

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, 1980–September 30, 1981

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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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AND THE JUDGE ADVOCATES GENERAL OF THE ARMED FORCES
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of the
U.S. COURT OF MILITARY APPEALS
and the
**JUDGE ADVOCATES GENERAL
OF THE ARMED FORCES**
and the
**GENERAL COUNSEL
DEPARTMENT OF TRANSPORTATION**
October 1, 1980 to September 30, 1981

The Judges of the United States Court of Military Appeals, the Judge Advocates General of the Armed Forces, 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, composed of the Judges of the United States Court of Military Appeals, the Judge Advocates General and the General Counsel of the Department of Transportation, met on several occasions during fiscal year 1981, to consider various proposals for the improvement of the military justice system. Among other proposals, the Code Committee approved the recommendations of the Joint Service Committee that 10 U.S.C. § 866(a) be amended to authorize reconsideration of a panel decision by the entire Court of Military Review of the service involved. Additionally, it approved another proposal by the Joint Service Committee that Rule 803, Military Rules of Evidence, be amended to specifically authorize the use of banking notations as evidence. During fiscal year 1981, the Code Committee also reviewed the progress of a working group which had been established during fiscal year 1980 to formulate recommendations for revisions in the Manual for Courts-Martial.

Although the project was not completed during fiscal year 1981, the working group submitted various recommendations for significant modifications to the present Manual and the Committee perceived a need for a substantially revised manual.

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.

HUGH J. CLAUSEN

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.

JOHN M. FOWLER

General Counsel, Department of Transportation.

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

October 1, 1980 to September 30, 1981

The Judges of the United States Court of Military Appeals submit their fiscal year 1981 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 1981 term, the Court acted on 2,073 petitions for grant of review, an increase of 22 percent over the fiscal year 1980 term. The Court granted further review in 151 of these cases (7 percent of the cases considered). On the master docket of mandatory appeals, certificates, and granted petitions, the Court disposed of 354 cases, an increase of 82 percent over fiscal year 1980. Approximately 81 percent of the Court's actions on master docket cases affirmed the Courts of Military Review. These cases were decided in 93 signed opinions (an increase of 55 percent over fiscal year 1980), 33 per curiam opinions (an increase of 94 percent over fiscal year 1980), and 228 summary dispositions (an increase of 93 percent over fiscal year 1980). The Court also acted upon 55 cases on the miscellaneous docket, issuing signed opinions in 3 cases and granting extraordinary relief in 2 cases. At the close of the term, 427 cases were pending on the petition docket subject to the statutory 30-day review rule; 196 cases were pending on the master docket; and 7 cases were pending on the miscellaneous docket. As a result of the 82 percent increase in the Court's final dispositions on the master docket over the preceding year, the number of cases pending on the master docket was cut in half. The increase in the number of cases pending on the petition docket over fiscal year 1980 was attributed to the significant increase of approximately 26 percent in the number of petitions filed with the Court during fiscal year 1981. Filings of petitions for extraordinary relief were also up by 26 percent and the motion practice increased by 13 percent over the previous fiscal year.

Reports from the Courts of Military Review indicate that the numbers of cases filed in the intermediate appellate courts continue to increase over the preceding years. The Navy-Marine Corps Court of Military Review experienced an increase of 50 percent over fiscal year 1980; the Army Court of Military Review experienced an increase of 14 percent; and the United States Air Force Court of Military Review experienced an increase of 11 percent. As in previous years, an increase in the number of cases submitted to the Courts of Military Review will inevitably result in an increase in the number of cases submitted to the United States Court of Military Appeals. Thus, the Court expects the increase in the number of cases which was experienced during fiscal year 1981 to continue during fiscal year 1982.

The Court admitted 643 attorneys to practice before its Bar during the fiscal year 1981 term, bringing the cumulative total of admissions before the Bar of the Court to 23,302.

JUDICIAL VISITATIONS

As in preceding years, the Judges of the Court continued to travel to military communities throughout the world to develop a better appreciation of the operational problems in the various Armed Services. Such problems must be considered by the Judges in administering the military justice system in a responsive manner. Chief Judge Everett visited the United States Military Academy, West Point, New York; the Air Force Academy, Peterson Air Force Base, and Fort Carson, Colorado; Camp Lejeune, North Carolina; Fort Sam Houston, Texas; Offutt Air Force Base, Nebraska; military installations in Japan, Korea, Okinawa, the Philippines and Taiwan; and the Army's Judge Advocate General's School, Charlottesville, Virginia. Judge Cook traveled to Maxwell Air Force Base, Alabama; Fort Lewis, Washington; and Fort Sill, Oklahoma. Judge Fletcher visited numerous military installations in the Far East during the spring of 1981.

In addition to these visits, the Judges of the Court participated in numerous conferences, seminars and similar projects to improve the professional legal education of military lawyers and to make service personnel and the general public aware of the safeguards provided by the Uniform Code of Military Justice and the Court's decisions interpreting the Code.

APPELLATE ADVOCACY CONFERENCE

On May 20-22, 1981, the Sixth Annual Homer Ferguson Conference on Appellate Advocacy was held at The American University. This annual conference, which, since its inception in 1976, has been

sponsored by the United States Court of Military Appeals in conjunction with the Military Law Institute, is named in honor of Senior Judge Homer Ferguson, a distinguished retired member of the Court and a former member of the United States Senate. The conference is designed to give military and civilian practitioners an opportunity to develop and maintain the skills required for appellate court practice within the military justice system and elsewhere. It has been certified for credit to meet the continuing legal education requirements of various State Bars. This year's speakers at the conference included Professor Samuel Dash, Georgetown University Law Center; Major John Cook, JAGC, U.S. Army; Honorable Robert M. Duncan, Judge, United States District Court for the Southern District of Ohio, and formerly Chief Judge, U.S. Court of Military Appeals; Brigadier General Wayne E. Alley, U.S. Army, Judge Advocate, Headquarters, U.S. Army Europe and Seventh Army (formerly Judge, U.S. Army Court of Military Review); Professor Eugene Gressman, University of North Carolina; Lieutenant Commander Ronald J. Beachy, USN, Instructor, U.S. Naval Justice School; and several members of the Court's staff. Numerous uniformed and civilian lawyers involved in practicing before Courts of Military Review and the United States Court of Military Appeals, as well as the Judges of the Courts of Military Review, and other scholars and commentators in the field of military justice were in attendance at the conference.

USCMA MANAGEMENT INFORMATION SYSTEM

During fiscal year 1981 the Court began to program its computer system to accept all docket entries. When the "phase in" period is completed, the Court will have a totally electronic docketing system which will result in significant reductions in the cost of managing and retaining the Court's recorded docket entries on all cases. Additionally, the new system will provide instantaneous access to all Court actions regarding briefs, motions and other materials filed with the Court. The Court anticipates that the computerization of its docketing system, which was commenced in fiscal year 1981, will be completed in fiscal year 1982.

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

Court-Martial Jurisdiction Over Persons and Offenses

During the fiscal year 1981 term the Court rendered its most significant ruling on the issue of military jurisdiction over drug

*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.

offenses. In *United States v. Trottier*, 9 M.J. 337 (C.M.A. 1980), the Court observed that there were numerous drug-related cases raising jurisdictional issues and concluded that it should extend its discussion beyond the specific facts of the case at bar. After noting the gravity and immediacy of the threat posed by drug traffic to military personnel and installations, the Court held "that very few drug involvements of a service person will not be 'service connected'."

The Court rejected an accused's claim that the military could not exercise jurisdiction over his person in *United States v. Buckingham*, 11 M.J. 184 (C.M.A. 1981). Although the accused claimed that the recruiter involved in his enlistment engaged in some form of misconduct by knowingly enlisting him contrary to service regulation, the Court distinguished *United States v. Russo*, 1 M.J. 134 (C.M.A. 1975), and its progeny on the basis that a regulatory violation alone would not defeat court-martial jurisdiction. Rather, the Court held that prior case law also required a regulatory impediment which was nonwaivable.

Applicability of Article 31 and Right to Counsel

The Court resolved numerous issues during the FY 1981 term which questioned the applicability of Article 31, Uniform Code of Military Justice, and the right to counsel. In *United States v. Armstrong*, 9 M.J. 374 (C.M.A. 1980), the Court held that Article 31 was not applicable to the extraction of bodily fluid and that evidence of a blood test was admissible, even though the accused was not given Article 31(b) warnings prior to the extraction of the blood.

The failure of a company commander to readvise an accused under Article 31(b) approximately 12 days after he was initially advised of his rights under that Article rendered the accused's statement inadmissible in *United States v. Dowell*, 10 M.J. 36 (C.M.A. 1980), where the accused was also placed in pretrial confinement. The Court rejected the Government's claim that no warnings were required because the only purpose for interviewing the accused was to inform him of an additional charge. Rather, the Court held that the circumstances involved in the case could foreseeably induce an incriminating statement. Additionally, the Court observed that the company commander, who knew that the accused was represented by counsel, was required to notify counsel prior to informing his client of the additional charge under circumstances which were the functional equivalent of an interrogation.

As with blood samples, the Court held in *United States v. Lloyd*, 10 M.J. 172 (C.M.A. 1981), that Article 31(b) warnings were not required prior to requesting a handwriting sample from a suspect.

The Court held in *United States v. Duga*, 10 M.J. 206 (C.M.A. 1981), that the requirement for Article 31(b) warnings was only applicable

to the interrogation of a suspect in situations where military rank, duty, or similar relationship may exert subtle pressure on a suspect to respond. Thus, the Court held that the interrogator must be acting in an official capacity, rather than from only personal motives, and that the person questioned must perceive that more than a casual conversation is involved. Finding that both of these prerequisites were not present, the Court held that Article 31(b) was inapplicable. Examining the facts in *Duga*, the Court held that Article 31(b) warnings were not required where the accused, a security policeman, was questioned by a friend who was also a security policeman.

The Court reaffirmed in *United States v. Muldoon*, 10 M.J. 254 (C.M.A. 1981), its earlier ruling that a suspect's request for counsel must be scrupulously honored by investigators. Thus, the Court held in *Muldoon* that the accused's confession was inadmissible where his request for counsel was not complied with by investigators who placed him in confinement and informed him two hours later as part of an "interrogation technique" that he had been implicated by someone else.

The Court's concern for an accused's right to counsel was emphasized again in *United States v. Breese*, 11 M.J. 17 (C.M.A. 1981), where the Court exercised its supervisory jurisdiction by establishing a rebuttable presumption of a conflict of interest by defense counsel in cases of multiple representation by the same counsel unless the trial judge conducts an appropriate inquiry into the matter.

Search and Seizure

As in previous terms, the fiscal year 1981 term resulted in numerous case decisions involving search and seizure questions. In *United States v. Rivera*, 10 M.J. 55 (C.M.A. 1980), the Court observed that the doctrine that an officer who authorizes a search or seizure must be neutral and detached, as set forth in *United States v. Ezell*, 6 M.J. 307 (C.M.A. 1979), merely reaffirmed existing law and, therefore, the case was not limited to prospective application. Thus, the Court reversed the conviction in *Rivera* because the commander who authorized the search had, prior to the release of the Court's opinion in *Ezell*, become personally involved in the investigation of the case.

The Court observed in *United States v. Middleton*, 10 M.J. 123 (C.M.A. 1981), that a commander's mere presence in the area of a search did not compromise his neutrality. In addition, the right of the commander was upheld in *Middleton* to conduct a health and welfare inspection, to use a trained drug detection dog during the inspection, and to use the information obtained during the inspection to establish probable cause for a subsequent search. However, in *United States v. Hayes*, 11 M.J. 249 (C.M.A. 1981), the Court emphasized that the Government's authority to conduct a military inspec-

tion was not absolute. When the defense challenged an inspection, the Court held that the Government was required to show the reasonableness of a barracks security inspection system. As there was a failure of proof of reasonableness in *Hayes*, the Court reversed the conviction of the offenses related to the inspection in question.

In *United States v. Lewis*, 11 M.J. 188 (C.M.A. 1981), the Court ruled that a sergeant had a right to search for a person to inform him of his military duties and the accused had no right to establish a private enclave in a room located in a military barracks. Thus, the Court held that the discovery of heroin resulting from such a search was proper and the evidence was admissible. *United States v. Cunningham*, 11 M.J. 210 (C.M.A. 1981), also involved a sergeant who ultimately detected criminal activity by an accused. There the Court held that the sergeant's smell of marijuana justified his entry into a barracks room wherein he observed additional criminal activity. Thus, the Court upheld the subsequent search of the room which produced incriminating evidence.

The Court also upheld the right of the Government to search under the seat of an automobile as incident to a valid arrest of the accused in *United States v. Cordero*, 11 M.J. 210 (C.M.A. 1981).

The Court rejected a claim in *United States v. Kalscheuer*, 11 M.J. 373 (C.M.A. 1981), that a military commander's power to authorize a search was inconsistent with the Fourth Amendment. Rather, the Court held that the responsibilities of a commander rendered this power consistent with the Fourth Amendment. As the power was derived from these responsibilities, the Court further disapproved the practice of delegating the power to authorize searches to subordinates who were neither military judges nor military magistrates.

Military Service Records

In *United States v. Mack*, 9 M.J. 300 (C.M.A. 1980), the Court held that a military form reflecting the imposition of punishment under the provisions of Article 15, UCMJ, was admissible during the sentencing portion of an accused's court-martial without a specific recital on the form that the accused had consulted with counsel or had declined to do so. The comments of the author judge of the principal opinion in *Mack* indicating that a record of a summary court-martial conviction was not admissible for the purpose of impeaching an accused commanded a majority vote in the Court's later decision in *United States v. Cofield*, 11 M.J. 422 (C.M.A. 1981), wherein the Court ruled that such a record was inadmissible for this purpose.

Another issue concerning the admissibility of military records was decided in *United States v. Cook*, 10 M.J. 138 (C.M.A. 1981), wherein the Court held that the records of a civilian criminal conviction

which were maintained pursuant to a service regulation could be admitted during the sentencing phase of a court-martial.

Military Practice and Procedure

Citing the responsibilities of a defense counsel in *United States v. Wray*, 9 M.J. 361 (C.M.A. 1980), the Court held that a military judge did not err by acceding to defense counsel's request that he omit an instruction on uncharged misconduct, even though there was evidence of uncharged misconduct introduced during the trial. However, the Court observed that there were certain instructions which were required, even if defense counsel requested their omission, as the duty to instruct the court members belonged to the trial judge, rather than to counsel.

Rejecting an argument that an accused has more rights during a proceeding to vacate a suspension of punishment imposed under the provisions of Article 15, UCMJ, than during the initial Article 15 proceeding itself, the Court held in *United States v. Covington*, 10 M.J. 64 (C.M.A. 1980), that the probationer was only entitled to notice of the intended action and to an opportunity to present his contentions in opposition to this action. The Court held that the notice could be written or oral and that the opportunity to reply did not require a personal appearance before the commander.

The question of whether an accused's officer status could be considered by a commander in referring a case to trial was resolved by the Court in *United States v. Means*, 10 M.J. 162 (C.M.A. 1981). Rejecting a defense argument that such status was irrelevant, the Court held that a commander could consider such status because commissioned officers occupy a special position of trust and duty in the Armed Services. Additionally, the Court held that the President's restriction on a special court-martial which precludes a sentence to confinement in the case of an officer was not invalid. Thus, it rejected the accused's claim that this restriction improperly required referral to a general court-martial if a commander concluded that confinement of an officer should be considered by the sentencing authority.

After criticizing the practice of equating "reasonable doubt" with "substantial doubt" in *United States v. Salley*, 9 M.J. 189 (C.M.A. 1980), the Court held that such an instruction constituted prejudicial error in *United States v. Cotten*, 10 M.J. 260 (C.M.A. 1981). This decision was thereafter given retroactive application in *United States v. Brooks*, 11 M.J. 420 (C.M.A. 1981).

Reviewing the prerogatives of a convening authority to defer a sentence to confinement, the Court held in *Pearson v. Cox*, 10 M.J. 317 (C.M.A. 1981), that a convening authority could impose a form of restriction in conjunction with the deferment of a sentence to

confinement at hard labor. The Court noted that the discretion of the convening authority under Article 57(d) was equivalent to the discretion of a federal magistrate or judge with respect to the release of a defendant pending appeal.

A convening authority who was present during the refusal of a Drum and Bugle Corps to perform as directed was disqualified as a reviewing authority in *United States v. Crossley*, 10 M.J. 376 (C.M.A. 1981). The Court observed that under the circumstances of this case, a reasonable person would conclude that the convening authority had a personal interest in the outcome of the court-martial. Thus, the case was returned to the appropriate authority for a new review and action.

Noting the distinction between the burden of production and the burden of persuasion, the Court held in *United States v. Cuffee*, 10 M.J. 381 (C.M.A. 1981), that an accused could be held accountable for the burden of production. Thus, the Court held that the Government did not have to prove affirmatively that the accused was not within an exception to a proscriptive regulation where the accused did not raise an issue as to the exception.

In *United States v. Cofield*, 11 M.J. 422 (C.M.A. 1981), the Court specifically adopted the practice of presenting motions *in limine* to the trial judge. However, the Court observed that "a trial judge should be granted considerable discretion to defer rulings on motions *in limine*".

Extraordinary Relief

Expanding its earlier holding in *Dettinger v. United States*, 7 M.J. 216 (C.M.A. 1979), that the Government may seek extraordinary relief from a Court of Military Review, the Court held in *United States v. Redding*, 11 M.J. 100 (C.M.A. 1981), that a Judge Advocate General may certify to the United States Court of Military Appeals the correctness of a Court of Military Review decision on an application for extraordinary relief. Additionally, relying on its Rules of Practice and Procedure, the Court held that the Government may appeal an adverse decision by the Court of Military Review. The Court ruled in reaching this decision that a final action by a Court of Military Review on an application for extraordinary relief was a "case" within the meaning of Article 67, UCMJ.

The Court in *Vorbeck v. Commanding Officer*, 11 M.J. 480 (C.M.A. 1981), refused to resolve the merits of a petition for extraordinary relief because the accused had not applied for relief to the appropriate Judge Advocate General under the provisions of Article 69, UCMJ. The Court noted that, under the statutory review system enacted by Congress, the Judge Advocates General had been empowered to review cases where the sentence did not extend to a punitive discharge or to confinement for one year or more.

Pretrial Agreements

Issues involving pretrial agreements have been litigated before the Court for a considerable number of years, and the FY 1981 term proved to be no exception. Illustrative are *United States v. Passini*, 10 M.J. 108 (C.M.A. 1980), and *United States v. Hinton*, 10 M.J. 136 (C.M.A. 1981), wherein the Court held that, under the circumstances presented in each case, reversal was not required because the respective trial judges did not ask all of the parties involved in each trial whether their understanding of the terms of the pretrial agreements comported with his own interpretation.

In *United States v. Dawson*, 10 M.J. 142 (C.M.A. 1981), the Court held that a provision in a pretrial agreement whereby the accused agreed that he would not violate the Uniform Code of Military Justice was too vague to be enforceable.

A withdrawal of a pretrial agreement by a convening authority prior to trial was upheld in *United States v. Kazena*, 11 M.J. 28 (C.M.A. 1981), where the convening authority learned of an additional charge after he signed the pretrial agreement.

ROBINSON O. EVERETT
Chief Judge.

WILLIAM H. COOK
Judge.

ALBERT B. FLETCHER, Jr.
Judge.

USCMA STATISTICAL REPORT

Fiscal Year 1981

CUMULATIVE SUMMARY

CUMULATIVE BEGINNING PENDING

Master Docket	387
Petition Docket	320
Miscellaneous Docket	<u>3</u>
TOTAL.....	710

CUMULATIVE FILINGS

Master Docket	
Certificates filed.....	9
Reconsiderations granted	3
Petition Docket	
Petitions for grant filed	2,173
Cross-petitions for grant filed.....	6
Petitions for new trial filed	1
Miscellaneous Docket	<u>59</u>
TOTAL.....	2,251

CUMULATIVE TERMINATIONS

Master Docket	354
Petition Docket	2,073
Miscellaneous Docket	<u>55</u>
TOTAL.....	2,482

CUMULATIVE END PENDING

Master Docket	196
Petition Docket	427
Miscellaneous Docket	<u>7</u>
TOTAL.....	630

OPINION SUMMARY

CATEGORY	SIGNED	PER CURIAM	MEM/ORDER	TOTAL
Master Docket	93	33	228	354
Petition Docket	0	0	2,073	2,073
Miscellaneous Docket	<u>3</u>	<u>0</u>	<u>52</u>	<u>55</u>
TOTAL	96	33	2,353	2,482

FILINGS (MASTER DOCKET)

Appeals filed.....	0
Certificates filed	9
Reconsideration granted	3
Petitions granted (from Petition Docket)...	* 151
TOTAL.....	163

TERMINATIONS (MASTER DOCKET)

Findings and sentence affirmed	287	Signed.....	93
Reversed in whole or in part.....	46	Per curiam.....	33
Granted petitions vacated.....	4	Mem/order	228
Other disposition directed.....	17	TOTAL	354
TOTAL.....	354		

PENDING (MASTER DOCKET)

Assigned Opinions pending	24
Judges' conference pending	1
Oral argument pending.....	34
Preargument conference pending	17
Calendar committee pending	100
Final briefs pending.....	20
TOTAL.....	196

FILINGS (PETITION DOCKET)

Petitions for grant of review filed	2,173
Petitions for grant/new trial filed	1
Cross-petitions for grant filed	6
TOTAL.....	2,180

TERMINATIONS (PETITION DOCKET)

Petitions for grant dismissed	33	Signed.....	0
Petitions for grant denied.....	1,871	Per curiam.....	0
Petitions for grant granted.....	151	Mem/order	2,073
Petitions for grant remanded.....	9	TOTAL	2,073
Petitions for grant withdrawn	9		
TOTAL.....	2,073		

PENDING (PETITION DOCKET)

Petition briefs pending	186
Staff attorney action pending	185
Court action pending	56
TOTAL.....	427

* In approximately 30 percent of these cases, the Court specified issues which were not raised by the appellant.

FILINGS (MISCELLANEOUS DOCKET)	
Writs of error coram nobis sought	1
Writs of habeas corpus sought	30
Writs of mandamus/prohibition sought.....	14
Other extraordinary relief sought.....	8
Writ appeals sought	<u>6</u>
TOTAL.....	59

TERMINATIONS (MISCELLANEOUS DOCKET)			
Petitions withdrawn	3		
Petitions remanded	0		
Petitions granted	2	Signed.....	3
Petitions denied	41	Per curiam.....	0
Petitions dismissed	<u>9</u>	Mem/order	<u>52</u>
TOTAL.....	55	TOTAL	55

PENDING (MISCELLANEOUS DOCKET)	
Briefs pending	0
Action by Writs Counsel pending.....	0
Show cause action by Court pending	0
Show cause response pending	3
Other final action pending	<u>4</u>
TOTAL.....	7

RECONSIDERATIONS AND REHEARINGS

CATEGORY	FILINGS	PENDING	DISPOSITIONS		
			Granted	Rejected	TOTAL
Master Docket	2	1	0	1	1
Petition Docket	7	2	0	5	5
Miscellaneous Docket	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>1</u>
TOTAL	10	3	0	7	7

MOTIONS ACTIVITY

CATEGORY	BEGIN PENDING	FILINGS	END PENDING	DISPOSITIONS		
				Granted	Rejected	TOTAL
All motions	36	823	69	686	104	790

REPORT OF
THE JUDGE ADVOCATE GENERAL OF THE ARMY

October 1, 1980 to September 30, 1981

In fiscal year 1981, Major General Hugh J. Clausen assumed the duties of The Judge Advocate General while Major General Hugh R. Overholt became The Assistant Judge Advocate General.

During fiscal year 1981 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**

During fiscal year 1981 the court-martial rates continued to show an increase in the Army-wide number of courts-martial. The total numbers of persons tried by all types of courts-martial in fiscal year 1981 were 12.6 percent higher than the year before. This overall increase reflects primarily a 29.4 percent rise in special courts-martial authorized to adjudge a bad conduct discharge and a 27.4 percent increase in summary courts-martial. The overall conviction rate for fiscal year 1981 was 91 percent, the same rate as was reported for the fiscal year 1980.

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 Divisions, 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

On 7 November 1980, the Army Chief of Staff approved permanent establishment of the U.S. Army Trial Defense Service (USATDS), a separate organization providing military defense counsel services throughout the Army. USATDS will continue to be organized as an activity of the U.S. Army Legal Services Agency, a field operating agency of The Judge Advocate General.

On 15 September 1981 the Army issued a new Chapter 18, Army Regulation 27-10, Military Justice, which provides regulatory authority for USATDS. By 30 September 1981 approximately 215 judge advocates were assigned to USATDS. These counsel were stationed in field offices which serve commands throughout the Army.

During fiscal year 1981 USATDS continued to develop its capability to support combat and combat support units. USATDS counsel participated in many local field exercises, deployment exercises at Fort Irwin, California, and in a major REFORGER exercise with the 1st and the 4th Infantry Divisions in Germany. The new organization also expanded its coordination with reserve units. Reserve defense counsel teams performed their two-weeks active duty training under the supervision of Senior Defense Counsel at ten posts throughout the continental United States. These teams augmented the field offices to which they were assigned and were able to function as defense counsel in administrative, nonjudicial, and judicial areas.

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 21, Army Regulation 27-10, Military Justice, was published on 15 September 1981. Some significant changes include: implementation of the U.S. Army Trial Defense Service; clarification

of what personnel records of an accused may be presented to the military judge prior to sentencing; and a provision for the detailing of military judges from another armed service. During the same period, Army Regulation 27-10 has been undergoing extensive evaluation with a view towards major revision. The major changes under consideration deal with the administration of nonjudicial punishment and the filing of these records in the servicemember's personnel file. It is expected that the revision will be published during fiscal year 1982.

Joint Service Committee on Military Justice

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. 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.

The Joint Service Committee considered proposals which resulted in the Military Justice Amendments of 1981. This legislation would require servicemembers to take leave pending review of certain court-martial convictions; would amend Article 13 of the Code entirely eliminating the distinction between sentenced and adjudged prisoners; would amend Article 38(b) to allow the service Secretaries to define "reasonably available" in relation to requests for individual military counsel; would provide for constructive service of decisions of the Courts of Military Review by amending Article 67(c); and would amend Article 69 by creating a two year statute of limitations on requests for review of certain courts-martial to The Judge Advocate General. Favorable action on this legislation is expected in fiscal year 1982.

The Joint Service Committee completed action on two changes to the *Manual for Courts-Martial* resulting in revision of Military Rule of Evidence 410 and paragraph 75 of the Manual dealing with the sentencing portion of a court-martial. At present time, the Committee is continuing the process of revising the *Manual for Courts-Martial*, a project which is expected to take two more years to complete.

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. personnel. During the reporting period 1 December 1979 through 30 November 1980, a total of 78,751 United States personnel, military and civilian, were charged with offenses subject to the primary or exclusive jurisdiction of foreign tribunals. A total of 71,082 of these offenses were charged against military personnel. Of this number 51,268 of the charges against military personnel were subject to exclusive foreign jurisdiction. Nonetheless, foreign authorities released 1,315 of the exclusive foreign jurisdiction offenses to United States military authorities for administrative or other appropriate disposition.

The rest of the military offenses subject to foreign jurisdiction, totaling 19,814 offenses, were concurrent jurisdiction offenses involving alleged violations of both United States military law and foreign law, over which the foreign country had the primary right to exercise jurisdiction. United States military authorities obtained a waiver of primary foreign jurisdiction in 16,722 of these incidents, for a world-wide waiver rate of 84.4 percent.

Thus, during the current reporting period, foreign authorities reserved for their disposition a total of 53,045 offenses allegedly committed by military personnel. A total of 49,953 of these offenses were relatively minor charges which were not punishable under United States military law, and were therefore subject to the exclusive jurisdiction of foreign authorities. It is significant to note that 50,231 of the military offenses reserved for disposition by foreign authorities, or 94.7 percent of the total offenses so reserved, involved traffic violations.

A total of 7,669 civilian employees and dependents were charged with offenses subject to foreign jurisdiction. As civilians are not subjects to trial by court-martial in peacetime, the United States had no effective jurisdiction over these offenses. Nonetheless, foreign authorities released 343 of these offenses, or 4.5 percent of the total, to United States military authorities for administrative or other appropriate disposition.

During the current reporting period, there were 53,568 final results of trials (i.e., final acquittals and final convictions). Of this number, 189, or about .4 percent of the final results, were acquittals. The vast majority of United States personnel who were convicted—52,921 (i.e., 98.8 percent)—received only a sentence to fine or reprimand. The remainder of the final results of trial consisted of 320 suspended sentences to confinement and 138 unsuspended sentences to confinement.

LITIGATION

Litigation involving the Army during fiscal year 1981 had only a limited impact upon military justice matters.

In *Hatheway v. Secretary of the Army*, 641 F. 2d 1376 (9th Cir. 1981), *cert. denied*, — U.S.— (1981), the court affirmed the decision of the district court sustaining the constitutionality of Article 125, Uniform Code of Military Justice, 10 U.S.C. Section 925 (1976). The court rejected the argument that the Uniform Code of Military Justice provision prohibiting sodomy between members of the same sex is unconstitutional.

EDUCATION AND TRAINING

During fiscal year 1981, The Judge Advocate General's School, located in Charlottesville, Virginia, provided legal education to lawyers of the military services and other Federal agencies. Thirty-seven resident courses were conducted with 2,200 students in attendance. Courses were attended by 1,315 Army, 212 Navy and Marine, 103 Air Force, 37 Coast Guard, 32 Army National Guard, 495 civilians, and 6 foreign students.

During fiscal year 1981, three Basic classes, the 94th, 95th, and 96th were conducted. A total of 310 officers (308 Army and 2 foreign) were graduated. The 29th Graduate Course graduated on 22 May 1981. The 30th Graduate Course began on 17 August 1981 with 61 Army, one Navy, five Marine and three foreign officers in attendance.

The Criminal Law Division sponsored five resident continuing legal education (CLE) courses in fiscal year 1981, including two 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 three non-resident courses in Germany for counsel assigned in that theatre. These included two general criminal law seminars and one professional responsibility seminar.

The International Law Division sponsored three one-week courses on the Law of Armed Conflict and one 2½ day course on the Legal Aspects of Terrorism. Additionally, the Division provided instructor support for a one-week course on the Law of Armed Conflict sponsored by USAREUR. All courses were designed for and attended by both judge advocates and operational staff officers. In keeping with

the "operationalization of international law," 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 with realistic situations that they had to resolve using the materials which are 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 all legal requirements.

The Contract Law Division sponsored 9 continuing legal education courses, covering areas from Fiscal Law to the Government's contracting out policy. The 11th Contract Attorneys Advanced Course, 5-9 January 1981, featured recent and proposed changes affecting Government contract law. Among the topics covered were contracting under Public Law 95-507, contracting for commercial and industrial type activities (CITA), Contract Disputes Act of 1978, and a look at Standards of Contract Problems in Government Contracting. In addition to presenting the Fiscal Law Course twice at TJAGSA, Division instructors presented the course at other locations: Seoul, Korea; Fort Benjamin Harrison, Indiana; and Fort Monroe, Virginia.

The Administrative and Civil Law Division sponsored a number of continuing legal education courses in fiscal year 1981. Legal Assistance, Government Information Practices, Federal Labor Relations, Military Administrative Law Developments, Environmental Law, and Law Office Management were among the courses presented. The Division also conducted the 3d U.S. Magistrate Court Workshop where students discussed actual problems encountered in the field. In addition, the Division developed and taught for the first time an Administrative Law for Military Installations course. This one week course combines the military installation aspects of several formerly separate courses, thereby allowing installation administrative lawyers to obtain necessary information and also save both time and travel money. During the summer of 1981, the Division was responsible for teaching two major resident courses for reserve component judge advocates: The Judge Advocate General's Service Organizations Team Training, and the Branch Officer Advanced Course (Phase IV).

Six resident classes of the Senior Officers Legal Orientation Course were conducted at TJAGSA for 194 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 26 students received instruction (6-9 May 1981). Additionally, a record number of 23 general officers attended General Officer Legal Orientation (GOLO) courses. The Division also provided a special military law orientation course for the newly appointed DoD General Counsel on 15 April 1981. A new course instituted during

fiscal year 1981 was the Deputy Community Commander Course for officers slated for those positions in Europe. Five officers attended the initial course at TJAGSA on 27-20 April 1981.

During fiscal year 1981, the members of the Administrative and Civil Law Division made several presentations outside TJAGSA. The Division sent an instructor to the NCO Advanced Course at Fort Benjamin Harrison to conduct courses in administrative and civil law subjects and also provided instruction at Fort Leavenworth to Pre-Command course students. In October, two instructors presented a Labor-Management Relations Seminar in the Republic of Korea. Additionally, at the U.S. Army Europe Administrative Law Conference from 11-15 May 1981, two members of this Division were the principal instructors and covered a wide range of administrative law topics.

The Administrative and Civil Law Division also gained a new mission during fiscal year 1981 when the Legal Assistance Branch was created within the Division and staffed with two attorneys. The Legal Assistance Branch is charged with studying, assisting, and improving legal assistance Army-wide. In its initial year of operation, the Branch has expanded legal assistance instruction at TJAGSA, conducted a survey of legal assistance offices in the field, and prepared and published research literature for use by legal assistance officers.

MAJOR PROJECTS

In April 1981, The Judge Advocate General's School, U.S. Army, was visited by a site inspection team of the Section on Legal Education and Admissions to The Bar of the American Bar Association. The team members visited classes; met with staff, faculty and students; and examined the facilities and programs of the School. The Accreditation Committee of the Section on Legal Education and Admissions to The Bar considered the team's report at their July meeting and adopted a motion noting the unique operation of the School and continuing the approval of the School's Judge Advocate Officer Resident Graduate Course offering a specialized program beyond the first degree in law.

On 20 March 1981, the fifth Charles L. Decker Lecture in Administrative and Civil Law was presented by Major General (Ret.) Lawrence H. Williams, formerly The Assistant Judge Advocate General of the Army. General Williams' topic was, "Advice to Future Staff Judge Advocates."

Professor Stephen A. Saltzburg, University of Virginia School of Law, delivered the Tenth Kenneth J. Hodson Lecture in Criminal Law on 26 March 1981.

The Edward H. Young Lecture in Military Legal Education was presented by Dean Wayne E. Alley, University of Oklahoma School of Law on 24 September 1981.

The Judge Advocate General's School was the site of the Judge Advocate General's Service Organizations International Law and Contract Law Team training, 15-26 June 1981, and the Branch Officer Advance Course Phase IV (Administrative and Civil Law) and the Judge Advocate Reserve Components General Staff course resident phase, 6-17 July 1981. The Judge Advocate Reserve Components General Staff course has been discontinued. Approximately 400 reserve judge advocates were trained at these sessions.

The Reserve Components Technical (On-Site) Training Programs were conducted at 42 different locations throughout the United States, including Hawaii and Puerto Rico, during academic year 1980-1981. Over 1,600 personnel attended these training sessions. While the vast majority of people were judge advocates of the USAR, the training was also attended by over 420 judge advocates of the Navy, Marine Corps, Air Force, National Guard and civilian attorneys. Reserve judge advocates assigned to USAR troop program units provided more than 90,000 hours of mutual support to the active Army. The Special Legal Assistance Officer Program also increased to provide more assistance to qualified recipients.

The Judge Advocate General's Mobilization Designation program, administered by the Reserve Affairs Department of TJAGSA, has leveled off at approximately 614 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 1981. These were: FM 27-1 Legal Guide for the Commander; AR 27-4, Legal Services: Judge Advocate General Service Organizations: Organization, Training, Employment and Administration; DA Pam 27-166, Soldiers' and Sailors' Civil Relief Act; and ROTC Manual 145-85, Fundamentals of Military Law. Changes issued were C5, DA Pam 27-21, Military Administrative Law Handbook; and C2, DA Pam 27-174, Military Justice: Jurisdiction of Courts-Martial. Rescission action was com-

pleted for the former DA Pam 27-13, Manual for Courts-Martial Annotations: Fifth Edition. Near the end of fiscal year 1981, a new system was instituted for distributing the DA Pam 27-100-series, Military Law Review, and the DA Pam 27-50-series, The Army Lawyer.

The Army Law Library Service (ALLS), operating with a budget of \$1.2 million, provided legal publications to over 250 libraries. Seven libraries were closed or consolidated while five new libraries were established. Special emphasis was placed on expanding the legal resources available to European and Korean branch offices and providing additional resource material dealing with the Military Rules of Evidence.

The Combat Developments Office provided JAGC planning for the entire range of Army '86 studies with most emphasis on the size and role of JAGC personnel in the next generation of Army divisions, Division 86. Planning began on the concept of the Air/Land Battle 2000 and a complete review of the JAGC Manpower Authorization Criteria (MACRIT), found in AR 570-2, was begun. TOE 27-600 was implemented and the JAGC portions of FM 101-5, FM 100-16, FM 100-10, and FM 63-3 were reviewed and revised.

On 31 March 1981 Colonel William K. Suter succeeded the retiring Colonel David L. Minton as Commandant of the School. In June of 1981, Colonel Robert E. Murray became Director of the Academic Department.

PERSONNEL, PLANS, AND POLICIES

With the inclusion of law students participating in the Funded Legal Education Program, the strength of The Judge Advocate General's Corps at the end of fiscal year 1981 was 1,781. Representing minority groups were 74 Blacks, 25 Hispanics, 18 Asian and Native Americans, and 127 women. The fiscal year 1981 end strength compares with an end strength of 1,501 in fiscal year 1980, 1,431 in fiscal year 1979, and 1,425 in fiscal year 1978. The grade distribution of the Corps at the end of the fiscal year was: 5 general officers, 95 colonels, 150 lieutenant colonels, 335 majors, 1,192 captains, and 9 first lieutenants. There were 66 officers (57 captains and 9 first lieutenants) participating in the Funded Legal Education Program. There were also 65 warrant officers.

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 several times during the year.

In February 1981 a selection board was convened to select 25 active duty commissioned officers to commence law school under the Funded Legal Education Program.

Sixty-four judge advocate officers completed the following schools:

U.S. Army War College	2
Industrial College of the Armed Forces	2
U.S. Army Command and General Staff College.....	8
Armed Forces Staff College	3
The Judge Advocate Officer Graduate Course	49

The Defense Officer Personnel Management Act (DOPMA) became effective on 15 September 1981 and will affect many JAGC personnel management policies. Two significant aspects of DOPMA are that newly-appointed JAG officers will be accessed as first lieutenants and that the JAGC, as a separate competitive category, may now select and promote its officers based on JAGC grade vacancies as they occur.

HUGH J. CLAUSEN
Major General, USA
The Judge Advocate General.

STATISTICAL SUMMARY: FISCAL YEAR 1981

Period: Fiscal Year 1981

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT
GENERAL	1426	1262	164	+ 5.4%
BCD SPECIAL	1792	1582		+ 29.4%
NON-BCD SPECIAL	2802	2598	204	- 8.6%
SUMMARY	4418	4070	348	+ 27.4%
OVERALL RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT				+ 12.6%

PART 2 - DISCHARGES APPROVED **

GENERAL COURTS-MARTIAL (CA LEVEL)	NUMBER OF DISHONORABLE DISCHARGES	367
	NUMBER OF BAD CONDUCT DISCHARGES	901
SPECIAL COURTS-MARTIAL (SA LEVEL)		
	NUMBER OF BAD CONDUCT DISCHARGES	1220

} 2488 How can 2 be more than 3?

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	1030	} 2404 } 2738
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	1374	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	334	

PART 4 - WORKLOAD OF THE COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD		714
GENERAL COURTS-MARTIAL	373	
BCD SPECIAL COURTS-MARTIAL	341	
REFERRED FOR REVIEW		2421
GENERAL COURTS-MARTIAL	1088	
BCD SPECIAL COURTS-MARTIAL	1333	
TOTAL CASES REVIEWED		2344
GENERAL COURTS-MARTIAL	1039	
BCD SPECIAL COURTS-MARTIAL	1305	
TOTAL PENDING AT CLOSE OF PERIOD		791
GENERAL COURTS-MARTIAL	422	
BCD SPECIAL COURTS-MARTIAL	369	
RATE OF INCREASE (+) / DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		1843
		27.2

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE COURT OF MILITARY REVIEW

NUMBER	2338
PERCENTAGE	99.7%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	59.0%
PERCENTAGE OF / DECREASE (-) OVER PREVIOUS REPORTING PERIOD	- 2.0%
PERCENTAGE OF TOTAL PETITIONS GRANTED	5.6%
PERCENTAGE OF / DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-18.4%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	3.3%
RATE OF / DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-11.2%

PAGE 1 OF 2

* Based on the date cases were tried during Fiscal Year.

** Based on the date cases were received during Fiscal Year.

STATISTICAL SUMMARY: FISCAL YEAR 1981—Continued

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		57	
RECEIVED		225	
DISPOSED OF		262	
GRANTED	34		
DENIED	224		
NO JURISDICTION	1		
FIELD	2		
WITHDRAWN	1		
TOTAL PENDING AT END OF PERIOD		20	

PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		777	} 2858
SPECIAL COURTS-MARTIAL		1348	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		454	} ← Probable error.
SPECIAL COURTS-MARTIAL		279	

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS		
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	779,336	
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	156,497	
RATE PER 1,000	200.8	
RATE OF INCREASE (+) OVER PREVIOUS PERIOD	+ 3.9	

ANNUAL REPORT
OF
THE JUDGE ADVOCATE GENERAL OF THE NAVY

pursuant to

THE UNIFORM CODE OF MILITARY JUSTICE

for

FISCAL YEAR 1981

Courts-Martial Workload.

a. There has been an increase in the total number of courts-martial during fiscal year 1981. (See Exhibit A, attached to this report.)

b. During fiscal year 1981, the U.S. Navy-Marine Corps Court of Military Review received for review 3,467 new court-martial cases, consisting of 328 general courts-martial and 3,139 special courts-martial, as compared with 2,877 courts-martial, consisting of 223 general courts-martial and 2,654 special courts-martial during fiscal year 1980. Of the 3,467 new cases received by the U.S. Navy-Marine Corps Court of Military Review in fiscal year 1981, 3,076 accused requested counsel (89 percent).

Navy-Marine Corps Trial Judiciary.

The Navy-Marine Corps Trial Judiciary provided military judges for 438 general courts-martial during fiscal year 1981, an increase of 84 cases from the 1980 level of 354 general courts-martial. In fiscal year 1981, 57 percent of the general courts-martial were tried by courts constituted with military judge alone. This represents the same percentage of general courts-martial constituted without members during fiscal year 1980.

The Navy-Marine Corps Trial Judiciary supplied military judges for 9,218 special courts-martial trials during fiscal year 1981, an increase of 1,119 cases above the fiscal year 1980 level. In fiscal year

1981, 89 percent of the special courts-martial were tried by courts constituted with military judge alone.

The present manning level of the Navy-Marine Corps Trial Judiciary is 26 general courts-martial judges, 7 more than the manning level at the close of fiscal year 1980. Thirty-two special courts-martial military judges are assigned to the Navy-Marine Corps Trial Judiciary, a decrease of 3 from the manning level at the close of fiscal year 1980.

Some 28 military judges attended the annual Judge Advocate General's Conference held in Washington, D.C., 20-24 October 1980. Eighteen judges attended the Military Judge's Course given at the Army Judge Advocate General's School in Charlottesville, Virginia. Three military judges attended the Seventh Interservice Military Trial Judge's Seminar at Maxwell Air Force Base, Alabama, 20-24 April 1981. Seven military judges from WESTPAC NORTH and WESTPAC SOUTH Judicial Circuits attended the MLI WESTPAC 1981 Seminar in Okinawa, Japan, 5-8 April 1981. The Chief Judge attended the Army Judge Advocate General's School, Charlottesville, Virginia, 4-5 June 1981, to present the administrative briefing to the faculty and students, including the military judges. The Deputy Chief attended the Army Judge Advocate General's School, 5-6 August 1981, to present the administrative briefing.

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

Due to the increase in personnel and consequent increase in courts-martial in the Mayport, Florida, Great Lakes, Illinois, and New London, Connecticut, areas, one military judge has been assigned to each of the aforementioned areas.

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 concentration throughout the world. The total manpower strength authorization for the Naval Legal Service Command includes 394 judge advocates, ten warrant officers, 145 legalmen, 62 yeoman, and for fiscal year 1981, 212 civilian employees (including 33 direct-hire foreign nationals and seven indirect-hire foreign nationals). Navy judge advocates in the Naval Legal Service Command comprise approximately 40 percent of the Navy's total judge advocate strength.

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

a. The Naval Legal Service Office Detachment at Adak, Alaska, was established effective 1 March 1981.

b. Approval has been obtained from the Chief of Naval Operations to establish Naval Legal Service Office Detachments at Cecil Field, Florida, effective 1 October 1981, and Sixth Fleet onboard the USS PUGET SOUND (AD-38) effective 1 January 1982.

The Naval Legal Service Command under the direction of the Judge Advocate General as Commander, 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. Counsel are provided to convening authorities in a timely manner in support of the military justice process. The demand for support has increased since fiscal year 1978 when an average of 13 general courts-martial and 329 special courts-martial were processed each month by naval legal service offices and detachments. The monthly average for fiscal year 1981 was 22 general courts-martial and 447 special courts-martial. Periodic command inspections into the operations of each of the various naval legal service offices and detachments have shown that 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-Marine Corps Court of Military Review, increased during fiscal year 1981.

b. In fiscal year 1981, 85 petitions were received by the Judge Advocate General. Fifteen petitions were pending from prior years. Of these 100 cases, 97 were reviewed during fiscal year 1981. Of those petitions reviewed, 96 petitions were denied, while relief was granted, in whole or in part, in 1 of the petitions. Three cases were pending review at the close of fiscal year 1981.

c. In addition, in fiscal year 1981, 99 general court-martial cases, which were not statutorily eligible for automatic review by the U.S. Navy-Marine Corps Court of Military Review, were reviewed by the Judge Advocate General.

Article, 73, UCMJ, Petitions. In fiscal year 1981, five petitions for new trials were submitted, one of which was referred to the U.S. Navy-Marine Corps Court of Military Review pursuant to Article 73, Uniform Code of Military Justice. Three petitions were denied. One petition was pending at the close of fiscal year 1981.

Article, 74, UCMJ, Petitions. Seven new petitions were submitted requesting the substitution of an administrative discharge for a punitive discharge awarded as part of a sentence by court-martial.

Eight cases were pending from the prior fiscal year. Of the fifteen petitions, two were granted and thirteen were denied.

Annual Judge Advocate General's Conference.

A conference of judge advocates and legalmen from all major Navy and Marine Corps commands was held in Washington, D.C. on 20-24 October 1980. The conference heard addresses by the Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps. The conference included formal presentations on various legal topics, including international relations, the handling of an alcoholic accused, human resource management, data processing, the Freedom of Information and Privacy Acts, appellate practice, security assistance, the Military Rules of Evidence, litigation support in Federal tort claim cases, Merit System Protection Board practice, taxation, and admiralty.

Panel discussions were conducted on various subjects including post-trial clemency, recent developments in military justice, the Ethics in Government Act, claims practice, Navy administrative discharge procedures and policies, environmental law, child abuse in the military community, labor and management relations, and productivity reports.

Continuing-legal-education-videotape presentations were offered on conflicts of interest, standards of conduct, consumer affairs, the new Federal Bankruptcy Act, recent developments in the field of environmental law, the role of the U.S. Attorney in civil litigation and current cases of interest in the Department of Defense, medical malpractice claims, trial tactics in the prosecution of criminal cases, oral advocacy, recent developments in family law, the ten commandments of cross-examination, setting goals in criminal litigation, ethics, trial before members as opposed to trial before military judge alone, and military criminal law horizons facing the Court of Military Appeals.

Seminars were conducted by various groups of conferees on the following topics: matters relating to the prosecution of courts-martial; concerns of trial defense counsel; the Law of Armed Conflict; legal assistance; recruiting new legalmen, manning, reenlistment and the evaluation and advancement system; Law of the Sea; Marine Corps policy research update; and Board for Correction of Naval Records procedures.

This annual conference of judge advocates and legalmen once again demonstrated the tremendous benefit derived when judge advocates and legalmen from all over the world have the opportunity to attend lectures and participate in seminars concerning significant areas of mutual concern.

Naval Justice School.

1. The Naval Justice School in Newport, Rhode Island, with a

teaching staff of thirteen officers and five enlisted personnel presented the following courses of instruction in military law and related administrative civil law matters to a total of 2,731 students during fiscal year 1981.

Lawyer Course. Five eight-week lawyer classes were presented during the year. This course, designed to provide basic training in military justice and military administrative and civil law matters to incoming Navy and Marine Corps lawyers, includes 191 hours of classroom instruction and 127 hours of practical exercises, including moot courts and various criminal law practical exercises. Training was provided to 187 Navy lawyers, 48 Marine Corps lawyers, and two civilian lawyers.

Legal Officer Course. Seven five-week classes were presented during the year. This course is designed for nonlawyer junior officers about to assume duties as a legal officer for a ship, station or other military unit with no military lawyer assigned. Included in the course curriculum are 150 classroom hours and 44 hours of practical exercises and seminars. Training was provided to 251 Navy officers, 61 Marine Corps officers, and two Coast Guard officers.

Naval-Marine Corps Reserve Officer Basic and Refresher Courses. These two-week courses of instruction are offered once each summer for Naval Reserve 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 to provide an update in recent developments in military law for lawyers who previously served on extended active duty as judge advocates, or who have previously attended the Reserve Officer Basic Course. Training was provided to 65 Naval Reserve lawyers and six Marine Corps Reserve lawyers.

Court Reporter Reserve Course. This two-week course of instruction is offered once each summer for enlisted personnel in the inactive reserve who are in an in-training status for the legalman rate. The course is broken down into two phases, only one phase being taken by a person during a single tour of active duty for training. Phase I is an introduction to legal-clerk matters and a brief introduction to court reporting equipment. Phase II is advance training on such matters as legal assistance, claims and use of court reporting equipment. Training was provided to 17 students in Phase I and 8 students in Phase II.

Senior Officer Course. Twenty-nine one-week classes were presented during the year, reaching a total of 1,730 students. This includes 210 students trained in the six classes which were presented in Newport, Rhode Island. The others were presented in Jacksonville, Florida; Charleston, South Carolina; Norfolk, Virginia; Whidbey Island and Bremerton, Washington; San Francisco and San Diego, California; Camp Pendleton, California; Rota, Spain; Pearl Harbor,

Hawaii, Subic Bay, Republic of the Philippines; Yokosuka, Japan; Parris Island, South Carolina; Cherry Point, North Carolina; Amphibious Warfare School and Command and Staff College, Quantico, Virginia; and New London, Connecticut. 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 1,081 Navy officers, 491 Marine Corps officers, 131 Coast Guard officers, 24 Army officers, two Air Force officers, and one 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 yeoman or legal clerks at their respective commands. Graduation from this course, and from the following Court Reporter Course, is required for conversion to legalman in the Navy. Training was provided to 224 Navy personnel and 12 Coast Guard personnel.

Court Reporter Course. Four five-and-one-half-week classes were presented during fiscal year 1981. The purpose of this course is to train enlisted personnel in the field of closed-mask court reporting. Training was provided to 81 Navy personnel, 25 Army personnel, and 12 Coast Guard personnel.

In addition to those formal courses of instruction listed above, the Naval Justice School also presented nearly 336 lecture hours of instruction in the areas of search and seizure, confessions and admissions, nonjudicial punishment, investigations, administrative discharges, and command relations with civil authorities, to 2,190 students at the Surface Warfare Officers School, Chaplain's School, Officer Indoctrination School, Naval War College, and Naval Academy Preparatory School in Newport, Rhode Island, and at the Naval Submarine School in New London, Connecticut.

Ethics. Action was taken to maintain high ethical standards for counsel and judges who participate in courts-martial. Judge advocates, prior to commencing lawyer duties, 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 consid-

ered by the JAG Ethics Committee during fiscal year 1981 were found to constitute unethical conduct or malpractice by any naval service judge advocate.

STATISTICAL SUMMARY: FISCAL YEAR 1981

Period: Fiscal Year 1981

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	438	409	29	84 (+24%)
BCD SPECIAL	3585	3585		750 (+26%)
NON BCD SPECIAL	5633	5288	345	369 (+ 7%)
SUMMARY	7747	7459	288	743 (+11%)
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				1946 (+13%)

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)	107
NUMBER OF DISHONORABLE DISCHARGES	
NUMBER OF BAD CONDUCT DISCHARGES	241
SPECIAL COURTS-MARTIAL (SA LEVEL)	
NUMBER OF BAD CONDUCT DISCHARGES	3611

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	328
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	3139
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	62

PART 4 - WORKLOAD OF THE NAVY-MARINE CORPS COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD	911	
GENERAL COURTS-MARTIAL	127	
BCD SPECIAL COURTS-MARTIAL	784	
REFERRED FOR REVIEW	3589	
GENERAL COURTS-MARTIAL	362	
BCD SPECIAL COURTS-MARTIAL	3227	
TOTAL CASES REVIEWED	3501	
GENERAL COURTS-MARTIAL	315	
BCD SPECIAL COURTS-MARTIAL	3186	
TOTAL PENDING AT CLOSE OF PERIOD	999	
GENERAL COURTS-MARTIAL	174	
BCD SPECIAL COURTS-MARTIAL	825	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		88 (+10%)

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

NUMBER	3076
PERCENTAGE	89%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	16%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+31%
PERCENTAGE OF TOTAL PETITIONS GRANTED	4%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-28%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	1%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+23%

STATISTICAL SUMMARY: FISCAL YEAR 1981—Continued

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		15	
RECEIVED		85	
DISPOSED OF		97	
GRANTED	1		
DENIED	96		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		3	

PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE		252	
GENERAL COURTS-MARTIAL			
SPECIAL COURTS-MARTIAL		8363	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		186	
SPECIAL COURTS-MARTIAL		867	

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	124	
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	725.433	
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	130368	
RATE PER 1,000	179.71	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	+4%	

REPORT OF
THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE
OCTOBER 1, 1980 TO SEPTEMBER 30, 1981

In compliance with the requirements of Article 6(a), Uniform Code of Military Justice (UCMJ), Major General Thomas B. Bruton, The Judge Advocate General, and Major 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.

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

During fiscal year 1981, the Judiciary Directorate of the Office of The Judge Advocate General processed over 2,419 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, under the provisions of the Manual for Courts-Martial 1969 (Rev.) and the UCMJ. In addition, the Directorate has 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 military justice issues in applications submitted to the Board for Correction of Military Records. There were 419 formal opinions provided the Secretary of the Air Force concerning those applications.

b. The Directorate also received 1,266 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 the 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 fiscal year 1981, 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 400 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.

The conversion of AMJAMS to the Honeywell H-6000 computer took place on 1 January 1981. Earlier difficulties relating to programming errors have been overcome. The conversion is now complete, with only minor programming difficulties remaining.

Trial Judiciary

The Air Force Trial Judiciary had an average of 31 military trial judges assigned at 10 locations. The program for joint use of military trial judges between the Army and Air Force in Alaska was expanded to Hawaii and continued with substantial savings. A limited similar program with the Navy in Iceland also continued.

Circuit Trial Counsel Program

The 21 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. In 1979, circuit trial counsel tried 229 general courts (95 percent of the total) and 292 special courts (27 percent of the total). In 1980, they tried 345 general courts (92 percent of the total) and 229 special courts (17 percent of the total). In 1981, they tried 90 percent of all general courts and about 16 percent of all special courts.

A recent survey of base staff judge advocates throughout the world showed that circuit trial counsel continue to provide outstanding

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

Confinement Facilities

Air Force prisoners with sentences of over three months confinement continue to be housed primarily at the United States Disciplinary Barracks, Fort Leavenworth, Kansas, and the confinement facilities at Fort Riley, Kansas, and Lowry Air Force Base, Colorado. The rehabilitation program at the 3320th Correction and Rehabilitation Squadron, Lowry Air Force Base, has been increased in capacity and now serves a population of approximately one hundred. This operation continues its long-time record of successfully restoring over fifty per cent of those who enter the program to effective regular service.

PREVENTIVE LAW AND LEGAL ASSISTANCE PROGRAMS

In 1981, Air Force attorneys provided legal assistance in 1,148,752 cases. The number of clients served was 473,864. In number of people served, the Legal Assistance Program is by far the largest of all Departmental activities. The importance of this program is based on the premise that a service member 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 complements 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 that the law is more than orders backed by threats, and that they have the power to mold their personal legal relationships. These programs are but another example of the efforts being made to further the accomplishment of the Air Force mission.

EDUCATION AND TRAINING

During fiscal year 1981, The Judge Advocate General's Department provided many 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 fiscal year 1981, and 142 judge advocates plus 2 reservists completed the training.

b. The Staff Judge Advocate Course—This course was presented twice in fiscal year 1981, and 40 judge advocates plus 4 reservists attended the course.

c. The Reserve and Air National Guard Refresher Course—Two classes of this course were conducted in fiscal year 1981. One hundred and sixty reserve attorneys attended.

d. The Legal Services Advanced Course—This course was presented once during fiscal year 1981 and 40 Air Force 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. Twelve sessions of the course were held in fiscal year 1981, and 170 students were graduated.

e. The Claims and Tort Litigation Course—During fiscal year 1981 this course was held twice. A total of 54 judge advocates, 6 civilian attorneys, 44 NCOs and 16 civilian paralegals attended.

f. The Federal Labor Relations and Equal Opportunity Course—Two sessions of this course were held in fiscal year 1981 and were attended by 92 judge advocates and 8 civilian attorneys employed in the Department.

g. Military Judges Seminar—This is a joint services course held once a year. In fiscal year 1981, 24 Air Force military judges and 16 judges from the other Armed Services attended.

Professional Military Training

During fiscal year 1981, 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—Twenty-five judge advocates attended this five-day course in fiscal year 1981.

b. Defense Attorney's Course at Northwestern University—Twenty-five judge advocates attended this five-day course in fiscal year 1981.

c. National College of State Trial Judges at the University of Nevada—Twelve judge advocates and one senior NCO attended courses at the college during fiscal year 1981.

Masters in Law Program

During fiscal year 1981, 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

Sixty judge advocates attended the basic procurement law course, and fifteen judge advocates attended the advanced procurement law course. Nine judge advocates attended the military judge course during fiscal year 1981.

CONTINUING LEGAL EDUCATION SEMINARS USING VIDEOTAPE

These seminar programs, specifically developed for CLE, 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 now 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*, continues to grow. Many law schools are making it a part of their federal documents depository program. Other subscribers include government agencies and private and public libraries. Topics with special emphasis in 1981 included the powers of the President, military jurisdiction over off-base offenses, fraternization, and environmental law. The *Reporter* is praised by government lawyers, both military and civilian, as an extremely valuable communications media that shares streamlined procedures and lessons learned, promotes crossfeed, and promotes a

better informed and better prepared Department. In 1981, improvements in editing and printing were instituted which allowed maintaining the substantive value of the *Reporter* while reducing the cost of publication.

FEDERAL LEGAL INFORMATION THROUGH ELECTRONICS (FLITE)

The Office of The Judge Advocate General continued to operate and expand one of the world's largest automated legal research systems. Department of Defense users in 1981 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, 110 colonels, 207 lieutenant colonels, 243 majors, and 623 captains. As of 30 September 1981, there were 1,208 judge advocates on active duty (5 generals, 102 colonels, 180 lieutenant colonels, 207 majors, and 714 captains).

STATISTICAL SUMMARY: FISCAL YEAR 1981

Period: 1 October 1980 - 30 September 1981

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	359	334	25	+38.1%
BCD SPECIAL	310	310		+15.7%
NON-BCD SPECIAL	1,063	951	112	+ 6.1%
SUMMARY	52	31	21	+15.6%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+14.0%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)			
NUMBER OF DISHONORABLE DISCHARGES		54	
NUMBER OF BAD CONDUCT DISCHARGES		131	
SPECIAL COURTS-MARTIAL (SA LEVEL)			
NUMBER OF BAD CONDUCT DISCHARGES		201	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	263
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	270
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	62

PART 4 - WORKLOAD OF THE COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD		250
GENERAL COURTS MARTIAL	146	
BCD SPECIAL COURTS MARTIAL	104	
REFERRED FOR REVIEW		533
GENERAL COURTS-MARTIAL	263	
BCD SPECIAL COURTS-MARTIAL	270	
TOTAL CASES REVIEWED		677
GENERAL COURTS-MARTIAL	347	
BCD SPECIAL COURTS MARTIAL	330	
TOTAL PENDING AT CLOSE OF PERIOD		106
GENERAL COURTS-MARTIAL	62	
BCD SPECIAL COURTS-MARTIAL	44	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+108.9%

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE REVIEW

COURT OF MILITARY

NUMBER	515
PERCENTAGE	96.6%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	386/677	57.0%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+115.6%
PERCENTAGE OF TOTAL PETITIONS GRANTED	57/397	14.4%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		- 19.7%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	57/677	8.4%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+121.8%

STATISTICAL SUMMARY: FISCAL YEAR 1981—Continued

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69			
PENDING AT BEGINNING OF PERIOD			10
RECEIVED			93
DISPOSED OF			93
GRANTED		7	
DENIED		85	
NO JURISDICTION		-	
WITHDRAWN		1	
TOTAL PENDING AT END OF PERIOD			10
PART 8 - ORGANIZATION OF COURT			
TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL			159
SPECIAL COURTS-MARTIAL			569
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL			200
SPECIAL COURTS-MARTIAL			804
PART 9 - COMPLAINTS UNDER ARTICLE 138			
NUMBER OF COMPLAINTS		46	
PART 10 - STRENGTH			
AVERAGE ACTIVE DUTY STRENGTH		549,040	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		31,971	
RATE PER 1,000		58.23	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		+ 8.5%	

PAGE 2 OF 2

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

October 1, 1980 to September 30, 1981

The table below shows the number of courts-martial records received and filed at Coast Guard Headquarters during FY-81 and the five preceding years.

Fiscal Year	81	80	79	78	77	76A	76
General Courts-Martial	2	3	2	3	5	0	4
Special Courts-Martial	58	67	47	58	84	25	181
Summary Courts-Martial	192	169	122	180	188	47	221
Total	252	239	171	241	277	72	406

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 met in a timely fashion.

General Courts-Martial

Charges referred to the two general courts-martial convened this year included specifications alleging violations of Articles 110, 120, 125, 128, and 134 (none involved marijuana or other controlled drugs). Neither accused requested trial by the military judge alone, and one received a sentence which included a bad-conduct discharge.

Special Courts-Martial

Twenty-two of the 58 accused tried by special courts-martial this fiscal year were tried by the military judge alone. Two of the 36 accused, tried by members, were acquitted of all charges and specifications, and one had all charges withdrawn by the convening authority prior to findings. Bad-conduct discharges were awarded two accused tried by military judge alone and three accused tried by courts with members. Only two of these punitive discharges were approved by the convening and supervisory authorities. Forty-two of the accused whose charges were referred to special courts-martial were nonrated (pay grades E-1 through E-3), the others were petty officers (pay grades E-4 through E-6).

The following table shows the distribution of the 224 specifications referred to special courts-martial.

Violation of the UCMJ, Article	No. of Spec's
80 (attempts)	10
85 and 86 (desertion and UA)	44
87 (missing movement).....	7
89 (disrespect toward superior commissioned officer)	3
91 (willful disobedience or disrespect)	13
92 (violation of order or regulation)	26
107 (false official statement)	1
108 (offenses against USCG property).....	7
121 (larceny and wrongful appropriation).....	20
128 (assault).....	14
134 (breaking restriction)	6
134 (miscellaneous)	15
134 or 92 (marijuana offenses)	22
134 or 92 (other controlled drug offenses)	19
Other offenses	17

The following is a breakdown of sentences awarded by the military judge alone in special courts-martial (22 convictions).

Sentence	Cases Imposed
Bad-conduct discharge.....	2
Confinement at hard labor (one maximum)	13
Hard labor without confinement	6
Reduction in rate	17
Restriction	2
Forfeiture of pay (\$11,950 total)	15
Others.....	2

In 11 of these 22 convictions, the accused pled guilty to all charges and specifications.

The following is a breakdown of sentences awarded by courts with members (33 convictions).

Sentence	Cases Imposed
Bad-conduct discharge.....	3
Confinement at hard labor.....	21
Hard labor without confinement	7
Reduction in rate	21
Restriction	9
Forfeiture of pay (\$25,017 total).....	26
Others.....	3

In 10 of these 33 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 three fiscal years.

FY	Number of Convictions	Forfeitures	Confinement	Reduction in grade
81	55	41 (75%)	34 (62%)	38 (69%)
80	64	45 (70%)	37 (58%)	34 (53%)
79	42	30 (71%)	24 (57%)	26 (62%)
Average % for 3 yrs:		72%	59%	61%

Summation

One of the two general courts-martial, both with members, adjudged a sentence which included a bad-conduct discharge. Thirty-eight percent of the accused tried by special court-martial were tried by military judge alone, and one-half of them pled guilty to all charges and specifications. Twenty-eight percent of the accused tried by special court-martial with members pled guilty to all charges and specifications. Only two of the five bad-conduct discharges adjudged this fiscal year were approved by the convening and supervisory authorities. The five percent increase in total courts-martial this fiscal year is attributed to the increase in summary courts-martial, since the others remained about the same.

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. Six 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, rehearing ordered or charges ordered dismissed	2
Findings and sentence set aside and charges dismissed	1
Findings of guilty of one of the charges or specifications set aside, and sentence as reassessed found to be appropriate.....	3

PERSONNEL AND TRAINING

The Coast Guard has 157 law specialists serving on active duty. One hundred and twenty-two are serving in a legal capacity and 35 are serving in general duty billets. The junior law specialists serving at district offices perform most trial and defense counsel services. Senior law specialists, most serving as district legal officers, are used as military judges when required.

The Sixth Coast Guard Basic Law Specialist Course was held at the Coast Guard Reserve Training Center, Yorktown, Virginia, from 21 September 1981 through 13 November 1981. 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.

DATA GATHERING METHODS

Military justice statistics have been in the past processed and tabulated almost entirely by hand. As such, some errors were inevitable, especially in accumulating the data on nonjudicial punishment (NJP). While the figures for courts-martial were compiled only by personnel in the Office of the Chief Counsel from each record of trial, the NJP figures were tabulated from the data on Coast Guard Form CG-4910s submitted by every unit in the Coast Guard, which were sometimes completed by individuals unfamiliar with military justice matters. The Form CG-4910 is a record of punishment promulgated pursuant to paragraph 133c, Manual for Courts-Martial, and has been used to inform commanding officers of misconduct at their units. The large majority of errors in the NJP statistics can probably be attributed to incorrectly completed Form CG-4910s, principally where several Form CG-4910s were used for multiple

offenses which were actually taken to a single mast, but were reported as several different instances of NJP.

On 1 December 1980 the foregoing method of data gathering was discontinued, and the Coast Guard began collecting military justice data through its Personnel Management Information System (PMIS) which inputs data into a Joint Uniform Military Pay System (JUMPS) computer. PMIS provides courts-martial and NJP information to the JUMPS computer through personnel service record entry forms, which are prepared to record the imposition of NJP and courts-martial convictions. The gathering of military justice statistics from personnel record forms through the PMIS/JUMPS computer should produce more accurate data. Only the NJP statistics were supplied by the JUMPS computer for this report. This new method of data gathering explains the reduction in NJP figures over last year's as reported in Part 11 of Appendix A. Because of the apparent past errors, a rate of increase or decrease was not calculated this year. In the future almost this entire report will be written from data furnished by this system.

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.

JOHN M. FOWLER
General Counsel
Department of Transportation.

Appendix A: U.S. Coast Guard Courts-Martial/NJP Statistics for October 1, 1980 to September 30, 1981 (Fiscal Year 1981)

Period: Oct. 1, 1980 through Sept. 30, 1981

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)				
TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	2	2	0	-33%
BCD SPECIAL	5	5		-44%
NON-BCD SPECIAL	53 ¹	50	2	-09%
SUMMARY	192	186	6	+14%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+05%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		0
NUMBER OF DISHONORABLE DISCHARGES		
NUMBER OF BAD CONDUCT DISCHARGES		1
SPECIAL COURTS-MARTIAL (SA LEVEL)		2
NUMBER OF BAD CONDUCT DISCHARGES		

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

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

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

TOTAL ON HAND BEGINNING OF PERIOD	6	
GENERAL COURTS-MARTIAL	1	
BCD SPECIAL COURTS-MARTIAL	5	
REFERRED FOR REVIEW	3	
GENERAL COURTS-MARTIAL	1	
BCD SPECIAL COURTS-MARTIAL	2	
TOTAL CASES REVIEWED	7	
GENERAL COURTS-MARTIAL	1	
BCD SPECIAL COURTS-MARTIAL	6	
TOTAL PENDING AT CLOSE OF PERIOD	2	
GENERAL COURTS-MARTIAL	1	
BCD SPECIAL COURTS-MARTIAL	1	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+17%

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

NUMBER	6
PERCENTAGE	86%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	71%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+76%
PERCENTAGE OF TOTAL PETITIONS GRANTED	40%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+40%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	29%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	200% ²

Appendix A: U.S. Coast Guard Courts-Martial/NJP Statistics for October 1, 1980 to September 30, 1981 (Fiscal Year 1981)—Continued

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		2
RECEIVED		4
DISPOSED OF		6
GRANTED	0	
DENIED	6	
NO JURISDICTION	0	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		0
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		0
GENERAL COURTS-MARTIAL		
SPECIAL COURTS MARTIAL		22
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		2
SPECIAL COURTS MARTIAL		36
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	8	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	39,602	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	1,635	
RATE PER 1,000	50.68	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	See footnote 3	

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- ¹ A convening authority withdrew all charges from one trial before findings.
- ² From 0 to 2.
- ³ Not calculated. See section entitled "DATA GATHERING METHODS" of written report.