

*Court of Military  
Review*

**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, 1977-September 30, 1978**

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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**  
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*Contents*

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

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

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

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

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

**REPORT OF THE GENERAL COUNSEL OF THE DEPARTMENT OF TRANS-  
PORTATION (UNITED STATES COAST GUARD)**



**JOINT REPORT**  
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**U.S. COURT OF MILITARY APPEALS**  
and the  
**JUDGE ADVOCATES GENERAL**  
**OF THE ARMED FORCES**  
and the  
**GENERAL COUNSEL,**  
**DEPARTMENT OF TRANSPORTATION**

**October 1, 1977 to September 30, 1978**

The judges of the U.S. Court of Military Appeals, the Judge Advocates General of the military departments, and the General Counsel of the Department of Transportation submit their annual report on the operation of the Uniform Code of Military Justice 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 year included implementation of the new Shepard's Military Justice Citations, forwarding of the Joint Services Committee legislative package to the Office of Management and Budget for final review before submission to the Congress, establishment of priorities for future legislative recommendations, and the initiation of the Federal Rules of Evidence project.

During the fiscal year, the Code Committee devoted substantial efforts toward prioritizing legislative recommendations which previously had been proposed by the various Code Committee members. It was agreed that the top priority of the Code Committee and the Joint Services Committee which supports it would go toward development and drafting of a continuing jurisdiction proposal and implementation of the Federal Rules of Evidence. Next in priority is development of a sentencing-by-military-judge concept, and third is modification of Article 66(a) to conform the Court of Military Review *en banc* process to that utilized in federal courts. Fourth and fifth priorities were assigned to amendment of the procedure for vacating

suspended sentences and amendment of Article 15 to authorize reduction in all enlisted grades.

During the Code Committee's quarterly meetings, a number of discussions focused upon the need for a staffing organization for the Code Committee itself. A working group developed a proposal for a Military Justice Council, however, after considerable debate, the proposal was tabled until a future date. The Joint Services Committee remains the staffing organization for the military members of the Code Committee with the Court providing a staff representative to participate in, but not vote, at working sessions of the committee. A separate working group under the direction of the Joint Services Committee devoted most of its efforts during the fiscal year to the Federal Rules of Evidence project. It is hoped that the evidentiary revision will be completed and effected by the end of the next fiscal year.

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 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 UNITED STATES COURT OF MILITARY APPEALS**

**October 1, 1977 to September 30, 1978**

The judges of the United States Court of Military Appeals submit their FY 1978 report on the administration of the Court and military justice to the Committees on Armed Services of the United States Senate and House of Representatives and the Secretaries of Defense, Transportation, Army, Navy, and Air Force, in accordance with Article 67(g), Uniform Code of Military Justice, 10 U.S.C. Sec. 867(g).

## **THE BUSINESS OF THE COURT**

During the 1978 term, the Court acted on 1,814 petitions for grant of review, granting review in 430 cases (24%). On the Master Docket of mandatory appeals, certificates, and granted petitions, the Court acted in 394 cases, affirming the Courts of Military Review in 52% of those cases. The Master Docket cases were decided in 67 signed opinions, 12 per curiam opinions and 315 summary dispositions. The Court also acted upon 98 cases on the Miscellaneous Docket granting relief in 2 cases. At the close of the term, 265 cases were pending on the Petition Docket and subject to the statutory 30-day review rule; 394 cases were pending on the Master Docket; and 10 cases were pending on the Miscellaneous Docket. A detailed analysis of the business of the Court for the 1978 term is attached.

Compared with the most recently available workload summary of the United States Courts of Appeals (12-month period ending June 30, 1978), the United States Court of Military Appeals had a lower per judgeship backlog of pending appeals (131 cases vs. 172 cases); no past due backlog on pending petitions for grant of review subject to the statutory 30-day review rule; higher per judgeship terminations (736 cases vs. 183, or 2208 vs. 549 when converted to 3-judge panels); and higher per judgeship filings (690 cases vs. 195, or 2070 vs. 585 when converted to 3-judge panels). An equal number of miscellaneous filings, some 30 per judgeship, were handled in each court system.

The National Center for State Courts has authorized release of certain confidential data which is part of a voluminous study scheduled for publication this spring entitled "State Court Caseload Sta-

tistics: Annual Report, 1975." This document contains statistical caseload data compiled on a national basis from the annual reports of each state court system. The attached excerpt deals with the comparative caseflow in courts of last resort with intermediate appellate courts, the equivalent structure to that of the military justice system.

**Comparative caseflow, courts of last resort in states with intermediate appellate courts, 1975.**

Courts ranked by number of judges, with per-judge filings and dispositions.

	Number Judges	Beginning pending	Filed	Disposed	End pending	Change in end pending		Filings per judge	Dispositions per judge
						Number	Percent		
Alabama	9	0	369	369	0	0	0	41	41
Oklahoma- <i>Supreme Court</i>	9	963	992	771	1,182	219	22.7	130	86
Texas- <i>Supreme Court</i>	9	155	973	974	154	-1	-0.6	108	108
Washington	9	233	504	500	237	4	1.8	56	56
California	7	N/A	3,668	3,712	N/A	N/A	N/A	524	530
Colorado	7	479	553	666	366	-113	-23.6	79	95
Florida	7	N/A	1,846	1,454	N/A	N/A	N/A	264	208
Georgia	7	N/A	1,313	N/A	N/A	N/A	N/A	188	N/A
Illinois	7	327	1,087	1,060	354	27	8.3	155	151
Louisiana	7	N/A	1,606	1,535	N/A	N/A	N/A	229	219
Maryland	7	20	756	751	25	5	25.0	108	107
Massachusetts	7	N/A	744	685	N/A	N/A	N/A	106	98
Michigan	7	380	952	936	396	16	4.2	136	134
Missouri	7	259	439	533	165	-94	-36.3	63	76
New Jersey	7	325	1,048	930	443	118	36.3	150	133
New York	7	438	2,949	3,070	442	4	.9	NC	NC
North Carolina	7	40	520	457	103	N/A	N/A	74	65
Ohio	7	N/A	1,323	1,310	N/A	N/A	N/A	189	187
Oregon	7	268	773	706	335	67	25.0	110	101
Pennsylvania	7	N/A	1,696	N/A	N/A	N/A	N/A	242	N/A
Arizona	5	350	889	932	307	-43	-12.3	178	186
Indiana	5	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
New Mexico	5	173	500	505	168	-5	-2.9	100	101
Tennessee	5	N/A	953	809	N/A	N/A	N/A	191	162
Texas- <i>Court of Criminal Appeals</i>	5	491	2,472	2,510	723	232	47.3	548	502
Oklahoma- <i>Court of Criminal Appeals</i>	3	220	814	790	244	24	10.9	271	263
US Court of Mil Appeals*	3	N/A	1,739	1,876	673	N/A	N/A	580	625

\*USCMA statistical figures reflect FY78 data.

At the time of the report, there were 26 state courts of last resort in systems with intermediate appellate courts in addition to the U.S. Court of Military Appeals. Of these 26 courts of last resort, over three-fourths have seven or nine judges. All but one have at least five judges in conformance with section 1.13(a) of the American Bar Association Standards Relating to Court Organization which provides that courts of last resort "should have not less than five nor more than nine members."

Virtually all of these 26 courts of last resort also utilize discretionary review procedures similar to those used in the U.S. Court of Military Appeals. 10 U.S.C. sec. 867. This also is in keeping with section 1.13(b) of the ABA Standards. In measuring caseload volume and the workload of these courts, the National Center for State Courts has adopted the well-recognized definition of a "case" as "any appeal, any original proceeding, or any request to appeal." This conforms to the realities of discretionary review since the certiorari process itself consumes substantially over half of the Court's resources and time as indeed it should if the top appellate court is to function as anything more than a rubber stamp.

The purpose in briefly summarizing the structure, size and operating procedures of these courts is primarily to emphasize that the U.S. Court of Military Appeals is one of only two courts of last resort with intermediate appellate courts which has only three sitting judges and which presently does not measure up to the American Bar Association's Standards. In spite of its size, however, the Court of Military Appeals ranks fifth among these courts in total cases filed and fourth in total cases disposed based upon our present statistical data.

In comparison to the other 26 state courts of last resort, the Court of Military Appeals' present workload reflects the highest filings on a per judgeship basis and also the highest number of dispositions. Additionally, measuring our present activity against that reported by the National Center for State Courts, the U.S. Court of Military Appeals was one of only eight of the courts of last resort surveyed which disposed of more cases than were filed.

The only other three judge court had roughly half the number of filings of our Court and barely one third the number of dispositions. Without a doubt, the U.S. Court of Military Appeals is, and will remain, one of the busiest courts of last resort in the entire country. This is understandable when one considers that the Court's jurisdiction extends to all active duty members of the Army, Navy, Air Force, Marine Corps, and Coast Guard, as well as reservists, retired members, and cadets at the military academies.

Until additional judgeships are authorized, the Court's only method of attempting to keep current with this caseload has been to rely more heavily upon automated equipment and very competent staff. Nevertheless, the Court's staffing level and its appropriation request both remain quite modest in comparison with the present funding levels of the state courts of last resort across the country. The following tables summarize the annual budgets of a number of representative state courts of last resort.

The Court has continued to streamline its internal operation to assure that all of the Court's programs and objectives can be met with minimal personnel and resources.

**TABLE I**

Jurisdiction	Authorized Personnel	Current Budget*	Total Dispositions**	Cost Per Disposition
Alabama Sup Ct .....	60	\$1.523	369	\$4,127
Calif. Sup Ct .....	77	\$3.261	3712	\$ 879
Florida Sup Ct .....	60	\$1.670	1454	\$1,149
Nevada Sup Ct .....	36	\$ .868	634	\$1,369
NY Ct of Appeals .....	112	\$3.530	3070	\$1,150
Ohio Sup Ct .....	62	\$1.763	1310	\$1,346
Okla Sup Ct .....	53	\$1.309	771	\$1,698
US Ct of Mil Appeals ...	49	\$2.033	1876	\$1,084

\* State court estimates are for FY79 in millions. USCMA is FY80 estimate.

\*\* Filing rates for the state courts are based upon National Center data whereas the USCMA rates reflect FY78 statistical data.

**TABLE II**

Jurisdiction	Authorized Personnel	Current Budget*	Total Filings**	Cost Per Filing
Alabama Sup Ct .....	60	\$1.523	369	\$4,127
Calif. Sup Ct .....	77	\$3.261	3668	\$ 889
Florida Sup Ct .....	60	\$1.670	1846	\$ 905
Nevada Sup Ct .....	36	\$ .868	553	\$1,570
NY Ct of Appeals .....	112	\$3.530	2949	\$1,197
Ohio Sup Ct .....	62	\$1.763	1323	\$1,333
Okla. Sup Ct .....	53	\$1.309	992	\$1,320
US Ct of Mil Appeals ...	49	\$2.033	1739	\$1,169

\* State court estimates are for FY79 in millions. USCMA is FY80 estimate.

\*\* Disposition rates for the state courts are based upon National Center data whereas the USCMA rates reflect FY78 statistical data.

**BAR MEMBERSHIP**

Applications for membership in the bar of the Court were received from 506 attorneys during 1978. Special ceremonies were held at the Old Colony House, Newport, Rhode Island, on July 10, 1978, and in conjunction with the Annual Meeting of the American Bar Association in New York, New York, on August 8, 1978.

During the year honorary membership in the bar of the Court was extended to several distinguished foreign visitors: Colonel Peter Agbeko, Director of Legal Services of the Armed Forces of Ghana; Colonel Frederic de Mulinen of Switzerland, a representative of the International Committee of the Red Cross and the Henry Durant Institute and the Director of Military Courses at the International Institute of Humanitarian Law, San Remo, Italy; Captain Hafiz Abdul Majid Malik, Judge Advocate General of the Navy of Pakistan; and Jean-

Jacques Surbeck, of Switzerland, who is with the Department of Doctrine and Law of the International Committee of the Red Cross.

### **APPELLATE ADVOCACY CONFERENCE**

Under the sponsorship of the United States Court of Military Appeals in conjunction with the Military Law Institute, the Third Annual Homer Ferguson Conference on Appellate Advocacy was held at the Georgetown University Law Center on May 17-20, 1978. The conference was addressed by a number of distinguished speakers. Senator Strom Thurmond of South Carolina spoke on the "Criminal Law Reform Act of 1978." Associate Justice Joseph R. Weisberger of the Supreme Court of Rhode Island reviewed recent criminal law developments in the United States Supreme Court. Henry B. Rothblatt, Esquire, addressed the subject of "Oral Arguments in Appellate Courts." Frederick Bernays Wiener, Esquire, spoke on "Advocacy at Military Law."

The Chief Judges of the Courts of Military Review conducted a panel discussion on the role of intermediate appellate courts, and Captain John S. Cooke of the Army Judge Advocate General's School faculty again provided the conference with his perceptive views on recent military justice developments. Professor Robinson O. Everett of Duke University Law School, who is Chairman of the ABA Standing Committee on Military Law, discussed the relationship between military justice and the organized bar.

Over 200 uniformed and civilian appellate lawyers practicing before the Courts of Military Review and this Court, as well as the Judges of the Courts of Military Review and this Court, the Judge Advocates General of the various services, and other scholars and commentators in the field of military justice, were in attendance at the conference.

### **MILITARY JUSTICE RESEARCH MATERIALS**

The state of legal research in the field of military justice was further enhanced by the release of Shepard's Military Justice Citations, published quarterly beginning in March 1978. The appearance of this publication completes the movement of military justice caselaw into the mainstream of American legal research materials.

### **BOOKS AND ARTICLES ON THE U.S. COURT OF MILITARY APPEALS**

Judge William H. Cook of the Court published a major article, *Courts-Martial: The Third System in American Criminal Law*, appearing in the 1978 Southern Illinois University Law Journal. Eugene R. Fidell, Esquire, a private practitioner and member of the Court's Bar, published a *Guide to the Rules of Practice and Procedure of the United States Court of Military Appeals* (1978). This booklet is an

exhaustive annotation of the Rules of Practice and Procedure promulgated by the Court in July 1977. A number of other articles and casenotes appeared in various legal periodicals and journals during the term.

### **JUDICIAL VISITATIONS**

The Judges of the Court continued their policy of visiting military installations in an effort to familiarize themselves with the conditions under which military justice is administered in the armed forces. Chief Judge Fletcher visited the Naval Base, Norfolk, Virginia; Langley Air Force Base, Hampton, Virginia; the Judge Advocate General's School, U.S. Army, Charlottesville, Virginia; the Aerospace Defense Command, Peterson Field, Colorado; the U.S. Air Force Academy, Colorado Springs, Colorado; Lowry Air Force Base, Denver, Colorado; Barksdale Air Force Base, Shreveport, Louisiana; and the Marine Corps Air Station, Cherry Point, North Carolina. Judge Cook visited Maxwell Air Force Base, Montgomery, Alabama; the Naval Support Activity, New Orleans, Louisiana; the Naval Justice School, Newport, Rhode Island; Andrews Air Force Base, Maryland; Offutt Air Force Base, Omaha, Nebraska; and major Army, Navy, Air Force and Marine Corps installations in Hawaii, Okinawa, Korea, Japan, the Philippines and Guam. Judge Perry visited the Naval Justice School, Newport, Rhode Island; Andrews Air Force Base, Maryland; Keesler Air Force Base, Mississippi; Vandenburg Air Force Base, Lompox, California; March Air Force Base, Riverside, California; the Marine Corps Base, Quantico, Virginia; and major Army, Navy, Air Force and Marine Corps installations in Hawaii, Okinawa, Korea, Japan, the Philippines and Guam. The Judges welcome these opportunities to meet with commanders, military lawyers, and others involved in the administration of military justice to get their views on the operation of the military justice system and the need for changes in the Uniform Code of Military Justice.

### **UNIONIZATION OF COURT EMPLOYEES**

On July 10, 1978, an election was held under the auspices of the United States Department of Labor to ascertain whether certain secretarial and clerical employees of the Court wished to be represented by the American Federation of Government Employees, Local 2. The labor union failed to gain a majority vote for the bargaining unit in the election thereby mooting the Court's contention that it was not subject to Executive Order 11491, which, by its terms, is limited in scope to executive agencies and departments of the government.

## LEGISLATIVE RECOMMENDATIONS

For the reasons previously addressed in this report, the Court recommends that the number of judgeships on the U.S. Court of Military Appeals be enlarged to a minimum of five. In order to attract the most capable individuals to fill future vacancies, the Court further recommends that, whatever the term of appointment, a newly appointed judge should be appointed to serve a full term. These recommendations, in addition to those set forth in the "Status of the Court and its Employees" section of last year's Report, warrant the attention of the Congress at the earliest possible date.

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

#### Appellate practice and procedure: limitations on post-trial review errors, retroactivity of decisions and the miscellaneous docket

The Court denied an appellate challenge to the adequacy of a staff judge advocate's post-trial review, reiterating that its purpose in establishing the rule requiring service of the review on trial defense counsel and an opportunity to submit rebuttal, *United States v. Goode*, 23 USCMA 367, 50 CMR 1 (1975), was to terminate the practice of litigating the adequacy of a review on appeal if the defense has not first challenged it before the convening authority. *United States v. Barnes*, 3 M.J. 406 (C.M.A. 1977).

The Court also had occasion to rule on the retroactivity of two prior decisions. The opinion in *United States v. Booker*, 5 M.J. 238 (C.M.A. 1977), which held that summary court-martial convictions could not be used to trigger the sentence escalation provisions of the Manual for Courts-Martial, United States, 1979 (Revised edition), was held to apply only prospectively. Likewise, the decision in *United States v. Newcomb*, *supra*, which held that a convening authority could not delegate to a subordinate the authority to appoint a military judge and counsel to a court-martial, was held to apply only prospectively. *United States v. Mixson*, 5 M. J. 236 (C.M.A. 1978).

On the Miscellaneous Docket of the Court, there were two decisions of interest. In *Whitfield v. United States*, 4 M.J. 289 (C.M.A. 1978), the Court ruled that once a servicemember has completed service of the term of confinement to which sentenced, the member must be released from all conditions of retraining and restraint resulting from assignment to a retraining brigade. In *Stewart v. Stevens*, 5 M.J. 220 (C.M.A. 1978), the Court declined to rule on a request to review the imposition of nonjudicial punishment under Article 15, UCMJ, which was alleged to be defective for lack of service connection over an off-base offense.

**Convening authority involvement in the court-martial process:  
delegation of responsibilities to subordinates**

In a case involving a convening authority's practice of delegating to his staff judge advocate the authority to name the military judge and counsel to a court-martial, the Court ruled that the selection of judge and counsel is nondelegable and must be personally made by the convening authority. *United States v. Newcomb*, 5 M.J. 4 (C.M.A. 1978). Similarly, the Court declined to approve a practice wherein the convening authority chose a group of officers and enlisted persons as potential jurors, leaving to subordinates the authority to select the jurors to serve on specific panels. *United States v. Ryan*, 5 M.J. 97 (C.M.A. 1978). These two cases underscored the principle that errors in the constitution of the court-martial defeat the jurisdiction of courts-martial so convened.

**Court-martial jurisdiction over persons: coerced enlistments and retention for trial in lieu of discharge**

The Court declined to extend the doctrine of *United States v. Catlow*, 23 U.S.C.M.A. 142, 48 CMR 758 (1974), which denied court-martial jurisdiction over a youth who enlisted in the Army upon being offered by a juvenile court judge the choice between indeterminate detention for 5 years and military service. In *United States v. Lightfoot*, 4 M.J. 262 (C.M.A. 1978), the Court held that the *Catlow* defense was not available to a criminal defendant who, on the advice of counsel, initiates the proposal of military service as an alternative choice to confinement for juvenile offenses.

The Court also construed the meaning of Article 2(1), UCMJ, which imposes court-martial jurisdiction upon persons "awaiting discharge after expiration of their terms of enlistment." In *United States v. Hutchinson*, 4 M.J. 190 (C.M.J. 1978), the Court held that the mere expiration of a term of enlistment does not automatically terminate court-martial jurisdiction. Such jurisdiction continues until the formalities of a discharge or release from active duty have been met or the person objects to his continued retention in the service and a reasonable time expires without appropriate action by the government. To the extent that the service fails to comply with military regulations which seem to mandate affirmative action to retain jurisdiction, they are ineffective for a regulation cannot restrict jurisdiction in a manner contrary to the intent of Congress.

In another case in which an accused had been given orders separating him from active duty which would be self-executing on their effective date, the failure of the government to do more than draft charges before that date allowed court-martial jurisdiction to terminate. The Court held the government was obligated at some definitive point in time to authoritatively signal its intent to impose legal processes upon an individual. The examples contained in paragraph



lld, Manual for Courts-Martial, United States, 1969, (Revised edition), of apprehension, arrest, confinement or filing of charges were not considered all-inclusive; however, the Court held merely writing down proposed charges was insufficient to retain jurisdiction. *United States v. Smith*, 4 M.J. 365 (C.M.A. 1978).

**Court-martial practice and procedure: general deterrence at sentencing, interservice inequality in punishment, plea bargain inquiry, revocation of jury waiver, summary court-martial offense**

Reviewing the opinion in *United States v. Mosely*, 1 M.J. 350 (C.M.A. 1976), in which the Court prohibited the use of the general deterrence theory of sentencing, a divided Court narrowed the decision and, in *United States v. Varacalle*, 4.M.J. 181 (C.M.A. 1978), affirmed a sentence imposed by a military judge who considered the deterrence of others in sentencing an accused who had pleaded guilty in separate affirming opinions, Chief Judge Fletcher and Judge Perry indicated that the military judge had achieved the proper goal of individualized sentencing notwithstanding his consideration of the general deterrence factor.

After the decision in *United States v. Courtney*, 1 M.J. 438 (C.M.A. 1976), which limited the maximum punishment in appropriate cases to the lesser of the Article 92 punishment or the Article 134 punishment when the criminal act violates both articles, the U.S. Army and the U.S. Air Force rescinded their drug regulations. In *United States v. Hoelsing*, 5 M.J. 355 (C.M.A. 1978), the Court rejected the argument that extant Navy and Coast Guard drug regulations carrying lower punishments causes Army and Air Force members to be deprived of the equal protection of laws when their services prosecuted them for drug offenses under the general article with its greater penalty.

In reviewing a case tried after the decision in *United States v. Green*, 1 M.J. 453 (C.M.A. 1976), the Court declined to adopt a standard of appellate review which would have permitted the military judge's inquiry into the existence of a plea bargain to be tested merely for substantial compliance. Unless the procedure outlined in *Green* was strictly followed the appellate authorities were left without a record which satisfactorily demonstrates the absence of *sub rosa* agreements. *United States v. King*, 3 M.J. 458 (C.M.A. 1977).

An accused's right at a common trial, under certain circumstances, to withdraw a request for trial by military judge alone was affirmed by the Court in *United States v. Wright*, 5 M.J. 106 (C.M.A. 1978). Change of litigation conditions, not merely change of mind, authorized the revocation of the jury waiver. By refusing to rule on the admissibility of pretrial statements at a preliminary session of the trial, and which at trial as both judge and fact finder the military judge would have later been required to redact as to each accused against the other, the military judge erred, which, when coupled with the

lack of demonstrated disadvantage to witnesses or readily available court-martial members, rendered denial of the withdrawal request an abuse of discretion by the military judge.

Upon reconsideration of its prior decision, the Court modified its position that the jurisdiction of a summary court-martial must be limited to minor military offenses lacking a civilian criminal counterpart. In *United States v. Booker*, 5 M.J. 246 (C.M.A. 1978) (on reconsideration), the Court held that *Middendorf v. Henry*, 425 U.S. 25 (1976), did not mandate a limitation on summary courts-martial to minor disciplinary matters.

#### **Courts of Military Review: power to suspend sentences and sentence-reassessment obligations**

In reviewing a case in which the U.S. Navy Court of Military Review had acted independently to suspend a bad-conduct discharge, the Court refused to depart from a strict construction of Articles 66, 71, and 74, UCMJ, 10 U.S.C. secs. 866, 871 and 874, by reading the grant of suspension powers in these articles to others and the withholding of it from the Courts of Military Review as an unequivocal denial of such authority to the Courts of Military Review. *United States v. Darville*, 5 M.J. 1 (C.M.A. 1978). In another case, the Court had the opportunity to review the action of a Court of Military Review in reassessing a sentence on the basis of error found in the admission at sentencing of certain nonjudicial punishments. The Court, asserting its statutory obligation to review as a matter of law a reassessment of sentence in a Court of Military Review required by a finding of error in the sentencing procedures at trial, held that the U.S. Army Court of Military Review erred as a matter of law in reassessing and affirming a sentence including a bad-conduct discharge on the grounds that it was a relatively light sentence. The Court held that the punishment was severe, and that it was inappropriate to view a bad-conduct discharge as a sign of lack of prejudice in sentencing in the face of acknowledged errors at trial. *United States v. Dukes*, 5 M.J. 71 (C.M.A. 1978).

#### **Right to confront witnesses: chain-of-custody forms, obligation to depose, and general discovery**

The Court addressed several cases involving witnesses at trial which are likely to have impact upon trial practice before courts-martial. In *United States v. Nault*, 4 M.J. 318 (C.M.A. 1978), the Court prohibited the use as a business record of a chain-of-custody form to account for the control of fungible contraband evidence during the time it is held in prosecutorial hands. Then, addressing the right to cross-examine prosecution witnesses at a pretrial investigation, the Court held that the failure of the defense to exercise the opportunity to depose two civilian witnesses who previously declined an

invitation to appear at the investigation foreclosed the accused on appeal from upsetting his conviction for lack of confrontation at the pretrial investigation. *United States v. Chuculate*, 5 M.J. 143 (C.M.A. 1978). The Court also made it clear that there is no constitutional right to general discovery for an accused at court-martial for the purpose of testing all possible defenses. The government has no obligation to produce witnesses whose names appear in an inculpatory way at a pretrial investigation in the absence of proof that the government is withholding evidence favorable to the defense. *United States v. Lucas*, 5 M.J. 167 (C.M.A. 1978). The Court went on to hold in the same case that not every failure to produce a material witness requires reversal of a conviction. Where the record on appeal demonstrates beyond a reasonable doubt that such evidence would not have tipped the balance in favor of the accused and where the evidence of guilt is so strong as to show no reasonable possibility of prejudice, reversal is not mandated.

**Right to counsel: pretrial confinees, access to client, and conflict-of-interest procedure**

In the exercise of its general supervisory power over the administration of military justice, the Court ruled that an accused in the military justice system is entitled to the assignment of counsel for representational purposes at the earliest possible moment and that fundamental fairness requires legal representation of those who are in pretrial confinement for more than a brief period of time. *United States v. Jackson*, 5 M.J. 223 (C.M.A. 1978). The Court declined to extend to an accused a statutory right under Article 38, UCMJ, to have the same attorney represent him at a rehearing at the trial level as had represented him on appeal pursuant to Article 70, UCMJ. Once appellate proceedings have terminated, if a rehearing is ordered the assignment of a different defense lawyer does not constitute an improper severing of any previous attorney-client relationship. *United States v. Kelker*, 4 M.J. 323 (C.M.A. 1978). The Court also was asked to rule on the denial of access of a civilian attorney to his military client who was being held for questioning on unrelated matters where the accused was unaware of the lawyer's presence nearby. The Court held that an incriminating statement secured from the accused under these circumstances was in derogation of his Sixth Amendment right to counsel. In this case, the Court also held that there may be circumstances when an accused can validly waive his rights to counsel after having initially asserted them. *United States v. Turner*, 5 M.J. 148 (C.M.J. 1978). In a case involving an accused who was represented by a lawyer who earlier had represented the principal prosecution witness, the Court directed that a military judge follow a procedure similar to that prescribed by Fed. R. Crim. P. 11 with respect to guilty pleas when faced with a trial involving a potential danger of repre-

sentation by counsel with a conflict of interest. *United States v. Davis*, 3 M.J. 430 (1977).

#### **Right to privacy: gate searches and parked automobiles**

Coming under scrutiny in *United States v. Rivera*, 4 M.J. 215 (C.M.A. 1978), was a random gate search procedure established by the American commander at Korat Royal Thai Air Force Base. In separate opinions affirming the conviction, Chief Judge Fletcher adopted a border-search rationale to support an American commander's search authority abroad while Judge Cook found the search valid based upon a commander's plenary search authority. Turning to a gate search at a military base within the territorial limits of the United States, the Court held, in *United States v. Harris*, 5 M.J. 44 (C.M.A. 1978), that the use of gate searches to deter persons from introducing contraband onto a military installation is an eminently reasonable response to a serious problem affecting the military. Nevertheless, for a gate search to be reasonable within the meaning of the Fourth Amendment's provisions against unreasonable searches, the regulatory procedure must be prescribed in advance and must eliminate the possibility that law enforcement personnel at the gate can exercise selectivity and discretion concerning who or what may be searched. In the third search case of the term the Court upheld the search of an automobile parked on an Air Force base. Because an automobile owner has no reasonable expectation of privacy in the odors emanating from it while parked in a public area, a trained marijuana detection dog may be used to detect the presence of marijuana inside a locked, parked automobile thereby supplying probable cause to support a search of the vehicle. *United States v. Grosskreutz*, 5 M.J. 344 (C.M.A. 1978).

#### **Right to speedy trial**

The Court also construed Article 10, UCMJ, which requires that immediate steps be taken once an accused is placed under arrest or confinement to inform him of the accusations and to try him or to dismiss the charges and release him. In *United States v. Nelson*, 5 M.J. 189 (C.M.A. 1978), the Court held this codal article was not violated where an accused was held in pretrial confinement for some 13 days after which he was released but not brought to trial for over 6 months. The Court ruled that this pretrial delay did not amount to a deprivation of the Sixth Amendment right to a speedy trial under pertinent Supreme Court caselaw.

#### **Substantive offenses: Assimilative Crimes Act**

Faced with an argument that the provisions of Articles 129 and 130, UCMJ, have preempted prosecution by court-martial for the offense of burglary of an automobile, as proscribed by the Texas Penal

Code, the Court held that, in enacting those provisions of the Code, Congress manifested no intention to limit military prosecution to only structures and places mentioned in Articles 129 and 130. Consequently, the two accused were properly indicted and tried for the burglary of an automobile under the provisions of the general article for "crimes and offenses not capital" made part of federal civilian law through the Assimilative Crimes Act. *United States v. Wright*, 5 M.J. 106 (C.M.A. 1978).

## USCMA FY78 STATISTICAL REPORT

### CUMULATIVE BEGINNING PENDING

Master Docket .....	345
Petition Docket .....	451
Miscellaneous Docket .....	<u>13</u>
<b>TOTAL .....</b>	<b>809</b>

### CUMULATIVE FILINGS

Certificates filed .....	9
Certificates filed w/ cross-petition granted .....	1
Petitions for grant of review filed .....	1,627
Extraordinary writs sought .....	99
Reconsideration filings granted .....	<u>4</u>
<b>TOTAL .....</b>	<b>1,740</b>

### CUMULATIVE TERMINATIONS

Master Docket .....	394
Petition Docket .....	1,384
Miscellaneous Docket .....	<u>98</u>
<b>TOTAL .....</b>	<b>1,876</b>

### CUMULATIVE END PENDING

Master Docket .....	394
Petition Docket .....	265
Miscellaneous Docket .....	<u>14</u>
<b>TOTAL .....</b>	<b>673</b>

### FILINGS (MASTER DOCKET)

Appeals filed .....	0
Certificates filed .....	9
Petitions granted .....	429
Petitions granted w/certificate .....	1
Reconsideration granted .....	<u>4</u>
<b>TOTAL .....</b>	<b>443</b>

### TERMINATIONS (MASTER DOCKET)

Findings and sentence affirmed .....	204		
Reversed in whole or in part .....	170		Signed .....
Granted petitions vacated .....	9		67
Other disposition directed .....	<u>11</u>		Per curiam .....
<b>TOTAL .....</b>	<b>394</b>		12
			Mem opn/order ...
			<u>315</u>
		<b>TOTAL .....</b>	<b>394</b>

### PENDING (MASTER DOCKET)

Assigned opinions pending .....	235
Judges' conference pending .....	0
Oral argument pending .....	22
Preargument conference pending .....	96
Calendar committee pending .....	5
Final briefs pending .....	<u>36</u>
<b>TOTAL .....</b>	<b>394</b>

FILINGS (PETITION DOCKET)

Petitions for grant of review filed .....	1,626
Petitions for grant/new trial filed .....	<u>1</u>
TOTAL .....	1,627

TERMINATIONS (PETITION DOCKET)

Petitions for grant dismissed .....	37	
Petitions for grant denied .....	1,326	Signed .....
Petitions for grant remanded .....	15	Per curiam .....
Petitions for grant withdrawn .....	<u>6</u>	Mem opn/order .....
TOTAL .....	1,384	TOTAL .....

PENDING (PETITION DOCKET)

Petition briefs pending .....	176
Staff attorney action pending .....	69
Court action pending .....	<u>20</u>
TOTAL .....	265

FILINGS (MISCELLANEOUS DOCKET)

Writs of error coram nobis sought .....	7
Writs of habeas corpus sought .....	24
Writs of mandamus/prohibition sought .....	40
Other extraordinary writs sought .....	<u>28</u>
TOTAL .....	99

TERMINATIONS (MISCELLANEOUS DOCKET)

Petitions withdrawn .....	4	
Petitions remanded .....	0	Signed .....
Petitions granted .....	2	Per curiam .....
Petitions denied .....	71	Mem opn/order .....
Petitions dismissed .....	<u>21</u>	TOTAL .....
TOTAL .....	98	98

PENDING (MISCELLANEOUS DOCKET)

Briefs pending .....	1
Action by Writs Counsel pending .....	12
Show cause action by Court pending .....	0
Show cause response pending .....	1
Temporary stay in effect .....	0
Other final action pending .....	<u>0</u>
TOTAL .....	14

## RECONSIDERATIONS

Category	Filings	Pending	Granted	Dispositions		Total
				Rejected		
MASTER DOCKET	34	2	5	29	34	
PETITION DOCKET	52	5	7	42	49	
MISC. DOCKET ...	<u>2</u>	<u>0</u>	<u>1</u>	<u>1</u>	<u>2</u>	
	88	7	13	72	85	

## MOTIONS

Category	Filings	Pending	Granted	Dispositions		Total
				Rejected		
	1078	34	788	257	1045	



**REPORT OF**  
**THE JUDGE ADVOCATE GENERAL OF THE ARMY**  
**OCTOBER 1, 1977 to SEPTEMBER 30, 1978**

During fiscal year 1978, 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 during fiscal year 1978. The total number of persons tried by all types of courts-martial in fiscal year 1978 declined by 7.1% from the year before, and those convicted by 5.3%. The figures for fiscal year 1977 were a 21.1% decline in persons tried, from the prior year, and a 23.3% decline in persons convicted.

The total number of Article 15's imposed during fiscal year 1978 decreased from that of fiscal year 1977 by 7.4%. In fiscal year 1978, there were 154,410 Article 15's imposed, or approximately 20.2 times the total number of courts-martial tried. In fiscal year 1977, there were 166,798 Article 15's imposed, also approximately 20.2 times the total number of courts-martial tried during that year.

A factor which contributed to the decline in the courts-martial rate was the continued use of administrative procedures to separate service members who were in trouble or likely to come into conflict with military criminal law. Procedures under Chapter 10, Army Regulation 635-200, were used to separate soldiers facing court-martial for an offense whose maximum punishment includes a punitive discharge. Expeditious Discharge and Trainee Discharge Programs were used to identify and separate members who could not adjust to Army life.

## Statistical Summary: Fiscal Year 1978

### a. Courts-martial statistics (persons tried):

Type court	Tried	Convicted	Acquitted	Decrease in persons tried over fiscal year 1977 (percent)
General .....	1,021	891	130	12.2
BCD special .....	810	629	(*)	4.0
Non-BCD special ..	3,945	3,499	446	6.6
Summary .....	1,848	1,646	202	6.5
Overall decrease in persons tried over fiscal year 1977:				7.1

\* Not available

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

#### General courts-martial:

Dishonorable discharges: ..... 165

Bad-conduct discharges: ..... 490

#### Special courts-martial:

Bad-conduct discharges: ..... 547

### c. Records of trial received for:

Review under Art. 66 (GCM): ..... 695

Review under Art. 66 (BCD SPCM): ..... 552

Examination under Art. 69 (GCM): ..... 356

### d. Workload of the Army Court of Military Review:

Total cases on hand at beginning of fiscal year 1978: ..... 738

GCM: ..... 489

BCD SPCM: ..... 249

Cases received for review: ..... 1,363

GCM: ..... 785

BCD SPCM: ..... 578

Total cases reviewed: ..... 1,601

GCM: ..... 962

BCD SPCM: ..... 639

Total cases pending at close of fiscal year 1978: ..... 500

GCM: ..... 312

BCD SPCM: ..... 188

Decrease over number of cases reviewed during fiscal year 1977 (percent): 22.0

### e. Requests for appellate counsel in cases before the Army Court of

#### Military Review:

Number: ..... 1,595

Percentage: ..... 99.6

### f. U.S. Court of Military Appeals actions (percentages):

ACMR reviewed cases forwarded to USCMA: ..... 58.9

Increase over fiscal year 1977: ..... 9.7

Total petitions granted: ..... 31.0

Increase over fiscal year 1977: ..... 14.0

Petitions granted of total cases reviewed by ACMR: ..... 18.2

Increase over number of cases reviewed during fiscal year 1977: ..... 9.8

g. Applications for relief, Article 69:	
Pending at beginning of fiscal year 1978: .....	19
Received during fiscal year 1978: .....	248
Disposed of: .....	232
Granted: .....	17
Denied: .....	208
No jurisdiction: .....	2
Withdrawn: .....	5
Total pending at end of fiscal year .....	35
h. Organization of trial courts.	
Trials by military judge alone:	
GCM: .....	547
BCD SPCM: .....	421
Trials by military judge with members:	
GCM: .....	507
BCD SPCM: .....	133
i. Complaints under Article 138 received by OTJAG: .....	91
j. Army average active duty strength, fiscal year 1978: .....	770,708
k. Nonjudicial punishment (Article 15).	
Number cases where nonjudicial punishment imposed: .....	154,410
Rate per 1,000 average strength: .....	200.3
Decrease in rate per 1,000 average strength over fiscal year 1977: .....	13.8

### **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, the Contract Appeals Division and the Regulatory Law Office. The latter two sections have no function related to the U.S. Army Judiciary and its court-martial mission, but represent the Army and the Department of Defense in certain contractual disputes before regulatory commissions and boards.

### **U.S. Army Trial Defense Service**

On 15 May 1978, with the approval of the Chief of Staff, the Army began a one-year test of a new organization for military defense counsel, known as the U.S. Army Trial Defense Service (USATDS). The test is being conducted at 16 installations.

The primary mission of USATDS is to provide specified defense counsel services at the installation level. USATDS counsel represent soldiers at courts-martial, Article 32 investigations, and certain administrative actions in which counsel is required. They also give advice to soldiers offered Article 15 punishment and to suspects, as required by law. Secondary USATDS missions are aimed at improving the professionalism and efficiency of defense counsel.

The underlying reasons for establishing a separate defense organization are similar to those which ten years ago prompted the Army to form an independent organization for military trial judges. Studies showed that some soldiers viewed military defense counsel as having divided loyalties because they were assigned to the command of the convening authority.

In the test, defense counsel are assigned to the U.S. Army Legal Services Agency. USATDS is headed by a senior JAGC colonel. With a three-man staff, he is located in the Washington area. The remaining defense counsel perform duties in the field. All were carefully screened to ensure they possessed necessary background, experience, and professional and personal qualifications. For administrative purposes, the testing installations have been grouped into three geographical regions. A field grade Regional Defense Counsel supervises operations within each region. The Assistant Judge Advocate General for Civil Law exercises overall supervision over the program. Performance ratings are accomplished in the defense chain, thereby eliminating allegations of unlawful command influence.

USATDS field offices are satellited on the local SJA offices for administrative and logistical support. This is similar to the arrangements now used to support the military trial judges.

In addition to correcting perceptions concerning divided loyalties of counsel, USATDS provides a responsive defense chain of supervision, guidance, and evaluation. Staff judge advocates now may devote an increasing share of their time to legal responsibilities which do not relate to the administration of military justice. Conversely, Regional and Senior Defense Counsel have only one job, the defense function, and they can devote their full efforts to such duties. Thus, through supervision and management, the Army will be able to enhance the professionalism of counsel and, at the same time, promote the most effective and efficient use of resources.

During fiscal year 1978, experience with the test program was favorable. It continues to be evaluated by commanders, staff judge advocates, USATDS personnel, and others charged with the administration of military justice.

### **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 evaluation 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.

## **Change To Military Justice Regulation**

Change 18, Army Regulation 27-10, Military Justice, was prepared in fiscal year 1978 with an effective date of 1 March 1979. Some of the significant changes include: providing for a mental status evaluation of accused referred to trial by general or BCD special court-martial; incorporating the designation by the Secretary of the Army of The Judge Advocate General as the authority next superior on Article 15 appeals, when no intermediate superior authority is reasonably available; incorporating revised DA Form 2627 (Record of Proceedings under Article 15, UCMJ); adding formulas for determining maximum authorized monthly forfeitures and detentions of pay under Article 15, UCMJ; updating the informational references to various restrictions as to membership of courts-martial and other related military justice duties; conforming the Advice as to Appellate Rights and the Petition for Grant of Review forms to the current rules of the U.S. Court of Military Appeals; and providing an index of the figures and tables located in the regulation.

## **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 1977 through 30 November 1978, out of 16,485 cases (worldwide) involving primary foreign concurrent jurisdiction of U.S. Army personnel, foreign authorities waived their jurisdiction in 16,261 cases for a waiver rate of 98.6 percent. This compares with a waiver rate of 97.5 percent in the previous reporting period.

## **LITIGATION**

Litigation involving the Army during fiscal year 1978 had only a limited impact upon military justice matters.

In *Curry v. Secretary of the Army*, Civ. No. 77-07171 (D. D.C. 1977), appeal docketed, No. 78-1031 (D.C. Cir. 1978), 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. In dismissing plaintiff's complaint, the district court concluded that the referenced portions of the UCMJ did not violate the Due Process Clause of the Fifth Amendment.

In *Stidham v. TJAG, et al.*, Civ. No. TH 77-129-C (S.D. Ind., 1978), plaintiff, a military prisoner serving his sentence in a federal penitentiary, sought to have his sentence reduced by the amount of time he spent in pretrial confinement. In dismissing his action, the U.S. District Court for the Southern District of Indiana concluded that

plaintiff's sentence did not exceed the statutory maximum sentence impossible for the offense he had committed and that, otherwise, the issue he raised was beyond the permissible scope of judicial review.

In *Ready v. United States*, Civ. No. C77-2798 (N.D. Cal., 1978), plaintiff sought back pay and allowances and restoration to his former rank alleging that his court-martial conviction was defective due to lack of speedy trial and inadequate representation by military counsel. The U.S. District Court for the Northern District of California dismissed plaintiff's complaint without prejudice to his refile in the U.S. Court of Claims, concluding that the latter court was the proper forum for disposition of plaintiff's action.

Finally, in *Mitchell v. United States*, Civ. No. 78-4-Civ-3 (E.D. N.C., 1978), plaintiff challenged his court-martial conviction in the U.S. District Court for the Eastern District of North Carolina, alleging that the court-martial lacked jurisdiction over the offense in question. Noting that plaintiff was serving a life sentence at the U.S. Disciplinary Barracks, Ft. Leavenworth, Kansas, the district court concluded that it lacked jurisdiction over plaintiff's action and dismissed it.

## EDUCATION AND TRAINING

During fiscal year 1978, The Judge Advocate General's School, located in Charlottesville, Virginia, provided legal education to lawyers of the military services and other Federal agencies. Forty-three resident courses were conducted with 2,102 students in attendance. Courses were attended by 1,311 Army, 105 Navy and Marine, 118 Air Force, 45 Coast Guard, 53 Army National Guard, 14 Air National Guard, 447 civilian, and 9 foreign students.

### Courses of Instruction

During fiscal year 1978, three Basic Classes, the 85-87th, were conducted. A total of 213 officers (211 Army, one Coast Guard, and one foreign) were graduated.

The 27th Graduate Class began on 21 August 1978 with 52 Army, one Navy, five Marine, and three foreign officers in attendance.

During fiscal year 1978, the Criminal Law Division expanded its continuing legal education offerings by presenting the 1st Criminal Law New Developments Course in October 1977. This course addresses a broad range of recent developments in the practice of military criminal law.

The International Law Division developed a new course of instruction for the Law of War Workshop. The International Law faculty focused on a substantial update of the law of war to include the 1977 Protocols to the Geneva Conventions with emphasis on student participation. Course content has a substantial number of hours of seminar and practical exercises.

In April 1978, the International Law Division arranged a Law of War Panel on Directions in the Development of the Law of War. The panel presented their views and comments on the future development of the law of war to the Graduate Class, Staff and Faculty, and guests from the University of Virginia. The members of the panel were Major General Walter D. Reed, The Judge Advocate General of the Air Force; Professor Telford Taylor, formerly Associate Prosecution Counsel of major Nazi war criminals before the International Military Tribunal, Nuremberg, and Chief Prosecutor for the United States under the Charter of the International Military Tribunal; and Professor W. Thomas Mallison of the George Washington University Law Center. Their remarks are being prepared for publication in the *Military Law Review*.

A member of the International Law faculty was a participant and instructor in the Fifth International Course on Law of War for Officers at San Remo, Italy, in September 1978. The course, sponsored by the International Institute of Humanitarian Law, presents a general program on the law of war, with special emphasis on practical application of the rules of war. Although some lawyers are invited, the course is designed primarily for senior commanders and staff officers who would have occasion to apply the law of war in the performance of their duties.

The 8th Procurement Attorneys' Advanced Course, 9-13 January 1978, featured construction contracting in the Federal sector. Emphasis was placed on specification analysis, changes, differing site conditions, delay, suspension and acceleration, inspection, acceptance and warranties, and relationships of subcontractors with their prime contractors. The week concluded with a simulated claims settlement negotiation session at the contracting officer level and claims preparation and remedies at the agency boards of contract appeals level.

The Administrative and Civil Law Division sponsored a number of continuing legal education (CLE) courses in fiscal year 1978. Legal assistance, Government information practices, claims, Federal labor relations, military administrative law developments, environmental law and law office management were among the courses presented. In addition, the division sent an instructor to the NCO Advanced Course at Fort Benjamin Harrison to conduct courses in administrative and civil law subjects.

In January 1978, the Administrative and Civil Law Division conducted the 1st Litigation Course. In attendance were 34 civilian and military attorneys from all the services. General topics, such as preparing a litigation report and responsive pleadings, as well as more specialized areas, such as civil rights litigation and the Federal Rules of Civil Procedure, were discussed. Two guest speakers, Mr. John Matthews (Civilian Attorney, Litigation Division, Office of The Judge Advocate General) and Mr. Anthony J. Steinmeyer (Appellate Sec-

tion, Civil Division, Department of Justice) highlighted the course with presentations on the missions of their respective offices.

The School continued to conduct a Senior Officer Legal Orientation course for the students of the Army War College at Carlisle Barracks (6-9 March 1978). In addition, six resident Senior Officer Legal Orientation Courses were conducted at the School for four major generals and 354 senior field grade command and staff officers. In May the School conducted a one-day Senior Officer Legal Orientation for a general officer.

### **Major Projects**

In April 1978, the Director of the Judge Advocate Division, Headquarters, Marine Corps, Brigadier General James P. King, USMC, spoke to the Graduate Class on the role of the Marine Judge Advocate. In May 1978, Lieutenant General Lawrence F. Snowden, USMC, Chief of Staff, Headquarters, Marine Corps, addressed the Graduate Class on the role of the Marine Corps now and in the future.

On 27 April 1978, the second Charles L. Decker Lecture in Administrative and Civil Law was presented by Professor A. E. Dick Howard, the White Burkett Miller Professor of Law and Public Affairs at the University of Virginia. Professor Howard's topic was "The Bakke Case: The Supreme Court and the Promised Land."

The Honorable Oliver Gasch, Judge, United States District Court for the District of Columbia, delivered the Seventh Kenneth J. Hodson Lecture in Criminal Law on 10 March 1978.

The Edward H. Young Lecture in Military Legal Education was presented by Professor John M. Hazard, Columbia University School of Law, on 21 September 1978.

The Judge Advocate General's School was the site of the Basic Officers Advanced Course (BOAC) Phase IV (Administrative and Civil Law) and the Judge Advocate Reserve Components General Staff Course (resident phase) 18 June-1 July 1978. One hundred and eighteen officers attended the BOAC course, and 41 field grade officers completed the General Staff course.

The Reserve Components Technical Training (on-site) Program provided training to JAG reservists in 52 cities. School faculty members made 24 on-site trips during academic year 1977-78.

The School hosted the annual Worldwide JAG Conference 10-14 October 1977. Judge advocates stationed throughout the United States and at foreign commands conferred on themes of current interest to the military legal community.

The Board of Visitors of The Judge Advocate General's School convened at the School for their annual meeting 20-22 March 1978. Members who attended were the Honorable Robert M. Duncan, Dean Emerson G. Spies, Mr. Marion E. Harrison, Mr. James W. Curtis, and Dean Chapin D. Clark. Other members of the Board, Ms. Ruth Fleet



Thurman and Dean Donald T. Weckstein, were briefed by the Commandant 30 July-1 August 1978.

Eighteen German jurists and senior prosecutors, guests of The Judge Advocate General, were briefed on the operation of the School and the U.S. military legal system in May 1978.

The Commandant attended both the mid-year joint meeting of the Association of Continuing Legal Education Administrators and the American Bar Association in New Orleans in February and the annual joint meeting in New York in August 1978.

### PERSONNEL, PLANS, AND POLICIES

Excluding law students, the average strength of The Judge Advocate General's Corps for fiscal year 1978 was 1,440. Representing minority groups were 51 Blacks, 11 Mexican-Americans, 11 Orientals, 7 Puerto Ricans, and 61 women. The fiscal year 1978 average strength compares with an average of 1,514 in fiscal year 1977, 1,588 in fiscal year 1976, 1,590 in fiscal year 1975, and 1,571 in fiscal year 1974. The average strength of the Corps has stabilized and should remain relatively constant for the foreseeable future. The grade distribution of the Corps at the end of the fiscal year was: 5 general officers, 75 colonels, 141 lieutenant colonels, 209 majors, and 995 captains. There were also 58 warrant officers. In addition, 74 officers were participating in the Funded Legal Education Program.

To ensure that the best qualified candidates for initial commission, career status, and The Judge Advocate Officer Graduate Course were selected, formal boards were convened under The Judge Advocate General's written instructions at several times during the year.

In February 1978 a selection board was convened to select 25 active duty commissioned officers to commence law school under the Funded Legal Education Program.

Notwithstanding recent trends toward a larger percentage of career judge advocates, there is still a shortage of field grade officers. As noted in last year's report, 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 policy has resulted in a decrease in the shortage of field grade officers in fiscal year 1978 and ultimately will eliminate the shortage in the future.

Sixty-one officers completed the following schools:

U.S. Army War College .....	2
Industrial College of the Armed Forces .....	1
U.S. Army Command and General Staff College .....	9
Armed Forces Staff College .....	1
The Judge Advocate Officer Graduate Course .....	48

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

WILTON B. PERSONS, JR.  
*Major General, USA*  
*The Judge Advocate General*

**ANNUAL REPORT**  
**of**  
**THE JUDGE ADVOCATE GENERAL OF THE NAVY**  
**pursuant to**  
**THE UNIFORM CODE OF MILITARY JUSTICE**  
**for**  
**FISCAL YEAR 1978**

*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 FY 1978. (See Exhibit A attached to this report.)

b. During FY 1978, the Navy Court of Military Review received for review 254 general courts-martial and 1,492 special courts-martial, as compared with 295 general courts-martial and 1,840 special courts-martial during FY 1977. Of 1,601 cases received by the Navy Court of Military Review, 1,416 accused requested counsel (88 percent).

*Navy-Marine Corps Trial Judiciary.*—The Navy-Marine Corps Trial Judiciary provided military judges for 481 general courts-martial during Fiscal Year 1978, a decrease of 1 case from Fiscal Year 1977. In Fiscal Year 1977, 61% of the general courts-martial were tried by courts constituted with military judge alone. This is 1% more than general courts-martial tried by courts constituted without members during Fiscal Year 1977.

The Navy Marine Corps Trial Judiciary supplied military judges for 4,940 special courts-martial trials during Fiscal Year 1978, an increase of 163 cases from the Fiscal Year 1977 level of 4,777. In Fiscal Year 1978, 91% of the special courts-martial were tried by courts constituted with military judge alone. This is 1% higher than special courts-martial tried by courts constituted without members during Fiscal Year 1977.

The present manning level of the Navy-Marine Corps Trial Judi-

ciary is 18 general court-martial military judges, 1 less than the manning level at the close of Fiscal Year 1977. Eighteen special court-martial military judges are assigned to the Navy-Marine Corps Trial Judiciary, an increase of 2 from the manning level at the close of Fiscal Year 1977.

Nineteen military judges attended the Annual Judge Advocate General's Conference held in Washington, D. C. during 3-7 October 1977. Two general court-martial military judges attended a regular three-week trial judge's course at the National College of the State Judiciary, Reno, Nevada. Nine military judges attended a Military Judges Seminar at Coronado, California 28-29 October 1977. Eleven military judges attended a Military Judges Seminar at Quantico, Virginia.

*Naval Legal Service.*—The Naval Legal Service (NLS) has added no new Naval Legal Service Offices or Branch Offices since the last report and still consists of 18 parent Naval Legal Service Offices and 16 Branch Offices which are located throughout the world. The total manpower strength authorization for the NLS includes 282 judge advocates, 5 warrant officers, 181 legalmen, and for Fiscal Year 1979, 158 civilian employees which includes 33 direct hire foreign nationals and 8 indirect hire foreign nationals. 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, by consolidating available legal resources at locations with a high concentration of naval commands, continues to provide timely response to requests from activities requiring counsel and trial team services. The insulation of defense counsel in their defense of court-martial accused has proven to be an ideal vehicle to remove any perception of command influence.

The NLS is providing an ever increasing amount of necessary legal services to local commands. Periodic command inspections into the operation of each of the various Naval Legal Service Offices and Branch Offices has shown that most line commanders who depend upon the NLS for support are satisfied with the quality and timeliness of services rendered.

*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 FY 1978, 78 petitions were received by the Judge Advocate General. Ninety-one petitions, including 38 from FY 1977, were reviewed during FY 1978 and relief was granted, in whole or in part, in 23 of the petitions. Pending review at the close of FY 1978 were

32 petitions. The following disposition was made of this total of 97 petitions: (a) 68 petitions were denied, of which 35 were from FY 1977; (b) 23 petitions were granted in whole or in part; (c) 32 petitions, one from FY 1977 and 31 from FY 1978, are still pending review.

*New Trial Petitions.*—In FY 1978, 1 petition for new trial was submitted pursuant to Article 73, Uniform Code of Military Justice, and was pending at the close of the fiscal year.

*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 3 October - 7 October 1977. The conference heard addresses by the Secretary of the Navy, Chief of Naval Operations, and the Assistant Commandant of the Marine Corps. The conference included presentations on various topics; *i. e.*, trends in military justice, an update on the Military Magistrate Program and military law, Posse Comitatus, delivery of personnel to civil authorities, Detainers' Act, conflict of interest, standards of conduct, law of the sea, law of armed conflict, and current litigation. 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 the use of legalmen in paralegal capacities, military personnel and financial management concerning the Naval Legal Service Office, civilian employee matters, Freedom of Information and Privacy Acts, environmental law, servicemen's unions, tort claims, garnishment, labor relations, affirmative claims, personnel claims, foreign criminal jurisdiction, international law, wiretapping and electronic surveillance, investigations, admiralty, administrative discharge procedures, legal assistance and taxation, including income, gift, estate, federal, state, and local.

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 1978.

*Naval Justice School.*—The Naval Justice School, in Newport, Rhode Island, with a teaching staff of twelve officers and six enlisted personnel, presented the following courses of instruction in military law and related administrative and civil law matters to a total of 1,763 students during Fiscal Year 1978.

*Lawyer Course:* Five eight-week lawyer classes were presented during the year. This course, designed to provide basic training in military justice and military administrative and civil law matters to incoming Navy and Marine Corps lawyers, includes 191 hours of classroom instruction and 127 hours of practical exercises, including moot courts and various criminal law practical exercises. Training was provided to 108 Navy lawyers and 58 Marine Corps lawyers.

*Legal Officer Course:* Seven five-week classes were presented during the year (six classes in Newport and one at Camp Pendleton, California). This course is designed for nonlawyer, junior officers about to assume duties as a legal officer for a ship, station, or other military unit with no military lawyer assigned. Included in the course curriculum are 150 classroom hours and 44 hours of practical exercises and seminars. Training was provided to 167 Navy officers, 111 Marine Corps officers, and six Coast Guard officers.

*Naval-Marine Corps Reserve Officer Basic and Refresher Courses:* These two-week courses of instruction are offered once each summer for naval and Marine Corps Reserve lawyers. The Basic Course serves as an introduction to military law for those lawyers without a significant active duty legal experience. The Refresher Course is designed for lawyers who have previously served on extended active duty as a judge advocate or Marine lawyer, or those who previously have attended the Reserve Basic Course, and provides the student with an update on recent developments in military law. Training was provided to 45 Naval Reserve lawyers and 44 Marine Corps Reserve lawyers in Fiscal Year 1978.

*Senior Officer Course:* Eighteen one-week classes were presented during the year, reaching a total of 981 students. Five of the classes were presented in Newport. The other thirteen were presented in Norfolk, Virginia; Charleston, South Carolina; Jacksonville, Florida; San Diego, and San Francisco, California; Seattle, Washington; Camp Pendleton, California; Amphibious Warfare School, and Command and Staff College, Quantico, Virginia; Pearl Harbor, Hawaii, Subic Bay, Philippines; and Okinawa and Yokosuka, Japan. This course is designed primarily for commanding officers and executive officers, and is intended to prepare these officers to handle the legal problems normally faced by commanding and executive officers in the areas of military justice and administrative and civil law. Training was provided to 486 Navy officers, 444 Marine Corps officers, and 51 Coast Guard officers during the fiscal year.

*Legal Clerk Course:* Five three and one-half week classes were conducted during the year. This course is designed to train enlisted personnel to serve as legal yeomen or legal clerks at their respective commands. Graduation from this course, and from the following Court Reporting Course, is required for conversion to legalman in the Navy. Training was provided to 135 Navy personnel and 17 Coast Guard personnel.

*Court Reporting Course:* Four five-and-one-half week classes were presented during Fiscal Year 1978. The purpose of this course is to train enlisted personnel in the field of closed mask court reporting. Training was provided to 43 Navy personnel, 31 Army personnel, and 17 Coast Guard personnel.

In addition to those formal courses of instruction listed above, the

Naval Justice School also presented nearly two hundred lecture hours of instruction in the areas of search and seizure, confessions and admissions, nonjudicial punishment, investigations, administrative discharges, and command relations with civil authorities, to 2,385 students at the Surface Warfare Officers School, Officer Candidate School, Chaplains School, Naval Academy Preparatory School, and the Naval War College, in Newport, Rhode Island, and at the Naval Submarine School in New London, Connecticut.

*Certification of NCMR Decisions to USCMA for review pursuant to Article 67 (b), UCMJ.*—During this reporting period, six 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 FY 1978, 110 complaints of wrongs were received in the office of the Judge Advocate General. One hundred thirty-five complaints of wrongs, including 27 from FY 1977, were reviewed during FY 1978, leaving 2 pending review as of 30 September 1978.

*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 (Revised edition)*. 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 first session of the 96th Congress.

Proposals concerning Government appeal, the President's authority to prescribe procedures for courts-martial, vacation proceedings, and en banc rehearings by Courts of Military Review all were reviewed and then submitted to the Code Committee for its consideration. These proposals are presently pending at the Code Committee.

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, 1969 (Revised edition)*, in light of the experience of the Federal courts with the new 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 three cases brought to the attention of the Judge Advocate General.

*Civil Litigation.*—During FY 1978, 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. Two of the more significant cases and issues involved are set forth below:

a. *McLelland v. Claytor*. This case involves a service member's seeking a writ of mandamus to compel the Secretary of the Navy to release him from the United States Navy and to cause all applicable military records to be corrected to show that he was never lawfully subject to the jurisdiction and control of the United States Navy, essentially because of a breach of contract. The service member alleges that the United States Navy guaranteed him a specific school but unknown to him his enlistment agreement stated a school other than the one he believed he was guaranteed when he signed the contract. The service member, therefore, asserts that his enlistment is void as a result of fraudulent misrepresentation, mistake as to a material fact, and breach of a fiduciary duty. The case is currently in a pending status; the service member is presently in a deserter status.

b. *Ash v. Tarquin*. This case involves the proper scope of nonjudicial punishment under Article 15, Uniform Code of Military Justice. The case is a consolidation of several cases raising the issues of (1) whether service-connection is an element in nonjudicial punishment proceedings; and (2) whether service members who are permanently assigned to a ship but are temporarily assigned to a shore activity are still embarked on or attached to a vessel for purposes of nonjudicial punishment. As to the first issue, the district court held that service connection is an element in nonjudicial punishment proceedings and



granted writs of habeas corpus in those cases where the issue was specifically raised. As to the second issue, the court dismissed the case but retained jurisdiction until the petitioners exhausted their administrative remedies. As of this date, the petitioners have not refiled.

Period: FISCAL YEAR 1978

**PART I - BASIC COURTS-MARTIAL STATISTICS (PERSONS)**

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF DECREASE OVER LAST REPORT
GENERAL	346	291	55	38 (10%)
BCD SPECIAL	1,477	1,477		305 (17%)
NON-BCD SPECIAL	5,911	5,299	612	472 (07%)
SUMMARY	5,594	5,330	264	1,364 (20%)
OVERALL RATE OF INCREASE/DECREASE OVER LAST REPORT			2,179 (14%)	<del>XXXXXXXXXX</del> /DECREASE!

**PART 2 - DISCHARGES APPROVED**

GENERAL COURTS-MARTIAL (CA LEVEL)	NUMBER OF DISHONORABLE DISCHARGES	47
	NUMBER OF BAD CONDUCT DISCHARGES	182
SPECIAL COURTS-MARTIAL (SA LEVEL)	NUMBER BAD CONDUCT DISCHARGES	1,434

**PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG**

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	254
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	1,492
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	48

**PART 4 - WORKLOAD OF THE NAVY COURT OF MILITARY REVIEW**

TOTAL ON HAND BEGINNING OF PERIOD	314	
GENERAL COURTS-MARTIAL	72	
BCD SPECIAL COURTS-MARTIAL	242	
REFERRED FOR REVIEW	1,878	
GENERAL COURTS-MARTIAL	303	
BCD SPECIAL COURTS-MARTIAL	1,575	
TOTAL CASES REVIEWED	1,768	
GENERAL COURTS-MARTIAL	254	
BCD SPECIAL COURTS-MARTIAL	1,514	
TOTAL PENDING AT CLOSE OF PERIOD	424	
GENERAL COURTS-MARTIAL	121	
BCD SPECIAL COURTS-MARTIAL	303	
RATE OF INCREASE/DECREASE OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	466 (21%)	<del>XXXXXXXXXX</del> /DECREASE

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

NUMBER	1,416
PERCENTAGE	81%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	27%	
PERCENTAGE OF INCREASE/DECREASE OVER PREVIOUS REPORTING PERIOD	29%	<del>XXXXXXXXXX</del> /DECREASE
PERCENTAGE OF TOTAL PETITIONS GRANTED	17%	
PERCENTAGE OF INCREASE/DECREASE OVER PREVIOUS REPORTING PERIOD	5%	<del>XXXXXXXXXX</del> /DECREASE
PERCENTAGE PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	5%	

**PART 6 - CONTINUED**

RATE OF INCREASE/DECREASE OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	128 (21%)	INCREASE/DECREASE
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**PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69**

PENDING AT BEGINNING OF PERIOD		45	
RECEIVED		78	
DISPOSED OF		91	
GRANTED	23		
DENIED	68		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		32	

**PART 8 - ORGANIZATION OF COURT**

TRIALS BY MILITARY JUDGE ALONE		211	
GENERAL COURTS-MARTIAL			
SPECIAL COURTS-MARTIAL		6,763	
TRIALS BY MILITARY JUDGE WITH MEMBERS		135	
GENERAL COURTS-MARTIAL			
SPECIAL COURTS-MARTIAL		620	

**PART 9 - COMPLAINTS UNDER ARTICLE 138**

NUMBER OF COMPLAINTS	135	
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**PART 10 - STRENGTH**

AVERAGE ACTIVE DUTY STRENGTH	698,956	
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**PART 11 - NON-JUDICIAL PUNISHMENT (ARTICLE 15)**

NUMBER CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	142,015	
RATE PER 1,000	203.2	
RATE OF INCREASE/DECREASE OVER PREVIOUS PERIOD	6,646 (5%)	INCREASE/DECREASE

**REPORT OF**  
**THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE**  
**OCTOBER 1, 1977 TO SEPTEMBER 30, 1978**

Major General Walter D. Reed, The Assistant Judge Advocate General, was named The Judge Advocate General on October 1, 1977, succeeding Major General Harold R. Vague, who retired. Brigadier General 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 Reed and Taylor made official staff visits to legal offices in the United States and overseas. They also attended and participated in various bar association meetings, and addressed numerous civil, professional, and military organizations.

**MILITARY JUSTICE STATISTICS AND US AIR FORCE JUDICIARY  
ACTIVITIES**

During FY 1978, the Judiciary Directorate of the Office of The Judge Advocate General processed in excess of 1,671 actions involving military justice. The Directorate has the overall responsibility of supervising the administration of military justice throughout the United States 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. One Air Force Court of Military Review decision was certified by The Judge Advocate General to the Court of Military Appeals during fiscal year 1978. An opinion was requested on whether the action of the convening authority in stating that testimony to be given at any Article 32 investigation by dependent youths would not be used against them or their parents disqualified him from action on the case.

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 324 formal opinions provided to the Secretary of the Air Force concerning those applications.

c. The Directorate also received 512 inquiries in specific cases requiring either formal written replies or telephonic replies to senior executive officials, including the President, or to members of Congress.

Period: FY 78

**PART 1 - BASIC COURTS-MARTIAL STATISTICS (PERSONS)**

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE/ DECREASE OVER LAST REPORT
GENERAL	128	116	12	-22.9%
BCD SPECIAL	130	130		+13.0%
NON-BCD SPECIAL	763	663	100	+10.3%
SUMMARY	25	21	4	0%
OVERALL RATE OF INCREASE/DECREASE OVER LAST REPORT			+4.8	INCREASE/DECREASE

**PART 2 - DISCHARGES APPROVED**

GENERAL COURTS-MARTIAL (CA LEVEL)				
NUMBER OF DISHONORABLE DISCHARGES			13	
NUMBER OF BAD CONDUCT DISCHARGES			78	
SPECIAL COURTS-MARTIAL (SA LEVEL)				
NUMBER BAD CONDUCT DISCHARGES			106	

**PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG**

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	84
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	102
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	24

**PART 4 - WORKLOAD OF THE USAF COURT OF MILITARY REVIEW**

TOTAL ON HAND BEGINNING OF PERIOD	47
GENERAL COURTS-MARTIAL	26
BCD SPECIAL COURTS-MARTIAL	21
REFERRED FOR REVIEW	186
GENERAL COURTS-MARTIAL	84
BCD SPECIAL COURTS-MARTIAL	102
TOTAL CASES REVIEWED	194
GENERAL COURTS-MARTIAL	95
BCD SPECIAL COURTS-MARTIAL	99
TOTAL PENDING AT CLOSE OF PERIOD	31
GENERAL COURTS-MARTIAL	14
BCD SPECIAL COURTS-MARTIAL	17
RATE OF INCREASE/DECREASE OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-12.6%
	INCREASE/DECREASE

**PART 5 - APPELLATE COUNSEL REQUESTS BEFORE USAF COURT OF MILITARY REVIEW**

NUMBER	178
PERCENTAGE	95.7%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	75.8%
PERCENTAGE OF INCREASE/DECREASE OVER PREVIOUS REPORTING PERIOD	-19.5%
	INCREASE/DECREASE
PERCENTAGE OF TOTAL PETITIONS GRANTED 39/147	26.5%
PERCENTAGE OF INCREASE/DECREASE OVER PREVIOUS REPORTING PERIOD	-9.7%
	INCREASE/DECREASE
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	20.1%

**PART 6 - CONTINUED**

RATE OF INCREASE/DECREASE OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-48.0%	INCREASE/DECREASE
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**PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69**

PENDING AT BEGINNING OF PERIOD		9	
RECEIVED		69	
DISPOSED OF		65	
GRANTED	22		
DENIED	43		
NO JURISDICTION			
WITHDRAWN			
TOTAL PENDING AT END OF PERIOD		14	

**PART 8 - ORGANIZATION OF COURT**

TRIALS BY MILITARY JUDGE ALONE		57	
GENERAL COURTS-MARTIAL			
SPECIAL COURTS-MARTIAL		378	
TRIALS BY MILITARY JUDGE WITH MEMBERS		71	
GENERAL COURTS-MARTIAL			
SPECIAL COURTS-MARTIAL		515	

**PART 9 - COMPLAINTS UNDER ARTICLE 138**

NUMBER OF COMPLAINTS	33	
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**PART 10 - STRENGTH**

AVERAGE ACTIVE DUTY STRENGTH	573,960	
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**PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)**

NUMBER CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	21,552	
RATE PER 1,000	37.54	
RATE OF INCREASE/DECREASE OVER PREVIOUS PERIOD	+2.6%	INCREASE/DECREASE

## **AMJAMS**

The Automated Military Justice Analysis and Management System (AMJAMS) has continued to meet the objectives for which it was primarily designed, i.e., more detailed and timely collection of data relating to court-martial and Article 15 activities, together with the increased analysis capability available with automated processing. At the present time the system is being reprogrammed for conversion to the Honeywell 6000 computer from the Burroughs 3500 scheduled for implementation on 1 January 1980. The conversion to the 6000 computer will enable processing MAJCOMs to design their own complex inquiries against their respective data bases through the inquiry process referred to as Selective Inquiry System (SIS). This will enable the MAJCOMs to extract data from the data base and have it arranged in particular formats that will satisfy their individual analytical desires and needs. Since the system was designed to act as an effective management tool as well as to provide a history of court-martial and Article 15 activity within the Air Force, this increased capability is expected to greatly enhance the potential of the system as a whole. At the headquarters level, over 150 special reports were produced during FY 78 to respond to various inquiries regarding military justice activities received from numerous sources both within and outside the Department of Defense. These special reports have included studies and surveys of such matters as comparative base surveys with regard to courts-martial and Article 15 activities; non-officer Air Force offenses; most common offenses; AWOL/desertion rates; drug offense activities; and a host of others. In addition, data from AMJAMS was extracted to help compile reports to the Department of Defense on criminal activity and disciplinary infractions; for the annual Air Force Posture Statement; the USAF Statistical Digest; the Quality/Disciplinary Trends Book; and the USAF Summary Digest, as well as many others.

## **Trial Judiciary**

The Air Force Trial Judiciary began its year with 29 trial judges located at 12 different locations throughout the world. In order to better manage its personnel resources, the trial judiciary continued reducing the number of its districts and consolidating them at circuit offices. During the year the RAF Mildenhall, England, District was closed and consolidated with the Sixth Circuit Office at Rhein-Main Air Base, Germany, on an experimental basis, and the Offutt Air Force Base District was closed and consolidated with the Fourth Circuit Office at Lowry Air Force Base, Colorado. By the end of the year, the number of trial judges was reduced to 27, stationed at 10 different locations.



### **Circuit Trial Counsel Program**

For several years, the Appellate Government Division of the Office of The Judge Advocate General, in addition to representing the Government's position in the appellate review of courts-martial, has supervised the corps of Circuit Trial Counsel who have prosecuted the most serious general courts-martial around the world. The total number of Circuit Trial Counsel has varied from seven to twelve and most recently has been eight.

On 24 January 1978 in a letter to Major Command Staff Judge Advocates entitled, "Improving the Quality of Prosecutors in Courts-Martial," Major General Walter D. Reed, The Judge Advocate General, United States Air Force, announced his decision to implement a program to expand the number of Circuit Trial Counsel so that they could "try or supervise the prosecution in the great bulk of trials by special courts-martial" and provide guidance and training to local prosecutors.

On 23 March 1978, 14 additional Circuit Trial Counsel were authorized and an additional officer position in Appellate Government Division was authorized to manage the program. At the same time Appellate Government Division was renamed Government Trial and Appellate Counsel Division to recognize its dual functions.

In a letter to All Staff Judge Advocates entitled "Up-Date," dated 19 May 1978, The Judge Advocate General explained the expanded Circuit Trial Counsel program as follows:

We have undertaken a program to improve the quality of trial work in the Air Force by enhancing the prosecution. I want to be certain that everyone understands why we have done this, what our program is, and what it is not. The Area Defense Counsel Program was our first step in up-grading trial practice in the Air Force, and it has worked well. The accused member of the Air Force receives representation second to none. The next step is obviously to assure that the government is equally well served. Declining disciplinary rates have reduced the opportunities for trial experience, and the increasing number of judge advocate duties have reduced the time available. We wanted a program that would allow judge advocates at base level to prosecute cases, and to have some skilled backup while they are doing it. Our program entails the designation and training of 14 additional circuit trial counsel (CTC)—not nearly enough to appear in every special court—but certainly enough to provide an associate or advisor to whom the local trial counsel can talk in preparing and presenting his cases. The CTC will probably appear in the more complicated cases, and he should be the chief counsel, with the local judge advocate acting as his associate. In addition to the availability of the circuit trial counsel, the enhancement of the prosecution program will entail trial advocacy work-

shops and a periodic prosecution newsletter. Having described the program it is equally important that everyone understands what it is not. It is not mandatory. In those cases where the convening authority believes the local judge advocates can try the case, he need not use the services of the CTC. It is not a change of authority or duty of the staff judge advocate. I expect the SJA to stay involved in and to supervise the trial of the cases. When the CTC participates, he does so under the operational supervision of the staff judge advocate. Finally it is not the creation of an area trial counsel, or a device to get the local judge advocate out of the courtroom. Our objective is to train as many qualified trial lawyers as possible, given the workload and resources available. With your help and confidence this program will make Air Force trials models of advocacy skills.

A number of favorable communications and other feedback indicate the expanded CTC program has been very well received by commanders and staff judge advocates and has filled a need for an active program to enhance the quality of prosecution in courts-martial.

#### **Confinement Facilities**

During fiscal year 1978, the United States Disciplinary Barracks at Fort Leavenworth, Kansas, developed facilities for female prisoners at all levels of custody and the Air Force was notified that female personnel sentenced to confinement by court-martial should be sent to that institution under the same criteria as apply for men. Also, the Air Force 3320th Correction and Rehabilitation Squadron at Lowry AFB, Colorado developed a suitable operating procedure which permits them to place female prisoners, selected as suitable prospects for restoration to duty, in the same program as men. Both male and female prisoners in the Air Force not confined at the United States Disciplinary Barracks or selected for the rehabilitation Squadron would continue to be confined at the Army's Fort Riley, Kansas confinement facility.

#### **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 one 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.

### **EXECUTIVE AGENT FOR THE PRINTING OF CMR INDEX FOR VOLUMES 26-50**

During 1978, the Office of The Judge Advocate General on behalf of all requiring agencies coordinated composition and page proof preparation for the index to Volumes 26-50 of the Court-Martial Reports. Publication is planned for 1979.

### **EDUCATION AND TRAINING**

During calendar year 1978, The Judge Advocate General's Department provided continuing legal and general education opportunities to its personnel.

#### **The Air Force Judge Advocate General's School**

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

a. The Judge Advocate Staff Officer Course—This six 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 1978, and 160 judge advocates completed it.

b. The Staff Judge Advocate Course—This course was presented once during 1978, and 40 judge advocates attended the course.

c. The Military Judges' Seminar—This seminar was conducted once during 1978, and 24 judge advocates, who are serving as military judges, participated.

d. The Reserve and Air National Guard Refresher Course—150 Reserve and Air National Guard judge advocates were graduated from this course.

e. The Legal Services Advanced Course—This course was presented once during 1978, 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, Mississippi. Nine courses were held in 1978, and 119 students were graduated. In addition a Legal Services Refresher Course was offered for 12 students.

#### **Professional Military Training**

During 1978, five judge advocates attended the Air Command and Staff College, and three attended the Air War College at Maxwell AFB, Alabama. 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—24 judge advocates attended this five-day course in 1978.

b. Defense Attorneys' Course at Northwestern University—26 judge advocates attended this five-day course in 1978.

c. Trial Advocacy Course sponsored by Association of Trial Lawyers of America—18 judge advocates attended the five-day course in 1978.

d. National College of State Trial Judges at the University of Nevada. Fifteen judge advocates and one senior NCO, the Chief Court Administrator, attended courses at the National College.

#### **Masters in Law Program**

During 1978 two judge advocates received their Master of Law in Labor Law; seven in Government Procurement Law; two in International Law; and one in Environmental Law.

#### **Procurement Law Courses: U.S. Army JAG School**

Eighty judge advocates attended the basic procurement law course, and ten judge advocates attended the advanced procurement law course.

### **TRIAL ADVOCACY COURSE**

The Judge Advocate General's Department developed and presented a 5 1/2 day in-residence course for Judge Advocates active in trial work. Thirty three judge advocates participated in the first presentation.

### **CONTINUING LEGAL EDUCATION SEMINARS USING VIDEOTAPE**

These seminar programs, specifically developed for C.L.E., provide a current course of study on subjects of special interest to the Department. Written study and reference materials accompany each program. They are the most widely available source of credit for mandatory state CLE programs, since the seminars are conducted at Air Force bases around the world. Reserve Judge Advocates and judge

advocates of the Army and Navy have also participated. Programs presently available and the number of participants in each, are as follows:

a. The Law of Federal Labor-Management Relations—a sixty-five hour course (50 hours of independent reading and 15 seminar hours including a one and a half hour videotape overview of the Law of Federal Labor-Management Relations under Executive Order 11491, as amended) 88 participants.

d. Supreme Court Trends in Criminal Law—a 15 hour course (10 hours of independent reading and 5 seminar hours, including a one-hour videotape presentation by Professor Abraham Dash, University of Maryland School of Law). This is a joint production with The Judge Advocate General of the Navy. 98 participants.

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) 55 participants.

f. Federal Income Tax—This course consists of four seminar hours including a two-hour videotape presentation followed by two hours of seminar for discussion, questions, and answers. This course focuses on changes in the Federal Tax Law with emphasis on those changes affecting the military taxpayer. All Judge Advocates required to view the program.

g. Environmental Law—This is a 7-hour course with a two hour videotape and a minimum 20 hours of preparatory reading. This course highlights the major federal law, executive orders, and agency directives bearing on a judge advocate's "environmental law practice." 69 participants.

h. Government Contract Law—This is a 32 hour course (25 hours of independent reading and 7 seminar hours). The four hour videotape portion of the seminar features Professor Ralph C. Nash, Jr.; Professor John Cibinic, Jr., of the George Washington University National Law Center; and Judge Richard C. Solibakke, Chairman, Armed Services Board of Contract Appeals. 150 participants.

#### **FEDERAL LEGAL INFORMATION THROUGH ELECTRONICS (FLITE)**

The Office of The Judge Advocate General, USAF, continued to operate and expand one of the world's largest automated legal research systems. Department of Defense users in 1978 included the Joint Chiefs of Staff, every uniformed service, the Court of Military Appeals and the Armed Services Board of Contract Appeals. The numerous non-DOD users included the Office of The President, Congress, U.S. Courts, the Departments of Justice, Energy, and HEW, and the International Trade Commission.

## THE REPORTER, AFRP 110-2

Publication of the upgraded version of *The Reporter*, a professional legal magazine initiated in 1977, continued in 1978 during which time the *Reporter* transitioned to a commercial printer, and began participating in the U.S. Government Depository Library Program. The publication produced significant interest. As a result, action was initiated for a *Reporter* subscription program, to be implemented in 1979 and managed by the Superintendent of Documents.

## PERSONNEL

This Department is authorized 8 generals, 112 colonels, 227 lieutenant colonels, 248 majors, and 563 captains. As of 30 September 1978, there were 1,111 judge advocates on active duty (5 general officers, 90 colonels, 142 lieutenant colonels, 204 major and 670 captains).

WALTER C. 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, 1977 to September 30, 1978**

The table below shows the number of court-martial records received and filed at Coast Guard Headquarters during FY-78 and the five preceding years:

	78	77	76A	76	75	74	73
General courts-martial . . . .	3	5	0	4	4	7	5
Special courts-martial . . . .	58	84	25	181	189	192	206
Summary courts-martial . . .	180	188	47	221	267	212	307
	241	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 one full-time general courts-martial judge 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 half of the special courts-martial (29), trial was by military judge with members, four of which included enlisted members. Three of the courts with members resulted in acquittal of all charges and specifications. The other half were tried by military judge alone, and in two of these trials the only bad-conduct discharges for this fiscal year were awarded.

In FY-1977 confinement was imposed as a sentence 44 times in 76 convictions; 22 times each by judge alone and a court with members. Maximum confinement of six months was imposed only once by judge alone, but four times by members. During this fiscal year confinement was imposed 25 times in 52 convictions; 17 by military judge alone and eight times by a court with members. The maximum of six months confinement was imposed only once by each type of court.

The following shows the pay grades of the defendants whose charges were referred to the 58 special courts-martial.

Pay grade E-1 through E-3: .....	45
Pay grade E-4 through E-6: .....	9
Pay grade E-7 through E-9 .....	4

The following table shows the distribution of the 206 specifications tried by the 58 special courts-martial:

Violation of the UCMJ, Article	No. of Spec's
85 & 86 (desertion and AWOL) .....	72
87 (missing movement) .....	14
89 (disrespect to superior comm. officer) .....	4
91 (willful disobedience or disrespect) .....	3
92 (violation of order or regulation) .....	7
95 (resisting arrest) .....	3
107 (making a false statement) .....	3
108 (offenses against USCG property) .....	8
121 (larceny and wrongful appropriation) .....	33
128 (assault) .....	1
132 (false claim) .....	12
134 (breaking restriction) .....	8
134 or 92 (marijuana offenses) .....	8
134 or 92 (other controlled drug offenses) .....	1
other offenses .....	29

The following is a breakdown of sentences awarded by the military judge alone in special courts-martial (29 convictions):

bad-conduct discharge .....	2	
confinement at hard labor .....	17	
hard labor without confinement .....	9	
reduction in rate .....	17	
restriction .....	11	
forfeiture of pay .....	15	(\$8,432 total)
fine .....	2	(\$500 total)

In 17 of these 29 convictions, the defendant pled guilty to all charges and specifications.

Sentences awarded by courts with members (23 convictions):

confinement at hard labor .....	8	
hard labor without confinement .....	3	
reduction in rate .....	11	
restriction .....	7	
forfeiture of pay .....	13	(\$9,320 total)
fine .....	1	
others .....	6	



In eight of these 23 convictions, the defendant pled guilty to all charges and specifications.

In one of the general courts-martial, the charges and specifications were dismissed by the military judge. The other two were tried by a court with members (no enlisted), and neither resulted in a sentence requiring review under Article 66, UCMJ.

The following is the distribution of the 38 specifications tried by the three general courts-martial:

Violation of the UCMJ, Article	No. of Spec's
108 (offenses against USCG property) .....	2
121 (larceny and wrongful appropriation) .....	13
128 (assault) .....	1
134 or 92 (marijuana offenses) .....	5
134 (various) .....	14
other offenses .....	3

### CONTINUING TRENDS

Although active duty strength remained about the same in fiscal years 1977 and 1978, the number of courts-martial again declined. This decrease (13%) may be linked to an increase in nonjudicial punishments imposed (up 8%) and an increase in the administrative discharge of individuals for marginal performance, unsuitability, misconduct, and abuse of drugs/alcohol, which rose from 801 in FY-1977 to 887 in FY-1978 (a 10% increase).

### CHIEF COUNSEL ACTION UNDER ARTICLE 69, UCMJ

In addition to the reviews of courts-martial conducted as a result of a petition filed by defendants under Article 69, UCMJ, a gratuitous review is conducted under Article 69 of all courts-martial not required to be reviewed by the Uniform Code of Military Justice. Nine Article 69 actions were taken as a result of the gratuitous reviews, in addition to those reported in Part 7 of Appendix A, as follows:

Findings and sentence disapproved .....	5
Some findings disapproved; sentence reassessed .....	2
Irregularities in sentencing procedures; sentence reassessed .....	1
Irregularities in post trial review and sentence disapproved .....	1

### PERSONNEL AND TRAINING

The Coast Guard has 146 law specialists serving on active duty. There are 114 in legal billets and 32 are serving in general duty billets. The junior officers serving at district offices act as trial and

defense counsel, while the senior officers, most serving as district legal officers, act as military judges.

The Third Coast Guard Basic Law Specialist Course was held at the Coast Guard Reserve Training Center, Yorktown, Virginia, from 18 September through 9 November 1978. The eight-week course introduced both the direct commissioned lawyers and the regular officers just completing law school to the many duties they would soon perform as Coast Guard law specialists. One half of the course was devoted to military justice. Nonjudicial punishment, jurisdiction, professional responsibility and ethics, court procedures, trial/defense counsel duties, and the Articles of the Code most frequently litigated were some of the areas covered. Each student was given an opportunity to demonstrate recently acquired knowledge and skills in moot courts. The course was concluded with addresses by the General Counsel of the Department of Transportation and the Chief Counsel of the Coast Guard.

#### **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, 1977 to September 30, 1978**  
**(FY-1978)**

Period: Oct. 1, 1977 through Sept. 30, 1978

**PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)**

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	3	2	0	(1 CHGS DISMISSED) -40%
BCD SPECIAL	2	2	0	-60%
NON-BCD SPECIAL	56	50	3	(3 CHGS DISMISSED) -29%
SUMMARY	180	171	9	-04%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-13%

**PART 2 - DISCHARGES APPROVED**

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES	0	
NUMBER OF BAD CONDUCT DISCHARGES	2	
SPECIAL COURTS-MARTIAL (SA LEVEL)		
NUMBER OF BAD CONDUCT DISCHARGES	2	

**PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG**

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	0
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	3*
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	2

**PART 4 - WORKLOAD OF THE COAST GUARD COURT OF MILITARY REVIEW**

TOTAL ON HAND BEGINNING OF PERIOD	5
GENERAL COURTS-MARTIAL	3
BCD SPECIAL COURTS-MARTIAL	2
REFERRED FOR REVIEW	5
GENERAL COURTS-MARTIAL	2
BCD SPECIAL COURTS-MARTIAL	2
TOTAL CASES REVIEWED	4
GENERAL COURTS-MARTIAL	2
BCD SPECIAL COURTS-MARTIAL	2
TOTAL PENDING AT CLOSE OF PERIOD	6
GENERAL COURTS-MARTIAL	3
BCD SPECIAL COURTS-MARTIAL	3
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-60%

**PART 5 - APPELLATE COUNSEL REQUESTS BEFORE COAST GUARD COURT OF MILITARY REVIEW**

NUMBER	4
PERCENTAGE	67%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USMA	50%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-10%
PERCENTAGE OF TOTAL PETITIONS GRANTED	00%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-17%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	00%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-10%

**PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69**

PENDING AT BEGINNING OF PERIOD		2	
RECEIVED		2	
DISPOSED OF		3	
GRANTED	1		
DENIED	2		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		1	

**PART 8 - ORGANIZATION OF COURT**

TRIALS BY MILITARY JUDGE ALONE		0	
GENERAL COURTS-MARTIAL			
SPECIAL COURTS-MARTIAL		29	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		3	
SPECIAL COURTS-MARTIAL		29	

**PART 9 - COMPLAINTS UNDER ARTICLE 138**

NUMBER OF COMPLAINTS	8	
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**PART 10 - STRENGTH**

AVERAGE ACTIVE DUTY STRENGTH	31,106**	
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**PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)**

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	2,615	
RATE PER 1,000	84.06	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	+8%	

PAGE 2 OF 2

\*Part 3 - Includes one case not tried this FY, but received for review under a new CA action.

\*\*Part 10 - Average active duty strength is that of enlisted only.