

**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, 1974 to December 31, 1974**

PROPERTY OF U.S. ARMY  
THE JUDGE ADVOCATE GENERAL'S SCHOOL  
LIBRARY

U. S. COURT OF MILITARY APPEALS

October 15th

Dear Colonel:

Received your letter and am enclosing a copy of the 1974 Annual Report. The 1975 Report has not gone to the printers as yet.

I didn't even know that you left the JAG School and were now in DC. Be sure you stop in to see me when you come over for any arguments. It's always nice to see you. Call anytime also.

Sincerely,

*Virginia*

Virginia Siegel

X31922

Enclosure

**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, 1974 to December 31, 1974**



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AND THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES  
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**JOINT REPORT**  
**of the**  
**U.S. COURT OF MILITARY APPEALS**  
**and the**  
**JUDGE ADVOCATES GENERAL**  
**OF THE ARMED FORCES**  
**and the**  
**GENERAL COUNSEL**  
**DEPARTMENT OF TRANSPORTATION**  
**January 1, 1974 to December 31, 1974**

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, constituting the Code Committee, 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.

Certain amendments to the Manual for Courts-Martial, United States, 1969 (Revised Edition) were submitted to the President in calendar year 1974. (On 27 January 1975 President Ford signed Executive Order 11835 implementing those proposed amendments.) Paragraph 34d of the Manual for Courts-Martial was amended to authorize the Secretary of a Department to prescribe regulations permitting payment of transportation and per diem to civilians called to testify at a pretrial investigation. Paragraph 61 was revised to require that the military judge or the president of a special court-martial without a military judge question the accused as to his understanding of his right to retain civilian counsel or to request individual military counsel. Paragraph 70 was

amended to state that the military judge or the president of a special court-martial without a military judge "must" as opposed to "should" explain the meaning and effect of a plea of guilty to the accused. Paragraph 76 was amended to require that the members be instructed that voting on proposed sentences begin with the lightest proposed sentence. Paragraphs 89 and 110 were amended to require that on rehearing a defendant will be credited with any confinement (including pretrial confinement) that was served in connection with the charges that are the subject of a new trial. Paragraphs 122 and 150 were amended to provide that an accused may be required to submit to psychiatric evaluation or testing by the government as a condition precedent to his presenting psychiatric testimony that would raise an issue as to his mental responsibility or capacity. Paragraph 152 was amended to extend authorization to search incident to arrest to include an area where the person arrested might gain possession of weapons or destructible evidence. The majority of the changes to the Manual for Courts-Martial were intended to implement recent decisions of the United States Supreme Court and the United States Court of Military Appeals.

The Judge Advocates General and the General Counsel, Department of Transportation, have initiated studies of proposed legislation that would enhance the quality and efficiency of the military judicial system. Among the proposals are studies of legislation to provide for discretionary appeals, expansion of the power of the Judge Advocate General under Article 69, elimination of the present requirement for a detailed pretrial and post-trial review by the staff judge advocate, elimination of review of the findings of a court-martial by the convening authority, and use of video tape as trial records. The judges favor study of granting all sentencing and probation authority to military judges and codification of offenses under Articles 133 and 134.

The Joint Service Committee on Military Justice, a Standing Committee composed of representatives of each of the services, has been directed to study those proposals and present a legislative package of changes to the Uniform Code of Military Justice to the Judge Advocates General and the judges of the United States Court of Military Appeals. A working group has been formed to research the proposals and to draft a legislative package.

The continuing deficit of experienced military lawyers, addressed in the 1972 and 1973 Reports, remains a primary concern of the Code committee. Quality military justice requires competent experienced military lawyers. The Code committee recommends passage of S 1362 and HR 4372, bills which would provide special



pay (monthly professional pay and a retention bonus) for military lawyers.

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.

ALBERT B. FLETCHER, JR.,  
*Chief Judge*

WILLIAM H. COOK,  
*Associate Judge*

HOMER FERGUSON,  
*Senior Judge*

WILTON B. PERSONS, JR.,  
*The Judge Advocate General  
United States Army*

H. B. ROBERTSON, JR.,  
*The Judge Advocate General  
United States Navy*

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

JOHN H. ELY,  
*General Counsel  
Department of Transportation*

## EXHIBIT A

For the Period

July 1, 1973 to June 30, 1974

### *Court-Martial Cases*

Army -----	21,987
Navy -----	22,475
Air Force -----	2,947
Coast Guard -----	409
TOTAL -----	47,818

### *Cases Reviewed by Courts of Military Review*

Army -----	2,130
Navy -----	2,589
Air Force -----	593
Coast Guard -----	18
TOTAL -----	5,330

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

Army -----	730
Navy -----	474
Air Force -----	210
Coast Guard -----	3
TOTAL -----	1,417

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

**January 1, 1974 to December 31, 1974**

The Judges of the United States Court of Military Appeals submit their report on the administration of the Court and military justice to the Committees on Armed Services of the United States Senate and House of Representatives and the Secretaries of Defense, Transportation, Army, Navy, and Air Force, in accordance with the Uniform Code of Military Justice, Article 67(g), 10 U.S.C. § 867(g).

Chief Judge Robert M. Duncan resigned from the Court effective July 11, 1974. He was subsequently appointed District Judge for the Southern District of Ohio.

Associate Judge William H. Cook, nominated by President Nixon on August 2, 1974, and confirmed by the Senate on August 16, 1974, took his oath of office on August 21, filling the vacated unexpired term of Chief Judge William H. Darden.

Two events, not within the reporting period, should be noted nonetheless. On March 13, 1975, President Ford nominated Judge Albert B. Fletcher, Jr., of the Eighth Judicial District for the State of Kansas, to fill the unexpired term of Chief Judge Robert M. Duncan. Following confirmation by the United States Senate, he took the oath of office as Chief Judge on April 30, 1975.

On May 19, 1975, after an illness that forced his retirement, Senior Judge Robert E. Quinn passed away. His loss saddens everyone.

The influx of cases docketed in the Court through Fiscal Year 1974 continued unabated, a total of 1,517 cases being received. 1,399 Petitions for Grant of Review, 18 Certificates for Review, and 100 Petitions for Extraordinary Relief comprised the aggregate. 109 opinions, affecting 115 accused, emerged from a selection of 85 Petitions, 17 Certificates, 8 Petitions for Extraordinary Relief, 4 combined Petitions and Certificates, and 1 Petition for Reconsideration.

To better assure the timeliness of post-trial review, *Burton*<sup>1</sup> and *Marshall*<sup>2</sup> pretrial guidelines have been tailored to the appellate process.

*Dunlap v. Convening Authority*, 23 USCMA 135, 48 CMR 751 (1974), established the rule requiring final convening authority review of the case within the 90 days after commencement of an appellant's post-trial restraint. A presumption of reversible error with possible dismissal of charges arises if diligence and furtherance of speedy review is not demonstrated by the government.

We are unchanged in the view expressed in previous annual reports, however, that greater gain will stem from legislative removal of the convening authority from the appellate process except for clemency functions.

In the case of *United States v. Henry N. Lumbus, Jr.*, 23 USCMA 231, 49 CMR 248 (1974), the Court held that an assault on an acting noncommissioned officer while in the execution of his office is not in violation of Article 91 of the Uniform Code of Military Justice and is punishable only as a simple assault. Article 91 covers insubordinate conduct toward warrant officers, noncommissioned officers and petty officers but says nothing about persons only acting in such a capacity. The history of the Code indicated that Congress never intended Article 91 to cover acting noncommissioned officers. We believe this is a matter that Congress may well want to look into so that legislative changes may be considered.

In other areas, the constitutionality of Article 133 (conduct unbecoming to an officer and gentleman) and Article 134 (disorder and conduct of a nature to be discrediting) of the Uniform Code have been upheld by the Supreme Court in *Parker v. Levy*, 417 U.S. 733, 41 L. Ed. 2d 439, 94 S. Ct. 2547 (1974), and *Secretary of the Navy v. Avrech*, 418 U.S. 676, 41 L. Ed. 2d 1033, 94 S. Ct. 3039 (1974).

Intervention by Federal courts exercising equitable jurisdiction by injunction was another question argued before the Supreme Court in both *Schlesinger v. Councilman*<sup>3</sup> and *McLucas v. De-Champlain*<sup>4</sup> in December of 1974. The validity of the assimilated crime portions of Article 134 (crimes and offenses not capital) of the Code was also at issue and argued in the latter case.

A meeting of the Code Committee was held in December 1974, at which time notice was served by the members of this Court that they intended to take a more direct interest in Code revision than has been our practice for the past several years, and we

<sup>1</sup> *United States v. Burton*. 21 USCMA 112, 44 CMR 166 (1971).

<sup>2</sup> *United States v. Marshall*. 22 USCMA 431, 47 CMR 409 (1973).

<sup>3</sup> Equitable jurisdiction curtailed, 420 U.S. 738, 43 L. ed 2d 591, 95 S. Ct. 1300 (1975).

<sup>4</sup> Constitutionality of this portion of Article 134 sustained, 421 U.S. 21, 43 L. ed. 2d 699, 95 S. Ct. 1365 (1975).

believe that the result of this renewed interest will be apparent during 1975.

During the year, 645 attorneys were admitted to the Bar of our Court. Special sessions were held in California, Massachusetts, and Rhode Island. Honorary membership certificates were presented to attorneys from Iran, Thailand, Turkey, and Great Britain.

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

Respectfully submitted,

WILLIAM H. COOK  
*Associate Judge*

HOMER FERGUSON  
*Senior Judge*

**STATUS OF CASES**  
**UNITED STATES COURT OF MILITARY APPEALS**  
**CASES DOCKETED**

Total by Services	Total as of June 30, 1972	July 1, 1972 to June 30, 1973	July 1, 1973 to June 30, 1974	Total as of June 30, 1974
<i>Petitions (Art. 67(b)(3)):</i>				
Army -----	13,531	957	720	15,208
Navy -----	7,016	376	469	7,861
Air Force -----	5,053	114	208	5,375
Coast Guard -----	55	5	2	62
Total -----	25,655	1,452	1,399	28,506
<i>Certificates (Art. 67(b)(2)):</i>				
Army -----	203	18	10	231
Navy -----	239	6	5	250
Air Force -----	97	3	2	102
Coast Guard -----	11	0	1	12
Total -----	550	27	18	595
<i>Mandatory (Art. 67(b)(1)):</i>				
Army -----	31	0	0	31
Navy -----	3	0	0	3
Air Force -----	3	0	0	3
Coast Guard -----	0	0	0	0
Total -----	37	0	0	37 <sup>1</sup>
Total cases docketed -----	26,242	1,479	1,417	29,138 <sup>2</sup>

See footnotes at end of table.

## COURT ACTION

	Total as of June 30, 1972	July 1, 1972 to June 30, 1973	July 1, 1973 to June 30, 1974	Total as of June 30, 1974
<b>Petitions (Art. 67(b)(3)):</b>				
Granted -----	2,942	130	91	3,163
Denied -----	22,079	1,270	1,273	24,622
Denied by Memorandum				
Opinion -----	6	0	1	7
Dismissed -----	21	3	6	30
Charges dismissed by Order	2	0	1	3
Withdrawn -----	424	7	4	435
Disposed of on Motion to Dismiss:				
With Opinion -- ----	8	0	0	8
Without Opinion -----	45	6	5	56
Disposed of by Order setting aside findings and sentence				
Remanded -----	6	0	0	6
Remanded -----	199	10	1	210
Court action due (30 days) <sup>a</sup>	80	97	127	127
Awaiting replies <sup>a</sup> -- ----	48	60	48	48
Decision affirmed by Order	0	0	1	1
<b>Certificates (Art. 67(b)(2)):</b>				
Opinions rendered -----	528	25	21	574
Opinions pending <sup>a</sup> -----	6	6	1	1
Withdrawn -- ----	8	0	0	8
Remanded -----	4	0	0	4
Disposed of by Order -----	1	0	0	1
Set for hearing <sup>a</sup> -----	0	0	0	0
Ready for hearing <sup>a</sup> -----	1	0	5	5
Awaiting briefs <sup>a</sup> -----	1	0	0	0
Leave to file denied -- ----	2	0	0	2
Motion to dismiss granted	0	0	1	1
<b>Mandatory (Art. 67(b)(1)):</b>				
Opinions rendered -----	37	0	0	37
Opinions pending -- ----	0	0	0	0
Remanded -----	1	0	0	1
Awaiting briefs <sup>a</sup> -- ----	0	0	0	0
<b>Opinions rendered:</b>				
Petitions -----	2,621	126	85	2,832
Motions to dismiss -----	11	0	0	11
Motions to stay proceedings	1	0	0	1
Per Curiam grants -- ----	57	0	0	57
Certificates -----	465	19	17	501
Certificates and Petitions	60	6	4	70
Mandatory -----	37	0	0	37
Petitions remanded -- ----	2	0	0	2
Petitons for a new trial ---	2	0	0	2

See footnotes at end of table.

## COURT ACTION—Continued

	Total as of June 30, 1972	July 1, 1972 to June 30, 1973	July 1, 1973 to June 30, 1974	Total as of June 30, 1974
<b>Petitions for reconsideration of:</b>				
Denial Order -----	10	0	0	10
Opinion -----	4	0	0	4
Petition for new trial__	1	0	0	1
Motion to reopen -----	1	0	0	1
<b>Petitions in the nature of writ of error coram nobis -----</b>				
Petition for writ of habeas corpus -----	3	0	0	3
Motion for appropriate relief -----	1	0	0	1
Petition (motion to strike)_	0	1	0	1
Miscellaneous Dockets ----	69	11	9	89
<b>Total -----</b>	<b>3,346</b>	<b>163</b>	<b>115</b>	<b>3,624<sup>4</sup></b>
<b>Completed cases:</b>				
Petitions denied -----	22,079	1,270	1,273	24,622
Petitions dismissed -----	21	3	6	30
Charges dismissed by Order	2	0	1	3
Petitions withdrawn -----	424	7	4	435
Certificates withdrawn ----	8	0	0	8
<b>Certificates disposed of by Order -----</b>				
Opinions rendered -----	1	0	0	1
Disposed of on motion to dismiss:	3,269	151	106	3,526
With Opinion -----	8	0	0	8
Without Opinion ----	45	6	6	57
<b>Disposed of by Order setting aside findings and sentence</b>				
Writ of error coram nobis by Order -----	6	0	0	6
Motion for bail denied ----	3	0	0	3
Remanded -----	1	0	0	1
Decision affirmed by Order	202	10	1	213
Decision affirmed by Order	0	0	1	1
<b>Total -----</b>	<b>26,069</b>	<b>1,447</b>	<b>1,398</b>	<b>28,914</b>
<b>Miscellaneous Docket Nos.</b>				
Assigned: ----- (1967 to Present)	267	54	100	421
Pending <sup>5</sup> -----	0	0	7	7

See footnotes at end of table.



## COURT ACTION—Continued

	Total as of June 30, 1972	July 1, 1972 to June 30, 1973	July 1, 1973 to June 30, 1974	Total as of June 30, 1974
Granted -----	3	1	2	6
Denied -----	98	8	11	117
Withdrawn -----	4	0	0	4
Dismissed -----	94	33	75	202
Issue moot -----	2	0	0	2
Remanded -----	1	0	0	1
Opinions rendered -----	68	11	8	87
Pet for Reconsideration pending <sup>5</sup> -----	0	0	1	1
Pet for Reconsideration denied -----	8	2	6	16
Pet for Reconsideration granted -----	0	0	1	1
Opinion rendered (Pet Recon) -----	1	0	0	1
Pet for new trial remanded	1	0	0	1
<b>Total -----</b>	<b>280</b>	<b>55</b>	<b>111</b>	<b>446<sup>6</sup></b>

	Pending completion as of		
	June 30, 1972	June 30, 1973	June 30, 1974
Opinions pending -----	23	17	12
Set for hearing -----	0	0	0
Ready for hearing -----	2	3	11
Petitions granted—awaiting briefs -----	8	9	6
Petitions—Court action due (30 days) ---	80	97	127
Petitions—awaiting replies -----	48	60	48
Certificates—awaiting briefs -----	1	3	0
Mandatory—awaiting briefs -----	0	0	0
<b>Total -----</b>	<b>162</b>	<b>189</b>	<b>204</b>

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

<sup>2</sup> 28,591 cases actually assigned docket numbers. Overage due to multiple actions on the same cases.

<sup>3</sup> As of June 30, 1972, 1973 and 1974.

<sup>4</sup> 3,624 cases were disposed of by 3,545 published Opinions. 176 Opinions were rendered in cases involving 103 Army officers, 38 Air Force officers, 24 Navy officers, 8 Marine Corps officers, 2 Coast Guard officers and 1 West Point cadet. In addition 19 opinions were rendered in cases involving 20 civilians. The remainder concerned enlisted personnel.

<sup>5</sup> As of June 30, 1974.

<sup>6</sup> Overage due to multiple actions on the same cases.

**REPORT OF**  
**THE JUDGE ADVOCATE GENERAL OF THE ARMY**  
**January 1, 1974 to December 31, 1974**

**LEGISLATION AND MILITARY JUSTICE PROJECTS**

During 1974 the process of monitoring the criminal justice system, developing improved procedures, and revising military justice publications and regulations continued to be a major activity of the Office of The Judge Advocate General. Following the trend of recent years, increased emphasis was placed upon procedural improvements which could be effected by regulatory changes.

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

**MAJOR PROJECTS**

The favorable evaluation of test programs involving military magistrates and the use of legal centers resulted in their widening usage during 1974, while development of study projects such as the random jury selection plan and the study of the UCMJ in time of war continued. New projects examining the use of video-tape in courts-martial and of judge advocate advice in inferior courts-martial were undertaken.

a. The evaluation of the CONUS Military Magistrate Test program, conducted at Forts Bragg, Dix, and Hood, was completed in 1974. Under the program, records of individuals in pretrial confinement are reviewed by a judge advocate, or in limited circumstances a field grade officer with military justice experience, to determine the legality of, and need for, continued pretrial confinement. In determining whether pretrial confinement meets the criteria set forth in paragraphs 20 through 22,

MCM, 1969 (Rev), the military magistrate considers all facts and circumstances surrounding the case, including the seriousness of the offense, the accused's ties to the community, and other pertinent information. If continued pretrial confinement is not deemed warranted, 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. On 11 July 1974 the Chief of Staff directed the implementation of the program at all installations having a confinement facility containing pre-trial confinees from more than one significantly active general court-martial jurisdiction, or having an average daily prisoner pretrial population in excess of 50 confinees. Commanders of installations having fewer than 50 confinees currently may adopt the military magistrate or a substituted program, pending study of an action to make the military magistrate mandatory in every pretrial confinement situation. The program was formally implemented by Change 13 to Army Regulation 27-10.

b. In April 1974 the Chief of Staff approved the implementation of the legal center concept at the option of local commanders. In operation, the legal center concept envisions the legal center supervising the processing of all legal and quasi-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 decision to implement the legal center concept on a "local option" basis was predicated on a determination that its use might not be beneficial at all installations, depending on the size and composition of the command, its individual characteristics, and its case load.

c. The initial test of the random jury selection project was completed at Fort Riley, Kansas, in December 1974. The program was designed to test the concept of limited random selection of court members, without derogation of the statutory responsibility of the convening authority. Under the plan, a master juror list is compiled from post locator files. Individuals on the master list are then 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 qualified. The convening authority retains veto power over the entire panel, but not individual members thereof, and when this power is exercised, another randomly selected panel must be chosen. The basic criteria established by the convening authority of the test jurisdiction included, *inter*

*alia*, that a prospective court member must be at least 21 years old; have been on active duty at least one year; have been assigned and stationed at the installation for at least three months; have never been convicted of a felony or any offense involving moral turpitude; and not have been convicted of a misdemeanor or received nonjudicial punishment under Article 15, UCMJ, during his present enlistment or term of service, or during the preceding 3 years, whichever period is shorter. While the complete evaluation of the test results will not be finished until 1975, it appears that because of the small number of cases at the test site, further testing of the concept is necessary.

d. A study was initiated in 1973 to evaluate the effectiveness of the Uniform Code of Military Justice in time of war, with The Judge Advocate General's School being tasked to perform the initial phase of the study. The initial effort, completed in 1974, was a thesis entitled: "The UCMJ in Future Hostilities: Towards a More Workable System." Using the work done by The Judge Advocate General's School as a starting point, a committee within the Office of The Judge Advocate General recommended that a multi-phase approach be taken, to include a formal study by The Judge Advocate General's School and the appointment of an *ad hoc* committee to study the effectiveness of the operation of the military justice system in time of war. The results of these studies will be available in 1976 and will provide the basis on which legislation and regulatory changes can be sought in order to insure a responsive military justice system in time of hostilities, regardless of the magnitude of the conflict.

e. Taking cognizance of the rapidly expanding use of video-tape in both state, and federal jurisdictions, steps were taken during 1974 to initiate a study to determine the potential value of video-tape in the law enforcement and military justice systems of the Army. The potential uses of video-tape are substantial. In the law enforcement area video-tape may be used to record crime scenes, hard evidence, confessions, line-ups, and other instances where the visual display of facts assist in proper adjudication. Video-tape also has great potential in the military justice system, where it may be used in pretrial investigations of cases which may result in courts-martial; in the presentation of evidentiary facts to a court; in the prerecording of testimony for later televising to an empaneled jury; and as a replacement for the traditional record of trial. The study will provide the basis for a determination as to whether the Army should use video-tape, and to what extent, in its legal and law enforcement systems.

f. Also undertaken during 1974 was a project to determine the feasibility of requiring informal judge advocate advice prior to

referring charges to inferior courts-martial. Since commanders of units exercising special and summary courts-martial jurisdiction do not generally have judge advocates assigned, charges are frequently referred without legal advice to trial by these lower courts. This study will determine if the use of informal pretrial advice by a judge advocate reduces the number of improper or unnecessary specifications referred to trial or otherwise improves the quality of military justice.

g. Pursuant to DOD Directive 5500.15, dated 16 October 1974, the Office of The Judge Advocate General acquired a new function, namely to conduct legal reviews of all weapons intended to meet a military requirement of the Department of the Army in order to ensure that their intended use in armed conflict is consistent with the obligations assumed by the U.S. under applicable international laws (*i.e.*, not one prohibited by international law such as a weapon calculated to cause unnecessary suffering).

h. The Office of The Judge Advocate General has also assisted in the preparation of DOD Directive 5100.77, "DOD Program for the Implementation of the Law of War" and implementing instructions. The DOD Directive is the first uniform statement of Department of Defense policy on the implementation of the law of war. That policy requires, in part, that the military departments adopt procedures to ensure the prompt reporting and investigation of alleged violations of the law of war, committed by or against members of the military departments, and also provides for appropriate disposition under the Uniform Code of Military Justice of cases involving alleged violations by persons subject to court-martial jurisdiction.

i. Several decisions of the Federal courts during 1974 impacted on the military justice system. One such was the habeas corpus proceeding initiated by former Lieutenant William Calley in the U.S. District Court for the Middle District of Georgia after his conviction for murder in the My Lai incident was affirmed by the Court of Military Appeals. Initially, he was released on bail by the District Judge on 27 February 1974. This order was ultimately reversed by the appeals court in *Calley v. Callaway*, 496 F. 2d 701, (5th Cir., 1974). Upon consideration of the merits, the District Court held that Calley had been denied a fair trial under the Constitution (382 F. Supp. 650 (D. M.D. Ga., 1974)). Significantly, the court ruled that Calley was prejudiced by pre-trial publicity which was exacerbated by what the court believed was the inability of the military justice system to protect Calley. Further, the court held that Calley was denied due process and the right to confrontation by the failure of

Calley (1) to obtain the transcripts of testimony given at the House Armed Services Committee investigation into My Lai, and (2) to obtain subpoenas for certain witnesses, including the Secretaries of Defense and Army, and the Chief of Staff of the Army. Finally, the court held that the charges against Calley were illegally drawn in that they failed to give proper notice to the accused. This decision has been appealed by both parties to the Fifth Circuit.

j. Less newsworthy than the *Calley* case, but of substantial importance to the Army were some actions of the Supreme Court. After several years of litigation over the constitutionality of Articles 133 and 134, the Articles were finally upheld by the Supreme Court in *Parker v. Levy*, 417 US 733 (1974); *Avrech v. Secretary of the Navy*, 418 US 676 (1974); and *McLucas v. De Champlain*, \_\_\_US\_\_\_ (April 15, 1975).

k. During 1974 the availability of Federal court injunction against allegedly unconstitutional courts-martial continued to be contested. In *Scott v. Schlesinger* (498 F. 2d 1093 (5th Cir. 1974)) and *Mascavage v. Richardson* (494 F. 2d 1156 (D.C. Cir. 1974)) the Fifth and District of Columbia Circuits joined the Third and Fourth Circuits in disapproving Federal Court intervention into active courts-martial. Thus, when *Schlesinger v. Councilman*, \_\_\_US\_\_\_ (43 USLW 4432, March 25, 1975) was argued in December 1974 the Tenth Circuit was alone in allowing the injunction of a court-martial because it allegedly violated *O'Callahan v. Parker*, 396 US 258 (1969). (Reversing the Tenth Circuit in *Councilman* (in 1975), the Supreme Court directed that the military judicial system be given all the deference due it as a system fully capable of interpreting not only military law but the Constitution as applicable within the Armed Services.)

l. In an area possibly left open to Federal court intervention, *i.e.*, personal jurisdiction disputes, the U.S. District Court for Kansas ruled during 1974 that the military courts must have an opportunity to consider the matter prior to its being reviewed by the Federal Courts. See, *Montoya v. Rowe* (unreported) No. 74-226-C3, USDC, D. Kansas.

m. Additionally, the Court of Claims held in *Artis v. United States*, \_\_\_F.2d\_\_\_ (18 Dec. 1974) that Article 69, UCMJ, remedies must be exhausted prior to collateral review of special courts-martial. It appears that during 1974 the military judicial system has gained acceptance as a fully competent criminal jurisdiction.

n. During 1974 several unreported decisions of importance

were rendered. In *Grance v. Callaway*, No. 74-180, USDC D. Haw. (24 July 1974), Article 57 (d), UCMJ, was held to be constitutional. *Grance*, as well as *Preston v. Nixon*, No. 4-74-301 (USDC D. Md., 5 June 1974) aff'd \_\_\_F.2d\_\_\_ (4th Cir. 7 Aug 1974) and *Kimball v. Callaway*, No. 74-10-225 (USDC D. Colo., 19 Apr 1974), held that there is no right to bail in the military. (*Grance*: post-trial; *Preston* and *Kimball*: pretrial). However, all three courts held that commanders' decisions to place soldiers in pre-trial confinement are reviewable for abuse of discretion. (More litigation on this subject may be expected in view of *Gerstein v. Pugh*, \_\_\_US\_\_\_ (1975) and *De Champlain v. Lovelace*, \_\_\_F.2d\_\_\_ (43 USLW 2349, 8th Cir. 1975). In *Gerstein*, not a military case, the Supreme Court required a rapid hearing before a neutral magistrate to determine probable cause following an arrest. In *De Champlain*, concerning an airman in pretrial confinement on charges of selling classified defense information, the Court held that the Fifth Amendment due process clause requires that pre-trial confinement be ordered only by an officer or military judge who is neutral and detached from the prosecution. Further, a rapid hearing before a neutral officer must be afforded, wherein the accused might present evidence supporting his release. The Government is to bear the burden at the hearing and a short statement of reasons for non-release must be given under the Eighth Circuit decision. The Supreme Court has granted certiorari in the case, but the impending trial may moot the case.)

o. The Supreme Court decided in *Schick v. Reed*, \_\_\_US\_\_\_ (43 USLW 4083, 24 Dec. 1974), that the President may attach constitutionally inoffensive conditions to pardons.

p. Raised in 1974, but not yet judicially resolved, are the treatment of prisoners at the U.S. Disciplinary Barracks (*Berenguer v. Froehlke*, D. Kansas) and whether a U.S. Court of Military Review merely authorizing a rehearing instead of ordering one is significant and whether that rehearing must be at the original location or can be held at Fort Leavenworth (*Hamlin v. Callaway*, S.D. Ga., 1974).

q. Of peripheral interest is the holding of the U.S. Court of Appeals for the Fourth Circuit that a violation of the Posse Comitatus Act could vitiate the conviction of a civilian defendant (*U.S. v. Walden*, 490 F. 2d 372, (4th Cir., 1974, cert. denied, 416 U.S. 983, reh. denied, 417 U.S. 977)). Also, on 28 December 1973, the U.S. Circuit Court for the Fifth Circuit held unconstitutional a local ordinance that proscribed the hiring for public service of anyone with a less than honorable discharge from the

armed forces (*Thompson v. Gallagher*, 489 F. 2d 443 (5th Cir., 1973) *reh. denied*, 489 F. 2d 443 (5th Cir., 1974)).

### SIGNIFICANT ACTIONS

During 1974, 1195 recorded actions, and many 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, including the evaluation of ongoing major projects; rendering opinions for the Army staff; and reviewing various aspects of criminal cases for action by the Army secretariat and staff.

The first changes to the *Manual for Courts-Martial, United States, 1969 (Revised edition)*, were forwarded to the President during 1974. These changes had two basic purposes: first, to bring various portions of the *Manual* into conformity with decisions of the United States Court of Military Appeals and the United States Supreme Court; and, secondly, to authorize the payment of travel expenses to witnesses who testify at pretrial investigations under Article 32, UCMJ.

Army Regulation 27-10, Military Justice, was revised on three occasions during 1974. Change 12 provided simplified procedures for obtaining qualified defense counsel at special courts-martial; provided for the permanent filing of all Article 15s in the efficiency portion of personnel files; provided for enhanced procedural safeguards in Article 15 proceedings; revised and simplified the record of proceedings under Article 15, UCMJ; and included attorney-client guidelines and a suggested guide for the conduct of Article 15 proceedings. Change 13 implemented the military magistrate program, previously discussed. Change 14 set forth standards and procedures for handling complaints by and against counsel, including civilian counsel, and for handling complaints against military judges.

Army Regulation 27-50, the status of forces regulation on policies and procedures, was revised during 1974 to include a provision for assignment of military legal advisers to U.S. servicemen being tried before foreign courts and a new form for reporting status of individual foreign criminal jurisdiction cases.

During 1974 the Office of The Judge Advocate General prepared both professional legal texts for practicing judge advocates and informational legal pamphlets for Army-wide distribution. DA Pamphlet 27-162, *Claims* (January 1974) compiles in a single text both the statutory and decisional law relating to claims



against and on behalf of the government. Likewise, the *Legal Assistance Handbook*, DA Pamphlet 27-12 (December 1974) provides a single volume reference to all areas of the law with which Legal Assistance Officers must deal. Materials published for Army-wide distribution included a revised *Deskbook for Special Court-Martial Convening Authorities*, DA Pamphlet 27-18 (January 1974), a practical guide which acquaints commanders with the purposes, processes, and procedures of the special court-martial. Field Manual 27-1, *Legal Guide for Commanders* (September 1974), replacing DA Pamphlet 27-19, provides an overview of legal processes which unit leaders may utilize to deal effectively with administrative, disciplinary and personal problems arising in their commands. Finally, a guide to individual conduct in combat situations was prepared for distribution to individual soldiers. Published under the auspices of the TRADOC Army-Wide Training Literature Program, *Your Conduct in Combat Under the Law of War*, TRADOC Pamphlet 27-1 (January 1974) appears in easily readable, illustrated form and describes the limits of acceptable conduct during combat operations under the laws of war.

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

a. A statistical summary of court-martial activities for FY 74 follows:

The number of persons tried by courts-martial for fiscal year 1974 (average Army strength, 799,301) follows:

	Convicted	Acquitted	Total
General .....	1,696	152	1,848
Special (W/BCDs) .....	1,249	112	1,361
Special (W/O BCDs) .....	12,395	1,058	13,453
Summary .....	4,825	500	5,325
<b>TOTAL</b> .....	<b>20,165</b>	<b>1,822</b>	<b>21,987</b>

The number of service personnel convicted of felonies in federal and state courts during fiscal year 1974 follows:

CONUS .....	1636
Overseas .....	61
<b>TOTAL</b> .....	<b>1697</b>

Records of trial by general and special (BCD) courts-martial received by The Judge Advocate General during fiscal year 1974:<sup>1</sup>

For review under Article 66 (General) -----	1,563
For review under Article 66 (Specials W/BCDs) -----	1,255
For examination under Article 69 -----	357
<b>TOTAL</b> -----	<b>3,175</b>

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

On hand at the beginning of period -----	579
General Courts-Martial -----	392
Special Courts-Martial (BCD) -----	187
Referred for review: -----	2,950 <sup>2</sup>
General Courts-Martial -----	1,672
Special Courts-Martial (BCD) -----	1,278
<b>TOTAL</b> -----	<b>3,529</b>
Reviewed -----	2,130
General Courts-Martial -----	1,224
Special Courts-Martial (BCD) -----	906
Pending at close of period -----	1,399 <sup>3</sup>
General Courts-Martial -----	840
Special Courts-Martial (BCD) -----	559
<b>TOTAL</b> -----	<b>3,529</b>

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

<sup>2</sup> This figure includes 28 cases which were referred to the Army Court of Military Review pursuant to Article 69, Uniform Code of Military Justice; 4 cases referred after rehearing; and 38 cases referred for reconsideration.

<sup>3</sup> In an effort to cope with the backlog, 17 additional attorneys have been assigned to the Defense Appellate Division, and steps have been taken to add an additional panel to the Army Court of Military Review.

Actions taken during 1 July 73 thru 30 June 74 by Army Court of Military Review:

Findings and sentence affirmed -----	1,744
Findings affirmed, sentence modified -----	267
Findings affirmed, sentence commuted -----	1
Findings affirmed, no sentence affirmed -----	4
Findings affirmed, sentence reassessment or rehearing as to sentence only ordered -----	3
Findings partially disapproved, sentence affirmed -----	17
Findings partially disapproved, rehearing ordered -----	2
Findings & sentence affirmed in part, disapproved in part -----	30
Findings & sentence disapproved, rehearing ordered -----	11
Findings & sentence disapproved, charges dismissed -----	35
Returned to field for new SJA & C/A action -----	11
Proceedings abated, death of accused -----	4
Case returned to field for lack of jurisdiction by ACOMR -----	1
<b>TOTAL</b> -----	<b>2,130</b>

Of 2,130 accused whose cases were reviewed by the Court of Military Review pursuant to Article 66 during the fiscal year, 1,617 (75.9%) requested representation by appellate defense counsel.

The records in the cases of 731 accused were forwarded to the United States Court of Military Appeals pursuant to the three subdivisions of Article 67 (b) during FY 74. These comprised 34.3% of the number of cases reviewed by the Court of Military Review during the period. Of the mentioned 731 cases, 721 were forwarded on petition of accused and 10 were certified by TJAG.

The Court of Military Appeals took the following actions on Army cases during fiscal year 1974:

Petitions Denied		Petitions Granted	
672		50	

  

Petitions		Certification		Mandatory Review	
Affirmed	Reversed	Affirmed	Reversed	Affirmed	Reversed
20	34	7	6	0	0

Applications for relief, Article 69:

Pending 1 July 1973	73
Received	512
Disposed of	411
Granted	57
Denied	339
Field (action by SJA)	2
No Jurisdiction	0
Withdrawn	13
Pending 1 July 1974	174

b. The US Army Judiciary is an element of the US Army Legal Services Agency. The Agency includes the Contract Appeals Division (twenty officers, four enlisted, and twelve civilians) which has no function related to the US Army Judiciary and its court-martial mission. Of the remaining Agency personnel, 56 officers are assigned to the Trial Judiciary, 55 officers to Defense Appellate Division, 33 officers to Government Appellate Division, 4 officers to Examination and New Trials Division, and 13 appellate military judges to the US Army Court of Military Review.

c. Several continuing legal education programs sponsored by military and civilian bar groups were attended by military judges during the year including the National College of the State Judiciary, Joint Services Military Judicial Seminar at Yorktown, VA, and Treasure Island, CA, and several seminars and con-

ferences sponsored by the Federal Judicial Center, American Bar Association, and Federal Bar Association.

d. Trials by military judge alone continued to represent a substantial savings of manpower of line officers during FY 74 as reflected by the following:

	FY	71	72	73	74
GCM Trials by Judge Alone -- --		95%	66%	67%	81%
SPCM Trials by Judge Alone ----		84%	93%	88%	91%

e. As executive agent for the Department of Defense, the Department of the Army (through the Office of The Judge Advocate General) maintains and collates information concerning the exercise of foreign criminal jurisdiction over U.S. servicemen. During the period 1 December 1973-30 November 1974, out of 16,875 cases (world-wide) involving primary foreign concurrent jurisdiction, foreign authorities waived their jurisdiction in 15,970 for a waiver rate of 94.6 percent. This compares with a waiver rate of 94.4 percent for the previous reporting period.

### *COMPLAINTS UNDER ARTICLE 138, UCMJ (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.

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 1974, he received and acted upon 122 cases, holding as follows:

	Cases	Percent
The complainant was wronged in whole or in part: -----	20	16.5
The complainant not wronged in whole or in part: -----	67	55
The complainant was referred to other channels: -----	11	9
The complaint was returned for procedural reasons		
with leave to resubmit: -- -----	20	16.5
The complaint was moot when received: -----	4	3

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 1974, providing resident instruction for nearly 2,000 students and conferees.

#### **Courses of Instruction.**

In May 1974 the Judge Advocate Officer Advanced Course, approved by the American Bar Association, graduated a total of 39 students (including 32 Army, 1 Navy, and 5 Marine judge advocates, and 1 Allied Officer from Ethiopia). The revised curriculum consists of 34 semester hours, of which 20 semester hours are of core courses, 8 elective, and the remaining 6 for successful completion of a Legal Writing Program.

Some 347 newly-commissioned Army judge advocates attended one of the five 8-week Judge Advocate Officer Basic Courses held during the year. In addition, 11 Coast Guard Officers and 4 Allied Officers attended the Basic Courses. Many of the Army students had attended a preliminary 4-week phase at the US Army Military Police School, Fort Gordon, Georgia, emphasizing officer orientation, and introductory military and police science subjects.

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, procurement law, international law, overseas judge advocate operations, claims, military administrative law developments, legal assistance, command legal problems, civil rights, environmental law, and federal labor relations. In all, The Judge Advocate General's School courses were attended by 193 Active Army judge advocates, 272 Army Reserve and Army National Guard judge advocates, 74 judge advocates of other services, and 121 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 worldwide Judge Advocate General's Conference, the Fifth Annual United States Army Reserve Judge Advocate Conference, and Fourth Annual National Guard Judge Advocate Conference.

Annual training of the United States Army Reserve Claims and Legal Assistance Teams in the Judge Advocate General Service Organization brought 132 officers and 234 enlisted men to the School in June 1974.

At the year's end, 2,231 students were enrolled in the School's 9 separate correspondence courses, and 39,215 copies of correspondence course lessons had been provided to other Army branch schools for use in their own courses.

In 1974 The Judge Advocate General's School conducted its 14th through 17th Senior Officer Legal Orientations for installation and brigade commanders. A similar course was conducted especially for reserve component commanders and another was presented 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 of Administration (Adjutant General School), and the School of Naval Justice. During 1974, 381 students graduated from the ten week Legal Clerk Course at the Adjutant General School, while 38 new court reporters successfully completed the Court Reporter's Course at the School of Naval Justice. Nineteen selected noncommissioned officers completing the NCO Advanced Course attended a final, two-week phase conducted at The Judge Advocate General's School in April 1974. Additional warrant officers, enlisted personnel, and legal secretaries have attended the School's Legal Assistance and Criminal Law Military Lawyer's Assistant Courses and the Law Office Management Course.

### **Major Projects**

The Judge Advocate General's School continued to enhance the mobilization readiness of reserve component units and personnel by providing technical training and assistance to reserve judge advocates at their home stations (Army Reserve Centers and National Guard Armories) during the inactive duty phase of their training program. During calendar year 1974 the School's faculty members presented instruction on 171 occasions to 900 reserve component judge advocates in 63 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 Judge Advocate General's Corps reserve component officer strength was 1853 on 31 December 1974.

The faculty continued to teach military law in courses at the Defense Race Relations Institute at Patrick Air Force Base, Florida, and 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 1974 included four issues of the *Military Law Review*, 12 issues of *The Army Lawyer*, and seven 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 a *Staff Judge Advocate Handbook*, a legal professional text on procurement law, and substantial changes to the current *Military Evidence* and *Military Administrative Law* pamphlets.

Faculty members provided technical assistance for three training films prepared for distribution throughout the Armed Forces. During 1974 filming of the following motion pictures was completed: "Uniform Code of Military Justice, Part I (Pretrial, Trial and Post-Trial procedures)"; "The Civilian and the Geneva Convention"; and "Nonjudicial Punishment under Article 15." Additionally, technical advice was provided for a sequel to the Military Justice, Part I motion picture. ("Uniform Code of Military Justice, Part II, Offenses, Rights and Safeguards") This second film, which deals with substantive offenses under the Code, will serve to satisfy the requirements of Article 137, UCMJ, when completed in 1975.

The Board of Visitors met at the School in December 1974. Members in attendance were Colonel Eberhard Deutsch, Judge Robert M. Duncan, Mr. John H. Finger, Professor John W. Reed, and the Honorable Richard E. Wiley.

#### PERSONNEL

The average strength of the Judge Advocate General's Corps was 1571 officers, compared with an average of 1554 in 1973,

and 1638 in 1972. The average strength of the Corps has stabilized and will remain relatively constant for the foreseeable future.

The approximately 1650 uniformed attorneys on active duty at the end of 1974 included 41 blacks, 10 Mexican-Americans, 8 Oriental-Americans, 1 American Indian, and 5 Puerto Ricans. Recruiting of black lawyers has resulted in about a 160% increase over the last two years. There are 27 commissioned women lawyers in the Corps.

High interest in JAGC commissions continues. This is attributable to an extensive recruiting program, interest by prior service personnel completing law school, and the increase in number of law school graduates. 584 applications were received to fill the 262 requirements for fiscal year 1975. The accession authority for fiscal year 1976 is 175, and it is apparent that the Corps will process a great number of applications for these positions.

The shortage of field grade officers, as reported previously, persists. On 31 December 1974 the Corps was short 18% of authorized Colonels, 45% of authorized Lieutenant Colonels, and 55% of authorized Majors. The shortage of Colonels will be further aggravated during 1975 by unexpected and non-mandatory retirements. At present promotion rates, the Corps will have 71 Colonels at the end of the summer of 1975 compared to 111 in September 1972. However, in the same area, the retention rate of newly commissioned personnel is increasing. Also, the Fully Funded Legal Education Program, which was announced last year, has been fully implemented. This program, combined with the Excess Leave Program, will provide approximately 60 attorneys per year. These officers, for the most part, have extensive line experience and bring both maturity and career desire to the Corps.

As reported last year the training of a limited number of enlisted personnel at civilian institutions in stenotype court reporting is in progress. The first graduates will arrive at their new units in the fall of 1975, joining the approximately 1516 legal clerks and 98 court reporters currently on active duty.

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



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

**January 1, 1974 to December 31, 1974**

Following the practice in recent years of having the Code Committee Report reach the Armed Services Committees of Congress shortly after the convening of each new session, this report, although embracing calendar year 1974, contains, unless otherwise indicated, statistical information covering fiscal year 1974.

*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 very little change, generally speaking, in the fiscal year 1974 court-martial workload. (See Exhibit A attached to this report).

b. During fiscal year 1974, the Navy Court of Military Review received for review 485 general courts-martial and 2,115 special courts-martial (total 2,600) as compared with 674 general courts-martial and 2,004 special courts-martial (total 2,678) during fiscal year 1973. Of 2,600 cases received by the Navy Court of Military Review, 1,589 accused requested counsel (61 percent).

*NAVY-MARINE CORPS TRIAL JUDICIARY.* a. SECNAV INST 5813.6B, promulgated 18 June 1974 with an effective date of 1 July 1974, changed the title of the U. S. Navy-Marine Corps Judiciary Activity to Navy-Marine Corps Trial Judiciary and set forth as its mission:

... To provide certified military judges for all general courts-martial convened within the naval service and all special courts-martial convened on board a Navy ship, station, or activity (except those special courts-martial for which the utilization of a certified military judge, not assigned to the Trial Judiciary, is authorized pursuant to directions of the Judge Advocate Gen-

eral), and to perform such other functions as may be assigned under the direction of the Judge Advocate General.

Simultaneously, the Secretary of the Navy in SECNAVINST 5813.7 established a separate Marine Corps Special Court-Martial Judiciary which is responsible for assigning military judges to special courts-martial convened by commands located at Marine Corps bases, air stations, and recruit depots. This new activity is under the supervision of the Judge Advocate General of the Navy.

b. The Navy-Marine Corps Trial Judiciary provided military judges for 694 general courts-martial during calendar year 1974, a decrease of 32 cases from the 1973 level of 726 general courts-martial. In 1974, 71 percent of the general courts-martial were tried by courts constituted with military judge alone. This compares with 63 percent of the general courts-martial tried by courts constituted without members during 1973.

c. The establishment of the Navy-Marine Corps Trial Judiciary with the additional responsibility of assigning special court-martial judges, accounts for the dramatic increase in the number of special court-martial cases in which Navy-Marine Corps Trial Judiciary personnel were involved. During calendar year 1974, military judges were furnished for 4,029 special courts-martial as opposed to 1,853 in calendar year 1973. In addition, Circuit Military Judges of the Navy-Marine Corps Trial Judiciary nominated ad hoc military judges to preside in 365 special courts-martial for which full-time military judges were unavailable. In 1974, 92 percent of the special courts-martial were tried by courts constituted with military judge alone. This compares with 91 percent of the special courts-martial tried by courts constituted without members during 1973.

d. The present manning level of the Navy-Marine Corps Trial Judiciary is 17 general court-martial military judges, a decrease of 1 from the manning level at the close of calendar year 1973. Eighteen special court-martial military judges are assigned to the Navy-Marine Corps Trial Judiciary, fourteen of whom were assigned to newly created billets when the judiciary was established.

e. The "Uniform Rules of Practice before Navy-Marine Corps Courts-Martial" and "Bailiff's Handbook" were published as Change 5 of the *Manual of the Judge Advocate General*. The former governs the trial of cases by courts-martial presided over by a military judge. These rules are intended to simplify and make uniform those court-martial procedures which the military trial judge has the authority to control under appropriate provisions of the Uniform Code of Military Justice, the *Manual for Courts-Martial, 1969 (Rev.)*, and such regulations as the Secretary of

the Navy may prescribe. "Bailiff's Handbook" provides much needed assistance by delineating the responsibilities of the bailiff and defining the relationship existing between the bailiff and others involved in the case including the judge, counsel, and accused.

f. Military judges of the Navy-Marine Corps Trial Judiciary attended a variety of professional meetings and seminars during calendar year 1974. Three general court-martial military judges attended the three-day Judicial Seminar, sponsored by the Coast Guard, at Yorktown, Virginia, 25-27 April 1974. Five general court-martial military judges attended the three-day Judicial Seminar, sponsored by the Coast Guard, at Treasure Island, California, 2-4 May 1974. One general court-martial military judge attended a trial judge's course at the National College of the State Judiciary, Reno, Nevada, from 14 July to 9 August 1974. One general court-martial military judge attended the Annual Meeting of the American Bar Association at Honolulu, Hawaii, 12-16 August 1974. One general court-martial military judge and two special court-martial military judges attended a three-day seminar at Norfolk, Virginia, 21-23 November 1974.

**NAVAL LEGAL SERVICE.** The Navy's new legal command structure, the Naval Legal Service, became fully operational on 1 July 1974. As stated in last year's report, a primary purpose of this reorganization was to bring all trial and defense counsel under the direct authority of the Judge Advocate General and thus make them independent of court-martial convening authorities. The Naval Legal Service (NLS), under the command of the Director, NLS—the Judge Advocate General has been assigned additional duty under the Chief of Naval Operations as Director—consists of 18 Naval Legal Service Offices and 15 subordinate branch offices located throughout the world. The total manpower strength authorization for the NLS includes 277 judge advocates, 176 legalmen, and 178 civilian employees. Navy judge advocates in the NLS comprise approximately one-third of the Navy's total judge advocate strength. The remaining two-thirds are assigned to such traditional billets as staff judge advocates to major line commands, counsel in the Office of the Judge Advocate General, and military judges assigned to the independent judiciary.

The responsibilities of the NLS extend beyond merely providing counsel for courts-martial. They include providing *all* necessary legal services to local commands which are beyond the scope or capacity of the command's staff judge advocate. With the establishment of the NLS, the Navy believes it is able to obtain optimum utilization of its lawyer resources in meeting the needs of commands and sailors alike.

*ARTICLE 69, UCMJ, PETITIONS.* This year there has been a slight 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 court-martial cases that have not been reviewed by the Navy Court of Military Review. In calendar year 1974, 65 petitions for relief were received by the Judge Advocate General, as opposed to 69 petitions received in calendar year 1973. Relief was granted, in whole or in part, in 11 of the 65 petitions received in 1974.

*NEW TRIAL PETITIONS.* In calendar year 1974, one petition for new trial was submitted pursuant to Article 73, Uniform Code of Military Justice, and it was denied.

*NAVAL JUSTICE SCHOOL.* a. Courses of instruction in military law and related administrative matters were presented by the Naval Justice School during 1974 to 2,348 officers and enlisted personnel of the Armed Forces. A total of 1,473 Navy, Marine Corps, and Coast Guard officers received instruction designed for commanding/executive officers. As in prior years, this command-level instruction was presented both at the school and at locations of fleet concentrations. Three hundred thirty Navy, Marine Corps, and Coast Guard non-lawyer junior officers received training for duty as unit legal officers. Two hundred thirty-three Navy and Marine Corps lawyers were trained for service as judge advocates. One hundred eight lawyer reservists of the Navy and Marine Corps were provided basic or refresher training in military law. Nine Navy and Marine Corps judge advocates newly assigned to duty in the Navy-Marine Corps Trial Judiciary attended a course presented for military judges. One hundred ninety-five Army, Navy, and Coast Guard enlisted personnel were trained to perform legal clerk and court reporting duties.

b. In addition to its formal courses of instruction, the Naval Justice School presented courses of instruction on search and seizure, right to counsel, and administrative proceedings to 3,588 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 23-27 September 1974. The conference heard addresses by the Under Secretary of the Navy, Vice Chief of Naval Operations, Judge Advocate General, Director, Naval Reserve Law Programs, and Solicitor General of the United States. The conference included presentations on various topics, including trends in litigation in the Navy, undesirable discharges, legal information

through electronics, trends in military justice, human goals program in the U.S. Navy, pending litigation, and the Navy Court of Military Review. In addition to these presentations, seminars were held on military justice matters, including matters pertaining to the trial counsel, defense counsel, and military judge; environmental law; labor relations; international law; claims; admiralty; administrative discharge procedures; legal assistance; and physical evaluation board procedures.

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 centered its efforts on informing judge advocates in the field of what is taking place in the way of changes 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 1975.

*CERTIFICATION OF NCMR DECISIONS TO USCMA FOR REVIEW PURSUANT TO ARTICLE 65(b), UCMJ.* Several Navy Court of Military Review decisions were considered for certification to the U. S. Court of Military Appeals by the Judge Advocate General during calendar year 1974, but only one decision was certified. The case involved a speedy trial issue.

*ARTICLE 138 COMPLAINTS OF WRONG.* During calendar year 1974, 123 Article 138 complaints of wrongs were reviewed in the Office of the Judge Advocate General for the Secretary of the Navy.

During the past calendar year the Military Justice Division completed staffing of the new Chapter XI to the *Manual of the Judge Advocate General*—"Regulations governing complaints of wrongs under Article 138, UCMJ." On 18 November 1974, the Secretary of the Navy approved the new regulations which are scheduled to appear as Change 7 to the *JAG Manual*. This new chapter is designed to clarify the procedures by which complaints of wrongs, submitted pursuant to Article 138, UCMJ, are to be processed. In addition, the new chapter sets forth Navy policy with regard to such matters as scope of coverage of the basic statute and its applicability to various classes of persons.

*FEDERAL CRIMINAL CODE.* During the past four years, the Military Justice Division has been involved in the review of the proposed new Federal Criminal Code. In November 1974, the final Justice Department draft was reviewed and comments were submitted to the Office of Legislative Affairs. It is expected that

the final revised version of S.1 will be presented to the 94th Congress early in 1975.

*JOINT-SERVICE COMMITTEE ON MILITARY JUSTICE.* The Joint-Service Committee on Military Justice has, as its primary goal, the preparation and evaluation of proposed amendments and changes to the Uniform Code of Military Justice and the *Manual for Courts-Martial, United States, 1969 (Revised edition)*. In November 1974, the chairmanship of the Committee rotated from the Deputy Assistant Judge Advocate General (Military Justice) to the Chief of the Army's Criminal Law Division. A full-time Navy member of the working group of the Committee was detailed in September 1974 for the purpose of staffing several proposed changes to the Uniform Code of Military Justice for submission to Congress. A timetable was established for the timely implementation of these proposals and was submitted to the Vice Chief of Naval Operations. The Committee met with the Judge Advocates General of all services on 5 November 1974 to discuss these proposals. A subsequent meeting of the Judge Advocates General was held 15 January 1975 for a more detailed discussion. At this meeting the Judge Advocates General discussed their often differing approaches to the various problems in military justice that are common to all the services. It was resolved that a greater exchange of ideas among the services should be encouraged through the Committee.

The proposals which the Committee has discussed generally are designed to streamline the military justice system. In conjunction with the work of the Committee, the Military Justice Division reviewed various recommendations of the ABA Standing Committee on Military Justice to amend the Uniform Code of Military Justice and monitored various bills introduced in the 93d Congress concerning military justice.

*CIVIL LITIGATION.* During calendar year 1974, the Judge Advocate General worked closely with the Justice Department in several civil litigation cases that had potential impact on the military justice system. Assistance was provided to the Department and to various U. S. Attorneys, including preparation of legal memoranda and litigation reports—in which the facts and law relevant to a case are set forth, proposed motions and briefs in final form to be submitted over a U. S. Attorney's signature, preparation of U. S. Attorneys for oral arguments before all Federal courts, including the United States Supreme Court, and assignment of judge advocates to make oral argument in United States district courts and courts of appeal. A few of the more significant cases and issues involved are set forth below:

a. *Avrech v. Secretary of the Navy* presented two issues, (1) whether Article 134, Uniform Code of Military Justice, was unconstitutionally vague and overbroad, and (2) whether a United States District Court has jurisdiction to review court-martial convictions, other than by habeas corpus. The United States Supreme Court, reversing the United States Court of Appeals for the District of Columbia, held that Article 134 was constitutional and did not decide the jurisdictional issue.

b. *Henry v. Warner; Daigle v. Warner; Betonie v. Sizemore*. The issue in these cases was whether representation by counsel of the accused at summary court-martial was, in the absence of waiver, a prerequisite to a sentence of confinement, in accordance with the Supreme Court decision in *Argersinger v. Hamlin*. In *Betonie*, the United States Court of Appeals for the Fifth Circuit held that counsel is required by *Argersinger* before confinement can be imposed by summary court-martial. In *Henry* and *Daigle*, the United States Court of Appeals for the Ninth Circuit held that the *Argersinger* right to counsel did not apply to summary courts-martial. The court also held, however, that due process required that counsel be provided in certain relatively complex cases. *Henry* is at present pending decision by the United States Supreme Court (*Middendorf v. Henry*).

c. *Brown v. United States* presented the issue whether the decision in *United States v. Greenwell*, 19 USCMA 460, 42 CMR 62 (1970), is retroactive. In *Greenwell*, the United States Court of Military Appeals 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 those of battalion size the authority to convene special courts-martial. On 2 January 1975, the United States Court of Appeals for the Third Circuit held that *Greenwell* was not retroactive and affirmed the decision of the United States District Court for the Eastern District of Pennsylvania to grant the Government's motion for summary judgment.

d. *Priest v. Secretary of the Navy* involves the constitutionality of Article 134, Uniform Code of Military Justice, and the extent of freedom of the press under the first amendment as applied to members of the Armed Forces. On 25 October 1974, the United States District Court for the District of Columbia granted the Government's motion for summary judgment. The plaintiff has appealed to the United States Court of Appeals for the District of Columbia Circuit.

e. *Gibson v. Warner* and *Jones v. Frudden* involve the issue of whether Article 15, Uniform Code of Military Justice, violates due

process in not permitting persons "attached to or embarked in a vessel" to demand court-martial in lieu of nonjudicial punishment. On 9 May 1974, the United States District Court for the District of Hawaii dismissed the complaint in *Gibson*. *Jones* is at present pending in the United States District Court for the Northern District of California.

f. *Allison v. Saxbe* involves the issues of scope of review of court-martial convictions in Federal habeas corpus petitions and whether bail should be granted a military prisoner whose direct military review is complete. The case is a petition for habeas corpus by a seaman convicted of distribution of LSD and of setting a 7½ million dollar fire on board USS FORRESTAL. After he escaped from the Portsmouth Naval Disciplinary Command, the petitioner remained at large for six months. Upon surrendering to military authorities in October 1974 at San Francisco, California, he sought his release through a habeas corpus petition filed in the United States District Court for the Northern District of California. In his petition, plaintiff is attempting to relitigate the same challenges to his court-martial conviction raised and decided against him in his military appeals. He also moved the court to release him on bail pending the outcome of his petition for habeas corpus. The case is pending decision on both the bail motion and the habeas corpus petition.

g. *Stahl v. Warner* is a class action against the Secretary of the Navy, which presents the issue of whether military counsel detailed to represent servicemen before courts-martial must also be permitted to represent their accused clients in Federal district court in actions collaterally attacking the court-martial proceedings. On 1 October 1974, the United States District Court for the Northern District of Illinois dismissed the complaint as to one of the named plaintiffs, an accused at a court-martial against whom charges were dismissed, on grounds of mootness. The judge, however, refused to hold the action moot as to two JAG Corps plaintiffs who have been released from active duty. The court is now considering whether a class of all Navy JAG lawyers should be certified as appropriate in this case.

h. *Artis v. United States* involved the issues of whether (1) the multiple roles 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. The United States Court of Claims dismissed the case 18 December 1974 for failure of the plaintiffs to exhaust the intramilitary remedy



of filing a petition for review under Article 69, Uniform Code of Military Justice.

i. *McDonald v. United States* involved the issues of (1) whether plaintiff's sixth amendment right to confrontation and his right to due process were violated by the inclusion of the investigation and report made pursuant to Article 32, Uniform Code of Military Justice, in the record of trial submitted to reviewing authorities; (2) whether the multiple roles assigned to the convening authority are constitutional (same issue as in *Artis, supra*, and *Sanders, infra*); and (3) the constitutionality of Article 134, Uniform Code of Military Justice. On 18 December 1974, the United States Court of Claims held that no deprivation of constitutional rights occurs when the Article 32 investigation and report are forwarded with the record of trial for review. The court dismissed the count of the complaint alleging this error, but remanded for further trial as to the other issues.

j. *Sanders v. United States* is another case in which the assignment of multiple roles to convening authorities under the Uniform Code of Military Justice is attacked as unconstitutional. The case is pending decision before the United States Court of Claims.

k. *Mascavage v. Richardson* and *Rainville v. Lee* presented the issue of whether there is court-martial jurisdiction over off-base, off-duty, and out-of-uniform possession and sale of marijuana to another serviceman. On 27 April 1973, in the *Mascavage* case, 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 same court took a similar action in the *Rainville* case on 21 June 1973. The cases were joined on appeal to the United States Court of Appeals for the District of Columbia Circuit, which on 1 March 1974 affirmed the actions by the District Court and ordered the cases dismissed for failure to exhaust military remedies. The cases have been petitioned to the U. S. Supreme Court, which has not taken action on the petitions. [In *Schlesinger v. Councilman*, 43 L.W. 4432 (March 25, 1975), the Supreme Court ruled on the issue of exhaustion of remedies in a case presenting similar issues. The Court held that, unless a serviceman demonstrates that he will suffer more severe harm than that normally associated with allowing a court-martial to proceed to determine his guilt or innocence, Federal courts should refuse to intervene in military proceedings. Although the Court found it unnecessary to rule on the question of whether off-base, off-duty, and out-of-uniform possession and transfer of marijuana were sufficiently service-connected to give military courts jurisdiction, the result in the case

provides added support for the result reached in the cases by the Court of Appeals.]

1. *Baldwin v. Secretary of the Navy* involved the issue of whether a serviceman who obtains a writ of habeas corpus ordering his discharge because of an erroneous denial of his conscientious-objector application may be tried by court-martial for a four-year unauthorized absence which commenced two months after his application was rejected by the Chief of Naval Personnel. The question presented to the U.S. District Court for the Eastern District of Pennsylvania is whether the grant of habeas corpus petition retroactively invalidated any trial by court-martial under the Supreme Court's opinion in *Parisi v. Davidson*, 405 U.S. 34 (1972).

**THE SECRETARY OF DEFENSE TASK FORCE ON THE ADMINISTRATION OF MILITARY JUSTICE IN THE ARMED FORCES.** As indicated in last year's report, the Secretary of the Navy submitted a reclama to the Secretary of Defense concerning that portion of the latter's 11 January 1973 nonjudicial punishment directive relating to the automatic staying of nonjudicial punishment pending appeal. As a result of that reclama, the Secretary of Defense exempted personnel attached to or embarked in a vessel from the automatic stay provisions of the directive.

H. B. ROBERTSON, JR.  
*Rear Admiral, USN*  
*The Judge Advocate General*  
*United States Navy*

## EXHIBIT A

	Fiscal Year 1974	Fiscal Year 1973
<b>General courts-martial</b>		
Rec'd for review under Art 66 -----	485	674
Rec'd for review under Art 69 and acquittals -----	117	114
Total -----	602	788
<b>Special courts-martial</b>		
Rec'd for review under Art 66 -----	2,115	2,004
Rec'd for review under Art 65c ----	0	1
Reviewed in the field -----	10,817	8,234
Total -----	12,932	10,239
<b>Summary courts-martial</b>		
Rec'd for review under Art 65c ----	0	0
Reviewed in the field -----	8,941	11,322
Total all courts-martial -----	22,475	22,349
<b>Navy Court of Military Review Actions</b>		
On hand for review end last FY ---	250	187
Rec'd for review during FY -----	2,600	2,678
Total on hand -----	2,850	2,865
Reviewed during FY -----	2,589	2,615
Pending review end current FY -----	261	250
Total -----	2,850	2,865
<b>Findings modified or set aside by Navy Court of Military Review during FY --</b>		
Requests for appellate counsel before NCMR -----	1,589	1,615
<b>U. S. Court of Military Appeals Action</b>		
Petitions forwarded to USCMA ----	465	376
Cases certified to USCMA by JAG--	5	6
Total cases docketed with USCMA -----	470	382
Petitions granted by USCMA -----	22	51
Petitions denied by USCMA -----	424	311
Total petitions acted upon by USCMA -----	446	362

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

**January 1, 1974 to December 31, 1974**

1. The Judge Advocate General, Major General Harold R. Vague, made staff visits to legal offices in the United States and overseas as required by the Uniform Code of Military Justice. General Vague also attended and participated in various meetings of civic, professional and military organizations. General Vague hosted the annual world-wide general court-martial convening authority Staff Judge Advocates Conference at Andrews AFB, Maryland in October 1974 and the major command Staff Judge Advocate Executive Conference at the Forrestal Building, Washington, D.C., in May 1974. During 1974 General Vague, accompanied by Col Teagarden, TJAG Executive, attended the United States Air Forces in Europe (USAFE), Air Training Command (ATC), Strategic Air Command (SAC), Tactical Air Command (TAC), Pacific Air Forces (PACAF), and Pacific Command (PACOM) JAG Conferences.

The Area Defense Counsel Program finished its one-year regional test on 30 June and was implemented on a world-wide basis on 1 July. This is a landmark change in military jurisprudence since, for the first time, it separates the defense from both local command and judge advocate control. Defense Counsel assigned to this program work exclusively for the individual serviceman. They are assigned directly to the Office of The Judge Advocate General at Headquarters, United States Air Force, and their effectiveness reports are completed by one of the seven Chief Circuit Defense Counsel. From 1 July to 31 December 1974, Area Defense Counsel participated in over 70 general courts-martial and 600 special courts-martial. In addition, they counseled clients in Article 15, administrative proceedings, and legal assistance.

The Automated Military Justice Analysis and Management System (AMJAMS) mentioned in the 1973 Report was implemented Air Force-wide on 1 July 1974. The reports produced are being used to assist The Judge Advocate General and field Staff Judge Advocates in the management and administration of military justice. The system's data base will constitute the primary source of information within this Department for conducting statistical

studies which measure disciplinary rates and trends and evaluate military justice involvement as it affects the quality of the force and the ability of the Air Force to carry out its mission.

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 1974, is shown in the following table:

Total number records received .....	670*
For review under Article 66 .....	599
General Court-Martial records .....	195
Special Court-Martial records .....	404
Examined under Article 69 .....	48
Acquittals under Article 61 .....	23

\* This represents an increase of 25% over the number of cases received in FY 73 (536).

The Court of Military Review modified the findings and/or sentence in 51 cases.

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

Cases on hand 30 June 1973 .....	132
Cases referred for review .....	599
Total for review .....	731
Cases reviewed & dispatched .....	593*
Cases on hand 30 June 1974 .....	138

\* This represents an increase of 53% over the number of cases reviewed during FY 73 (388).

c. During the fiscal year 80.8% of the accused, whose cases were referred for review under Article 66, requested representation by Appellate Defense Counsel before the Court of Military Review.

d. The following table shows the number of cases forwarded to the United States Court of Military Appeals pursuant to the three subdivisions of Article 67(b); and the number of petitions granted during the period:

Cases reviewed & dispatched by Court of Review .....	593
Number cases forwarded to USCMA .....	211
Cases petitioned .....	209
Cases certified .....	2
Percent total forwarded of total cases reviewed .....	35.6%
(Increase of 5.4% over FY 73)	
Petitions granted .....	17
Percent grants of total petitioned .....	8.1%
(Increase of 3.8% over FY 73)	

Percent petitions granted of total cases reviewed  
 by Court of Review ----- 2.9%  
 (Increase of 1.6% over FY 73)

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

General Courts-Martial -----	268
Special Courts-Martial -----	2,573
Summary Courts-Martial -----	106
Total -----	2,947

The overall court-martial rate per 1,000 assigned personnel was 4.3 as compared to 3.6 in FY 1973, a rate increase of 19.4%.

### 3. Reportable Article 15 Actions, FY 1974:

	PERCENTAGE OF TOTAL NUMBER OF CASES	
<b>TOTAL CASES</b> -----	37,556	
Officers -----	170	0.5%
Airmen -----	37,386	99.5%
<b>PUNISHMENTS IMPOSED*</b>		
Restrictions (over 14 days)		
Officers -----	13	7.6%
Airmen -----	2,649	7.1%
Quarters Arrest/Correctional Custody		
Officers -----	0	0.0%
Airmen -----	2,849	7.6%
Extra Duties (over 14 days)		
Airmen -----	1,846	4.9%
Reduction in Grade		
Airmen -----	24,887	66.6%
Forfeiture of Pay		
Officers -----	135	79.4%
Airmen -----	27,096	72.5%
Detention of Pay		
Officers -----	0	0.0%
Airmen -----	32	0.1%
Written Reprimand		
Officers -----	127	74.7%
Airmen -----	352	0.9%
<b>MITIGATING ACTIONS</b>		
Appeals Taken		
Officers -----	36	21.2%
Airmen -----	3,068	8.2%
Appeals Denied		
Officers -----	35	97.2%**
Airmen -----	2,532	82.5%**
Suspension of Punishment		
Officers -----	8	4.7%
Airmen -----	19,063	51.0%

See footnotes at end of table.

PERCENTAGE OF TOTAL  
NUMBER OF CASES

Other Action		
Officers -----	2	1.2%
Airmen -----	4,177	11.2%

\* The number of punishments imposed will not equal the number of cases as some offenders receive a combination of punishments.

\*\* Of appeals taken.

The overall Article 15 rate per 1,000 assigned personnel was 54.3 as compared to 48.5 in the previous fiscal year, a rate increase of 11.9%.

4. During Calendar Year 1974 editorship of the JAG Law Review was transferred to the Judge Advocate School, Maxwell AFB, AL. A special summer 1974 issue of the Law Review was devoted to articles submitted by members of the Trial Judiciary on trial related military justice topics (Vol. 15, Issue 2). With Volume 16 the JAG Law Review became the Air Force Law Review and the format was changed to that of a booklet. Four issues were published during the Calendar Year in this new format. Five military justice related articles were printed in these issues, including the first in a series on the history of the structure of military justice in the United States. Other articles dealt with the power of Reserve and National Guard commanders, disciplinary control systems, the agency defense in drug cases and pretrial mental examinations.

5. In October 1974, the staff of Federal Legal Information Through Electronics (FLITE) completed work on a key-word-in-context (KWIC) index of the Court of Military Appeals cases reported in the Courts-Martial Reports (CMR). The compilation in microfiche form indexes every uncommon word in the context it was used in the decision, with both CMR and COMA citations. A copy was furnished to the Court of Military Appeals for their evaluation. The Air Force by DOD directive maintains and operates FLITE to provide computer based legal research and special products to all DOD components and other Federal, State and local organizations. FLITE search service is provided to the Court of Military Appeals on a nonreimbursable basis.

6. During Calendar Year 1974, The Judge Advocate General's Department provided continuing legal and general education opportunities to 804 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 1974 and 200 judge advocates completed it. During the year, twelve judge advocates were sent to various civilian universities to obtain an LL.M Degree. Four

completed a course of study in Procurement 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. One hundred and five judge advocates were authorized to attend this course during 1974. Air Force judge advocate officers also attended the Basic Contract Course for logistic officers conducted by the Army JAG School at Charlottesville, Virginia. In 1974, 15 officers attended this course and 5 additional officers attended the Army Advanced Procurement Law Course. In 1974, 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. Two of our General Courts-Martial judges and four of our Special Courts-Martial judges were enrolled in the course for judges sponsored by the National College of State Trial Judges 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 attended The Industrial College of the Armed Forces. 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 nearly appointed Staff Judge Advocates which was established in 1971 trained 40 of our officers in 1974 prior to their assignment as a base Staff Judge Advocate. The Reserve and Air National Guard judge advocates attended a two-week refresher course and 160 students graduated in 1974. A 13-week forensic medicine course was conducted as required at Malcolm Grow Hospital, Andrews AFB, Maryland. Graduates of this course are assigned as forensic medicine consultants to area hospital commanders. Seven lawyers completed this course of instruction. In 1974, selected Air Force officers participated in the Funded Legal Education Program (FLEP) and the Excess Leave Program with 19 completing their law school requirements and designated as judge advocates. During the summer vacation months these FLEP and Excess Leave Program 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 AFB, Mississippi. Eleven courses were held in 1974 and 109 students were graduated. An advanced course for Legal Technicians was established at Maxwell AFB, Alabama and 40 senior NCOs attended this course. 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.

On 31 December 1974, there were 1231 judge advocates on duty. The Department's field grade manning continued to decline in 1974. As of 31 December 1974, 324 of the Department's field grade authorizations were manned by captains. The Department is authorized 125 colonels, 254 lieutenant colonels, 346 majors, and 477 captains. The Department has assigned 100 colonels (25 short), 135 lieutenant colonels (119 short), 169 majors (177 short), and 821 captains (344 over). These figures reveal a 44 percent shortage of experienced field grade judge advocates.

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, 1974 to December 31, 1974

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, 1973, and ending June 30, 1974.

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.

	1974	1973	1972	1971	1970
General courts-marital -----	7	5	6	2	2
Special courts-marital -----	190	206	167	129	76
Summary courts-marital -----	212	307	348	287	174
Total -----	409	518	521	418	252

Even though the number of courts-martial is substantially less than the previous year, the lawyer involvement in courts-martial remained about the same as in the previous year due to the requirement to assign defense counsel to summary courts-martial if confinement was to be considered as an authorized punishment.

### *SPECIAL COURTS-MARTIAL*

All special courts-martial had lawyers for defense counsel, and non-lawyer trial counsel were used only two times. A military judge was assigned in all of the trials. As has been noted in previous reports, a full-time judiciary for special courts-martial has not been established in the Coast Guard. Military judges are provided for special courts-martial by use of the two full-time general court-martial judges when available, and by the use of military judges assigned to other primary duties. Control over the detail of judges is centrally exercised, and all requirements have been filled in timely fashion. In 145 of the special courts-martial, trial was by military judge with members, none of which included enlisted members. In the remaining 45 cases, the defendant elected to be tried by military judge alone.

In 15 of the cases, the sentence included a bad conduct discharge. Five of these were adjudged by military judge alone, and the remaining 10 were adjudged by a court with members. Of the 15, two were remitted or commuted by the convening authority, leaving 13 to reach the Court of Military Review. Two of these were disapproved by the Court. Thus 11 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 44 out of the 184 in which there was a conviction. Maximum confinement of six months was imposed as a punishment only 17 times, eight when trial was by military judge alone. In one case the defendant was sentenced to suffer no punishment.

Of the 184 cases in which there was a conviction, 100 sentences were affirmed on review without modification. Eighty-four were mitigated in some manner. In 115 cases, there were guilty pleas to all of the charges and specifications. Sixty-three of these involved pretrial agreements.

The following table shows the distribution of the 588 specifications tried by the 190 special courts-martial:

AWOL or desertion .....	239
Missing ship movement .....	47
Marihuana offenses .....	41
Offenses involving controlled drugs .....	16
Willful disobedience or disrespect .....	63
Assault .....	16
Violation of order or regulation .....	53
Larceny or wrongful appropriation .....	21
Breaking restriction .....	21
Offenses against Coast Guard property .....	9
Provoking words or threats .....	12
Neglect of duty .....	10
Housebreaking .....	5
Bad checks .....	10
Other offenses .....	25

### *GENERAL COURTS-MARTIAL*

In 6 of the general courts-martial, trial was by a court with members. In one, the defendant elected to be tried by military judge alone.

No dishonorable discharges were adjudged. In 3 cases, the sentence included a bad conduct discharge. Two of these were adjudged by a court with members. Of the 3, none were remitted or commuted by the convening authority; all reached the Court

of Military Review. None of these were disapproved by the Court. Thus all bad conduct discharges survived the review process.

Of the 6 cases in which there was a conviction, 3 sentences were affirmed on review without modification. Three were mitigated in some manner. In 2 of the cases there were guilty pleas to all the charges and specifications. Both of these involved pretrial agreements.

The following table shows the distribution of the 34 specifications tried by the 7 general courts-martial:

AWOL or desertion .....	2
Marihuana offenses .....	3
Offenses involving controlled drugs .....	6
Violation of orders or regulations .....	3
Conspiracy .....	6
Fraud & Forgery .....	4
Solicitation .....	2
Extortion .....	1
Assault .....	1
False official statements .....	3
Larceny .....	1
Altering and wrongfully possessing examination papers .....	2

#### **COURT OF MILITARY REVIEW AND COURT OF MILITARY APPEALS**

The Coast Guard Court of Military Review had 16 cases docketed with it during the fiscal year. Of the 18 cases that were decided during the fiscal year, 14 were affirmed without modification and the findings or sentence were modified in 4 cases. Two petitions were submitted to the Court of Military Appeals for a grant of review; one petition was granted.

**JOHN HART ELY**  
*General Counsel*  
*Department of Transportation*