

**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, 1972 to December 31, 1972**

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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, 1972 to December 31, 1972**

**Contents**

**JOINT REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS  
AND THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES  
AND THE GENERAL COUNSEL OF THE DEPARTMENT OF TRANSPORTATION**

**REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS**

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

**REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY**

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

**REPORT OF THE GENERAL COUNSEL OF THE DEPARTMENT OF TRANSPORTATION (UNITED STATES 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  
DEPARTMENT OF TRANSPORTATION**

**January 1, 1972 to December 31, 1972**

As required by Article 67(g), Uniform Code of Military Justice, the Judges of the United States Court of Military Appeals, the Judge Advocates General of the military departments, and the General Counsel of the Department of Transportation submit their annual joint report on the operation of the Uniform Code of Military Justice to the Committees on Armed Services of the United States Senate and House of Representatives and to the Secretaries of Defense, Transportation, Army, Navy, and Air Force.

The Judges, the Judge Advocates General, and the General Counsel, constituting the Code Committee, met several times throughout the year. These conferences have resulted in an interchange of information and continued consideration of possible amendments to the Uniform Code of Military Justice.

The Code Committee continues to recommend consideration of legislation that would (1) specify the extent to which the Court of Military Appeals, the Courts of Military Review, and military judges may entertain petitions for extraordinary relief; (2) permit the execution of a sentence to confinement at the time the convening authority approves the sentence to eliminate the pointless and costly segregation of various classes of

prisoners and to permit unsentenced prisoners to benefit from rehabilitative training; (3) to eliminate the convening authority's role in post-trial review proceedings except in mitigation of sentence; and (4) to replace Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934, the general Article, by enacting separate punitive articles defining the offenses that are presently prosecuted under it.

The desirability of prompt action concerning Article 134 is accentuated by recent decisions of the United States Courts of Appeals for the District of Columbia and the Third Circuit, which were handed down after the end of our formal reporting period. These decisions hold the Article unconstitutional for vagueness. *Avrech v. United States*, \_\_\_F.2d\_\_\_(D.C. Cir. 1973); *Levy v. United States*, \_\_\_F.2d\_\_\_(3rd Cir. 1973). While the Committee is informed that these decisions are to be appealed to the Supreme Court, there is, despite almost 200 years of constitutional history and precedent, no assurance that the Article will survive further appellate examination. There is therefore a need for early congressional consideration of the problem.

A standing committee composed of representatives of the services continues to study subjects related to the administration of military justice under the Code and to make recommendations to the Code Committee regarding proposed legislative action. The Committee is currently considering some of these proposals that may become future Code Committee recommendations.

Delay in processing disciplinary actions continues to concern the Court, The Judge Advocates General, and the General Counsel. Completion of any criminal trial and appeal normally cannot be accomplished within a few days, but instances in which the transcription of a record of trial and action by the convening authority were prolonged over several months occur often enough that this part of the appellate process needs further attention and action to assure that the accused is afforded the speediest possible justice consistent with due process.

In many cases, sentences to confinement have long since been served by the time the case is forwarded to the Court of Military Review or to the Court of Military Appeals. This means that the accused is temporarily restored to duty pending completion of appellate review. Since statistically the chances of reversal are slight, the accused knows he probably will receive a punitive discharge, and his continuation on duty in this status often adversely affects morale and discipline until the rest of his sentence can be executed.

Although the armed forces have tried such innovations as leave without pay and requests for immediate execution of discharges to relieve this problem, a better solution and more protection of the accused's rights would result if effective controls by commands eliminated unnecessary delays.

The Code Committee remains concerned over the shortage of experienced military lawyers, on whose shoulders the burden of maintaining our military justice system ultimately rests. Competition with private firms and other Government agencies, the end of the draft, and the close of the Vietnam conflict have caused a steady decrease in applications for career positions as judge advocates. With the coming of peace, accelerated promotion and other career incentives either vanish or become less important to the potential candidate. The outlook for improved retention is uncertain. The Committee recommends that Congress consider further incentives to attract and retain lawyers for a full military career.

The separate reports of the Court of Military Appeals and of the individual services show the number of courts-martial in the appellate review category during the reporting period. Exhibit A to this report recapitulates the number of courts-martial of all types tried throughout the world, the number of these cases reviewed by the Courts of Military Review, and the number ultimately reviewed by the Court of Military Appeals.

Respectfully submitted,

WILLIAM H. DARDEN,  
*Chief Judge*  
ROBERT E. QUINN,  
*Associate Judge*  
ROBERT M. DUNCAN,  
*Associate Judge*  
GEORGE S. PRUGH,  
*The Judge Advocate General,*  
*U. S. Army*  
MERLIN H. STARING,  
*The Judge Advocate General,*  
*U.S. Navy*  
JAMES S. CHENEY,  
*The Judge Advocate General,*  
*U.S. Air Force*  
JOHN W. BARNUM,  
*General Counsel*  
*Department of Transportation*

**EXHIBIT A**  
**For the Period**  
**July 1, 1971 to June 30, 1972**

*Court-Martial Cases*

Army.....	31,587
Navy.....	21,977
Air Force.....	2,661
Coast Guard.....	648
	56,873
Total.....	56,873

*Cases Reviewed by Courts of Military Review*

Army.....	3,156
Navy.....	2,793
Air Force.....	240
Coast Guard.....	14
	6,203
Total.....	6,203

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

Army.....	819
Navy.....	530
Air Force.....	97
Coast Guard.....	0
	1,446
Total.....	1,446



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

**January 1, 1972 to December 31, 1972**

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

During fiscal year 1972, the Court's workload again increased. In 1971, 1,268 cases were docketed, and in 1972 the number increased to 1,497. This figure includes 1,419 petitions, 27 certificates, and 51 petitions for extraordinary relief. This is the largest number of cases that the Court has reviewed since 1958. Despite the increased workload and a reduction in the number of employees, the Court has maintained its docket in a current status. There is no backlog.

The Court issued 129 opinions during this period. Ninety resulted from grants of the accused's petitions for review, 24 from certificates filed by The Judge Advocates General, one from a combination of the accused's petition and The Judge Advocate General's certificate, and 14 from petitions filed by the accused for extraordinary relief.

Searches and seizures and the convening authority's post-trial review are areas that continue to cause difficulty. The concept of probable cause to search is difficult for lawyers and judges and evidently gives nonlawyers even more difficulty. Commanding officers who normally act as magistrates and grant permission to search frequently authorize searches on an inadequate justification, resulting in the exclusion of seized evidence either at trial or on appellate review.

In an effort to remedy the problem, the Army has authorized its military judges to issue search warrants. This change has been in operation too briefly for sound conclusions about its effect. We hope it will reduce the number of cases reversed because of inadequate justification for a search. If the new

system proves successful, the Court will urge that the other Departments consider adopting it.

Problems related to the content of the post-trial review should largely be eliminated by removal of the convening authority from the appellate process. As stated in the Joint Report, the Court recommends amendments to the Uniform Code that would have that effect.

The Court continues to be concerned about pretrial and appellate delay in the processing of serious courts-martial. In many cases, the accused spends several months in pretrial confinement and it takes an equally lengthy period to transcribe the record and obtain the convening authority's action. By that time, the accused has often served the confinement portion of his sentence. The execution of the remainder must await completion of appellate review. This creates a problem for the services in having temporarily restored to duty an accused who knows that, in the normal course of events, he will probably receive a punitive discharge, and thus has little incentive to perform properly. This condition also adversely affects the rights of the accused to a speedy disposition of his case and the administration of military justice in general, the success of which depends on the rapid punishment of offenders.

The services have taken administrative steps to reduce these delays. Innovations such as leave without pay, commandant's parole, and requests for early execution of sentences have reduced the period of active duty between the end of a sentence to confinement and the final approval of the sentence. The Army has also used in one command a system of traveling "magistrates" who visit confinement facilities, review the length of pretrial confinement of prisoners awaiting trial, and order the release of those whose detention is considered too long.

Admirable as these efforts are, the Court believes that further administrative measures are required. Responsibility for the pretrial confinement of the accused and the speedy processing of his case is ultimately a command function. In the early days of military justice administration under the Code, at least one service established strict controls over the processing time for every stage of the court-martial process, with necessary delays being permitted at defense request. We recommend consideration of a return to these controls or the adoption of similar measures to eliminate unnecessary delay and to speed the trial and appellate review of all courts-martial.

Seven hundred and thirty-five attorneys were admitted during the year to the bar of the Court. The total number of persons now admitted to practice before the Court is 17,307. In addition,

honorary certificates of membership in the bar were presented to five attorneys of the following foreign countries: Republic of Zaire—1, Iran—2, Great Britain—1, and Jordan—1.

Two special sessions of the Court were held in the United States Courthouse at Charlottesville, Virginia, for the purpose of admitting reserve officers who were on temporary active duty at The U. S. Army Judge Advocate General's School. A total of 105 attorneys were admitted.

The Court has been favorably impressed by the young military lawyers who have appeared before it on behalf of the Government and the accused. The excellence of their briefs and the pertinence of their arguments have been of great assistance to the Court in disposing of the cases before it. We commend these young counsel for their competence and diligence.

A detailed analysis of the cases that have been processed by the Court since the beginning of its operations in 1951 is attached. (Exhibit A).

WILLIAM H. DARDEN,  
*Chief Judge*  
ROBERT E. QUINN,  
*Associate Judge*  
ROBERT M. DUNCAN,  
*Associate Judge*

**EXHIBIT A**  
**Status of Cases**  
**United States Court of Appeals** <sup>*military*</sup>  
**CASES DOCKETED**

Total by Services	Total as of June 30, 1970	July 1, 1970 to June 30, 1971	July 1, 1971 to June 30, 1972	Total as of June 30, 1972
<i>Petitions (Art. 67(b)(3)):</i>				
Army.....	12,222	505	804	13,531
Navy.....	5,874	623	519	7,016
Air Force.....	4,883	74	96	5,053
Coast Guard.....	53	2	0	55
Total.....	23,032	1,204	1,419	25,655
<i>Certificates (Art. 67(b)(2)):</i>				
Army.....	177	11	15	203
Navy.....	226	2	11	239
Air Force.....	95	1	1	97
Coast Guard.....	10	1	0	11
Total.....	508	15	27	550
<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.....	23,577	1,219	1,446	<sup>2</sup> 26,242

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

<sup>2</sup> 23,707 cases actually assigned docket numbers. Overage due to multiple actions on the same cases.

## COURT ACTION

	Total as of June 30, 1970	July 1, 1970 to June 30, 1971	July 1, 1971 to June 30, 1972	Total as of June 30, 1972
<b>Petitions (Art. 67(b)(3)):</b>				
Granted.....	2,656	189	97	2,942
Denied.....	19,784	1,009	1,286	22,079
Denied by Memorandum opinion.....	5	0	1	6
Dismissed.....	19	0	2	21
Charges dismissed by Order.....	1	1	0	2
Withdrawn.....	405	10	9	424
Disposed of on Motion to Dismiss:				
With Opinion.....	8	0	0	8
Without Opinion.....	44	0	1	45
Disposed of by Order setting aside findings and sentence....	6	0	0	6
Remanded.....	181	7	11	199
Court action due (30 days) <sup>3</sup> .....	71	90	80	80
Awaiting replies <sup>3</sup> .....	50	24	48	48
<b>Certificates (Art. 67(b)(2)):</b>				
Opinions rendered.....	493	10	25	528
Opinions pending <sup>3</sup> .....	2	7	6	6
Withdrawn.....	8	0	0	8
Remanded.....	4	0	0	4
Disposed of by Order.....	1	0	0	1
Set for hearing <sup>3</sup> .....	0	0	0	0
Ready for hearing <sup>3</sup> .....	1	0	1	1
Awaiting briefs <sup>3</sup> .....	0	0	1	1
Leave to file denied.....	0	0	2	2
<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>3</sup> .....	0	0	0	0
<b>Opinions rendered:</b>				
Petitions.....	2,307	224	90	2,621
Motions to dismiss.....	11	0	0	11
Motions to Stay Proceedings....	1	0	0	1
Per Curiam Grants.....	57	0	0	57
Certificates.....	431	10	24	465
Certificates and Petitions.....	59	0	1	60
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 Order.....	10	0	0	10
Opinion.....	4	0	0	4
Petition for New Trial.....	1	0	0	1

See footnotes at end of table.

**COURT ACTION—Continued**

	Total as of June 30, 1970	July 1, 1970 to June 30, 1971	July 1, 1971 to June 30, 1972	Total as of June 30, 1972
Motion to Reopen.....	1	0	0	1
Petitions in the Nature of Writ of Error Coram Nobis.....	3	0	0	3
Petitions for Writ of Habeas Corpus.....	0	1	0	1
Motion for Appropriate Relief..	1	0	0	1
Miscellaneous Dockets.....	37	18	14	69
<b>Total.....</b>	<b>2,964</b>	<b>253</b>	<b>129</b>	<b>3,346</b>
<b>Completed cases:</b>				
Petitions denied.....	19,784	1,009	1,286	22,079
Petitions dismissed.....	19	0	2	21
Charges dismissed by Order....	1	1	0	2
Petitions withdrawn.....	405	10	9	424
Certificates withdrawn.....	8	0	0	8
Certificates disposed of by Order.....	1	0	0	1
Opinions rendered.....	2,926	235	115	3,276
Disposed of on Motion to Dismiss:				
With Opinion.....	8	0	0	8
Without Opinion.....	44	0	1	45
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.....	184	7	11	202
<b>Total.....</b>	<b>23,390</b>	<b>1,262</b>	<b>1,424</b>	<b>26,076</b>
Miscellaneous Docket Nos. Assigned: (1967 to Present)	167	49	51	267
Pending.....	0	0	1	1
Granted.....	2	1	0	3
Denied.....	78	17	3	98
Withdrawn.....	1	1	2	4
Dismissed.....	49	15	30	94
Issue moot.....	1	1	0	2
Remanded.....	0	0	1	1
Opinions rendered.....	37	17	14	68
Opinion rendered (Pet for Reconsideration).....	1	0	0	1
Pet for Reconsideration denied..	4	2	2	8
Pet for New Trial denied.....	0	0	1	1
<b>Total.....</b>	<b>173</b>	<b>54</b>	<b>54</b>	<b>5 281</b>

See footnotes at end of table.

## COURT ACTION—Continued

	Pending completion as of—		
	June 30, 1970	June 30, 1971	June 30, 1972
Opinions pending.....	48	17	23
Set for hearing.....	0	0	0
Ready for hearing.....	6	4	2
Petitions granted—awaiting briefs....	15	11	8
Petitions--Court action due (30 days).....	71	90	80
Petitions—awaiting replies.....	50	24	48
Certificates—awaiting briefs.....	0	1	1
Mandatory—awaiting briefs.....	0	0	0
Total.....	190	147	162

<sup>3</sup> As of June 30, 1970, 1971 and 1972.

<sup>4</sup> 3,346 cases were disposed of by 3,309 published Opinions. 170 Opinions were rendered in cases involving 98 Army officers, 37 Air Force officers, 24 Navy officers, 8 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.

<sup>5</sup> Overage due to multiple actions on the same cases.

**REPORT OF**  
**THE JUDGE ADVOCATE GENERAL OF THE ARMY**  
**January 1, 1972 to December 31, 1972**  
**LEGISLATION AND MILITARY JUSTICE PROJECTS**

This past year, emphasis was placed upon procedural improvements which could be effected by regulatory change rather than by requiring statutory amendment. It is clear that the need now is for stability, training and education in the system, and evaluation of existing laws rather than further disruption, change, and turbulence which further statutory amendment or revision would surely cause.

The Army representatives to the Code Committee and the Joint Service Committee on Military Justice continued, however, to participate in the process of reviewing both the *Manual for Courts-Martial, United States, 1969 (Revised edition)*, and the Uniform Code of Military Justice, with a view toward updating these positive laws in accordance with the needs of the Army, developments in the law, and changes in the Federal legal system.

Delay in the processing time of courts-martial and Article 15 punishment continued to plague the Army in 1972. The programs described below—some of which are ongoing, others new—did alleviate delay to a large extent. The new Rules of Court, published in the Military Judges Guide and in Army Regulation 27-10, established specific periods between the service of charges and trial date for both general and special courts-martial. For instance, one of the rules requires the military judge to set a trial date in general court-martial cases within 20 days after an accused has been served with charges, unless there is a valid reason why a trial cannot be held within this period. Legal centers and branch offices underway in Europe (and in the United States on a test basis) reduce processing time for substantially all legal actions. Examples of time reduction possible under this concept were observed in a recent survey of the Fort Belvoir legal center. Article 15 processing time was reduced from 19 to 2-3 days. Delay in the processing of administrative discharges for unsuitability or unfitness was reduced to 72 hours, and estimates for the



processing of administrative discharges for the good of the service were 24 hours.

A new Article 15 form has been tested in Europe. This new form occupies one side of a single legal size sheet of paper and simplifies and consolidates the present three forms (DA Forms 2627, 2627-1, and 2627-2). The test reveals that its simplicity enables commands to reduce greatly both processing time and clerical errors. Because of the success of this test, replacement of the present three forms by the test form is planned.

The Military Magistrate Program continues to be effective in Europe. It is a program which vests a field grade judge advocate, qualified as a military judge, with the responsibility for making a determination as to the continuation of pretrial confinement as to any prisoner in a US Army Europe and Seventh Army confinement facility. Since the program has been in existence, the magistrates have considered 2,077 prisoners in pretrial confinement and have released 301 of them. Recently, the Chief of Staff, Army, approved a test of the Military Magistrate Program at two Army installations in the United States. In this test, the installation staff judge advocate will be designated by the installation commander to appoint military magistrates for the installation confinement facility. The experience of the Program in Europe is such as to quiet most criticism leveled at pretrial confinement procedures. A noticeable improvement has been seen in the expeditious handling of cases where pretrial confinement is involved, and there is increased circumspection by all concerned before a serviceman is ordered into such restraint.

As the result of the recommendations of the Matheson Committee, the Office of The Judge Advocate General became aware of the increasing need for military justice training by troop leaders and noncommissioned officers. Several courses and publications were implemented this past year in order to develop a better understanding of the military justice process among commanders, staff officers, noncommissioned officers, and enlisted men. The following new Department of the Army pamphlets have been published: DA Pamphlet 27-18, *Deskbook for Special Court-Martial Convening Authorities*, designed to assist brigade and battalion commanders who have responsibilities as special court-martial convening authorities; DA Pamphlet 27-19, *Legal Guide for Commanders*, for use by company grade officers and senior noncommissioned officers, primarily in the processing of court-martial charge sheets and nonjudicial punishment; DA Pamphlet 27-20, *Lessons in Military Law*, an instruction guide for Officer Candidate School and officers' basic courses; and DA Pamphlet 27-4, *Correctional Custody*,

explaining the substantive standards for establishing and operating a correctional custody facility. Correctional custody is a potentially effective, but often overlooked, form of nonjudicial punishment. There are also several new educational courses offered on military justice. The Senior Officers' Legal Orientation Course provides instruction on military justice and other legal subjects for senior field grade officers. For junior officers, Army regulations have been changed to provide for the mandatory presentation of military justice instruction in officer basic, officer advanced, and Officer Candidate School courses. The enlisted soldier has not been overlooked. The newest lesson plan under review is entitled "Communicating with the Enlisted Man." The plan involves a two-hour class taught jointly by a company commander and a JAGC defense counsel to company-sized classes. The class illustrates the role the commander and defense counsel play in the administration of military justice.

Several special projects in military justice were initiated in 1972. A scenario was prepared for use in Article 15 proceedings, to be used as a guide for commanders and to establish a higher degree of uniformity in the Article 15 procedures. These procedures insure that an accused who accepts nonjudicial punishment will do so knowingly, intelligently, and with legal advice. The accused will also be made aware of his right to present matters in extenuation, mitigation, and defense. Field testing of a program for the random selection of court members was initiated in order to develop a system which will avoid the appearance that the commander influences a court decision by the selection of court members. A proposal for a separate defense establishment was made. This proposal is currently under serious study. Finally, extensive study of a method to reform military sentencing procedures was undertaken. The goal of this study is eventually to transfer sentencing power to the military judge. Before sentencing power can be transferred to the military judge, a comprehensive presentencing report system must be developed. Steps are presently underway to accomplish this.

Several Supreme Court cases impacted upon the service in 1972. Of these cases, *Argersinger v. Hamlin*, 407 U.S. 25 (1972), and *Morrissey v. Brewer*, 408 U.S. 471 (1972), are of particular importance. The Court in *Argersinger* held that, absent a knowing and intelligent waiver, no person may be imprisoned for any offense unless he was represented by counsel. This case impacted upon the military service because there was no requirement for a defense counsel to represent an accused before a summary court-martial. *Argersinger* was implemented in the

Army by prohibiting sentences to confinement in courts-martial unless the accused is represented by a lawyer or unless he makes a knowing and intelligent waiver of such counsel. The Court in *Morrissey* held that due process requires an informal hearing to assure that the findings of a parole violation are substantiated. This case impacted upon the military because a vacation of a suspended sentence is analogous to the revocation of a parole, and there was no requirement for a hearing in the case of most vacation of suspension proceedings involving sentences by inferior courts-martial. *Morrissey* was implemented in the Army by requiring a hearing, similar to that required by Article 72 of the Code, in all cases in which a suspended sentence to confinement is to be vacated.

The Report of the Task Force on the Administration of Military Justice in the Armed Forces, released on 30 November 1972, contained many proposals affecting military justice. Major proposals included the following: to implement the use of hearings during Article 15 proceedings, to abolish the summary court, to allow the military judge to suspend and defer sentences, to create a separate establishment for defense counsel, to provide for random selection of court members, and to propose enactment of a specific legislative provision in the UCMJ to ban discrimination. A number of these recommendations will require legislation. Others can be effected by amendment to Army regulations. Many of these recommendations were already under consideration before the Report was released, and some will be implemented next year. Finally, as to some recommendations, there is no, or little, serious support, or the implementation of the recommendations is beyond the existing personnel and financial resources of the service. In any case, the Report of the Task Force provides a useful review of suggested changes to the military justice system. It is significant, however, that the Task Force did not recommend a major overhaul of the system. There are many examples found in the Report to support the conclusion that, by and large, courts-martial are fairly operated. The focus of primary Task Force concern was on the discretionary steps before court-martial proceedings actually begin. The Army is scrutinizing this same area with the view to initiating necessary procedural improvement, if possible, without the need for legislation.

The Army's experience in Vietnam during the period 1964-1972 revealed significant weaknesses in military justice functioning. Prompt, effective, and fair discipline was not always realized because of delays in imposing punishment following the commission of the offense. Securing the right to a speedy trial for individual servicemen in some cases was extremely

difficult due to rapid and frequent personnel changes, including unavailability of essential witnesses. In essence, military justice procedures were not adapted to support units engaged in large scale hostilities.

Initial evaluation indicates the problems were not caused by deficiencies in the Code, but rather in its implementation and in the training, administrative, logistical, and organizational problems that arise in wartime. Studies designed to detect and eliminate these deficiencies are today principal tasks in the Office of The Judge Advocate General. It is anticipated that the military justice system can be conformed to provide prompt and just disposition of offenses without legislative changes.

The number of persons tried by courts-martial for fiscal year 1972 (average Army strength, 993,587) follows:

	Convicted	Acquitted	Total
General.....	1,867	180	2,047
Special (W/BCD's).....	931	71	1,002
Special (W/O BCD's).....	14,308	1,303	15,611
Summary.....	12,134	793	12,927
<b>Total.....</b>	<b>29,240</b>	<b>2,347</b>	<b>31,587</b>

Records of trial by general and special (BCD) courts-martial received by the Judge Advocate General during fiscal year 1972: <sup>1</sup>

For review under Article 66 (General).....	1,782
For review under Article 66 (Specials W/BCD's).....	1,018
For examination under Article 69.....	435
<b>Total.....</b>	<b>3,235</b>

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

On Hand at the beginning of period.....	1,231
General Courts-Martial.....	837
Special Courts-Martial (BCD).....	394
Referred for review.....	<sup>2</sup> 2,978
General Courts-Martial.....	1,941
Special Courts-Martial.....	1,037
<b>Total.....</b>	<b>4,209</b>
Review.....	3,156
General Courts-Martial.....	2,038
Special Courts-Martial (BCD).....	1,118
Pending at close of period.....	1,053
General Courts-Martial.....	740
Special Courts-Martial (BCD).....	313
<b>Total.....</b>	<b>4,209</b>

Miscellaneous Docket Matters:

Denied.....	1
Dismissed.....	1
Mooted.....	0

<sup>1</sup> Figures in this section are based on records of trial as opposed to number 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 section.

<sup>2</sup> This figure includes 45 cases which were referred to the Army Court of Military Review pursuant to Article 69, Uniform Code of Military Justice; 18 cases referred after rehearing; and 58 cases referred for reconsideration.

Actions taken during 1 July 71 thru 30 June 72 by Army Court of Military Review:

Findings and sentence affirmed.....	2,293
Findings affirmed, sentence modified.....	634
Findings affirmed, sentence commuted.....	3
Findings affirmed, no sentence affirmed.....	4
Findings affirmed, sentence reassessment or rehearing as to sentence only ordered.....	1
Findings partially disapproved, sentence affirmed.....	40
Findings partially disapproved, rehearing ordered.....	1
Findings & sentence affirmed in part, disapproved in part.....	72
Findings & sentence disapproved, rehearing ordered.....	17
Findings & sentence disapproved, charges dismissed.....	48
Returned to field for New SJA & C/A action.....	37
Order for psychiatric examination.....	3
Motion for appropriate relief, denied.....	1
Motion for reconsideration (re-opened case), dismissed.....	1
Proceedings abated, death of accused.....	1
<hr/>	<hr/>
Total.....	3,156

Of 3,156 accused whose cases were reviewed by the Court of Military Review pursuant to Article 66 during the fiscal year, 1,990(63.1%) requested representation by appellate defense counsel.

\* \* \* \* \*

The records in the cases of 819 accused were forwarded to the United States Court of Military Appeals pursuant to the three subdivisions of Article 67 (b) during FY 72. These comprised 26.0% of the number of these cases reviewed by the Court of Military Review during the period. Of the mentioned 819 cases, 804 were forwarded on petition of accused and 15 were certified by TJAG.

56 includes an article on the Pilot Legal Assistance Program by Mr. F. Raymond Marks; an article on presumptions and inferences by Major Jack P. Hug, JAGC; an article on surplus property sales by Major Curtis L. Tracy, JAGC; and an article on the dumping of nerve gas by Captain Ronald P. Cundick, JAGC. Volume 57 contains an article on the Manual for Courts-Martial—1984 by Major General Kenneth J. Hodson, USA; an article on German military law by Dr. Friedhelm Krueger-Sprengel; the second article on the future of the Court of Military Appeals by Captain John T. Willis, JAGC; and an article on war crimes by Captain Jordan J. Paust, JAGC. Volume 58 includes an article on perjury in the military by Lieutenant Colonel Leo K. O'Drudy, Jr., USMC; an article on jury selection under the Code by Major R. Rex Brookshire, II, JAGC; and an article on environmental responsibility for the military lawyer by Captain John E. Kirchner, JAGC.

Sixteen issues of the Judge Advocate Legal Service were published during 1972 in order 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, and actions of The Judge Advocate General under Article 69, UCMJ.

During 1972 twelve issues of *The Army Lawyer* were published. This monthly journal provides timely information of a practical nature to practicing Army lawyers with focus upon military justice, claims, personnel, legal assistance, procurement, judicial, and litigation information pertinent to the military lawyer in the field. Other miscellaneous items such as military affairs opinions and selected civilian court decisions were included in *The Army Lawyer*.

The annual Judge Advocate General's Conference was held in Charlottesville during the period 1-5 October 1972. One hundred twenty-seven selected conferees attended. Principal speakers were the Honorable Tom C. Clark, Associate Justice of the United States Supreme Court (Retired); Department of Defense General Counsel J. Fred Buzhardt; Attorney General Robert B. Morgan of North Carolina; and Deputy Assistant Secretary of Defense John A. Busterud.

The School continued to plan and conduct reserve judge advocate training. War crimes teams and procurement law teams of the reserve Judge Advocate General's Service Organization (JAGSO) detachments received intensive classroom and team training at the School during two-week periods in June and July. The remaining JAGSO detachments, consisting of

court-martial, legal assistance, and claims teams received on-the-job training at approximately 30 military installations throughout the United States. This training was planned and monitored by the School.

JAGSO detachments have expanded their inactive duty training by conducting mutual support missions. Rather than performing training in the sterile surroundings of a United States Army Reserve center, over 400 members of JAGSO detachments are now performing this training on weekends and evenings at active duty posts. This assistance rendered by the Reserve members of the Corps has greatly reduced the backlog of judge advocate actions at many installations.

The School conducted nonresident training for approximately 1,500 personnel, of which some 600 were active Army personnel, 680 national guardsmen and reservists, and 130 U.S. civilian personnel. The remainder are from other U.S. armed services, ROTC, allied military, and allied civilian personnel. Enrollment is spread over eight courses with additional students taking miscellaneous subcourses without being enrolled in a specific course. Approximately 550 students are enrolled in courses designed for officer personnel. Over 200 of these students are enrolled in the Judge Advocate Career level course. About 400 enlisted personnel are enrolled in nonresident legal clerk courses and an additional 120 are enrolled in the Senior NCO Course and Legal Administrative Technician Course.

## PERSONNEL

In 1972, the average strength of the Judge Advocate General's Corps was 1,638 officers, compared with an average of 1,740 during 1971. The curtailment of non-JAGC attorneys as trial and defense counsel in special courts-martial continued with only 14 such attorneys being certified during 1972. Non-JAGC attorneys were required in Vietnam, Korea, and Europe where commands are widespread geographically, and where there are transportation difficulties. An area jurisdiction concept was initiated in Europe to utilize JAGC assets more effectively.

The retention of experienced officers remains a most serious problem. Even with a declining strength, the Corps still had a 53% shortage of field grade officers, the same shortage as 1971. More disturbing is the fact that the grades of lieutenant colonel and major are respectively 55% and 63% short of authorized strength. Since the retention rate of newly commissioned judge advocates is only 7%, the shortage of field grade officers will probably continue. In addition to the poor retention picture, the interest in JAGC commissions has continued to decline. There

were only 252 applications (a decrease of 20% from FY 72) for appointment to fill the 200 openings in FY 73. To increase the desirability of a tour of duty with JAGC, a reduction of the basic JAGC active duty obligation from four years to three years was approved, effective 1 April 1973.

To attract new applicants and increase retention, legislation was introduced in the 92d Congress to authorize professional pay for lawyers. H.R. 4606, known as the Pirnie Bill, was unanimously approved by the House of Representatives on 19 July 1971. Hearings were held by the Senate Armed Services Committee on S.704, a companion bill, on 19 September 1972. However, the bill was not reported out of committee. It is anticipated that similar legislation will be proposed by the Department of Defense for the 93d Congress.

The Adjutant General's School, Fort Benjamin Harrison, Indiana, commenced training of legal clerks in April 1972 and graduated 337 legal clerks in that year. The Judge Advocate General's School also trained 20 legal paraprofessionals. The USAREUR School at Oberammergau, Germany, trained 225 legal clerks and 28 legal paraprofessionals for service in USA-REUR. These training programs permitted the filling of 80% of authorized legal clerk positions and increased the efficiency of the administration of military justice.

GEORGE S. PRUGH  
*Major General, USA*  
*The Judge Advocate General*  
*United States Army*



**REPORT OF  
THE JUDGE ADVOCATE GENERAL OF THE NAVY**

**January 1, 1972 to December 31, 1972**

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 1972, contains, unless otherwise indicated, statistical information covering fiscal year 1972.

*COURT-MARTIAL WORKLOAD.* a. There has been a decrease in the total court-martial workload, as reflected by Exhibit A to this report.

b. During fiscal year 1972, the Navy Court of Military Review received for review 718 general courts-martial and 1,993 special courts-martial (total 2,711) as compared with 752 general courts-martial and 2,707 special courts-martial (total 3,459) during fiscal year 1971. Of the 2,711 cases received by the Navy Court of Military Review during fiscal year 1972, 1,540 accused requested counsel (57 percent).

*SUPERVISION OF THE ADMINISTRATION OF MILITARY JUSTICE.* Complying with the requirements of Article 6(a), Uniform Code of Military Justice, the Judge Advocate General, the Deputy Judge Advocate General, and the Assistant Judge Advocate General (Military Law) continued to visit commands within the United States, Europe, the Far East, and Southeast Asia in the supervision of the administration of military justice. During calendar year 1972, much work has been done in revitalizing the Article 6(a) inspections.

*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 approximately three-and-a-half years. The law center concept has demonstrated its value by accommodating without undue difficulty the increased workload resulting from the implementation of the Military Justice Act of 1968. During calendar year 1972, as a result of our drawdown of forces in Vietnam, the law center in Saigon, Vietnam, was disesta-

blished, thereby reducing the number of law centers throughout the world from 28 to 27.

*U. S. NAVY-MARINE CORPS JUDICIARY ACTIVITY.* a. The U. S. Navy-Marine Corps Judiciary Activity supplied military judges for 939 general courts-martial during calendar year 1972, an increase of 15 cases over the 924 general courts-martial tried during calendar year 1971. Of these, 66 percent were tried by courts constituted with military judge alone. In calendar year 1971, 67 percent of the general courts-martial were tried by courts constituted with military judge alone.

b. The present manning level of the U. S. Navy-Marine Corps Judiciary Activity stands at 19 general court-martial military judges, a decrease of one from the manning level at the close of calendar year 1971. Three special court-martial military judges are assigned to the Judiciary Activity by temporary-additional-duty orders as part of a pilot project instituted in November 1971. Two of the special court-martial military judges are assigned to the Judiciary Branch Office at Norfolk, Virginia, and the third is assigned to the Judiciary Branch Office at San Diego, California. The general court-martial military judges of the Judiciary Activity and the special court-martial military judges assigned to the Judiciary Activity at Norfolk, Virginia, and San Diego, California, tried 1,554 special courts-martial (88% by military judge alone) during calendar year 1972 as compared with 1,262 special courts-martial in calendar year 1971.

c. The Navy hosted the 1972 Military Judicial Seminar at Newport, Rhode Island, on 6, 7, and 8 April, 1972, under the sponsorship of the National Conference of Special Court Judges and the National College of the State Judiciary. The seminar was attended by 67 military trial and appellate judges. The civilian staff included five civilian judges. Distinguished visitors and speakers at the seminar numbered 11 military and 6 civilian. The latter included the Chief Judge and Judges of the United States Court of Military Appeals. Every military service was represented on the program.

d. Military judges of the Navy-Marine Corps Judiciary Activity attended a variety of professional meetings and seminars during calendar year 1972 including the annual meeting of the American Bar Association at San Francisco in August 1972. One Navy and two Marine Corps GCM judges attended the four-week courses for trial judges at the National College of the State Judiciary, Reno, Nevada. Five GCM judges attended the annual staff judge advocate's conference at Washington, D. C., 2-6 October 1972. Two SPCM military judges, one Navy and one Marine Corps, attended a seminar on the American Bar

Association Standards for the Administration of Criminal Justice at Reno, Nevada, on 24-26 November 1972. Opportunities for contact with their civilian counterparts have served to give military judges increased incentive for professional improvement and an increased appreciation of the importance of their function in the military community. The Judge Advocate General of the Navy will continue to encourage efforts designed to provide increased opportunities for professional intercourse between military and civilian judges.

*ARTICLE 69, UCMJ, PETITIONS.* This year there has been a decrease in the number of petitions for relief submitted pursuant to Article 69, Uniform Code of Military Justice, a provision which permits the Judge Advocate General to act in certain cases that have been finally reviewed under Article 76. In calendar year 1972, 80 petitions for relief were received by the Judge Advocate General, as opposed to 87 petitions received in calendar year 1971. Of these 80 petitions, 9 have been granted in whole or part.

*NEW-TRIAL PETITIONS.* Eight petitions for new trial submitted pursuant to Article 73, Uniform Code of Military Justice, have been received. Of these 8 petitions, 5 were forwarded to the U. S. Court of Military Appeals, where the cases in question were awaiting review. The remaining petitions were denied.

*NAVAL JUSTICE SCHOOL.* The Naval Justice School continued to offer intensive instruction in the principles of military justice and related administrative matters. During the calendar year, the school presented complete formalized instruction to a total of 1,942 officers and enlisted personnel of all the Armed Forces. A total of 333 Navy, Marine Corps, and Coast Guard officers graduated from eight five-week nonlawyer courses. Seven five-week nonlawyer courses were presented at Newport, Rhode Island, and one was presented at Camp Pendleton, California. A total of 203 lawyers of the Navy and Marine Corps completed six ten-week officer lawyer courses. Two hundred twenty-four enlisted members of the Army, Navy, and Coast Guard were trained to perform legal-clerk and court-reporting duties for their respective services and sixteen additional enlisted personnel received a two-week course in legal clerkship. (During the year, in anticipation of the requirements for the new legalman rating, the five-week legal clerk and court reporting course was expanded to seven weeks.) Additionally, 1,166 officers of the Navy, Marine Corps, Coast Guard, Army and Air Force were given instruction specifically designed for senior officers. This latter instruction was presented at the Naval Justice School, the Naval War College, and on road

trips to Camp Pendleton, California, Camp Lejeune, North Carolina, Long Beach, California, Jacksonville, Florida, Oceana, Virginia, Quantico, Virginia, and Norfolk, Virginia. In addition to the foregoing formal courses of instruction, hundreds of students at the Newport Officer Training Center, the Naval Destroyer School, the Naval Chaplains School, the Naval Submarine School at New London, Connecticut, and the Naval Hospital, Newport, Rhode Island, were given basic indoctrination in such areas of military law as search and seizure, right to counsel, and administrative proceedings. Finally, a total of 230 Reserve Navy, Marine Corps, and Coast Guard lawyers received instruction at the annual East and West Coast Reserve Seminars.

*ANNUAL STAFF JUDGE ADVOCATE'S CONFERENCE.* a. A conference of judge advocates from all major Navy and Marine Corps commands was held in Washington, D. C., on 2-6 October 1972. The conference heard addresses by the Secretary of the Navy, the Deputy Under Secretary of the Navy, the Chief of Naval Operations, the Commandant of the Marine Corps, the General Counsel of the Department of Defense, the Judge Advocate General, and the Director, Judge Advocate Division, Headquarters, Marine Corps. The conference also included special meetings of Marine Corps Staff Judge Advocates, fleet- and type-commander judge advocates, law center directors, pilot legal assistance program officers, and the Ad Hoc Committee of GCM Military Judges on Rules for Bailiffs and Orderlies. Special seminars were held on the processing of affirmative claims, problems of the trial counsel, problems facing the defense counsel, aspects of administrative discharges, and recommendations for improving legal services for the Navy and retention of junior judge advocates. Additionally, the Assistant Judge Advocates General for Civil and Military Law made presentations to the conferees on matters of interest from those divisions under their cognizance, and a panel discussion was held on Reform to the Uniform Code of Military Justice featuring Nathaniel Jones, Esq., General Counsel for the National Association for the Advancement of Colored People, Norman L. Blumenfeld, Esq., Staff Assistant to Senator Bayh (D. Ind.), and Colonel Charles J. Keever, USMC, Deputy Director, Judge Advocate Division, Headquarters, U. S. Marine Corps.

b. This annual conference of 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. The 1972 conference emphasized participation by younger

judge advocates, and it produced over 60 specific recommendations directed to the improvement of legal services to the Navy and Marine Corps. These recommendations are being studied by a special task force appointed by the Judge Advocate General for the purpose of identifying those which have merit and initiating action to place them in effect. Plans are now being formulated to hold a similar conference, with similar objectives, in 1973.

#### **CERTIFICATION OF NCMR DECISIONS TO USCMA FOR REVIEW**

*PURSUANT TO ARTICLE 67(b), UCMJ.* A number of areas in the law have been clarified by use of the certification process during the past year. Important U. S. Court of Military Appeals opinions were obtained on various subjects, including the balance of judicial authority between the convening authority and the military judge, the power of the trial judge to determine situs of trial, what material must be included in a staff judge advocate's review, the grounds for terminating any attorney-client relationship, the type of argument a defense counsel can make when the accused desires a punitive discharge, and the admissibility of drug-analysis laboratory reports as entry exceptions to the hearsay rule. Eleven such Navy Court of Military Review decisions were certified by the Judge Advocate General to the U. S. Court of Military Appeals for review in fiscal year 1972.

*CIVIL LITIGATION.* During calendar year 1972, the Judge Advocate General provided assistance to the Justice Department in several civil-litigation cases that had potential impact on the military-justice system. Some of the cases and issues involved are set forth below:

a. *Flemings v. Warner*—issue involved is the retroactive application of the decision in *O'Callahan v. Parker*. The case was argued before the U. S. Supreme Court on 4 December 1972.

b. *Augenblick v. United States*—issues involved are (1) the retroactive application of *O'Callahan*; (2) the constitutionality of Article 134, UCMJ; and (3) the finality of review under Article 76, UCMJ. The case was argued before the U. S. Court of Claims on 4 May 1972.

c. *Brown v. United States*—presents the issue of the retroactive application of *U.S. v. Greenwell*, 19 USCMA 460, 42 CMR 62 (1970). The case is currently pending in the U. S. District Court for the Eastern District of Pennsylvania. Cross motions for summary judgment are to be filed on 9 March 1973.

d. *Sieger and Lyle v. Kincaid*—both cases involve court-martial jurisdiction over off-base, off-duty, and out-of-uniform possession of marijuana and were tried in the U. S. District Court for the Middle District of Florida. In *Sieger*, the court held for the Government, finding sufficient service connection in plaintiff's participation in the drug exemption program. In *Lyle* the court held for the plaintiff despite the fact that, subsequent to apprehension at a Trailways bus station, the marijuana was discovered on his person at the military-controlled Shore Patrol Station. Neither case is being appealed.

e. *Logemann v. Laird*—involves the issues of whether a conscientious objector (CO) must complete trial by court-martial for refusal to obey an order to perform noncombatant hospital duties prior to being discharged as a CO, and the duty of a CO claimant to obey such orders during the period his CO claim was erroneously denied by the Secretary. The U. S. District Court for the Eastern District of Pennsylvania granted petitioner's writ of habeas corpus and ordered his immediate release from the service. The case is currently on appeal to the U. S. Court of Appeals for the Third Circuit.

f. *Daigle and Crosby v. Warner*—concerns the issue of whether right to counsel as extended in *Argersinger v. Hamlin* is applicable to the summary court-martial. The U. S. District Court for Hawaii held for plaintiff in extending the right to lawyer counsel at trial to those sentenced to confinement by summary court-martial. The case is currently on appeal to the U. S. Court of Appeals for the Ninth Circuit.

g. *In re DeSersa*—involved the issue of probable cause for the arrest by an FBI agent of a marine who was absent without leave. The case was decided in favor of the Marine Corps by the U. S. District Court for the District of Utah.

h. *Devlin v. United States*—involved the issue of retroactive application of *O'Callahan v. Parker*. The U. S. District Court for the Eastern District of North Carolina held *O'Callahan* not to apply retroactively.

i. *Goodman v. Secretary of the Navy*—involved the issue of the necessity of exhausting the military remedy of writ of *coram nobis* to the U. S. Court of Military Appeals prior to seeking habeas corpus relief in Federal district court. The U. S. District Court for the Middle District of Pennsylvania ordered plaintiff to exhaust the remedy of *coram nobis* to the U. S. Court of Military Appeals.

j. *Messina v. Guinn*—presented the issues of (1) court-martial jurisdiction over a serviceman whose enlistment had been involuntarily extended; (2) exhaustion of military remedies prior to filing a habeas corpus petition in Federal district

court; and (3) court-martial jurisdiction over the on-base sale of marijuana to another serviceman. The U. S. District Court for the Southern District of California decided the case in favor of the Navy on all issues.

k. *Kilgore v. Laird*—involved the issue of a “lost soldier.” The plaintiff was missing for two years, although he asserted that he had made several attempts to get back to the Navy. The U. S. District Court for the Southern District of California enjoined the Navy from proceeding with the petitioner’s court-martial for unauthorized absence for the period and held that he was entitled to an immediate honorable discharge from the Navy. No appeal was taken in the case after the adverse decision the Army received in *Parisi v. Davidson*.

1. *United States ex rel Will v. Laird*—involves the issue of whether a conscientious objector (CO) whose claim had been improperly denied by the Chief of Naval Personnel must complete a pending trial by court-martial on charges unrelated to his CO claim, unauthorized absence, prior to being released from the service. The case is currently pending in the U. S. District Court for the Northern District of Illinois.

m. *Chenoweth v. Warner*—involves the issue of the legality of pretrial confinement imposed upon the accused who is charged with violating Article 108, UCMJ, and 18 USC sec. 2153 (sabotage). The U. S. District Court for the Northern District of California, on 20 November 1972, remanded the case to naval authorities to redetermine the propriety of further pretrial confinement in line with Articles 10 and 13, UCMJ.

**THE SECRETARY OF DEFENSE TASK FORCE ON THE ADMINISTRATION OF MILITARY JUSTICE IN THE ARMED FORCES.** The Judge Advocate General was extensively involved as a member of the Secretary of Defense Task Force on the Administration of Military Justice in the Armed Forces. Although the Task Force was primarily concerned with problems of racial and ethnic discrimination, inquiry was made by that group into all facets of military justice. A report on the findings of the Task Force was submitted to the Secretary of Defense on 30 November 1972. It is expected that there may result from this report many far-reaching changes which could develop into major programs for the Judge Advocate General.

MERLIN H. STARING,  
*Rear Admiral, USN,*  
*The Judge Advocate General,*  
*United States Navy*

## EXHIBIT A

	<i>Fiscal year</i> 1972	<i>Fiscal year</i> 1971
<b>General courts-martial:</b>		
Received for review under Article 66.....	718	752
Received for review under Article 69 and acquittals.....	155	176
Total.....	873	928
<b>Special courts-martial:</b>		
Received for review under Article 66.....	1,993	2,707
Received for review under Article 65c.....	0	2
Reviewed in the field.....	7,803	11,028
Total.....	9,796	13,737
<b>Summary courts-martial:</b>		
Received for review under Article 65c.....	0	2
Reviewed in the field.....	11,308	14,095
Total.....	11,308	14,097
Total all courts-martial.....	21,977	28,762
<b>Navy Court of Military Review actions:</b>		
On hand for review end last fiscal year.....	269	451
Received for review during fiscal year.....	2,711	3,459
Total on hand.....	2,980	3,910
Reviewed during fiscal year.....	2,793	3,641
Pending review end current fiscal year.....	187	269
Total.....	2,980	3,910
<b>Findings modified or set aside by Navy:</b>		
Court of Military Review during fiscal year.....	119	195
Requests for appellate counsel before NCMR.....	1,540	2,050
<b>U.S. Court of Military Appeals actions:</b>		
Petitions forwarded to USCMA.....	519	623
Cases certified to USCMA by JAG.....	11	2
Total cases docketed with USCMA.....	530	625
Petitions granted by USCMA.....	32	111
Petitions denied by USCMA.....	500	517
Total petitions acted upon by USCMA.....	532	628



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

**January 1, 1972 to December 31, 1972**

1. As The Judge Advocate General of the Air Force, I served as a member of the DOD Task Force on the Administration of Military Justice in the Armed Forces. The report of the Task Force was completed and forwarded to Secretary Laird on 30 November 1972. General Vague and I visited legal offices in the United States and overseas as required by Article 6(a), UCMJ. We also attended and participated in various bar association meetings, and addressed numerous civic, professional and military organizations. The 1972 Major Air Command Judge Advocate Conference was held at Bolling Air Force Base and the Forrestal Building, Washington, D.C., in October 1972. The pilot project for the Air Force Trial Judiciary Division discussed in the 1971 and 1972 Reports was concluded and evaluated. As the result of the Pilot Project, a program was adopted and implemented providing for full time trial and defense counsel in trials by general courts-martial and full time special court-martial military judges. As a result of this implementation, all trial and defense counsel for general courts-martial and all special court-martial military judges for all such duty throughout the Air Force are now assigned to The Judge Advocate General in the same manner as are military judges for general courts-martial pursuant to UCMJ, Article 26(c).

2. a. The number of records of trials 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 1972, is shown in the following table:

Total number records received.....	340
For review under Article 66.....	267
General court-martial records.....	112
Special court-martial records.....	155
Examined under Article 69.....	50

The Court of Military Review modified the findings and/or sentence in 36 cases.

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

Cases on hand June 30, 1971.....	46
Cases referred for review.....	267
	<hr/>
Total for review .....	312
	<hr/>
Cases reviewed and dispatched.....	240
Cases on hand June 30, 1972.....	72

c. During the fiscal year 79.8% 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.....	240
Number of cases forwarded to USCMA.....	97
Cases petitioned.....	96
Cases certified.....	1
Percent total forwarded of total cases reviewed.....	40.4
Petitions granted.....	8
Percent grants of total petitioned.....	8.3
Percent petitions granted of total cases reviewed by Court of Review.....	3.3

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

General courts-martial.....	189
Special courts-martial.....	2,245
Summary courts-martial.....	227
	<hr/>
Total.....	2,661

### 3. Reportable Article 15 actions, fiscal year 1972:

	Number of cases	Percentages of total number of cases
Total cases.....	34,712	
Officers.....	170	0.5
Airmen.....	34,542	99.5
Punishments imposed:		
Officers.....	261	
Airmen.....	53,665	
Restrictions (over 14 days):		
Officers.....	3	1.1
Airmen.....	3,518	6.6
Quarters arrest/correctional custody:		
Officers.....	2	0.8
Airmen.....	3,104	5.8
Extra duties (over 14 days):		
Airmen.....	1,487	2.8

	Number of cases	Percentages of total number of cases
Reduction in grade:		
Airmen.....	22,541	42.0
Forfeiture of pay:		
Officers.....	129	49.4
Airmen.....	22,595	42.1
Detention of pay:		
Officers.....	0	0.0
Airmen.....	30	0.1
Written reprimand:		
Officers.....	127	48.7
Airmen.....	390	0.7
Mitigating actions:		
Appeals taken.....	1,867	**5.4
Officers.....	15	
Airmen.....	1,852	
Appeals denied.....	1,579	***84.7
Officers.....	14	
Airmen.....	1,565	
Suspension of Punishment.....	15,917	**45.9
Officers.....	3	
Airmen.....	15,914	
Other Action.....	3,204	**9.2
Officers.....	0	
Airmen.....	3,204	

\*\*Of total cases (34,712).

\*\*\*Of appeals taken (1,864).

4. A substantial amount of activity concerning regulations and manuals related to military justice occurred in 1972. New and revised editions of AFM 111-1, Military Justice Guide, AFM 111-6, Procedure Guides for Courts-Martial, AFR 110-15, Use of U.S. Magistrates for Trial of Minor Offenses Committed by Civilians, AFR 111-7, Explanation of Articles of the UCMJ (Article 137), AFR 111-9, Nonjudicial Punishment Under Article 15, UCMJ, and AFR 111-17, Release of Information Relating to Criminal Proceedings, were published and distributed to the field in 1972. In addition, Change 1 to AFR 111-9 was also published and distributed to the field.

5. Volume XIV of the USAF JAG Law Review was published and distributed during 1972. Each of the four issues comprising this volume were special issues sponsored by various commands and agencies. Consequently, only issue number three, sponsored by the Air Force Communications Service, contains an article devoted to a military justice topic. The title of this article is "Jurisdiction: Minus a Uniform."

6. During calendar year 1972, the Judge Advocate General's Department provided continuing legal and general education

opportunities to 359 of its personnel. The basic course for new and recently assigned judge advocates was The Judge Advocate Staff Officer Course held at the Air University, Maxwell Air Force Base, Ala. This six week course was conducted five times during 1972, and 200 judge advocates completed it. On 1 July 1973, The Judge Advocate Staff Officer Course is to be changed to The Judge Advocate General's School, USAF, and will have an increase in faculty and an enlarged scope of activities.

During the year, nine judge advocates were sent to various civilian universities to obtain an LL.M degree. Five were pursuing a course of study in Procurement Law, two in International Law, one in Labor Law and one in Tax Law. Because of the continually increasing importance of the procurement law field, an internship for future procurement lawyers is held at each of the five Air Material Areas (AMA). Five selected judge advocates entering active duty for the first time are assigned to the AMA Procurement Office for one year before being regularly assigned to judge advocate duties at the office of the AMA Staff Judge Advocate. This program is in addition to the regular and continuing two week Procurement Law course held at Wright-Patterson Air Force Base, OH. Eighty-five judge advocates completed this latter course during 1972. In 1973, this course will increase to 105 officers for that year in order to provide more procurement training. AF Judge Advocate officers also attend the Logistics Officer Course conducted by the Army JAG School at Charlottesville, VA. In 1972, ten attended the basic course and five the advanced course. In 1972, 25 officers attended the one week course for prosecuting attorneys and 25 attended the equal length course for defense attorneys held at Northwestern University. Four of our military judges were enrolled in the course for judges sponsored by the National College of State Trial Judges. This is a six week course held at the University of Nevada in Reno, Nev. Judge Advocates were also in attendance at the various military schools during 1972.

During that year three lawyers attended the Air Command and Staff College and one the Air War College. For 1973 there will be five attending the former and three the latter. Two officers attended the Armed Forces Staff College. We also have a quota of one officer per odd year to attend the Industrial College of the Armed Forces and one officer per even year to attend the National War College. Air Force lawyers attend the Squadron Officers School, but their assignment is on a local command basis and not by The Judge Advocate General. However, attendance at this course is encouraged. A course for newly appointed staff judge advocates was established in 1971

and began in August 1972. It will be conducted each year with 32 officers enrolled per session. Additionally, a two week refresher course is held each year for Reserve and Air National Guard judge advocates. In 1972, 64 officers attended two sessions of this course. A 13 week Forensic Medicine course is conducted, as required, at Malcolm Grow Hospital, Andrews Air Force Base, MD. Those attending this course are assigned as Forensic Medicine Consultants to area hospital commanders. The first class of 10 lawyers was held in 1970. Seven students attended this course starting in March 1972. In 1972 selected Air Force Regular Officers were participating in the excess leave program to obtain their legal education. It is anticipated that upon completion of law school these students will enter active duty as judge advocates. Therefore, during the summer vacation period, they may perform active duty in an Air Force legal office as "legal interns." In addition to those assigned to Base Legal Offices, nine were assigned to the various divisions of the Office of The Judge Advocate General at Hq USAF. A very significant step toward the improvement of administration in our legal offices was the establishment during 1971, of the new school for legal technicians at Keesler Air Force Base, MISS. The first class of this specialized course for enlisted members entering the legal field began in January 1972. In addition to these programs, Air Force Judge Advocates and Legal Technicians attended other various short courses pertaining to law conducted by civilian colleges and universities and the armed forces.

7. 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 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.

8. On June 30, 1972, there were 1,097 Judge Advocates on duty. Of these, 553 were members of the Regular Air Force, 425 were Career Reserve officers (of this number, 338 entered active duty in Career Reserve status and have a 4-year active duty service commitment), and 118 were Reserve officers with established dates of separation. The Regular officer strength decreased by 12 and the total officer strength decreased by 199 between June 30, 1971 and June 30, 1972.

9. At the close of the period of this report, there were 66 commands exercising general court-martial jurisdiction.

JAMES S. CHENEY,  
*Major General, USAF,*  
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**REPORT OF THE GENERAL COUNSEL OF THE DEPARTMENT OF  
TRANSPORTATION (U. S. COAST GUARD)**

**January 1, 1972 to December 31, 1972**

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 given are for the fiscal year beginning July 1, 1971, and ending June 30, 1972.

The table below shows the number of court-martial records received and filed at Coast Guard Headquarters during the fiscal year and the four preceding years.

	1972	1971	1970	1969	1968
General courts-martial.....	6	2	2	2	0
Special courts-martial.....	167	129	76	92	91
Summary courts-martial.....	348	287	174	207	216
<b>Total.....</b>	<b>511</b>	<b>418</b>	<b>252</b>	<b>301</b>	<b>307</b>

Both special and summary courts-martial showed a marked increase during the year. Nearly all of the increase can be attributed to an upsurge in the offenses of absence without authority, desertion, missing movement, and marihuana or controlled drug use, possession, and sale.

In spite of the increase, all special courts-martial had lawyers for defense counsel and non-lawyer trial counsel were used only 15 times. A military judge was assigned in all of the trials. As was noted in the last report submitted, a full-time judiciary for special courts-martial has not been established in the Coast Guard. The needs for military judges necessary for special courts-martial are met by use of general court-martial judges when available and by the use of military lawyers assigned to other full-time duties. Control over the detail of judges is centrally exercised, and nearly all requirements have been filled in timely fashion. On occasion, it has been necessary to ask for the detail of military judges from the other Armed Forces. These judges were used in 15 of the 167 trials. In 128 of the cases, trial was by military judge with members, one of

which included enlisted members. In the remaining 39 cases, the accused elected to be tried by military judge alone.

In 12 of the cases, the sentence included a bad conduct discharge. Five of these were adjudged by military judge alone, and the remaining seven were adjudged by a court with members. Of the 12, three were remitted or commuted by the convening or supervisory authorities leaving nine to reach the Court of Military Review. Two of these were disapproved by the Court. Thus, seven bad conduct discharges survived the review process during the year. A trend in sentencing noted previously and which continued during the year was the significant number of sentences which did not include confinement as a part of the punishment imposed. This was true in over one-half the cases—79 out of 147—in which there was a conviction. Maximum confinement of six months was imposed as a punishment only 11 times, none when trial was by military judge alone.

Of the 147 cases with approved sentences, 88 sentences were affirmed on review without modification. Fifty-nine sentences were mitigated in some form. In 91 cases, there were guilty pleas to all of the charges and specifications. Twenty-five of these involved pretrial agreements.

The following table shows the distribution of the 518 specifications tried in the 167 special courts-martial:

AWOL or desertion.....	197
Missing ship movement.....	58
Marihuana offenses.....	56
Offenses involving controlled drugs.....	31
Willful disobedience or disrespect.....	25
Assault.....	10
Violation of order or regulation.....	27
False representation or official statement.....	8
Larceny or wrongful appropriation.....	18
Breaking restriction.....	35
Offenses against Coast Guard property.....	17
Provoking words or threats.....	3
Neglect of duty.....	4
Sleeping on post.....	1
Other offenses.....	27

The Coast Guard Court of Military Review had 14 cases docketed with it during the fiscal year. Of the nine cases that were decided during the fiscal year, six were affirmed without modification and the findings or sentence were modified in three cases.

The Court Rules of Practice and Procedure for Coast Guard General and Special Courts-Martial were published in March 1972. The Court Rules were designed to improve the efficiency and uniformity of trials and to state in a formal manner many



of the practices and procedures already being employed in Coast Guard courts-martial.

The General and Special Court-Martial Trial Guide (CG 432) was published and distributed in April 1972.

Orders were issued to a second full time general court-martial military judge for the Coast Guard. The Coast Guard now has two military judges available for general courts-martial (one on the West Coast and one on the East Coast). These judges sit on all general courts-martial and enough special courts-martial to ensure that their primary duty is that of military judge.

Also during 1972, Rear Admiral William L. Morrison, the Chief Counsel of the Coast Guard, made inspection visits to several district legal offices. In addition, members of his staff participated in extensive formal inspections, under the program of the Inspector General, of several district legal offices. Fourteen Coast Guard officers commissioned for active duty as lawyers were graduated during the year from the basic course at the Judge Advocate General's School, U. S. Army, Charlottesville, Virginia.

JOHN W. BARNUM,  
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