

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
October 1, 1979–September 30, 1980

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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

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For the Period
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Contents

**JOINT REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS
AND THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES
AND THE GENERAL COUNSEL OF THE DEPARTMENT OF TRANS-
PORTATION**

REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

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

JOINT REPORT
of the
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GENERAL COUNSEL
DEPARTMENT OF TRANSPORTATION
October 1, 1979 to September 30, 1980

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, pursuant to 10 U.S.C. §867(g).

The Code Committee, consisting of the individuals designated above, continued its tradition of meeting quarterly during the fiscal year to review developments in the field of military justice and to consider proposals designed to improve the operation of the Uniform Code of Military Justice. In particular, the Code Committee supported the commencement of an extensive review of the Manual for Courts-Martial, United States, 1969 (Revised edition), with a view toward developing a substantially revised manual. This review has been undertaken by a working group composed of representatives of each individual service and a member of the Court's staff and is expected to be completed within a two-year period. In addition, the Military Rules of Evidence, which were reviewed and approved by the Code Committee and thereafter promulgated by the President pursuant to his rule-making authority under Article 36 of the Uniform Code of Military Justice, took effect on September 1, 1980.

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

ROBINSON O. EVERETT

Chief Judge.

WILLIAM H. COOK

Associate Judge.

ALBERT B. FLETCHER, JR.

Associate Judge.

ALTON H. HARVEY

The Judge Advocate General, U.S. Army.

JOHN S. JENKINS

The Judge Advocate General, U.S. Navy.

THOMAS B. BRUTON

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

THOMAS G. ALLISON

General Counsel, Department of Transportation.

REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS

October 1, 1979 to September 30, 1980

The judges of the United States Court of Military Appeals submit their FY 1980 report on the administration of the Court and military justice to the Committees on Armed Services of the United States Senate and House of Representatives and the Secretaries of Defense, Transportation, Army, Navy, and Air Force in accordance with Article 67(g), Uniform Code of Military Justice, 10 U.S.C. §867(g).

THE BUSINESS OF THE COURT

During the fiscal year 1980 term, the Court acted on 1,701 petitions for grant of review, granting review in 337 cases (20%). On the master docket of mandatory appeals, certificates, and granted petitions, the Court acted in 195 cases, affirming the Courts of Military Review in 69% of those cases. The master docket cases were decided in 60 signed opinions, 17 per curiam opinions and 118 summary dispositions. The Court also acted upon 50 cases on the miscellaneous docket, granting extraordinary relief in one case. At the close of the term, 320 cases were pending on the petition docket and subject to the statutory 30-day review rule; 387 cases were pending on the master docket; and 3 cases were pending on the miscellaneous docket. The increase of 185 pending master docket cases over the number of cases pending on the same docket at the close of the previous year is accounted for by a large number of cases containing a common issue which were granted during the year but which remained undecided on September 30, 1980. The impact of these common-issue cases was reflected in an increase of some 163% in cases granted review over the prior year. The number of initial filings was also considerably higher in the case of appellate filings in FY 80—petitions for grant of review were up by 14%. The motion practice also increased by 8% during this period. However, extraordinary writ petition filings on the miscellaneous docket decreased by 33%.

Reports from the Courts of Military Review indicate that all of the intermediate appellate courts have experienced an upsurge in cases

submitted for review—up 68% in the Air Force, 18% in the Army, and 53% in the Navy, over the 1979 workload in those courts. The number of cases filed in this Court will inevitably follow these trends, with the expectation that the United States Court of Military Appeals will have a record-setting year in 1981.

The Court admitted 588 attorneys to practice before its Bar during the FY80 term, bringing the cumulative total of admissions before the Bar of the Court to 22,658.

COURT VACANCY PERIOD

Shortly before the beginning of the FY80 term of the Court, Judge Matthew J. Perry resigned to accept an appointment as a United States District Judge for the District of South Carolina. As noted in the Court's previous annual report, Judge Perry's resignation marked the second time in less than 6 years that a judge of this Court has elected to resign to accept a federal district judgeship. The vacancy resulting from Judge Perry's resignation was not filled until April 16, 1980, when Robinson O. Everett became a member of the Court and also was designated as Chief Judge. During the intervening period of approximately 7 months the two judges serving on the Court followed the policy of granting a petition for review if either of the judges believed that "good cause" had been shown as required by Article 67(b)(3), UCMJ. Also, during this period in which a vacancy existed on the Court, cases in which petitions had previously been granted and which were pending on the master docket, or cases in which certified questions had been submitted by a Judge Advocate General of one of the services under Article 67(b)(2), UCMJ, could not be disposed of unless both sitting judges agreed on the result in a particular case. Upon the assumption of office by Chief Judge Everett, a number of cases which had been argued previously were set for reargument. In setting the cases for argument subsequent to April 16, 1980, an effort was made to dispose of the oldest pending cases and, in particular, those common to a significant number of other cases awaiting final disposition by the Court.

JUDICIAL VISITATIONS

The Judges of the Court continued their policy of participating in conferences relating to the administration of military justice and visiting military installations in an effort to familiarize themselves with the conditions under which military justice is administered in the armed forces. Judge Cook was at San Diego, California, in November 1979; Cherry Point, North Carolina, in December 1979; Chicago, Illinois in January 1980; and Honolulu, Hawaii, in August 1980 for meetings sponsored by the American Bar Association on the adminis-

tration of military justice. Judge Fletcher visited Fort Sill, Oklahoma, during April and May 1980, and Maxwell Air Force Base, Alabama, during September 1980. Chief Judge Everett visited the Judge Advocate General's School, U.S. Army, in Charlottesville, Virginia, in August 1980; Randolph Air Force Base, Texas, in September 1980; and Maxwell Air Force Base, Alabama, in September 1980.

In addition to these visitations, Chief Judge Everett was invited to address a number of groups interested in hearing the views on military justice of the Court's newest member. In May 1980, he addressed the Pentagon Chapter of the Federal Bar Association on "Civilianization of Military Justice" and this talk was later published in the *Army Lawyer*. He also presented the Court's Report at the annual meeting of the Judge Advocates Association, which took place in August 1980 in conjunction with the annual meeting of the American Bar Association. In addition, he addressed regional conferences of Air Force Reserve Judge Advocates at San Antonio, Texas and Maxwell Air Force Base, Alabama and a meeting of Washington area Naval Reserve Judge Advocates.

In addition to the Judges' visitations, the Court hosted a meeting at the courthouse of the Standing Committee on Military Law of the American Bar Association in May 1980. Also, it conducted a ceremony for admission of new members to its Bar in connection with the Annual Meeting of the American Bar Association.

APPELLATE ADVOCACY CONFERENCE

Under the sponsorship of the United States Court of Military Appeals, in conjunction with the Military Law Institute, the Fifth Annual Homer Ferguson Conference on Appellate Advocacy was held at the Georgetown University Law Center on May 21 - 23, 1980. This conference has been held each year since its inception in 1976 and is named in honor of Senior Judge Homer Ferguson, who is a distinguished retired member of the Court and a former member of the United States Senate. The conference gives military and civilian practitioners an opportunity to receive concentrated instruction intended to develop and maintain the skills necessary for appellate court practice within the military justice system or elsewhere. The conferees may obtain certified credit to meet the continuing legal education requirements of their respective State Bars. Distinguished speakers at this year's conference included Honorable Albert Tate, Jr., Judge, United States Court of Appeals for the Fifth Circuit; Honorable Howard T. Markey, Chief Judge, United States Court of Customs and Patent Appeals; Honorable James Duke Cameron, Chief Justice, Supreme Court of Arizona; Honorable William A. Grimes, Chief Justice, Supreme Court of New Hampshire; Honorable Wade H. McCree, Solicitor General of the United States; and Dean John J.

Douglass of the National College of District Attorneys. About two hundred and fifty uniformed and civilian appellate lawyers practicing before the Courts of Military Review and this Court, as well as the Judges of the Courts of Military Review, the Judge Advocates General of the various services, and other scholars and commentators in the field of military justice were in attendance at the conference.

USCMA MANAGEMENT INFORMATION SYSTEM

During this fiscal year the Court installed a new computer system and laser printer which are designed to provide the Court with greatly expanded word processing and data processing capabilities. The installation of this equipment followed an extensive survey of available computer hardware with a view toward procuring an integrated system which would provide superior data processing capability and state-of-the-art word processing support for all aspects of the Court's operation. The innovativeness of the chosen system is attested by the number of visits to the Court by officials of both trial and appellate federal and state courts, members of governmental agencies, and representatives of private firms, who are interested in seeing first-hand the many uses to which such an automated management information system can be put. The basic design of the Court's new system has also served as a model for a number of federal and state appellate courts, as well as several U.S. Attorney's offices throughout the country.

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

Court-Martial Jurisdiction over Persons and Offenses

During the FY80 term the Court rendered a significant ruling as to court-martial jurisdiction over the person of a military accused. In a unanimous opinion in *United States v. Bridgeford*, 9 M.J. 79 (1980), the Court held that an enlistee in the United States Army Reserve who was involuntarily recalled to active duty and notified of his right to object to such activation, waived his right to object to procedural irregularities in his involuntary activation by his failure to make such an objection until he was tried by court-martial several months after being recalled to active duty. The Court distinguished an earlier ruling in *United States v. Kilbreth*, 22 U.S.C.M.A. 390, 47 C.M.R. 327 (1973), on the basis that the appellant in *Bridgeford* failed to object

*This section of the Court's Annual Report is prepared solely as an informational tool by the staff of the Court. It is included for the convenience of the reader to assist in easily locating cases of particular interest during the term. The case summaries are of no precedential value and should not be cited in briefs filed with the Court.

within a reasonable period of time after his involuntary activation. In another noteworthy decision concerning the jurisdiction of a court-martial over the person of a military accused, the Court held in *United States v. Beard*, 7 M.J. 452 (C.M.A. 1979), that where no action had been taken by local military authorities to separate the accused from the Army and where the accused himself had not objected to his retention beyond his term of obligated service, his military status was not terminated upon the expiration of such term of service.

In the area of off-base drug offenses the Court held in *United States v. Carr*, 7 M.J. 339 (C.M.A. 1979), that, since an off-base exchange of money and LSD had been simply the final step in a series of actions by the accused that began on a military base and continued through all the essential steps but the last, the court-martial had jurisdiction to try the accused for the charged offense of sale of LSD. However, the Court also held in this case, that the court-martial lacked jurisdiction to try the accused for a separate drug sale which occurred two days after the first offense at the apartment of a civilian accomplice where all the details for this second sale were worked out. In *United States v. Hardin*, 7 M.J. 399 (C.M.A. 1979), the Court held with respect to the charged offenses of sale and transfer of marijuana which occurred off-base that the court-martial which tried the accused had jurisdiction over these off-base offenses, since the underlying negotiations for the sale and transfer took place aboard a U.S. Navy ship and since the buyer returned to or near military property with the drugs, even though the actual exchange of marijuana and money occurred off-base.*

In an unusual case involving the court-martial of a military accused for larceny of monies from his civilian insurance company by submission of a false claim for a stolen vehicle, the Court held that court-martial jurisdiction existed. *United States v. Seivers*, 8 M.J. 63 (C.M.A. 1979). Even though the accused filed the fraudulent claim from his off-base residence, the insurer had mailed drafts for the insurance proceeds back to the accused at his duty station; and the accused's larceny offense therefore did not reach fruition until he received these drafts, endorsed them, and deposited them in his bank account, which was located on-base.

Right to Counsel

In *United States v. Edwards*, 9 M.J. 94 (C.M.A. 1980), the Court defined the responsibility of the Government to serve the staff judge advocate's post-trial review on an accused's original defense counsel

*Shortly after the FY80 term ended, a majority of the Court expressed a significant change of position when it observed in *United States v. Trottier*, 9 M.J. 337 (C.M.A. 1980), that almost every involvement of service personnel with the commerce in drugs, whether on or off base, is "service-connected."

at trial, even though another defense counsel had been contacted by the accused for legal advice concerning his rights during the post-trial processing of his record. The record in this case disclosed no formal appointment of a substitute defense counsel, no formal acceptance or rejection by the accused of a substitute defense counsel, and no action by the accused that could fairly be construed as a voluntary waiver of the attorney-client relationship which he had earlier established with his original defense counsel. The Court held that it was prejudicial error to preclude the accused's original trial defense counsel from fulfilling his role during the post-trial review proceedings, absent any extraordinary circumstance or a knowing and voluntary severance of the accused's right to his original counsel's services.

In a case in which a military accused petitioned the Court for extraordinary relief in connection with the proceedings of a special court-martial held at the U.S. Naval Station, Subic Bay, Republic of the Philippines, the military judge had denied a defense request that a civilian member of the Bar of the Philippines be permitted to represent him at trial. Over a strong dissent that the Court was unduly restricting a statutory right afforded to a military accused under Article 38(b), UCMJ, a majority of the Court denied the accused's request for an extraordinary writ to reverse the ruling of the military judge and held that the military judge had authority to bar a foreign lawyer from acting as civilian counsel at the accused's court-martial; that an attorney who has not been admitted to practice before the highest court of a state of the United States, or is not a member of the bar of a Federal court may be required to demonstrate that he is qualified to practice before courts-martial; and that the issue of whether the military judge abused his discretion in this particular instance was a matter for examination during the normal course of direct review of the accused's case. *Soriano v. Hosken*, 9 M.J. 221 (C.M.A. 1980).

Right to Witnesses

The Court rendered several decisions during this term which concerned rulings by a military judge on a defense request for an expert psychiatrist and a request by an accused to allow his sister to testify on his behalf. In *United States v. Salisbury*, 7 M.J. 425 (C.M.A. 1979), the Court held that the military judge committed prejudicial error by denying a defense request for an expert psychiatrist to testify in a murder case in order to establish the defense theory that the victim's death resulted from suicide. In support of his request that the desired psychiatrist be called as a defense witness, the accused's counsel represented to the military judge that the psychiatrist's testimony would indicate that the deceased victim's mental condition was consistent with the defense position that the victim committed suicide.

The Court concluded that the materiality of the requested expert's testimony was demonstrated on the record and that the accused was prejudiced by the denial of his request.

In *United States v. Courts*, 9 M.J. 285 (C.M.A. 1980), the Court gave further guidance to military judges in ruling on witness requests by holding that a military judge did not abuse his discretion in denying a defense request, submitted shortly before trial was to begin, that the accused's sister be brought to court at government expense to testify as a material witness at the sentencing portion of his court-martial. In that case the Court reaffirmed its position that the trial judge must determine in his discretion whether some judicially acceptable form of testimony was available in lieu of the live testimony of a requested witness. In view of the substance of the expected testimony of the accused's sister, as stipulated at trial, and because of the practical difficulties of producing her live testimony, the availability to the accused of other live testimony on the same topic, and the timing of the defense request, the trial judge had not abused his discretion by refusing to compel the Government to bring the requested witness to testify at trial.

The Court also addressed a troublesome problem encountered by defense counsel seeking to interview protected government informants in drug cases. In *United States v. Killebrew*, 9 M.J. 154 (C.M.A. 1980), the Court found that the Government had intentionally blocked defense counsel's pretrial access to an informant by secretly transferring him to a distant and undisclosed location and that an unauthenticated telephone interview between the accused's defense counsel and the supposed informant was insufficient to protect the accused's right under the Manual for Courts-Martial to interview potential witnesses. Although its decision provides guidance to counsel and trial judges, the Court was unable to determine from the record whether there was any risk of prejudice to the accused. Therefore, the record was remanded for a limited hearing to determine what information the informant might have provided if the accused's trial defense counsel had originally been granted meaningful access to conduct an interview with him.

Search and Seizure

In *United States v. Dillard*, 8 M.J. 213 (C.M.A. 1980), the Court held with respect to evidence seized during a search conducted in accordance with an oral authorization that, because the authorization had not been reduced to writing by the local military commander as required by Army regulations, the discovered evidence should have been suppressed.

United States v. Fimmano, 8 M.J. 197 (C.M.A. 1980) had been argued before Judge Perry left the Court but was not decided until

January 1980. A majority of the Court ruled that for the searches conducted after the date of the decision the authorization to search must be supported by probable cause established by sworn testimony. A motion for reconsideration was not granted by equally divided vote. Although serving on the Court when the motion for reconsideration was acted upon, Chief Judge Everett did not participate therein.

Two cases before the Court involved the stopping and ensuing search of an automobile on the basis of an anonymous telephone tip received by local military authorities. In both *United States v. Texidor-Perez*, 7 M.J. 356 (C.M.A. 1979), and *United States v. Gillis*, 8 M.J. 118 (C.M.A. 1979), the Court observed that an investigative stop of an automobile may be predicated on reasonable suspicion. However, to search a car probable cause is required, and the anonymous tip received by telephone in these cases was insufficient to establish probable cause, when the informant did not identify himself and gave no information as to how he had acquired the reported information that a particularly described automobile entering the main gate of a certain military base would be carrying passengers who possessed marijuana.

In *United States v. Paige*, 7 M.J. 480 (C.M.A. 1979), the Court considered the legality of the apprehension and search of a military accused at a border crossing from Holland into Germany. When the accused and his fellow serviceman attempted to enter Germany from Holland by automobile, a German border official stopped them and requested identification. The German official thereupon delivered the identification cards produced by the accused and his companion to Army military policemen, who ordered both individuals to remove their personal luggage to a room within the checkpoint station. After conducting "pat down" searches, the military policemen advised them that they were being apprehended for "illegal border crossing" and directed them to remove their clothing and submit to complete searches. Two plastic bags containing heroin found on the accused led to his conviction by court-martial. On appeal, the Court ruled that since there was no such offense as "illegal border crossing," the military policemen who apprehended and searched the accused and his companion in the checkpoint station had no lawful basis for such apprehension. Thus, the apprehension and search violated the Fourth Amendment of the United States Constitution; and so the discovered bags of heroin were inadmissible at the accused's court-martial.

Court-Martial Practice and Procedure

In *United States v. Slubowski*, 7 M.J. 461 (C.M.A. 1979), the Court concluded that an accused's right to be tried by impartial court members had not been prejudiced by the military judge's requirement that, in conducting the *voir dire* examination of the court members,

counsel for both sides submit proposed questions to the judge. The judge, in turn, would himself ask the questions of the court members. The Court noted, however, that this procedure was contrary to that followed in the overwhelming majority of cases reviewed on appeal and that its decision in this case was not intended to imply that such a procedure was preferable to the oral examination of the court members by counsel themselves.

In *United States v. Brewster*, 7 M.J. 450 (C.M.A. 1979), the military judge during his guilty plea inquiry had informed the accused that the maximum punishment for the charged offenses included confinement at hard labor for 20 years. The correct maximum was 10 years. The Court concluded that this erroneous information had substantially misadvised accused as to the consequences of his guilty plea and that this erroneous advice—although given with the concurrence of the accused's trial defense counsel and not contested by the accused until his case came on for appellate review of his record—rendered the accused's guilty pleas improvident. Accordingly, the findings and sentence were ordered set aside with provision for a rehearing.

In *United States v. Cooper*, 8 M.J. 5 (C.M.A. 1979), during the course of an inquiry to determine whether an accused's pleas of guilty to aggravated assault and communicating threats were provident, the military judge decided to reject the pleas because the accused had stated that he did not believe in his own mind that he was guilty. The judge thereupon refused to accept the guilty pleas, entered pleas of not guilty, and proceeded to try the accused at a bench trial over a defense objection that the judge had become disqualified to sit as an impartial trier of the facts and should have recused himself after rejecting the accused's guilty pleas. The Court held that since the accused had not fully and unequivocally admitted his guilt during the providency inquiry and since nothing in the record indicated that the military judge had inexorably concluded, as a result of that inquiry, that the accused was guilty of the crimes to which he attempted to plead guilty, the judge did not abuse his discretion in denying the accused's challenge for cause against him at the bench trial.

In another significant case decided this term, a military judge at a general court-martial ordered the reopening of an Article 32, UCMJ, pretrial investigative hearing after charges had earlier been referred to trial and after the accused had been arraigned. The judge's ruling resulted from a defense motion in which it was claimed that there were deficiencies in the original Article 32 investigation. The pretrial investigation was reopened in accordance with the military judge's ruling and, at the conclusion of this supplemental investigative hearing, the convening authority reviewed the pretrial advice of his staff judge advocate and again referred the case on the identical charges to the same general court-martial. However, when the court reconvened, the accused was found to have voluntarily absented himself

from the trial and, in view of the fact that he had earlier been properly arraigned, the trial proceeded in his absence and resulted in findings of guilty of the alleged offenses. The accused contended on appeal that the court-martial had lacked jurisdiction to try and convict him in his absence. However, the Court held in *United States v. Johnson*, 7 M.J. 396 (C.M.A. 1979), that the deficiencies in the original pretrial investigation conducted under Article 32, UCMJ, did not deprive the accused's court-martial of jurisdiction and that, upon the convening authority's subsequent review of the record of the supplemental investigation and his decision to refer the same charges to the existing court-martial, it was not necessary to begin the accused's court-martial anew. Thus, the accused's original arraignment was effective and his trial *in absentia* was proper.

The Court reviewed and disapproved the use by military judges of a form instruction to court members contained in the Army's Military Judge's Guide, which in effect equated *reasonable* doubt with *substantial* doubt. In *United States v. Salley*, 9 M.J. 189 (C.M.A. 1980), the Court noted that the instruction on reasonable doubt of which the accused complained has met with disfavor among appellate courts generally but that there has been reluctance to reverse convictions because of the use of such an instruction, at least in the absence of a defense objection or request for clarification. After reviewing the entire record, the Court concluded that the accused had not been prejudiced by the trial judge's reference to substantial doubt in instructing the court members on the meaning of reasonable doubt.

In three separate cases the Court again reviewed the appropriateness of considering general deterrence as a factor in deliberating on a just and proper sentence in a court-martial. In *United States v. Lania*, 9 M.J. 100 (C.M.A. 1980), the Court held that a trial counsel may properly urge the court members to consider the general deterrence of others in deliberating on a just and fair sentence, so long as he does not invite the court members to rely on deterrence alone, to the exclusion of other appropriate factors, in imposing an individualized sentence in a particular case. After quoting extensively from a trial counsel's argument to the court members, the Court reaffirmed this principle in the case of *United States v. Thompson*, 9 M.J. 166 (C.M.A. 1980), when it held that the court members were adequately apprised of the various factors, including the deterrence of others, which they could properly consider in arriving at an appropriate and just sentence for the particular accused in that case. Again in *United States v. Smith*, 9 M.J. 187 (C.M.A. 1980), the Court rejected an accused's contention that substantial prejudice resulted from a military judge's instructions to court members to consider what effects, if any, the sentence which they would impose might have in deterring others from considering similar acts and misconduct. The Court noted in this case that the military judge mentioned other factors

besides deterrence of others that could be considered by the court members and that his instructions did not unduly focus on the general deterrence factor but, instead, were a clear exhortation to the court members to individualize the accused's sentence.

With respect to the right of an accused during the appellate review process to petition the Court for further review of his record under Article 67, UCMJ, when that accused is in an unauthorized absence status, the Court issued a significant decision in *United States v. Schreck*, 9 M.J. 217 (C.M.A. 1980), which substantially modified its earlier decision in *United States v. Smith*, 22 U.S.C.M.A. 247, 46 C.M.R. 247 (1973), concerning the legal effect of an accused's unauthorized absence status on his right to file a petition with the Court either personally or through his duly authorized counsel. The Court had held in *Smith* that an appellate defense counsel could not file a petition on behalf of his unauthorized absentee client under Article 67, UCMJ. In *Schreck*, decided this term, the Court now holds that even when an accused is in an unauthorized absence status during his entire 30-day appeal period — which commenced in this case with service of the Court of Military Review decision on his properly authorized appellate defense counsel — his counsel may file a petition for review under Article 67, UCMJ.

ROBINSON O. EVERETT

Chief Judge.

WILLIAM H. COOK

Judge.

ALBERT B. FLETCHER, JR.

Judge.

USCMA STATISTICAL REPORT

Fiscal Year 1980

CUMULATIVE SUMMARY

CUMULATIVE BEGINNING PENDING	
Master Docket.....	202
Petition Docket.....	299
Miscellaneous Docket.....	<u>6</u>
TOTAL.....	507
CUMULATIVE FILINGS	
Certificates filed.....	34
Petitions for grant filed.....	1,725
Petitions for new trial filed.....	1
Extraordinary writs sought.....	47
Reconsiderations granted.....	<u>5</u>
TOTAL.....	1,812
CUMULATIVE TERMINATIONS	
Master Docket.....	195
Petition Docket.....	1,364
Miscellaneous Docket.....	<u>50</u>
TOTAL.....	1,609
CUMULATIVE END PENDING	
Master Docket.....	387
Petition Docket.....	320
Miscellaneous Docket.....	<u>3</u>
TOTAL.....	710

OPINION SUMMARY

CATEGORY	SIGNED	PER CURIAM	MEM/ORDER	TOTAL
Master Docket.....	60	17	118	195
Petition Docket.....	0	0	1,364	1,364
Miscellaneous Docket.....	1	0	49	50
TOTAL.....	61	17	1,531	1,609
FILINGS (MASTER DOCKET)				
Appeals filed.....		0		
Certificates filed.....		34		
Petitions granted.....		337		
Reconsideration granted.....		<u>5</u>		
TOTAL.....		376		

TERMINATIONS (MASTER DOCKET)

Findings & sentence affirmed.....	134	Signed.....	60
Reversed in whole or in part.....	39	Per curiam.....	17
Granted petitions vacated.....	16	Mem/order.....	<u>118</u>
Other disposition directed.....	<u>6</u>	TOTAL.....	195
TOTAL.....	195		

PENDING (MASTER DOCKET)

Assigned opinions pending.....	193
Judges' conference pending.....	15
Oral argument pending.....	60
Prerargument conference pending.....	23
Calendar committee pending.....	75
Final briefs pending.....	<u>21</u>
TOTAL.....	387

FILINGS (PETITION DOCKET)

Petitions for grant of review filed.....	1,717
Petitions for grant/new trial filed.....	1
Cross-petitions for grant filed.....	<u>8</u>
TOTAL.....	1,726

TERMINATIONS (PETITION DOCKET)

Petitions for grant dismissed.....	7	Signed.....	0
Petitions for grant denied.....	1,340	Per curiam.....	0
Petitions for grant remanded.....	15	Mem/order.....	<u>1,364</u>
Petitions for grant withdrawn.....	<u>2</u>	TOTAL.....	1,364
TOTAL.....	1,364		

PENDING (PETITION DOCKET)

Petition briefs pending.....	187
Staff attorney action pending.....	96
Court action pending.....	<u>37</u>
TOTAL.....	320

FILINGS (MISCELLANEOUS DOCKET)

Writs of errors coram nobis sought.....	3
Writs of habeas corpus sought.....	14
Writs of mandamus/prohibition sought....	19
Other extraordinary relief sought.....	<u>11</u>
TOTAL.....	47

TERMINATIONS (MISCELLANEOUS DOCKET)

Petitions withdrawn.....	3	Signed.....	1
Petitions remanded.....	0	Per curiam.....	0
Petitions granted.....	1	Mem/order.....	<u>49</u>
Petitions denied.....	36	TOTAL.....	50
Petitions dismissed.....	<u>10</u>		
TOTAL.....	50		

PENDING (MISCELLANEOUS DOCKET)

Briefs pending	0
Action by Writs Counsel pending	0
Show cause action by Court pending	0
Show cause response pending	0
Other final action pending	<u>3</u>
TOTAL	3

RECONSIDERATIONS & REHEARINGS

CATEGORY	FILINGS	PENDING	DISPOSITIONS		
			Granted	Rejected	TOTAL
Master Docket	15	0	5	5	10
Petition Docket	16	4	2	5	7
Miscellaneous Docket	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
TOTAL	31	4	7	10	17

MOTIONS ACTIVITY

CATEGORY	FILINGS	PENDING	DISPOSITIONS		
			Granted	Rejected	TOTAL
All Motions	728	36	551	123	674

REPORT OF
THE JUDGE ADVOCATE GENERAL OF THE ARMY
October 1, 1979 to September 30, 1980

In fiscal year 1980, Brigadier General Lloyd K. Rector assumed the duties of the Commander, U.S. Army Legal Services Agency and Chief Judge, U.S. Army Court of Military Review.

During fiscal year 1980 the Office of The Judge Advocate General continued to monitor the proceedings of courts-martial, to review and prepare military justice publications and regulations, and to develop draft legislative changes for the UCMJ.

MILITARY JUSTICE STATISTICS
AND U.S. ARMY JUDICIARY ACTIVITIES

After several years of declining court-martial rates, fiscal year 1980 saw a significant increase in the Army-wide number of courts-martial. The total number of persons tried by all types of courts-martial in fiscal year 1980 was 23.3% higher than the year before. This overall increase reflects primarily a 59% rise in special courts-martial empowered to adjudge a bad conduct discharge and a 50.1% increase in the number of summary courts-martial. The number of regular special courts-martial decreased slightly (0.5%), while general courts-martial increased by 7.7%. The overall conviction rate also increased, from 88% of persons tried in fiscal year 1979 to 91% of persons tried in fiscal year 1980.

Use of nonjudicial punishment increased slightly in fiscal year 1980. The total number of Article 15's imposed in fiscal year 1980 was 151,371, up 3% from the previous year's figure of 146,411. Based upon the average active duty strength of the Army, the number of Article 15's imposed in fiscal year 1980 amounted to 196.9 per thousand soldiers, compared to a rate of 193.0 per thousand for the previous year.

Average active duty strength of the Army in fiscal year 1980 was 10,000 greater than in fiscal year 1979, a 1.3% increase. The increase in the size of the Army would not appear to be a significant factor in the increased number of disciplinary actions.

Statistical Summary: Fiscal Year 1980

Period: Fiscal Year 1980

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	1353	1244	109	+ 7.7%
BCD SPECIAL	1385	1169		+ 59.0%
NON-BCD SPECIAL	3065	2870	195	-0.5%
SUMMARY	3467	3148	319	+ 50.1%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+ 23.3%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES		342
NUMBER OF BAD CONDUCT DISCHARGES		582
SPECIAL COURTS-MARTIAL (SA LEVEL)		
NUMBER OF BAD CONDUCT DISCHARGES		901

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	1092	} 2115 } 2480
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	1023	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	365	

PART 4 - WORKLOAD OF THE COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD		397
GENERAL COURTS-MARTIAL	236	
BCD SPECIAL COURTS-MARTIAL	161	
REFERRED FOR REVIEW		2160
GENERAL COURTS-MARTIAL	1129	
BCD SPECIAL COURTS-MARTIAL	1031	
TOTAL CASES REVIEWED		1843
GENERAL COURTS-MARTIAL	992	
BCD SPECIAL COURTS-MARTIAL	851	
TOTAL PENDING AT CLOSE OF PERIOD		714
GENERAL COURTS-MARTIAL	373	
BCD SPECIAL COURTS-MARTIAL	341	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		1584 16.4%

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE COURT OF MILITARY REVIEW

NUMBER	1835
PERCENTAGE	99.6%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	61.0%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	5.9%
PERCENTAGE OF TOTAL PETITIONS GRANTED	24.0%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	14.8%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	14.5%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	9.4%

Statistical Summary: Fiscal Year 1980—Continued

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		32
RECEIVED		311
DISPOSED OF		286
GRANTED	46	
DENIED	236	
NO JURISDICTION	2	
STAYED	1	
WITHDRAWN	1	
TOTAL PENDING AT END OF PERIOD		57
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		862
GENERAL COURTS-MARTIAL		758
SPECIAL COURTS-MARTIAL		2481
TRIALS BY MILITARY JUDGE WITH MEMBERS		596
GENERAL COURTS-MARTIAL		265
SPECIAL COURTS-MARTIAL		265
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS		
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	768,741	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		151,371
RATE PER 1,000		196.9
RATE OF INCREASE (+) / DECREASE (-) OVER PREVIOUS PERIOD		3.9

The U.S. Army Judiciary

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

The Agency also includes the Government Appellate Division, the Defense Appellate Division, the Trial Defense Service, Contract Appeals Division, the Regulatory Law Office, and the Professional Recruiting Office. The latter three sections have no function related to the U.S. Army Judiciary and its court-martial mission. The Contract Appeals Division and the Regulatory Law Office represent the Army and the Department of Defense in certain contractual disputes before regulatory commissions and boards. The Professional Recruiting Office coordinates the recruitment of lawyers for the Army.

U.S. Army Trial Defense Service

In fiscal year 1980, the Army completed a worldwide test of the US Army Trial Defense Service (USATDS), a new, independent organization for military defense counsel. After a successful year-long test at sixteen TRADOC installations in FY 1979, the Army Chief of Staff directed the expansion of the USATDS test to all commands in the United States, including Alaska, Hawaii, and the Republic of Panama, beginning 1 September 1979. The Commander in Chief, Eighth US Army, Korea, and the Commander in Chief, US Army, Europe, were given the option of including their commands in the test.

By 1 January 1980, all Army commands, including those in Europe and Korea, had joined the test. At the end of FY 1980, USATDS had 42 field and branch offices located at 39 CONUS installations, five in Korea, and 33 in Europe (all but one in Germany). One hundred and ninety-eight defense counsel provide specified defense counsel services at these offices. For administrative and supervisory purposes, the field offices were divided into nine geographical regions. A field grade Regional Defense Counsel supervised operations within each region, while a Senior Defense Counsel directed each field office.

The primary purpose of the expanded test was to test the ability of USATDS to perform larger mission requirements in more diverse organizations, particularly combat and combat support units. By the end of FY 1980, USATDS counsel had participated in many local field exercises and in deployment exercises at Fort Irwin, California. Plans were completed to send a USATDS counsel to Europe with the 2d Armored Division's contingent to a Reforger exercise. USATDS accomplished numerous cross-support missions among the major commands, including the provision of 13 defense counsel for a major investigation at Lexington Bluegrass Army Depot, and ten defense counsel for a multiple-accused rape case in Panama.

In February and March 1980, the expanded program was evaluated by commanders, staff judge advocates, military judges, and defense counsel. At the end of FY 1980, the program was still in a test posture pending final decision by the Army Chief of Staff.

SIGNIFICANT MILITARY JUSTICE ACTIONS

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

Change to Military Justice Regulation

Change 20, Army Regulation 27 - 10, Military Justice, was published with an effective date of 15 August 1980. Some of the significant changes included: providing The Judge Advocate General with authority to grant limited exceptions to the regulation when required by military exigencies; clarifying that special courts-martial empowered to adjudge bad-conduct discharges may be convened only by an officer exercising general court-martial convening authority; eliminating review of denials of applications for deferment of sentence to confinement; eliminating the requirement for mental status evaluations of service members referred to trial by general or BCD special courts-martial; providing authorization for commanders to administer oaths for military justice purposes, including search and seizure and apprehension; describing the military judge's authority to issue orders authorizing interception of oral and wire communications; revising procedures for notifying an accused of the appellate decision on his case by the Court of Military Review; and allowing commanders who impose nonjudicial punishment to determine whether records of minor punishment will be filed in a soldier's Official Military Personnel File or maintained in unit records only. This last mentioned change permits a local commander to decide whether a record of punishment which has been characterized as "minor" will be available to promotion and school selection boards. As a result, commanders now have greater flexibility in imposing punishment, since minor punishment can be imposed for a minor disciplinary infraction without long-term effects on a soldier's career. Minor punishment is defined in the regulation as restriction or extra duty for 14 days or less, detention or forfeiture of pay for not more than one month, correctional custody for seven days or less, admonition or reprimand, or any combination thereof.

FOREIGN CRIMINAL JURISDICTION

As executive agent for DOD, DA (through OTJAG) maintains and collates information concerning the exercise of foreign criminal jurisdiction over U.S. service members. During the period 1 December 1979 through 30 November 1980 out of 14,636 cases (worldwide) involving primary foreign concurrent jurisdiction of U.S. Army personnel, foreign authorities waived their jurisdiction in 14,211 cases for a waiver rate of 97% percent. This rate is slightly lower than that of the previous reporting period.

LITIGATION

Litigation involving the Army during fiscal year 1979 had only a limited impact upon military justice matters.

In *Hatheway v. Secretary of the Army*, No. 80 - 4013 (9th Cir.) appellant challenges the decision of the Northern District of California sustaining the constitutionality of Article 125, Uniform Code of Military Justice. He alleges that private consensual sodomy between members of the same sex cannot be prosecuted. The appeal is pending.

EDUCATION AND TRAINING

During fiscal year 1980, The Judge Advocate General's School, located in Charlottesville, Virginia, provided legal education to lawyers of the military services and other Federal agencies. Forty-three resident courses were conducted with 2,123 students in attendance. Courses were attended by 1,283 Army, 160 Navy and Marine, 90 Air Force, 31 Coast Guard, 50 Army National Guard, 498 civilians, and 11 foreign students.

During fiscal year 1980, three Basic Classes, the 91 - 93rd, were conducted. A total of 232 officers (231 Army, and one foreign) were graduated.

The 29th Graduate Class began on 18 August 1980 with 49 Army, one Navy, five Marine, and three foreign officers in attendance.

The Criminal Law Division sponsored six resident continuing legal education (CLE) courses in fiscal year 1980, including three Trial Advocacy courses. The advocacy courses combine instruction on new developments in criminal law, seminars, and videotaped workshops to improve and polish the experienced trial attorney's advocacy skills. The major portion of these offerings is devoted to student-participation workshops and exercises designed to enable the attorneys to refine their courtroom skills and the techniques of persuasion. The courses are accredited by all states having mandatory CLE

requirements. Additionally, the Division presented four non-resident courses in Germany for counsel assigned in that theatre. These included two general criminal law seminars and two professional responsibility seminars.

The International Law Division sponsored three one-week courses and one two-week course on the Law of Armed Conflict and one 2½ day course on Legal Aspects of Terrorism. All courses were designed for and attended by both judge advocates and operational staff officers. In keeping with "the operationalization of international law" begun last year, the major focus of the courses was on practical, hands-on training, rather than didactic instruction. Utilizing practical exercises, seminars and war gaming techniques, the students were presented realistic situations that they had to resolve using the materials which should be available in the field. With the attendance of both judge advocates and operational staff officers, all students were exposed to the interface of operational necessities and legal requirements.

The International Law Division was also responsible for presenting the periodic Judge Advocate General Service Organization Team training to USAR International Law Detachments. Beginning in the fall of 1979, the division mailed selected materials on international law to each team and recommended various courses of study or training with the materials. When the teams arrived for training, the first week was devoted to conferences and seminars on the role of international law in military operations and the role of the USAR in implementing international law programs. The second week was entirely a Practical Exercise/War Game commencing in a peacetime setting and moving through mobilizations, pre-deployment, deployment, and insertion of active and reserve units into a combat theatre of operations. With this training completed and with on-going unit training programs proposed, the division has been working with the Reserve Affairs Department and selected active force JA's to utilize these USAR assets in field training and command post exercises. Such a use will provide realistic training to the teams as well as providing a service to both active and reserve component commanders.

The Contract Law Division sponsored 12 continuing legal education courses, covering areas from Fiscal Law to the Government's new contracting out policy. The 10th Contract Attorneys Advanced Course, 7 - 11 January 1980, featured recent and proposed changes affecting Government contract law. Among the topics covered were 8(a) contracting under Public Law 95 - 507, contracting for commercial and industrial type activities (CITA), and the Contract Disputes Act of 1978. Two courses, Contract Claims, Litigation and Remedies and Negotiations, Changes, and Terminations, were offered for the first time. Additionally, the Division sent two instructors to Seoul, Korea, to present a three day Fiscal Law Course.

The Administrative and Civil Law Division sponsored a number of continuing legal education courses in fiscal year 1980. Legal Assistance, Government Information Practices, Federal Labor Relations, Military Administrative Law Developments, Environmental Law, Litigation, and Law Office Management were among the courses presented. The Division also conducted the 2d U.S. Magistrate Court Workshop where students contributed actual problems being experienced in the field for the group's discussion and solution. In addition, the Division sent an instructor to the NCO Advanced Course at Fort Benjamin Harrison to conduct courses in administrative and civil law subjects.

Six resident classes of the Senior Officers Legal Orientation Course were conducted at TJAGSA for 259 senior field grade command and staff officers. The School also continued to conduct the SOLO Course at the U.S. Army War College, Carlisle Barracks, where 32 students received instruction (28 April - 2 May 1980). A new course instituted during fiscal year 1980 was the General Officer Legal Orientation (GOLO) for General Officer command designees. During this fiscal year, TJAGSA conducted nine GOLO Courses for a total of ten General Officers.

During fiscal year 1980, members of the Administrative and Civil Law Division made several presentations outside of TJAGSA. The Division Chief taught at the first Pre-Command Course for Training Base Commanders at Fort Dix, New Jersey on 5 and 6 December 1979, and in July 1980 a Division representative addressed the Military Law Section of the American Bar Association on the Army's administrative separation program. Additionally, at the U.S. Army Europe Administrative Law Conference from 12 to 16 May 80, two members of this Division were the principal instructors and covered a wide range of administrative law topics.

MAJOR PROJECTS

The Director of the Judge Advocate Division, Headquarters, Marine Corps, Brigadier General James P. King, USMC, spoke to the Graduate Class on the role of the Marine Judge Advocate in March 1980.

On 1 May 1980, the fourth Charles L. Decker Lecture in Administrative and Civil Law was presented by Professor John J. Broderick, Associate Dean and Professor of Law at Campbell University School of Law. Professor Broderick's topic was "Arbitration: An Idea Whose Time Has Come."

The Honorable Charles E. Moylan, Jr., Associate Judge of the Maryland Court of Special Appeals, delivered the Ninth Kenneth J. Hodson Lecture in Criminal Law on 21 March 1980.

The Edward H. Young Lecture in Military Legal Education was presented by the Honorable John J. Rhodes, Minority Leader, United States House of Representatives, on 26 September 1980.

The Judge Advocate General's School was the site of the Judge Advocate General's Service Organizations International Law and Contract Law Team training, 16 – 27 June 1980, and the Branch Officer Advance Course Phase II (Criminal Law) and the Judge Advocate Reserve Components General Staff Course resident phase, 7 – 18 July 1980. Approximately 270 reserve judge advocates were trained at these sessions.

The Reserve Components Technical (On-Site) Training Program for the academic year 1979 – 1980 provided training to 1,415 reserve judge advocates, 105 enlisted members, and 20 civilian attorneys in 38 cities covered during 22 trips. The Law School Liaison Program was revamped during the last quarter of fiscal year 1979. All ABA approved law schools now have liaison officers. During calendar year 1979, reserve judge advocates assigned to USAR troop program units provided over 90,000 manhours of mutual support to the active Army.

The Judge Advocate General's Mobilization Designation program, administered by the Reserve Affairs Department of TJAGSA, has leveled off at approximately 500 positions CONUS-wide. Officers transferring from Troop Program Units to the Individual Ready Reserve are seeking Mobilization Designation vacancies, and active component Staff Judge Advocates continue to rely on the services of their MOBDES officers. Mobilization designees serve at active component stations throughout the country. They also serve on the U.S. Army Court of Military Review, at Government and Defense Appellate Divisions, Examination & New Trials Division, and the Office of The Judge Advocate General.

The School hosted the 1980 Worldwide JAG Conference, 13 – 17 October 1980. Over 200 senior Judge Advocates from all over the world conferred on areas of interest and discussed recent developments in all areas of military law.

New editions of several DA publications for which TJAGSA is responsible were issued during fiscal year 1980. These included FM 27 – 14, Legal Guide for the Soldier; DA Pam 27 – 15, Military Justice Handbook: Trial Guide; DA Pam 27 – 17, Military Justice Handbook: Procedural Guide for the Article 32(b) Investigating Officer; and DA Pam 27 – 174, Military Justice: Jurisdiction of Courts-Martial. Change 3 to DA Pam 27 – 12, Legal Assistance Handbook, and Change 4 to DA Pam 27 – 21, Military Administrative Law Handbook, also were issued during the year.

The number of law libraries serviced by the Army Law Library Service (ALLS) grew to 267 with the addition of the Corps of Engineers Near East Project Office in Tel Aviv, Israel. ALLS ini-

tiated procedures to reduce costs by computerizing ALLS inventories, reviewing all yearly purchases, and examining consolidation of libraries on multiple library posts.

The combat developments office revised the Judge Advocate sections of TRADOC Pamphlet 1 – 1, reviewed the utilization of Judge Advocate slots in the Army study of the future heavy division (Division 86) and initiated use of JAGC TOE 27 – 600H.

On 1 July 1980 Colonel William K. Suter succeeded Lieutenant Colonel Robert M. Nutt as Deputy Commandant and Director of the Academic Department.

PERSONNEL, PLANS, AND POLICIES

Excluding law students, the strength of The Judge Advocate General's Corps at the end of fiscal year 1980 was 1,501. Representing minority groups were 62 Blacks, 17 Hispanics, 11 Asian and Native Americans, and 98 women. The fiscal year 1980 end strength compares with an end strength of 1431 in fiscal year 1979, 1425 in fiscal year 1978, 1525 in fiscal year 1977, and 1565 in fiscal year 1976. The grade distribution of the corps at the end of the fiscal year was: 6 general officers, 86 colonels, 149 lieutenant colonels, 249 majors, and 1011 captains. There were also 58 warrant officers. In addition, 66 officers were participating in the Funded Legal Education Program.

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

In February 1980 a selection board was convened to select 21 active duty commissioned officers to commence law school under the Funded Legal Education Program.

Notwithstanding recent trends toward a larger percentage of career judge advocates, there is still a shortage of field grade officers in the Corps.

Sixty-six judge advocate officers completed the following schools:

U.S. Army War College.....	2
Industrial College of the Armed Forces.....	1
U.S. Army Command and General Staff College.....	8
Armed Forces Staff College.....	5
The Judge Advocate Officer Graduate Course.....	50

With worldwide testing of the Trial Defense Service, The Judge Advocate General has discontinued the policy of requiring separate certification of judge advocates as defense counsel.

ALTON H. HARVEY
Major General, USA
The Judge Advocate General

ANNUAL REPORT
of
THE JUDGE ADVOCATE GENERAL OF THE NAVY
pursuant to
THE UNIFORM CODE OF MILITARY JUSTICE
for
FISCAL YEAR 1980

Supervision of the administration of military justice. — Complying with the requirement 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 and Europe in the supervision of the administration of military justice.

Court-Martial Workload.

a. There has been an increase in the total number of courts-martial during fiscal year 1980. (See Exhibit A attached to this report.)

b. During fiscal year 1980, the U.S. Navy Court of Military Review received for review 2,877 new court-martial cases, consisting of 223 general courts-martial and 2,654 special courts-martial, as compared with 1,970 courts-martial consisting of 209 general courts-martial and 1,761 special courts-martial during fiscal year 1979. Of the 2,877 new cases received by the U.S. Navy Court of Military Review in fiscal year 1980, 2,500 accused requested counsel (87% percent).

Navy-Marine Corps Trial Judiciary.

The Navy-Marine Corps Trial Judiciary provided military judges for 428 general courts-martial during fiscal year 1980, an increase of 114 cases from the 1979 level of 314 general courts-martial. In 1980, 57% of the general courts-martial were tried by courts constituted with military judge alone. This represents a 19% increase in the number of courts constituted without members since fiscal year 1979.

The Navy-Marine Corps Trial Judiciary supplied military judges for 9,409 special courts-martial trials during fiscal year 1980, an increase of approximately 860 cases over the fiscal year 1979 level. In fiscal year 1980, 89% of the special courts-martial were tried by courts constituted with military judge alone.

There are nineteen general court-martial military judges presently assigned to the Navy-Marine Corps Trial Judiciary, one more than the manning level at the close of fiscal year 1979. Thirty-five special courts-martial military judges are assigned to the Navy-Marine Corps Trial Judiciary, an increase of one from the manning level at the close of fiscal year 1979.

Some twenty-one military judges attended the annual Judge Advocate General's conference held in Washington, D.C., 22 - 26 October 1979. Four military judges attended the three-week General Jurisdiction Course at the National Judicial College, Reno, Nevada. Three military judges attended the one-week Evidence Course at the National Judicial College, Reno, Nevada. Eighteen judges attended the Military Judge Course given at the Army JAG School in Charlottesville, Virginia. Six military judges attended the Military Law and Justice Seminar hosted by the California Western Law School in San Diego, California. Two military judges attended the Military Rules of Evidence Workshop in Pensacola, Florida. Four military judges attended the 1980 WESTPAC Judiciary Seminar at Okinawa, Japan. Eleven military judges attended the 2nd Annual Camp Pendleton Continuing Legal Education program for the American Trial Lawyers Association.

In an effort to further reduce travel expenses throughout the judiciary, the circuits have been realigned to show more realistic geographical limitations.

Naval Legal Service Command.

The Naval Legal Service Command at present consists of nineteen Naval Legal Service Offices and seventeen detachments which are located in areas of naval concentrations throughout the world. The total manpower strength authorization for the Naval Legal Service Command includes 380 judge advocates, 12 warrant officers, 146 legalmen, 62 yeomen, and for fiscal year 1980, 163 civilian employees, which includes 33 direct-hire foreign nationals and 7 indirect-hire foreign nationals. Navy judge advocates in the Naval Legal Service Command comprise approximately 38% of the Navy's total judge advocate strength.

The Naval Legal Service Command, during the past year, has undergone the following changes:

a. Several title changes were made as follows:

Commander, Naval Legal Service Command vice Director, Naval Legal Service;

Commanding Officers vice Officer in Charge, Naval Legal Service Officers;

Officers in Charge vice Head, Naval Legal Service Branch Offices;

Naval Legal Service Office Detachments vice Naval Legal Service Branch Offices;

b. The Naval Legal Service Office Detachment at Long Beach is now a Naval Legal Service Office. New detachments were established at New Orleans and Annapolis with proposals underway to establish detachments at Meridian, Mississippi; Gulfport, Mississippi; Port Hueneme, California, and Adak, Alaska. The detachment at Holy Loch, Scotland, was disestablished.

The Naval Legal Service Command continues to provide timely response to requests from activities requiring counsel and trial-team services. The Naval Legal Service Command is providing an ever-increasing amount of necessary legal services to local commands. Periodic command inspections into the operation of each of the various Naval Legal Service Offices and detachments has shown most line commanders who depend upon the Naval Legal Service Command for support are satisfied with the quality and timeliness of services received.

Article 69, UCMJ, Petitions. a. The number of petitions filed pursuant to Article 69, Uniform Code of Military Justice, under which the Judge Advocate General may vacate or modify the findings or sentence of courts-martial which have been finally reviewed under Article 76, but have not been reviewed by the U.S. Navy Court of Military Review, decreased slightly during fiscal year 1980.

b. In fiscal year 1980, 67 petitions were received by the Judge Advocate General. Seven petitions were pending from prior years. Of these 74 cases, 59 petitions were reviewed during fiscal year 1980. Of those petitions reviewed, 50 petitions were denied, while relief was granted, in whole or in part, in 9 of the petitions. Fifteen cases were pending review at the close of fiscal year 1980.

c. In addition, in fiscal year 1980, 116 general court-martial cases, which were not statutorily eligible for automatic review by the U.S. Navy Court of Military Review, were reviewed by the Judge Advocate General.

Article 73, UCMJ, Petitions. In fiscal year 1980, six petitions for new trials were submitted, one of which was referred to the U.S. Navy Court of Military Review pursuant to Article 73, Uniform Code of Military Justice. Five petitions were denied.

Article 74(b), UCMJ, Petitions. Eight new petitions were submitted requesting the substitution of an administrative discharge for a punitive discharge awarded as part of a sentence by court-martial. Two cases were pending from the prior fiscal year. Two cases were adjudicated, and eight cases were pending at the close of the fiscal year.

Annual Judge Advocate General's Conference.

a. A conference of judge advocates from all major Navy and Marine Corps commands was held in Washington, D.C., on 22 October – 26 October 1979. The conference heard addresses by the Secretary of the Navy, the Vice Chief of Naval Operations, and the Commandant of the Marine Corps. The conference included formal presentations on various legal topics; *i.e.*, human resources management, investigations, garnishments, the military rules of evidence, taxation, and claims. Panel discussions were conducted on post-trial clemency, the Ethics in Government Act, the alcoholic accused, labor-management relations, military/industrial hazard claims and litigation, foreign criminal jurisdiction, the Privacy Act, and the Freedom of Information Act. Continuing legal education videotape presentations were made concerning cross-examination, extraordinary writ practice, the U.S. Court of Military Appeals, setting goals in criminal litigation, trial tactics, collateral attack on court-martial convictions in U.S. District Court, conflict of interest/standards of conduct, and the psychology of eyewitness testimony. In addition to these presentations, seminars discussed military personnel and financial management issues, appellate defense and appellate government issues, law-of-war problems, legal assistance, malpractice liability, and community involvement.

b. This annual conference of judge advocates once again demonstrated the tremendous benefit which is derived when judge advocates from all over the world have the opportunity to attend lectures and participate in seminars concerning significant legal matters in areas of mutual concern, which have arisen during the past year.

Naval Justice School

1. The Naval Justice School in Newport, Rhode Island, with a teaching staff of twelve officers and five enlisted personnel, presented the following courses of instruction in military law and related administrative and civil law matters to a total of 1,752 students during fiscal year 1980.

Lawyer Course: Four eight-week lawyer classes were presented during the year. This course, designed to provide basic training in military justice and military administrative and civil law matters to incoming Navy and Marine Corps lawyers, includes 191 hours of classroom instruction and 127 hours of practical exercises, including moot courts and various criminal law practical exercises. Training was provided to 134 Navy lawyers and 47 Marine Corps lawyers.

Legal Officer Course: Eight five-week classes were presented during the year (seven classes in Newport and one at Camp Pendleton, California). This course is designed for the nonlawyer, junior officer about to assume duties as a legal officer for a ship, station, or other military unit with no military lawyer assigned. Included in the course

curriculum are 150 classroom hours and 44 hours of practical exercises and seminars. Training was provided to 224 Navy officers, 72 Marine Corps Officers, and 3 Coast Guard officers.

Naval-Marine Corps Reserve Officer Basic and Refresher Courses: These two-week courses of instruction are offered once each summer to Navy and Marine Corps Reserve lawyers. The Basic Course serves as an introduction to military law for those lawyers without significant active-duty legal experience. The Refresher Course is designed for the lawyer who has previously served on extended active duty as a judge advocate, or who previously has attended the Reserve Basic Course. It provides the student with an update on recent developments in military law. Training was provided to 33 Naval Reserve lawyers, 31 Marine Corps Reserve lawyers, and one Coast Guard Reserve lawyer.

Senior Officer Course: Seventeen one-week classes were presented during the year, reaching a total of 910 students. Six of the classes were presented in Newport. The other eleven were presented in Norfolk, Virginia; Charleston, South Carolina; Jacksonville, Florida; San Diego and San Francisco, California; Seattle, Washington; Camp Pendleton, California; Amphibious Warfare School and Command and Staff College, Quantico, Virginia; Pearl Harbor, Hawaii; and Camp Lejeune, North Carolina. This course is designed primarily for commanding officers and executive officers, and is intended to prepare these officers to handle the legal problems normally faced by commanding and executive officers in the areas of military justice and administrative and civil law. Training was provided to 433 Navy officers, 410 Marine Corps officers, 44 Coast Guard officers, 18 Army officers, 4 Air Force officers, and 1 civilian during the fiscal year.

Legal Clerk Course: Five three-and-one-half-week classes were conducted during the year. This course is designed to train enlisted personnel to serve as legal yeomen or legal clerks at their respective commands. Graduation from this course, and from the following Court Reporting Course, is required for conversion to legalman in the Navy. Training was provided to 181 Navy personnel, 10 Coast Guard personnel, and 3 civilians.

Court Reporter Course: Four five-and-one-half-week classes were presented during fiscal year 1980. The purpose of this course is to train enlisted personnel in the field of closed-mask court reporting. Training was provided to 65 Navy personnel, 28 Army personnel, and 10 Coast Guard personnel.

2. In addition to those formal courses of instruction listed above, the Naval Justice School also presented nearly 357 lecture hours of instruction in the areas of search and seizure, confessions and admissions, nonjudicial punishment, investigations, administrative discharges, and command relations with civil authorities to 1,641 students at the Surface Warfare Officers School, Officer Candidate

School, Chaplains School, Officer Indoctrination School, and the Naval War College in Newport, Rhode Island, and at the Naval Submarine School in New London, Connecticut.

Article 138, UCMJ, Complaints of Wrongs. In fiscal year 1980, 117 complaints of wrongs were received in the Office of the Judge Advocate General. Two such complaints were pending from fiscal year 1979. One hundred fifteen complaints of wrongs, including the two pending from fiscal year 1979, were reviewed during fiscal year 1980, leaving four pending review as of 30 September 1980.

Joint-Service Committee on Military Justice.

a. The Joint-Service Committee on Military Justice was established by the Judge Advocates General and the General Counsel of the Department of Transportation, on 17 August 1972. Representatives are provided by the Army, Navy, Air Force, Marine Corps, Department of Transportation (Coast Guard), and a nonvoting representative is provided by the U.S. Court of Military Appeals. During fiscal year 1980, the Navy representative was the Committee Chairman. A Navy representative also chaired the Working Group to the Committee. 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*. 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 military services. In 1976, it was given the additional responsibility for commenting on military justice concerns originating from outside the military services.

b. The proposed legislation on improving the efficiency of the military justice system, noted in last year's report, was submitted by the Department of Defense as part of its legislative program for the second session of the 96th Congress.

c. The Military Rules of Evidence, discussed in last year's report, became effective on 1 September 1980, after two-and-one-half years of effort.

d. The Working Group of the Joint-Service Committee is now in the process of revising the *Manual for Courts-Martial*, a project that is expected to take at least three years to complete. An outline of the project has been approved by the Department of Defense General Counsel and drafting of the new *Manual for Courts-Martial* is in progress.

Ethics. Action was taken to maintain high ethical standards for 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 Canons of Judicial Ethics, and the ABA Standards for the Administration of Criminal

Justice. The JAG Ethics Committee was established by section 0141, *Manual of the Judge Advocate General*, to consider ethical questions and make appropriate recommendations to the Judge Advocate General. It is comprised of the Assistant Judge Advocate General (Civil Law); the Assistant Judge Advocate General (Military Law); the Assistant Judge Advocate General (Military Personnel and Management); a representative of the Commandant of the Marine Corps; and the Executive Assistant to the Judge Advocate General, who acts as recorder. None of the matters considered by the JAG Ethics Committee during fiscal year 1980 were found to constitute unethical conduct or malpractice by any naval service judge advocate.

Statistical Summary: Fiscal Year 1980

Period: Fiscal Year 1980

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	354	328	26	97 (+38%)
BCD SPECIAL	2835	2835		917 (+48%)
NON-BCD SPECIAL	5264	4941	323	101 (-2%)
SUMMARY	7004	6679	325	76 (+1%)
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				989 (+7%)

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		73	
NUMBER OF DISHONORABLE DISCHARGES			
NUMBER OF BAD CONDUCT DISCHARGES		186	
SPECIAL COURTS-MARTIAL (SA LEVEL)			
NUMBER OF BAD CONDUCT DISCHARGES		2873	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	223	
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	2654	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	77	

PART 4 - WORKLOAD OF THE COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD		494	
GENERAL COURTS-MARTIAL	98		
BCD SPECIAL COURTS-MARTIAL	396		
REFERRED FOR REVIEW		2963	
GENERAL COURTS-MARTIAL	255		
BCD SPECIAL COURTS-MARTIAL	2708		
TOTAL CASES REVIEWED		2546	
GENERAL COURTS-MARTIAL	226		
BCD SPECIAL COURTS-MARTIAL	2320		
TOTAL PENDING AT CLOSE OF PERIOD		911	
GENERAL COURTS-MARTIAL	127		
BCD SPECIAL COURTS-MARTIAL	784		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		530 (+26%)	

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE REVIEW

COURT OF MILITARY

NUMBER	2500	
PERCENTAGE	84	

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	14
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-10
PERCENTAGE OF TOTAL PETITIONS GRANTED	7
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+21
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	7
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-22%

Statistical Summary: Fiscal Year 1980—Continued

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		7	
RECEIVED		67	
DISPOSED OF		59	
GRANTED	9		
DENIED	50		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		15	

PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		200	
SPECIAL COURTS-MARTIAL		7320	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		154	
SPECIAL COURTS-MARTIAL		772	

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	117	
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	708927	
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	124893	
RATE PER 1,000	176.2	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-10%	

PAGE 2 OF 2

REPORT OF
THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE
October 1, 1979 to September 30, 1980

In compliance with the requirements of Article 6(a), Uniform Code of Military Justice (UCMJ), Maj General Walter D. Reed, The Judge Advocate General, and Brig General James Taylor, Jr., the Assistant Judge Advocate General, made official staff visits to legal offices in the United States and overseas. They also attended and participated in various bar association meetings and addressed numerous civil, professional, and military organizations. On September 1, 1980, Major General Thomas B. Bruton became The Judge Advocate General of the Air Force.

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

During FY 1980, the Judiciary Directorate of the Office of The Judge Advocate General processed in excess of 2140 actions involving military justice. The Directorate has the overall responsibility of supervising the administration of military justice throughout the United States Air Force from the trial level through the appellate review process, pursuant to the provisions of the Manual for Courts-Martial 1969 (Rev.) and the UCMJ. In addition, the Directorate had the staff responsibility for the Office of The Judge Advocate General in all Air Force military justice matters which arise in connection with programs, special projects, studies and inquiries generated by the Air Staff; Headquarters USAF; the Secretaries, Departments of Defense, Army, Navy, and Air Force; members of Congress; and other interested federal, state and civil agencies. Some of the Directorate's activities are discussed below.

a. The Judiciary Directorate also serves as the action agency for the review of applications submitted to the Board for Correction of Military Records. There were 387 formal opinions provided to the Secretary of the Air Force concerning those applications.

b. The Directorate also received 850 inquiries in specific cases requiring either formal written replies or telephonic replies to senior executive officials, including the President, or to members of Congress.

AMJAMS

The Automated Military Justice Analysis and Management System (AMJAMS) which became operational in July 1974 is a fully automated data system which allows The Judge Advocate General's Department to collect and collate data pertaining to courts-martial and nonjudicial punishment. This information is used to provide current statistical reports and management tools for use by this headquarters, major commands, general court-martial jurisdictions and individual bases. It enables this department to answer specific inquiries on cases in progress and to prepare studies of various aspects of military justice administration, as required by Congress and other governmental agencies, and for internal management purposes.

During FY 1980, the system produced approximately 30 standard reports on a monthly basis and an additional 40 reports on a quarterly basis. The system was also used to answer over 350 individual requests for particular statistical information. These special requests were received from such activities as the General Accounting Office, the Senate Armed Services Committee, Air Force Security Police and the Air Force Military Personnel Center.

Progress continues towards the planned conversion of AMJAMS to the Honeywell H-6000 computer on 1 January 1981. Earlier difficulties relating to programming errors have been overcome. The conversion is now in the final stages of system testing. No further major difficulties are anticipated.

Trial Judiciary

The Air Force Trial Judiciary had an average of 31 military trial judges assigned at eleven locations. The program for joint use of military trial judges between the Army and Air Force in Alaska continued with substantial savings and a limited similar program with the Navy in Iceland was started.

Circuit Trial Counsel Program

The 22 Circuit Trial Counsel stationed at nine locations within our seven judicial circuits worldwide continued a busy schedule of prosecuting general courts-martial and selected special courts-martial. The caseload for calendar year 1980 showed a significant increase over the previous year. In 1979 CTCs tried 229 general courts (95% of the total) and 292 special courts (27% of the total). In 1980 they tried 345 general courts (92% of the total) and 229 special courts (17% of the total). They also served as government counsel on 21 officer discharge boards.

A recent survey of base staff judge advocates throughout the world showed that CTCs are continuing to provide outstanding pro-

fessional prosecution of serious cases and are providing excellent training in courtroom skills for younger judge advocates. They also constitute a valuable source of expertise on military justice matters generally for base legal offices.

Confinement Facilities

As previously reported, most Air Force prisoners with sentences including more than three months' confinement are confined at the United States Disciplinary Barracks, Fort Leavenworth, Kansas; Fort Riley, Kansas; and Lowry Air Force Base, Colorado. However, during the past year, the increased demand for space at Fort Riley by the Army itself, coupled with an increase in Air Force prisoners receiving midrange periods of confinement (roughly four through nine months) has necessitated reopening the Confinement Facility at Lowry Air Force Base to accept some of these prisoners. This is additional to the rehabilitation program which continues to be operated by the 3320th Correction and Rehabilitation Squadron at Lowry Air Force Base.

PREVENTIVE LAW AND LEGAL ASSISTANCE PROGRAMS

In calendar year 1980, Air Force attorneys provided more services to more people than any time in the past. The number of cases increased 10%—from 1,066,123 to 1,169,358. The number of clients served increased 8%—from 469,268 to 506,519. In number of people served, the Legal Assistance Program is by far the largest of all Departmental activities. The importance of these programs is based on the premise that a service person whose concern about personal civil legal problems has been alleviated is much more capable to perform those military duties essential to mission accomplishment. The Preventive Law Program compliments other Department activities by stressing, through educational means, the importance of problem avoidance rather than mere problem solving. Morale and discipline is much improved when people understand the law is more than orders backed by threats and they have the power to mold their personal legal relationships. These programs are but another example of the efforts being made to further accomplishment of the Air Force mission.

EDUCATION AND TRAINING

During calendar year 1980, The Judge Advocate General's Department provided numerous continuing legal and general education opportunities to its personnel.

The Air Force Judge Advocate General's School

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

a. The Judge Advocate Staff Officer Course—This seven week course provides the basic educational tools for a new Air Force attorney to practice military law. The course was conducted four times in 1980, and 163 judge advocates completed the training.

b. The Staff Judge Advocate Course—This course was presented twice in 1980, and 51 judge advocates attended the course.

c. The Reserve and Air National Guard Refresher Course—Two classes of this course were conducted in 1980, 160 attorneys including one Army judge advocate attended.

d. The Legal Services Advanced Course—This course was presented once during 1980 and 40 Air Force and two Navy NCO legal technicians were graduated. The Department's enlisted personnel receive their basic paralegal training at a special legal technician's school at Keesler AFB, Mississippi. Fourteen sessions of the course were held in 1980; 164 active duty and 28 Reserve and Air National Guard students were graduated. In addition, two Legal Services Refresher Courses were conducted for Reserve and Air National Guard legal technicians; a total of 14 students attended.

e. The Claims and Tort Litigation Course—This is a new and continuing course which is now fully established. A pilot session of the class was held in 1980 and was attended by 11 NCO and four civilian paralegal technicians.

f. The Federal Labor Relations and Equal Opportunity Course—This is a new course designed to provide training in several areas of growing judge advocate participation. One session of the course was held in 1980 and was attended by 59 judge advocates and five civilian attorneys employed in the Department.

Professional Military Training

During 1980, five judge advocates attended the Air Command and Staff College, and two attended the Air War College at Maxwell AFB, Alabama. Two officers attended the Armed Forces Staff College, and one attended the National War College.

Short Courses at Civilian Universities

a. Prosecuting Attorney's Course at Northwestern University—25 judge advocates attended this five-day course in 1980.

b. Defense Attorney's Course at Northwestern University—25 judge advocates attended this five-day course in 1980.

c. National College of State Trial Judges at the University of Nevada—Fifteen judge advocates and one senior NCO attended courses at the College during 1980.

Master of Law Program

During 1980 three judge advocates received their Master of Law in Labor Law; six in Government Procurement Law; two in International Law; and one in Environmental Law.

Procurement Law and Military Judge Courses: U.S. Army JAG School

Eighty judge advocates attended the basic procurement law course, and fifteen judge advocates attended the advanced procurement law course. Six judge advocates attended the Military Judge Course during 1980.

CONTINUING LEGAL EDUCATION SEMINARS USING VIDEOTAPE

These seminar programs, specifically developed for C.L.E., provide a current course of study on subjects of special interest to the Department. Written study and reference materials accompany each program. They are the most widely available source of credit for mandatory state CLE programs, since the seminars are conducted at Air Force bases around the world. Reserve judge advocates and judge advocates of the Army and Navy have also participated. Programs presently available and the number of credit hours available, are as follows:

Law of Federal Labor/Management Relations	15 hours
Government Lawyer and Professional Responsibility	6 hours
Trial Techniques	9 hours
International Law—Conduct of Armed Conflict	6 hours
Federal Income Tax	4 hours
Supreme Court Trends in Criminal Law	3 hours
Appellate Commentary	5 hours
Environmental Law	6 hours
Government Contract Law	7 hours
Computer Assisted Legal Research	3 hours
Estate Planning	4 hours

THE REPORTER, AFRP 110—2

Interest in our law journal, the *Reporter*, has continued to expand. Subscribers now include government agencies at federal, state and local levels, private and public libraries, bar associations, and law firms. Topics with special emphasis in 1980 included the military lawyer's contribution to military readiness, medical and risk management, and international law. The *Reporter* continues to be lauded by its readership as an extremely valuable communicative media, promoting crossfeed, sharing streamlined procedures and lessons

learned, and promoting a better informed JAG Department prepared to support commanders at all levels. There is certainly not a more necessary and effective recurring publication anywhere in the Department of Defense.

FEDERAL LEGAL INFORMATION THROUGH ELECTRONICS (FLITE)

The Office of The Judge Advocate General, USAF, continued to operate and expand one of the world's largest automated legal research systems. Department of Defense users in 1980 included the Joint Chiefs of Staff, every uniformed service, the Court of Military Appeals and the Armed Services Board of Contract Appeals. The numerous non-DOD users included the Office of the President, Congress, U.S. Courts, the Departments of Justice, Energy, and the International Trade Commission.

PERSONNEL

This department is authorized 9 generals, 107 colonels, 211 lieutenant colonels, 249 majors, and 594 captains. As of 30 September 1980, there were 1213 judge advocates on active duty (5 general officers, 93 colonels, 157 lieutenant colonels, 232 majors, 722 captains, and 4 first lieutenants).

THOMAS B. BRUTON
Major General, USAF
The Judge Advocate General
United States Air Force.

Statistical Summary: Fiscal Year 1980

Period: FY 1980

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	260	232	28	+52.0%
BCD SPECIAL	268	268		+40.3%
NON-BCD SPECIAL	991	908	83	+27.2%
SUMMARY	45	32	13	+43.8%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+33.3%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)			
NUMBER OF DISHONORABLE DISCHARGES		54	
NUMBER OF BAD CONDUCT DISCHARGES		130	
SPECIAL COURTS-MARTIAL (SA LEVEL)			
NUMBER OF BAD CONDUCT DISCHARGES		232	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	220	
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	247	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	41	

PART 4 - WORKLOAD OF THE COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD		107
GENERAL COURTS-MARTIAL		
	53	
BCD SPECIAL COURTS-MARTIAL		
	54	
REFERRED FOR REVIEW		467
GENERAL COURTS-MARTIAL		
	220	
BCD SPECIAL COURTS-MARTIAL		
	247	
TOTAL CASES REVIEWED		324
GENERAL COURTS-MARTIAL		
	127	
BCD SPECIAL COURTS-MARTIAL		
	197	
TOTAL PENDING AT CLOSE OF PERIOD		250
GENERAL COURTS-MARTIAL		
	146	
BCD SPECIAL COURTS-MARTIAL		
	104	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+56.5

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE COURT OF MILITARY REVIEW

NUMBER	442	
PERCENTAGE	94.6%	

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	179/324	55.2%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-20.7%
PERCENTAGE OF TOTAL PETITIONS GRANTED	71/179	24.6%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+153.6%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	44/324	13.6%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+ 24.3%

Statistical Summary: Fiscal Year 1980—Continued

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		6	
RECEIVED		75	
DISPOSED OF		71	
GRANTED	14		
DENIED	57		
NO JURISDICTION			
WITHDRAWN			
TOTAL PENDING AT END OF PERIOD		10	

PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE		135	
GENERAL COURTS-MARTIAL			
SPECIAL COURTS-MARTIAL		652	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		124	
SPECIAL COURTS-MARTIAL		605	

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	40	
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	546,176	
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	29,457	
RATE PER 1,000	53.93	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	+23.1%	

PAGE 2 OF 2

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

October 1, 1979 to September 30, 1980

The table below shows the number of courts-martial records received and filed at Coast Guard Headquarters during FY80 and the five preceding years.

	80	79	78	77	76A	76	75
General Courts-Martial	3	2	3	5	0	4	4
Special Courts-Martial	67	47	58	84	25	181	189
Summary Courts-Martial	169	122	180	188	47	221	267
Total	239	171	241	277	72	406	460

COURTS-MARTIAL

Counsel and military judges are detailed to all special courts-martial. For most cases, the presiding judge was the full-time general courts-martial judge. When he was unavailable, military judges with other primary duties were utilized. Control of the detail of judges is centrally exercised, and all requirements have been filled in a timely fashion.

General Courts-Martial

Charges referred to the three general courts-martial convened this year included specifications alleging violations of Articles 81, 86, 121, 128, and 92 or 134 involving marijuana. One accused requested and was tried by the military judge alone. One of the trials with members resulted in an acquittal of all charges and specifications. Both sentences adjudged by the two general courts-martial included a bad-conduct discharge.

Special Courts-Martial

Thirty-two of the 67 accused tried by special courts-martial this fiscal year were tried by the military judge alone. Two accused in these trials and one in a trial with members were acquitted of all charges and specifications. Bad-conduct discharges were awarded two accused tried by military judge alone and seven accused tried by courts with members. Seven of these nine punitive discharges were approved by the convening authorities and supervisory authorities.

The following shows the pay grades of the accused whose charges were referred to the 67 special courts-martial.

Pay Grade	Accused
E - 1 through E - 3 (Non-Rated)	47
E - 4 through E - 6 (Petty Officers)	18
E - 7 through E - 9 (Chief Petty Officers)	1
Commissioned Officers	1

The following table shows the distribution of the 363 specifications referred to the 67 special courts-martial.

Violation of the UCMJ, Article	No. of Spec's
81 (conspiracy)	9
85 and 86 (desertion and UA)	73
87 (missing movement)	7
91 (willful disobedience or disrespect)	6
92 (violation of order or regulation)	20
107 (false official statement)	2
108 (offenses against USCG property)	13
121 (larceny and wrongful appropriation)	62
123 (forgery)	72
128 (assault)	4
134 (breaking restriction)	13
134 or 92 (marijuana offenses)	30
134 or 92 (other controlled drug offenses)	4
Other offenses	48

The following is a breakdown of sentences awarded by the military judge alone in special courts-martial (30 convictions).

Sentence	Cases Imposed
Bad-conduct discharge	2
Confinement at hard labor	20
Hard labor without confinement	5
Reduction in rate	17
Restriction	5
Forfeiture of pay (\$12,096 total)	18
Others	10

In 14 of these 30 convictions, the accused pled guilty to all charges and specifications.

The following is a breakdown of sentences awarded by courts with members (34 convictions).

Sentence	Cases Imposed
Bad-conduct discharge	7
Confinement at hard labor (2 maximum)	17
Hard labor without confinement	3
Reduction in rate	17
Restriction	7
Forfeiture of pay (\$18,228 total)	27
Others	12

In 11 of these 34 convictions, the accused pled guilty to all charges and specifications.

The following indicates the three sentences imposed most by special courts-martial in the past four fiscal years.

FY	Number of Convictions	Forfeitures	Confinement	Reduction in grade
80	64	45 (70%)	37 (58%)	34 (53%)
79	42	30 (71%)	24 (57%)	26 (62%)
78	52	28 (54%)	25 (48%)	28 (54%)
77	76	53 (70%)	44 (58%)	33 (43%)
Average % for 4 yrs:		(66%)	(55%)	(53%)

Summation

Forty-seven percent of the accused this fiscal year were tried by the military judge alone, and about one-half of them pled guilty to all charges and specifications. In the trials with members one-third of the accused pled guilty to all charges and specifications. While enlisted active duty strength in the Coast Guard remained about the same during the three years prior to fiscal year 1980, the number of courts-martial declined. This trend appeared to be linked to the continuing increases in impositions of nonjudicial punishment and administrative discharge of individuals for marginal performance, unsuitability, misconduct, and abuse of drugs and alcohol. All these factors, including enlisted active duty strength, remained about the same in fiscal year 1980; however, the number of courts-martial increased for the first time since 1975. The following illustrates these factors in recent years.

FY	Courts-Martial Amount (% of + or -)	NJP Amount (% of + or -)	Discharges Amount (% of + or -)
77	277 -	2,430 -	801 -
78	241 (- 13%)	2,615 (+ 08%)	887 (+ 10%)
79	171 (- 29%)	3,086 (+ 18%)	1,088 (+ 23%)
80	239 (+ 40%)	2,697 (- 13%)	1,090 (00%)

CHIEF COUNSEL ACTION UNDER ARTICLE 69, UCMJ

In addition to the required reviews of courts-martial conducted as a result of petitions filed by accused under Article 69, UCMJ, a review is conducted under Article 69 of all courts-martial not requiring appellate review. Eight Article 69 actions were taken as a result of these reviews, in addition to those reported in Part 7 of Appendix A, as follows:

Findings and sentence set aside, and charges may have been referred to another trial or dismissed	4
Findings and sentence set aside and charges dismissed	1
Supervisory Authority's Action set aside and record of trial forwarded to other GCM authority for new Article 65(c), UCMJ, review	3

PERSONNEL AND TRAINING

The Coast Guard has 164 law specialists serving on active duty. 132 are serving in a legal capacity and 32 are serving in general duty billets. The junior law specialists serving at district offices perform trial and defense counsel services. Senior law specialists, most serving as district legal officers, are used as military judges when required.

The Fifth Coast Guard Basic Law Specialist Course was held at the Coast Guard Reserve Training Center, Yorktown, Virginia, from 7 September 1980 through 31 October 1980. The eight-week course introduced both the direct commissioned lawyers and the regular officers, just completing law school, to the many duties they would soon perform as Coast Guard law specialists. One-half of the course was devoted to military justice. Nonjudicial punishment, jurisdiction, professional responsibility and ethics, court procedures, trial/defense counsel duties, and the Articles of the Code most frequently litigated were some of the areas covered. Each student was given an opportunity to demonstrate recently acquired knowledge and skills in moot courts.

ADDITIONAL MILITARY JUSTICE STATISTICS

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

THOMAS G. ALLISON
General Counsel
Department of Transportation.

**Appendix A: U.S. Coast Guard Courts-Martial/NJP Statistics for
October 1, 1979 to September 30, 1980 (Fiscal Year 1980)**

Period: Oct. 1, 1979 through 30 Sept. 1980

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	3	2	1	+50%
BCD SPECIAL	9	9		+88%
NON-BCD SPECIAL	58	55	3	+38%
SUMMARY	169	165	4	+39%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+40%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)			
NUMBER OF DISHONORABLE DISCHARGES		0	
NUMBER OF BAD CONDUCT DISCHARGES		2	
SPECIAL COURTS-MARTIAL (SA LEVEL)			
NUMBER OF BAD CONDUCT DISCHARGES		7	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	3 ¹	
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	8 ²	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	0	

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

TOTAL ON HAND BEGINNING OF PERIOD		1	
GENERAL COURTS-MARTIAL	0		
BCD SPECIAL COURTS-MARTIAL	1		
REFERRED FOR REVIEW		11	
GENERAL COURTS-MARTIAL	3		
BCD SPECIAL COURTS-MARTIAL	8		
TOTAL CASES REVIEWED		6	
GENERAL COURTS-MARTIAL	2		
BCD SPECIAL COURTS-MARTIAL	4		
TOTAL PENDING AT CLOSE OF PERIOD		6	
GENERAL COURTS-MARTIAL	1		
BCD SPECIAL COURTS-MARTIAL	5		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD			-14%

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

NUMBER	5	
PERCENTAGE	83%	

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	17%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-12%
PERCENTAGE OF TOTAL PETITIONS GRANTED	00%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-50%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	00%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-14%

**Appendix A: U.S. Coast Guard Courts-Martial/NJP
Statistics for October 1, 1979 to September 30, 1980
(Fiscal Year 1980)—Continued**

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		2
RECEIVED		2
DISPOSED OF		2
GRANTED	0	
DENIED	2	
NO JURISDICTION	0	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		2
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		1
GENERAL COURTS-MARTIAL		
SPECIAL COURTS-MARTIAL		32
TRIALS BY MILITARY JUDGE WITH MEMBERS		2
GENERAL COURTS-MARTIAL		
SPECIAL COURTS-MARTIAL		35
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	5	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	31,804 ³	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	2,697	
RATE PER 1,000	84.80	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-13%	

PAGE 2 OF 2

- ¹Includes one which was tried during FY-79 and returned after a substitute supervisory authority action.
- ²Includes one which was tried in past FY and received after a new convening authority's action.
- ³Enlisted personnel only.