

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, 1973 to December 31, 1973

PROPERTY OF U.S. ARMY

THE JUDGE ADVOCATE GENERAL'S SCHOOL
LIBRARY



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, 1973 to December 31, 1973

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, 1973 to December 31, 1973

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 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, continue to recommend consideration of legislation that would (1) specify the extent to which the U. S. 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; and (3) relieve the convening authority of the responsibility for making a posttrial review of the findings of a court-martial but retain his power to mitigate the sentence.

There is a need, however, for continued study and evaluation of the present system before legislative changes are actually initiated. The enactment of broad legislative proposals at this time would likely bring disruption to the orderly processes of military justice.

Improvements to the military justice system are being accomplished by the services through changes in regulations and procedures without the necessity for legislative action. The Air Force has established a pilot project to test a separate defense counsel service which operates independently of the office of the base staff judge advocate and is removed from local command lines. The Army revised its military justice regulation to increase greatly the procedural rights afforded persons under Article 15, Uniform Code of Military Justice. The Navy is implementing programs which will place trial and defense counsel and all military judges under the authority of the Judge Advocate General of the Navy.

Now imminent is the decision of the U. S. Supreme Court on the constitutionality of Article 134, Uniform Code of Military Justice, which arose in the cases of *Avrech v. Secretary of the Navy*, 477 F. 2d 1237 (D. C. Cir. 1973); and *Levy v. Parker*, 478 F. 2d 772 (3rd Cir. 1973). The U. S. Court of Military Appeals has held that Article 134 is constitutional. The Code Committee continues to monitor this litigation with a view towards alternative solutions in the event the U. S. Supreme Court declares Article 134 unconstitutional.

The Joint-Service Committee on Military Justice, a standing committee composed of representatives of the services, continues to study subjects related to the administration of military justice under the Uniform Code of Military Justice and to make recommendations to the Code Committee regarding proposed legislative action. The Military Justice Committee is currently considering a number of proposals for legislative action that the Code Committee may adopt as future recommendations, to include legislation to replace Article 134 with separate, punitive articles; to grant extraordinary writ powers to military judges; to permit the execution of sentences to confinement at the time the sentence is approved; to eliminate the need for post-trial reviews; and to transfer sentencing authority to military judges in noncapital cases.

The U. S. Supreme Court in *Gosa v. Mayden*, 413 U. S. 665 (1973), handed down during the reporting period an important decision in the area of military justice. In that case, the Supreme Court decided that its decision in *O'Callahan v. Parker*, 395 U. S. 258 (1969), would not be applied retroactively. The *O'Callahan*

decision held that there was no court-martial jurisdiction over offenses without a military connection.

Pretrial and post-trial delays in processing courts-martial continue to be of concern to the Court, The Judge Advocates General, and the General Counsel. Several of the Court's cases have had the combined effect of assuring that military accused are afforded the speediest possible justice consistent with due process. The Court recently gave added emphasis to its earlier ruling in *United States v. Burton*, 21 USCMA 112, 44 CMR 166 (1971), concerning speedy trial. *Burton* held that, absent defense requests for continuance, a presumption of an Article 10, Uniform Code of Military Justice, violation exists when pretrial confinement exceeds three months and that this presumption places a heavy burden on the Government to show diligence, in the absence of which a dismissal of the charges will result. In *United States v. Marshall*, 22 USCMA 431, 47 CMR 409 (1973), the Court held that, when a *Burton* violation has been raised by the defense, the Government must demonstrate that extraordinary circumstances—beyond such normal problems as mistakes in drafting charges, manpower shortages, illnesses, injuries, and leaves—contributed to the delay. Operational demands, a combat environment, or convoluted offenses were examples given by the Court that might justify a departure from the norm. In a number of cases since the *Marshall* decision, charges have been dismissed against accused who were confined in excess of three months. The Judge Advocates General and the General Counsel continue to address this problem in their various services.

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. The 1972 Report noted several factors which caused a steady decrease in applications for career positions as judge advocates. However, due to the increased enrollment in, and graduation from, law schools, there has been a marked decrease in the job availability for attorneys. This is true in both the private and public sectors. Consequently, applications for the Judge Advocate General's Corps have increased, and the outlook for retention is guardedly optimistic. However, the gap now existing in career shortages cannot be cured for many years even though retention is now beginning to improve. Therefore, the Committee continues to recommend that Congress consider further incentives or professional pay to attract and retain military lawyers for a full 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,

ROBERT M. DUNCAN,
Chief Judge

ROBERT E. QUINN,
Associate Judge

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

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

HAROLD R. VAGUE,
*The Judge Advocate General,
United States Air Force*

RODNEY E. EYSTER,
*General Counsel,
Department of Transportation*

EXHIBIT A

**For the Period
July 1, 1972 to June 30, 1973**

Court-Martial Cases

Army -----	22,798
Navy -----	22,349
Air Force -----	2,640
Coast Guard -----	518
Total -----	48,305

Cases Reviewed by Courts of Military Review

Army -----	2,594
Navy -----	2,615
Air Force -----	388
Coast Guard -----	11
Total -----	5,608

Cases Docketed with U.S. Court of Military Appeals

Army -----	975
Navy -----	382
Air Force -----	117
Coast Guard -----	5
Total -----	1,479

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

January 1, 1973 to December 31, 1973

In accordance with the provisions of the Uniform Code of Military Justice, Article 67(g), 10 USC § 867(g), 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 the House of Representatives, and the Secretaries of Defense, Transportation, Army, Navy and Air Force.

The court's workload continued at a high rate during fiscal year 1973. During this period, 1,452 Petitions, 27 Certificates, and 54 Petitions for Extraordinary Relief, a total of 1,533 cases, were docketed. Despite this increase of 46 cases over the number for the preceding fiscal period, the Court's docket remains current, without backlog.

A total of 163 opinions were rendered by the Court from 126 Petitions for Review granted, 19 Certificates filed by the Judge Advocates General, 6 combined Certificate and Petition cases, 1 Motion to Strike, and 11 Extraordinary Relief Petitions filed by the accused.

Since *United States v. Burton*, 21 USCMA 112, 44 CMR 166 (1971) and *United States v. Marshall*, 22 USCMA 431, 47 CMR 409 (1973), a rebuttable presumption arises, when pretrial confinement exceeds 90 days, that an accused has been denied his right to speedy trial in violation of the Uniform Code. Yet pretrial and appellate delays in the processing of serious courts-martial continue to create business for the Court. 54 Petitions for Extraordinary Relief were filed in the Court this fiscal year by accused. A prima facie case for relief was established by the allegations in 16 instances. Orders to Show Cause were then issued to respective respondents. In one-half of these Petitions, the relief sought was from inordinate delays. Hopefully, further administrative measures designed to protect the accused from these abuses will be taken by the services.

The viability of Articles 133 and 134 of the Uniform Code remains in question despite the United States Supreme Court's having granted certiorari to review holdings in *United States v. Avrech*, 477 F. 2d 1237 (1973), and *United States v. Levy*, 478 F. 2d 772 (1973), that the articles are unconstitutionally vague.

Conversely, some jurisdictional aspects of military justice were clarified by the Supreme Court in *Gosa v. Mayden* and *Warner v. Flemings*, 413 US 665, 37 L. Ed 2d 873, 93 S. Ct 2926 (1973) by giving only prospective application to *O'Callahan v. Parker*, 395 US 258, 23 L. Ed 2d 291, 89 S. Ct 1683 (1969), which limited military jurisdiction to "service-connected" crimes.

The Court adheres to the belief that problems related to post-trial review should be eliminated by removal of the convening authority from the appellate process, except for clemency functions.

During the year 920 attorneys were admitted to the bar of this Court, Honorary Certificates of Membership were given to an additional 8 attorneys from India, Pakistan, Canada, Israel, Iran and the Philippines. Special sessions of the Court, admitting 14 reserve officers to membership in our bar, were held in Providence, R. I. on August 31, 1973, and in Anaheim, Calif. on September 11, 1973.

Chief Judge Darden's resignation from the Court was accepted by President Nixon on December 29, 1973.

A detailed analysis of the cases processed by the Court since May 1951 is attached (Exhibit A).

Respectfully submitted,

WILLIAM H. DARDEN
Chief Judge

ROBERT E. QUINN
Associate Judge

ROBERT M. DUNCAN
Associate Judge

EXHIBIT A

STATUS OF CASES

UNITED STATES COURT OF MILITARY APPEALS

CASES DOCKETED

Total by Services	Total as of June 30, 1971	July 1, 1971 to June 30, 1972	July 1, 1972 to June 30, 1973	Total as of June 30, 1973
<i>Petitions (Art. 67(b) (3)) :</i>				
Army -----	12,727	804	957	14,488
Navy -----	6,497	519	376	7,392
Air Force -----	4,957	96	114	5,167
Coast Guard -----	55	0	5	60
Total -----	24,236	1,419	1,452	27,107
<i>Certificates (Art. 67(b) (2)) :</i>				
Army -----	188	15	18	221
Navy -----	228	11	6	245
Air Force -----	96	1	3	100
Coast Guard -----	11	0	0	11
Total -----	523	27	27	577
<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	37¹
Total cases docketed -----	24,796	1,446	1,479	27,721²

¹ 2 Flag officer cases; 1 Army and 1 Navy

² 27,203 cases actually assigned docket numbers. Overage due to multiple actions on the same cases.

COURT ACTION

	Total as of June 30, 1971	July 1, 1971 to June 30, 1972	July 1, 1972 to June 30, 1973	Total as of June 30, 1973
Petitions (Art. 67(b) (3)):				
Granted -----	2,845	97	130	3,072
Denied -----	20,793	1,286	1,270	23,349
Denied by Memorandum				
Opinion -----	5	1	0	6
Dismissed -----	19	2	3	24
Charges dismissed by Order	2	0	0	2
Withdrawn -----	415	9	7	431
Disposed of on Motion to				
Dismiss:				
With Opinion -----	8	0	0	8
Without Opinion -----	44	1	6	51
Disposed of by Order setting				
aside findings and sentence	6	0	0	6
Remanded -----	188	11	10	209
Court action due (30 days) *	90	80	97	97
Awaiting replies *	24	48	60	60
Certificates (Art. 67(b) (2)):				
Opinions rendered -----	503	25	25	553
Opinions pending *	7	6	6	6
Withdrawn -----	8	0	0	8
Remanded -----	4	0	0	4
Disposed of by Order -----	1	0	0	1
Set for hearing *	0	0	0	0
Ready for hearing *	0	1	0	0
Awaiting for briefs *	0	1	0	0
Leave to file denied -----	0	2	2	2
Mandatory (Art. 67(b) (1)):				
Opinions rendered -----	37	0	0	37
Opinions pending -----	0	0	0	0
Remanded -----	1	0	0	1
Awaiting briefs *	0	0	0	0
Opinions rendered:				
Petitions -----	2,531	90	126	2,747
Motions to dismiss -----	11	0	0	11
Motions to Stay Proceedings	1	0	0	1
Per Curiam Grants -----	57	0	0	57
Certificates -----	441	24	19	484
Certificates and Petitions --	59	1	6	66
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

See footnotes at end of table.

COURT ACTION—Continued

	Total as of June 30, 1971	July 1, 1971 to June 30, 1972	July 1, 1972 to June 30, 1973	Total as of June 30, 1973
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 -----	3	0	0	3
Petitions for Writ of Habeas Corpus -----	1	0	0	1
Motion for Appropriate Relief -----	1	0	0	1
Petitions (Motion to Strike)	0	0	1	1
Miscellaneous Dockets ----	55	14	11	80
Total -----	3,217	129	163	3,509^a
Completed cases:				
Petitions denied -----	20,793	1,286	1,270	23,349
Petitions dismissed -----	19	2	3	24
Charges dismissed by Order	2	0	0	2
Petitions withdrawn -----	415	9	7	431
Certificates withdrawn ----	8	0	0	8
Certificates disposed of by Order -----	1	0	0	1
Opinions rendered -----	3,154	115	151	3,420
Disposed of on Motion to Dismiss:				
With Opinion -----	8	0	0	8
Without Opinion -----	44	1	6	51
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 -----	191	11	10	212
Total -----	24,645	1,424	1,447	27,516
Miscellaneous Docket Nos.				
Assigned: -----	216	51	54	321
(1967 to Present)				
Pending ^b -----	0	0	2	2
Granted -----	3	0	1	4
Denied -----	95	3	8	106
Withdrawn -----	2	2	0	4
Dismissed -----	64	30	33	127
Issue moot -----	2	0	0	2
Remanded -----	0	1	0	1
Opinions rendered -----	54	14	11	79

See footnotes at end of table.

COURT ACTION—Continued

	Total as of June 30, 1971	July 1, 1971 to June 30, 1972	July 1, 1972 to June 30, 1973	Total as of June 30, 1973
Pet for Reconsideration pending ^a -----	0	0	2	2
Pet for reconsideration denied -----	6	2	2	10
Opinion rendered (Pet for Reconsideration)	1	0	0	1
Pet for New Trial Remanded	0	1	0	1
Total -----	229	53	59	339^a

	Pending completion as of		
	June 30, 1971	June 30, 1972	June 30, 1973
Opinions pending -----	17	23	17
Set for hearing -----	0	0	0
Ready for hearing -----	4	2	3
Petitions granted—awaiting briefs--	11	8	9
Petitions—Court action due (30 days) -----	90	80	97
Petitions—awaiting replies -----	24	48	60
Certificates—awaiting briefs -----	1	1	3
Mandatory—awaiting briefs -----	0	0	0
Total -----	147	162	189

^a As of June 30, 1971, 1972, and 1973.

^b 3,509 cases were disposed of by 3,436 published Opinions. 173 Opinions were rendered in cases involving 101 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.

^c As of June 30, 1973.

^d Overage due to multiple actions on the same cases.

REPORT OF
THE JUDGE ADVOCATE GENERAL OF THE ARMY
January 1, 1973 to December 31, 1973
LEGISLATION AND MILITARY JUSTICE PROJECTS

During 1973, the Office of The Judge Advocate General continued to monitor the processing of courts-martial, to develop improved procedures, and to revise military justice publications and regulations. Emphasis was placed upon seeking change in the military justice system by regulatory amendment and special programs.

MAJOR PROJECTS

Some major projects were stimulated by the Department of Defense Task Force on the Administration of Military Justice in the Armed Forces, while others were the product of several years of formulation and refinement. These projects illustrate that a strong, viable military justice system can be maintained and enhanced by internal efforts, without the need for legislation.

a. A plan was formulated to conduct a test of limited random selection of court members, without derogation of the statutory responsibility of the convening authority. The plan avoids the need for legislative change in the UCMJ, yet accomplishes the desired goal. Under the plan, currently being tested at Fort Riley, Kansas, a master juror list is compiled from post locator files. Individuals on the master list are administered a questionnaire, based upon criteria established by the convening authority, to determine whether they possess basic qualifications. A panel is then randomly selected from those found to be so qualified. The convening authority retains veto power over the panel as a whole, and when this power is exercised, another randomly selected panel must be chosen. The results of the test should be available during the summer of 1974. Some problems that may have to be addressed are defining what standards the convening authority should use in ascertaining the qualifications of potential court members and whether such program can quell the appearance of

evil in our court member selection process because there is still some involvement in that process by the convening authority even under the plan.

b. Due largely to an "appearance of evil" in the relationship of military defense counsel to the local command, the feasibility of establishing a separate defense counsel structure, independent of local commands, was studied. The need for such a change was highlighted by the belief of many enlisted men that defense counsel were "company men." On 11 January 1973, the Secretary of Defense directed that the services develop plans for a separate defense counsel structure. Efforts were intensified and a plan was developed; however, immediate implementation of the plan was precluded by an acute shortage of Army lawyers. As an interim measure, the Chief of Staff directed the improvement of office and support facilities for defense counsel, and the physical separation of their offices from those of staff judge advocates and prosecutors. Also under consideration is a plan to assure that counsel before courts-martial acquire courtroom experience and a desirable trial advocacy skill level before they try cases on their own. The plan also identifies Army lawyers who are especially skilled in criminal trial practice. Attorney-client guidelines for the use of judge advocates were developed. Defense counsel were also given a well-defined channel through which to air their complaints and to seek advice. The Assistant Judge Advocate General for Civil Law was designated as the individual responsible for supervising the operation of this advice and complaint channel, which should prove to be of great benefit to defense counsel in the field.

c. Tests of the Military Magistrate Program were initiated at three CONUS sites, Forts Bragg, Dix, and Hood. Under the program, earlier implemented with favorable results in Europe, the records of individuals in pretrial confinement are reviewed by an experienced judge advocate to determine the necessity for continued confinement. Consideration is given such factors as the seriousness of the offense, number of dependents, and other pertinent information. If continued pretrial confinement is not found necessary, the accused may be released by the magistrate. The magistrate's review also insures that no prisoner will be overlooked in the assignment of counsel. Preliminary results indicate that the program is progressing well. In 1974, the results of this testing will be evaluated with a view toward Army-wide implementation.

d. Tests of the legal center pilot projects, earlier established in United States Army, Europe, were concluded at Forts Belvoir and Carson. The concept of this program envisions the legal

center supervising the processing of all legal actions, including administrative discharges, within a specific geographical area, rather than solely within a particular general court-martial jurisdiction. Special court-martial jurisdictions are consolidated at the brigade or comparable level, and individual judge advocates at the legal center are designated to advise brigade level commanders. The concept was well received by the commanders concerned. The results of these tests are currently being evaluated at the Department of the Army. A decision regarding Army-wide implementation of the concept will be made early in 1974.

e. Plans were developed and implemented to increase the effectiveness of nonjudicial punishment by procedural changes designed to assure that the rights of accused are fully protected, to streamline the procedures, and to formalize the punishment process. In addition, a greater degree of uniformity in the proceedings was considered essential. An upcoming change to the Army military justice regulation, AR 27-10, will contain a suggested guide for conduct of nonjudicial punishment proceedings, and a new Department of the Army form for use in recording proceedings under Article 15, UCMJ. The suggested guide, or scenario, is intended to provide a simple, useful procedural format and will contain a complete "script", with appropriate instructional comments, for use by the commander. The new DA Form 2627 will replace the three present forms (DA Forms 2627, 2627-1, 2627-2). The new one-page form, capable of being printed in a manifold containing several copies with interleaved carbons, simplifies and expedites administrative processing.

f. A study was initiated in 1973 to evaluate the effectiveness of the Uniform Code of Military Justice during time of war. Recognizing the lengthy study that would be necessary to evaluate fully the questions of whether the military justice system would be able to dispense justice effectively in time of war and, if not, what alternatives exist to assure proper functioning, The Judge Advocate General's School was tasked to perform the initial research on the project. Upon completion of the initial phase of the study, the matter will be submitted to the Joint-Service Committee on Military Justice, to formulate a unified approach on the need to change the system to assure responsiveness in large scale hostilities.

g. A study was undertaken to determine the feasibility and effectiveness of empowering military judges to adjudge and suspend sentences in all cases not capital. It was determined that this measure, requiring legislative action, would be appropriate as a long range project, and that several preconditions would be

involved. Among these are the development of a detailed presentencing report, in order to give judges a proper picture of the accused's background, and the development of a corps of legal paraprofessionals to compile the reports and perform functions comparable to parole officers. Also necessary would be an all-service sentencing handbook, to enable military judges to perform the newly acquired role in a uniform manner. A sentencing institute would also be beneficial, in order to insure the continuing education of military judges on accepted sentencing techniques.

h. Several decisions of the Federal courts during 1973 required extensive policy studies.

Two decisions of the United States Circuit Courts of Appeal, *Avrech v. Secretary of the Navy*, 477 F. 2d 1237 (D.C. Cir. 1973), and *Levy v. Parker*, 478 F. 2d 772 (3rd Cir. 1973), had the combined effect of holding Articles 133 and 134 unconstitutional for vagueness. The Army is appealing *Levy* and the Navy, *Avrech*. Shortly after the *Avrech* decision, subordinate commands were advised that, pending final outcome of the case, "offenses should, when possible, be charged under the third clause of Article 134 or some other Article." One month later, however, the *Levy* case held that Article 134 failed to satisfy the standard of precision required by the due process clause and, hence, the entire article was void for vagueness. No qualification as to the third clause of that article, an assimilative provision punishing all crimes and offenses not capital, was made by the court, leaving utilization of even that clause questionable. The interim effect of these decisions was the obvious uncertainty of charging individuals under the affected articles, even in cases where no other punitive article proved appropriate. This problem was particularly acute in the handling of drug offenses. The decisions prompted intensive study as to the charging alternatives available.

Consideration is being given to several courses of action to fill the voids which may be created by *Avrech* and *Levy*. One course would be to amend Article 134 along the lines of the Assimilative Crimes Act so that the U. S. Code, to include relevant state laws (under 18 U. S. C. Section 13), would be available for use in charging certain crimes, and so that the D. C. Code would be applicable where the U. S. Code is not. The other path would require amending existing articles of the Code and drafting new ones, to incorporate the offenses presently tried under Article 134 into specific, punitive provisions. The promulgation of a prohibited practices regulation incorporating many of the offenses tried under Article 134, thereby making those offenses subject to being charged under Article 92 of the Code, is being considered as an interim measure pending legislation. However, this approach

will result in a reduction of the maximum punishment for some offenses, such as those involving drugs.

The most important decision by the U. S. Supreme Court in the military justice area was *Gosa v. Mayden*, 413 U. S. 665 (1973), which held that the decision in *O'Callahan v. Parker*, 395 U. S. 258 (1969), would not be applied retroactively. The *O'Callahan* case limited court-martial jurisdiction to "service connected" offenses. The problem of what offenses are "service connected" continues. The Court of Appeals for the 10th Circuit held that off post drug offenses by a serviceman are not "service connected."

Councilman v. Laird, 481 F.2d 613 (10th Cir. 1973), cert. granted sub nom. *Schlesinger v. Councilman*, 38 L.Ed.2d 737 (1973). The Third and Fourth Circuits, in similar situations involving off post drug offenses, have found "service connection." *Sedivy v. Richardson*, 485 F.2d 1115 (3rd Cir. 1973); *Dooley v. Ploger*, ___F.2d___ (4th Cir. 1974). The *Councilman* case is presently before the Supreme Court. Two courts of appeal also held that *O'Callahan* did not have extraterritorial application, *Wimberly v. Richardson, Secretary of Defense, et al.*, 472 F.2d 923 (7th Cir. 1973), cert. denied 413 U.S. 921 (1973), and *Slater Williams v. Froehlke*, 356 F.Supp. 591 (S.D.N.Y. 1973).

SIGNIFICANT ACTIONS

During 1973, 1,267 recorded actions and numerous miscellaneous actions, involving military justice, were handled by the Office of The Judge Advocate General. These actions included evaluating and drafting legislation, Executive orders, pamphlets, and regulations impacting upon the operation of the Army and the Department of Defense; monitoring the administration of military justice; rendering opinions for the Army staff; and reviewing various aspects of criminal cases for action by the Army secretariat and staff. Some of the more significant actions are discussed below:

a. On 25 May 1973, Colonel Theodore W. Guy, USAF, a former prisoner of war, preferred charges against eight PW returnees, including five Army enlisted men. The charges were substantially the same against each soldier, alleging a failure to obey an order not to collaborate with the enemy, aiding the enemy by unauthorized communication, conspiracy to promote disaffection and disloyalty in the prison camp, and attempting to promote the disaffection and disloyalty of a prisoner. These charges required extensive investigation and analysis of the evidence to ascertain the validity of the allegations. The evidence was found to be in large part vague and contradictory. Much of it was hearsay and

thus not admissible in a court-martial. Because of this conclusion, combined with the announced Department of Defense policy precluding trials of prisoners of war for propaganda statements, the length of confinement, the conditions of the prison camp, the lack of specialized survival training received by these enlisted men, and the failure of the North Vietnamese to abide by their international commitments under the Geneva Conventions, the charges of misconduct against the five Army returnees were dismissed by the Secretary of the Army. Subsequently, on 23 and 27 July 1973, Major Edward W. Leonard, Jr., USAF, preferred substantially identical charges against the same Army returnees. A further inquiry into the basis for Major Leonard's charges disclosed no material evidence not previously considered. The additional charges were dismissed on 5 October 1973.

b. On 21 December 1973, the United States Court of Military Appeals affirmed the conviction of First Lieutenant William L. Calley, Jr., for premeditated murder of twenty-two Vietnamese nationals and assault with intent to murder a Vietnamese child. His approved sentence was dismissal, forfeiture of all pay and allowances, and confinement at hard labor for twenty years. Pursuant to Article 71(b) of the Code, the case was transmitted to the Secretary of the Army for his action.

c. Several Department of the Army pamphlets on military law were prepared under the supervision of the Office of The Judge Advocate General in 1973. DA Pamphlet 27-14, *Legal Guide for the Soldier* (March 1973), illustrates the entire panoply of military law to the serviceman and shows him that military law is broader than military justice. DA Pamphlet 27-173, *Military Justice—Trial Procedure* (October 1973), revises the earlier trial procedure handbook, to reflect the changes in trial procedure since 1964. DA Pamphlet 27-22, *Military Criminal Law—Evidence* (November 1973), a joint Army and Air Force pamphlet, updates the development in the law of criminal evidence since the earlier edition of the handbook on evidence in 1962. DA Pamphlet 27-174, *Military Justice—Jurisdiction of Court-Martial* (November 1973), is designed as a ready reference for Army lawyers in the area of Jurisdiction and updates the previous 1965 version. Finally, a Department of the Army pamphlet, entitled *What's It All About?—The Special Court-Martial*, was prepared. This pamphlet, being published in comic book form, was devised to attract a wider range of personnel and to illustrate the special court-martial process in a manner easily understood by any serviceman.

d. Army Regulation 27-10, the military justice regulation, was revised during 1973 to increase greatly the procedural rights

afforded persons under Article 15, UCMJ. A change to that regulation provides for the availability of legal advice to the accused prior to the imposition of nonjudicial punishment; the opportunity for a full public hearing before the officer who intends to impose punishment; the right to present evidence to the imposing officer, to include the calling of witnesses; the right to have a personal spokesman at the hearing; and, the automatic stay of certain punishments upon the timely filing of an appeal. Most of the changes had previously been informally effected throughout the Army. Army Regulation 27-10 is also being revised to provide that the nonjudicial punishment of correctional custody can be imposed in a fashion to require the accused to work or train either in his unit, or in the Correctional Custody Facility.

*MILITARY JUSTICE STATISTICS AND U.S. ARMY
JUDICIARY ACTIVITIES.*

a. A statistical summary of court-martial activities for FY 73 follows:

The number of persons tried by courts-martial for fiscal year 1973 (average Army strength, 852,098) follows:

	Convicted	Acquitted	Total
General -----	1,493	128	1,621
Special (W/BCD's) -----	900	42	942
Special (W/O BCD's) -----	11,902	1,007	12,909
Summary -----	6,627	699	7,326
TOTAL -----	20,922	1,876	22,798

Records of trial by general and special (BCD) courts-martial received by The Judge Advocate General during fiscal year 1973:¹

For review under Articles 66 (General) -----	1,194
For review under Article 66 (Specials W/BCD's) -----	802
For examination under Article 69 -----	323
TOTAL -----	2,319

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

On hand at the beginning of period -----	1,053
General Courts-Martial -----	740
Special Courts-Martial (BCD) -----	313
Referred for review -----	2,120 *
General Courts-Martial -----	1,289
Special Courts-Martial (BCD) -----	831
TOTAL -----	3,173

Reviewed -----		2,594
General Courts-Martial -----	1,637	
Special Courts-Martial (BCD) -----	957	
Pending at close of period -----		579
General Courts-Martial -----	392	
Special Courts-Martial (BCD) -----	187	
TOTAL -----		3,173
Miscellaneous Docket Matters		
Denied -----	0	
Dismissed -----	0	
Mooted -----	0	

¹ Figures in this section are based on records of trial as opposed to the 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 24 cases which were referred to the Army Court of Military Review pursuant to Article 69, Uniform Code of Military Justice; 8 cases referred after rehearing; and 67 cases referred for reconsideration.

Actions taken during 1 July 72 thru 30 June 73 by Army Court of Military Review :

Findings and sentence affirmed -----	1,903
Findings affirmed, sentence modified -----	423
Findings affirmed, sentence commuted -----	4
Findings affirmed, no sentence affirmed -----	8
Findings affirmed, sentence reassessment or rehearing as to sentence only ordered -----	7
Findings partially disapproved, sentence affirmed -----	39
Findings partially disapproved, rehearing ordered -----	1
Findings & sentence affirmed in part, disapproved in part -----	70
Findings & sentence disapproved, rehearing ordered -----	50
Findings & sentence disapproved, charges dismissed -----	49
Returned to field for New SJA & C/A action -----	39
Proceedings abated, death of accused -----	1
TOTAL -----	2,594

Of 2,594 accused whose cases were reviewed by the Court of Military Review pursuant to Article 66 during the fiscal year, 2,006 (77.3%) requested representation by appellate defense counsel.

The records in the cases of 975 accused were forwarded to the United States Court of Military Appeals pursuant to the three subdivisions of Article 67(b) during FY 73. These comprised 37.6% of the number of these cases reviewed by the Court of Military Review during the period. Of the mentioned 975 cases, 957 were forwarded on petition of accused and 18 were certified by TJAG.

The Court of Military Appeals took the following actions on Army cases during fiscal year 1973:

Petitions Denied		Petitions Granted	
859		75	

Petitions		Certification		Mandatory Review	
Affirmed	Reversed	Affirmed	Reversed	Affirmed	Reversed
35	33	8	10	0	0

Applications for relief, Article 69:

Pending 1 July 72 -----	69
Received -----	403
Disposed of -----	399
Granted -----	93
Denied -----	298
Field (action by SJA) -----	5
No Jurisdiction -----	1
Withdrawn -----	2
Pending 1 July 73 -----	73

b. A review of the statistics discloses a decrease in all types of courts-martial during fiscal year 1973. When compared with fiscal year 72, general courts-martial were down 21%, special courts-martial were down 17%, and summary courts-martial down 44%. Overall, the decrease amounted to 28%, while the strength of the Army only decreased 14%.

c. During fiscal year 73, there were 190,272 nonjudicial punishments, or approximately eight times the total number of courts-martial (general, special, and summary). In fiscal year 1972, there were 217,245 nonjudicial punishments recorded. This year's total represented a reduction of 12% from 1972.

d. The U.S. Army Judiciary was reorganized as a part of the U.S. Army Legal Services Agency in March 1973. Its authorized military personnel strength was increased to 175 officers, 1 warrant officer, and 4 enlisted personnel; however, 20 officers, 4 enlisted personnel, and 12 of the 62 civilians that were authorized in fiscal year 73 are assigned to the Contract Appeals Division of the Agency, and have no functions related to the U.S. Army Judiciary and its courts-martial mission.

THE EXPANDED LEGAL ASSISTANCE PROGRAM

The outstanding accomplishments of the Pilot Legal Assistant Program have led to its incorporation into the traditional Legal Assistance Program, and to its continuation on a permanent basis.

The Expanded Legal Assistance Program, as it is now known, has been established in order to provide free legal representation in civilian courts, both civil and criminal, for impecunious service members and their dependents. Currently, the project is in operation at nine Army installations: Fort Devens, Massachusetts; Fort Huachuca, Arizona; Fort George G. Meade and Aberdeen Proving Ground, Maryland; Fitzsimmons General Hospital and Fort Carson, Colorado; Fort Dix and Fort Monmouth, New Jersey; and HQ, US Army Support Command, Hawaii. This program resulted from one of the findings of the Department of Defense Task Force on the Administration of Military Justice in the Armed Forces that most commanders felt there was a need for Army lawyers to go into civil courts to represent members of their commands.

The availability of legal representation in civilian courts to aid servicemen in their financial and legal difficulties should serve as an effective preventive law device and reduce criminal law activity.

COMPLAINTS UNDER ARTICLE 138, UNIFORM CODE OF MILITARY JUSTICE (10 USC 938)

Procedures.

Article 138, Uniform Code of Military Justice (10 USC 938), as implemented by Army regulations, provides that any member of the Army who feels that he has been wronged by his commander may complain of that wrong to the commander concerned. If the commander declines to provide redress, the complainant may then submit a formal complaint to the general court-martial convening authority over the commander who denied redress.

Upon receipt of the complaint, the general court-martial convening authority must investigate the complaint or conduct an informal inquiry into the complaint. Following the investigation or inquiry, he must act on the complaint by (a) granting or denying the redress requested; (b) returning the complaint because it is a complaint which is not cognizable under the provisions of Article 138; (c) forward the complaint to an authority capable of granting redress, if he cannot grant the requested redress; (d) advise the complainant of more proper means to seek the requested redress, if there are other channels for such actions; or (e) if the complaint is already under consideration in other channels, advise the complainant of this.

Following his action on the complaint, the general court-martial convening authority must forward the complaint to The Judge Advocate General for his personal review on behalf of the Secretary of the Army.

Volume and Results.

The Judge Advocate General, as the designee of the Secretary of the Army, reviews each complaint submitted under the provisions of Article 138. During 1973, he received and acted upon 106 cases, as follows:

	Cases	Percent
The complainant was wronged in whole or in part:-----	20	19
The complainant not wronged in whole or in part: -----	54	51
The complaint was not cognizable -----	15	14
The complaint was returned for procedural reasons with leave to resubmit -----	16	15
The complaint was moot when received -----	1	1

The foregoing statistics do not take into account those cases in which the member withdrew his complaint prior to action by the officer exercising general court-martial jurisdiction. Also, they do not account for the unknown number of instances where soldiers have requested (formally or informally) redress from their commanders and the commanders, being apprised of the situation, have granted relief. In such instances, the soldier would have no basis or reason for submitting an Article 138 complaint. Most legitimate complaints are resolved in this manner.

EDUCATION AND TRAINING

The Judge Advocate General's School, US Army, continued to expand its educational activities on behalf of military lawyers in calendar year 1973, providing resident instruction for nearly 2,000 students and conferees.

Courses of Instruction.

In June 1973, the Judge Advocate Officer Advanced Course, approved by the American Bar Association, graduated its largest class to date (42 officers, including 34 Army, 1 Navy, and 4 Marine judge advocates, and allied officers from Pakistan, Iran, and the Philippines). A Marine Corps graduate was permanently assigned to the School's faculty as an instructor and United States Marine Corps Representative. Forty-one of the Advanced Course theses presented by the students were accepted by the faculty. At least nine are being published in various legal journals. The revised curriculum, consisting of 22 semester hours of core courses and 6 semester hours of electives (from a total of 16 hours offered), proved successful and was continued for the 22d Judge Advocate Officer Advanced Course which began in August 1973.

Some 290 newly-commissioned Army judge advocates attended one of the four 8-week Judge Advocate Officer Basic Courses held

during the year. In addition, 10 Coast Guard officers and 2 allied officers from Iran attended the Basic Courses. Most of the Army students had attended a preliminary four-week phase at the U.S. Army Military Police School, Fort Gordon, Georgia, emphasizing officer orientation, introductory military, and police science subjects. Upon graduation, 142 of the Army officers were assigned to major CONUS installations and training centers, 74 to corps and divisions, 63 to major Army commands, and 9 to arsenals, depots, and other installations. Twenty-three percent of the graduates were assigned overseas.

The School's continuing legal education program for active and reserve forces judge advocates included a qualification course for military judges and courses in criminal trial advocacy, criminal law administration, procurement law, international law, overseas judge advocate operations, claims, military personnel law, legal assistance, command legal problems, litigation and environmental law, civilian employee law, and a seminar concerning the judge advocate role in Army race relations. In all, the courses were attended by 289 active Army judge advocates, 232 Army Reserve and Army National Guard judge advocates, 93 judge advocates in other services, and 158 Government civilian attorneys (approximately one-third of whom represented agencies other than the Department of Defense). In addition, the School was the site of the annual world-wide Judge Advocate General's Conference, the Second Annual National Guard Judge Advocate Conference, the Fourth Annual USAR Judge Advocate Conference, and a conference of instructors teaching law subjects in other service schools.

Annual training of the USAR general court-martial trial in the Judge Advocate General Service Organization brought 98 officers and 117 enlisted men to the School in June 1973.

At the year's end, 1,753 students were enrolled in the School's 7 separate correspondence courses, and 18,320 copies of correspondence course lessons had been provided to other Army branch schools for use in their own courses. The School also provided instructor and student material in support of active duty training phases for education of judge advocate reserves enrolled in USAR Schools and (with support of U.S. Army Command and General Staff College) for officers attending the Judge Advocate Reserve Component Command and Staff Course.

In 1973, The Judge Advocate General's School conducted its 9th through 13th Senior Officer Legal Orientations for installation and brigade commanders. One of the courses was conducted especially for reserve component commanders and another as an elective for US Army War College students headed for command

assignments. Paraprofessional training responsibilities are divided among The Judge Advocate General's School, US Army Institute for Administration (Adjutant General's School), and the School of Naval Justice. The latter school trained 43 Army court reporters in 1973. At the Adjutant General's School, 572 soldiers completed the new Legal Clerk's Course, and 15 selected NCO's completing the NCO Advanced Course attended a final, two-week phase conducted at TJAGSA in June 1973. Additional enlisted men and women and legal secretaries have attended the School's Legal Assistance and Criminal Law Paraprofessional courses and Law Office Management courses.

Major Projects.

Incident to reorganization of the Army in 1973, The Judge Advocate General's School was assigned major new missions. Principal among these was that of enhancing the mobilization readiness of reserve component units and personnel by providing technical training and assistance to judge advocates at their home stations (Army Reserve centers and National Guard armories) during the inactive duty phase of their training program. From October through December 1973, the School's faculty members collectively presented instruction on 67 occasions to 894 reserve component judge advocates in 53 cities. Following uniform programs of instruction—related where practicable to the annual training of the host unit—this "on-site" training in criminal law, claims, legal assistance, procurement law, and international law has improved the capability of unit and nonunit reserve judge advocates for immediate delivery of legal services to the Army upon mobilization. Equally, it is enhancing their capacity for expanding legal services in the Army during peacetime by providing practical assistance to Army judge advocate offices by performing on-the-job reserve training in those offices. The scope of the program has expanded, for the JAGC reserve component officer strength increased from 1,843 on 1 January 1972 to 2,050 on 31 December 1973.

In October 1973, the faculty began teaching military law in courses at the Defense Race Relations Institute at Patrick Air Force Base, Florida. The School also provided military law instruction at certain Army service schools to which no full-time judge advocate instructor is assigned.

Faculty members continued their participation in the ABA Section on Legal Education and Admissions to the Bar, the Association of American Law Schools, and the Association of Continuing Legal Education Administrators. Also, faculty members—as well as other judge advocates—attended continuing

legal education programs conducted by such agencies as the American Law Institute-American Bar Association Joint Committee on Continuing Legal Education, the Practicing Law Institute, Northwestern University, the National College of District Attorneys, and the National Institute of Trial Advocacy.

School publications during 1973 included 4 issues of the *Military Law Review*, 12 issues of *The Army Lawyer* (distributed to all active duty Army JAGC officers and to USAR and National Guard judge advocates with the assistance of Chief, Army Reserve and Chief, National Guard Bureau, respectively), and 15 issues of the case-digest Judge Advocate Legal Service (which provides rapid dissemination of digests of recent cases of interest to judge advocates). Besides school texts produced primarily for resident and nonresident instruction, the School authored many texts for Army-wide use, including the following: a *Deskbook for Special Court-Martial Convening Authorities*, a *Legal Guide for Commanders*, legal professional texts on military administrative law and claims, a training circular entitled "Your Conduct in Combat under the Law of War," and an ROTC Manual entitled "Fundamentals of Military Law."

During 1973, faculty members provided technical assistance for three training films prepared for distribution throughout the Armed Forces. They included the following: Uniform Code of Military Justice, Part I (Pretrial, Trial, and Post-Trial Procedures); The Civilian and the Geneva Convention; and Non-judicial Punishment under Article 15.

On 12 April 1973, while the School's Board of Visitors was in session, ground was broken for a new JAG School Building being constructed by the University of Virginia adjacent to its new law school building (also under construction). Completion is expected during academic year 1974-1975. Properly staffed and funded, the new building can provide a military legal research center, improved resident legal education through the expanded use of seminar rooms, moot courtrooms, and educational TV facilities. The new building will also reduce the cost of temporary duty, through increased availability of Government billeting and messing facilities for students.

PERSONNEL

The average strength of the Judge Advocate General's Corps was 1,554 officers, compared with an average of 1,638 in 1972 and 1,740 officers in 1971. It is anticipated that the authorized strength of the Corps will now stabilize for the foreseeable future at approximately 1,545 officer-lawyers. The certification of non-

JAG lawyers has continued to decline with only 1 such officer certified in 1973.

In the report for 1972, it was reported that the interest in JAGC commissions had declined. However, interest in JAGC service increased in 1973. This is mainly due to an extensive recruiting program, decrease of the minimum obligated tour from four years to three years, and the increase in number of law school graduates and the corresponding declining civilian job market. Applications were required during the year to fill 350 openings in fiscal year 1974. Over 588 applications were received to fill these 350 openings.

The retention of experienced officers still remains a most serious problem. On 31 December 1973, the Corps was short over 52% of authorized field grade officers. The Corps was short 62.5% of authorized majors and 50% of authorized lieutenant colonels. However, in this area again, the picture is brighter. The retention rate of newly commissioned officers has increased. Many of the new acquisitions are prior service personnel who are returning to active duty after completion of law school. These new officers bring with them a wealth of experience in line units and an appreciation of military life. Most of these officers are returning for a career in The Judge Advocate General's Corps. Additionally, Congress has approved legislation to permit 25 officers to attend law school at Government expense each year, commencing with the 1974-1975 school year. This program, together with the excess leave program, will provide The Judge Advocate General's Corps with career officers who have extensive line experience.

A program has been approved to train a limited number of enlisted personnel at civilian institutions in stenotype court reporting. The training will consist of a one year course of instruction beginning in fiscal year 1975. Tuition will be paid by Department of the Army and students will receive full pay and allowances during the course of instruction.

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

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

January 1, 1973 to December 31, 1973

Following the practice in recent years of having the Code Committee Report reach the Armed Services Committee of Congress shortly after the convening of each new session, this report, although embracing calendar year 1973, contains, unless otherwise indicated, statistical information covering fiscal year 1973.

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 and the Far East in the supervision of the administration of military justice.

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

b. During fiscal year 1973, the Navy Court of Military Review received for review 674 general courts-martial and 2,004 special courts-martial (total 2,678) as compared with 718 general courts-martial and 1,993 special courts-martial (total 2,711) during fiscal year 1972. Of the 2,678 cases received by the Navy Court of Military Review, 1,615 accused requested counsel (60 percent).

U. S. NAVY-MARINE CORPS JUDICIARY ACTIVITY. a. The U. S. Navy-Marine Corps Judiciary Activity supplied military judges for 726 general courts-martial during calendar year 1973, a decrease of 213 cases from the 939 general courts-martial tried during calendar year 1972. In 1973, 63 percent were tried by courts constituted with military judge alone. In calendar year 1972, 66 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 18 general courts-martial military judges, a decrease of one from the manning level at the close of calendar year 1972.

c. Four 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; one is assigned to the Judiciary Branch Office at San Diego, California; and one is assigned to the Navy-Marine Corps Judiciary Activity, Washington, D. C.

d. In 1973, the special court-martial military judges attached to the Judiciary Activity tried 864 special courts-martial at Norfolk, Virginia; San Diego, California; and Washington, D. C., (91 percent by military judge alone) as compared to 804 cases (91 percent by military judge alone) tried by the special court-martial military judges attached to the Judiciary Activity in calendar year 1972.

e. The general court-martial judges of the Navy-Marine Corps Judiciary Activity tried 989 special courts-martial during calendar year 1973. Thus, in 1973, 1,853 Navy and Marine Corps special courts-martial were tried by full-time military judges assigned to the Navy-Marine Corps Judiciary Activity.

f. The proposed revision of SECNAVINST 5813.4A, which was designed to expand the Navy-Marine Corps Judiciary Activity to include special court-martial military judges, received the concurrence of the Chief of Naval Operations and the Chief of Naval Personnel during the course of review in calendar year 1973. The Commandant of the Marine Corps, however, has nonconcurred in the concept and the matter is now awaiting resolution by the Secretary of the Navy.

g. Military judges of the Navy-Marine Corps Judiciary Activity attended a variety of professional meetings and seminars during calendar year 1973. Eight general court-martial and two special court-martial military judges attended the three-day Judicial Conference and Sentencing Seminar sponsored by the Army at Fort Sam Houston, San Antonio, Texas, 9-12 May 1973. One general court-martial military judge attended the Annual Meeting of the American Bar Association at Washington, D. C., in August 1973. Four general court-martial military judges attended the Navy JAG Conference at Washington, D. C., 23-28 September 1973. Two general court-martial military judges attended the Conference for District Court Judges at the Federal Judicial Center, Washington, D. C. 1-4 October 1973. 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 pro-

vide increased opportunities for professional intercourse between military and civilian judges.

h. Drafts of proposed "Uniform Rules of Practice before Navy-Marine Corps Courts-Martial" and "Bailiff's Handbook," prepared by separate committees of military judges of the Navy-Marine Corps Judiciary Activity, were submitted to the Judge Advocate General for approval and publication. Both items have received favorable review in the Office of the Judge Advocate General, and early publication in calendar year 1974 is anticipated.

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 1973, 69 petitions for relief were received by the Judge Advocate General, as opposed to 80 petitions received in calendar year 1972. Of these 69 petitions, 5 were granted in whole or part.

NEW TRIAL PETITIONS. In calendar year 1973, eight petitions for new trial were submitted pursuant to Article 73, Uniform Code of Military Justice. Of these eight petitions, four concerned cases which were before either the U. S. Court of Military Appeals or the Navy Court of Military Review for review. In these instances, the petitions for new trial were forwarded to the appropriate appellate court for action. The remaining petitions were denied.

PRISONERS OF WAR. During the past calendar year the Office of the Judge Advocate General was called upon to provide legal advice to the Secretary of the Navy concerning charges brought against former prisoners of war for alleged misconduct while in captivity.

NAVAL JUSTICE SCHOOL. a. The Naval Justice School continued to offer intensive instruction in the principles of military justice and related administrative matters. During 1973, the Naval Justice School presented formal courses of instruction on the principles of military law and related administrative matters to 2,283 officers and enlisted personnel of the Armed Forces, including Navy personnel ranging in grade from seaman apprentice to rear admiral. Navy, Marine Corps, and Coast Guard officers numbering 1,264 received instruction designed for officers serving in positions of command. This instruction was presented at eleven different Navy and Marine Corps bases throughout the continental United States, as well as at the Naval Justice School. Three hundred twenty-one Navy, Marine Corps, and Coast Guard junior officers were trained to perform the duties of nonlawyer unit legal offi-

cers. One hundred eighty lawyers of the Navy, Marine Corps, and Coast Guard received training for duty as judge advocates or law specialists. Two hundred sixty lawyer reservists of the Navy, Marine Corps, and Coast Guard were provided basic or refresher instruction in military law; and 242 enlisted members of the Navy, Army, and Coast Guard were trained to perform legal clerk and court reporting duties. A course for military judges was presented for the first time at the Naval Justice School to sixteen Navy and Marine Corps judge advocates.

b. In addition to the foregoing courses of instruction, the Naval Justice School gave basic instruction in such areas of military law as search and seizure, right to counsel, and administrative proceedings to 4,926 officers at other Navy schools in Newport, Rhode Island, and New London, Connecticut.

ANNUAL JUDGE ADVOCATE GENERAL'S CONFERENCE.

a. A conference of judge advocates from all major Navy and Marine Corps commands was held in Washington, D. C., on 23-28 September 1973. The conference heard addresses by the Secretary of the Navy, the Chief of Naval Operations, the Commandant of the Marine Corps, the Judge Advocate General, the Director, Judge Advocate Division, Headquarters, Marine Corps, and the Director, Naval Reserve Law Companies. The conference also included presentations regarding trends in litigation in the Navy, the expanding role of women in the Navy, the proposed *JAG Manual* provisions dealing with Article 138, Uniform Code of Military Justice, complaints, legal assistance matters, developments in military law, and the practice and procedures before the Physical Evaluation Board. In addition to these presentations, seminars were held on military justice matters, environmental law matters, administrative discharge procedures, international law developments, career planning and personnel matters, and the challenges facing trial counsel, defense counsel, and military judges, to mention just a few.

b. This annual conference of judge advocates has once again demonstrated the tremendous benefit which can be derived when judge advocates from all over the world have the opportunity to meet and discuss new developments in military justice as well as the opportunity to participate in seminars concerning the problem areas which have arisen during the past year. The JAG Conference, in keeping with its theme, the "Changing Role of the Law in the Navy and Marine Corps in the Mid-1970s," centered its efforts on informing judge advocates in the field of what is taking place in the way of change in the military-justice system at the present time and of what can be expected in future years. Plans are now underway for a similar conference in 1974.

CERTIFICATION OF NCMR DECISIONS TO USCMA FOR REVIEW PURSUANT TO ARTICLE 67(b), UCMJ. A number of areas in the law were 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 right of a suspect to withdraw his consent to search while the search is in progress, and definitive guidelines concerning the time chargeable to the Government in responding to motions to dismiss charges due to failure to afford an accused a speedy trial. Six Navy Court of Military Review decisions were certified by the Judge Advocate General to the U. S. Court of Military Appeals for review in calendar year 1973.

CIVIL LITIGATION. During calendar year 1973, 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. *Warner v. Flemings*—issue involved the question of the retroactive application of the decision in *O'Callahan v. Parker*. On 25 June 1973, the Supreme Court held that *O'Callahan* was not to be afforded retroactive application.

b. *Avrech v. Secretary of the Navy*—issue involved the constitutionality of Article 134, Uniform Code of Military Justice. The United States Court of Appeals for the District of Columbia Circuit held Article 134 to be unconstitutionally vague in violation of the fifth amendment. The case is currently on appeal to the United States Supreme Court.

c. *Daigle and Crosby v. Warner*—issue involved the question of whether the Supreme Court decision in *Argersinger v. Hamlin* applied to the military summary court-martial. The United States Court of Appeals for the Ninth Circuit, on 24 October 1973, held that *Argersinger* and its interpretation of the right to counsel under the sixth amendment was inapplicable to the military-justice system. However, the court held that there was a due process right to assistance of counsel at a summary court-martial where confinement was awarded pursuant to the rule announced in *Gagnon v. Scarpelli*. The Navy is currently urging the Department of Justice to petition the United States Supreme Court for certiorari.

d. *Henry et al v. Warner*—issue involved (1) the applicability of *Argersinger* to the summary court-martial; and (2) the authority of a Federal district court to extend relief in the nature of mandamus and of habeas corpus beyond its geographical confines. The case is currently awaiting presentation of oral argu-

ment before the United States Court of Appeals for the Ninth Circuit.

e. *Betonie v. Sizemore*—issue involved the same question as that in *Daigle and Crosby v. Warner*. The case is currently awaiting presentation of oral argument before the United States Court of Appeals for the Fifth Circuit.

f. *Brown et al v. United States* presented the issue of the retroactive application of the decision in *United States v. Greenwell*, 19 USCMA 460, 42 CMR 62 (1970), which held that the Secretary of the Navy must act personally in granting commanding officers and officers in charge of separate and detached commands smaller than battalion size authority to convene special courts-martial. On 28 September 1973, the United States District Court for the Eastern District of Pennsylvania granted the Government's motion for summary judgment and held that *Greenwell* was not to be afforded retroactive application by the Federal civil courts. Plaintiff's counsel is currently appealing this decision to the United States Court of Appeals for the Third Circuit.

g. *Stahl v. Warner* presented the issue whether detailed military defense counsel at trial by court-martial must also be permitted to represent the accused in Federal district court upon collateral attack of court-martial proceedings. On 8 January 1974, the United States District Court for the Northern District of Illinois denied plaintiff's motion for preliminary injunction and declaratory relief.

h. *Jones v. Domina* presented the issue of the constitutionality of Article 134, where it is used to proscribe transfer of heroin. The case is currently pending before the United States District Court for the District of Maine.

i. *McCahill v. Eason* presented the issues concerning (1) the constitutionality of Article 134 and (2) the habeas corpus jurisdiction of District Court in a situation where the accused merely has court-martial charges pending against him, but is under no form of pretrial restraint. On 12 June 1973, the United States District Court for the Northern District of Florida held that it possessed habeas jurisdiction under such circumstances and ruled that Article 134 was unconstitutionally vague. The case is currently awaiting decision on appeal to the United States Court of Appeals for the Fifth Circuit.

j. *Priest v. Secretary of the Navy* presented the issue of the constitutionality of Article 134, Uniform Code of Military Justice. The case is currently pending before United States District Court for the District of Columbia and has been stayed pending the outcome of *Secretary of the Navy v. Avrech* at the Supreme Court.

k. *Wishmeyer v. Bolton* presented the issue of whether the off-base, off-duty use and transfer of marijuana was service connected. On 12 June 1973, the United States District Court for the Northern District of Florida held that petitioner's offenses were not service connected within the meaning of *O'Callahan v. Parker*. The case is currently awaiting decision on appeal to the United States Court of Appeals for the Fifth Circuit.

l. *Mascavage v. Richardson* presented the issue of whether there was court-martial jurisdiction over off-base, off-duty, and out-of-uniform possession and sale of marijuana to another serviceman. On 25 April 1973, the United States District Court for the District of Columbia denied plaintiff's motion for preliminary injunction and dismissed the action for failure to exhaust intramilitary remedies. The case is presently pending appeal before the United States Court of Appeals for the District of Columbia Circuit.

m. *Holder et al v. Richardson* presented the same issue as that in *Mascavage*. On 21 June 1973, the United States District Court for the District of Columbia granted plaintiff's motion for injunctive relief and held that his offenses were not service connected within the meaning of *O'Callahan*. The Government has appealed that ruling, and the case is presently pending before the District of Columbia Circuit where it has been joined with *Mascavage v. Richardson* and *Rainville v. Lee*.

n. *Rainville v. Lee* presented the same issue as that in *Mascavage* and *Holder*. On 27 June 1973, the United States District Court for the District of Columbia denied plaintiff's motion for injunctive relief and dismissed the case for failure to exhaust intramilitary remedies. Plaintiff has appealed that ruling to the District of Columbia Circuit, and the case has been consolidated with the *Mascavage* and *Holder* cases.

o. *Herrin v. Richardson* presented the issue of whether off-base, off-duty use and possession of marijuana was service connected within the meaning of *O'Callahan v. Parker*. On 17 October 1973, the United States District Court for the Eastern District of Virginia denied plaintiff's motion for injunctive and declaratory relief and held that his offenses were triable by court-martial.

p. *Gnip v. Kizer* presented the issue of whether off-base, off-duty, out-of-uniform possession and sale of marijuana was service connected, where sale was to fellow serviceman acting as undercover agent for CID. After hearings at both the United States District Court for the Eastern District of Virginia and at the United States Court of Appeals for the Fourth Circuit, plaintiff's action was dismissed for failure to exhaust intramilitary remedies. Plaintiff then sought extraordinary relief at the United

States Court of Military Appeals which was denied on 28 December 1973.

q. *Artis v. United States* involved the issues of whether (1) the multiple role of the convening authority in the military-justice system constitute a denial of due process of law; and (2) whether admission of official service-record entries to prove the offense of unauthorized absence violates the sixth amendment guarantee of cross-examination and confrontation of witnesses. The case is currently pending before the United States Court of Claims.

r. *McDonald v. United States* presented the issues of (1) the constitutionality of Article 134 where it is used to proscribe the offense of aggravated assault; and (2) whether the multiple role of the convening authority in the military-justice system constitutes denial of due process. The case is currently pending before the United States Court of Claims.

In addition to the above-mentioned cases, there are approximately six other cases pending before the United States Court of Claims and various other United States District Courts which present issues that are virtually identical to those enumerated above. The Judge Advocate General is also providing assistance to the Justice Department in the litigation of those cases.

THE SECRETARY OF DEFENSE TASK FORCE ON THE ADMINISTRATION OF MILITARY JUSTICE IN THE ARMED FORCES. As a result of the recommendations of the Department of Defense Task Force on the Administration of Military Justice in the Armed Forces, the Secretary of Defense, on 11 January 1973, directed, among other things, that the Secretaries of the various military departments submit plans for revising the structure of their judge advocate organizations to place defense counsel under the authority of the respective Judge Advocates General, and in the case of the Marine Corps under the Director, Judge Advocate Division, as well as the implementation of revised procedures for nonjudicial punishment.

In response to this directive, the Secretary of the Navy promulgated ALNAV 41 on 4 May 1973 which set forth the guidelines promulgated by the Secretary of Defense in his memorandum of 11 January 1973, with the exception of the provision relating to automatic staying of nonjudicial punishment pending appeals. With respect to this provision, the Secretary of the Navy submitted a reclama pointing out that such provision would be contrary to law and the manifest congressional intent.

Two significant changes are noted:

- (1) The proceeding will be open to the public unless otherwise requested by the accused or would involve the

divulgence of classified material; and

- (2) The accused is permitted to be accompanied by a personal representative who may, but need not be, an attorney.

The remainder of ALNAV 41 outlines procedures which have long been in effect throughout the naval service.

In addition, on 3 October 1973, the Secretary of the Navy approved for fiscal year 1975 implementation within the Navy, a plan proposed by the Judge Advocate General creating a new command entitled the Naval Legal Service. This command will come directly under the Chief of Naval Operations with the Judge Advocate General assigned as the Director, Naval Legal Service. Present Navy law centers will be established as separate component field activities of this new command, responsible directly to the Judge Advocate General and retitled Naval Legal Service Offices. Under this reorganization, trial counsel as well as defense counsel will come under the authority of the Judge Advocate General and, thus, be independent of the convening authority.

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

EXHIBIT A

	Fiscal Year 1973	Fiscal Year 1972
General courts-martial		
Rec'd for review under Art 66 -----	674	718
Rec'd for review under Art 69 and acquittals -----	114	155
Total -----	788	873
Special courts-martial		
Rec'd for review under Art 66 -----	2,004	1,993
Rec'd for review under Art 65c -----	1	0
Reviewed in the field -----	8,234	7,803
Total -----	10,239	9,796
Summary courts-martial		
Rec'd for review under Art 65c -----	0	0
Reviewed in the field -----	11,322	11,308
Total -----	11,322	11,308
Total all courts-martial -----	22,349	21,977
Navy Court of Military Review actions		
On hand for review end last FY ----	187	269
Rec'd for review during FY -----	2,678	2,711
Total on hand -----	2,865	2,980
Reviewed during FY -----	2,615	2,793
Pending review and current FY ---	250	187
Total -----	2,865	2,980
Findings modified or set aside by Navy Court of Military Review during FY		
115	115	119
Requests for appellate counsel before NCMR -----		
1,615	1,615	1,540
U. S. Court of Military Appeals actions		
Petitions forwarded to USCMA ----	376	519
Cases certified to USCMA by JAG --	6	11
Total cases docketed with USCMA -----	382	530
Petitions granted by USCMA -----	51	32
Petitions denied by USCMA -----	311	500
Total petitions acted upon by USCMA -----	362	532

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

January 1, 1973 to December 31, 1973

1. Major General Harold R. Vague, Assistant Judge Advocate General, was named The Judge Advocate General on October 1, 1973, vice Major General James S. Cheney, who retired. Brigadier General Walter D. Reed, Director of Civil Law, was named The Assistant Judge Advocate General. Generals Cheney and Vague 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 addressed numerous civic, professional, and military organizations. Major General Cheney participated in the Annual Code Committee Meeting held in Washington, D.C. on February 22, 1973, per Article 67(g), Uniform Code of Military Justice. The Judge Advocate General hosted a world-wide major command and general court-martial convening authority Staff Judge Advocates' Conference at Andrews AFB, MD, in October 1973. General Vague, Lt. Colonel Teagarden, TJAG Executive, and CMSgt Miller, Airman Advisor to TJAG, attended the USAFE Judge Advocate Conference from 30 October to 1 November 1973.

A further expansion of the Air Force Trial Judiciary system mentioned in the 1972 Report in the form of a program providing for a complete defense counsel service at base level has been prepared and submitted to the Department of Defense. The plan envisions an office and administrative support for the base defense counsel separate and apart from the office of the Base Staff Judge Advocate, both from a physical and supervisory standpoint. Overall supervision and management of the program would be the responsibility of the Chief, Appellate Defense Division. A Pilot Project of the program will be initiated within the First Circuit, USAF Trial Judiciary (northeastern part of the United States), on January 1, 1974, and it is presently anticipated that it will be implemented world-wide by July 1, 1974.

On April 25, 1973 the Director of Data Automation for the

Air Force approved the design, testing and implementation of the Automated Military Justice Analysis and Management System (AMJAMS), a fully automated data system which will enable The Judge Advocate General's Department to collect and correlate data pertaining to courts-martial and nonjudicial punishment. This data will provide current statistical reports and many new management tools will be available for use by Headquarters USAF, by Major Commands and by general and special court-martial jurisdictions. Reports will be furnished on a monthly basis covering significant aspects of military justice administration for cases processed during that month and TJAG's Annual Report will automatically be prepared from the computer data base, eliminating the need for the present manually prepared Court-Martial and Article 15 Activities Report. Each month a list of cases in progress containing information on the cases in each court-martial jurisdiction will be automatically prepared and furnished to the jurisdiction concerned. The design and testing, which is being accomplished by the Air Force Data Systems Design Center, is scheduled to be completed in time to release the system for world-wide implementation in July of 1974.

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 1973, is shown in the following table:

Total number records received	536
For review under Article 66	448
General Court-Martial records	181
Special Court-Martial records	267
Examined under Article 69	65
Acquittals under Article 61	23

The Court of Military Review modified the findings and/or sentence in 42 cases.

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

Cases on hand 30 June 1972	72
Cases referred for review	448
Total for review	520
Cases reviewed and dispatched	388
Cases on hand 30 June 1973	132

c. During the fiscal year 77.9% 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 -----	388
Number cases forwarded to USCMA -----	117
Cases petitioned -----	114
Cases certified -----	3
Percent total forwarded of total cases reviewed -----	30.2%
Petitions granted -----	5
Percent grants of total petitioned -----	4.3%
Percent petitions granted of total cases reviewed by Court of Review -----	1.3%

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

General Courts-Martial -----	267
Special Courts-Martial -----	2,254
Summary Courts-Martial -----	119
Total -----	2,640

3. Reportable Article 15 Actions, FY 1973:

	PERCENTAGE OF TOTAL NUMBER OF CASES	
TOTAL CASES -----	35,845	
Officers -----	167	0.5%
Airmen -----	35,678	99.5%
PUNISHMENTS IMPOSED		
Officers -----	270	---
Airmen -----	55,532	---
Restrictions (over 14 days)		
Officers -----	11	4.1%
Airmen -----	2,985	5.4%
Quarters Arrest/Correctional Custody		
Officers -----	1	0.4%
Airmen -----	2,288	4.1%
Extra Duties (over 14 days)		
Airmen -----	1,511	2.7%
Reduction in Grade		
Airmen -----	23,238	41.8%
Forfeiture of Pay		
Officers -----	146	54.1%
Airmen -----	25,135	45.3%
Detention of Pay		
Officers -----	0	0.0%
Airmen -----	51	0.1%
Written Reprimand		
Officers -----	112	41.5%
Airmen -----	324	0.6%
MITIGATING ACTIONS		
Appeals Taken -----	2,317	6.5% **
Officers -----	25	
Airmen -----	2,292	
Appeals Denied -----	1,832	79.0% ***
Officers -----	21	
Airmen -----	1,811	

	PERCENTAGE OF TOTAL NUMBER OF CASES	
Suspension of Punishment -----	17,328	48.3%**
Officers -----	8	
Airmen -----	17,320	
Other Action -----	3,865	10.8%**
Officers -----	2	
Airmen -----	3,863	

** Of total cases (35,845)

*** Of appeals taken (2,317)

4. In accordance with our policy of insuring that Air Force regulations and manuals related to military justice are always current, new and revised editions of AFM 111-1, Military Justice Guide and AFM 111-3, Court-Martial and Article 15 Activities Report were published and distributed to the field during 1973. In addition, a complete revision of AFR 111-9, Nonjudicial Punishment Under Article 15, UCMJ, incorporating several significant procedural changes has been drafted for publication early in 1974.

5. The Air Force Judge Advocate General's Department, acting as agent for all the Armed Services, contracted with a commercial law book publisher to publish, beginning 1 July 1973, the Advance Opinions of the United States Court of Military Appeals and the United States Courts of Military Review. Prior to 1 July 1973, Advance Opinions had been published only for the United States Court of Military Appeals. In view of the fact that Advance Opinions for the Courts of Military Review are now published, digests of such opinions are no longer printed in the JAG Reporter, a monthly publication by this Department. However, a cumulative index to the Advance Opinions of the Court of Military Appeals and all the Courts of Military Review is now printed in the Reporter. The AFJAG Law Review printed, in this calendar year, four articles dealing with various aspects of the administration of military justice, including searches conducted by private individuals and the procedural safeguards in military law insuring effective assistance by defense counsel. In September 1973 a special issue of the Law Review was published in honor of the 25th anniversary of the Air Force Judge Advocate General's Department.

6. During calendar year 1973 The Judge Advocate General's Department provided continuing legal and general education opportunities to 688 of its personnel. The basic course for new judge advocates is the Judge Advocate Staff Officer Course held at the Air University, Maxwell AFB, Alabama. This six week course was conducted five times during 1973 and 198 judge advocates completed it. During the year 19 judge advocates were sent

to various civilian universities to obtain an LL.M degree. Ten were pursuing a course of study in Procurement Law, three in International Law, three in Labor Law, one in Environmental Law and two in Patent Law. One judge advocate was assigned to each of the five Air Materiel Areas (AMA), in a contract internship program. These five selected judge advocates are newly procured officers and are assigned to the AMA procurement offices for one year before being regularly assigned to judge advocate duties requiring a procurement background. This program is in addition to the regular and continuing two week procurement law course held at Wright-Patterson AFB, Ohio. Ninety-five judge advocates completed this course during 1973 in the two courses offered. Air Force judge advocate officers also attended the Basic Contract Course for logistic officers conducted by the Army JAG School at Charlottesville, Virginia. In 1973, ten officers attended this course and 15 additional officers attended the Army Advanced Procurement Law Course. In 1973, 25 officers attended the one-week course for prosecuting attorneys and 25 additional officers attended the equal length course for defense attorneys held at Northwestern University. One of our senior military judges was 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, Nevada. Judge advocates were also in attendance at the various short courses offered by the Air Force in fields such as labor management relations.

During the year five judge advocates attended the Command and Staff College and three the Air War College. Two officers attended the Armed Forces Staff College and one senior judge advocate attended the Industrial College of the Armed Forces. Next year one student is scheduled to attend the National War College. Air Force lawyers attend the Squadron Officers School but this assignment is by command selection and not by The Judge Advocate General. Attendance at this course is encouraged by the Department. The course for newly appointed Staff Judge Advocates which was established in 1971 trained 37 of our officers in 1973 prior to their assignment as a base Staff Judge Advocate. Two classes were conducted for Reserve and Air National Guard judge advocates during the year. This two-week refresher course graduated 62 students in 1973. A 13-week forensic medicine course is conducted as required at Malcolm Grow Hospital, Andrews AFB, Maryland. Graduates of this course are assigned as forensic medicine consultants to area hospital commanders. Five lawyers completed this course of instruction. In 1973, as in previous years, selected Air Force officers participate in the Excess Leave Program to obtain their legal education. A total of 70

officers were enrolled in this program in 1973 with ten completing their law school requirements and designated as judge advocates. During the summer vacation months these students perform active duty in an Air Force legal office as "legal interns". Selected individuals are given the opportunity to perform their summer training at various divisions in the Office of The Judge Advocate General, Headquarters USAF. The Department's enlisted personnel receive their training at a special legal technicians school at Keesler Air Force Base, Mississippi. Eleven courses were held in 1973 and 109 students were graduated. In addition to these programs Air Force judge advocates and legal technicians attended various other short courses pertaining to law and taxation conducted by civilian universities and the armed forces.

7. On 30 June 1973, there were 1214 judge advocates on duty. Of these 600 were Regular Air Force. The Department's field grade manning continued to decline in 1973. As of 30 June 1973, 318 of the Department's field grade authorizations were manned by captains. The Department is authorized 126 colonels, 251 lieutenant colonels, 350 majors, and 481 captains. The Department has assigned 103 colonels (23 short), 119 lieutenant colonels (132 short), 187 majors (163 short), and 797 captains (315 over). These figures reveal a 43 percent shortage of experienced field grade judge advocates.

8. At the close of the period of this report, there were 61 commands exercising general court-martial jurisdiction.

HAROLD R. VAGUE
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, 1973 to December 31, 1973

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, 1972, and ending June 30, 1973.

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.

	1973	1972	1971	1970	1969
General courts-martial -----	5	6	2	2	2
Special courts-martial -----	206	167	129	76	92
Summary courts-martial -----	307	338	287	174	207
Total -----	518	511	418	252	301

Even though the total number of courts-martial are only slightly higher than in the previous year, special courts-martial showed a marked increase. Nearly all of the increase in special courts-martial can be attributed to the increased availability of lawyers.

In spite of the increase, all special courts-martial had lawyers for defense counsel and non-lawyer trial counsel were used only three 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 the two full-time 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. In 164 of the special courts-martial, trial was by military judge with members, none of which included enlisted members. In the remaining 42 cases, the defendant elected to be tried by military judge alone.

In 20 of the cases, the sentence included a bad conduct discharge. Nine of these were adjudged by military judge alone, and the remaining 11 were adjudged by a court with members. Of the 20, 10 were remitted or commuted by the convening or supervisory authorities, leaving 10 to reach the Court of Military Review. Three of these were disapproved by the Court. Thus, 7 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 64 out of 194—in which there was a conviction. Maximum confinement of six months was imposed as a punishment only 14 times, three when trial was by military judge alone.

Of the 193 cases with approved sentences, 121 sentences were affirmed on review without modification. Seventy-two were mitigated in some form. In 116 cases, there were guilty pleas to all of the charges and specifications. Fifty-five of these involved pre-trial agreements.

The following table shows the distribution of the 618 specifications tried in the 206 special courts-martial:

AWOL or desertion	214
Missing ship movement	51
Marihuana offenses	73
Offenses involving controlled drugs	27
Willful disobedience or disrespect	70
Assault	34
Violation of order or regulation	8
False representation or official statement	18
Larceny or wrongful appropriations	12
Breaking restriction	28
Offenses against Coast Guard property	12
Provoking words or threats	13
Neglect of duty	4
Sleeping on post	2
Cheating on advancement examination	8
Mutiny	2
Other Offenses	42

The Coast Guard Court of Military Review had 11 cases docketed with it during the fiscal year. Of the 14 cases that were decided during the fiscal year, 7 were affirmed without modification and the findings or sentence were modified in 7 cases. Five petitions were submitted to the Court of Military Appeals for a grant of review, one petition was granted.

The Mast Guide (CG-441) published and distributed in October 1972 proved to be a great aid in administering non-judicial punishment in the Coast Guard.

RODNEY E. EYSTER
General Counsel
Department of Transportation