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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, 1970 to December 31, 1970**

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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, 1970 to December 31, 1970

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

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REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

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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, 1970, to December 31, 1970

The following is the 19th 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 full consideration of legislative amendments to the Uniform Code of Military Justice consistent with the policy and purpose of this committee.

The Code Committee has taken note of recent criticism of the administration of military justice. The committee believes that this criticism is without substantial foundation and that the system of criminal justice in the Armed Forces of the United States is fair and just. Errors may occur in any system of justice administered by fallible humans, but the military justice system is unequalled in the scope of its provisions for the correction of errors. Some of the present criticism seems to be based on incomplete understanding of the Uniform Code of Military Justice and some may be based on dislike for any type of military organization. Constructive changes in the Uniform Code of Military Justice and in the administration of military justice, however, are always desirable. Proposals for change are constantly under study by the Code Committee with a view to the continued improvement of the military justice system.

The Code Committee now has under study and consideration the following subjects:

- (1) Legislation which would expand the power of the military trial judge in contempt matters.
- (2) Legislation which would specify the powers of the Court of Military Appeals, the Courts of Military Review, and military judges to issue writs and orders in aid of their jurisdiction.
- (3) Legislation to permit an appeal to the U.S. Supreme Court from decisions of the Court of Military Appeals in cases involving constitutional questions.
- (4) Legislation to permit the execution of a sentence to confinement at the time the convening authority approves the sentence. Such legislation not only would reduce the pointless and costly segregation of various classes of prisoners, but would permit this class of prisoner to benefit from rehabilitation training.
- (5) Legislation to amend article 69, Uniform Code of Military Justice, to permit limited delegation of the authority of the Judge Advocate General of an Armed Force to correct errors in certain court-martial cases and to give the Judge Advocate General of an Armed Force the authority to correct errors in certain records of trial by general court-martial without the necessity of referring such records to a Court of Military Review.
- (6) Legislation to amend article 62(a), Uniform Code of Military Justice, to permit an appeal of an interlocutory ruling by the prosecution in certain limited categories of cases, such as a ruling that a confession, or evidence obtained as the result of a search, is not admissible,

or a determination that a specification failed to allege an offense. Such a provision would conform military practice to civilian practice (see, for example, the American Bar Association Standards on Criminal Appeals, section 1.4; see also, 18 U.S.C. 3731). Such an appeal would be made to a senior trial judge in the area or to a Court of Military Review. Under current law, such appeals may be made only to the convening authority and only in the limited situation where a specification before a court-martial has been dismissed.

(7) Legislation to relieve the convening authority of responsibility for making a post-trial review of the findings of a court-martial.

(8) Legislation to provide for a system of random selection of court members in general courts-martial and possibly in special courts-martial.

(9) Legislation which would transfer sentencing power to the military judge in all cases, except those involving the death penalty.

The Code Committee notes the increasing shortage of experienced military lawyers. One indication of this shortage is the many *pro forma* errors which are appearing in records of trial by court-martial. These errors can be attributed only to a lack of experience among legal personnel. The Code Committee recommends the increased use of para-professional personnel and that attention be paid to improving the skills and the retention of legal clerks and court reporters. A highly trained para-professional corps would not only save money, but would improve the attractiveness of a career as a military lawyer, as it would permit military lawyers to devote their energy and effort only to those matters requiring a lawyer's skill and training. The passage by Congress of legislation authorizing incentive or professional pay for military lawyers is necessary to raise the experience level of military lawyers to an acceptable level. Judge Darden joins in noting the importance of attracting and retaining well qualified military lawyers. He considers, however, that a decision on whether incentive or professional pay for lawyers is necessary is a part of a military manpower problem that is for determination by Congress, concerning which he should make no recommendation.

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, 1969 to June 30, 1970**

Court-Martial Cases

Army -----	58,999
Navy -----	29,988
Air Force -----	2,600
Coast Guard -----	252
Total -----	91,839

Cases Reviewed by Boards of Review (now Courts of Military Review)

Army -----	2,420
Navy -----	3,825
Air Force -----	321
Coast Guard -----	11
Total -----	6,577

Cases Docketed with U.S. Court of Military Appeals

Army -----	409
Navy -----	429
Air Force -----	142
Coast Guard -----	3
Total -----	983

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

January 1, 1970 to December 31, 1970

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 Committee 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.

CASES DOCKETED

The workload of the Court during fiscal year 1970 has maintained a steady pace with 983 cases docketed as compared to 1010 in fiscal year 1969, a drop in number of 27 cases. Included in the 983 cases are 13 Certificates forwarded by the Judge Advocates General under article 67(b) (2), an increase of 4 over the previous annual period. No mandatory appeal was filed, thus marking the ninth consecutive year since a case under article 67(b) (1) has been submitted for final review.

The court granted 227 petitions or 23 percent of those docketed and, excluding those classified in the miscellaneous docket series, released 237 written opinions. In these opinions 56 percent contained reversals in whole or in part of the decisions of the Courts of Military Review below.

MISCELLANEOUS DOCKET

As recited in the Court's Annual Report for 1969, on June 16, 1969, the U.S. Supreme Court in *Noyd v. Bond*, 395 U.S. 683 (1969), held that a Federal district court does not have jurisdiction of a petition for writ of habeas corpus filed by a military prisoner who has not sought relief in the U.S. Court of Military Appeals. As a result of that decision, this Court's workload in the area designated "miscellaneous docket" has increased significantly. Prior to that decision, the following number of petitions for extraordinary relief under the All Writs Act, 28 USC § 1651(a), were filed during the periods noted:

<i>Year ending</i>	<i>No. of petitions</i>	<i>Year ending</i>	<i>No. of petitions</i>
1966 -----	2	1968 -----	20
1967 -----	24	1969 (thru June 30) -----	25

Subsequent to the release of *Noyd v. Bond* :

1969 (July 1–Dec. 31)-----	53
1970 (thru June 30)-----	46

Representative of the holdings of this court on the subject are the following.

The power of the court to act upon petitions for extraordinary relief is limited to cases in which an accused may properly seek review pursuant to article 67(b), Uniform Code of Military Justice, 10 USC § 867(b). Thus, a conviction which became final prior to May 31, 1951, the effective date of the Uniform Code, is not reviewable under the All Writs Act, *United States v. Homcy*, 18 USCMA 515, 40 CMR 227 (1969). One whose charges have been referred to trial by summary court-martial, or to a special court-martial without a reporter, may not seek extraordinary relief. *United States v. Snyder*, 18 USCMA 480, 40 CMR 192 (1969). Petitions for extraordinary relief may not be filed by one against whom no court-martial proceedings are pending. *Mueller v. Brown*, 18 USCMA 534, 40 CMR 246 (1969).

In *Swisher v. Secretary of Army*, Miscellaneous Docket No. 70-59, 20 USCMA — (1970), the Court declined to exercise jurisdiction of a petition in the nature of mandamus to be directed to the Warden of the U.S. Penitentiary, Leavenworth, Kans., holding :

“[T]his Court’s jurisdiction is limited to the administration of the Uniform Code of Military Justice exclusively within the armed forces of the United States.”

A serviceman in confinement for a period of approximately one year under sentence of a general court-martial is entitled to a Writ of Mandamus to compel the convening authority to review and act upon his case pursuant to Articles 61 and 64, Uniform Code, 10 U.S.C. §§ 861, 864. *Montavon v. United States*, Miscellaneous Docket No. 70-3, 19 USCMA 628 (1970) ; *Hundley v. United States*, Miscellaneous Docket No. 70-64, 20 USCMA — (1970).

A civilian employee, serving with the Armed Forces in Vietnam, is not subject to trial by court-martial (*United States v. Averette*, 19 USCMA 363, 41 CMR 363 (1970)), and charges against him must be dismissed. *Zamora v. Woodson, et al.*, 19 USCMA 403; 42 CFR 5 (1970).

The deferment of a sentence to confinement pursuant to Article 57(d), Uniform Code, 10 U.S.C. § 857(d), may not be vacated by a subsequent commander without independent cause. *Collier v. United States*, 19 USCMA 42 CMR 113 (1970).

In *Mercer v. Dillon*, 19 USCMA 264, 41 CMR 264 (1970), the Court held that the limitations on jurisdiction of courts-martial over certain civilian offenses fixed by *O’Callahan v. Parker*, 395 US 258 (1969), do not apply to convictions which were final prior to *O’Callahan* decision. not apply to convictions which were final prior to the *O’Callahan* decision.

BAR MEMBERSHIP

The membership of the Court's bar now totals 15,751, an increase of 810 members from the last annual report. Among those admitted were Chief Justice Robert K. Shoecraft of the Trust Territory of the Pacific Islands on July 22, 1970.

Fourteen attorneys from foreign lands were awarded Honorary Membership Certificates to the bar: four from the Republic of Vietnam; three from Thailand; two from England; two from Iran; one from Korea; one from Liberia, and one from the Republic of China (Taiwan).

Chief Judge Robert E. Quinn held a special admission session in the Courtroom of the U.S. Court of Appeals for the First Circuit, Boston, Mass., on June 17, 1970. This special admission session had been requested and coordinated by Capt. Anthony J. DeVico, JAGC, USN, Staff Judge Advocate of the First Naval District, in order to afford reservists of all branches of the Armed Forces in the greater Boston area an opportunity to become members of the bar of this court.

Sixty-one individuals, including Hon. Robert H. Quinn, the Attorney General of the State of Massachusetts, were sponsored by Capt. DeVico. The oath was administered by Alfred C. Proulx, the Clerk of the Court.

Before concluding the court session, Chief Judge Quinn, in open court, administered the oath of Military Judge to Capt. DeVico under the provisions of the Military Justice Act of 1968.

After Court adjourned, Chief Judge Quinn was the honored guest at a luncheon given by the admittees at the Officer's Club at the Boston Naval Yard. He was presented with a memento commemorating the event, which carried a seal of the United States Navy affixed to a base made of wood from the gun deck of "*Old Ironsides*", now permanently docked at a pier adjoining the Officer's Club.

ACTIVITIES OF THE JUDGES AND STAFF MEMBERS

Chief Judge Quinn, Judge Ferguson, Judge Darden, and Mr. Alfred C. Proulx, the Clerk of the Court, were guests at the Annual Dinner Meeting of the Military Law Committee of the District of Columbia Bar Association at the Officer's Club of the Walter Reed Army Medical Center on the evening of April 22, 1970.

At the invitation of the Board of Directors of the International Society for Military Law and Law of War, Chief Judge Quinn, Judge Ferguson and Mr. Proulx participated at its Fifth International Congress on Military Law and Law of War, held in Dublin, Ireland, from May 25-31, 1970. The Congress, of interest to all those who devote themselves to the study and practice of military penal law and law of

war, had two principal themes: "*Military Obedience In Internal Penal Law and In Law of War*", and "*Concept of War and Combatant in Modern Conflicts.*"

Among the specific topics discussed at the Congress were:

- (1) *Percentage and treatment of delinquency in military life;*
- (2) *Reevaluation and development of Laws and Constitution applicable in armed conflicts;* and
- (3) *Historical development of the conception of belligerent status of the Law of War.*

Some 350 delegates from 25 different countries were in attendance at the Congress. While in Dublin a visit was made to the Courts of Ireland and a courtesy call was paid to the Chief Justice of the Supreme Court of Ireland, the Honorable Cearbhall O. Dalaigh.

At the conclusion of the Congress the party attended and participated in the 29th meeting of the Interservice Legal Committee, hosted by Gen. James A. Polk, Commander-in-Chief, U.S. Army, Europe, in Berchtesgaden, Germany, on June 1-2, 1970. The committee consisted of approximately 100 senior staff judge advocates of the Army, Navy and Air Force in Europe, Iceland, and Africa, as well as the Judge Advocates General of the Army, Navy and Air Force. Judge Ferguson was the principal speaker at the dinner closing the conference.

On the evening of June 5th, Chief Judge Quinn addressed the German-American Law Dinner in Heidelberg, Germany. Approximately 200 German and American lawyers were in attendance.

While in Europe, the Judges and the Clerk of the Court visited the SHAPE Headquarters in Belgium and attended a command briefing in Heidelberg at Headquarters, U.S. Army, Europe, at which all senior officers of the command were present.

Chief Judge Quinn (1) delivered a lecture to the officers and students of the Military Science Department at the University of Rhode Island, Kingston, R.I., on February 25, 1970. This lecture was welcomed as part of the ROTC instruction on the evaluation of the fairness of the Uniform Code of Military Justice, both to the accused and to the military system.

(2) Attended at the invitation of Chief Justice Bailey Aldrich the Annual Conference of the First Judicial Circuit in Boston, Mass., on May 13, 1970. Chief Judge Quinn also attended, at the invitation of Chief Justice Thomas H. Roberts of the Rhode Island Supreme Court, the Tenth Annual Meeting of the Judicial Conference of Rhode Island on October 3, 1970.

(3) Contributed an article entitled "*Courts-Martial Practice: A View From the Top*" to the *Hastings Law Journal*, Hastings College of Law, University of California, for its 1970 Symposium on Military Law issue publication; and

(4) Addressed the Young Lawyers Section of the Rhode Island Bar Association on the evening of December 2, 1970.

Judge Darden (1) addressed the 18th Advanced Class at the Judge Advocate General's School, Charlottesville, Va., on April 3, 1970.

(2) Served on the panel of Judges, together with the Honorable Roger J. Traynor, former Chief Justice of the California Supreme Court, and the Honorable J. Skelly Wright, Circuit Judge, U.S. Court of Appeals for the District of Columbia, to hear final arguments in the Twentieth Annual Sutherland Cup Appellate Moot Court Competition, involving four Law Schools: The Catholic University of America, Cornell University, Fordham University, and Yale University, on the evening of April 17, 1970.

(3) Visited the Rehabilitation Center of the United States Air Force, known as the 3320th Retraining Camp (Air Training Command), located at Lowry Air Force Base, Colo., on October 23, 1970.

(4) Participated in "A Symposium on Military Justice—Present and Prospective", and served as a panel member in a presentation entitled "The Role of the Military Judge", sponsored by the Military Law and Justice Committee of the Federal Bar Association at their Annual Convention in Washington, D.C., on September 16, 1970.

Mr. Proulx represented the Court at the Annual Meeting of the American Bar Association, held in St. Louis, Mo., August 9–12, 1970. While at this meeting he participated in the annual business meeting of the Judge Advocates Association, convened in St. Louis, on August 10th, reporting on the work of the Court during the past year. He also attended the Federal Bar Association Annual Convention, together with Commissioner Benjamin Feld and the Court's Librarian, Miss Dorothy V. Allport, in Washington, D.C., September 15–19, 1970. At the invitation of the Judge Advocate General of the Navy, he attended the annual 1970 Judge Advocate General's Conference held in Washington, D.C., during the period October 19–23.

Chief Commissioner Daniel F. Carney was the guest speaker at the 54th and 55th Basic Classes of the Judge Advocate General's School, Charlottesville, Va., on March 20 and June 10, 1970, respectively, as well as at the Navy Appellate Review Activity, where he delivered a lecture on ways in which counsel can improve their practice before this Court, in conjunction with their continuing legal education program, at the Washington Navy Yard on April 15, 1970. He also spoke at the weekly meeting of the Naval Reserve Law Company 5–11, held in the United States Court of Military Appeals Courtroom on the "All Writs Act", on the evening of October 6, 1970. An address on this same topic was given by him at the Navy Judge Advocate General's Conference, held in Washington, D.C., on October 22, 1970.

Commissioner Benjamin Feld, having participated as the Court's representative in the Planning Conference on the subject "The Human Rights of the Man in Uniform", held at George Washington University in June 1968 under the sponsorship of the American Veterans Committee, was designated by Chief Judge Quinn to attend the National Conference (at which some 16 national organizations were co-sponsors) on March 19, 1970. The conference was primarily educational. No resolutions or actions were taken. Its main objectives were exchange of information and viewpoints by experts and authorities from the civilian and military sectors and the free and open discussion of the issues involved in the controversial subjects of the rights of men and women in the military service of their Nation.

EXPEDITING APPELLATE REVIEW

At a meeting of the Code Committee held in the Conference Room of the Court building, among the subjects discussed was the desirability of expediting the review of the court-martial record at every stage of the appellate process. It was the opinion of each Judge Advocate General that one of the major delays occurred between the completion of trial and the convening authority's action—a delay attributable to an overall shortage of personnel and court reporters, in particular, in the preparation of the transcript of the record of trial for review. Chief Judge Quinn agreed to bring this matter to the attention of the Secretary of Defense and the following letter was dispatched on November 10, 1970, with the Secretary's response dated November 27, 1970:

UNITED STATES COURT OF MILITARY APPEALS
Washington, D.C., November 10, 1970.

Hon. MELVIN R. LAIRD
Secretary of Defense
Room 3E880 The Pentagon
Washington, D.C.

MY DEAR MR. SECRETARY: During my years as Chief Judge of the United States Court of Military Appeals, I have been impressed with the dedicated efforts of military lawyers to process court-martial cases expeditiously. Recently, however, I have noted a steady increase in the time elapsing between completion of the trial and the convening authority's action. Another disturbing trend is the increase in time required to dispose of cases at the appellate review level. I am passing on to you my thoughts concerning this problem because of its great importance and potential impact upon the orderly administration of military justice within the Department of Defense.

Both the Constitution and the Uniform Code of Military Justice guarantee an accused certain important procedural and substantive rights. Protection of those rights is a prerequisite for a fair and orderly system of military justice. Extensive delays in the processing of a case are often prejudicial to those rights. For example, a record of trial is often received for appellate review after the

accused has already served his sentence to confinement. He therefore does not receive the full benefit of a favorable appellate decision. Furthermore, if the court orders a rehearing, both the Government and the defense bear an additional burden in preparing for it because of this unnecessary passage of time.

Although more and more court-martial chronology sheets are citing "a shortage of court reporters" as a reason for delay in the processing of cases at the trial level, I realize that there may also be other reasons for delay. The greatly increased caseload over the last ten (10) years, the additional missions for service lawyers and judges assigned by the Military Justice Act of 1968, and the critical shortage of experienced judge advocates are undoubtedly major contributing factors to delay at both the trial and appellate levels. In short, then, the delays that I have noted appear to stem largely from personnel shortages. I commend you for your efforts to improve the retention of judge advocates through the use of incentive pay.

Faced with continuing attacks on the military and our system of justice, it is imprudent and unwise not to provide the court reporters and other personnel needed to keep abreast of the greatly increased caseload and thus properly protect the rights of each accused.

Sincerely yours,

(S) Robert E. Quinn
ROBERT E. QUINN
Chief Judge.

THE SECRETARY OF DEFENSE
Washington, D.C., November 27, 1970.

HON. ROBERT E. QUINN
*Chief Judge of the United States Court of Military Appeals,
Washington, D.C.*

DEAR JUDGE QUINN: I have read with interest and concern your letter of November 10, 1970 concerning delays you have noted in the processing of court-martial cases. You indicated that a lack of sufficient court reporters and a critical shortage of experienced Judge Advocates are major contributing factors in the delays at both trial and appellate levels.

I share with you a deep conviction that all constitutional and statutory rights must be fully enjoyed by members of the Armed Forces, in particular the right to expeditious trial and appellate review.

I am making inquiry into the matters raised in your letter. You may be assured that I will continue to do all that is within my power to insure that the administration of military justice within the Department of Defense meets the highest possible standards. With respect to shortages of experienced military lawyers you have correctly noted that the pending incentive pay legislation (H.R. 4296) is one of our principal efforts to improve retention. Unless this legislation passes, I am afraid that this problem will increase.

I appreciate your bringing these matters to my attention.

Sincerely,

(Signed) MEL LAIRD.

FOREIGN VISITORS

During the year various foreign officials visited the Judges and the court facilities. On September 10, 1970, Lt. Gen. Ghaesem Amidi, the Chief Judicial Officer, and Maj. Gen. Zeia Farsui, Prosecutor-General, Imperial Iranian Armed Forces, who were in the United States as guests of the U.S. Army Judiciary, were received at the court.

A group of general officers from Great Britain, including Air Vice Marshal J. E. Allen-Jones, Director for Legal Services for the Royal Air Force, Maj. Gen. Harry Owen, Director of the British Army Legal Services, and Wing Commander Eric Kinder of the Air Section of the British Ministry of Defence, visited the Court later in the month of September. These officers were on a survey study tour in the United States of the operation of the Uniform Code of Military Justice to the end of making recommendations to their Parliament regarding the adoption of a similar code, which is now under consideration for the armed forces of Great Britain.

On December 18, 1970, Judge Tun-Hua Huang of the Yun-Lin District Court of the Republic of China (Taiwan), who was on a study of the Federal court system of the United States, paid a visit to the Court.

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
United States Court of Military Appeals

CASES DOCKETED

Total by Services	Total as of June 30, 1968	July 1, 1968 to June 30, 1969	July 1, 1969 to June 30, 1970	Total as of June 30, 1970
<i>Petitions (Art. 67(b)(3)):</i>				
Army-----	11, 320	499	403	12, 222
Navy-----	5, 084	363	427	5, 874
Air Force-----	4, 605	139	139	4, 883
Coast Guard-----	52	0	1	53
Total-----	21, 061	1, 001	970	23, 032
<i>Certificates (Art. 67(b)(2)):</i>				
Army-----	169	2	6	177
Navy-----	222	2	2	226
Air Force-----	87	5	3	95
Coast Guard-----	8	0	2	10
Total-----	486	9	13	508
<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	¹ 37
Total cases docketed-----	21, 584	1, 010	983	² 23, 577

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

² 23,159 cases actually assigned docket numbers. Overage due to multiple actions on the same cases.

COURT ACTION

Total by Services	Total as of June 30, 1968	July 1, 1968 to June 30, 1969	July 1, 1969 to June 30, 1970	Total as of June 30, 1970
Petitions (Art. 67(b)(3)):				
Granted.....	2, 265	164	227	2, 656
Denied.....	18, 306	765	713	19, 784
Denied by memorandum opinion.....	5	0	0	5
Dismissed.....	19	0	1	20
Withdrawn.....	374	12	19	405
Disposed of on motion to dismiss:				
With opinion.....	8	0	0	8
Without opinion.....	41	2	1	44
Disposed of by order setting aside findings and sentence..	6	0	0	6
Remanded.....	177	2	2	181
Court action due (30 days) ³ ..	30	100	71	71
Awaiting replies ³	24	14	50	50
Certificates (Art. 67(b)(2)):				
Opinions rendered.....	471	9	13	493
Opinions pending ³	0	3	2	2
Withdrawn.....	7	0	1	8
Remanded.....	4	0	0	4
Disposed of by order.....	1	0	0	1
Set for hearing ³	0	0	0	0
Ready for hearing ³	2	0	1	1
Awaiting briefs ³	2	1	0	0
Mandatory (Art. 67(b)(1)):				
Opinions rendered.....	37	0	0	37
Opinions pending.....	0	0	0	0
Remanded.....	1	0	0	1
Awaiting briefs ³	0	0	0	0
Opinions rendered:				
Petitions.....	1, 984	99	224	2, 307
Motions to dismiss.....	11	0	0	11
Motions to stay proceedings..	1	0	0	1
Per curiam grants.....	56	1	0	57
Certificates.....	415	6	10	431
Certificates and petitions....	53	3	3	59
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.....	8	1	1	10
Opinions.....	1	0	3	4
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	1	0	3
Motion for appropriate relief..	0	0	1	1
Miscellaneous dockets.....	5	3	29	37
Total.....	2, 579	114	271	2, 964

See footnotes at end of table.

COURT ACTION—Continued

Total by Services	Total as of June 30, 1968	July 1, 1968 to June 30, 1969	July 1, 1969 to June 30, 1970	Total as of June 30, 1970
Completed cases:				
Petitions denied.....	18,306	765	713	19,784
Petitions dismissed.....	19	0	1	20
Petitions withdrawn.....	374	12	19	405
Certificates withdrawn.....	7	0	1	8
Certificates disposed of by order.....	1	0	0	1
Opinions rendered.....	2,571	113	242	2,926
Disposed of on motion to dis- miss:				
With opinion.....	8	0	0	8
Without opinion.....	41	2	1	44
Disposed of by order setting aside findings and sentence..	6	0	0	6
Writ of error coram nobis by order.....	3	0	0	3
Motion for bail denied.....	1	0	0	1
Remanded.....	180	2	2	184
Total.....	21,517	894	979	23,390
Miscellaneous docket Nos. assigned (1967 to present):				
Pending.....	32	38	97	167
Granted.....	0	0	4	4
Denied.....	16	20	42	78
Withdrawn.....	0	1	0	1
Dismissed.....	8	13	28	49
Issue moot.....	0	0	1	1
Opinions rendered.....	5	3	28	36
Total.....	29	37	105	⁵ 171
Pending completion as of—				
	June 30, 1968	June 30, 1969	June 30, 1970	
Opinions pending.....	1	55	48	
Set for hearing.....	0	0	0	
Ready for hearing.....	6	0	6	
Petitions granted—awaiting briefs.....	5	12	15	
Petitions—Court action due (30 days)...	30	100	71	
Petitions—awaiting replies.....	24	14	50	
Certificates—awaiting briefs.....	2	1	0	
Mandatory—awaiting briefs.....	0	0	0	
Total.....	68	182	190	

³ As of June 30, 1968, 1969, and 1970.

⁴ 2,964 cases were disposed of by 2,923 published opinions. 142 opinions were rendered in cases involving 80 Army officers, 33 Air Force officers, 20 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.

⁵ Overage due to multiple actions on the same cases.

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

January 1, 1970 to December 31, 1970

The number of persons tried by courts-martial for fiscal year 1970 (average Army strength, 1,473,191) follows:

	Convicted	Acquitted	Total
General.....	2, 449	179	2, 628
Special (w/BCD's).....	581		581
Special (w/o BCD's).....	38, 043	2, 724	40, 767
Summary.....	14, 146	877	15, 023
Total.....	55, 219	3, 780	58, 999

*	*	*	*	*
Records of trial by general and special (BCD) courts-martial received by the Judge Advocate General during fiscal year 1970: ¹				
For review under Article 66 (general).....				2, 120
For review under Article 66 (Specials w/BCD's).....				581
For examination under Article 69.....				440
Total				3, 141
*	*	*	*	*

Workloads of the Army Court of Military Review during the same period:

On hand at the beginning of period.....		369
General courts-martial.....	369	
Special courts-martial (BCD).....	0	
Referred for review.....		² 2, 840
General courts-martial.....	2, 259	
Special courts-martial.....	581	
Total		3, 209

¹ Figures in this section are based on records of trial as opposed to number of accused involved. Because of cases in which more than one individual is tried, the figures in this section will be less than those in the other sections.

² This figure includes 33 cases which were referred to the Court of Military Review pursuant to Article 69, Uniform Code of Military Justice. 30 cases referred after rehearing, 26 cases referred for reconsideration. 3 cases forwarded to Court en banc after decision. 2 cases referred after new SJA review and C/A action, and 1 motion for appropriate relief.

Reviewed -----		2, 420
General courts-martial-----	2, 041	
Special courts-martial (BCD)-----	379	
Pending at close of period-----		789
General courts-martial-----	587	
Special courts-martial (BCD)-----	202	
		<hr/>
Total -----		3, 209
		<hr/> <hr/>
* * * * *		

Actions taken during period 1 July 69 thru 30 June 70 by Army Court of Military Review:

Findings and sentence affirmed-----	1, 613
Findings affirmed, sentence modified-----	571
Findings affirmed, sentence reassessed, or rehearing ordered as to sentence only -----	28
Findings affirmed—sentence disapproved or set aside-----	5
Findings partially disapproved, sentence affirmed-----	13
Findings partially disapproved and rehearing ordered-----	10
Findings and sentence affirmed in part, disapproved in part-----	97
Findings and sentence disapproved, rehearing ordered-----	25
Findings and sentence disapproved, charges dismissed-----	46
Returned to field for new SJA review—C/A action-----	11
Motion for appropriate relief, denied-----	1
	<hr/>
Total -----	2, 420
	<hr/> <hr/>

Of 2,420 accused whose cases were reviewed by the Court of Military Review pursuant to Article 66 during the fiscal year, 1,243 (51.3 percent) requested representation by appellate defense counsel.

* * * * *

The records in the cases of 409 accused were forwarded to the United States Court of Military Appeals pursuant to the three subdivisions of Article 67(b) during fiscal year 1970. These comprised 16.9 percent of the number of these cases reviewed by the Court of Military Review during the period. Of the mentioned 409 cases, 403 were forwarded on petition of accused and six were certified by TJAG.

The Court of Military Appeals took the following actions on Army cases during fiscal year 1970:

Petitions		Certification		Mandatory review		Petitions denied	Petitions granted
Affirmed	Reversed	Affirmed	Reversed	Affirmed	Reversed		
35	57	3	5	0	0	309	90

* * * * *

Applications for relief, Article 69:

Pending 1 July 1969-----	175
Received -----	695
Disposed of-----	623
Granted -----	167
Denied -----	436
Field (action by SJA)-----	9
No jurisdiction-----	5
Withdrawn -----	6
Numbers voided (duplicate cases)-----	12
Pending 1 July 1970-----	235

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

The United States Army Judiciary collects and reviews statistics on courts-martial. A review of the 1970 statistics indicates that as combat activities in Vietnam are slowing down and as the overall strength of the Army is being reduced, the number of trials by courts-martial is increasing. This follows the pattern of increased courts-martial activity that occurred at the end of World War I, World War II, and Korea. It is anticipated that as happened in those prior periods, the increase will be only temporary before a sharp downturn.

The number of court-martial cases requiring mandatory review under Article 66, UCMJ, increased so greatly during 1970 that a new panel of the United States Army Court of Military Review became necessary. This new panel is expected to be fully operational early in 1971. The authorized strength of the U.S. Army Judiciary was increased to 139 officers at the end of fiscal year 1970. The actual strength of the Trial Judiciary rose from 66 in January 1970 to 74 in December 1970. The 74 trial Judges are further subdivided into 26 general court-martial judges and 48 special court-martial judges. It is expected that by June 1971 the strength of the Trial Judiciary will increase to 90-100 trial judges as the goal of having all special courts-martial tried by a military judge assigned to the judiciary is reached. Trials before the military judge alone, which were first permitted under the Military Justice Act of 1968, resulted in great savings of time. More than 80 percent of the general court-martial cases and 90 percent of the special court-martial cases were tried before a judge alone.

The Annual Judicial Conference was held in October 1970 at the Judge Advocate General's School in conjunction with the JAG Conference, but only a limited number of judges were able to attend. The

trial judges participated in two Military Judge Seminars sponsored by the United States Marine Corps for judges of all the armed services. Those seminars are scheduled to become annual affairs sponsored by the different armed services on a rotating basis. Judges and appellate counsel in the U.S. Army Judiciary participated extensively in a program of continuing legal education by attending courses and seminars sponsored by the American Bar Association, the Practicing Law Institute, and various State and regional bar groups.

LEGISLATION AND MILITARY JUSTICE PRACTICE

The end of the first full year's operation under the Military Justice Act of 1968 has seen wide acceptance and use of the act's provisions. We are fast reaching our goal of having a military judge detailed to every special court-martial. Military judges are now being detailed to approximately 83 percent of the special courts-martial convened.

Public interest in the administration of criminal justice in the military continues to be very high. It is reflected by the introduction in Congress of a number of bills which propose sweeping changes in the military justice system. These bills also contain some of the proposals which I indicated as being under study in my office in my 1969 report.

Studies conducted in my office and problems related to certain current cases indicate the wisdom of moving toward modest revisions in the Uniform Code of Military Justice and military justice procedures. The present powers of the military judge over proceedings in and out of court are inadequate to permit him to have full control over the parties, the witnesses, counsel, and the press. Legislation more clearly defining the power of the military judge and increasing his contempt power should be enacted. Trained lawyers, preferably military judges, should replace the convening authority in those strictly legal functions which the convening authority is now required by the Code to perform, and the Code should be amended to remove requirements that the convening authority perform duplicative legal review of court-martial findings. The convening authority should retain the power to approve the sentence of a court-martial in order to permit him to exercise clemency in favor of the accused. Since every court-martial is reviewed for legal errors by a trained lawyer, the review of findings by the convening authority is unnecessary. The convening authority should be replaced by a trained lawyer, preferably a military judge, in procedures under Article 62, Reconsideration and Revision, and Article 63, Rehearings. The strictly legal questions raised under these provisions should not be handled by laymen.

The convening authority should be empowered to order execution of the confinement portion of a court-martial sentence in order that confinement facilities not be burdened with trying to comply with meaningless segregation of prisoners. Finally, the Supreme Court should

be authorized by Congress to review directly decisions of the U.S. Court of Military Appeals.

All of the sweeping changes proposed in bills recently introduced in Congress are not needed. But each of these proposals shows some constructive thought which could contribute to improving the military justice system. The central features of these proposals are an independent military justice command or defense corps, removal of or limitation on the prosecutorial discretion of the convening authority, and random selection of the members of courts-martial.

The creation of an independent military justice command would create increased personnel requirements in a period of personnel shortages and thus would be difficult to implement. Military judges of general courts-martial and, increasingly in the Army, military judges of special courts-martial are already members of an independent organization. Unless changes are made with regard to the convening authority's discretion to prosecute, there is no possible need for an independent trial counsel or prosecution division. What remains, then, is the question of the independence of defense counsel of courts-martial.

I believe that defense counsel are already independent. They are protected by the Code from unlawful influence and from any adverse actions by their superiors for the zeal with which they carry out their responsibilities. I have studied the possible implementation of an independent defense command for two other reasons: (1) the possibility that such an organization would improve the confidence which accused have in military defense counsel; (2) the possibility that such an organization would improve the confidence which military defense counsel have in their own independence. I shall continue to study the possibility of implementing such a system by regulation because I believe these latter two reasons to be as important as the actual independence of counsel at courts-martial. Pilot programs should be run to test the feasibility of this type of organization before legislation requiring it is enacted.

I do not believe that changes in the area of prosecutorial discretion are necessary. Provisions of the Code and the Manual for Courts-Martial sufficiently circumscribe this discretion. The convening authority's place in the military justice system is in deciding if a breach of discipline is so serious that it warrants the use of the judicial process. Once this decision is made, the court-martial is and should be completely out of his control. The military commander remains responsible for discipline within his command and should have the ultimate decision on matters of prosecution subject to the standards set out by the Manual and the Code.

Random selection of court members presents an extremely difficult problem. As court members are selected by the individual who made

the decision to prosecute the case, the assertion that he will select persons prone to convict has some plausibility. The acquittal rate in trials by court-martial belies the assertion, however, as it is equal to or greater than the acquittal rate in the Federal courts. A real problem with a system of random selection is that it may make certain individuals who are required for a military mission unavailable because of court duty. Any system for the selection of court members must take cognizance of this fact. A system of random selection in which all members of the military are eligible for court duty would have to provide, as do civilian systems for extensive screening by a "jury commissioner," and probably also for a greater number of peremptory challenges by prosecution and defense. This factor would result in greater numbers of people being unavailable for duty during the member selection process. This type of inefficiency is completely intolerable in a combat situation and difficult to tolerate in any military situation. Under the current system, the convening authority is required to select persons of judicial temperament as court members. This selection reduces the necessity for great numbers of peremptory challenges. Any system of random selection for members of courts-martial should contain some objective screening standards to reduce the size of the venire and the need for large numbers of peremptory challenges.

A member of a court-martial takes on a tremendous responsibility. In his decision, he must do justice both to the military community and the accused. It would be undesirable to empanel as court members persons who were so immature and inexperienced that they would be unable to accept seriously and conscientiously their responsibilities as members of the military community. For this reason, any system of random selection should contain some criteria to assure that those selected have the maturity and experience necessary to serve.

PERSONNEL

The strength of the Judge Advocate General's Corps remained constant during the year, averaging approximately 1,900 commissioned attorneys. This permitted the curtailment of the program of certification of non-JAGC attorneys to perform duty as trial and defense counsel in trials by special courts-martial. However, it was not possible to completely discontinue the program. Non-JAGC attorneys still must be utilized in areas such as Vietnam and Europe where commands are widespread geographically and time-space factors preclude availability of JAGC attorneys for all cases.

Following the increase in commissioned strength it was necessary to provide additional lay personnel to support the new judge advocate functions at the special court-martial level. It was recommended that a position be provided for a trained enlisted legal clerk, in the grade of

E-6, in each battalion of the Army. This recommendation was approved on 1 July 1970.

Retention of experienced officers remains the most critical problem facing the Corps. Legislation (H.R. 4296) to provide for professional pay for judge advocates was passed by the House of Representatives and forwarded to the Senate in December 1969. It remains pending in the Senate. The shortage of field grade officers increased from 33 percent at the beginning of the year to approximately 43 percent by the end of the year. A declining interest in JAGC commissions has also become evident, apparently because of the 1969 changes in the draft law. Compared to 1969, applications for commission in the Judge Advocate General's Corps were down more than 50 percent in 1970. The Corps needs the passage of legislation containing a reasonable incentive in order to attract competent, and retain experienced, attorneys.

EDUCATION AND TRAINING

During calendar year 1970, the Judge Advocate General's School, United States Army, provided resident instruction for 1,200 students. This instruction was presented in 21 courses.

Four cycles of the 10-week Basic Course were conducted at the School during 1970. The 55th Basic Class of 83 students, including 4 Vietnamese officers, 3 Thai officers, and one Iranian officer, was graduated in April 1970. The 56th Basic Class (58 students, including the Liberian Judge Advocate General) graduated in June 1970; the 57th Basic Class (36 students) in September 1970. The 58th Basic Class of 100 students, including one Korean officer, one Women's Army Corps officer, and seven Coast Guard officers, was graduated in December 1970. This represents an increase of two classes over the normal two cycles of the Basic Course per year. The increase was necessary to meet the continued increased counsel requirements of the Military Justice Act of 1968.

The 18th Judge Advocate Officer Advanced Course was graduated from the School in May 1970. It comprised 29 students, including one officer from the United States Women's Army Corps, one officer of the United States Navy, two officers of the United States Marine Corps, and one officer from Iran.

The 19th Advanced Course began in August 1970. Among its officer students are two officers from the United States Navy, three officers from the United States Marine Corps, one officer from Ethiopia, one officer from Vietnam, and one officer from Iran.

In addition to these general courses, a number of short functional courses were conducted during calendar year 1970. These courses were: Legal Logistics; Military Judge (2 cycles); International Law; Civil Affairs Law; Military Justice; Labor Law (2 cycles); and the

Judge Advocate Refresher Course. In addition, new courses in military affairs and legal logistics were developed.

Because of the increasing complexity of the administration of military justice under the Military Justice Act, a special course for warrant officer legal administrative technicians was developed and conducted. The course provides guidance in office management and in applying procedures of the military justice system.

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. The School has also developed a Legal Clerk's Course and it is anticipated that the first of these courses will be conducted in calendar year 1971.

Blocks of instruction on the Manual and the Code were prepared for the Non-Commissioned Officer Education System, under the auspices of U.S. Continental Army Command, and distributed to all Army service schools. More extensive blocks of instruction have been prepared for student officers in Army service schools. Additionally, several hours of military justice instruction were written for U.S. Army Reserve school courses.

In order to improve the quality of military justice instruction in all Army service schools, extensive information regarding details of current instruction was obtained in 1970. In order to keep military law instructors in other schools up-to-date, a Military Legal Subjects Instructors' Conference is planned for 8-9 February 1971.

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 revised to reflect the Act's changes include "School Text on Pretrial Procedure," and DA Pamphlet 27-16, "The Legal Clerk's Handbook."

Four issues of the "Military Law Review" were published during 1970. Volume 47 included an article on conscientious objectors by Maj. David M. Brahms, USMC. Volume 50 contains an article on habeas corpus, by Maj. Charles Cushman, USMC, and one on pretrial restraint, by Maj. Richard R. Boller, JAGC.

During 1970, 20 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 United States Court of Military Appeals opinions, all published Army Court of Military Review opinions, grants and certifications of review by USCOMA, actions of The Judge Advocate General under Article 69, UCMJ, miscellaneous notices and memoranda concerning military justice, selected military affairs opinions, and selected civilian court decisions.

One hundred and twenty hours of filming of instruction for reserve JAGC units, begun in 1968, were completed this year. These films record the material presented at the School in the areas of military justice, military affairs, legal logistics, claims, and international law. Study packets and lesson plans have been prepared for use with the films.

To assist in the implementation of the Manual for Courts-Martial, the school has distributed hundreds of copies of the Manual and binders to authorized personnel. 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 United States Navy, Marine Corps, and Coast Guard.

The annual Judge Advocate General's Conference was held in Charlottesville during the period 4-8 October 1970. Eighty-eight selected conferees attended. Principal speakers were Mr. Leon Jaworski, President-elect of the American Bar Association, and Hon. J. Fred Buzhardt, General Counsel of the Department of Defense. One of the principal subjects of discussion was the implementation of the Military Justice Act.

The school planned the judge advocate phases of LOGEX, the annual logistical exercise conducted at Fort Lee, Va., Due to budgetary restrictions, however, LOGEX 70 was cancelled, after the completion of considerable preparation. It is expected that this work product will be utilized in future logistical exercises.

The collection of materials for the Military Legal Center, established last year, is continuing. During 1970, several individual donations to the center were received, including materials from the collection of the late S. Arthur Devan.

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

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

January 1, 1970 to December 31, 1970

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 1970, contains, unless otherwise indicated, statistical information covering fiscal year 1970.

COURT-MARTIAL WORKLOAD. a. The total court-martial workload within the Navy and Marine Corps has remained relatively stable, but the number of general courts-martial has continued to increase (during the past 5 fiscal years there has been a 271 percent increase in general courts-martial). The fluctuation in each type of case during the past fiscal year is set forth below :

Type case	Fiscal year 1969	Fiscal year 1970	Increase (+) or decrease (-)	Percent of increase or decrease
General court-martial.....	929	1, 317	+388	+42
Special court-martial involving BCD...	2, 808	2, 991	+183	+7
Special court-martial not involving BCD.....	13, 431	12, 371	-1, 060	-8
Summary court-martial.....	13, 078	13, 309	+231	+2
Total.....	30, 246	29, 988		

b. During fiscal year 1970 Navy Board of Review/the Navy Court of Military Review received for review 1,073 general courts-martial and 2,991 special courts-martial (total 4,064) as compared with 715 general courts-martial and 2,808 special courts-martial (total 3,523) during fiscal year 1969. Of the 4,064 cases received by Navy Boards of Review/the Navy Court of Military Review during fiscal year 1970, 2,102 accused requested counsel (52 percent). A more detailed statistical report is attached as Exhibit A.

SUPERVISION OF ADMINISTRATION OF MILITARY JUSTICE. Complying with the requirements of Article 6(a), Uniform Code of Military Justice, the Judge Advocate General visited

commands throughout Europe, and the Deputy Judge Advocate General visited commands throughout the Far East and Southeast Asia. In addition, 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.

LAW CENTER PROGRAM. The law center program, whereby legal resources and facilities are centrally located in strategic geographic areas from which surrounding commands may be provided legal services when and where needed, has been in existence for a year and a half. Although this relatively short time of existence does not provide a basis for full evaluation, it is noteworthy that the increased workload resulting from the implementation of the Military Justice Act of 1968, has been met without undue difficulty. Additionally, studies are presently pending to provide for the increase of clerical billets within the law center system in order to further facilitate and increase the services provided.

U.S. NAVY-MARINE CORPS JUDICIARY ACTIVITY. The present manning level of the U.S. Navy-Marine Corps Judiciary Activity stands at 21 military judges, a decrease of two from the manning level of 23 at the close of calendar year 1969. Additionally, as of 31 December 1970, 673 Marine and Navy judge advocates have been certified as qualified to preside at special courts-martial. Effort is being made to ensure that as many as possible of those judge advocates who are certified as military judges for special courts-martial receive special training. Similarly, effort is made to keep members of the U.S. Navy-Marine Corps Judiciary Activity up to date with the entire spectrum of military discipline, correction, and justice. To this end, during calendar year 1970, five military judges visited the U.S. Naval Disciplinary Command, Portsmouth, N.H., where they received extensive briefings on the program objectives, resources, and recent achievements; six military judges attended the West Coast Judicial Conference at Camp Pendleton, Calif.; nine military judges attended the East Coast Judicial Conference at Camp Lejeune, N.C., and five military judges attended the Judge Advocate General's Conference in Washington, D.C.

ARTICLE 69, UCMJ, PETITIONS. There has been an increase in the number of petitions for relief pursuant to the new provision of Article 69, Uniform Code of Military Justice, which permits the Judge Advocate General to act in certain cases which have been finally reviewed under Article 76. In calendar year 1970, 81 petitions for relief were received and action has been completed in 64 of these cases.

MANUAL OF THE JUDGE ADVOCATE GENERAL. A complete revision of the Manual of the Judge Advocate General, which supplements the Manual for Courts-Martial and also provides guidance for all other functions of the Judge Advocate General, was completed during calendar year 1970 and full distribution thereof was made to the field.

NAVAL JUSTICE SCHOOL. a. 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 under the Uniform Code of Military Justice and in related support activities. 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. During calendar year 1970, the School provided instruction in various courses to a total of 2,177 officers and enlisted personnel of all the Armed Forces.

b. Five nonlawyer officer classes graduated at the Justice School in Newport and one class at Camp Pendleton, Calif. The graduating classes consisted of 440 officers of the Navy, Marine Corps, and Coast Guard. In addition thereto, 278 lawyers of the Navy, Marine Corps, and Coast Guard completed the officer lawyer courses offered by the School.

c. Four hundred and ninety-five officers completed the senior officers' short courses offered at Newport, R.I.; Quantico, Va.; Virginia Beach, Va.; and San Diego, Calif. One hundred and seven officers completed the Reserve seminars for lawyers and 145 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 Navy Destroyer School.

d. Four hundred and thirty-three enlisted members of Army, Navy, Marine Corps, and Coast Guard have graduated from six five-week legal clerk and court reporting courses.

STAFF JUDGE ADVOCATES CONFERENCE. a. 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 over a year, 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 over a year 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.

b. 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 1971.

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

EXHIBIT A

Fiscal Year 1970

General courts-martial:

Received for review under Article 66.....	1, 073
Received for review under Article 69 and acquittal.....	244
<u>Total.....</u>	<u>1, 317</u>

Special courts-martial:

Received for review under Article 66.....	2, 991
Received for review under Article 65c.....	0
Reviewed in the field.....	12, 371
<u>Total.....</u>	<u>15, 362</u>

Summary courts-martial:

Received for review under Article 65c.....	0
Reviewed in the field.....	13, 309
<u>Total.....</u>	<u>13, 309</u>

<u>Total all courts-martial.....</u>	<u>29, 988</u>
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Board of Review/Navy Court of Military Review actions:

On hand for review 1 July 1969.....	212
Received for review during fiscal year 1970.....	4, 064
<u>Total on hand.....</u>	<u>4, 276</u>

Reviewed during fiscal year 1970.....	3, 825
Pending review on 30 June 1970.....	451
<u>Total.....</u>	<u>4, 276</u>

Findings modified or set aside by Boards of Review/Navy Court of

Military Review during fiscal year 1970.....	168
Requests for appellate counsel.....	2, 102
<u>Total.....</u>	<u>2, 270</u>

Court of Military Appeals actions:

Petitions forwarded to USCMA.....	427
Cases certified to USCMA by JAG.....	2
<u>Total cases docketed with USCMA.....</u>	<u>429</u>

Petitions granted by USCMA.....	102
Petitions denied by USCMA.....	300
<u>Total petitions acted upon by USCMA.....</u>	<u>402</u>

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

January 1, 1970 to December 31, 1970

1. Brig. Gen. Morton J. Gold, Deputy Staff Judge Advocate, AFSC, was named the Assistant Judge Advocate General on 2 February 1970, vice Brig. Gen. Joseph E. Kryszakowski, who was reassigned to become the Staff Judge Advocate of SAC. Generals Cheney and Gold made staff visits to legal offices in the United States and overseas as required by the Uniform Code of Military Justice, Article 6(a). They also attended and participated in various bar association meetings and spoke before numerous civic, professional and military organizations. The Judge Advocate General hosted a worldwide Major Command and General Court-martial Convening Authority Staff Judge Advocates Conference at Maxwell Air Force Base, Ala., in October 1970. The Military Affairs Division was redesignated as the Administrative Law Division in November 1970, and the Legal Aid Division was formed in the Civil Law Directorate to implement an expanded legal assistance program whereby judge advocate officers may act as counsel for personnel in the grade of E-4 and below, including civil and criminal court appearances where permitted by State and local laws. The Legal Automated Writing System (LAWS), an automated typing center using MT/ST automatic typewriters and a central dictation recording system, was formed in order to provide expanded typing and correspondence preparation for the department. During the year a study was conducted as to the feasibility of assigning all trial counsel, defense counsel, and military judges to district and circuit offices throughout the world, reporting directly to the Judge Advocate General rather than being assigned to the various commands, and personnel being assigned to the duties on a full time basis. It was determined that such an organization of the trial personnel appeared to be feasible and that a pilot project in the southeastern United States should be placed into operation to test the soundness of such an organization. At year's end, a detailed plan outlining the pilot project was being staffed through the Air Staff with a target date of early 1971 for the start of the pilot project.

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 1970, is shown in the following table :

Total number records received.....	396
For review under article 66.....	306
General court-martial records.....	143
Special court-martial records.....	163
Examined under Article 69.....	56

The Court of Military Review modified the findings and/or sentence in 66 cases.

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

Cases on hand 30 June 1969.....	61
Cases referred for review.....	306
Total for review.....	367
Cases reviewed and dispatched.....	¹ 321
Cases on hand 30 June 1970.....	46
Miscellaneous Docket matters.....	2

¹ Includes 5 En Banc Decisions.

c. During the fiscal year 74.5 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 United States Court of Military Appeals pursuant to the three subdivisions of Article 67(b) ; and the number of petitions granted during the period :

Cases reviewed and dispatched by Court of Review.....	321
Number cases forwarded to USCMA.....	142
Cases petitioned.....	139
Cases certified.....	3
Percent total forwarded of total cases reviewed.....	43. 6
Petitions granted.....	28
Percent grants of total petitioned.....	20. 4
Percent petitions granted of total cases reviewed by Court of Review.....	8. 7

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

General courts-martial.....	233
Special courts-martial.....	1, 905
Summary courts-martial.....	462
Total	2, 600

3. Reportable Article 15 actions, fiscal year 1970:

	Number of cases	Percentage of total number of cases
Total cases.....	28, 776	-----
Officers.....	183	0. 6
Airmen.....	28, 593	99. 4
Punishments imposed:		
Officers.....	303	-----
Airmen.....	47, 312	-----
Restrictions (over 14 days):		
Officers.....	6	2. 0
Airmen.....	4, 642	9. 8
Quarters arrest/correctional custody:		
Officers.....	0	0. 0
Airmen.....	3, 651	7. 7
Extra duties (over 14 days): Airmen.....	2, 129	4. 5
Reduction in grade: Airmen.....	19, 237	40. 7
Forfeiture of pay:		
Officers.....	149	49. 2
Airmen.....	16, 918	35. 8
Detention of pay:		
Officers.....	0	0. 0
Airmen.....	50	0. 1
Written reprimand:		
Officers.....	148	48. 8
Airmen.....	685	1. 4
Mitigating actions:		
Appeals taken.....	1, 639	¹ 5. 7
Officers.....	20	-----
Airmen.....	1, 619	-----
Appeals denied.....	1, 419	² 86. 6
Officers.....	20	-----
Airmen.....	1, 399	-----
Suspension of punishment.....	11, 707	¹ 40. 7
Officers.....	7	-----
Airmen.....	11, 700	-----
Other action.....	2, 120	¹ 7. 4
Officers.....	2	-----
Airmen.....	2, 118	-----

¹ Of total cases (28,776)

² Of appeals taken (1,639)

4. A revised and updated version of AFM 111-2, Court-Martial Instruction Guide, was published 15 June 1970. It contained revisions brought about by the Military Justice Act of 1968. A completely new version of AFM 110-1, Legal Research Guide, was published 10 April 1970. It contained a new, uniform system of citations for military lawyers.

5. Volume XII of the Air Force JAG Law Review was published and distributed during 1970. The Law Review is a quarterly publication devoted to a survey of important judicial, legislative, and administrative law developments of interest to Air Force lawyers, military and civilian. There were two "special" issues: Spring, 1970, sponsored by the Air University, and Fall, 1970 devoted to International Law. Articles of particular note in the Military Justice field were: "The Guilty Plea—Recent Developments," Winter, 1970; "The Ambit of O'Callahan," Spring, 1970; "Conduct Expected of an Officer and a Gentleman: Ambiguity," Spring, 1970; "The Effect of O'Callahan on Drug Abuse Cases," Spring, 1970; "The Military Judge and Multiple Confessions by Single Accused," Summer, 1970; and "Military Justice is to Justice as . . .," Summer, 1970. The last article was written by Mr. Robinson O. Everett from material he presented to the American and Federal Bar Association Conventions and is an answer to many of the criticisms directed at the Military Justice system. Mr. Everett, a professor of law at Duke University and a recognized authority in the field of military law, is a Lieutenant Colonel in the United States Air Force Reserve assigned to The Judge Advocate General's Department.

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 Court of Military Review. These digests are printed in the Reporter on 5" x 8" perforated sheets with the descriptive word index lines to facilitate filing. Thus, they not only serve as an advanced report of the latest developments of 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 contain the decisions of the United States Court of Military Appeals and selected decisions of the Courts of Military Review of the services. The Judge Advocate General continued to have the operational responsibility for LITE (Legal Information Through Electronics).

LITE is a Department of Defense (DOD) owned system for the full-text storage and retrieval of legal information by computer. Among the searchable current data bases in the system are: the United States Court of Military Appeals and Courts of Military Review decisions, the Manual for Courts-Martial, 1969 (Revised edition), and other regulations, manuals, and directives pertaining to military justice matters. 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 1970, there were 1,237 judge advocates on duty. Of these, 589 were members of the Regular Air Force, 368 were Career Reserve officers (of this number 265 entered active duty in Career Reserve status and have a 4-year active duty service commitment), and 280 were Reserve officers with established dates of separation. The Regular officer strength decreased by 28 and the total officer strength increased by 59 between 30 June 1969 and 30 June 1970.

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, 1970 to December 31, 1970

The following is the annual report of the General Counsel of the Department of Transportation submitted pursuant to Article 67(g) of the Uniform Code of Military Justice. Unless otherwise noted the figures are for the fiscal year beginning July 1, 1969 and ending June 30, 1970.

The table below shows the number of court-martial records received and filed at Coast Guard headquarters during the fiscal year and the 4 preceding years:

	1970	1969	1968	1967	1966
General courts-martial.....	2	2	0	2	3
Special courts-martial.....	76	92	91	68	95
Summary courts-martial.....	174	207	216	211	212
Total.....	252	301	307	281	310

Major provisions of the Military Justice Act of 1968 (Public Law 90-632) became effective on August 1, 1969, shortly after the beginning of the fiscal year. One general and 15 special courts-martial noted in this report were tried before the new provisions became effective; one general and 61 special courts-martial were tried after the effective date. Perhaps the most important features of the new law were those designed to increase defense representation by lawyers in special court-martial trials. The Military Justice Act had this result in the Coast Guard. In terms of percentage, 95 percent of the accused persons tried under the new provisions (58 out of 61 special court-martial defendants) were represented by lawyers. In the two previous fiscal years, 76 percent and 69 percent of the special court-martial defendants had lawyers. For the whole of the current year, 72 of the 76 special court-martial defendants had qualified lawyers as their defense counsel. The new legislation also had an impact on the detailing of legally trained prosecutors. In 56 of the 61 special court-martial cases tried after August 1, 1969, the trial counsel was a lawyer; in the previous year,

trial counsel was a lawyer in only 28 percent of the 92 special court-martial cases. A military judge and two lawyers as adversary counsel participated in 90 percent of the current year's special courts-martial; in the previous year a full set of three lawyers functioned in only 24 percent of the trials.

The 78 general and special court-martial cases in the current year disposed of 185 specifications of offenses, distributed as follows:

AWOL or desertion.....	58
Larceny or wrongful appropriation.....	28
Drug offenses (all marihuana or LSD).....	17
Missing ship.....	16
Assaults	12
Violation of regulation or order.....	7
Communicating a threat.....	7
False official writing.....	7
Willful disobedience or disrespect.....	5
Escape from confinement or custody.....	4
Drunk or disorderly.....	4
Others	15

The 17 marihuana-LSD offenses were charged against 11 different accused, four of whom were cleared of such charges. None of the remaining drug offenders received a bad conduct discharge nor was confinement in excess of 4 months adjudged.

Thirty-four of the year's special courts-martial and both general courts-martial were contested cases; 42 of the special courts-martial were uncontested. Sixteen of the special court-martial cases resulted in acquittals or dismissal of charges or disapproval of guilty findings. Twenty-eight sentences were affirmed as adjudged; 34 sentences were mitigated in some degree.

Ten cases were docketed with the Coast Guard Court of Military Review during the fiscal year. The court wrote opinions in each of these cases and also an opinion upon an application for a writ of mandamus. Punitive discharges were disapproved by the court in three of the cases reviewed and approved in four others; the court also approved one suspended bad conduct discharge. The two general court-martial cases were reviewed under the provisions of Article 69; their sentences did not include a punitive separation. Five of the 10 cases reviewed by the court were tried after the Military Justice Act of 1968 became effective; two of the five cases were tried by the military judge sitting alone.

Only one petition for review of a Court of Military Review decision was filed with the U.S. Court of Military Appeals during the year; the petition was denied. However, the General Counsel certified one case involving a question as to the authority of a military judge sitting alone to examine the contents of a pretrial agreement. The opinion of

the Court of Military Appeals rendered July 17, 1970, upheld such authority. See *United States v. Villa*, 19 USMCA 564, 42 CMR 166.

The findings and sentences of two special courts-martial and one summary court-martial were vacated during the calendar year under the relief provisions of Article 69. Action in two of the cases was initiated by the Government, the other by petition of the accused. One other petition for relief was filed during the year, but relief was denied.

During 1970, Rear Adm. William L. Morrison, the Chief Counsel of the Coast Guard, made inspection visits to district legal offices in New York, St. Louis, Long Beach, San Francisco, and Seattle. In connection with his St. Louis visit, he also attended sessions of the American Bar Association Standing Committee on Military Justice and of the Judge Advocates Association. In October he addressed the Military Judicial Seminar sponsored by the Marine Corps at Camp Lejeune, N.C. In December a senior member of the Chief Counsel's staff, Capt. R. A. Ratti, represented the Coast Guard at graduation ceremonies of the Judge Advocate General's School, U.S. Army, Charlottesville, Va., and addressed the graduates of the advanced course. Eight Coast Guard officers commissioned for active duty as lawyers were included among those graduating from the basic course at the Army school.

A conference of district and base legal officers was held at Coast Guard Headquarters during the period May 25-27, 1970. The conference was addressed by the General Counsel, the Chief Counsel, and members of his staff, and information was exchanged on a wide variety of legal problems encountered by field legal officers. It is expected that such conferences of Coast Guard lawyers will become an annual event.

The General Counsel certified two additional legal officers as military judges. In view of the relatively small number of special and general courts-martial, the Coast Guard has established the practice of certifying only qualified officers in the grade of lieutenant commander and above as military judges. Setting a minimum grade level is considered to be consistent with present and emerging concepts of the position and prestige of military judges.

JAMES A. WASHINGTON, Jr.,
General Counsel,
Department of Transportation.