

Judge Darden administered the oath to the Chief Judge, Col. George F. Westerman, JAGC, USA, and to the 11 associate judges of the newly created U.S. Army Court of Military Review at a ceremony held in the courtroom of the U.S. Army Judiciary, on August 1, 1969, the effective date of the Military Justice Act of 1968.

On that same date Judge Darden participated in the ceremony at which Capt. Cecil R. Harrison, JAGC, USN, was sworn in as chief judge of the U.S. Navy Court of Military Review, along with 11 associate judges, who thereupon assumed their respective offices as the highest members of the independent judiciary charged with the solemn responsibility of administering justice among those who constitute the naval forces of our Nation. At the invitation of Chief Judge Harrison, Judge Darden made the following remarks:

This is an auspicious date for those of us who are interested in and have some responsibility for the administration of military justice. It marks the effective date of the Military Justice Act of 1968, another significant step in an evolutionary series of refinements and improvements in the system.

Those of us who are proud of this system are distressed, of course, by uncomplimentary references to military justice in contemporary decisions of courts outside our system and by lingering doubts in the minds of some members of the public that military justice has really changed. These doubts and criticisms can't be dispelled by words alone, of course, but only through performance. Those of us who know the extent of the protections available to members of the armed forces today have reason to suspect that the continued attacks on military justice and prejudice against it betray either a refusal to judge the system as it exists today, instead of during an earlier period when there were some abuses that are not tolerated now, or else a deep-seated hostility to anything that is military in nature. None of us would contend that perfection exists, but we do have reason to ask that the critics take an up-to-date reading and make a current assessment of how we might do better. We would like to disabuse the doubters of the impression that concepts of fairness and justice come as revealed truths only to those who have absolutely nothing to do with

defending our country or of the impression that once a person becomes associated with the armed forces he necessarily becomes part of a gigantic conspiracy to repress and harass and punish nearly everybody else.

After this flight of hyperbole, I should comment more directly in point. In addition to my official pleasure that the new law creates the title of Military Judge, effective today, I am personally pleased that many of you who are taking this oath are persons whose friendships I have enjoyed during times when both you and I were in different jobs. Although most of the Senate staff work on the Military Justice Act of 1968 was performed by the staff of Senator Ervin's Subcommittee on Constitutional Rights, I also did some work on the bill. At the time of its passage, I had no reason to think that today I would be involved in its application. I am extremely pleased that I have the privilege of being with you today and of administering this oath. I congratulate each of you as you assume a new title. I know each of you will continue and redouble his conscientious efforts to make military discipline just and fair. I hope I can join you in contributing to such an objective.

Chief Judge Quinn, Judge Ferguson, Judge Darden, and Mr. Alfred C. Proulx, the clerk of the court, attended the annual Military Law Committee dinner, District of Columbia Bar Association, held at the Officer's Club, Walter Reed Army Medical Center, Washington, D.C., on the evening of May 21, 1969.

At the invitation of the Judge Advocate General of the U.S. Army, Judge Darden and Mr. Proulx were in attendance at the 1969 Judge Advocate General's Conference held at The Judge Advocate General's School in Charlottesville, Va., during the period of July 14-18, 1969. The central theme of the conference was the Military Justice Act of 1968, including the new Manual for Courts-Martial, both of which were effective August 1, 1969.

Mr. Alfred C. Proulx, clerk of the court, as a representative of the court, attended the annual meeting of the American Bar Association held in Dallas, Tex., during the month of August 1969. In conjunction with the American Bar Association meeting, he participated, together with the Judge Advocates General of the services, in the annual meeting of the Judge Advocates Association, by reporting on the status of the court's work.

Mr. Proulx also attended the 1969 Navy Judge Advocate General's Conference held in Washington, D.C. during the period of October 14-17, 1969. The program covered many topics of general interest, with emphasis on the Military Justice Act of 1968, the Manual for Courts-Martial, 1969 (revised), the law centers, and military judges.

Chief Commissioner Daniel F. Carney was invited to speak, as in years past, regarding the operations and functions of the court to the students of the 50th, 51st, 52d, 53d, and 54th Basic Classes at the Judge Advocate General's School, Charlottesville, Va., on March 26, June 10,

July 23, October 22, and December 3, 1969, respectively. He also addressed the members of the U.S. Naval Reserve Law Company 5-11 on March 11, 1969 in Washington, D.C., and the U.S. Army Engineer School on "Relationship of Military Law to Subsequent Assignments" on September 24, 1969 at Fort Belvoir, Va.

### U.S. SUPREME COURT DECISIONS

The U.S. Supreme Court rendered decisions affecting the application of the Uniform Code of Military Justice in the following three cases. The first two were referred to in the 1968 annual report:

(1) *Augenblick v. United States*, 393 U.S. 348. This decision, released on January 14, 1969 held that a court-martial conviction, final under the provisions of article 76, Uniform Code of Military Justice (10 U.S.C. 876), may not be collaterally attacked in the civil courts except on a petition for writ of habeas corpus. The court further noted but did not decide that a defect of constitutional dimensions adversely affecting the accused *may* justify collateral attack.

(2) *O'Callahan v. Parker*, 395 U.S. 258. This decision, handed down on June 2, 1969, declared that courts-martial have no jurisdiction of offenses cognizable by civil courts and having no military significance. It also bars trial of servicemen for crimes committed against civilians in the civil communities of the country by off-duty personnel.

(3) *Noyd v. Bond*, 395 U.S. 683. On June 16, 1969, the court announced in the instant case that a U.S. Federal district court does not have jurisdiction over the habeas corpus petition of a military prisoner who alleges unlawful confinement pending appeal, and who has not petitioned the U.S. Court of Military Appeals for habeas corpus relief.

### FOREIGN VISITORS

Courtesy visits were made to the court by the following foreign dignitaries:

(1) On March 27, 1969, Judge Trevor George Rapke, Queen's counsel, the Judge Advocate General for the Naval Forces of the Commonwealth of Australia, who has been serving in that position since 1964. He is also a judge of the County Court of Victoria (Australia) and Judge of the Court of Mines since 1958. In addition, he is founding Member of the Australian and New Zealand Society of Criminology, and actively interested in penal reform and the problems of recidivism. Judge Rapke visited the court on a previous overseas study in 1965, at which time he was made an honorary member of the court's bar.

(2) On June 4, 1969, a Turkish delegation headed by the Honorable Sirri Atalay, the Deputy Speaker of the Turkey Senate, accompanied by:

Honorable Rahmi Ergil  
President Supreme Council of Judges

Honorable Atif Hacı Asacglu  
National Deputy

Honorable Necati Volkan  
Deputy Minister of Justice

Honorable İlhan Arıkan  
Justice, Supreme Court of Appeals

Honorable Ali Arcaç  
Justice, Supreme Court of Appeals

Honorable Raif Tosyali  
Associate Judge, High Criminal Court

Honorable Hasan F. Yurtsever  
Justice, Criminal Court of Peace

Rear Admiral Fahri Coker, Turkish Navy  
Chief Prosecutor, Military Court of Appeals

Mr. Selahattin Yertut  
Assistant Public Prosecutor of Ankara

Mr. Vehbi Genç  
Assistant Public Prosecutor of Ankara

Mr. Ercument Beyhan  
Practicing Attorney

Mr. Ziya Estas  
Practicing Attorney

Miss Sayra Araslı  
Joint U.S. Military Mission for Aid to Turkey

Mr. Mustafa Ovacık  
TUSLOG Attorney Advisor

On that same date, Chief Judge Quinn attended a luncheon in the West Conference Room of the U.S. Supreme Court building, hosted by Chief Justice Earl Warren, in honor of the delegation.

(3) On September 4, 1969, a delegation from the Republic of Vietnam, headed by Col. Nguyen Van Duc, director of the Directorate of Military Justice. The party also included :

Lt. Colonel Le Dinh Luc  
Deputy Director  
Directorate of Military Justice

Lt. Col Nguyen Trong Lieu  
Chief, Research Bureau  
Directorate of Military Justice

Major Le Nhuy Hung  
Chief, Studies and Plans Branch, J1  
Joint General Staff

Major Nguyen Dinh Tri  
Chief Prosecutor  
Third Mobile Field Court

Mr. Nguyen The Cuong  
Deputy Prosecutor  
Court of First Instance, Saigon

Col. Van Duc presented to the court a plaque as a memento of appreciation for the welcome extended him and his group.

(4) On October 2, 1969, two associate justices of the Supreme Court of Vietnam, the Honorable Nguyen Van Bien and the Honorable Nguyen Mong Bich, accompanied by Col. George F. Westerman, JAGC, USA, the chief judge of the U.S. Army Court of Military Review. Justice Bich had made a former visit to the court in 1966, at which time he was a Colonel in the military and was serving as the director of Military Justice.

(5) On October 27, 1969, Maj. Avraham Frish, a member of the Judge Advocate Section, Israel Defense Force, visiting the United States to study the military justice system of our armed services.

#### **JUDGE PAUL J. KILDAY**

The November–December 1968 issue of the Air Force JAG Law Review was dedicated to the memory of the late Judge Paul J. Kilday, who died suddenly on October 12, 1968, with the following note :

#### **IN MEMORIAM**

All members of the Judge Advocate General's Department share the feeling of loss occasioned by the passing of Judge Paul J. Kilday of the U.S. Court of Military Appeals. Appointed to that Court in 1961, Judge Kilday had had an outstanding career as lawyer, district attorney, and Congressman from Texas.

As a member of the House Armed Services Committee for 22 years, he helped draft many of the postwar laws pertaining to the Military Services, including the Uniform Code of Military Justice.

We respectfully dedicate this Special Issue of the Law Review to the memory of this distinguished attorney, legislator, and jurist.

(S) Robert W. Manss  
ROBERT W. MANSS,  
*Major General, USAF*  
*The Judge Advocate General*  
*United States Air Force.*

The memory of Judge Kilday was also honored, along with judges and members of the District of Columbia Bar who passed away during 1968, at the District of Columbia Bar Association memorial services held in the Ceremonial Courtroom of the U.S. Courthouse on May 28, 1969.

### STATUS OF CASES

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.*

WILLIAM H. DARDEN,  
*Associate Judge.*

**EXHIBIT "A"**

**Status of Cases**

**U.S. Court of Military Appeals**

**CASES DOCKETED**

Total by services	Total as of June 30, 1967	July 1, 1967 to June 30, 1968	July 1, 1968 to June 30, 1969	Total as of June 30, 1969
<i>Petitions (art. 67(b)(3)):</i>				
Army-----	10,852	468	499	11,819
Navy-----	4,730	354	363	5,447
Air Force-----	4,494	111	139	4,744
Coast Guard-----	52	0	0	52
Total-----	20,128	933	1,001	22,062
<i>Certificates (art. 67(b)(2)):</i>				
Army-----	163	6	2	171
Navy-----	215	7	2	224
Air Force-----	83	4	5	92
Coast Guard-----	7	1	0	8
Total-----	468	18	9	495
<i>Mandatory (art. 67(b)(1)):</i>				
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	37
Total cases docketed-----	20,633	951	1,010	<sup>2</sup> 22,594

<sup>1</sup> 2 Flag officer cases; 1 Army and 1 Navy.

<sup>2</sup> 22,202 cases actually assigned docket numbers. Overage due to multiple actions on the same cases.



## COURT ACTION

	Total as of June 30, 1967	July 1, 1967 to June 30, 1968	July 1, 1968 to June 30, 1969	Total as of June 30, 1969
<b>Petitions (art. 67(b)(3)):</b>				
Granted.....	2, 144	121	164	2, 429
Denied.....	17, 483	823	765	19, 071
Denied by memorandum opinion.....	2	3	0	5
Dismissed.....	18	1	0	19
Withdrawn.....	355	19	12	386
Disposed of on motion to dismiss:				
With opinion.....	8	0	0	8
Without opinion.....	41	0	2	43
Disposed of by order setting aside findings and sentence..	5	1	0	6
Remanded to board of review..	168	9	2	179
Court action due (30 days) <sup>1</sup> ..	80	30	100	100
Awaiting replies <sup>1</sup> .....	16	24	14	14
<b>Certificates (art. 67(b)(2)):</b>				
Opinions rendered.....	442	29	9	480
Opinions pending <sup>1</sup> .....	15	0	3	3
Withdrawn.....	7	0	0	7
Remanded.....	2	2	0	4
Disposed of by order.....	1	0	0	1
Set for hearing <sup>1</sup> .....	0	0	0	0
Ready for hearing <sup>1</sup> .....	0	2	0	0
Awaiting briefs <sup>1</sup> .....	2	2	1	1
<b>Mandatory (art. 67(b)(1)):</b>				
Opinions rendered.....	37	0	0	37
Opinions pending.....	0	0	0	0
Remanded.....	1	0	0	1
Awaiting briefs <sup>1</sup> .....	0	0	0	0
<b>Opinions rendered:</b>				
Petitions.....	1, 865	119	99	2, 083
Motions to dismiss.....	11	0	0	11
Motions to stay proceedings...	1	0	0	1
Per curiam grants.....	48	8	1	57
Certificates.....	389	26	6	421
Certificates and petitions...	50	3	3	56
Mandatory.....	37	0	0	37
Petitions remanded.....	2	0	0	2
Petitions for a new trial.....	2	0	0	2
Petitions for reconsideration of:				
Denial orders.....	6	2	1	9
Opinion.....	1	0	0	1
Petition for new trial.....	1	0	0	1
Motion to reopen.....	1	0	0	1
Petitions in the nature of writ of error coram nobis...	2	0	1	3
Miscellaneous Dockets.....	1	4	3	8
<b>Total.....</b>	<b>2, 417</b>	<b>162</b>	<b>114</b>	<b>* 2, 693</b>

See footnotes at end of table.

## COURT ACTION—Continued

	Total as of June 30, 1967	July 1, 1967 to June 30, 1968	July 1, 1968 to June 30, 1969	Total as of June 30, 1969
<b>Completed cases:</b>				
Petitions denied.....	17, 483	823	765	19, 071
Petitions dismissed.....	18	1	0	19
Petitions withdrawn.....	355	19	12	386
Certificates withdrawn.....	7	0	0	7
Certificates disposed of by order.....	1	0	0	1
Opinions rendered.....	2, 409	162	113	2, 684
Disposed of on motion to dismiss:				
With opinion.....	8	0	0	8
Without opinion.....	41	0	2	43
Disposed of by order setting aside findings and sentence..	5	1	0	6
Writ of error coram nobis by order.....	2	1	0	3
Motion for bail denied.....	1	0	0	1
Remanded to board of review..	169	11	2	182
<b>Total.....</b>	<b>20, 499</b>	<b>1, 018</b>	<b>894</b>	<b>22, 411</b>

### Miscellaneous dockets (January 1967 to present):

Pending <sup>1</sup> .....	5	3	4	4
Granted.....	0	0	0	0
Denied.....	2	14	20	36
Denied in memorandum opinion.....	0	0	1	1
Withdrawn.....	0	0	1	1
Dismissed.....	2	6	13	21
Opinion rendered.....	1	4	3	8

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### Pending completion as of—

	June 30, 1967	June 30, 1968	June 30 1969
Opinions pending.....	32	1	55
Set for hearing.....	0	0	0
Ready for hearing.....	0	6	0
Petitions granted—awaiting briefs.....	4	5	12
Petitions—court action due 30 days....	80	30	100
Petitions—awaiting replies.....	16	24	14
Certificates—awaiting briefs.....	2	2	1
Mandatory—awaiting briefs.....	0	0	0
<b>Total.....</b>	<b>134</b>	<b>68</b>	<b>182</b>

<sup>1</sup> As of June 30, 1967, 1968, and 1969.

<sup>2</sup> 2,683 cases were disposed of by 2,659 published opinions. 134 opinions were rendered in cases involving 74 Army officers, 32 Air Force officers, 19 Navy officers, 6 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, 1969 to December 31, 1969  
COURT-MARTIAL ADMINISTRATION**

The number of persons tried by courts-martial for fiscal year 1969 (average Army strength, 1,528,707) follows:

	Convicted	Acquitted	Total
General.....	2, 323	159	2, 482
Special.....	56, 805	2, 792	59, 597
Summary.....	13, 115	1, 126	14, 241
<b>Total.....</b>	<b>72, 243</b>	<b>4, 077</b>	<b>76, 320</b>

Records of trial by general court-martial received by the Judge Advocate General during fiscal year 1969:

For review under article 66.....	1, 938
For examination under article 69.....	480
<b>Total .....</b>	<b>2, 418</b>

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

On hand at the beginning of period.....	446
Referred for review.....	1, 203
<b>Total .....</b>	<b>2, 519</b>
Reviewed .....	2, 150
Pending at close of period.....	369
<b>Total .....</b>	<b>2, 519</b>

<sup>1</sup> This figure includes 36 cases which were referred to boards of review pursuant to article 69, Uniform Code of Military Justice, and 43 cases on rehearing or reconsideration.

Actions taken during fiscal year 1969, by boards of review:

Affirmed .....	1, 350
Sentence modified.....	622
Charges dismissed.....	32
Findings and sentence disapproved in part.....	63

Findings affirmed, reassessment or rehearing on sentence only.....	5
Findings partially disapproved.....	8
Findings and sentence disapproved, rehearing ordered.....	49
Findings affirmed, sentence disapproved.....	2
Findings partially disapproved, rehearing ordered.....	7
Sentence commuted.....	3
Returned to field for new SJA-C/A action.....	7
Case tolled until accused regain sanity.....	2
<b>Total</b> .....	<b>2,150</b>

Of the 2,150 accused whose cases were reviewed by boards of review pursuant to article 66 during the fiscal year 1,556 (72.4 percent) requested representation by appellate defense counsel. The records in the cases of 501 accused were forwarded to the U.S. Court of Military Appeals pursuant to the three subdivisions of article 67(b). These comprised 23.3 percent of the number of these cases reviewed by boards of review during the period. Of the mentioned cases, 499 were forwarded on petition of accused and two were certified by the Judge Advocate General.

The actions taken by the Court of Military Appeals on Army cases for fiscal year 1969 were as follows:

Opinions on petitions		Certification		Mandatory review		Petitions denied	Petitions granted
Affirmed	Reversed	Affirmed	Reversed	Affirmed	Reversed		
15	19	0	0	0	0	403	61

Applications for relief under article 69, as amended by the Military Justice Act of 1968.

25 October 1968 (effective date of amended article 69) to 30 June 1969:

Received .....	327
Processing completed:	
Relief granted.....	66
Relief denied.....	86
Closed—no action required.....	2
<b>Total</b> .....	<b>154</b>
Pending .....	173

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

Under the Military Justice Act of 1968 (hereinafter, "the Act") the U.S. Army Court of Military Review was established on 1 August 1968. The Court, the successor to the Army Boards of Review, has 12 appellate judges, sitting in four panels. As authorized by the act, I designated one of the appellate judges, Col. George F. Westerman, as the chief judge. He, in turn, designated the senior judge of each panel. In addition to changing the title of law officer to military judge, the act also authorized a convening authority to detail a military judge to a special court-martial. To carry out the intent of Congress that a military judge, when available, should preside over special courts-martial, the strength of the U.S. Army Field Judiciary was increased during 1969 from 24 general court-martial judges to a total of 64 military judges, of whom 28 were designated as general court-martial judges, and 36 were designated as special court-martial judges. In addition to those 64 full-time military judges, I also certified 160 part-time judges, who preside over special courts-martial as an additional duty.

To insure that these military judges would be basically qualified to perform their judicial duties, particularly their new sentencing duties, each was required to complete successfully a 2-week military judge course at the Judge Advocate General's School. The U.S. Army Judiciary worked closely with the Judge Advocate General's School in planning and conducting six military judge courses during 1969. The Annual Judicial Conference was held in July at the Judge Advocate General's School in connection with the Judge Advocate General's Conference. The revision of the Military Judge's Guide was completed and distributed during the year.

## LEGISLATION AND MILITARY JUSTICE PROJECTS

Under my direction, a triservice committee under the chairmanship of Col. Dale R. Booth, USA, completed work on the Manual for Courts-Martial, United States, 1969 (revised edition). This new Manual, which implements the Military Justice Act of 1968, was promulgated as Executive Order 11476, dated 19 June 1969, and became effective on 1 August 1969. It superseded the Manual for Courts-Martial, United States, 1969, which had been in effect for only 8 months. New Army regulations, instructional pamphlets, and military justice forms were revised to implement the Manual and the act.

There has been a generally favorable reaction to the administration of justice under the act and the revised Manual for Courts-Martial. The use of lawyer counsel has significantly improved trials by special courts-martial, particularly when a military judge presides over the proceedings. Because of an acute shortage of experienced and quali-

fied judge advocates, military judges have been detailed to only slightly more than one-half of all special courts-martial; initial reports show that when judges are detailed to special courts-martial, 97 percent of the accused have elected trial by judge alone. About two-thirds of the accused in general courts-martial have elected trial by military judge alone. Trial by judge alone has not only decreased trial time and shortened trial records, but has also resulted in a significant saving of line office time. Based on an examination of the first few records of trial by judge alone received in the Army Court of Military Review, Chief Judge Westerman estimates that these will be a considerable saving in appellate review time.

The act brought needed modernization to the administration of justice in the Armed forces. Further experience with and analysis of the operation of the military justice system will undoubtedly show the need for additional changes in the Uniform Code of Military Justice. These changes will be necessary, not only to improve the efficiency of the system, but to maintain the delicate balance between the evolving rights of today's soldier to due process and the rights of society to an effective Armed force.

Several proposed changes in military justice procedures are now under active consideration in my office. One proposal is to transfer sentencing power to the military judge in all noncapital cases. This is the practice in the Federal courts and in the large majority of State courts. It is the rule recommended, without reservation, by the American Bar Association in its Standards on Sentencing Alternatives and Procedures. The reasons for this rule apply equally in the military as in civilian life. Imposition of a proper sentence is not a job for an amateur; it is a difficult task, even for an experienced judge. The part-time court member has neither the time nor the motivation to become knowledgeable about matters of criminology and penology. Further, because of the restrictions of article 37, Uniform Code of Military Justice, little effective guidance can be given to him once he is selected as a member of a court-martial. Thus, sentences adjudged by court members run the gamut from being so severe as to hamper rehabilitation to being too light to permit effective rehabilitation or to have any deterrent effect. The military judge, by study, application, and experience, can develop the know-how to strike a reasonable balance between the frequently competing factors of deterrence and rehabilitation. If the military judge is given sentencing power, the question is then presented whether he should have the normal sentencing alternatives such as the power to suspend all or part of the sentence.

In connection with any proposal to give the military judge substantially the same powers as his civilian counterpart, consideration should be given to broadening his contempt powers so that he can exercise

more effective control over the proceedings, particularly with respect to controlling the conduct of persons outside his courtroom, when their conduct constitutes a direct threat to the right of the accused or the Government to a fair trial.

A second proposal for a change in military justice procedure was brought into sharper focus by the decision of the U.S. Supreme Court in *O'Callahan v. Parker* and recent collateral attacks on courts-martial in the Federal courts. The highest military court, the U.S. Court of Military Appeals, has by its own decisions stated that it is bound to follow the decisions of the U.S. Supreme Court where they are applicable. However, decisions of the U.S. Court of Military Appeals may only be reviewed collaterally in the Federal courts, and then only on the petition of the accused; there is at present no method whereby immediate recourse to the Supreme Court may be had; nor is there any way for the Government to obtain a review of an adverse ruling of the highest military court. The result of this situation is clear when the implication of *O'Callahan v. Parker* is considered. The Supreme Court, of course, decides only those issues actually before it in litigation. Yet each of its decisions may have ramifications which will generate a great deal of collateral litigation. Litigation of a point of law through the Federal courts is a time-consuming procedure. When litigation through the military system of courts is added to this, the resulting delay may be untenable. The deterrent effect of sentences is an important aspect of the military justice system, and this effect is lessened or lost if the resolution of crucial points of law is long delayed. Undue delay in the final disposition of criminal matters is harmful to any judicial system; in the military, undue delay not only breeds contempt for the system, but may have an adverse impact on morale and discipline. For this reason, I have directed a study of legislation which would permit decisions of the U.S. Court of Military Appeals to be reviewed in appropriate cases by the U.S. Supreme Court. While there may be some question concerning the constitutionality of such legislation, I believe that the workload would not impose too great a burden on the high court.

A third proposal for change arose as a result of a consideration of the problems reflected in *Bayhand*, 6 USCMA 762, and *Nelson*, 18 USCMA 177, in connection with the amendment of article 57, Uniform Code of Military Justice, permitting deferment of service of a sentence to confinement pending completion of appellate review. Under present provisions of law, if there is no deferment, the accused remains in confinement and receives credit for service of his sentence to confinement. Yet, in a considerable number of cases, he completes the service of his sentence to confinement before appellate review of his case is complete; in such cases, the accused never becomes a sentenced



prisoner and never receives the benefits of whatever rehabilitation program the confinement facility has to offer. Correctional officials are certain that lengthy confinement of an unsentenced prisoner—who is, in a sense, an “enforced idleness” status—results in a poorly motivated prisoner and jeopardizes his rehabilitation. It seems logical that if a convening authority can defer confinement, he should have concomitant authority to order the confinement executed. Under these circumstances, and in order that confinement facilities not be burdened with trying to comply with meaningless administrative restrictions, it appears highly desirable to permit the convening authority to approve and order a confinement sentence into execution. Such a proposal has been made by the code committee in the past (see, for example, the “F” bill in the code committee report for 1964; see also p. 7 of the code committee report for the period June 1, 1952, to Dec. 31, 1953).

A fourth proposal presently being studied in my office is whether certain offenses of absence without leave and desertion should be prosecuted in Federal courts. At present, Federal courts prosecute cases of draft-dodging and other offenses in violation of the Universal Military Training and Service Act. One recurring and increasing problem within the Army is the disposition of numerous absence offenses, particularly within the United States. Many of these soldiers absent themselves for prolonged periods of time or repeatedly for shorter periods, principally to avoid military service. Some never even complete 8 weeks of basic military training before their ultimate discharge. They fill our confinement facilities and cause innumerable legal, administrative, and fiscal problems. Rarely can such soldiers be motivated to become worthwhile members of the military community. In essence, they are draft-dodgers in uniform. If Federal courts prosecute civilian draft-dodgers, why should they not prosecute “military” draft-dodgers? Consideration is being given to submitting a legislative proposal that would permit trial in Federal courts of all unauthorized absences in excess of 30 days, wherever committed, if the initial absence commenced within 2 years of a soldier’s entry on active military duty. An exception might be made for absences in a combat theater.

## PERSONNEL

The Military Justice Act of 1968, which became effective on 1 August 1969, precipitated an unprecedented increase in the size of the Judge Advocate General’s Corps during the past year. The Judge Advocate General’s School conducted five Basic Officer Courses during the year, and by 31 December 1969, 1,850 judge advocates were on active duty. This figure represents an increase of nearly 400 officers over the previous year.

In order to provide qualified counsel during the implementation stage of the Military Justice Act, a number of non-JAGC attorneys were certified under the provisions of article 27(b), Uniform Code of Military Justice to perform duty as trial and defense in trials by special courts-martial.

The most critical problem facing the Corps continues to be that of retaining experienced officers. Unusually heavy losses of obligated volunteer lawyers with 4 to 5 years of experience, coupled with a steady outflow of retirement eligible officers, have resulted in a 33 percent shortage of field grade officers. The Judge Advocate General's Corps leads all other branches of the Army in this regard.

On 2 December 1969 the House of Representatives passed and sent to the Senate legislation introduced by Congressman Pirnie of New York (H.R. 4296) providing for professional pay for judge advocates. If enacted into law, this bill would provide significant incentives to JAGC officers to remain on active duty and would contribute immeasurably to the solution of the retention problem. The importance of retaining experienced legal officers was pointedly emphasized by a Department of Defense study group which concluded: "The detailed findings of this Group demonstrate that a failure to curb the current outflow of experienced lawyers will, within a few years, drastically impair the ability of those remaining lawyers to render proper and complete legal services within the Armed forces. This conclusion is apparent since, unless the trend is changed, the overwhelming majority of lawyers in uniform will be obligated tour officers recently out of law school who are in the service only as a result of pressure from the draft." With the change in the draft law, the pressure on civilian lawyers to seek commissions has been decreased materially. Under the new law and the new deferment rules, most young lawyers will be exempt from the draft by the time they are admitted to the bar. Thus, it is critically important that a reasonable incentive be available to insure that the Judge Advocate General's Corps remains as a viable organization.

## **EDUCATION AND TRAINING**

During calendar year 1969, the Judge Advocate General's School, U.S. Army, provided resident instruction for 1,342 students. This instruction was presented in 25 courses.

Five cycles of the 10-week Basic Class were conducted at the School during 1969. The 50th Basic Class of 113 students, including two Thai officers, was graduated in April 1969. The 51st Basic Class (76 students) graduated in June 1969; the 52d Basic Class (80 students) in August 1969; and the 53d Basic Class (107 students) in October 1969.

The 54th Basic Class of 97 students, including one Korean officer, was graduated in December 1969. This represents an increase of three classes over the normal two cycles of the Basic Class per year. The increase was necessary to train an additional 400 officers of the Judge Advocate General's Corps in its expansion from 1,400 to 1,800 officers. These additional officers were required to meet the increased counsel requirements of the Military Justice Act of 1968.

The 17th Judge Advocate Officer Advanced Course was graduated from the School in May 1969. It comprised 38 students, including one officer of the U.S. Navy and three officers of the U.S. Marine Corps.

The 18th Advanced Course began in September 1969. Among its 29 officer students are one officer from the U.S. Women's Army Corps, one officer from the U.S. Navy, two officers from the U.S. Marine Corps, and one officer from Iran.

In addition to these general courses, a number of short, functional courses were conducted during calendar year 1969. These courses were: Procurement Law (three cycles); International Law; Civil Affairs Law; Military Justice Course; Labor Law; Civil Law; Military Affairs; Foreign Law; Law in Vietnam (two cycles); JAGC Officer Orientation Course; and the Judge Advocate Refresher Course.

In addition, a new 2-week course was developed for military judges so that they could be certified as judges for courts-martial under the provisions of the Military Justice Act of 1968. Completion of the course has been made a requirement for certification as a military Judge. All members of the Advanced Class complete the course.

Blocks of instruction on the changes made by the act were prepared and published in the Judge Advocate Legal Service. Pursuant to DA Circular 350-84, separate lesson plans were written for field grade officers, company grade officers, and enlisted men, explaining the special responsibilities of each group. This orientation material was filmed, and copies were distributed to each CONUS Army Staff Judge Advocate.

A substantial portion of the School's contribution to the implementation of the Military Justice Act of 1968 was the writing of new regulations and pamphlets and the revision of old publications on military justice. Publications which have been newly written or revised to reflect the act's changes include: DA Pam 27-7, Guide for Summary Court-Martial Trial Procedure; DA Pam 27-10, The Trial Counsel and the Defense Counsel; DA Pam 27-15, Trial Guide for Special Court-Martial; DA Pam 27-16, The Legal Clerk's Handbook; and DA Pam 27-9, Military Judges' Guide.

In 1969, ROTC subject schedules S-402 and S-502, instruction in

military justice, were updated in accord with the Manual for Courts-Martial, 1969 (revised edition), and the Military Justice Act of 1968. Additionally, 6 hours of military justice instruction were written for Branch Officer Career, Associate Branch Officer Career, and USAR School Courses. Presently, uniform lesson plans are being formulated for presenting 15 to 25 hours of instruction on military justice to Branch Basic Officer, Officer Candidate, and Advanced Officer Courses.

To assist in the implementation of the Military Justice Act of 1968, the School distributed 4,268 copies of the new Manual and binders to every active and reserve judge advocate, their commanders, and key members of their headquarters staff. The School also distributed a considerable number of packets of military justice material, particularly guides for military judges in special courts-martial, to judge advocate officers in the U.S. Navy, Marine Corps, and Coast Guard.

The annual Judge Advocate General's Conference was held in Charlottesville during the period 14-18 July 1969, just before the Military Justice Act went into effect (1 August 1969). Two hundred thirty-three conferees attended. Principal speakers were Gen. William C. Westmoreland, Senator Sam J. Ervin, Jr., and Congressman Alexander Pirnie. The principal subject of discussion was the Military Justice Act and its implementation.

In order to improve the quality of military justice in all Army service schools, a legal subjects instructors' conference was held at the School on 17 and 18 March. Improved teaching techniques were covered and discussed, in addition to the changes created by the Manual for Courts-Martial, 1969 (revised edition) and the Military Justice Act of 1968.

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. A special course for legal clerks was developed. The course provides guidance in applying procedure of the military justice system, with emphasis at the special court-martial level.

Four issues of the "Military Law Review" were published during 1969. Volume 45 included an article on the Military Justice Act of 1968 by Senator Sam J. Ervin, Jr., one of the principal sponsors of the act. Volume 46 contains an article by the Honorable Robert Quinn, Chief Judge, U.S. Court of Military Appeals, comparing the military and civilian systems of justice.

During 1969, 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 pamphlet includes digests of all U.S. Court of Military Appeals opinions, all published

Army Court of Military Review opinions, grants, and certifications of review by the Court of Military Appeals, actions of the Judge Advocate General under article 69, Uniform Code of Military Justice, miscellaneous notices and memoranda concerning military justice, selected military affairs opinions, and selected civilian court decisions.

Four issues of the "Procurement Legal Service" were prepared by the School in 1969. In addition, the School and the University of Virginia Law School co-sponsored a 2-day conference on Government contracts.

The School planned the judge advocate phases of LOGEX, the annual logistical exercise conducted at Fort Lee, Va. In May 1969 members of the staff, faculty, and Advanced Course participated in the exercise. New features of LOGEX this year included moot general courtsmartial and the use of computers in solving legal problems.

The collection of materials for the Military Legal Center, established last year, is continuing. During 1969, 11 individual donations to the center were received, including materials on British, French, Korean, and Turkish law, as well as U.S. civil and military legal subjects.

Some \$50,000 was spent during 1969 to complete the filming of instruction for reserve JAGC units, begun last year. These films record the material presented at the School in the areas of military justice, military affairs, procurement, claims, and international law. Study packets and lesson plans have been prepared for use with the films.

KENNETH J. HODSON,  
*Major General, USA,*  
*The Judge Advocate General,*  
*United States Army.*

## REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

January 1, 1969 to December 31, 1969

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 1969, contains, unless otherwise indicated, statistical information covering fiscal year 1969.

Courts-martial of all types—general, special, and summary—convened within the Navy and Marine Corps increased from 28,962 in fiscal year 1968 to 30,246 in fiscal year 1969. The fluctuation in each type of case is set forth below :

Type case	Fiscal year		Increase (+) or decrease (-)	Percent of in- crease or decrease
	1969	1968		
General court-martial.....	929	832	97	12
Special court-martial involving BCD...	2, 808	3, 055	-247	-8
Special court-martial not involving BCD.....	13, 431	12, 885	546	4
Summary court-martial.....	13, 078	12, 190	888	7
<b>Total.....</b>	<b>30, 246</b>	<b>28, 962</b>	<b>1, 284</b>	<b>4</b>

During fiscal year 1969 Navy boards of review received for review 715 general courts-martial and 2,808 special courts-martial (total 3,523) as compared with 587 general courts-martial and 3,055 special courts-martial (total 3,642) during fiscal year 1968. Of the 3,523 cases received by boards of review during fiscal year 1969, 1,637 accused requested counsel (46 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 commands throughout the Far East, the Deputy Judge Advocate General visited commands throughout 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.

On 1 August 1969, 28 new law centers were activated worldwide. There is now a total of 30 law centers as the Norfolk law center and the San Diego law center were already in operation on that date. Experience during the first 5 months indicates that the concept of pooling of available lawyer personnel in central locations is the most efficient method of providing the lawyer personnel required by the Military Justice Act of 1968. Certain limitations are present due to lack of funds and available clerical billets to support the judge advocates manning law centers.

To further implement the provisions of the Military Justice Act of 1968 regarding military judges, the Navy-Marine Corps Judiciary Activity was increased in size from 9 to 17 branch offices with the number of military judges for general courts-martial increased from 12 to 23. Approximately 500 Navy and Marine Corps judge advocates have been certified as military judges to perform in special courts-martial. Effort is being made to insure that as many as possible of those judge advocates who are certified as military judges receive special training. Only those military judges assigned to the Navy-Marine Corps Judiciary Activity sit on general courts-martial. Workload permitting they are also available to sit on special courts-martial. The approximately 500 military judges referred to above are not assigned to the Navy-Marine Corps Judiciary Activity and sit only on special courts-martial.

An increased workload in the office has resulted from the new provision of article 69, Uniform Code of Military Justice, which permits the Judge Advocate General to vacate or modify, in whole or in part, the findings or sentence of certain courts-martial cases which have been finally reviewed under article 76. In calendar year 1969, 71 applications for relief were received, and action was completed in 64 of the cases.

The work of the ad hoc joint services committee to revise the Manual the Courts-Martial has been completed and the Manual for Courts-Martial, 1969, revised, has been published and distributed to all commands within the naval service.

The regulations supplementing the Manual for Courts-Martial contained in the Manual of the Judge Advocate General were completely revised and distributed to the field prior to 1 August 1969, the effective date of the Military Justice Act of 1968. This revision was made necessary by the Military Justice Act of 1968 and the revision of the Manual for Courts-Martial.

A complete revision of the Manual of the Judge Advocate General is now in the final stages of review and will be distributed to the field in the first quarter of 1970.

The U.S. Naval Justice School, which is under the technical supervision of the Judge Advocate General, continues to offer intensive courses of instruction in the fundamental principles of military justice and procedures under the Uniform Code of Military Justice. The School affords instruction in military justice, legal clerk duties and court reporting to officers and enlisted personnel of all the Armed Forces, and provides an officer lawyer course which is designed for the direct-appointment lawyers of the Navy. The course for officer lawyers was increased in length from 7 to 10 weeks. The course of instruction for nonlawyer officers has been reduced in length from 7 to 5 weeks. The change in the length of the courses was brought about by the increased responsibilities of lawyer officers in special courts-martial with a concomitant decrease in the use of nonlawyer counsel in special courts-martial. Of benefit to both lawyer and nonlawyer students is the new Administrative Law Department which was established at the Justice School to provide instruction on subjects other than courts-martial, such as investigations, administrative discharges, and claims.

During the calendar year the School provided instruction in various courses to a total of 2,313 officers and enlisted personnel of all the Armed Forces.

Six nonlawyer officer classes graduated at the Justice School in Newport and one class at Camp Pendleton, Calif. The graduating classes consisted of 585 officers of the Navy, Marine Corps, and Coast Guard. In addition thereto, 316 lawyers of the Navy, Marine Corps, and Coast Guard completed the officer lawyer courses offered by the School.

Five hundred and two officers completed the senior officers' short courses offered at Newport, R.I., and Quantico, Va. Three hundred and one officers completed the Reserve seminars for lawyers offered in Newport, R.I., and Corpus Christi, Tex., and 90 officers of the Navy were given special instruction in military justice by officers of the Naval Justice School staff as part of a course at the Naval Destroyer School.

Six hundred and nineteen enlisted members of the Army, Navy, Marine Corps, and Coast Guard have graduated from six 5-week legal clerk and court reporting courses.

A conference was held in Washington, D.C. of staff judge advocates from all major Navy and Marine Corps commands. The conference, which was held in October, was particularly timely in that the law centers had been in operation for 2 months, and this meeting provided the staff judge advocates with an opportunity to discuss any problems which were being encountered in the field in regard to law centers. The major provisions of the Military Justice Act of 1968 had also



been in effect for 2 months and topics relating to the revised Uniform Code of Military Justice, Manual for Courts-Martial and Manual of the Judge Advocate General were discussed. The judge advocate attendees were provided with information regarding the status of civilian and military cases involving the Supreme Court decision in the case of *O'Callahan v. Parker*. Further discussions were held regarding the current topic of protest and dissent within the Armed Forces.

An annual conference of senior staff judge advocates has proven to be a most valuable method of bringing the judge advocates in the field up to date on developments in military justice and provides a forum for discussion of problems encountered in the field. Plans are now being formulated to hold a similar conference in 1970.

JOSEPH B. McDEVITT,  
*Rear Admiral, USN,*  
*The Judge Advocate General,*  
*United States Navy.*

## EXHIBIT A

### Fiscal Year 1969

#### General courts-martial:

Received for review under article 66.....	715
Received for review under article 69 and acquittal.....	214
<b>Total.....</b>	<b>929</b>

#### Special courts-martial:

Received for review under article 66.....	2,808
Received for review under article 65c.....	1
Reviewed in the field.....	13,430
<b>Total.....</b>	<b>16,239</b>

#### Summary courts-martial:

Received for review under article 65c.....	0
Reviewed in the field.....	13,078
<b>Total.....</b>	<b>13,078</b>

**Total all courts-martial..... 30,246**

#### Board of review actions:

On hand for review 1 July 1968.....	244
Received for review during fiscal year 1969.....	3,523
<b>Total on hand.....</b>	<b>3,767</b>
Reviewed during fiscal year 1969.....	3,555
Pending review on 30 June 1969.....	212
<b>Total.....</b>	<b>3,767</b>

Findings modified or set aside by boards of review during fiscal year 1969..... 84  
Requests for appellate counsel..... 1,637

#### Court of Military Appeals actions:

Petitions forwarded to U.S.C.M.A.....	363
Cases certified to U.S.C.M.A. by JAG.....	2
<b>Total cases docketed with U.S.C.M.A.....</b>	<b>365</b>
Petitions granted by U.S.C.M.A.....	84
Petitions denied by U.S.C.M.A.....	260
<b>Total petitions acted upon by U.S.C.M.A.....</b>	<b>344</b>



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

January 1, 1969 to December 31, 1969

1. Brig. Gen. James S. Cheney, Staff Judge Advocate, PACAF, was named the Assistant Judge Advocate General on 31 January 1969, vice Brig. Gen. William H. Lumpkin, who retired from active duty on the same date. Maj. Gen. Robert W. Manss was relieved as the Judge Advocate General on 30 September 1969 and assigned as Assistant Deputy Chief of Staff/Personnel effective 1 October 1969 and retired from active duty on 1 November 1969. Brig. Gen. James S. Cheney was appointed to the regular grade of Major General effective 30 September 1969 and appointed as the Judge Advocate General on the same date. Generals Manss and Cheney made staff visits to legal offices in the United States and overseas as required by article 6(a), Uniform Code of Military Justice. They also attended bar association meetings, and addressed numerous civic, professional, and military organizations during the year. The Judge Advocate General hosted a worldwide Major Command and General Court-Martial Convening Authority Staff Judge Advocates Conference at Headquarters, U.S. Air Force in November 1969. The Directorate of Military Justice in the Office of the Judge Advocate General was reorganized effective 2 January 1969 and redesignated as the Directorate of USAF Judiciary. The Air Force Trial Judiciary was established as a division within the USAF Judiciary. In accordance with the Military Justice Act of 1968, the Air Force Court of Military Review was established on 1 August 1969.

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 1969, is shown in the following table:

Total number records received.....	515
For review under article 66.....	385
General court-martial records.....	167
Special court-martial records.....	218
Examined under article 69.....	98

The Court of Military Review modified the findings and/or sentence in 70 cases.

*b.* The workload of the Court of Military Review was as follows:

Cases on hand 30 June 1968.....	53
Cases referred for review.....	385
	<hr/>
Total for review.....	438
	<hr/>
Cases reviewed and dispatched.....	377
Cases on hand 30 June 1969.....	61

*c.* During the fiscal year 77.4 percent of the accused, whose cases were referred for review under article 66, requested representation by appellate defense counsel before the Court of Military 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 Court of Review.....	377
	<hr/>
Number of cases forwarded to U.S.C.M.A.....	144
	<hr/>
Cases petitioned.....	139
Cases certified.....	5
	<hr/>
Percent total forwarded of total cases reviewed.....	38.2
Petitions granted.....	18
Percent grants of total petitioned.....	12.9
Percent petitions granted of total cases reviewed by Court of Review....	4.8

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

General courts-martial.....	301
Special courts-martial.....	1,733
Summary courts-martial.....	755
Total .....	2,789

3. Reportable article 15 actions, fiscal year 1969 :

	Number of cases	Percentage of total number of cases
Total cases.....	29, 112	
Officers.....	219	0. 8
Airmen.....	28, 893	99. 2
Punishments imposed:		
Officers.....	358	
Airmen.....	46, 014	
Restrictions (over 14 days):		
Officers.....	15	4. 2
Airmen.....	4, 812	10. 5
Quarters arrest/correctional custody:		
Officers.....	0	0. 0
Airmen.....	4, 075	8. 9
Extra duties (over 14 days): Airmen.....	1, 998	4. 3
Reduction in grade: Airmen.....	18, 418	40. 0
Forfeiture of Pay:		
Officers.....	166	46. 4
Airmen.....	15, 709	34. 1
Detention of pay:		
Officers.....	0	0. 0
Airmen.....	36	0. 1
Written Reprimand:		
Officers.....	177	49. 4
Airmen.....	966	2. 1
Mitigating actions:		
Appeals taken.....	1, 537	<sup>1</sup> 5. 3
Officers.....	13	
Airmen.....	1, 524	
Appeals denied.....	1, 293	<sup>2</sup> 84. 1
Officers.....	13	
Airmen.....	1, 280	
Suspension of punishment.....	10, 981	<sup>1</sup> 37. 7
Officers.....	5	
Airmen.....	10, 976	
Other action.....	1, 562	<sup>1</sup> 5. 4
Officers.....	3	
Airmen.....	1, 559	

<sup>1</sup> Of total cases (29,112).

<sup>2</sup> Of appeals taken (1,537).

4. A revised edition of Air Force Manual 111-1 was published 17 July 1969 and distributed to all Judge Advocates in the field. This revision implements the Manual for Courts-Martial, 1969 (revised edition); incorporates the material previously contained in AFRs 111-2 and 111-6; and reflects the changes brought about by the Military Justice Act of 1968.

5. During 1969, volume XI of the Air Force JAG Law Review was published and distributed. The Law Review is a very important medium for the dissemination of ideas, experiences, and information concerning significant developments in military and related law areas. The Law Review changed from a bimonthly to a quarterly format with an increase in pages per issue and per volume. Of the four issues, two were sponsored by major commands: AFLC, Summer; AFSC, Fall. The Spring issue was a Military Justice special issue devoted to the changes brought about by the Military Justice Act of 1968. Articles were written by leading JAG Military Justice authorities. Several other articles of interest in the Military Justice area were: "Article 105, Misconduct as a Prisoner," Fall, 1969; "Miranda and Military Justice," Spring, 1969; "Of Crimes, Courts-Martial and Punishment—A Short History of Military Justice," Spring, 1969; and "Collateral Attack on Court-Martial Convictions," Fall, 1969. The last article was written by Robinson O. Everett, Professor of Law, Duke University, a noted authority in the Military Justice field, and a reservist assigned to the Special Activities Group, Office of The Judge Advocate General, HQ USAF.

6. The Air Force JAG Reporter was published monthly during this year. This publication contains digests of the latest opinions of the Court of Military Appeals and the Courts of Military Review (formerly boards of review). These digests are printed in the Reporter on 5- by 8-inch perforated card stock with descriptive-word index lines to facilitate filing. Thus, they not only serve as an advance report of the latest developments in the law, but also as a research tool in the interim between release of the opinion and its full-text publication 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 law book publisher for publication of the Court-Martial reports which contains the decisions of the U.S. Court of Military Appeals and selected decisions of the Courts of Military Review of the services. Operational responsibility for LITE (Legal Information Thru Electronics) was transferred by the Assistant Secretary of the Air Force for Financial Management to the Judge Advocate General, USAF, effective 1 July 1969. LITE is a Department of Defense

(DOD) owned, computerized system for the full-text storage and retrieval of legal information. Among the searchable current data bases in the system are: The U.S. Court of Military Appeals and Courts of Military Review (formerly boards of review) decisions and the Manual for Courts-Martial, 1969 (revised edition). LITE searches are available to all DOD agencies without charge and to all other Government agencies on a cost-reimbursement basis.

8. On 30 June 1969, there were 1,178 Judge Advocates on duty. Of these, 617 were members of the Regular Air Force, 294 were Career Reserve officers (of this number, 166 entered active duty in Career Reserve status and have a 4-year active duty service commitment), and 267 were Reserve officers with established dates of separation. The Regular officer strength decreased by 16 and the total officer strength decreased by 45 between 30 June 1968, and 30 June 1969.

9. At the close of the period of this report, there were 77 commands exercising general court-martial jurisdiction.

JAMES S. CHENEY,  
*Major General, USAF,*  
*The Judge Advocate General,*  
*United States Air Force.*





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

January 1, 1969 to December 31, 1969

So far as military justice is concerned, the year 1969 was marked by three especially noteworthy occurrences:

1. The issuance of two new Manuals for Courts-Martial.
2. The taking effect on August 1, 1969, of the provisions of the Military Justice Act of 1968 (Public Law 90-632).
3. The decision of the U.S. Supreme Court in *O'Callahan v. Parker*, 395 U.S. 258.

The Manual for Courts-Martial which became effective on January 1, 1969, was the first revision since publication of the original Manual in 1951. The Military Justice Act of 1968 effected major changes in the Uniform Code of Military Justice and made it necessary to issue a second revised 1969 Manual for Courts-Martial.

Coast Guard supplementary regulations were issued after publication of each of the new Manuals and, responding to the statutory changes, included directions for the detailing of certified lawyers to represent the accused before special courts-martial and instructions for the assignment of military judges to special courts-martial.

The General Counsel certified 44 officer-lawyers of the Coast Guard as qualified for duty as military judges. A few of these officers, who are assigned and directly responsible to the General Counsel or to the Chief Counsel of the Coast Guard as his designee, are eligible to serve as military judges of general courts-martial. The General Counsel also established the Coast Guard Court of Military Review to replace the former board of review and named three civilian and five officer-lawyers as appellate judges.

The Supreme Court's opinion in *O'Callahan v. Parker*, holding that "crimes to be under military jurisdiction must be service-connected," upset previously held views concerning the jurisdiction of courts-martial over civil-type offenses committed by servicemen off post. The impact of this case on military justice may be judged from the fact that within 5 months after announcement of the Supreme Court's decision on June 2, 1969, the U.S. Court of Military Appeals decided 33 cases involving consequential issues. The General Counsel furnished

an opinion for the information and guidance of the Coast Guard which was circulated in the service by ALDIST 59 on 12 June 1969.

ALDIST 17 of March 12, 1969, and ALDIST 96 of September 3, 1969, transmitted messages to the field following publication of the Court of Military Appeals opinions in *United States v. Donohew*, 18 U.S.C.M.A. 149, 39 CMR 149, and *United States v. Care*, 18 U.S.C.M.A. 535, 40 CMR 247. The *Donohew* case required that a detailed inquiry be made at trial to ascertain the accused's understanding of his full rights to counsel. The *Care* opinion delineated procedural requirements for guilty plea cases.

The following table shows the number of court-martial trial records received during the fiscal year ending June 30, 1969, together with figures for the 4 preceding years:

	1969	1968	1967	1966	1965
General courts-martial.....	2	0	2	3	1
Special courts-martial.....	92	91	68	95	95
Summary courts-martial.....	207	216	211	212	231
Total.....	301	307	281	310	327

Eight of the 94 major cases in 1969, including one of the two general courts-martial, resulted in acquittals. Of the 86 convictions, seven were set aside upon review by the convening or supervisory authority. In the remaining 79 cases, the sentence was either reduced or disapproved in 38 instances. Findings and sentences were affirmed without modification in 37 cases. Fifty-one trials were uncontested, the accused having entered pleas of guilty.

The courtroom trials of the 94 major cases engaged the services of 171 lawyers, including eight civilian defense counsel. In the previous year 138 lawyers, including nine civilians, participated in 91 trials. A qualified lawyer represented the accused in 72 of the current year's 94 trials as compared with 63 defense lawyers in 91 trials the preceding year. A full set of three lawyers—president, trial counsel, and defense counsel—functioned in 22 of the 92 special courts-martial tried. As a result of the newly effective instructions for the detailing of qualified defense lawyers and military judges to special courts-martial, it is expected that a higher percentage of such trials will utilize a full set of lawyers in 1970 and that a qualified lawyer will be provided for the accused in a greater number of cases.

A total of 264 offenses were disposed of by special or general courts-martial. AWOL or desertion and missing ship were charged 81 times.

Next in frequency were marihuana and dangerous drug offenses, which totaled 72 (marihuana, 55; hard narcotics, 0; other drugs, 17). The 72 drug offenses accounted for only 19 of the 94 cases; three cases resulted in acquittals; a conviction in a fourth was set aside. Sentences in drug cases included five bad conduct discharges; but only three were affirmed. The average confinement adjudged in this type of case was 4.7 months; confinement was adjudged in 10 cases. The third most frequent offense was larceny or wrongful appropriation, charged 35 times.

Nineteen cases were docketed with the board of review during the fiscal year; only six of these involved contested charges. The findings and sentence were affirmed without modification in 10 cases referred to the board of review; findings were modified in four cases; the sentence was modified in seven cases. Six bad conduct discharges were disapproved upon or following appellate review. Although the record of trial in 10 BCD cases affirmatively indicated that the accused desired a bad conduct discharge, in four of such cases the punitive discharge was not approved.

Action was taken on motion of the Government to accord relief pursuant to article 69 in two summary court-martial cases which had been finally reviewed. The findings and sentence were vacated in one and the sentence modified in the other. One application for relief under article 69 was denied.

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