

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



and the
JUDGE ADVOCATES GENERAL
of the
ARMED FORCES
and the
GENERAL COUNSEL
of the
DEPARTMENT OF TRANSPORTATION

PURSUANT TO THE
UNIFORM CODE OF MILITARY JUSTICE
For the Period

January 1, 1976-December 31, 1976

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

PURSUANT TO THE
UNIFORM CODE OF MILITARY JUSTICE

For the Period
January 1, 1976-December 31, 1976

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of the
U.S. COURT OF MILITARY APPEALS
and the
JUDGE ADVOCATES GENERAL
OF THE ARMED FORCES
and the
GENERAL COUNSEL
DEPARTMENT OF TRANSPORTATION
January 1, 1976 to December 31, 1976

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

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

The Joint Service Committee on Military Justice, a standing Committee composed of representatives of each of the services, has recently completed a legislative package proposing changes to the Uniform Code of Military Justice. This package has been coordinated upon by the Judge Advocates General and it is presently being staffed within the Department of Defense. The proposal provides for discretionary appeals from courts-martial convictions, expansion of the power of The Judge Advocate General under Article 69, eliminates the present requirement for a detailed pretrial advice and post-trial review by the Staff Judge Advocate, eliminates review of the findings of a court-martial by the convening authority, eliminates

the mandatory review of every court-martial affecting general or flag officers, authorizes the President to designate certain areas in which, because of operational requirements or isolation of units, an offender may not demand trial by court-martial instead of nonjudicial punishment and allows the use of videotape as trial records.

The code committee has recommended consideration of other legislation which would implement a concept of continuing jurisdiction for military trial courts. The judges favor this concept and the committee has agreed to review its possible implementation. The Joint Service Committee on Military Justice has been directed to study this proposal and determine its feasibility.

The Court of Military Appeals and the Judge Advocates General are considering a revised system for publishing Court of Military Review and Court of Military Appeals opinions.

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

ALBERT B. FLETCHER, Jr.,

Chief Judge.

WILLIAM H. COOK,

Associate Judge.

MATTHEW J. PERRY,

Associate Judge.

HAROLD R. VAGUE,

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

WILTON B. PERSONS, Jr.,

The Judge Advocate General, U.S. Army.

WILLIAM O. MILLER,

The Judge Advocate General, U.S. Navy.

LINDA KAMM,

General Counsel, Department of Transportation.

EXHIBIT A

For The Periods
July 1, 1975 to June 30, 1976
and
July 1, 1976 to September 30, 1976

	<i>Fiscal Year 1976</i>	<i>Fiscal Year 1977</i>
Army	10,404	2,098
Navy	18,941	5,038
Air Force	1,423	276
Coast Guard	406	72
TOTAL	31,174	7,484

Cases Reviewed by Courts of Military Review

	<i>Fiscal Year 1976</i>	<i>Fiscal Year 1977</i>
Army	2,185	385
Navy	3,008	744
Air Force	347	75
Coast Guard	21	4
TOTAL	5,561	1,208

Cases Docketed with U.S. Court of Military Appeals

	<i>Fiscal Year 1976</i>	<i>Fiscal Year 1977</i>
Army	1,248	218
Navy	725	198
Air Force	229	52
Coast Guard	7	4
TOTAL	2,209	472

REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS

October 1, 1975 to September 30, 1976

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

Judge Matthew J. Perry, nominated by President Gerald R. Ford on December 10, 1975, and confirmed by the Senate on December 19, 1975, took his oath of office on February 18, 1976, as a Judge for the remainder of the term expiring May 1, 1981.

Judge William H. Cook was reappointed as a Judge by President Ford on February 10, 1976, confirmed by the Senate for the term expiring May 1, 1991, and took the oath of office on April 23, 1976.

Senior Judge Ferguson retired again from active service with the Court on May 21, 1976.

Under the sponsorship of the United States Court of Military Appeals in conjunction with the Military Law Institute, the Homer Ferguson Conference on Appellate Advocacy was held at the Georgetown University Law Center on May 20-21, 1976. The conference was attended by uniformed and civilian appellate lawyers practicing before the Courts of Military Review and this Court. The Judges of the Courts of Military Review and the Judge Advocates General of the various services were also in attendance. The principal address was delivered by Justice William H. Rehnquist. The occasion of the conference was used to publish and to discuss newly proposed Rules of Practice and Procedure for the United States Court of Military Appeals. Written comments on the proposed Rules were solicited from members of the bar and bar groups. Comments were provided by the Army, Navy, Air Force, and Coast Guard, as well as the American Bar Association, The Association of the Bar of the City of New York, several members of the bar, and other interested organizations. At this writing, the Court has the proposed rules and comments thereto under advisement.

During the spring, the Judges and professional staff of the Court visited the Courts of Military Review of the Army, Navy, Air Force, and Coast Guard. Through a combination of briefings and roundtable discussions, all of these parties involved in appellate military justice litigation and administration had the opportunity to meet each other face to face and to discuss common problems.

During fiscal year 1976, a total of 2,191 cases were docketed in the Court. This total includes 2,049 Petitions for Grant of Review, 24 Certificates of Review, and 118 Petitions for Extraordinary Relief. The Court rendered 112 opinions on 100 Grants of Review, 4 Certificates of Review, and 8 Petitions for Extraordinary Relief. Petitions for Grant of Review were denied in 1,632 cases. The Court remanded 308 cases to be held in the Courts of Military Review pending action in this Court on principal cases. During the 1976 term, 659 attorneys were admitted to the Bar of our Court.

Several significant opinions affecting the administration of military justice were promulgated during the 1975 term. In *United States v. Blakey*, 24 U.S.C.M.A. 63, 51 C.M.R. 192 (1976), the Court made it clear that in a criminal case the usual situation should be for each accused to be represented by his own individual defense attorney, and only in exceptional cases will deviation from this norm be countenanced. The Court suggested that the services would be well advised to avoid future problems by initially appointing separate counsel for each accused. In *United States v. Dunks*, 24 U.S.C.M.A. 71, 51 C.M.R. 200 (1976), a military judge's failure to grant a continuance during an administrative appeal under USAREUR Supp. 1 to AR 27-10 was held to deprive the accused of the right to judicial review of such an administrative decision concerning speedy trial rights. In the case of *Courtney v. Williams*, 24 U.S.C.M.A. 87, 51 C.M.R. 260 (1976), the Court made applicable to the uniformed services the requirements of *Gerstein v. Pugh*, 420 U.S. 103 (1975), that a neutral and detached magistrate must pass upon the necessity for pretrial confinement. The authority granted by paragraph 67f, Manual for Courts-Martial, United States, 1969 (Rev.), to a convening authority to direct a military judge to accede on questions of law upon reconsideration was held to be inconsistent with the Congressional mandate of Article 62(a), Uniform Code of Military Justice. *United States v. Ware*, 24 U.S.C.M.A. 102, 51 C.M.R. 275 (1976).

On reconsideration of its earlier decision in *United States v. Jordan*, 23 U.S.C.M.A. 525, 50 C.M.R. 664 (1976), the Court withdrew from its position that the federal exclusionary rule should apply to all actions of foreign police, and held that only when American officials are present at the scene of a foreign search or, even though not present, provide any information or assistance, directive or request, setting in motion, aiding or otherwise furthering the objectives of the foreign search, must the search satisfy the Fourth

Amendment as applied in the military community before fruits of the search may be admitted into evidence in a trial by court-martial. Where a search is conducted solely by foreign authorities, it shall be a prerequisite for admission of the fruits of the search into evidence that the search by foreign officials was lawful, applying the law of their sovereign. *United States v. Jordan*, 24 U.S.C.M.A. 156, 51 C.M.R. 375 (1976). In *United States v. Carpenter*, 24 U.S.C.M.A. 210, 51 C.M.R. 507 (1976), in ruling that an accused must be granted the right to compel the attendance of material witnesses at trial, notwithstanding protestations of military necessity that the witness was unavailable because of attendance at a military school, the Court took the occasion to comment upon the provisions of paragraph 115a, Manual for Courts-Martial, United States, 1969 (Rev.), requiring the defense to submit its requests for witnesses to a partisan advocate for determination, noting an apparent inconsistency with Article 46, Uniform Code of Military Justice, 10 U.S.C. § 846.

Supplementing last year's decision in *United States v. Goode*, 23 U.S.C.M.A. 367, 51 C.M.R. 1 (1975), which required service of the post-trial review upon defense counsel prior to the convening authority's action, in *United States v. Cruz-Rijos*, 24 U.S.C.M.A. 271, 24 C.M.R. 723 (1976), the Court held that Article 54, UCMJ, requires that a copy of the record of trial must be given to the accused as soon as it is authenticated. The Court evoked the equal protection of laws principle in *United States v. Courtney*, 24 U.S.C.M.A. 280, 51 C.M.R. 796 (1976), to limit the maximum sentence for an offense laid under Article 134, UCMJ, when a similar offense is prohibited by regulation under Article 92 and carries a lesser penalty there. In *United States v. Green*, 24 U.S.C.M.A. 299, 52 C.M.R. 10 (1976), the Court ruled that the trial judge must ascertain whether a plea bargain exists, and whether the accused understands the meaning and effect of each condition as well as the sentence limitations in it, although inquiry into the actual sentence should be delayed until after announcement of the sentence when the accused elects to be sentenced by the judge alone. In another extremely important case, *McPhail v. United States*, 24 U.S.C.M.A. 304, 52 C.M.R. 15 (1976), the Court held that its authority to issue appropriate writs in aid of its jurisdiction under the All Writs Act is not limited to the appellate jurisdiction found in Article 67, UCMJ, but also extends to granting relief to a person subject to the Uniform Code of Military Justice from the burdens of a judgment by an inferior court that has acted contrary to constitutional commands and the decisions of the Court. As a superior judicial tribunal, the exercise of supervisory authority includes jurisdiction to require compliance with applicable law from all courts and persons purporting to act under the authority of the Uniform Code of Military Justice. The Court ordered a writ to issue

directing the Judge Advocate General of the Air Force to vacate an accused's conviction under Article 69, UCMJ.

The Court ruled in several important cases on the issue of the constitutional limitation on court-martial jurisdiction to service-connected offenses. In *United States v. Hedlund*, 25 U.S.C.M.A. 1, 54 C.M.R. 1 (1976), the Court rejected the use of the military status of the victim of a crime as solely determinative of the existence of service connection. In *United States v. Roberts*, 25 U.S.C.M.A. 39, 54 C.M.R. 39 (1976), the admissibility of contraband seized in a barracks inspection with the assistance of a marihuana detection dog was severely restricted. According to the standard announced in *United States v. Ledbetter*, 25 U.S.C.M.A. 51, 54 C.M.R. 51 (1976), the question of the availability of a witness to appear at an Article 32 investigation requires striking a balance between the significance of a witness' testimony and the relative difficulty and expense of obtaining the witness' presence. In *United States v. Williams*, 25 U.S.C.M.A. 176, 54 C.M.R. 284 (1976), the Court held the off-post, off-duty use of hashish by a serviceman standing alone was not service connected.

During this past term, the Court also recommended specific legislative action and/or review by the Congress in a number of areas. In *United States v. McCarthy*, 25 U.S.C.M.A. 30, 35 n. 3, 54 C.M.R. 30, 35 n. 3 (1976), the Court recommended that Congress reexamine the military jury selection process. Tenure for all judges in the military justice system was suggested to the Congress as a means of eliminating judicial tampering in *United States v. Ledbetter*, 25 U.S.C.M.A. 51, 59 n. 12, 54 C.M.R. 51, 59 n. 12 (1976). Also in *Ledbetter*, the Court commented on the absence of an availability definition for witnesses participating in an Article 32, UCMJ, investigation. In *United States v. Carpenter*, 24 U.S.C.M.A. 210, 51 C.M.R. 507 (1976), the Court noted that the military judge should be specifically empowered by the Uniform Code of Military Justice to order the appearance of a witness at all stages during the proceedings.

In *Courtney v. Williams*, 24 U.S.C.M.A. 87, 89, 51 C.M.R. 260, 262 (1976), the Court noted the absence of a statutorily-prescribed procedure for reviewing the probable cause determination made when ordering a serviceman into arrest or confinement. In *United States v. Courtney*, 24 U.S.C.M.A. 280, 51 C.M.R. 796 (1976), the Court noted the existence of multiple statutes within the Uniform Code of Military Justice with varying penalties for the same criminal offense, a situation which does not exist elsewhere in the United States Code, and held that the lesser penalty controlled. Finally, in *United States v. Occhi*, 25 U.S.C.M.A. 93, 54 C.M.R. 93 (1976), the Court commented on the absence of authority in military judges to suspend sentences which they impose in court-martial proceedings.

The Chief Judge strongly recommended that Congress consider legislation to allow an interlocutory government appeal from an adverse ruling by the trial judge. *United States v. Rowel*, 24 U.S.C.M.A. 137, 138, 51 C.M.R. 327, 328 (1976) (Fletcher, C.J., concurring). Under present law in the military, if the defendant is successful in suppressing evidence at the trial level, the government has no right of appeal.

A detailed analysis of the cases processed by the Court since May 1951 is attached. (Exhibit A). These statistics have been computed on the basis of the fiscal year ending September 30, 1976.

Respectfully submitted,

ALBERT B. FLETCHER, Jr.

Chief Judge.

WILLIAM H. COOK,

Judge.

MATTHEW J. PERRY,

Judge.

STATUS OF CASES
UNITED STATES COURT OF MILITARY APPEALS
CASES DOCKETED

Total by Service	Total as of Sept. 30, 1974	Oct. 1, 1974 to Sept. 30, 1975	Oct. 1, 1975 to Sept. 30, 1975	Total as of Sept. 30, 1976
Petitions (Art. 67(b)(3)):				
Army	15,404	1,290	1,093	17,787
Navy	7,942	582	746	9,270
Air Force	5,427	301	203	5,931
Coast Guard	64	3	7	74
Total	28,837	2,176	2,049	33,062
Certificates (Art. 67(b)(2)):				
Army	233	14	12	259
Navy	250	0	6	256
Air Force	103	3	4	110
Coast Guard	12	0	2	14
Total	598	17	24	639
Mandatory (Art. 67b)(1):				
Army	31	0	0	31
Navy	3	0	0	3
Air Force	3	0	0	3
Coast Guard	0	0	0	0
Total	37	0	0	37
Total cases docketed	29,472	2,193	2,073	33,738

¹ Flag officer cases; 1 Army and 1 Navy.

² 33,089 cases actually assigned docket numbers. Overage due to multiple actions on the same cases.

COURT ACTION

	Total as of Sept. 30, 1974	Oct. 1, 1974 to Sept. 30, 1975	Oct. 1, 1975 to Sept. 30, 1976	Total as of Sept. 30, 1976
Petitions (Art. 67(b)(3)):				
Granted	3,180	259	473	3,912
Denied.....	24,953	812	2,624	28,389
Denied by Memorandum				
Opinion	7	1	0	8
Dismissed	32	1	5	38
Charges dismissed by Order	3	0	5	8
Withdrawn.....	438	5	5	448
Disposed of on Motion to Dis-				
miss:				
With Opinion	8	0	0	8
Without Opinion	58	14	10	82
Disposed of by Order setting				
aside findings and sen-				
tence.....	6	2	1	9
Remanded	211	19	310	540
Court action due (30 days) ³ ..	112	147	136	136
Awaiting replies ³	39	115	75	75
Decision affirmed by Order ...	1	1	41	43
Proceedings abated	0	1	1	2
Certificates (Art. 67(b)(2)):				
Opinions rendered	575	13	4	592
Opinions pending ³	0	4	3	3
Withdrawn	8	0	2	10
Remanded	4	1	0	5
Disposed of by Order.....	1	1	21	23
Set for Hearing ³	1	0	2	2
Ready for hearing ³	3	0	0	0
Awaiting briefs ³	8	7	1	1
Leave to file denied	2	0	0	2
Motion to dismiss granted	1	0	1	2
Mandatory (Art. 67(b)(1)):				
Opinions rendered	37	0	0	37
Opinions pending.....	0	0	0	0
Remanded	1	0	0	1
Awaiting briefs ³	0	0	0	0
Opinions rendered:				
Petitions	2,843	111	99	3,053
Motions to dismiss.....	11	0	0	11
Motions to stay proceedings ..	1	0	0	1
Per Curiam grants	58	0	0	58
Certificates.....	502	13	4	519
Certificates and Petitions	70	0	0	70
Mandatory	37	0	0	37
Petitions remanded	2	0	1	3

See footnotes at end of table.

COURT ACTION—Continued

	Total as of Sept. 30, 1974	Oct. 1, 1974 to Sept. 30, 1975	Oct. 1, 1975 to Sept. 30, 1976	Total as of Sept. 30, 1976
Petitions for a new trial.....	2	0	0	2
Petitions for reconsideration of:				
Denial Order.....	10	0	0	10
Opinion.....	4	0	0	4
Petition for new trial.....	1	0	0	1
Motion to reopen.....	1	0	0	1
Petitions in the nature of writ of error coram nobis...	3	0	2	5
Petition for writ of habeas corpus.....	1	0	0	1
Motion for appropriate relief	1	0	0	1
Petition (motion to strike).....	1	0	0	1
Miscellaneous Dockets (1 Pet. Recon.).....	90	7	6	103
Order on Misc. Docket.....	1	0	0	1
Total	3,639	131	112	3,882

*As of Sept. 30, 1974, 1975 and 1976.

*3,639 cases were disposed of by 3,559 published Opinions. 176 Opinions were rendered in cases involving 105 Army officers, 38 Air Force officers, 32 Navy officers, 9 Marine Corps officers, 2 Coast Guard officers and 1 West Point cadet. In addition 19 Opinions were rendered in cases involving 20 civilians. The remainder concerned enlisted personnel.

COURT ACTION

	Total as of Sept. 30, 1974	Oct. 1, 1974 to Sept. 30, 1975	Oct. 1, 1975 to Sept. 30, 1976	Total as of Sept. 30, 1976
Completed cases:				
Petitions denied	24,953	1,812	1,632	28,397
Petitions dismissed	32	1	5	38
Charges dismissed by Order ..	3	0	5	8
Petitions withdrawn	438	5	5	448
Certificates withdrawn	8	0	2	10
Certificates disposed of by Order	1	0	22	23
Opinions rendered	3,539	124	102	3,765
Disposed of on motion to dismiss:				
With Opinion	8	0	0	8
Without Opinion	59	14	11	84
Disposed of by Order setting aside findings and sentence	6	2	1	9
Writ of error coram nobis by Order	3	0	0	3
Motion for bail denied	1	0	0	1
Remanded	214	18	308	540
Decision affirmed by Order ...	1	1	41	43
Proceedings abated	0	1	1	2
Total	29,266	1,978	2,135	33,379
Miscellaneous Docket Nos. Assigned (1967 to Present):				
Pending ⁵	446	64	118	628
Granted	0	0	13	13
Denied	6	0	1	7
Withdrawn	118	24	100	242
Dismissed	4	3	4	11
Issue moot	218	23	7	248
Remanded	4	0	1	5
Opinions rendered	1	0	2	3
Pet for Reconsideration pending ⁵	89	8	6	103
Pet for Reconsideration denied	0	0	1	1
Pet for Reconsideration granted	17	2	4	23
Opinion rendered (Pet Recon).	1	0	1	2
Pet for new trial remanded ..	1	0	0	1

See footnotes at end of table.

COURT ACTION—Continued

	Total as of Sept. 30, 1974	Oct. 1, 1974 to Sept. 30, 1975	Oct. 1, 1975 to Sept. 30, 1976	Total as of Sept. 30, 1976
Disbarred	0	1	0	1
Vacated	0	2	2	4
Total	460	63	142	⁶665
Pending completion as of				
	Sept. 30, 1974	Sept. 30, 1975	Sept. 30, 1976	
Opinions pending	1	5		69
Set for hearing	10	89		34
Ready for hearing	16	22		17
Petitions granted—awaiting briefs ...	7	2		25
Petitions—Court action due (30 days).....	112	27		136
Petitions—awaiting replies	39	147		75
Certificates—awaiting briefs	1	115		1
Mandatory—awaiting briefs	0	7		0
Total	186	409		357

⁵ As of Sept. 30, 1976.

⁶ Overage due to multiple actions on the same cases.

**REPORT OF
THE JUDGE ADVOCATE GENERAL OF THE ARMY
January 1, 1976 to September 30, 1976
LEGISLATION AND MILITARY JUSTICE PROJECTS**

During 1976 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 participate in developing draft amendments to the Uniform Code of Military Justice (UCMJ).

Military Magistrate Program

The evolution of the Military Magistrate Program continued during 1976. The program, initiated in 1974, was extended on 1 January 1976 to include judge advocate magistrates' review of pretrial confinement of all Army personnel in military confinement facilities. Other key features of the extended program were:

Authority in military magistrates to order release from pretrial confinement or permit continued confinement, with no provision for appeal.

Presumption by military magistrates in each case that the officer directing pretrial confinement did so on the basis of substantial evidence that the person confined had committed an offense under the UCMJ.

Assignment of military magistrates to the U.S. Army Legal Services Agency (USALSA), with limited use of part-time, locally assigned magistrates in geographically remote areas with low average pretrial confinement population. Magistrates assigned to USALSA were given responsibility for reviewing all pretrial confinement in CONUS, Europe, and Korea.

Placement of military magistrates under the supervisory control of full-time military judges. The Chief Trial Judge, U.S. Army Judiciary, was given the responsibility for general administration of the program.

Authority in military magistrates to issue search warrants under certain conditions.

In March 1976 as a result of the United States Court of Military Appeals decision in *Courtney v. Williams*, 24 USCMA 87, 51 CMR 260 (1976), the program was modified to require that the military magistrate initially determine whether there was probable cause to believe that the accused had committed an offense under the UCMJ and, if satisfied probable cause existed, whether the accused should remain in pretrial confinement to assure his presence at trial. Magistrates could no longer presume that the officer ordering pretrial confinement did so on the basis of substantial evidence establishing probable cause, and Army Regulations were amended accordingly.

The most recent change in the program came in August 1976, when military judges assigned to the U.S. Army Judiciary were empowered to perform magisterial duties when so authorized by the Chief, U.S. Army Judiciary, or his designee. In the future, military judges will gradually take over virtually all pretrial confinement reviews.

Courts-Martial and Nonjudicial Punishment

During 1976 a decline in the number of courts-martial Army-wide continued. The number of persons tried by all types of courts-martial in fiscal year 1976 was 36.09% less than in fiscal year 1975. One reason was continued reduction in the size of the Army.

Other reasons include:

Increased use of administrative procedures to separate service members in trouble or likely to come into conflict with military law. Procedures under Chapter 10, AR 635-200, are used to separate soldiers facing court-martial charges punishable by punitive discharge. The Expeditious Discharge and Trainee Discharge Programs are aimed at identifying and separating members who cannot adjust to Army life. These programs are having great impact upon the numbers of judicial actions within the Army.

Quality of recruits. Statistically, service members who are non-high school graduates or fall into lower mental categories represent the majority of offenders in the Army. The fewer of these individuals who are permitted to enlist, the lower the offense rates.

During fiscal year 1976 there were 159,918 nonjudicial punishments, or approximately 15 times the total number of courts-martial (general, special, and summary). During the transitional period fiscal year 7T (July through September 1976), there were 45,432 nonjudicial punishments. In fiscal year 1975, 175,217 nonjudicial punishments were recorded.

Significant Actions

Other significant actions included evaluating and drafting legislation, Executive Orders, pamphlets and regulations affecting legal operations in the Army and Department of Defense; monitoring the administration of military justice, including evaluations of on-going major projects; rendering opinions for the Army Staff; and reviewing criminal cases for action by the Army Secretariat and Staff. Some examples follow.

Legislative Proposals

Article 67(g), UCMJ, established the Code Committee composed of the Judge Advocates General, the General Counsel of the Department of Transportation, and the judges of the United States Court of Military Appeals. It meets regularly to review and recommend legislative changes concerning the operation of the UCMJ. To assist in this work, the Judge Advocates General created in August 1972 a Joint Service Committee on Military Justice. The committee and its working group meet regularly to discuss proposals to amend the *Manual for Courts-Martial, 1969 (Revised edition)* and the UCMJ. Until 1 October 1976 Colonel Wayne E. Alley, JAGC, USA, was chairman.

The Judge Advocates General had agreed in July 1975 to legislative concepts consisting of a system of discretionary appeals in court-martial cases; modifications in records of trial; a limitation on the number of defense counsel and provision for more precise definition of "reasonable availability" of individual military defense counsel; and changes in convening authority functions, primarily the abolition of his action approving or disapproving findings in cases reviewable by a Court of Military Review.

In January 1976 the Air Force, which had legislative drafting responsibility, submitted a legislative package encompassing these concepts. The Army made two proposals to amend the package. One would eliminate the preferential appellate rights accorded to flag and general officers. The other would eliminate the right to demand trial by court-martial when nonjudicial punishment is offered in certain areas of operations designated by the President.

MILITARY JUSTICE STATISTICS AND U.S. ARMY JUDICIARY ACTIVITIES

a. A statistical summary of court-martial activities for fiscal year 1976 and fiscal year 1977T follows. Figures for 1977T are in parentheses.

Number of persons tried by courts-martial (average Army strength, 790,741)

	Convicted	Acquitted	Total
General	1,305(271)	171(37)	1,476(308)
Special (BCD authorized)	837(188)	179(31)	1,016(219)
Special (BCD not authorized)	5,208(964)	705(172)	5,913(1,136)
Summary	1,797(364)	202(71)	1,999(435)
TOTAL	9,147(1,787)	1,257(311)	10,404(2,098)

Records of trial by general and special courts-martial (BCD) received by The Judge Advocate General (see note):

For review under Article 66 (General)	1,095(251)
For review under Article 66 (Special with BCD)	792(153)
For examination under Article 69	333(85)
TOTAL	2,220(489)

Workload of the U.S. Army Court of Military Review:

On hand at the beginning of period	883(727)
General Courts-Martial	568(517)
Special Courts-Martial (BCD)	315(210)
Referred for review.....	2,029(442)
General Courts-Martial	1,202,(286)
Special Courts-Martial (BCD)	827(156)
TOTAL	2,912(1,169)
Reviewed	2,185(385)
General Courts-Martial	1,253(215)
Special Courts-Martial (BCD)	932(170)
Pending at close of period	727(784)
General Courts-Martial	517(588)
Special Courts-Martial (BCD)	210(196)

Note: Figures in this section are based on records of trial and not the number of accused.

Actions taken by U.S. Army Court of Military Review:

Findings and sentence affirmed	1,666(310)
Findings affirmed, sentence modified	219(26)
Findings affirmed, sentence commuted	8(0)
Findings affirmed, no sentence affirmed	0(1)
Findings affirmed, sentence reassessment or rehearing as to sentence only ordered	7(4)
Findings partially disapproved, sentence affirmed	9(5)
Findings partially disapproved, rehearing ordered	2(0)
Findings and sentence affirmed in part, disapproved in part	43(9)
Findings and sentence disapproved, rehearing ordered	104(9)
Findings and sentence disapproved, charges dismissed	53(6)
Case returned to field for new review and action	56(10)
Proceedings abated, death of accused	2(0)
Case returned to field for lack of jurisdiction in ACMR.....	1(1)
Order for psychiatric examination	2(1)
Returned to TJAG for a limited hearing before a different Military Judge	1(1)
Remanded to TJAG, findings-sentence dismissed by USCMA.....	1(0)
Miscellaneous decision disposing of the case	11(2)
TOTAL	2,185(385)

Of 2,185(385) accused whose cases were reviewed by the U.S. Army Court of Military Review pursuant to Article 66, 2091(371) requested representation by appellate defense counsel.

The records in the cases of 1,223(205) Army accused were forwarded to the United States Court of Military Appeals pursuant to Article 67(b). This comprised 55.6 percent of the cases reviewed by the U.S. Army Court of Military Review during the period. Of the aforementioned cases, 1,204(205) were forwarded on petition of accused and 19(0) were certified by TJAG.

The Court of Military Appeals took the following actions on Army cases:

PETITIONS OF ACCUSED

Pending 1 July 1975 (1 July 1976)	149(123)
Forwarded	1,204(205)
Granted	306(28)
Denied.....	914(200)
Pending 1 July 1976 (1 October 1976)	123(99)

OPINIONS ON PETITIONS GRANTED

Pending 1 July 1975 (1 July 1976).....	70(211)
Granted	314(28)
Rendered	163(15)
Affirmed.....	29(6)
Reversed.....	134(9)
Pending 1 July 1976 (1 October 1976)	211 ³ (223)

CERTIFIED CASES

Pending 1 July 1975 (1 July 1976)	5(0)
Forwarded	19(0)
Decided	23(0) ⁵
Affirmed.....	7(0)
Reversed.....	16(0)
Pending 1 July 1976 (1 October 1976)	0(0)
Applications for relief, Article 69:	
Pending 1 July 1975 (Pending 1 July 1976)	63(70)
Received	382(82)
Disposed of.....	375(103)
Petitions granted.....	29(5)
Petitions denied.....	339(96)
Returned to field for action	6(0)
No jurisdiction	1(0)
Withdrawn	0(2)
Pending 1 October 1976	49

¹6 petitions dismissed, 3 petitions withdrawn and 1 motion for leave to file untimely petition dismissed.

²1 petition dismissed.

³1 petition denied, reconsidered by USCMA and granted, 6 grants vacated and denied, 1 denied vacated and granted, and 2 reconsiderations of denials granted and petitions granted.

⁴1 reconsideration of denial granted and petition granted.

⁵1 case remanded to ACMR.

In Federal and State Courts, 1,240(399) Army personnel were convicted of felonies.

b. An analysis of the statistics discloses the following:

	1975	1976	Percent of change
Strength of the Army	790,301	787,480	Down .356.
Courts-martial	16,278	10,404	Down 36.
GCM	1,635	1,476	Down 9.7.
BCD special	1,266	1,016	Down 19.7.
Special	9,259	5,913	Down 36.1.
Summary	4,118	1,999	Down 51.4.

c. 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 Examination and New Trials Division, and the Trial Judiciary.

d. The Agency also includes the Government Appellate Division, the Defense Appellate Division, and Contract Appeals Division. (The Contract Appeals Division has no function related to the U.S. Army Judiciary and its court-martial mission, but represents the Army in contractual disputes.)

e. Trials by military judges alone continued to represent a substantial savings of manpower of line officers, as reflected by the following:

	Fiscal year						
	1971	1972	1973	1974	1975	1976	197T
GCM trials by judge alone	95%	66%	67%	81%	66%	64%	64%
SPCM (BCD) trials by judge alone	95%	93%	88%	91%	87%	87%	80%

f. As executive agent for DOD, DA (through OTJAG) maintains and collates information concerning the exercise of foreign criminal jurisdiction over U.S. servicemen. During the period 1 December 1975 to 30 November 1976, out of 13,850 cases (world-wide) involving primary foreign concurrent jurisdiction of U.S. Army personnel, foreign authorities waived their jurisdiction in 13,467 cases for a waiver rate of 97.2 percent. This compares with a waiver rate of 95.9 percent in the previous reporting period.

LITIGATION

Litigation affecting the Army during 1976 and 197T continued to have impact upon the form and direction of military justice.

The Army won a significant victory in the U.S. Supreme Court in *Greer v. Spock*, 424 U.S. 828 (1976), wherein the Court held that installation commanders may prohibit political activities on their installations, including those areas generally open to the public, and may also prohibit the on-post distribution of literature that is inimical to loyalty, discipline, or morale. In June 1976 the Court denied former Lieutenant William Calley's petition for certiorari. This action let stand a decision of the U.S. Court of Appeals for the Fifth Circuit which held that Calley's claims of constitutional defects in his celebrated court-martial had been given full and fair consideration in the Army judicial system, that Calley had received a fair trial, and that there was no reason to interfere with the military judicial process leading to his conviction and affirmance in military tribunals. *Middendorf v. Henry*, 425 U.S. 25 (1976), held that there is no right to counsel in a summary court-martial.

In April 1976 the first allegations of extensive violations of the cadet honor code at the U.S. Military Academy (USMA) emerged. The Cadet Honor Committee investigated charges that over one hundred members of the class of 1977 had cheated on an Electrical Engineering "take-home" examination. On 1 June 1976, a class action was filed by Cadet Timothy Ringgold (*Ringgold v. U.S., et al.*, 420 F. Supp. 698 (S.D.N.Y. 1976)), seeking to enjoin expulsion proceedings and to reinstate cadets who had resigned. The court granted the Government's motion for summary judgment, holding that the cadet honor code was not unconstitutionally vague or discriminatorily enforced, and that the absence of an alternative to the penalty of expulsion did not infringe the Eighth Amendment proscription against cruel and unusual punishment. On 30 June 1976 Cadet Kenneth Harms filed an action (*Harms v. U.S., et al.*, Civ. No. 76-1276, D.N.J., July 12, 1976) alleging that, notwithstanding a finding of not guilty by the Cadet Honor Committee, his case was referred to a board of officers which recommended his expulsion. He also claimed the right to be tried by court-martial. The court held that a Cadet Honor Committee proceeding is of no binding legal consequence and that, expulsion from USMA being administrative and nonpenal in nature, one is not entitled to criminal justice protections. On 30 July 1976 Cadet Paul Williamson brought suit (*Williamson v. U.S., et al.*, Civ. No. 76-0300, D.R.I., March 3, 1977) alleging that the Secretary of the Army unlawfully supplanted the Cadet Honor Committee with a different system (Internal Review Panels) and that, although Cadet Williamson had been found guilty of collaboration on the examination, his alleged co-collaborator had been found not guilty. The court dismissed the case without prejudice for lack of exhaustion of administrative remedies. The Cadets then took several issues to the U.S. Court of Military Appeals (USCMA) in petitions for extraordinary relief (*Allen v. Berry and*

Hoffmann, Misc No. 76-61, USCMA, Sept. 10, 1976, *Kane v. Berry and Hoffman*, Misc No. 76-62, USCMA, Sept. 10, 1976, *In re D'Arcangelo*, Misc No. 76-44, USCMA, Sept. 10, 1976, and *Harms v. USMA*, Misc No. 76-58, USCMA, Sept. 10, 1976). USCMA directed certain issues to be briefed, to which TJAG responded by filing a motion to dismiss on the basis that USCMA's jurisdiction is limited to criminal justice matters only. Oral arguments were held on 16 August 1976, after which, on 10 September 1976, USCMA issued a brief order denying the petitions but without disclaiming jurisdiction. Meanwhile, on 3 September 1976, another suit was filed by Cadet D'Arcangelo (*D'Arcangelo v. Berry and Hoffman*, Civ. No. 76-3948, S.D.N.Y., Feb. 7, 1977) challenging the legal authority of the Secretary to promulgate USMA Regulation 1-6, which governed readmission of separated cadets and their alternative service commitments. The court denied plaintiff's requests for preliminary relief. The litigation arising out of the USMA cases promises to remain active for some time to come.

In *Berlin Democratic Club v. Rumsfeld*, 410 F. Supp. 144 (D.D.C. 1976), the court held that allegations by U.S. citizens overseas that Army officials illegally wiretapped, opened mail, infiltrated organizations, and committed other acts of harassment and intimidation against them stated justiciable claims; that a warrant was required for U.S. wiretaps on U.S. citizens overseas; that damages could be recovered for violation of First and Sixth Amendment rights; and that a nonresident alien lacked standing to sue in a Federal court for actions overseas against him by U.S. officials which may have violated the U.S. Constitution. The judge also denied the Army's motion to dismiss or for summary judgment. In answering the complaint it was necessary for the Secretary of the Army to assert a formal claim of privilege to protect certain military and state secrets. In May 1976, because of potential conflict of interest, the Department of Justice authorized the U.S. Attorney to withdraw representation of the six individual Army defendants who then retained private counsel at Government expense. In another intelligence case, *Socialist Workers Party v. Attorney General*, Civ. No. 73-3160, S.D.N.Y., July 18, 1973, court orders required a world-wide search of Army documents. The Secretary of the Army asserted military and state secrets privileges to protect documents affecting U.S. relationship with foreign governments.

EDUCATION AND TRAINING

On 4 July 1976 Col. Barney L. Brannen, Jr. succeeded Col. William S. Fulton, Jr. as Commandant of the Judge Advocate General's School, U.S. Army.

The school continued to provide legal education to lawyers of the military services and other Federal agencies. During fiscal year 1976 and fiscal year 1977 forty-five resident courses were conducted with 2,598 students in attendance. Courses were attended by 2,068 Army officers (including 830 active duty judge advocates), 112 Navy and Marine Corps officers, 40 Air Force officers, and 378 civilian attorneys of the Federal Government.

Four basic courses, the 78th through the 81st, were conducted at the school. A total of 266 officers were graduated, including nine Coast Guard officers and four allied officers from Japan, Great Britain, Taiwan, and Thailand.

The 24th Advance Class began on 25 August 1975 with 44 students in attendance: 36 U.S. Army, 1 U.S. Navy, 5 U.S. Marine Corps, and 2 foreign officers. The class was graduated on 28 May 1976. The 25th Advanced Class which began 23 August 1976 will graduate its 51 students on 27 May 1977. There are 45 U.S. Army, 1 U.S. Navy, and 5 U.S. Marine Corps officers in the class.

The school conducted six Senior Officer Legal Orientation (SOLO) courses for installation and brigade commanders. The course was also presented to the students of the Army War College at Carlisle Barracks.

The educational development of legal paraprofessionals in the Army was furthered by the presentation of two courses at the school in fiscal year 1976. These courses are designed to instruct lawyer assistants in the functions and administration of the military justice and administrative law sections of installation judge advocate offices.

In May 1976 the Administrative and Civil Law Division of the school conducted the First Civil Rights Course. The course gives military and federal civil agency attorneys a general background in individual civil rights with specific emphasis on their applicability in the military community. Guest speakers included Major General Julius W. Becton, Jr., Commander, 1st Cavalry Division, Fort Hood, and Ms. Barbara Greene Kilberg, Associate Counsel to President Ford on Women's Rights.

As a result of recent fiscal problems within the Army, a course for lawyers and comptrollers stressing the Anti-Deficiency Act (31 U.S.C. 665), the Army budget, and associated fiscal law problems was devised. The First Fiscal Law Course was conducted 9-11 February 1976. The course is now offered twice yearly by the Procurement Law Division.

Annual lectures commemorating honorary academic chairs at the school were delivered by eminent lawyers. Mr. Emerson G. Spies, Dean of the University of Virginia School of Law, delivered the Edward H. Young Lecture on 26 August 1976. On 4 March 1976 the Kenneth J. Hodson Lecture was presented by Mr. Robert M. Ervin, Chairman, ABA Criminal Justice Section.

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

The school also hosted the 8th Annual Judge Advocate General's Reserve Conference 9-11 September 1976.

The 1976 Conference on Military Law for Legal Educators provided a forum at the school for the interchange of ideas on military law between respected members of the civilian academic community and members of the school's faculty.

PERSONNEL, PLANS, AND POLICIES

The average strength of the Judge Advocate General's Corps for fiscal year 1976 and 1977T was 1,588. This compares with an average of 1,590 in 1975, 1,571 in 1974, and 1,554 in 1973. The average strength of the Corps has stabilized and should remain relatively constant for the foreseeable future. This included 56 blacks, 11 Mexican-Americans, 7 Puerto Ricans, 9 Oriental-Americans, and 34 women. The Corps was distributed in the following grades: 5 general officers, 76 colonels, 125 lieutenant colonels, 144 majors, and 1,215 captains. There were also 61 warrant officers. There were a total of 142 officers participating in either the excess leave or fully funded education programs.

In order to insure that the best qualified candidates were selected, formal boards were convened under The Judge Advocate General's written instructions to select candidates for initial commissions, the Judge Advocate General's School Advanced Class attendance, and career status.

In February 1976 a selection board was convened to select 25 active duty commissioned officers to commence law school under the Funded Legal Education Program.

Notwithstanding the recent trends toward a larger percentage of career judge advocates, the shortage of field grade officers remained a critical problem. On 9 February 1976 the Secretary of the Army approved, for purposes of temporary promotion, separate judge advocate promotion lists through the grade of colonel, and lengthier zones of consideration than on the Army Promotion List. This should help to alleviate field grade shortages in the future.

Fifty-eight officers completed the following schools:

U.S. Army War College	2
Industrial College of the Armed Forces	2
Command and General Staff College	9
Armed Forces Staff College	1
Armed Forces Institute of Pathology	3
Defense Language Institute	5
The Judge Advocate General's School (Advanced Class)	36

Ten officers received advanced degrees from civil schools under the Fully Funded Graduate School Program.

The Judge Advocate General stressed the creation of institutional improvements. Shortly after his assumption of office, he established a policy that, whenever possible, counsel should initially assume a prosecutorial rather than a defense role in courts-martial so that accused persons have the benefit of experienced counsel. Plans were completed to establish a Field Defense Service Office in the Defense Appellate Division on 1 October 1976. Its missions are to provide guidance on ethics and trial tactics, prepare the *Advocate*, a defense counsel newsletter, and to coordinate with the Judge Advocate General's School in developing courses to develop the skills of defense counsel. With Field Defense Service assistance, the Judge Advocate General's School prepared the 1st Defense Trial Advocacy Course, which was presented in October 1976. These courses will be offered to active duty defense counsel with 6-12 months trial experience. In addition, he activated an ethics committee to review problems and complaints involving ethical issues. Opinions of the committee are published periodically in the *Army Lawyer* to insure continuing education of the Corps on such matters.

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

ANNUAL REPORT
OF
THE JUDGE ADVOCATE GENERAL OF THE NAVY

pursuant to

THE UNIFORM CODE OF MILITARY JUSTICE

for the period

Fiscal Year 1976 and Fiscal Year 197T

In accordance with the Code Committee decision announced by Chief Judge Fletcher at the Code Committee meeting of 25 January 1977, this report contains statistical information covering fiscal year 1976 and 197T, with textual material covering the first nine months of calendar year 1976. The period covering 1 October 1976 to 31 December 1976 will be included in the next annual report.

SUPERVISION OF THE ADMINISTRATION OF MILITARY JUSTICE. Complying with the requirements of article 6(a), Uniform Code of Military Justice, the Judge Advocate General and the Deputy Judge Advocate General continued to visit commands within the United States, Europe, and the Far East in the supervision of the administration of military justice.

COURT-MARTIAL WORKLOAD. a. There has been a decrease in the total number of courts-martial during fiscal year 1976 and fiscal year 197T. (See Exhibit A attached to this report.)

b. During fiscal year 1976, the Navy Court of Military Review received for review 503 general courts-martial and 2,427 special courts-martial, as compared with 597 general courts-martial and 2,919 special courts-martial during fiscal year 1975. Of 2,930 cases received by the Navy Court of Military Review, 2,081 accused requested counsel (71 percent). During fiscal year 197T, the Navy Court of Military Review received for review 129 general courts-martial and 527 special courts-martial. Of 656 cases received by the Navy Court of Military Review during fiscal year 197T, 466 accused requested counsel (71 percent).

NAVY-MARINE CORPS TRIAL JUDICIARY. The Navy-Marine Corps Trial Judiciary provided military judges for 541 general courts-martial during fiscal year 1976, and 179 during fiscal year 1977. In fiscal year 1976, 91 percent of the general courts-martial were tried by courts constituted with military judge alone. In fiscal year 1977, 78 percent of the general courts-martial were tried by courts constituted with military judge alone.

The Navy-Marine Corps Trial Judiciary supplied military judges for 5,191 special court-martial trials during fiscal year 1976 and 1,469 during fiscal year 1977. In addition, Circuit Military Judges of the Navy-Marine Corps Trial Judiciary nominated ad hoc military judges to preside in 344 special courts-martial during fiscal year 1976 and 75 during fiscal year 1977, for which full-time military judges were unavailable. In fiscal year 1976, 91 percent of the special courts-martial were tried by courts constituted with military judge alone. In fiscal year 1977, 83 percent of the special courts-martial were tried by military judge alone.

The present manning level of the Navy-Marine Corps Trial Judiciary is 19 general court-martial military judges, an increase of 3 from the manning level at the close of calendar year 1975. Nineteen special court-martial military judges are assigned to the Navy-Marine Corps Trial Judiciary, the same manning level as at the close of calendar year 1975.

Military judges and legalmen of the Navy-Marine Corps Trial Judiciary attended a variety of professional meetings and seminars during calendar year 1976. Two special court-martial military judges attended a special court judge seminar at the National College of the State Judiciary, Reno, Nevada, 18-25 September 1976. It is anticipated that many military judges will attend the Annual Judge Advocate General's Conference to be held in Washington, D.C., 18-22 October 1976. One chief legalman attended a three-day workshop sponsored by the National Association of Legal Assistants at San Francisco; another attended a one-week Law Office Management Course at the Judge Advocate General's School, Charlottesville, Virginia; and a third attended a four-day Bureau of Naval Personnel—Discipline Command seminar at Newport, Rhode Island. One legalman first class attended a two-week Leadership and Management Course at the Fleet Training Center, Mayport, Florida.

NAVAL LEGAL SERVICE. This past July marked the second anniversary of the establishment, in a fully operational status, of the eighteen Naval Legal Service Offices which, together with their branch offices, comprise the Naval Legal Service.

Under the Naval Legal Service concept, legal resources have been consolidated at Naval Legal Service Offices at various locations throughout the world. These offices, ranging in size from the large Naval Legal Service Office with 33 judge advocates assigned, located

at Norfolk, Virginia, to the small Naval Legal Service Office with six judge advocates assigned located in Guam, are tasked with providing all necessary legal services and counsel within an assigned geographical area.

Continued field visits by the Judge Advocate General, Deputy Judge Advocate General, and Deputy Assistant Judge Advocate General (Inspections and Surveys) during the past year have confirmed an initial impression gained during the Naval Legal Service's first year of operation that most line commanders who are dependent on the various Naval Legal Service Offices and branch offices were more than satisfied with the quality and timeliness of services received. Command inspections conducted under the Navy Command Inspection Program have disclosed that all Naval Legal Service Offices are accomplishing their mission in a responsive and satisfactory manner.

While the transition from Law Center status, under the financial and command control of various commands, to that of independent activities under the command of the Judge Advocate General, was not without its difficulties, primarily due to initial paucity of available funding and personnel limitations, the concept has continued to work well. In addition to providing a badly needed focus and capability within the Office of the Judge Advocate General for allocation of financial and personnel support in the provision of legal services to the Navy, the placing of all court-martial defense counsel in Naval Legal Service Offices under the direction of the Judge Advocate General, in implementation of one of the recommendations of the Department of Defense Task Force on the Administration of Military Justice in the Armed Forces, has removed any basis for even a perception of command control over defense counsel functions, yet permitted the Judge Advocate General to exercise direct professional supervision over counsel performance and training.

With the flexibility gained as a major manpower claimant over judge advocate billets assigned to the Naval Legal Service, the Judge Advocate General is able more readily to redistribute personnel as necessary, on either a temporary or permanent basis, to meet the legal needs of Navy commands throughout the world.

The Naval Legal Service is meeting or exceeding the goals and expectations which were set for it at its founding, and with increased emphasis on the standardization of organization and services, should be even more responsive and efficient in meeting the Navy's legal needs in the future.

ARTICLE 69, UCMJ, PETITIONS. The number of petitions for relief submitted pursuant to Article 69, Uniform Code of Military Justice, a provision which permits the Judge Advocate General to act in court-martial cases that have not been reviewed by the Navy Court of Military Review, has remained relatively constant. In fiscal

year 1976, 80 petitions for relief were received by the Judge Advocate General, while 86 petitions for relief were received in calendar year 1975. Seventy-three petitions, including 17 pending from fiscal year 1975, were reviewed during the year and relief was granted, in whole or in part, in 12 of the petitions reviewed. During fiscal year 1977, 25 petitions for relief were received by the Judge Advocate General. Twenty-two petitions, including 15 pending from fiscal year 1976, were reviewed during the transition period and relief was granted, in whole or in part, in two of the petitions reviewed.

ARTICLE 73, UCMJ, PETITIONS. In fiscal year 1976, eight petitions for new trials were submitted pursuant to article 73, Uniform Code of Military Justice. Four petitions were denied within the Office of the Judge Advocate General. Two petitions were pending review at the conclusion of fiscal year 1976. Of the remaining, one petition was forwarded to the U.S. Court of Military Appeals and one petition was forwarded to the Navy Court of Military Review. During fiscal year 1977, three petitions for new trial were submitted pursuant to article 73, Uniform Code of Military Justice. One petition, received in fiscal year 1976, was granted within the Office of the Judge Advocate General in fiscal year 1977. Four petitions, including one from fiscal year 1976, were pending review at the conclusion of fiscal year 1977.

ANNUAL JUDGE ADVOCATE GENERAL'S CONFERENCE. A conference of judge advocates from all major Navy and Marine Corps commands will be held 18-22 October 1976. This annual conference will afford judge advocates from all over the world an opportunity to participate in seminars concerning areas of mutual concern which have arisen during the past year.

NAVAL JUSTICE SCHOOL. Courses of instruction in military law and related administrative matters were presented by the Naval Justice School during fiscal year 1976 to 2,379 officers and enlisted personnel of the Armed Forces, and during fiscal year 1977 to 1,147. A total of 1,521 Navy, Marine Corps, and Coast Guard officers received instruction designed for commanding/executive officers in fiscal year 1976 and 17 in fiscal year 1977. As in prior years, this command-level instruction was presented both at the school and at locations of fleet concentration. Three hundred forty-six Navy, Marine Corps, and Coast Guard nonlawyer junior officers received training for duty as unit legal officers in fiscal year 1976 and 52 in fiscal year 1977. Two hundred thirty-seven Navy and Marine Corps lawyers were trained for service as judge advocates in fiscal year 1976 and 87 in fiscal year 1977. Seventy-eight lawyer reservists of the Navy and Marine Corps were provided basic or refresher training in military law in fiscal year 1976, and 107 in fiscal year 1977. Fourteen Navy and Marine Corps judge advocates newly assigned to duty in the Navy-Marine Corps Trial Judiciary attended a course presented

for military judges in fiscal year 1976, and 14 in fiscal year 1977. One hundred eighty-three Army, Navy, and Coast Guard enlisted personnel were trained to perform legal clerk and court reporting duties in fiscal year 1976, and 53 in fiscal year 1977.

In addition to its formal courses of instruction, the Naval Justice School presented instruction on search and seizure, right to counsel, and administrative proceedings to 4,700 officers at other Navy schools in Newport, R.I., and New London, Conn., in fiscal year 1976, and 817 in fiscal year 1977.

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, UCMJ, COMPLAINTS OF WRONGS. In fiscal year 1976, 111 complaints of wrongs were received in the Office of the Judge Advocate General. One hundred six complaints of wrongs, including eight pending from calendar year 1975, were reviewed during fiscal year 1976. During fiscal year 1977, 26 complaints of wrongs were received in the Office of the Judge Advocate General. Twenty complaints of wrongs, including ten from fiscal year 1976, were reviewed during fiscal year 1977, leaving 19 pending review.

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, 1969 (Rev.)*. It also serves as a forum for the exchange of ideas relating to military justice matters among the services. In the past, the committee has mainly considered proposals and ideas generated within the services. In 1976 it was given responsibility for commenting on matters that came from outside the services as well.

Proposed legislation designed to improve the efficiency of the military-justice system was presented by the Joint-Service Committee working group and approved by the service Judge Advocates General in 1975. In 1976 the Joint-Service Committee's draft in bill form was submitted to the services for staffing. The working group of the committee monitored this staffing during 1976. Several technical changes and some substantive additions proposed during this process will be incorporated into the proposed bill before it is forwarded to the Department of Defense for review. It is expected that the staffing will be completed early in 1977.

At the request of the Assistant Secretary of Defense (Manpower and Reserve Affairs), the committee commented on the Report of the Defense Review Committee for the Code of Conduct insofar as the report related to military-justice matters. The Office of the General

Counsel of the Department of Defense requested the comments of the committee on a proposed bill to amend the Uniform Code of Military Justice prepared by the Committee on Military Justice and Military Affairs of the Association of the Bar of the City of New York. The committee's comments will be delivered early in 1977.

During 1976, the working group of the committee studied the feasibility of a proposal to establish continuous jurisdiction courts-martial. While there was general agreement that it would be technically feasible to replace the present system of convening courts-martial on a case-by-case basis with a permanent court system in each of the services, the working group found some areas of service disagreement on the question of the scope of the powers such courts could be given. The committee anticipates further study of "continuing jurisdiction" in 1977.

MILITARY MAGISTRATE PROGRAM. In response to *Courtney v. Williams*, 24 USCMA 87, 51 CMR 260 (1976), the Secretary of the Navy, on 13 April 1976, established a Navy-Marine Corps Military Magistrate Program to monitor pretrial confinement within the naval service. Ultimately, the program will be promulgated in the form of a secretarial instruction.

CABINET COMMITTEE ON INTERNATIONAL NARCOTICS CONTROL. During 1976, the Judge Advocate General provided a Navy representative to the working group of the President's Cabinet Committee on International Narcotics Control. This committee, composed of representatives of the Postal Service, Customs Service, Department of Defense, the three military departments, and the State Department, has been engaged in an examination of various methods for interdicting the flow of dangerous drugs into the United States. Most recently, the committee has intensively examined the problem of contraband contained in first-class mail flowing in the military postal system, concentrating upon the lacuna in authority to search that mail under current statutes and regulations. Solutions to the problem are presently under study by specialized subcommittees appointed by the chairman. Search of mail and seizure of contraband found therein impacts directly upon court-martial proceedings.

ETHICS. Action was taken to maintain high ethical standards for 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); the civilian counselor; a representative of the Commandant of the Marine Corps; and the Military Executive Assistant, who acts as recorder. Preliminary steps were taken in 1976 to distribute the comparative analysis of the ABA Standards for the Administration of Criminal Justice and Military Practice and Procedure to all major offices where Navy and Marine Corps judge advocates are stationed. Appropriate action was taken under the provisions of section 0142 of the *Manual of the Judge Advocate General* in seven cases brought to the attention of the Judge Advocate General.

CIVIL LITIGATION. During 1976 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; preparation of U.S. attorneys for oral arguments before all Federal courts, including the U.S. Supreme Court; and assignment of judge advocates to make oral arguments in U.S. district courts and courts of appeal. A few of the more significant cases and issues involved are set forth below:

a. *Middendorf v. Henry*. The issue presented in this case was whether a summary court-martial could adjudge sentences including confinement if the accused were not represented by counsel. This issue had produced a split of authority in the circuits following the Supreme Court's decision in *Argersinger v. Hamlin*. On 24 March 1976, the U.S. Supreme Court ruled, in an opinion by Justice Rehnquist, that the Constitution does not require the appointment of counsel to represent persons tried by summary courts-martial.

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

McDonald v. United States; Sanders v. United States. These consolidated cases challenged the constitutionality of the Uniform Code of Military Justice provisions assigning multiple (prosecutorial and judicial) roles to convening authorities. On 18 February 1976, the

U.S. Court of Claims rendered its opinion upholding the challenged provisions of the Uniform Code of Military Justice.

d. *Priest v. Secretary of the Navy*. This case assessed the scope of freedom of the press under the first amendment available to members of the military services. The U.S. District Court for the District of Columbia granted the Government's motion for summary judgment. The plaintiff has an appeal pending before the U.S. Court of Appeals for the District of Columbia Circuit.

e. *Williamson v. Secretary of the Navy*. This case raised issues of Federal court jurisdiction to review courts-martial, and alleged violation of the petitioner's fourth amendment rights. In May 1975, the U.S. District Court for the District of Columbia granted the Government's motion for summary judgement. The petitioner then filed an appeal in the U.S. Court of Appeals for the District of Columbia.

	Fiscal year		
	1976	197T	1975
General courts-martial:			
Received for review under Article 66	503	129	597
Received for review under Article 69 and acquittals ..	138	33	94
Total	641	162	691
Special courts-martial:			
Received for review under Article 66	2,427	527	2,919
Received for review under 65c	0	0	0
Reviewed in the field	8,278	¹ 2,044	10,439
Total	10,705	¹ 2,571	13,358
Summary courts-martial:			
Received for review under Article 65c	0	0	0
Reviewed in the field	7,595	¹ 2,305	8,706
Total	7,595	¹ 2,305	8,706
Total all courts-martial	18,941	¹ 5,038	22,755

¹ Estimated 197T figures.

	Fiscal Year		
	1976	197T	1975
Navy Court of Military Review Actions:			
On hand for review end last fiscal year	431	353	261
Received for review during fiscal year	2,930	698	3,516
Total on hand	3,361	1,051	3,777
Reviewed during fiscal year	3,008	744	3,346
Pending review end current fiscal year	353	307	431
Total	3,361	1,051	3,777
Findings modified or set aside by Navy Court of Military			
Review during fiscal year	184	60	122
Requests for appellate counsel before NCMR	2,081	466	2,392
U.S. Court of Military Appeals Actions:			
Petitions forwarded to USCMA	711	194	491
Cases certified to USCMA by JAG	5	1	0
Total cases docketed with USCMA	716	195	491
Petitions granted by USCMA	99	29	48
Petitions denied by USCMA	552	204	435
Total petitions acted upon by USCMA	651	233	483

REPORT OF

THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

January 1, 1976 to December 31, 1976

1. In compliance with the requirements of Article 6(a), Uniform Code of Military Justice, The Judge Advocate General, Major General Harold R. Vague, and the Assistant Judge Advocate General, Brigadier General Walter D. Reed, made staff visits to legal offices in the United States and overseas. During May, General Vague hosted the Major Command Staff Judge Advocate Executive Conference at the Forrestal Building, Washington, D.C. In addition, he attended the annual American Bar Association/Judge Advocate Association Conference in Atlanta, Georgia, where he presented his annual report to the Judge Advocate Association. During the year, General Vague attended and participated in various other meetings of civil, professional and military organizations.

2. During 1976, the Judiciary Directorate of the Office of The Judge Advocate General processed in excess of 1,493 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 (MCM, 1969 (Rev.)) and the UCMJ. In addition, the Directorate has the staff responsibility for the Office of The Judge Advocate General in all matters pertaining to military justice within the Air Force which arise in connection with programs, special projects, studies and inquiries generated by the Air Staff, Headquarters USAF, the Secretaries, Department of Defense, Army, Navy, Air Force, members of Congress and other interested federal, state and civil agencies. Some of the Directorate's activities are discussed below:

a. Two Air Force Court of Military Review decisions were certified by The Judge Advocate General to the Court of Military Appeals during Calendar Year 1976. Opinions were requested on a number of important subjects including material which must be included in the Staff Judge Advocate's Post Trial Review, the extent of the Military Judge's active participation in a trial before he becomes disqualified and the extent of the convening authority's participation before he is disqualified from participating in the review of the case.

b. This year 93 applications for relief were submitted to The Judge Advocate General pursuant to Article 69, Uniform Code of Military Justice. This provision allows The Judge Advocate General to act in those court-martial cases which have been finally reviewed under Article 76, UCMJ. Relief was granted in whole or in part in 14 of those cases.

c. In Calendar Year 1976, one petition requesting a new trial was submitted pursuant to Article 73, UCMJ, and was denied.

d. The Judiciary Directorate also serves as the action agency for the review of applications submitted to the Board for Correction of Military Records. 253 formal opinions were provided to the Secretary of the Air Force concerning those applications.

e. The Directorate also received 475 inquiries in specific cases requiring either formal written replies or telephonic replies to senior executive officials, including the President or to members of Congress.

3. Analysis of the operation of the Automated Military Justice Analysis and Management System (AMJAMS), implemented Air Force-wide on 1 July 1974, reveals that it continues to meet the objectives for which it was designed; i.e. more detailed and timely collection of data pertaining to court-martial and Article 15 activities, together with the increased analysis capability available with automated processing. The management and analytic uses for information contained in the systems data base continued to increase. Over 131 special reports have been produced and utilized to respond to various questions regarding military justice activities received from over 19 different agencies and offices both within and outside the Department of Defense. These special reports include a study on disciplinary rates by sex to be used by the Brookings Institute, studies to support various surveys by the General Accounting Office (GAO) on military justice, a study on various aspects of military judge sentencing in contrast to court member sentencing and a detailed analysis of Article 15 processing time which was provided to all major command and general courts-martial jurisdiction Staff Judge Advocates.

4. The Air Force Trial Judiciary began its year with 37 trial judges located at 22 different locations throughout the world. During the year the McGuire Air Force Base District was closed and consolidated with the 1st Circuit at Bolling Air Force Base. The Sheppard Air Force Base, Texas, District, was consolidated with the Carswell Air Force Base, Texas, District. The McDill Air Force Base, Florida, and the Bangkok, Thailand, offices were closed. By the end of the year, the number of trial judges were reduced to 32 at 18 different locations.

5. a. The number of records of trial received in the Office of The Judge Advocate General, for review pursuant to Article 66 and for

examination pursuant to Article 69, during Fiscal Year 1976, is shown in the following table:

Total number records received	410
For review under Article 66	341
General Court-Martial records	167
Special Court-Martial records	174
Examined under Article 69	51
Acquittals under Article 61	18

This represents a decrease of 20% from the number of cases received in FY 1975 (515).

The Court of Military Review modified the findings and/or sentence in 63 cases.

b. The number of records of trial received in the Office of the Judge Advocate General, for review pursuant to Article 66 and for examination pursuant to Article 69, during Fiscal Year 7T, is shown in the following table:

Total number of records received	74
For review under Article 66	63
General Court-Martial records	28
Special Court-Martial records	35
Examined under Article 69	8
Acquittals under Article 61	3

The Court of Military Review modified the findings and/or sentence in 21 cases.

6. The workload of the Court of Military Review for FY 76 and 7T was as follows:

Cases on hand 30 June 1975	80
Cases referred for review	341

Total for review	421
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Cases reviewed and dispatched	347
Cases on hand 30 June 1976	74
Cases referred for review	63

Total for review	137
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Cases reviewed and dispatched	75
Cases on hand 30 September 1976	62

* This represents a decrease of 33 percent from the number of cases reviewed during fiscal year 75 (521), as compared to FY 76.

7. During the 1976 fiscal year 93.3 percent of the accused, whose cases were referred for review under Article 66, requested representation by Appellate Review. During the 7T Fiscal Year 98.4 percent of the accused, whose cases were referred for review under Article 66, requested representation by Appellate Defense Counsel before the Court of Military Review.

8. a. The following table shows the number of cases forwarded to the United States Court of Military Appeals pursuant to the three subdivisions of Article 67(b); and the number of petitions granted during the fiscal year 1976 period.

Cases reviewed and dispatched by Court of Review.....	347
Number cases forwarded to USCMA	229
Cases petitioned	225
Cases certified	4
Percent forwarded of total cases reviewed.....	66.0
(Increase of 11.7 percent over fiscal year 75)	
Petitions granted.....	61
Percent grants of total petitioned.....	27.1
(Increase of 20.3 percent over fiscal year 75)	
Percent petitions granted of total cases reviewed by Court of Review	17.6
(Increase of 14 percent over fiscal year 75)	

b. The following table shows the number of cases forwarded to the United States Court of Military Appeals pursuant to the three subdivisions of Article 67(b); and the number of petitions granted during the fiscal year 7T period:

Cases reviewed and dispatched by Court of Review.....	75
Number of cases forwarded to USCMA.....	52
Cases petitioned	52
Cases certified	0
Percent forwarded of total cases reviewed.....	69.3
(Increase of 3.3 percent over fiscal year 76)	
Petitions granted.....	13
Percent grants of total petitioned.....	25.0
(Decrease of 2.1 percent over fiscal year 1976)	
Percent petitions granted of total cases reviewed by Court of Review	17.3
(Decrease of 0.3 percent over fiscal year 76)	

9. a. During Fiscal Year 1976, the following numbers of persons were tried by courts-martial convened in the Air Force:

General Courts-Martial	227
Special Courts-Martial	1,136
Summary Courts-Martial	60
<hr/> Total	<hr/> 1,423

The overall court-martial rate per 1,000 assigned personnel was 2.4 as compared to 2.9 in fiscal year 75, a rate decrease of 17.2 percent.

b. During fiscal year 7T, the following numbers of persons were tried by courts-martial convened in the Air Force:

General Courts-Martial	36
Special Courts-Martial	237
Summary Courts-Martial	13
<hr/> Total	<hr/> 276

The overall court-martial rate per 1,000 assigned personnel was 0.47 which will compute to 1.88 if projected to period covering twelve months. This projected annual figure would represent a decrease of 21.7 percent as compared to the rate of 2.4 for fiscal year 76.

10. a. Reportable Article 15 Actions, fiscal year 1976:

	Number of cases	Percentage of total
TOTAL CASES.....	26,366	
Officers	145	0.5
Airmen	26,221	99.5
Punishment imposed: *		
Restriction:		
Officers.....	7	4.8
Airmen	1,110	4.2
Quarters Arrest/Correctional Custody:		
Officers	0	0.0
Airmen	971	3.7
Extra Duties: Airmen	4,222	16.1
Reduction in Grade: Airmen	20,333	77.5
Forfeiture of Pay:		
Officers	112	77.2
Airmen	19,702	75.1
Detention of Pay:		
Officers	0	0.0
Airmen	17	0.1
Written Reprimand:		
Officers	100	69.0
Airmen	320	1.2
Mitigating actions:		
Appeals Taken:		
Officers.....	20	13.8
Airmen	2,953	11.3
Appeals Granted:		
Officers.....	1	* 5.0
Airmen	412	* 14.0
Suspension of Punishment:		
Officers.....	16	11.0
Airmen	15,802	60.3
Other Action: *		
Officers.....	1	0.7
Airmen	906	3.5

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

* Of the reduction in grade, 73.5% were suspended at the time the punishment was imposed.

* Of appeals taken.

* Includes mitigation, remission and set aside actions.

b. Reportable Article 15 Actions, FY 7T:

	Number of cases	Percentage of total
TOTAL CASES	5,529	
Officers	33	0.6
Airmen	5,496	99.4
Punishment imposed: ⁷		
Restriction:		
Officers.....	3	9.1
Airmen.....	195	3.5
Quarters Arrest/Correction Custody:		
Officers.....	0	0.0
Airmen.....	122	2.2
Extra Duties: Airmen	837	15.2
Reduction in Grade: Airmen	⁸ 4,345	79.1
Forfeiture of Pay:		
Officers.....	27	81.8
Airmen.....	4,104	74.7
Detention of Pay:		
Officers.....	0	0.0
Airmen.....	5	0.1
Written Reprimand:		
Officers.....	28	84.8
Airmen.....	80	1.5
Mitigating actions:		
Appeals Taken:		
Officers.....	10	30.3
Airmen.....	587	10.7
Appeals Granted:		
Officers.....	0	⁹ 0.0
Airmen.....	101	⁹ 17.2
Suspension of Punishment:		
Officers.....	2	6.1
Airmen.....	3,386	61.6
Other Action: ¹⁰		
Officers.....	0	0.0
Airmen.....	251	4.6

⁷ The number of punishments imposed will not equal the number of cases as some offenders receive a combination of punishments.

⁸ Of the reduction in grade, 74.6% were suspended at the time the punishment was imposed.

⁹ Of appeals taken.

¹⁰ Includes mitigation, remission and set aside actions.

11. During Calendar Year 1976, one United States Supreme Court Decision had potential impact on the military justice system.

a. In *Barry v. Owen*, decided sub nom *Kelly v. Johnson*, the court upheld the uniform standards promulgated by a metropolitan police department. The court found that plaintiffs had not met their burden of showing *no* rational basis underlying the promulgation of the standards at issue. The court noted the presumptive rationality

of such objectives as instilling discipline, a consideration which lies at the heart of the military dress and appearance standards.

12. During Calendar Year 1976, The Judge Advocate General's Department provided on campus continuing legal and general education opportunities to 734 of its personnel.

13. The 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 4 times during 1976 and 112 judge advocates completed it.

b. THE STAFF JUDGE ADVOCATE COURSE—This course was presented once during 1976 and 40 judge advocates attended the course.

c. THE MILITARY JUDGES SEMINAR—This seminar was conducted once during 1976 and 24 judge advocates who are serving as military judges participated.

d. THE RESERVE AND AIR NATIONAL GUARD REFRESHER COURSE—160 Reserve and Air National Guard judge advocates graduated from this course.

e. THE LEGAL SERVICES ADVANCED COURSE—This course was presented once during 1976 and 40 senior NCO legal technicians attended this course. NOTE: The Department's enlisted personnel receive their *basic* legal training at a special legal technicians school at Keesler AFB, Mississippi. Eight courses were held in 1976 and 88 students were graduated.

14. *Professional Military Training:*

During 1976, five judge advocates attended the Air Command and Staff College and three the Air War College at Maxwell AFB, Alabama. Two officers attended the Armed Forces Staff College and one attended the National War College. Nine Air Force lawyers attended the Squadron Officers Course at Maxwell AFB, Alabama.

15. *Short Courses at Civilian Universities:*

a. PROSECUTING ATTORNEYS COURSE AT NORTHWESTERN UNIVERSITY—25 Judge Advocates attended this five day course in 1976.

b. DEFENSE ATTORNEYS COURSE AT NORTHWESTERN UNIVERSITY—25 Judge Advocates attended this 5 day course in 1976.

c. TRIAL ADVOCACY COURSE AT CREIGHTON UNIVERSITY—40 Judge Advocates attended two five day courses in 1976. The first course was for Prosecutors (20 attended) and the second was for Defense attorneys. (20 Area Defense Counsel attended.)

d. NATIONAL COLLEGE OF STATE TRIAL JUDGES AT THE UNIVERSITY OF NEVADA—Four General Courts-Martial Judges

and eight Special Courts-Martial Judges attended courses at the National College during 1976.

e. THE NATIONAL ACADEMY, UNIVERSITY OF COLORADO—Five Special Courts-Martial Judges attended the two week judges seminar taught by the Academy.

16. *Masters in Law Program:*

During 1976 three judge advocates received their Masters of Law in Labor Law; six in Government Procurement Law; and, three in International Law.

17. *Procurement Law Courses:*

a. PROCUREMENT LAW COURSE AT WRIGHT-PATTERSON AFB—76 Judge Advocates attended during 1976.

b. U.S. ARMY JAG SCHOOL—15 Judge Advocates attended the basic procurement law course and 5 judge advocates attended the advanced procurement law course.

c. PROCUREMENT LAW INTERN PROGRAM—During 1976 five newly assigned judge advocates spent their first year as a judge advocate at Air Material areas developing a detailed knowledge of Air Force procurement procedures and policies.

18. *Patents Officers Course:*

Twenty judge advocates and Air Force civilian attorneys who perform duty in the patent law area attended this course.

19. Continuing Legal Education (CLE) Seminars using video tape presentations as a teaching aid—During 1976, The Judge Advocate General's Department developed several new films and text books which were made available to the field. Seminar courses provide a current course of study on subjects of special interest to the Department. More than 430 Air Force Judge Advocates participated at 27 seminars conducted at Air Force bases around the world. Reserve Air Force Judge Advocates, and Judge Advocates of the Army and Navy have also participated in several of the seminars. Programs presently in the inventory are as follows:

a. THE LAW OF FEDERAL LABOR-MANAGEMENT RELATIONS—a sixty-five hour course (50 hours of independent reading and 15 seminar hours including a one and a half hour video tape overview of the law of Federal Labor-Management Relations under Executive Order 11491, as amended). Written materials and an examination accompany the program.

b. PROFESSIONAL RESPONSIBILITY AND THE GOVERNMENT ATTORNEY—a thirty-eight hour course (30 hours of independent reading and 8 seminar hours). The video tape presentation includes a two hour video tape interview of Professor Samuel Dash, Georgetown University Law Center, and Chief Judge Albert Fletcher, U.S. Court of Military Appeals. Written materials and an examination accompany the program.

c. TRIAL TECHNIQUES—a 16 hour course (6 hours of independent reading and 10 seminar hours including a three hour video tape presentation by Mr. Robert Begam, President-Elect of The Association of Trial Lawyers of America and Mr. Theodore I. Koskoff, President, Roscoe Pound American Trial Lawyers Foundation.) Written materials and an examination accompany the program.

d. SUPREME COURT TRENDS IN CRIMINAL LAW—a 15 hour course (10 hours of independent reading and 5 seminar hours including a one hour video tape presentation by Professor Abraham Dash, University of Maryland School of Law). This video tape was made in the room that served as the Supreme Court chambers 1810-1860 and which has only recently been renovated and opened to the public. Written materials and an examination accompany the program. This is a joint production with The Judge Advocate General of the Navy.

e. LAW OF ARMED CONFLICT AND AERIAL WARFARE—a 16 hour course (8 seminar hours including the video tape showing and 8 hours of preparatory reading). The course covers the concepts of the law of Armed Conflict (with emphasis on Air Warfare) as established from international law principles, agreements and customs.

f. FEDERAL INCOME TAX—a one hour color video tape program. This program discusses federal tax problems affecting servicemen and spotlights the changes caused by the Tax Reform Act of 1976.

g. ENVIRONMENTAL LAW—a 7 hour course with a two hour video tape and a minimum 20 hours of preparatory reading. This course highlights the major Federal laws, Executive orders and agency directives bearing on a judge advocate's "environmental practice".

20. In 1976 selected Air Force officers participated in the Funded Legal Education Program (FLEP) and the Excess Leave Program with 29 completing their law school requirements and being designated as judge advocates. During the summer vacation months these FLEP and Excess Leave Program students perform active duty in an Air Force legal office as "Legal Interns". Selected individuals are given the opportunity to perform their summer training at various divisions in the Office of The Judge Advocate General, Headquarters, USAF.

21. A new program which permits the training of Air Force ROTC graduates (commissioned officers on educational delay to attend law school) was approved in 1976. This program requires 89 days training during a summer vacation at an active duty Air Force Base for officers desiring a JAG commission. A test program which trained three officers in 1975 and five officers in 1976 proved successful with both the students and the base Staff Judge Advocates. Twenty-two officer students will participate in the 1977 summer program.

22. On 31 December 1976 there were 1144 Judge Advocates on duty (90 colonels, 149 lieutenant colonels, 175 majors, and 724 captains).

At the close of the period of the report, there were 55 commands exercising general court-martial jurisdiction.

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

REPORT OF THE GENERAL COUNSEL OF THE DEPARTMENT OF TRANSPORTATION (U.S. COAST GUARD)

January 1, 1976 to December 31, 1976

The following is the annual report of the General Counsel of the Department of Transportation submitted pursuant to Article 67(g) of the Uniform Code of Military Justice. Unless otherwise noted, the figures given are for the fiscal year beginning July 1, 1975, and ending June 30, 1976, and for the transition quarter (July 1, 1976 to September 30, 1976).

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

	1976A	1976	1975	1974	1973	1972
General courts-martial	0	4	4	7	5	6
Special courts-martial	25	181	189	192	206	167
Summary courts-martial	47	221	267	212	307	348
Total	72	406	460	411	518	521

SPECIAL COURTS-MARTIAL

All special courts-martial had lawyers for defense and trial counsel. A military judge was assigned in all of the trials. As has been noted in previous reports, a full-time judiciary for special courts-martial has not been established in the Coast Guard. Military judges are provided for special courts-martial by use of the two full-time general court-martial judges when available, and by the use of military judges assigned to other primary duties. Control over the detail of judges is centrally exercised, and all requirements have been filled in a timely fashion.

In 101 of the special courts-martial, trial was by military judge with members, one of which included enlisted members. In the remaining 105 cases, the defendant elected to be tried by military judge alone. In 28 of the cases, the sentence included a bad conduct discharge. Fifteen of these were adjudged by military judge alone, and the remaining 13 were adjudged by a court with members. Of the 28, 9 were remitted or commuted by the convening authority or officer exercising general court-martial jurisdiction, leaving 19 to reach the Court of Military Review. Four of these were disapproved

by the Court. Thus 15 bad conduct discharges survived the review process during the year.

A trend in sentencing noted previously and which continued during the year was the significant number of sentences which did not include confinement as a part of the punishment imposed. This was true in 72 out of the 195 in which there was a conviction. Maximum confinement of six months was imposed as a punishment only 10 times, six when trial was by military judge alone. In 2 cases the defendant was sentenced to suffer no punishment.

Of the 195 cases in which there was a conviction, 130 sentences were affirmed on review without modification. Sixty-five were mitigated in some manner. In 80 cases there were guilty pleas to all of the charges and specifications. There were 27 pretrial agreements; 20 of these involved guilty pleas to all charges and specifications.

The following table shows the distribution of the 892 specifications tried by the 206 special courts-martial:

AWOL or desertion.....	252
Missing ship movement.....	55
Marihuana offenses.....	49
Offenses involving controlled drugs.....	3
Willful disobedience or disrespect.....	110
Assault.....	34
Violation of order or regulation.....	45
Larceny or wrongful appropriation.....	83
Breaking restriction.....	41
Offenses against Coast Guard property.....	16
Neglect of duty.....	36
Housebreaking or unlawful entry.....	29
Bad checks.....	31
False claims.....	33
Communicating a threat.....	12
Escape from custody or resisting apprehension.....	11
Other offenses.....	52

892

GENERAL COURTS-MARTIAL

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

Two dishonorable discharges were adjudged, one by military judge alone and one by members. In two cases the sentence included a bad conduct discharge, one by military judge alone and one by members. Of the four, none were remitted or commuted by the convening authority; all reached the Court of Military Review. None of these were disapproved by the Court. Thus all punitive discharges survived the review process.

Of the four cases in which there was a conviction, two sentences were affirmed on review without modification. Two were mitigated

in some manner. In one of the cases there were guilty pleas to all the charges and specifications. Three of the cases involved pretrial agreements.

The following table shows the distribution of the 44 specifications tried by the four general courts-martial:

AWOL or desertion.....	2
Marihuana offenses.....	3
Conspiracy	2
Forgery.....	3
Obstruction or theft of mail.....	6
Larceny	16
Receiving stolen property.....	1
Damage to government property	3
Damage to private property.....	1
Unlawful entry	5
Attempted aggravated arson	1
Conspiracy to commit murder	1
	<hr/> 44

COURT OF MILITARY REVIEW AND COURT OF MILITARY APPEALS

The Coast Guard Court of Military Review had 18 cases docketed with it during the period. Of the 25 cases that were decided during the year, 15 cases were affirmed without modification and the findings or sentence were modified in 10 cases. Eight petitions were submitted to the Court of Military Appeals for a grant of review; three petitions were granted and one was abated by the death of the petitioner. Two cases were certified to the Court of Military Appeals and have not yet been decided.

ITEMS OF INTEREST

Last year's report noted that on 20 February 1975, the Coast Guard authorized the use of video tape records of trial, in order to save substantial resources and to expedite the review of records of trial. Ten records of trial were received by the Chief Counsel during the year where video tape was used as the transcript. Two of these cases were general courts-martial. The Coast Guard Court of Military Review held that ". . . the video tapes without a transcript in writing do not satisfy the current requirements of law for producing a record of trial." *United States v. Simpson*, CGCM 9942, Docket No. 787 (1 March 1976), and *United States v. Barton*, CGCM 9943, Docket No. 790 (1 March 1976). Both of these cases were certified to the Court of Military Appeals and oral arguments were heard on 9 June 1976. Pending a decision by the Court, use of video tape as a trial transcript is being held in abeyance.

During the period of this report convening authorities have been prohibited from entering into negotiations with a view toward a pretrial agreement (negotiated plea) unless first authorized to do so

by the Chief Counsel of the Coast Guard. Generally authority is granted only in cases such as certain sexual offenses where there may be a valid desire to shield an essential witness from the trauma of having to testify in a public trial, as in a child molestation case, or where the convening authority has good reason to believe that a trial on the merits would result in extraordinary expense to the government. The Chief Counsel is not made aware of the terms of a proposed pretrial agreement. Prior to 1 September 1975 approximately 55 to 70 pretrial agreements would be entered into during a twelve month period. In the first thirteen months that the requirement for permission to enter into negotiations was in effect only six such requests were received. Four of these requests were granted.

LINDA HELLER KAMM