

ANNUAL REPORT
of the
U. S. COURT OF MILITARY APPEALS



and the
JUDGE ADVOCATE GENERALS
of the
ARMED FORCES
and the
GENERAL COUNSEL
of the
DEPARTMENT OF TRANSPORTATION

**PURSUANT TO THE
UNIFORM CODE OF MILITARY JUSTICE**

**For the Period
October 1, 1976–September 30, 1977**

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ANNUAL REPORT
SUBMITTED TO THE
COMMITTEES ON ARMED SERVICES
of the
SENATE AND OF THE
HOUSE OF REPRESENTATIVES
and to the
SECRETARY OF DEFENSE
AND SECRETARY OF TRANSPORTATION
and the
SECRETARIES OF THE DEPARTMENTS OF THE
ARMY, NAVY, AND AIR FORCE

PURSUANT TO THE
UNIFORM CODE OF MILITARY JUSTICE

For the Period
October 1, 1976-September 30, 1977

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AND THE JUDGE ADVOCATE GENERALS OF THE ARMED FORCES
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and the
JUDGE ADVOCATE GENERALS
OF THE ARMED FORCES
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DEPARTMENT OF TRANSPORTATION
October 1, 1976 to September 30, 1977

The judges of the U.S. Court of Military Appeals, the Judge Advocate Generals of the military departments, and the General Counsel of the Department of Transportation submit their annual report on the operation of the Uniform Code of Military Justice pursuant to article 67 (g) of the Uniform Code of Military Justice.

The Code Committee, consisting of the members designated above, continued its tradition of meeting quarterly during the fiscal year. Major accomplishments during the present reporting period included implementation of the new "Military Justice Reporter" as well as a FLITE digest of all decisions in the "Court-Martial Reports" for use by military practitioners. The Code Committee also entered into negotiations with "Shepard's Citations" concerning the feasibility of developing a "Military Justice Citator."

The Code Committee also devoted significant attention toward consideration of legislative proposals submitted by various members of the committee. The Joint Service Committee legislative package received final DOD approval during fiscal year 1977 with the judges of the court taking no formal position on the legislation. Among other proposals considered by the Code Committee were continuing jurisdiction for military trial courts as well as an increase in the number of judges for the U.S. Court of Military Appeals for the sake of continuity and predictability as well as to handle the heavy workload of the court.

The separate reports of the U.S. Court of Military Appeals and the individual services address further items of particular interest to the Committees on Armed Services of the U.S. Senate and House of Representatives and to the Secretaries of Defense, Transportation, Army, Navy, and Air Force.

ALBERT B. FLETCHER, JR.,

Chief Judge.

WILLIAM H. COOK,

Associate Judge.

MATTHEW J. PERRY,

Associate Judge.

WILTON B. PERSONS, JR.,

The Judge Advocate General, U.S. Army.

WALTER D. REED,

The Judge Advocate General, U.S. Air Force.

CHARLES E. MCDOWELL,

The Judge Advocate General, U.S. Navy.

LINDA HELLER KAMM,

General Counsel, Department of Transportation.

REPORT OF THE U.S. COURT OF MILITARY APPEALS

October 1, 1976 to September 30, 1977

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

THE BUSINESS OF THE COURT

During the 1977 term, a total of 2,222 cases were docketed in the court. This total included 2,061 petitions for grant of review, 19 certificates of review, and 142 petitions for extraordinary relief. The court rendered 81 opinions on 78 grants of review, 1 certificate of review, 1 petition for extraordinary relief, and 1 motion to dismiss. Petitions for grant of review were granted in 354 cases and denied in 1,462 cases. A detailed analysis of the cases processed by the court since May 1951 is attached.

Applications for membership in the bar of the court were received from 520 attorneys during 1977. A special admission ceremony was held in conjunction with the annual meeting of the American Bar Association in Chicago, Ill., on August 22, 1977. A noteworthy change in the 1977 Rules of Practice and Procedure now permits admission to the bar in absentia.

NEW RULES OF PRACTICE AND PROCEDURE

The court promulgated a complete revision of its Rules of Practice and Procedure on July 1, 1977. Extensive revisions were made in the procedures for filing petitions for grant of review and in the timing and contents of required and optional pleadings. In recognition of the burgeoning activity in extraordinary writs, the rules make extensive provisions with respect to the jurisdiction of the court to issue writs and in the format and content of petitions and briefs filed on the miscellaneous docket.

REPORTING MILITARY JUSTICE CASELAW

In March 1977, the West Publishing Co. of St. Paul, Minn., began publishing the slip opinions and daily journal of the U.S. Court of Military Appeals. Several months later, the "Military Justice Reporter" was inaugurated as a new unit of the National Reporter System, containing the opinions and daily journals of this court and selected opinions of the Courts of Military Review. The advance sheets and bound volumes of the "Military Justice Reporter" are available to Federal agencies on the Federal Supply Schedule, and to individuals by direct subscription.

APPELLATE ADVOCACY CONFERENCE

Under the sponsorship of the U.S. Court of Military Appeals in conjunction with the Military Law Institute, the Second Annual Homer Ferguson Conference on Appellate Advocacy was held at the Georgetown University Law Center on May 18-20, 1977. The principal address was delivered by Justice Arthur J. Goldberg. Other distinguished speakers included Circuit Judge John Godbold of the U.S. Court of Appeals for the Fifth Circuit, Justice William A. Grimes of the New Hampshire Supreme Court, and F. Lee Bailey, Esq. Some 200 uniformed and civilian appellate lawyers practicing before the Courts of Military Review and this court, the judges of the Courts of Military Review and the Judge Advocate Generals of the various services, and other scholars and commentators in the field of military justice were in attendance.

JUDICIAL VISITATIONS

During the reporting period, both Chief Judge Fletcher and Judge Perry made visitations to inspect the operation of military justice facilities within the armed forces. The chief judge visited Camp Lejeune Marine Corps Base in Jacksonville, N.C., on July 13-15, 1977, and the Naval Justice School at Newport, R.I., on August 16-17, 1977. Judge Perry visited the Judge Advocate General's School, U.S. Army, in Charlottesville, Va., on April 29, 1977, Keesler Air Force Base, Miss., on April 27, 1977, and Vandenburg Air Force Base, Calif., on May 20-22, 1977. These visits provide the opportunity for the judges to become acquainted with the personnel who administer the military justice system and to obtain firsthand knowledge of the impact of their caselaw in the field. The judges particularly value the critiques of the military justice system made by field commanders on these visits.

SCHOLARLY REVIEW OF THE COURT'S DECISIONS

Two major articles on the court were published by important legal periodicals during the 1977 term. The Indiana Law Journal pub-

lished "United States Court of Military Appeals: A Review of the 1975-76 Term," with an introductory article by John T. Willis, "The United States Court of Military Appeals: 'Born Again'," 52 Ind. L.J. 151 (1976). Another significant contribution to the literature was made in Cooke, "The United States Court of Military Appeals, 1975-1977: Judicializing The Military Justice System," 76 Mil. L. Rev. 43 (1977). Additionally, many casenotes were written during the term commenting on various decisions. The court welcomes critical analysis of its opinions by serious legal scholars.

STAFF REORGANIZATION

The staff of the court underwent a reorganization in March 1977. Patterned after the ABA Standards model and the U.S. Circuit Court of Appeals circuit executive, the position of court executive was created. The court executive exercises responsibility as court administrator to develop long-range plans and programs to support the court's role in the military justice system. The clerk of court exercises operational responsibility in matters of appellate procedure and the daily operation of the court. The central legal staff director exercises operational responsibility for the initial review of petitions for grant of review by the central legal staff. Each judge's chamber continues to operate as an independent entity, but receives support from these three major staff components.

STATUS OF THE COURT AND ITS EMPLOYEES

As established in article 67, UCMJ, 10 U.S.C. 867, the court is "located for administrative purposes only in the Department of Defense." From time-to-time since 1951, various questions have arisen concerning whether the court is subject to executive branch or Department of Defense control. In July 1977, the Bureau of Executive Personnel, Civil Service Commission, rendered an opinion that the court was "outside the Commission's purview." Immediately thereafter, the court issued U.S. Court of Military Appeals resolutions I and II, which directed that the status quo be maintained by adopting the relevant personnel regulations of the Commission on an interim basis. Before the attendant circumstances could be resolved, 12 of the court's employees filed an action in the U.S. District Court for the District of Columbia seeking a temporary restraining order, a preliminary injunction, and declaratory relief against the judges of the court, the Secretary of Defense, and the Chairman of the Civil Service Commission. *Miele v. Brown*, Civil No. 771346 (D.D.C., filed Aug. 1, 1977). This matter resolved on August 29, 1977, after dismissing the judges of the court as defendants in the matter, by a stipulation of dismissal which in relevant part provides as follows:

The United States Court of Military Appeals is a legislative court, organized under Article I of the Constitution.

* * * Congress intended the Court of Military Appeals to have complete independence in its decision-making process; however, to "reduce expenditures for the relatively small staff of the Court," Congress located the Court within the Department of Defense "for administrative purposes only."

* * * Until July, 1977, location of the Court of Military Appeals within the Department of Defense for administrative purposes had been interpreted since the establishment of the Court of Military Appeals in 1950 to place the Court's employees under the civil service system administered by the Executive Branch departments and agencies under statutes and regulations administered by the Civil Service Commission.

* * * * * * * * *

* * * This stipulation shall be effective until vacated or modified * * * or until an express statutory change is enacted regarding the status of employees of the Court of Military Appeals."

This is merely an example of the conflicts which have developed. The language in article 67 of the Uniform Code of Military Justice which places the court "for administrative purposes only in the Department of Defense" continues to plague the court, as it has since the court's creation, as to the proper functions which the Department of Defense and the court each possess. At times, there has been harmony; at other times, there has been discord. Because of the continuing potential conflict, it now might well be more efficient for the court to perform all its administrative requirements independently. It, thus, appears that the time has come for the Congress to readdress and reassess the relationship between the court, its employees, and the executive branch of government. Still another concern is the fact that the U.S. Court of Military Appeals is the only Federal court without specific statutory language addressing such matters as the retirement and tenure of its employees, as well as the retirement of its judges. The U.S. Tax Court, which, like this court, has been denominated by Congress as "established under article I of the Constitution" (art. 67(a)(1), UCMJ, 10 U.S.C. 867; 26 U.S.C. 744), has exhaustive enabling legislation that might well serve as a guide in making the desired changes for this court.

SIGNIFICANT DECISIONS AFFECTING THE ADMINISTRATION OF MILITARY JUSTICE WITHIN THE ARMED FORCES

Appellate Practice: The Involvement of Accused and Counsel

Two previously unresolved aspects of practice before the U.S. Court of Military Appeals were resolved in *United States v. Larnear*, 3 M.J. 76 (C.M.A. 1977). The court rejected a reading of article 67, Uniform Code of Military Justice, 10 U.S.C. 867, which would allow other than actual service upon the accused of the decision of a Court of Military Review to begin the running of the 30-day period in which a petition may be filed with the court. Second, the court approved the practice which would allow the accused to direct an attorney to receive service of the Court of Military Review decision and to petition this court for review. Subsequently, the court made it clear that an attorney who files a petition for grant of review in this court is presumed to be so authorized, and absent evidence to the contrary brought forward by the Government an inquiry into such authorization would not be directed. *United States v. Daly*, 4 M.J. 145 (C.M.A. 1977). It has been suggested that these matters warrant legislative consideration as well.

Collateral Military Justice Procedures: Certificate of Innocence, Postconviction Retraining Programs, Pretrial Confinement, and Suspended Sentence Vacation

The provisions of 28 U.S.C. 2513 which authorize the issuance of a certificate of innocence under certain circumstances were held to encompass an unjust conviction by a court-martial. Where the U.S. Army Court of Military Review was an appropriate forum to issue such a certificate, the failure of that court to do so is reviewable in the U.S. Court of Military Appeals, but the decision will be reviewed only for abuse of discretion on the part of the inferior court.

Limitations upon the use of retraining programs as a condition to the sentence punishment of a court-martial were established in *United States v. Robinson*, 3 M.J. 65 (C.M.A. 1977). The circumstances of the U.S. Air Force Retraining Group program were found to be punitive, not administrative, and the court held they could not be involuntarily imposed upon an accused after the adjudged term of confinement has been served.

Amplified standards for pretrial incarceration were established in *United States v. Heard*, 3 M.J. 14 (C.M.A. 1977). Before an accused person may be placed in pretrial confinement it must first be ascertained that probable cause exists that a crime has been committed and that the accused committed it, that confinement is necessary to assure the accused's presence at trial or to protect the safety of the community, and that lesser forms of restriction or conditions on release have been

considered and found wanting. The court adopted the ABA Standards, Pretrial Release §§ 5.1, 5.2, 5.6, 5.7, and 5.8 (1968).

The constitutional and codal limitations on proceedings to vacate a suspended sentence of a court-martial were further delineated in *United States v. Bingham*, 3 M.J. 119 (C.M.A. 1977). The provisions of article 72, UCMJ, were brought into compliance with the constitutional rules prescribed in *Gagnon v. Scarpelli*, 411 U.S. 778 (1973), and *Morrisey v. Brewer*, 408 U.S. 481 (1972). Now engrafted onto article 72 are the constitutional prerequisites of a preliminary hearing in the event the probationer will be confined by reason of the violation of probation and a revocation hearing in which the decision to revoke suspension must be reduced to a written statement of the evidence and reasons for the actions. Moreover, the court found that the article 72 responsibilities of the special court-martial convening authority could not be delegated to another, absent constitutional disqualification of that officer.

Command Influence: Separating Command and Judicial Functions

The relationship between a military commander exercising general court-martial jurisdiction and an inferior commander exercising special court-martial jurisdiction was the subject of an appeal in *United States v. Hardy*, 4 M.J. 20 (C.M.A. 1977). Focusing on the statutory responsibilities of the inferior commander, the court held that only the inferior commander could withdraw a case previously referred for trial to a special court-martial. Recognizing that there was a line of demarcation between command and judicial functions, the court refused to sanction a superior commander's interference with the judicial actions of a subordinate convening authority which injected the spectre of unlawful command control into the case.

Pleas of Guilty: Judicial Supervision

The convening authority's role in reviewing cases in which a military judge has accepted a plea of guilty was severely restricted in *United States v. Lanzer*, 3 M.J. 60 (C.M.A. 1977). The court was unwilling to accept the proposition that a post-trial review based upon an ex parte conversation could repudiate a proper guilty plea inquiry. Consequently, on rehearing at which appellant was convicted on a plea of not guilty, the convening authority was nevertheless bound to honor the terms of a pretrial agreement as to which a military judge had initially accepted the guilty plea. Henceforth, only a trial judge would be authorized to modify the terms of a pretrial agreement. Another indication that pleas of guilty once accepted should not be reopened casually is found in the court's decision in *United States v. Barfield*, 2 M.J. 136 (C.M.A. 1977). In a rehearing on the sentence directed

by an appellate tribunal, an accused will not be permitted to withdraw a plea of guilty merely by setting up new matter which appears to be inconsistent with the facts admitted by the plea. At such a rehearing, a previously entered plea of guilty may be set aside only if it has been entered through lack of understanding of its meaning and effect.

Presidential and Secretarial Rulemaking and Delegation Authority

A provision of the Uniform Rules of Practice before Army Courts-martial which required counsel before courts-martial to submit all motions at a preliminary hearing or to forego them at trial was held to be inconsistent with the "Manual for Courts-martial," which specifically provides that while motions should normally be made prior to the entry of a plea, the failure to do so will not constitute "a waiver of the defense or objection." Paragraph 67a, MCM. Moreover, the court was unable to find any authority whereby the President had delegated his rulemaking authority under article 140, UCMJ, to the Secretary of the Army, who promulgated the rule in question. *United States v. Kelson*, 3 M.J. 139 (C.M.A. 1977).

Right to Counsel: Effective Representation

In a major statement on the right to effective representation by counsel, the court established mandatory guidelines for counsel exercising defense functions in the military justice system. In *United States v. Palenius*, 2 M.J. 86 (C.M.A. 1977), the court held that an accused was denied the effective representation of counsel when he was advised that he should waive appellate representation when his case went before the U.S. Army Court of Military Review. The court went on to mandate that the trial defense attorney must advise the accused of the appeals process, take any action on behalf of the accused which is necessary during intermediate reviews, including reviewing the staff judge advocate's report and presenting matters to the convening authority requesting modification or reduction of sentence, if appropriate; second, the defense attorney at trial should formulate appellate issues and discuss them with the client and pass them on to the appellate defense counsel when appointed; third, the trial defense attorney should render the client such advice and assistance, including an application for deferment of sentence, which the exigencies of the particular case might require; and, finally, the trial defense attorney should not terminate the attorney-client relationship until substitute trial defense counsel or appellate defense counsel have been properly designated and have commenced their duties, and an application must first be made to the judge or court then having jurisdiction of the cause asking to be relieved of the duty of further representation of the accused.

Right to Counsel: The Summary Court-Martial Dilemma

Further exploration of the impact of *Middendorf v. Henry*, 425 U.S. 25 (1976), on the military justice system was made by the court in *United States v. Booker*, 5 M.J. 238 (C.M.A. 1977). The use of evidence of the imposition of discipline at a summary court-martial in a subsequent trial was restricted, and if the accused had not been advised of the right to consult with counsel before accepting either nonjudicial punishment or summary court-martial discipline then the use of evidence of them would be completely prohibited. A person who accepts nonjudicial punishment or summary court-martial discipline will be required to make an effective waiver of the right to forego removal to a criminal proceeding with constitutional protection. Finally, evidence of the imposition of summary court-martial discipline will not constitute evidence of conviction for purposes of impeachment. Also of importance to the administration of military justice and the obligation of the military departments to provide the assistance of counsel is the court's decision in *United States v. Hill*, 4 M.J. 33 (C.M.A. 1977). The court characterized the post-trial interview with the accused as adversary in character, and pronounced that the accused is entitled to the presence and assistance of counsel at that time.

Right to Defense Witnesses: Convenience, Credibility, and Cumulative Considerations

The obligation of the prosecution in a court-martial case to produce material defense witnesses was further delineated in *United States v. Willis*, 3 M.J. 94 (C.M.A. 1977). There, notwithstanding that the witnesses in question had previously testified and their testimony was available in the original transcript, a refusal to produce them at a rehearing on the grounds that their materiality had to be evaluated in terms of military convenience was flatly rejected. Neither inconvenience nor cost to the Government will require the defense to accept a substitute for the trial presence of a material witness on sentencing. The witness question was further elucidated in *United States v. Jouan*, 3 M.J. 136 (C.M.A. 1977), where the court relied on the rule of relevancy and materiality of expected testimony to hold as error the failure to produce a second defense witness whose credibility and demeanor were considerably stronger than the first witness the Government agreed to produce. The cumulative aspects of defense witness requests were addressed in *United States v. Williams*, 3 M.J. 239 (C.M.A. 1977). There the denial of two defense witnesses was held to be prejudicial error because both witnesses could have given material testimony both on the merits and as to sentencing by virtue of their having known the accused during different periods of time than any other witnesses. The court also established that when two or more witnesses are

found to be merely cumulative by the trial judge, the defense must be given the opportunity of choosing which of the witnesses will be utilized.

Right to Public Trial: Government's Secrets Cases

The right of an accused to a public trial when prosecuted before a court-martial on espionage offenses can only be limited in certain regards. In *United States v. Grunden*, 25 U.S.C.M.A. 327, 54 C.M.R. 1053 (1977), the court established a bifurcated procedure for dealing with classified materials at trial. At a preliminary hearing closed to the public, the trial judge must give the Government the opportunity to establish that the disclosure of classified information can only be prevented by excluding the public from the trial proceedings. Once the trial judge ascertains that the material in question has been classified by the proper authorities in accordance with appropriate regulations, and that there is a reasonable danger that presentation of these materials before the public will expose military matters which in the interest of national security should not be divulged, the trial judge must then define the scope of the exclusion of the public. Only that portion of a witness' testimony which is devoted to classified materials may be restricted to closed sessions of the court-martial. The trial judge *sua sponte* must instruct the court members both prior to the testimony and during final instructions as to the underlying basis for the use of such a bifurcated process.

Subject-Matter Jurisdiction

The prosecution of off-base offenses by court-martial was limited in *United States v. Alef*, 3 M.J. 414 (1977). The court overruled a portion of *United States v. Beeker*, 18 U.S.C.M.A. 563 40 C.M.R. 375 (1969), as being contrary to the Supreme Court of the United States decision in *Relford v. Commandant*, 401 U.S. 355 (1971). Neither the existence of a lawful general regulation prohibiting certain conduct nor the decision of a military commander to engage in law enforcement activities outside the military installation automatically renders an off-base offense service connected. Henceforth, the court indicated it would require the prosecution both to plead and prove the jurisdictional basis for trial of an accused and the offenses. With respect to the question of the retroactivity of *United States v. McCarthy*, 2 M.J. 26 (1976), it was held that it would apply to all cases not final on September 24, 1976.

Substantive Law Changes: The Test of Mental Responsibility

Because of medical developments and changes in social thought, the test of mental responsibility established in paragraph 120*b*, MCM, was modified by the court in *United States v. Frederick*, 3 M.J. 230 (C.M.A. 1977), in favor of the definition of insanity propounded by

the American Law Institute and adopted by the vast majority of the Federal circuits. The question of mental responsibility being one of substantive law, the court held it was not within the President's rule-making powers under article 36, UCMJ. Inasmuch as Congress has not specified a standard, the duty of defining the standard of mental responsibility has been left to the courts. The court directed that the ALI standard would apply only to cases pending appeal on July 25, 1977, and to all cases tried after that date.

ALBERT B. FLETCHER, Jr.,

Chief Judge.

WILLIAM H. COOK,

Associate Judge.

MATTHEW J. PERRY,

Associate Judge.

STATUS OF CASES
UNITED STATES COURT OF MILITARY APPEALS
CASES DOCKETED

Total by service	Total as of Sept. 30, 1975	Oct. 1, 1975 to Sept. 30, 1976	Oct. 1, 1976 to Sept. 30, 1977	Total as of Sept. 30, 1977
Petitions (art. 67(b)(3)):				
Army.....	16,694	1,093	1,140	18,927
Navy.....	8,524	746	710	9,980
Air Force.....	5,728	203	207	6,138
Coast Guard.....	67	7	4	78
Total.....	31,013	2,049	2,061	35,123
Certificates (art. 67(b)(2)):				
Army.....	247	12	10	269
Navy.....	250	6	6	262
Air Force.....	106	4	3	113
Coast Guard.....	12	2	0	14
Total.....	615	24	19	658
Mandatory (art. 67(b)(1)):				
Army.....	31	0	0	31
Navy.....	3	0	0	3
Air Force.....	3	0	0	3
Coast Guard.....	0	0	0	0
Total.....	37	0	0	37
Total cases docketed.....	31,665	2,073	2,080	35,818

¹ 2 flag officer cases: 1 Army and 1 Navy.

² 34,988 cases actually assigned docket numbers. Overage due to multiple actions on the same cases.

COURT ACTION

	Total as of Sept. 30, 1975	Oct. 1, 1975 to Sept. 30, 1976	Oct. 1, 1976 to Sept. 30, 1977	Total as of Sept. 30, 1977
Petitions (art. 67(b)(3)):				
Granted.....	3,439	473	354	4,266
Denied (8 in memorandum opinion).....	25,773	2,624	1,462	29,851
Dismissed.....	33	5	3	41
Charges dismissed by order...	3	5	5	13
Withdrawn.....	443	5	6	454
Disposed on a motion to dis- miss:				
With opinion.....	8	0	0	8
Without opinion.....	62	10	11	93
Disposed of by order setting aside findings and sentence.	8	1	5	14
Remanded.....	230	310	55	595
Court action due (30 days) ³ ..	147	136	152	152
Awaiting answers ³	115	75	292	292
Decision affirmed by order....	2	41	33	76
Proceedings abated.....	1	1	1	3
Writ of error coram nobis pending.....	0	0	1	1
Certificates (art. 67(b)(2)):				
Opinions rendered.....	588	4	1	593
Opinions pending ³	4	3	17	17
Withdrawn.....	8	2	0	10
Remanded.....	5	0	0	5
Disposed of by order.....	2	21	2	25
Set for hearing ³	0	2	0	0
Ready for hearing ³	0	0	3	3
Awaiting briefs ³	7	1	2	2
Leave to file denied.....	2	0	0	2
Motion to dismiss granted....	1	1	0	2
Mandatory (art. 67(b)(1)):				
Opinions rendered.....	37	0	0	37
Opinions pending.....	0	0	0	0
Remanded.....	1	0	0	1
Awaiting briefs ³	0	0	0	0
Opinions rendered:				
Petitions.....	2,954	99	78	3,131
Motions to dismiss.....	11	0	1	12
Motions to stay proceedings...	1	0	0	1
Per curiam grants.....	58	0	0	58
Certificates.....	515	4	0	519
Certificates and petitions.....	70	0	1	71
Mandatory.....	37	0	0	37
Petitions remanded.....	2	1	0	3
Petitions for a new trial.....	2	0	0	2

See footnotes at end of table.

COURT ACTION—Continued

	Total as of Sept. 30, 1975	Oct. 1, 1975 to Sept. 30, 1976	Oct. 1, 1976 to Sept. 30, 1977	Total as of Sept. 30, 1977
Opinions rendered:—Continued				
Petitions for reconsideration				
of:				
Denial order.....	10	0	0	10
Opinion.....	4	0	0	4
Petition for new trial.....	1	0	0	1
Motion reopen.....	1	0	0	1
Petitions in the nature of writ of error coram nobis.....	3	2	0	5
Petition for writ of habeas corpus.....	1	0	0	1
Motion for appropriate relief..	1	0	0	1
Petition (motion to strike)....	1	0	0	1
Miscellaneous dockets (one petition reconsidered).....	97	6	1	104
Order on miscellaneous dock- et.....	1	0	0	1
Total.....	3,770	112	81	4,3,963
Completed cases:				
Petitions denied.....	26,765	1,632	1,454	29,851
Petitions dismissed.....	33	5	3	41
Charges dismissed by order...	3	5	5	13
Petitions withdrawn.....	443	5	6	454
Certificates withdrawn.....	8	2	0	10
Certificates disposed of by order.....	1	22	2	25
Opinions rendered.....	3,663	102	79	3,844
Disposed of on motion to dis- miss:				
With opinion.....	8	0	0	8
Without opinion.....	73	11	9	93
Disposed of by order setting aside findings and sentence..	8	1	5	14
Writ of error coram nobis by order.....	3	0	0	3
Motion for bail denied.....	1	0	0	1
Remanded.....	232	308	55	595
Decision affirmed by order....	2	41	33	76
Proceedings abated.....	1	1	1	3
Total.....	31,244	2,135	1,652	35,031
Miscellaneous docket numbers as- signed: (1967 to present).....	510	118	142	760

See footnotes at end of table.

COURT ACTION—Continued

	Total as of Sept. 30, 1975	Oct. 1, 1975 to Sept. 30, 1976	Oct. 1, 1976 to Sept. 30, 1977	Total as of Sept. 30, 1977
Pending ⁵	0	0	17	17
Granted.....	6	1	14	21
Denied.....	142	100	89	331
Withdrawn.....	7	4	2	13
Dismissed.....	241	7	19	267
Issue moot.....	4	1	0	5
Remanded.....	1	2	1	4
Opinions rendered.....	97	6	1	104
Petition for reconsideration pending ⁵	0	0	0	0
Petition for reconsideration denied.....	19	4	5	28
Petition for reconsideration granted.....	1	1	0	2
Opinion rendered (pet. recon.).....	1	0	0	1
Petition for new trial re- manded.....	1	0	0	1
Disbarred.....	1	0	0	1
Vacated.....	2	2	1	5
Total.....	523	128	149	⁶800
	Pending completion as of			
	Sept. 30, 1975	Sept. 30, 1976	Sept. 30, 1977	
Opinions pending.....	5	69	273	
Set for hearing.....	89	34	9	
Ready for hearing.....	22	17	19	
Petitions granted—awaiting briefs.....	2	25	44	
Petitions—court action due (30 days).....	27	136	152	
Petitions—awaiting replies.....	147	75	292	
Certificates—awaiting briefs.....	115	1	2	
Mandatory—awaiting briefs.....	7	0	0	
Writ of error coram nobis.....	0	0	1	
Total.....	409	357	792	

³ As of Sept. 30, 1975, 1976, and 1977.

⁴ 3,963 cases were disposed by 3,854 published opinions. 176 opinions were rendered in cases involving 105 Army officers, 38 Air Force officers, 32 Navy officers, 9 Marine Corps officers, 2 Coast Guard officers and 1 West Point cadet. In addition 19 opinions were rendered in cases involving 20 civilians. The remainder concerned enlisted personnel.

⁵ As of Sept. 30, 1977.

⁶ Overage due to multiple actions on the same cases.

REPORT OF
THE JUDGE ADVOCATE GENERAL OF THE ARMY

October 1, 1976 to September 30, 1977

During fiscal year 1977, the Office of The Judge Advocate General continued to monitor the proceedings of courts-martial, to review and prepare military justice publications and regulations, and to develop draft legislative changes for the UCMJ.

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

The military justice system continued to experience a decline in the number of courts-martial Army-wide. However, the decline was not as precipitous as from fiscal year 1975 to fiscal year 1976. The total number of persons tried by all types of courts-martial in fiscal year 1977 declined by 21 percent from the previous year compared to a 36 percent decline from fiscal year 1975 to fiscal year 1976. The total number of persons convicted by all types of courts-martial in fiscal year 1977 decreased by 23 percent from fiscal year 1976. This was compared to a 37 percent decline from fiscal year 1975 to fiscal year 1976. The fiscal year 1977 decline in courts-martial reflected drops in the numbers of general and special courts-martial tried. The decline in the number of summary courts-martial tried was not significant.

The total number of article 15's imposed during fiscal year 1977 increased over that of fiscal year 1976. In fiscal year 1977, there were 166,798 article 15's imposed, or approximately 20 times the total number of courts-martial tried. In fiscal year 1976, there were 159,918 article 15's imposed, or approximately 15 times the total number of courts-martial tried during that year.

Factors which contributed to the continued decline in the courts-martial rate were:

- a. Increased use of nonjudicial punishment.
- b. Continued use of administrative procedures to separate service members who were in trouble or likely to come into conflict with military law. These types of programs significantly lowered the numbers of judicial actions within the Army.

1. Procedures under chapter 10, AR 635-200, were used to separate soldiers facing court-martial for an offense whose maximum punishment includes a punitive discharge.

2. Expeditious discharge and trainee discharge programs were used to identify and separate members who could not adjust to Army life.

Statistical Summary: Fiscal Year 1977

a. Courts-martial statistics (persons tried) :

Type court	Tried	Convicted	Acquitted	Decrease in persons tried over fiscal year 1976 (percent)
General.....	1, 163	1, 020	143	21. 2
BCD special.....	844	739	(1)	16. 9
Non-BCD special.....	4, 224	3, 601	623	28. 6
Summary.....	1, 976	1, 679	297	4. 0
Overall decrease in persons tried over fiscal year 1976.....				21. 6

¹ Not available.

b. Punitive discharges approved (by GCM convening authority):

General courts-martial:	
Dishonorable discharges.....	241
Bad conduct discharges.....	538
Special courts-martial:	
Bad conduct discharges.....	675

c. Records of trial received for:

Review under art. 66 (GCM).....	837
Review under art. 66 (BCD SPCM).....	675
Examination under art. 69 (GCM).....	370

d. Workload of the Army Court of Military Review:

Total cases on hand at beginning of fiscal year 1977.....	784
<hr/>	
GCM.....	588
BCD SPCM.....	196
<hr/>	
Cases received for review.....	1, 623
<hr/>	
GCM.....	924
BCD SPCM.....	699
<hr/>	
Total cases reviewed.....	2, 052
<hr/>	
GCM.....	1, 282
BCD SPCM.....	770
<hr/>	
Total cases pending at close of fiscal year 1977.....	355

185,000
100,000
100,000

GCM.....	230
BCD SPCM.....	125
<hr/>	
Decrease over number of cases reviewed during fiscal year 1976.....	6.1%
e. Requests for appellate counsel in cases before the Army Court of Military Review:	
Number.....	2,019
Percentage.....	98.4
f. U.S. Court of Military Appeals actions (percentages):	
ACMR reviewed cases forwarded to USCMA.....	49.2
Increase over fiscal year 1976.....	5.9
Total petitions granted.....	17.0
Decrease over fiscal year 1976.....	9.1
Petitions granted of total cases reviewed by ACMR.....	8.4
Decrease over number of cases reviewed during fiscal year 1976.....	6.0
g. Applications for relief, art. 69:	
Pending at beginning of fiscal year 1977.....	49
Received during fiscal year 1977.....	282
Disposed of.....	312
Granted.....	21
Denied.....	287
No jurisdiction.....	0
Withdrawn.....	4
Total pending at end of fiscal year 1977.....	19
h. Organization of trial courts:	
Trials by military judge alone:	
GCM.....	716
BCD SPCM.....	529
Trials by military judge with members:	
GCM.....	525
BCD SPCM.....	150
i. Complaints under art. 138 received by OTJAG.....	86
j. Army average active duty strength, fiscal year 1977.....	779,181
k. Nonjudicial punishment (art. 15):	
Number cases where nonjudicial punishment imposed.....	166,798
Rate per 1,000 average strength.....	214.1
Increase over fiscal year 1976.....	10.1%

The U.S. Army Judiciary

The U.S. Army Judiciary is an element of the U.S. Army Legal Services Agency. It consists of the U.S. Army Court of Military Review, the Clerk of Court, the Examinations and New Trials Division, and the Trial Judiciary.

The Agency also includes the Government Appellate Division, the Defense Appellate Division, and the Contract Appeals Division. The latter division has no function related to the U.S. Army Judiciary and its court-martial mission.

The last of the 14 military magistrates assigned in 1976 were phased out during the year and their functions, including pretrial confinement reviews, were assumed by military judges assigned to the U.S. Army Judiciary.

SIGNIFICANT MILITARY JUSTICE ACTIONS

Actions involving military justice handled by the Criminal Law Division, OTJAG, included evaluating and drafting legislation, Executive Orders, pamphlets and regulations impacting on the operation of the Army and the Department of Defense; monitoring the administration of military justice, including evaluations of on-going major projects; rendering opinions for the Army staff; and reviewing various aspects of criminal cases for action by the Army Secretariat and staff.

Automated Military Justice Information System

Coordination began with the U.S. Army Management Systems Support Agency (USAMSSA) to automate court-martial and nonjudicial punishment data being stored on punchcards at the U.S. Army Legal Services Agency (USALSA). The project goal was to facilitate retrieval of military justice data at USALSA, where the sole means of retrieving information from punchcards was by electric sorter. Once information had been retrieved by punchcard, it then was recorded by hand. This archaic process was not responsive to the needs of management and was wasteful of personnel resources. Work began to transfer the data base from the punchcards to computer disk-packs for the USAMSSA computer. Analysis of proposed computer programs was initiated with a view toward full utilization of the data base, as well as the computer's capability of analyzing large amounts of data.

Change to Military Justice Regulation

Change 17, Army Regulation 27-10, Military Justice, was prepared in fiscal year 1977 with an effective date of 1 November 1977. The change incorporated all outstanding message changes to AR 27-10 and introduced several new procedures not previously covered. Some of the significant changes included changing distribution of DA Form 2627, Record of Proceedings under Article 15, UCMJ, to replace article 15 orders formerly required; removing the restriction against summary courts-martial adjudging confinement unless the accused is represented by legal counsel; establishing procedures for detailing counsel when pretrial confinement is imposed; clarifying when article 15 punishments involving deprivation of liberty are stayed pending appeal; incorporating the extended military magistrate program, including authority for military judges to perform magisterial duties; and establishing policy prohibiting multiple representation by military attorneys.

FOREIGN CRIMINAL JURISDICTION

As executive agent for DOD, DA (through OTJAG) maintains and collates information concerning the exercise of foreign criminal jurisdiction over U.S. service members. During the period 1 December 1976 through 30 November 1977, out of 14,263 cases (worldwide) involving primary foreign concurrent jurisdiction of U.S. Army personnel, foreign authorities waived their jurisdiction in 13,906 cases for a waiver rate of 97.5 percent. This compares with a waiver rate of 97.2 percent in the previous reporting period.

LITIGATION

Litigation involving the Army during fiscal year 1977 had only a limited impact upon military justice matters.

A number of cadets at the U.S. Military Academy brought suit in various Federal courts attacking their separation from the Academy for cheating. In *Williamson v. United States*, the U.S. District Court for the District of Rhode Island granted summary judgment for the Government, upholding the use of internal review panels to investigate charges of honor code violations. In *D'Arcangelo v. Berry*, the U.S. District Court for the Southern District of New York held that plaintiff cadet had no standing to challenge the authority of the Secretary of the Army to promulgate U.S. Military Academy regulation 1-6. This regulation permitted cadets charged with honor code violations to resign from the Military Academy on the condition they could reapply the following year. The court concluded that the exercise of this action by a cadet was voluntary and that no injury was suffered by cadets choosing to leave the Academy in this manner. The U.S. Court of Appeals for the Second Circuit affirmed the decision of the District Court in *Ringgold v. United States*, holding that the separation of cadets for violating the honor code was within the statutory authority of the Secretary of the Army.

In *Curry v. Secretary of the Army*, plaintiff challenged the constitutionality of the Uniform Code of Military Justice in the U.S. District Court for the District of Columbia, alleging that the convening authority was given authority which denied the accused due process. Briefs were filed and a decision was pending at the end of the fiscal year.

EDUCATION AND TRAINING

Throughout fiscal year 1977, The Judge Advocate General's School, U.S. Army, continued to play a vital role in the training and education of uniformed and civilian military lawyers and selected commanders. A total of 50 resident courses of instruction were presented at the school at Charlottesville, Va., and attended by 2,399 students;

1,797 Army officers, 66 Navy and Marine officers, 69 Air Force officers, 70 Coast Guard officers, 391 Federal civilian attorneys, and 6 foreign students.

Courses of Instruction

During fiscal year 1977, the 82d through 84th Judge Advocate Officer Basic Courses were conducted, graduating 232 Army officers. Each student in these courses received a total of 237 hours of instruction, presented over a 9-week period; 120 hours of instruction related to criminal law, 84 hours of instruction related to administrative and civil law, 19 hours of instruction related to procurement law, and 14 hours of instruction related to international law. In addition, 23 hours of elective instruction were offered for officers to be assigned overseas. Instruction in criminal law topics included 8 hours of practical exercises in trial techniques and 18 hours of practice court exercises designed to develop practical application of legal principles and effective trial advocacy.

The 25th Judge Advocate Officer Advanced Class attended by 51 student-officers—45 Army, 1 Navy, and 5 Marine—commenced on 23 August 1976, and graduated on 31 May 1977. The 26th Judge Advocate Officer Advanced Class began on 22 August 1977, attended by 57 student-officers; 48 Army, 1 Navy, 4 Marine, and 4 Allied officers. The advanced course, recognized by the American Bar Association as a graduate-level law program, consists of 28 semester hours of core curriculum and 14 semester hours of elective courses.

The resident continuing legal education courses presented by the school during fiscal year 1977 included a qualification course for military trial judges, new defense trial advocacy courses, training courses for paralegals both in the field of criminal law and legal assistance, basic and advanced procurement attorney courses, fiscal law and contract costing courses, law of war instructor courses, and several courses highlighting recent developments in the fields of administrative law and military justice. These courses were presented to both active duty and Reserve personnel, as well as Federal civilian employees, and ranged in length from 3½ days to 3 weeks. The school continued to expand the breadth of its course offerings in fiscal year 1977 by presenting new courses in claims, government information practices, and defense trial advocacy.

In addition to presenting instruction to attorneys and paraprofessionals, the school also conducted six resident Senior Officer Legal Orientation Courses and one nonresident course presented at the U.S. Army War College, Carlisle Barracks, Pa. These 4½-day courses are taught to senior command and staff officers and are designed to familiarize students with fundamental legal principles involved in the ad-

ministration of military justice and discipline, as well as the proper exercise of command prerogatives.

The Reserve Components Technical Training (Onsite) Program provided training to JAGC reservists in 51 cities, as faculty members made 22 onsite trips during the academic year 1976-77. To facilitate training of defense counsel assigned to Europe, a special offering of the defense trial advocacy course was offered in Frankfurt, Germany, by the criminal law faculty. In addition, the school continued to present a wide offering of correspondence courses to active duty and reserve component members.

Major Projects

The International Law Division developed a team-teaching course for law-of-war instructor training. Teams composed of a military attorney and another officer with command experience, preferably in combat, were trained together and upon graduation returned to their home installation to continue functioning as a team in presenting instruction on the Hague and Geneva Conventions. In March 1977, a member of the International Law faculty served as a delegate to the European Red Cross seminar in Warsaw, Poland, on dissemination of the Geneva Conventions of 1949.

During fiscal year 1977, the Criminal Law Division developed, and put into use, computer-assisted instruction in the law of AWOL.

On 3 March 1977, the Kenneth J. Hodson lecture in criminal law was presented by Dean A. Kenneth Pye, Chancellor, Duke University.

On 25 August 1977, the Edward H. Young lecture in military legal education was presented by Professor R. R. Baxter, editor-in-chief, *American Journal of International Law*.

On 27 May 1977, a third honorary academic chair commemorated by an annual lecture, the Charles L. Decker Chair of Administrative and Civil Law, was dedicated by Maj. Gen. Charles L. Decker, USA (ret.). The first occupant of this honorary academic chair was Lt. Col. Peter J. Kenny, chief of the school's administrative and civil law division. Lt. Col. Kenny and his successors will hold the chair during the period of their respective tenures as division chief.

In April the school hosted the Associated Schools Commandants' Conference with over 35 conferees in attendance.

Eighteen German jurists and senior prosecutors were briefed on the operation of the school and the military legal system in May. Later in the month, the school hosted two standing committees of the American Bar Association: The Committee on Lawyers in the Armed Forces and the Committee for Military Law.

The attorney general of the Commonwealth of Virginia conducted a conference at the school on 29 June 1977 for military attorneys who work in Virginia.

The Judge Advocate General's School was the site for the Branch Officers Advanced Course (BOAC) phase II (criminal law) and the Judge Advocate General's Reserve Component General Staff Course during the period 20 June-1 July 1977. One hundred and one officers attended the BOAC course and 48 field grade officers were in attendance at the general staff course.

The Judge Advocate General's Reserve training workshop was held at the school 7-9 September 1977. Over 100 Reserve component judge advocate officers representing military law centers, JAGSO detachments, Army Reserve commands, training divisions, garrisons, civil affairs units and support commands attended.

The school hosted the Worldwide JAG Conference, 11-15 October 1976. Judge advocates stationed throughout the United States and from commands in foreign countries conferred on themes of current interest to the military legal community.

The Commandant attended the midyear and the annual joint meetings of the Association of Continuing Legal Education Administrators and the American Bar Association.

PERSONNEL, PLANS, AND POLICIES

Excluding law students, the average strength of The Judge Advocate General's Corps for fiscal year 1977 was 1,514. Representing minority groups were 57 blacks, 11 Mexican-Americans, and 55 women. The fiscal year 1977 average strength compares with an average of 1,588 in 1976 and 1977T, 1,590 in 1975, 1,571 in 1974, and 1,554 in 1973. The average strength of the corps has stabilized and should remain relatively constant for the foreseeable future. The grade distribution of the corps was: 6 general officers, 75 colonels, 153 lieutenant colonels, 140 majors, and 1,151 captains. There were also 58 warrant officers. In addition, 132 officers were participating in either the excess leave or fully funded education programs.

To insure that the best qualified candidates were selected, formal boards were convened under The Judge Advocate General's written instructions to select candidates for initial commissions, the Judge Advocate Officer Advanced Course, and career status.

In February 1977, a selection board was convened to select 25 active-duty commissioned officers to commence law school under the funded legal education program.

Notwithstanding the recent trends toward a larger percentage of career judge advocates, there is still a shortage of field grade officers. On 9 February 1976 the Secretary of the Army approved, for purposes of temporary promotion, separate judge advocate promotion consideration through the grade of colonel, and deeper zones of consideration than on the Army promotion list. This resulted in a decrease in

the shortage of field grade officers in fiscal year 1977 and should eliminate the shortage in the future.

Sixty officers completed the following schools:

U.S. Army War College.....	3
Command and General Staff College.....	8
Armed Forces Staff College.....	1
Armed Forces Institute of Pathology.....	1
Defense Language Institute.....	2
The Judge Advocate Officer Advanced Course.....	45

Two officers received advanced degrees from civil schools under the fully funded graduate school program.

In January 1977, the establishment of "Additional Skill Identifier 7B—Court Reporter," for use with MOS 313A, legal administrative technician, was announced. A 5-year test program to evaluate the utilization of warrant officer court reporters was initiated. On 14 March 1977, six enlisted court reporters were selected for appointment as warrant officers. All of these warrant officer court reporters have been appointed and are performing court reporter duties.

Effective 1 April 1977, The Judge Advocate General adopted a policy of deferring the certification of judge advocates as defense counsel until they had acquired at least four months of military justice experience and receive a favorable recommendation from their staff judge advocate and the military judges before whom they have practiced.

WILTON B. PERSONS, JR.,
Major General, U.S.A.,
The Judge Advocate General,
United States Army

ANNUAL REPORT
of
THE JUDGE ADVOCATE GENERAL OF THE NAVY
pursuant to
THE UNIFORM CODE OF MILITARY JUSTICE
for the period
FISCAL YEAR 1977

Supervision of the administration of military justice.—Complying with the requirements of article 6(a), Uniform Code of Military Justice, the Judge Advocate General and the Deputy Judge Advocate General 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 a decrease in the total number of courts-martial during fiscal year 1977. (See exhibit A attached to this report.)

b. During fiscal year 1977, the Navy Court of Military Review received for review 295 general courts-martial and 1,840 special courts-martial, as compared with 632 general courts-martial and 3,446 special courts-martial during fiscal year 1976 and fiscal year 1977. Of 2,135 cases received by the Navy Court of Military Review, 1,479 accused requested counsel (69 percent).

Navy-Marine Corps Trial Judiciary.—The Navy-Marine Corps Trial Judiciary provided military judges for 482 general courts-martial during fiscal year 1977, a decrease of 138 cases from the 1976 level of 620 general courts-martial. In 1977, 60 percent of the general courts-martial were tried by courts constituted with military judge alone. This is 2 percent less than general courts-martial tried by courts constituted without members during 1976.

The Navy-Marine Corps Trial Judiciary supplied military judges for 4,777 special court-martial trials during fiscal year 1977, a decrease of 414 cases from the 1976 level of 5,191. In addition, circuit military judges of the Navy-Marine Corps Trial Judiciary nominated ad hoc

military judges to preside in 104 special courts-martial for which full-time military judges were unavailable. Ad hoc judges presided in 273 special courts-martial during 1976. In 1977, 90 percent of the special courts-martial were tried by courts constituted with military judge alone. This is the same percentage of special courts-martial tried by courts constituted without members during 1976.

The present manning level of the Navy-Marine Corps Trial Judiciary is 19 general court-martial military judges, the same as the manning level at the close of fiscal year 1976. Sixteen special court-martial military judges are assigned to the Navy-Marine Corps Trial Judiciary, a decrease of three from the manning level at the close of fiscal year 1976.

Military judges and clerks of court of the Navy-Marine Corps Trial Judiciary attended a variety of professional meetings and seminars during fiscal year 1977. Some 15 military judges attended the annual Judge Advocate General's Conference held in Washington, D.C., 18-22 October 1976. One general court-martial military judge attended a regular 3-week trial judge's course at the National College of the State Judiciary, Reno, Nev., during the period 11-29 October 1976; one attended a 1-week evidence specialty course at the National College of the State Judiciary; one participated in the American Bar Association National Institute on exclusionary rules functioning within the fourth, fifth and sixth amendments at New York, N.Y.; and one participated in the 1977 military justice seminar west coast session sponsored by the Federal Bar Association. One special court-martial military judge also attended the 1-week evidence specialty course at the National College of the State Judiciary and another attended a 1-week military judges seminar at the Air Force Judge Advocate General's School, Maxwell Air Force Base, Ala. One chief legalman attended a 3-day workshop sponsored by the National Association of Legal Assistants at San Francisco; another attended a 4-day Bureau of Naval Personnel Discipline Command seminar at Newport, R.I. One sergeant attended an advance legal services course sponsored by the Commandant of the Marine Corps at Camp Pendleton, Calif., from 19-30 September 1977.

Naval Legal Service.—The Naval Legal Service (NLS) now consists of 18 naval legal service offices and 16 subordinate branch offices located throughout the world. The total manpower strength authorization for the NLS includes 281 judge advocates, 183 legalmen, and 166 civilian employees. Navy judge advocates in the NLS comprise approximately one-third of the Navy's total judge advocate strength.

The NLS, under the direction of the Judge Advocate General in his capacity as Director, Naval Legal Service, through consolidation of available legal resources at locations with a high concentration of naval commands, has been able to provide timely response to requests

from naval commands for counsel and trial-team services. Further, it continues to prove to be an ideal vehicle for insulating defense counsel from any possibility of command influence in their defense of court-martial accused.

The NLS is providing an ever increasing amount of necessary legal services to local commands. Periodic inspections into the operation of each of the various offices and their branches has shown that most of the line commanders who depend upon the NLS for support were more than satisfied with the quality and timeliness of services received.

Article 69 petitions.—The number of petitions filed under article 69, Uniform Code of Military Justice, pursuant to which the Judge Advocate General may vacate or modify the findings or sentence of courts-martial which have been finally reviewed under article 76, but have not been reviewed by the Navy Court of Military Review, has remained relatively constant.

In fiscal year 1977, 76 petitions were received by the Judge Advocate General. Seventy-two petitions, including 23 from fiscal year 1976 and fiscal year 197T, were reviewed during fiscal year 1977 and relief was granted, in whole or in part, in 21 of the petitions. Pending review at the close of fiscal year 1977 were 45 petitions. The following disposition was made of this total of 117 petitions: (a) 51 petitions were denied, of which 15 were from fiscal year 1976 and fiscal year 197T; (b) 21 petitions were granted in whole or in part; (c) 19 petitions, one of which was from fiscal year 1977, are being held pending decision by the U.S. Court of Military Appeals in the case of *United States v. Redmond*, 32,049; (d) 26 petitions, all of which are from fiscal year 1977, are still pending review.

New trial petitions.—In fiscal year 1977, 12 petitions for new trials were submitted pursuant to article 73, Uniform Code of Military Justice. Three petitions, received in fiscal year 197T and pending at the conclusion of fiscal year 197T, were acted upon by the Office of the Judge Advocate General in fiscal year 1977, one of which was referred to the U.S. Court of Military Appeals. One petition, received in fiscal year 1976, pending at the conclusion of fiscal year 1976, was partially granted within the Office of the Judge Advocate General in fiscal year 1976. The following disposition was made of these 16 petitions: (a) One petition from fiscal year 1976 was partially granted; (b) two petitions from fiscal year 197T were denied; (c) three petitions, one of which was from fiscal year 197T, were forwarded to either the Navy Court of Military Review or the U.S. Court of Military Appeals, as cases still pending review; (d) six petitions were denied; and (e) four petitions were pending as of 30 September 1977.

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 18 October–22 October 1976. The conference heard addresses by the Secretary of the Navy, Vice Chief of Naval Operations, the Chief of Staff of the Marine Corps, and the General Counsel, Department of Defense. The conference included presentations on various topics including trends in military justice, the military magistrate program, Federal Register, FLITE system, standards of conduct, petroleum reserves and pending legislation. In addition to these presentations, seminars were held which discussed the responsibilities of trial counsel, defense counsel, military judges, and staff judge advocates. Additional seminars addressed ethics, Freedom of Information and Privacy Acts, environmental law, tort claims, labor relations, personnel claims, foreign criminal jurisdiction, international law, investigations, admiralty, administrative discharge procedures, legal assistance and taxation, and the My Lai affairs.

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 participate in seminars concerning areas of mutual concern which have arisen during the past year. Plans are already underway for a similar conference in October 1977.

Naval Justice School.—Courses of instruction in military law and related administrative matters were presented by the Naval Justice School during fiscal year 1977 to 1,998 officers and enlisted personnel of the Armed Forces.

A total of 994 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 concentration.

Three hundred forty-six Navy, Marine Corps, and Coast Guard non-lawyer junior officers received training for duty as unit legal officers.

One hundred ninety Navy and Marine Corps lawyers were trained for service as judge advocates.

One hundred thirty-one lawyer reservists of the Navy and Marine Corps were provided basic or refresher training in military law.

Fifteen Navy and Marine Corps judge advocates newly assigned to duty in the Navy-Marine Corps Trial Judiciary attended a course presented for military judges.

Two hundred two Army, Navy, and Coast Guard enlisted personnel were trained to perform legal clerk duties and 121 to perform court reporting duties.

In addition to its formal courses of instruction, the Naval Justice School presented instruction on search and seizure, right to counsel, and administrative proceedings to 3,108 officers at other Navy schools in Newport, R.I., and New London, Conn.

Certification of NCMR decisions to USCMA for review pursuant to article 67(b), UCMJ.—During this reporting period, four cases were certified for review by the U.S. Court of Military Appeals pursuant to article 67(b), Uniform Code of Military Justice.

Article 138 complaints.—In fiscal year 1977, 127 complaints of wrongs were received in the Office of the Judge Advocate General. One hundred nineteen complaints of wrongs, including 19 from fiscal year 1976 and fiscal year 197T, were reviewed during fiscal year 1977, leaving 27 pending review as of 30 September 1977.

Joint-Service Committee on Military Justice.—The primary function of the Joint-Service Committee on Military Justice is 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 (rev.)” It also serves as a forum for the exchange of ideas relating to military justice matters among the services. In the past, the committee has mainly considered proposals and ideas generated within the services. In 1976 it was given responsibility for commenting on matters that came from outside the services as well.

The proposed legislation on improving the efficiency of the military justice system, noted in last year’s report, continued on its way to Capitol Hill. During the period of this report, the draft bill was referred by the Department of Defense to the Office of Management and Budget for review and clearance by other executive departments affected. It is expected that the draft bill will be submitted by the Department of Defense as part of its legislative program for the second session of the 95th Congress.

At the request of the Office of the General Counsel of the Department of Defense, the Joint-Service Committee commented on a bill to amend the Uniform Code of Military Justice prepared by the Committee on Military Justice and Military Affairs of the Association of the Bar of the City of New York. The committee’s comments were delivered in February 1977.

During the period of this report, the Joint-Service Committee continued its study of the concept of legislative changes to create courts-martial exercising continuous jurisdiction. The working group of the committee will continue its work on this proposal in the coming year, with a view to drafting legislative proposals embracing the continuing jurisdiction concept.

The working group of the Joint-Service Committee is also undertaking a thorough review of the rules of evidence contained in the “Manual for Courts-Martial, United States, 1969 (rev.)” in light of the experience of the Federal courts with the Federal rules of evidence. It is anticipated that changes designed to more closely align military and civilian practice in this area will be recommended.

Ethics.—Action was taken to maintain high ethical standards of conduct of counsel and judges who participate in courts-martial. Incoming judge advocates received instruction at the Naval Justice School on the “ABA Code of Professional Responsibility” and the “ABA Standards for the Administration of Criminal Justice.” The JAG Ethics Committee was established to consider questions of ethics and malpractice; serve as a liaison for ethics matters; and make recommendations, as appropriate, to the Judge Advocate General. It is comprised of the Assistant Judge Advocate General (Civil Law); the Assistant Judge Advocate General (Military Law); the Assistant Judge Advocate General (Military Personnel and Management); a representative of the Commandant of the Marine Corps; and the Executive Assistant to the Judge Advocate General who acts as recorder. Appropriate action was taken under the provisions of section 0141 of the “Manual of the Judge Advocate General” in five cases brought to the attention of the Judge Advocate General.

Civil litigation.—During the period of this report, the Judge Advocate General worked closely with the Justice Department in several civil litigation cases having potential impact on the military justice system. Assistance was provided to the Department and to various U.S. attorneys, including preparation of legal memorandums and litigation reports; preparation of briefs and motions in conjunction with a U.S. attorney; and preparation of U.S. attorneys for oral arguments before Federal courts. A few of the more significant cases and issues involved are set forth below:

a. *Allison v. Saxbe.*—This case considered the proper scope of review for court-martial convictions in federal habeas corpus proceedings. The petitioner was a Navy seaman convicted by court-martial of arson in a \$7.5 million fire aboard *USS Forrestal*. After his escape from Portsmouth Naval Disciplinary Command, the petitioner was at large for 6 months before he surrendered to military authorities in October 1974 at San Francisco. Promptly thereafter, he filed a petition for habeas corpus in the U.S. District Court for the Northern District of California. The district court denied Allison’s petition in a memorandum opinion of 5 September 1975. His appeal of the district court’s action is currently pending before the U.S. Court of Appeals for the Ninth Circuit.

b. *Priest v. Secretary of the Navy.*—This case assessed the scope of freedom of the press under the first amendment available to members of the military services. The U.S. District Court for the District of Columbia granted the Government’s motion for summary judgment. The plaintiff appealed to the U.S. Court of Appeals for the District of Columbia Circuit, where oral argument was heard in March 1977.

c. *Williamson v. Secretary of the Navy.*—This case raised issues of federal court jurisdiction to review courts-martial, and an alleged

violation of the petitioner's fourth amendment rights. In May 1975, the U.S. District Court for the District of Columbia granted the Government's motion for summary judgment. The U.S. Court of Appeals for the District of Columbia affirmed the lower court's opinion in January 1977.

Period: Fiscal Year 1977

PART I - BASIC COURTS-MARTIAL STATISTICS (PERSONS)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE/DECREASE OVER LAST REPORT
GENERAL	384*	344*	40*	232 (38%)
BCD SPECIAL	1,782*	1,782*		628 (26%)
NON-BCD SPECIAL	6,383*	5,729*	691*	1,895 (23%)
SUMMARY	6,958*	6,553*	405*	637 (8%)
OVERALL RATE OF INCREASE/DECREASE OVER LAST REPORT			3,392 (18%)	INCREASE/DECREASE

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)			49*	
NUMBER OF DISHONORABLE DISCHARGES			231*	
NUMBER OF BAD CONDUCT DISCHARGES			1,782*	
SPECIAL COURTS-MARTIAL (SA LEVEL)				
NUMBER BAD CONDUCT DISCHARGES				

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	295
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	1,840
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	73

PART 4 - WORKLOAD OF THE NAVY COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD		307	
GENERAL COURTS-MARTIAL	105		
BCD SPECIAL COURTS-MARTIAL	202		
REFERRED FOR REVIEW		2,241	
GENERAL COURTS-MARTIAL	360		
BCD SPECIAL COURTS-MARTIAL	1,881		
TOTAL CASES REVIEWED		2,234	
GENERAL COURTS-MARTIAL	393		
BCD SPECIAL COURTS-MARTIAL	1,841		
TOTAL PENDING AT CLOSE OF PERIOD		314	
GENERAL COURTS-MARTIAL	72		
BCD SPECIAL COURTS-MARTIAL	242		
RATE OF INCREASE/DECREASE OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	909 (29%)		INCREASE/DECREASE

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE NAVY COURT OF MILITARY REVIEW

NUMBER	1,479	
PERCENTAGE	69%	

PART 6 - U. S. COURT OF MILITARY APPEALS ACTIONS

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA		30%
PERCENTAGE OF INCREASE/DECREASE OVER PREVIOUS REPORTING PERIOD	5%	INCREASE/DECREASE
PERCENTAGE OF TOTAL PETITIONS GRANTED		13%
PERCENTAGE OF INCREASE/DECREASE OVER PREVIOUS REPORTING PERIOD	12%	INCREASE/DECREASE
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR		4%

*Interim figures based on difference between 1977 estimated figures and last quarter actual figures less 5 Field Commands.

NOTE: Rate of Increase/Decrease and Percentages of Increase/Decrease are based on comparison of Fiscal Year 1976 (1 July 1975 - 30 June 1976) with Fiscal Year 1977. Whole numbers reflect actual difference between reporting periods and percentages reflect percentage of increase or decrease.

PART 6 - CONTINUED		
RATE OF INCREASE/DECREASE OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	45 (7%)	INCREASE/DECREASE
PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD	41	
RECEIVED	76	
DISPOSED OF	72	
GRANTED	17	
DENIED	51	
NO JURISDICTION	4	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD	45	
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE	227*	
GENERAL COURTS-MARTIAL		
SPECIAL COURTS-MARTIAL	7,460*	
TRIALS BY MILITARY JUDGE WITH MEMBERS	157*	
GENERAL COURTS-MARTIAL		
SPECIAL COURTS-MARTIAL	681*	
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	127	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	715,076	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	135,369*	
RATE PER 1,000	189.31	
RATE OF INCREASE/DECREASE OVER PREVIOUS PERIOD	14,641 (10%)	

*Interim figures based on difference between 1977 estimated figures and last quarter actual figures less 5 Field Commands.

NOTE: Rate of Increase/Decrease and Percentages of Increase/Decrease are based on comparison of Fiscal Year 1976 (1 July 1975 - 30 June 1976) with Fiscal Year 1977. Whole numbers reflect actual difference between reporting periods and percentages reflect percentage of increase or decrease.

REPORT OF
THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE
October 1, 1976 to September 30, 1977

Maj. Gen. Walter D. Reed, the Assistant Judge Advocate General, was named the Judge Advocate General on October 1, 1977, succeeding Maj. Gen. Harold R. Vague, who retired. Brig. Gen. James Taylor, Jr., Director of Civil Law, was named the Assistant Judge Advocate General.

In compliance with the requirements of article 6(a), Uniform Code of Military Justice (UCMJ), Generals Vague, Reed, and Taylor made official staff visits to legal offices in the United States and overseas. In addition, they attended various meetings of professional civil and military organizations.

The fourth and final session of the Diplomatic Conference on the Reaffirmation and Development of International Law Applicable in Armed Conflict convened in Geneva, Switzerland, on March 17 and closed on June 10, 1977, after 4 years and four sessions (previous sessions were held in 1974, 1975, and 1976). These diplomatic conferences have been convened by the Swiss Government for the purpose of supplementing the 1949 Geneva Conventions with new protocols. The U.S. delegation included military lawyers assigned by the Judge Advocate General of each service. There were 109 nations participating, with numerous observers and national liberation movements. Two new protocols for armed conflict were adopted. The first protocol strengthens protection for combatants by insuring wider application of prisoner of war status for both regular and irregular forces.

Of special interest to the Air Force under protocol I are:

- (1) Protection of medical aircraft;
- (2) Prohibition of use of enemy uniforms, insignia, or emblems to shield or protect military operations;
- (3) Protection for descending airmen;
- (4) Limitation on attacks by bombardment of populated areas containing separate and distinct military objectives, and;
- (5) Codification of existing customary rule that civilian casualties and damages to civilian property are not unlawful—provided such losses are incidental to an attack on a legitimate military objective, and those civilian losses are not excessive to the military advantage sought.

The second protocol expands basic humanitarian rights applicable in internal conflicts and grants more specific protection to the victims of civil wars.

The UCMJ remains the principal way by which punitive action may be taken for violation of the law of armed conflict by military personnel. Future implementation of these agreements may warrant appropriate amendments to the code.

MILITARY JUSTICE STATISTICS AND U.S. AIR FORCE JUDICIARY ACTIVITIES

During 1977, the judiciary directorate of the Office of the Judge Advocate General processed in excess of 1,515 actions involving military justice. The directorate has the overall responsibility of supervising the administration of military justice throughout the U.S. Air Force from the trial level through the appellate review process, pursuant to the provisions of the "Manual for Courts-Martial, 1969 (Rev.)," and the UCMJ. In addition, the directorate had the staff responsibility for the Office of the Judge Advocate General in all Air Force military justice matters which arise in connection with programs, special projects, studies, and inquiries generated by the Air Staff; Headquarters USAF; the Secretaries, Departments of Defense, Army, Navy, and Air Force; Members of Congress; and other interested Federal, State, and civil agencies. Some of the directorate's activities are discussed below:

a. Three Air Force Court of Military Review decisions were certified by the Judge Advocate General to the Court of Military Appeals during calendar year 1977. Opinions were requested on a number of important subjects including whether the action of the military judge in showing the sentence worksheet to the trial defense counsel constituted an announcement of the prepared sentence which precluded full reconsideration by the court members; clarification of the standard for evaluating whether clemency should be extended to an accused; and the definition of "official conduct" in relation to article 31 and search and seizure.

b. The judiciary directorate also serves as the action agency for the review of applications submitted to the Board for Correction of Military Records. There were 317 formal opinions provided to the Secretary of the Air Force concerning those applications.

c. The directorate also received 430 inquiries in specific cases requiring either formal written replies or telephonic replies to senior executive officials, including the President or to Members of Congress.

AMJAMS

Analysis of the operation of the Automated Military Justice Analysis and Management System (AMJAMS), implemented Air Force-

wide on July 1, 1974, reveals that it continues to meet the objectives for which it was designed, that is, more detailed and timely collection of data pertaining to court-martial and article 15 activities, together with the increased analysis capability available with automated processing. The management and analytic uses for information contained in the system's data base continued to increase. Over 216 special reports have been produced and utilized to respond to various questions regarding military justice activities received from over 20 different agencies and offices both within and outside the Department of Defense. These special reports include a study on Air Force members tried in overseas locations conducted by the General Accounting Office, a study on AWOL and desertion rates for the Air Force posture statement, a study on percentage of cases ending in acquittal, and a study to determine the accuracy of military justice information in the officer digest system at the Air Force Military Personnel Center.

Trial Judiciary

The Air Force Trial Judiciary began its year with 32 trial judges located at 18 different locations throughout the world. In order to better manage its personnel resources, the trial judiciary has begun reducing the number of its districts and consolidating them at the circuit offices. During the year, the Eglin Air Force Base and Shaw Air Force Base districts were closed and consolidated with the Second Circuit Office at Maxwell Air Force Base. The Wright-Patterson Air Force Base, Ohio, and the Luke Air Force Base, Ariz., offices were closed. By the end of the year, the number of trial judges were reduced to 29, stationed at 12 different locations.

Period: FY 1977

PART I - BASIC COURTS-MARTIAL STATISTICS (PERSONS)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE/ DECREASE OVER LAST REPORT
GENERAL	166	146	20	-26.9%
BCD SPECIAL	115	115		-44.7%
NON-BCD SPECIAL	692	592	100	-25.4%
SUMMARY	25	15	10	-58.3%
OVERALL RATE OF INCREASE/DECREASE OVER LAST REPORT			29.9%	INCREASE/DECREASE

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		22	
NUMBER OF DISHONORABLE DISCHARGES			
NUMBER OF BAD CONDUCT DISCHARGES		80	
SPECIAL COURTS-MARTIAL (SA LEVEL)		92	
NUMBER BAD CONDUCT DISCHARGES			

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	108
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	99
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	38

PART 4 - WORKLOAD OF THE COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD	62	
GENERAL COURTS-MARTIAL	32	
BCD SPECIAL COURTS-MARTIAL	30	
REFERRED FOR REVIEW	207	
GENERAL COURTS-MARTIAL	108	
BCD SPECIAL COURTS-MARTIAL	99	
TOTAL CASES REVIEWED	222	
GENERAL COURTS-MARTIAL	114	
BCD SPECIAL COURTS-MARTIAL	108	
TOTAL PENDING AT CLOSE OF PERIOD	47	
GENERAL COURTS-MARTIAL	26	
BCD SPECIAL COURTS-MARTIAL	21	
RATE OF INCREASE/DECREASE OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	38.2%	INCREASE/DECREASE

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE COURT OF MILITARY REVIEW

NUMBER	203	
PERCENTAGE	96.7%	

PART 6 - U. S. COURT OF MILITARY APPEALS ACTIONS

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	93.2%
PERCENTAGE OF INCREASE/DECREASE OVER PREVIOUS REPORTING PERIOD	9.6%
PERCENTAGE OF TOTAL PETITIONS GRANTED	36.2%
PERCENTAGE OF INCREASE/DECREASE OVER PREVIOUS REPORTING PERIOD	23%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	33.8%

PART 6 - CONTINUED		
RATE OF INCREASE/DECREASE OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		38.2% INCREASE/DECREASE
PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		5
RECEIVED		75
DISPOSED OF		71
GRANTED	10	
DENIED	61	
NO JURISDICTION	--	
WITHDRAWN	--	
TOTAL PENDING AT END OF PERIOD		9
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		74
GENERAL COURTS-MARTIAL		
SPECIAL COURTS-MARTIAL		363
TRIALS BY MILITARY JUDGE WITH MEMBERS		92
GENERAL COURTS-MARTIAL		
SPECIAL COURTS-MARTIAL		444
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	66	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	582,189	
PART II - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	21,015	
RATE PER 1,000	36.1	
RATE OF INCREASE/DECREASE OVER PREVIOUS PERIOD	20.3%	INCREASE/DECREASE

UCMJ Legislative Package

The Department of Defense's draft of proposed legislation to amend the UCMJ is presently awaiting clearance from the Office of Management and Budget for submission to Congress. The amendments are designed to simplify and reduce the workload mandated by existing procedures. The changes include: (a) Appellate review only where accused files timely notice of appeal and the sentence as approved extends to dismissal, discharge, or confinement of 1 year or more; (b) convening authority will determine only whether the case should be referred to trial and/or whether clemency is warranted rather than being required to make legal determinations relating to the sufficiency of the evidence before and after trial; (c) the Judge Advocate General is given the power to modify or set aside the findings or sentence in a general court-martial not subject to appeal to a court of military review; and (d) "videotape" is allowed for use as a trial record.

PREVENTIVE LAW PROGRAM

The preventive law program established in 1974 continued to meet its primary objective of improving the accomplishment of the Air Force mission through enhancement of discipline and morale through education and information and its secondary objectives of educating and informing Air Force members in such a way that the objectives of the law may be achieved largely by self-discipline; persuading Air Force people to seek professional legal guidance in learning and exercising their legal rights and obligations; and providing commanders and Air Force members a broad channel of communication on the subject of avoiding problems.

ESTABLISHMENT OF THE USAF CENTRAL LABOR LAW OFFICE

During 1977, seven attorney and four administrative positions were committed to establish the USAF Central Labor Law Office (CLLO), located in San Antonio, Tex. This office is expected to be fully manned and operational in 1978.

The principal duties of the CLLO include providing direct representation in administrative third-party proceedings under E.O. 11491 concerning unfair labor practices and representation cases; providing representation, upon request, in other administrative third-party proceedings involving impasses, arbitrable matters, EEO complaints and adverse action appeals; disseminating significant labor law developments to judge advocates in the field; providing legal advice and assistance to HQ USAF/DPC's Office of Civilian Personnel Operations; and providing, upon request, legal advice and assistance concerning

labor-management relations matters to major command and installation-level judge advocates.

EDUCATION AND TRAINING

During calendar year 1977, the Judge Advocate General's department provided continuing legal and general education opportunities to approximately 700 of its personnel.

The Judge Advocate General's School

The Judge Advocate General's School, Air University, Maxwell AFB, Ala., taught the following resident courses:

a. *The Judge Advocate Staff Officer Course.*—This 6-week course provides the basic educational tools for an attorney, new to the Air Force, to practice military law. The course was conducted four times during 1977, and 97 judge advocates completed it.

b. *The Staff Judge Advocate Course.*—This course was presented once during 1977, and 40 judge advocates attended the course.

c. *The Military Judges' Seminar.*—This seminar was conducted once during 1977, and 24 judge advocates who are serving as military judges participated.

d. *The Reserve and Air National Guard Refresher Course.*—160 Reserve and Air National Guard judge advocates graduated from this course.

e. *The Legal Services Advanced Course.*—This course was presented once during 1977, and 40 senior NCO legal technicians attended this course. Note: The department's enlisted personnel receive their basic legal training at a special legal technician's school at Keesler AFB, Miss. Eight courses were held in 1977, and 98 students were graduated.

Professional Military Training

During 1977, five judge advocates attended the Air Command and Staff College, and three attended the Air War College at Maxwell AFB, Ala. Two officers attended the Armed Forces Staff College, and one attended the National War College.

Short Courses at Civilian Universities

a. *Prosecuting attorney's course at Northwestern University.*—20 judge advocates attended this 5-day course in 1977.

b. *Defense attorney's course at Northwestern University.*—20 judge advocates attended this 5-day course in 1977.

c. *Trial advocacy course at Creighton University.*—56 judge advocates attended the 5-day course in 1977.

d. *National College of State Trial Judges at the University of Nevada.*—16 judge advocates and 1 senior NCO, the chief court administrator, attended courses at the National College.

Masters In Law Program

During 1977 two judge advocates received their master of law in labor law; seven in Government procurement law; three in international law; and one in environmental law.

Procurement Law Course: U.S. Army JAG School

Seventy-eight judge advocates attended the basic procurement law course, and six judge advocates attended the advanced procurement law course.

CONTINUING LEGAL EDUCATION SEMINARS USING VIDEOTAPE PRESENTATIONS AS A TEACHING AID

During 1977, the Judge Advocate General's department developed several new films and textbooks which were made available to the field. Seminar courses provide a current course of study on subjects of special interest to the department. Most, if not all, Air Force judge advocates participated in at least two seminars conducted at Air Force bases around the world. Reserve Air Force judge advocates, and judge advocates of the Army and Navy have also participated in several of the seminars. Programs presently in the inventory are as follows:

a. *The Law of Federal Labor-Management Relations*.—A 65-hour course (50 hours of independent reading and 15 seminar hours including a 1½-hour videotape overview of the law of Federal labor-management relations under Executive Order 11491, as amended). Written materials and an examination accompany the program.

b. *Professional Responsibility and the Government Attorney*.—A 38-hour course (20 hours of independent reading and 8 seminar hours). The videotape presentation includes a 2-hour videotape interview of Prof. Samuel Dash, Georgetown University Law Center, and Chief Judge Albert Fletcher, U.S. Court of Military Appeals. Written materials and an examination accompany the program.

c. *Trial Techniques*.—A 16-hour course (6 hours of independent reading and 10 seminar hours, including a 3-hour videotape presentation by Mr. Robert Begam, president-elect of the Association of Trial Lawyers of America, and Mr. Theodore I. Koskoff, president, Roscoe Pound American Trial Lawyers Foundation). Written materials and an examination accompanying the program.

d. *Supreme Court Trends in Criminal Law*.—A 15-hour course (10 hours of independent reading and 5 seminar hours, including a 1-hour videotape presentation by Prof. Abraham Dash, University of Maryland School of Law). This videotape was made in the room that served as the Supreme Court chamber, 1810–1860, and which has only recently been renovated and opened to the public. Written materials and

an examination accompany the program. This is a joint production with the Judge Advocate General of the Navy.

e. *Law of Armed Conflict and Aerial Warfare*.—A 16-hour course (8 seminar hours, including the videotape showing and 8 hours of preparatory reading). The course covers the concepts of the law of armed conflict (with emphasis on air warfare) as established from international law principles, agreements, and customs.

f. *Federal Income Tax*.—This course consists of 4 seminar hours including a 2-hour videotape presentation followed by 2 hours of seminar for discussion, questions, and answers. Approximately 6 hours of preparatory reading is required. This course focuses on changes in the Federal tax law resulting from the Tax Reform Act of 1976 and the Tax Reduction and Simplification Act of 1977, with emphasis on those changes affecting the military taxpayer.

g. *Environmental Law*.—This is a 7-hour course with a 2-hour videotape and a minimum 20 hours of preparatory reading. This course highlights the major Federal laws, Executive orders, and agency directives bearing on a judge advocate's "environmental law practice."

h. *Government Contract Law*.—This is a 32-hour course (25 hours of independent reading and 7 seminar hours). The 4-hour videotape portion of the seminar features Prof. Ralph C. Nash, Jr.; Prof. John Cibinic, Jr., of the George Washington University National Law Center; and Judge Richard C. Solibakke, chairman, Armed Services Board of Contract Appeals.

FUNDED LEGAL EDUCATION, EXCESS LEAVE PROGRAMS AND LAW STUDENT TRAINING

In 1976, selected Air Force officers participated in the Funded Legal Education Program (FLEP) and the excess leave program, with 37 completing their law school requirements and being 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.

A new program which permits the training of Air Force ROTC graduates (commissioned officers on educational delay to attend law school) was approved in 1976. This program requires 89 days' training during a summer vacation at an active duty Air Force base for officers desiring a JAG commission. A test program which trained three officers in 1975 and five officers in 1976 proved successful for both the students and the base staff judge advocates. Twenty-one officer students participated in the 1977 summer program.

EXECUTIVE AGENT FOR THE PRINTING OF DECISIONS OF THE COURTS OF MILITARY REVIEW

During 1977 the Office of Executive Services of the Judge Advocate General of the Air Force continued the publication and distribution of interim court-martial decisions in the absence of a contract with a commercial publisher. The office worked with Defense Supply Service, the Court of Military Appeals, and the other services in developing specifications for a new commercial publisher. Executive Services continued to act as executive agent for the services in the contract to produce slip opinions and in coordinating with West Publishing Co. under the new printing arrangements.

FEDERAL LEGAL INFORMATION THROUGH ELECTRONICS (FLITE)

The Office of the Judge Advocate General, USAF, continued to operate one of the world's largest automated legal research systems and provide free service to users in the Department of Defense. FLITE also produced a complete headnote digest and index on microfiche of volumes 1-51 of the CMR's. This became a major research tool in the military justice area.

PERSONNEL

On 31 December 1976, there were 1,103 judge advocates on duty (4 general officers, 81 colonels, 142 lieutenant colonels, 203 majors, and 673 captains). On 31 December 1977, there were 1,114 judge advocates on duty (4 general officers, 85 colonels, 136 lieutenant colonels, 204 majors, and 685 captains).

WALTER D. REED,
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)

October 1, 1976 to September 30, 1977

The table below shows the number of court-martial records received and filed at Coast Guard Headquarters during fiscal year 1977 and the 4 preceding years:

	1977	1976A	1976	1975	1974	1973
General courts-martial . . .	5	0	4	4	7	5
Special courts-martial . . .	84	25	181	189	192	206
Summary courts-martial . .	188	47	221	267	212	307
Total	277	72	406	460	411	518

GENERAL/SPECIAL COURTS-MARTIAL

All special courts-martial had lawyers for defense/trial counsel. Military judges were assigned in all of the trials. Military judges are provided for special courts-martial by use of the two full-time general courts-martial judges when available, and by the use of military judges assigned to other primary duties. Control of the detail of judges is centrally exercised, and all requirements have been filled in a timely fashion.

In 43 of the special courts-martial, trial was by military judge with members, 5 of which included enlisted members. In the remaining 41 cases, the defendant elected to be tried by military judge alone. In five cases, the sentence included a bad conduct discharge. Four of these were adjudged by military judge alone, and the remaining one was adjudged by a court with members. Of the five punitive discharges, four have been affirmed by the Court of Military Review, with one pending decision.

In fiscal year 1976, 72 of 195 convictions did not include confinement as a part of the sentence imposed. Maximum confinement of 6 months was imposed at special courts-martial as a punishment only 10 times, 6 when trial was by judge alone. In fiscal year 1977, while the total num-

ber of special courts-martial declined sharply, confinement was imposed as a punishment 44 times in 76 convictions; 22 times each by judge alone and a court with members. Maximum confinement of 6 months was imposed only once by judge alone, but four times by members.

The following table shows the distribution of the 266 specifications tried by the 84 special courts-martial:

AWOL or desertion.....	82
Violation of order or regulation.....	33
Larceny/wrongful appropriation.....	20
Dereliction of duty.....	17
Assault	16
Marijuana offenses.....	15
Missing ship movement.....	14
Breaking restriction.....	10
Offenses against USCG property.....	8
Communicating a threat.....	8
Willful disobedience or disrespect.....	6
Housebreaking/unlawful entry.....	4
Offenses involving controlled drugs.....	3
False claims.....	1
Other offenses.....	29
 Total	 266

The following is a breakdown of sentences awarded by the military judge alone in special courts-martial (39 convictions):

Bad conduct discharge.....	4	
Forfeiture of pay.....	28	(\$16,580 total)
Hard labor without confinement.....	10	
Restriction.....	9	
Reduction in rate.....	18	
Confinement at hard labor.....	22	

Sentences awarded by court with members (37 convictions):

Bad conduct discharge.....	1	
Forfeiture of pay.....	25	(\$18,658 total)
Detention of pay.....	1	(\$200X3 mo. detained for 9 mo.)
Hard labor without confinement.....	7	
Restriction.....	7	
Reduction in rate.....	25	
Confinement at hard labor.....	22	

Four of the general courts-martial were with members (no enlisted members). The fifth trial was by military judge alone. Four bad conduct discharges were awarded, three by members and one by the military judge. Two have been affirmed by the Court of Military Review; one disapproved by the Court of Military Review and a rehearing

authorized (not held) ; one pends Court of Military Review decision; one defendant was acquitted.

The following is the distribution of the 10 specifications tried by the 5 general courts-martial:

Desertion	1
Conspiracy	4
Violation of lawful order (possession of cocaine)	5

SIGNIFICANT TRENDS

While the general trend of courts-martial/nonjudicial punishment in the Coast Guard has been downward, it is difficult to pinpoint the exact cause. The possibility does exist that two programs in particular did have a direct impact on these figures: The first, the Commandant’s guidelines on discharge for “marginal performers” significantly reduced the administrative burden in separating these individuals; and second, there was an increased use of discharges under honorable conditions for those personnel categorized as unsuitable of adapting to military life. Combining the administrative discharge categories of marginal performance, unsuitability, misconduct and abuse of drugs/ alcohol for the years 1975, 1976, and 1977, we find discharges rising from 623 to 711 to 801 respectively.

Chief Counsel Action Under Article 69, Uniform Code of Military Justice

In addition to the reviews of courts-martial conducted as a result of a petition filed by defendants under article 69, Uniform Code of Military Justice, the Military Justice Division, USCG Headquarters conducts a gratuitous review under article 69 of all courts-martial not required to be reviewed by the Uniform Code of Military Justice. Twelve article 69 actions were taken as a result of the gratuitous review, in addition to those reported in part 7 of appendix A, as follows:

a. Findings and sentence disapproved	4
b. Some findings disapproved; sentence reassessed	3
c. Irregularities in sentencing procedures; sentence reassessed	2
d. Irregularities in post trial review, new review ordered/findings and sentence disapproved	2
e. Illegal confinement; sentence reassessed	1

PERSONNEL AND TRAINING

The Coast Guard has 134 law specialists serving on active duty. There are 115 in legal billets, and 19 are serving in general duty billets. The junior officers serving at district offices act as trial and defense counsels, while the senior officers, some serving as district legal officers, act as military judges.

The second Coast Guard basic law specialist course was held at the Reserve Training Center, Yorktown, Va., September-November 1977. The 9-week course was designed to introduce both the direct commissioned lawyer, as well as the regular officers just completing law school, to the many aspects of military justice they would soon encounter at field offices. Nonjudicial punishment, trial-defense counsel duties and court procedure were some of the areas covered.

A conference of district and base legal officers was held during the period of 16-19 May 1977. The conferees were addressed by the General Counsel of the Department of Transportation, the Chief Judge of the U.S. Court of Military Appeals, the Chief Counsel of the Coast Guard, and members of the Chief Counsel's staff. As in the past, information was exchanged on a wide variety of legal problems encountered by field legal offices.

NEW PUBLICATIONS

On 21 June 1977, the "Military Justice Manual" (CG-448) was promulgated. The primary reason for developing such a manual was to incorporate, in one publication, various separately published military justice materials. The manual includes a large portion of the "Coast Guard Supplement to the Manual for Courts-Martial" (GC-241). It will serve to facilitate, through amendments and additions, expanded guidance to the field to promote uniformity.

ADDITIONAL MILITARY JUSTICE STATISTICS

Appendix A contains additional basic military justice statistics for the reporting period and reflects the increase/decrease of the workload in various categories.

LINDA HELLER KAMM,
General Counsel,
Department of Transportation.

**Appendix A—U.S. Coast Guard Courts-Martial/NJP
Statistics for
October 1, 1976 to September 30, 1977**

Period: 1 October 1976 to 30 September 1977 - U.S. Coast Guard

PART 1 - BASIC COURTS-MARTIAL STATISTICS (PERSONS)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE/ DECREASE OVER LAST REPORT
GENERAL	5	4	1	20%
XXX SPECIAL BCD Awarded	5	5		0%
XXXX SPECIAL	79	71	4	56%
SUMMARY	188	174	14	30%
OVERALL RATE OF INCREASE/DECREASE OVER LAST REPORT			42%	INCREASE /DECREASE

other

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		0	
NUMBER OF DISHONORABLE DISCHARGES			
NUMBER OF BAD CONDUCT DISCHARGES		4	
SPECIAL COURTS-MARTIAL (SA LEVEL)			
NUMBER BAD CONDUCT DISCHARGES		4	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL		4
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL		5
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL		0

PART 4 - WORKLOAD OF THE USCG COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD		2	
GENERAL COURTS-MARTIAL	1		
BCD SPECIAL COURTS-MARTIAL	1		
REFERRED FOR REVIEW		13	
GENERAL COURTS-MARTIAL	7		
BCD SPECIAL COURTS-MARTIAL	6		
TOTAL CASES REVIEWED		10	
GENERAL COURTS-MARTIAL	4		
BCD SPECIAL COURTS-MARTIAL	6		
TOTAL PENDING AT CLOSE OF PERIOD		5	
GENERAL COURTS-MARTIAL	3		
BCD SPECIAL COURTS-MARTIAL	2		
RATE OF INCREASE/DECREASE OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		16	INCREASE /DECREASE

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE USCG COURT OF MILITARY REVIEW

NUMBER	2	
PERCENTAGE	40%	

PART 6 - U. S. COURT OF MILITARY APPEALS ACTIONS

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA		60%
PERCENTAGE OF INCREASE/DECREASE OVER PREVIOUS REPORTING PERIOD	28%	INCREASE /DECREASE
PERCENTAGE OF TOTAL PETITIONS GRANTED		
PERCENTAGE OF INCREASE/DECREASE OVER PREVIOUS REPORTING PERIOD	15%	INCREASE /DECREASE
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR		10%

PART 6 - CONTINUED			
RATE OF INCREASE/DECREASE OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		2%	INCREASE/ DECREASE
PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69			
PENDING AT BEGINNING OF PERIOD		2	
RECEIVED		7	
DISPOSED OF		7	
GRANTED	3		
DENIED	4		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		2	
PART 8 - ORGANIZATION OF COURT			
TRIALS BY MILITARY JUDGE ALONE		1	
GENERAL COURTS-MARTIAL			
SPECIAL COURTS-MARTIAL		41	
TRIALS BY MILITARY JUDGE WITH MEMBERS		4	
GENERAL COURTS-MARTIAL			
SPECIAL COURTS-MARTIAL		43	
PART 9 - COMPLAINTS UNDER ARTICLE 138			
NUMBER OF COMPLAINTS	2		
PART 10 - STRENGTH			
AVERAGE ACTIVE DUTY STRENGTH	31,606		
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)			
NUMBER CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	2,430		
RATE PER 1,000	76.88		
RATE OF INCREASE/DECREASE OVER PREVIOUS PERIOD	2.1%		INCREASE /DECREASE