

**ANNUAL REPORT  
of the  
CODE COMMITTEE  
on  
MILITARY JUSTICE**



**INCLUDING SEPARATE REPORTS  
of the  
U.S. COURT OF MILITARY APPEALS,  
THE JUDGE ADVOCATES GENERAL  
OF THE U.S. ARMED FORCES,  
AND THE CHIEF COUNSEL  
OF THE U.S. COAST GUARD**

**For the Period**

**October 1, 1983 to September 30, 1984**

**PROPERTY OF U.S. ARMY  
THE JUDGE ADVOCATE GENERAL'S SCHOOL  
LIBRARY**

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

**PURSUANT TO THE**  
**UNIFORM CODE OF MILITARY JUSTICE**  
For the Period  
**October 1, 1983-September 30, 1984**

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**REPORT OF THE CHIEF COUNSEL OF THE COAST GUARD**

# **JOINT ANNUAL REPORT**

**of the**

## **CODE COMMITTEE**

**PURSUANT TO THE**

### **UNIFORM CODE OF MILITARY JUSTICE**

**October 1, 1983 to September 30, 1984**

Pursuant to the amendments to the Uniform Code of Military Justice as enacted by Congress within the Military Justice Act of 1983, P.L. 98-209, 97 Stat. 1393 (1983), the Code Committee was reconstituted during fiscal year 1984. Professor A. Kenneth Pye and Mary Ellen Hanley, Esquire, were appointed by the Secretary of Defense as the public members of the Committee. These public members joined the Judges of the United States Court of Military Appeals; the Judge Advocates General of the Army, Navy, and Air Force; the Chief Counsel of the Coast Guard; and the Director, Judge Advocate Division, Headquarters, United States Marine Corps, as members of the Committee. As so constituted, the Code Committee submits its annual report on the operation of the Uniform Code of Military Justice.

During fiscal year 1984, the Code Committee met on several occasions to review the final drafts and the dissemination of the Manual for Courts-Martial, United States, 1984, which replaced the Manual for Courts-Martial, United States, 1969 (Revised edition). Additionally, it reviewed the efforts which had been made by the staffs of the Supreme Court of the United States, the Solicitor General's Office, and the United States Court of Military Appeals, as well as by military lawyers within each of the Armed Services, to develop and implement internal procedures for seeking certiorari review by the Supreme Court, which was authorized by the Military Justice Act of 1983. Pursuant to the interest expressed in the Senate Report which preceded the passage of the Military Justice Act of 1983, S. Rep. No. 98-53, 98th Cong., 1st Sess. (1983), the Code Committee decided to conduct at

least two meetings each fiscal year which would be open to the general public, commencing in fiscal year 1985. The Committee also considered the implementation of other aspects of the Military Justice Act of 1983 and reviewed various proposals to modify the digest system for the Military Justice Reporter, which contains the published decisions of the United States Court of Military Appeals and selected decisions of the various Courts of Military Review.

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

ROBINSON O. EVERETT

*Chief Judge*

ALBERT B. FLETCHER, JR.

*Associate Judge*

WALTER T. COX III

*Associate Judge*

Major General HUGH J. CLAUSEN

*The Judge Advocate General, U.S. Army*

Rear Admiral THOMAS E. FLYNN

*The Judge Advocate General, U.S. Navy*

Major General THOMAS B. BRUTON

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

Rear Admiral EDWIN H. DANIELS

*Chief Counsel, U.S. Coast Guard*

Brigadier General WALTER J. DONOVAN

*Director, Judge Advocate Division,*

*Headquarters, U.S. Marine Corps*

MARY ELLEN HANLEY

*Esquire*

Professor A. KENNETH PYE

**REPORT OF THE**  
**UNITED STATES COURT OF MILITARY APPEALS**  
**October 1, 1983 to September 30, 1984**

The Judges of the United States Court of Military Appeals submit their fiscal year 1984 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 to 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 1984 term of the Court, 3296 petitions for grant of review, certificates for review, cross-petitions, granted reconsideration petitions, petitions for new trial, petitions for extraordinary relief and writ appeal petitions were filed with the Court. This was the highest total number of such filings since the creation of the Court by Congress in 1951 and, although the increase over last year's filings was only 2 percent, this was the third consecutive year that a record number of such cases was filed with the Court.

In addition to this record number of filings, the Court reviewed and acted on 3528 petitions for grant of review during fiscal year 1984, reflecting an increase in such review actions of 26 percent over fiscal year 1983. The Court granted further review in 433 of these cases, or 12 percent of the cases considered. On the master docket of mandatory appeals, certificates for review, and granted petitions, the Court took final action in 467 cases, which reflects an increase in final dispositions of 137 percent over fiscal year 1983. Approximately 48 percent of the Court's actions on these master docket cases affirmed the decisions of the Courts of Military Review. Although the Court experienced a record number of filings during fiscal year 1984, the number of cases pending action by the Court at the end of this year was reduced by 26 percent as a result of the increased number of final actions during this period.

The number of petitions for extraordinary relief and writ appeal petitions filed with the Court during fiscal year 1984 was substantially less

than in the prior fiscal year, since only 44 such petitions were filed during the current fiscal year as compared with 72 such petitions filed during fiscal year 1983. Additionally, 1036 motions were filed with the Court during the current fiscal year and the Court acted on 1030 motions during the same period.

In addition to its case review workload, the Court admitted 534 attorneys to practice before its Bar during the fiscal year 1984 term, bringing the cumulative total of admissions before the Bar of the Court to 24,872.

### **JUDGE WILLIAM H. COOK RETIRES**

On March 31, 1984, Judge William H. Cook retired from the United States Court of Military Appeals. However, he elected to assume Senior Judge status on April 1, 1984, and was recalled to active service on the Court by Chief Judge Robinson O. Everett on April 2, 1984. He continued such active service until June 30, 1984, when he assumed full retired status as a Senior Judge. In serving on the Court for a decade, Judge Cook left a legacy of numerous opinions which have significantly contributed to the administration of military justice.

Fortunately, the vacancy created by Judge Cook's retirement was quickly filled by the President with the nomination of Judge Walter Thompson Cox, III, on June 28, 1984, his confirmation by the United States Senate on July 27, 1984, and his investiture on September 6, 1984. Judge Cox brings to the Court extensive experience as a trial judge in South Carolina, a private practitioner of law, and an officer and military trial judge in the Judge Advocate General's Corps of the United States Army. As a result of Judge Cox's arrival during the fiscal year 1984 term, the Court was able to continue its work with a vacancy of less than three months and was able to begin the 1985 term with a full schedule of oral arguments.

### **JUDICIAL VISITATIONS**

Consistent with the past practice of the Court, the Judges continued during fiscal year 1984 to visit military installations and deliver speeches to various professional organizations and educational seminars for the purpose of informing both the military and civilian communities of the Court's responsibility in the administration of the military justice system and to facilitate a better understanding of the Court's role in this system.

In fulfillment of this responsibility, Chief Judge Everett attended meetings and spoke to a Duke University Law School Seminar and to the Civitan Club in Durham, North Carolina; the University of Richmond Law School Legal Forum, Richmond, Virginia; the U.S. Coast Guard Legal Officers' Seminar and a joint meeting of the Capitol Hill and Pentagon Chapters of the Federal Bar Association, Washington,

D.C.; the Tenth Interservice Military Judges Seminar, Maxwell Air Force Base, Alabama; Law Day programs at Travis Air Force Base, California, and the U.S. Navy's Atlantic Fleet Headquarters, Norfolk, Virginia; a Career Planning seminar presented in Raleigh, North Carolina, by Wake Forest University Law School; the National Conference of the Commissioners on Uniform Laws, Keystone California; the Judge Advocates Association Annual Meeting, Chicago, Illinois; a Naval Reserve Judge Advocates Conference, Charleston, South Carolina; the dedication of the Naval Justice School, Newport, Rhode Island; the Judge Advocate General's On-Site Conference, New Orleans, Louisiana; the Partner/Associate Luncheon of the law firm of Patton, Boggs & Blow, Washington, D.C.; the Law Development Course, Judge Advocate General of the Army's School, Charlottesville, Virginia; Trial, Defense and Judiciary Conferences, Garmisch, Germany; the German-American Friendship Dinner, Heidelberg, Germany; the Military Law Committee of the General Practice Section of the American Bar Association, Nellis Air Force Base, Nevada; the Naval Reserve Trial Judiciary Conference, Reno, Nevada; and the Federal Bar Association's Seminar on Constitutional Crises in the Courts, Baltimore, Maryland.

Judge Cook, prior to his retirement, addressed a conference of senior judge advocates at the U.S. Coast Guard Headquarters, Washington, D.C.

Judge Fletcher visited and spoke at the Air Force Judge Advocate General's Annual Survey of the Law Conferences at Dyess Air Force Base, Abilene, Texas, and at Westover Air Force Base, Massachusetts; the New York Bar Association's Conference, New York; the U.S. Pacific Commanders' Legal Conference, Clark Air Base, Republic of the Philippines; and various other conferences of military judge advocates at the Naval Legal Service Office, Honolulu, Hawaii; the Naval Legal Service Office, Subic Bay, Republic of the Philippines; the Naval Fleet Activities, Yokosuka, Japan; Yokota Air Base, Japan; Camp Butler, Okinawa, Japan; Osan Air Force Base, Korea; and Seoul, Korea.

Shortly after Judge Cox took the oath of office toward the end of fiscal year 1984, he delivered a speech to the Pentagon Chapter of the Federal Bar Association, Washington, D.C.

As in previous years, the visits and speeches of the Judges provided them with an opportunity to ascertain the impact of the Court's decisions on the administration of the Uniform Code of Military Justice at all levels of the military community.

## HOMER FERGUSON CONFERENCE

The Ninth Annual Homer Ferguson Conference was held at the George Washington University on May 16-17, 1984, under the joint



sponsorship of the Court and the Military Law Institute. This year's conference was designed to give both military and civilian practitioners an opportunity to develop and maintain the skills necessary for practice before trial and appellate courts. As in previous years, the 1984 conference was certified for credit to meet the continuing legal education requirements of various State Bars. The speakers for this year's conference included:

The Honorable Tim Murphy, Judge, Superior Court, D.C.

The Honorable Lawrence G. Wallace, First Deputy Solicitor General of the United States.

The Honorable Francis J. Larkin, Associate Justice, Massachusetts Trial Court.

Major General Kenneth J. Hodson, USA (Ret.).

Assistant Dean John S. Jenkins, National Law Center, George Washington University.

General John A. Wickham, Jr., Chief of Staff, U.S. Army.

Professor Yale Kamisar, University of Michigan Law School.

Professor Frederic I. Lederer, Marshall-Wythe School of Law, College of William and Mary.

Professor Stephen A. Saltzburg, University of Virginia Law School.

Professor David Schlueter, St. Mary's University School of Law.

Major Lee Schinasi, Office of the Judge Advocate General, U.S. Army.

The Honorable Gerald Bard Tjoflat, U.S. Court of Appeals, 11th Circuit.

Mr. Paul Summit, Special Counsel for Criminal Law, U.S. Senate Committee on Judiciary.

Colonel James G. Garner, Chief Trial Judge, U.S. Army Judiciary.

Professor Abraham S. Goldstein, Yale University Law School.

The Honorable Lois H. Herrington, Assistant Attorney General for Justice Assistance.

Professor James Taylor, Jr., Wake Forest University Law School.

The Honorable Robinson O. Everett, Chief Judge, U.S. Court of Military Appeals.

The invocation for this year's conference was offered by Rear Admiral Ross H. Trower, Chaplain's Corps, U.S. Navy (Ret.).

Numerous uniformed and civilian lawyers involved in practicing before military courts, 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. Additionally, the entire conference was videotaped and the Court received numerous requests for tapes so that additional people could benefit from the material presented at the conference.

## SIGNIFICANT DECISIONS AFFECTING THE ADMINISTRATION OF MILITARY JUSTICE WITHIN THE ARMED FORCES<sup>1</sup>

### Military Rules of Evidence

During the fiscal year 1984 term the Court decided numerous cases which interpreted various provisions of the Military Rules of Evidence which were promulgated by the President in 1980. In *United States v. Dulus*, 16 M.J. 324 (C.M.A. 1983), the Court relied on Rule 313(c), Military Rules of Evidence (hereafter cited as Mil.R.Evid.), in affirming a conviction resulting from the administrative inventory of an automobile after the military owner was placed in pretrial confinement. Citing Mil.R.Evid. 301(f)(2), the Court held in *United States v. Williams*, 16 M.J. 333 (C.M.A. 1983), that a military judge did not err by refusing a defense request to strike the direct testimony of a witness who invoked his right against self-incrimination on cross-examination. The Court concluded that since the refusal to answer a cross-examination question was related to a collateral matter, the military judge was not required to strike the direct testimony of such witness. The question of when and under what circumstances an investigator must notify an attorney prior to interrogating a military accused was addressed by the Court in *United States v. Sutherland*, 16 M.J. 338 (C.M.A. 1983). Therein, the Court held that there was no requirement under Mil.R.Evid. 305(e), or under the prior authority of *United States v. McDonald*, 9 M.J. 81 (C.M.A. 1980), to notify an attorney prior to interrogating his client where the attorney-client relationship related to a separate offense which was not closely related to the offense under investigation. The Court distinguished earlier holdings in *United States v. McOmer*, 1 M.J. 380 (C.M.A. 1976), and *United States v. Lowry*, 2 M.J. 55 (C.M.A. 1976), on the basis that these earlier cases involved the questioning of suspects who were represented by attorneys where the questioning related to the same or closely related offenses which had produced the attorney-client relationships.

Considering the question of whether an issue had been waived on ap-

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<sup>1</sup> 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.

peal in *United States v. Dyke*, 16 M.J. 426 (C.M.A. 1983), the Court held that the admission into evidence of a record of nonjudicial punishment without a signature affixed thereto was "plain error" within the meaning of Mil.R.Evid. 103(d), and that the issue had not been waived under Mil.R.Evid. 103(a)(1) merely because the trial defense counsel failed to object to its admission into evidence. Citing Mil.R.Evid. 311(a), the Court held in *United States v. Olmstead*, 17 M.J. 247 (C.M.A. 1984), that an accused had no reasonable expectation of privacy in his vehicle after it was demolished in an accident and was left resting upside down on the grounds of the U.S. Naval Academy. The Court further held that law enforcement officials invaded no constitutionally protected interest in the seizure and subsequent examination of the vehicle without obtaining a search warrant. Noting the policy underlying Mil.R.Evid. 701 and 702, the Court held in *United States v. Tyler*, 17 M.J. 381 (C.M.A. 1984), that a lay witness could testify that the substance given to him by the accused and used by the witness was cocaine. In so holding, the Court relied on previous decisions of the Court which held that the prior user of a drug may express his opinion as to the identity of such drug.

The question of when and under what circumstances an accused may present favorable evidence as to aspects of his military character was addressed by the Court in *United States v. Piatt*, 17 M.J. 442 (C.M.A. 1984). Therein, the Court reversed a court-martial conviction by holding that when the charges against the accused arose in the context of his performance of his military duties as a drill instructor, the military judge erred by excluding proffered evidence of his good character as a drill instructor. The Court concluded that Mil.R.Evid. 404 was not intended to exclude evidence of military character when a specific issue relating to that character was involved in the trial of the accused. This ruling was later applied in *United States v. McNeill*, 17 M.J. 451 (C.M.A. 1984), where the Court reversed a conviction on the basis of a similar issue. Finally, in *United States v. Dillon*, 18 M.J. 340 (C.M.A. 1984), the Court held that a decedent's statement that he possessed cocaine which had been obtained from a person other than the accused and which the decedent intended to sell was not admissible under Mil.R.Evid. 804(b) as a declaration against penal interest. The Court so ruled after concluding that there was no indication that the decedent believed that his statement might subject him to any criminal liability.

#### Authority of the Court

Government counsel argued in *United States v. Matthews*, 16 M.J. 354 (C.M.A. 1983), that the Court did not have jurisdiction to adjudicate the constitutionality of the imposition of the death sentence under the procedures set forth in the Uniform Code of Military Justice

and the Manual for Courts-Martial. The Court rejected this argument by concluding that the legislative history and the federal statute which created the Court clearly evidenced an intent by Congress to empower it to determine the constitutionality of the various provisions of the Uniform Code of Military Justice and any other statute which was directly involved in a case pending before the Court. Thus, the Court concluded that it was properly empowered by Congress to address the issue of whether the death penalty could be constitutionally adjudged and executed within the military justice system.<sup>2</sup>

### Guilty Plea Providence Inquiry

Issues relating to pleas of guilty continue to be litigated before the Court, as is illustrated by a number of decisions rendered during the fiscal year 1984 term. In *United States v. Acevedo-Velez*, 17 M.J. 1 (C.M.A. 1983), the accused was charged with the arson of an Army barracks. During the providence inquiry, the accused acknowledged that he intended to burn a coat within the barracks, but asserted that he did not intend to burn the barracks itself. In overruling *United States v. Greene*, 20 U.S.C.M.A. 297, 43 C.M.R. 137 (1971), the Court held that arson was not a specific intent crime and that the accused's acknowledgement that he intended to burn a coat within the barracks was sufficient to sustain a plea of guilty to the arson of the barracks. This ruling was later applied by the Court in *United States v. Caldwell*, 17 M.J. 8 (C.M.A. 1983), wherein the Court affirmed an aggravated arson conviction despite the accused's contention that his guilty plea was improvident. Addressing the "innocent purpose" defense with respect to a guilty plea to a wrongful appropriation charge in *United States v. Kastner*, 17 M.J. 11 (C.M.A. 1983), the Court held that an accused's conduct must be viewed from an objective standard. Thus, the Court ruled that where an accused took property for the purpose of demonstrating the lack of security at a storage facility, such purpose did not require a rejection of his plea of guilty to wrongful appropriation. The Court specifically rejected an earlier holding in *United States v. Roark*, 12 U.S.C.M.A. 478, 31 C.M.R. 64 (1961), that evidence of such a statement would, if believed, constitute a defense to the charged crime. Finally, in *United States v. Hannan*, 17 M.J. 115 (C.M.A. 1984), the Court held that a military judge, when conducting a hearing on the accused's guilty plea, was not obligated to inquire into the accused's understanding of his parole eligibility conditions. The Court held that such a collateral consequence was not a necessary part of a guilty plea inquiry and that, therefore, the judge was not required to inquire into the matter on his own initiative.

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<sup>2</sup> As previously reported in the annual report for fiscal year 1983, the Court set aside the death penalty in *United States v. Matthews*, 16 M.J. 354 (C.M.A. 1983), for failure to comply with those procedures which were constitutionally required as a prerequisite for lawful imposition of such punishment.

## Post-Trial Delay

The Court continued to emphasize during the 1984 fiscal year term that unreasonable and unexplained post-trial delays would not be tolerated where an appellant could demonstrate some prejudice which resulted therefrom. Thus, in *United States v. Shely*, 16 M.J. 431 (C.M.A. 1983), the Court held that the charges must be dismissed where the appellant demonstrated such prejudice and there was an unexplained delay of 439 days between the court-martial and the final action of the supervisory authority.

## Search and Seizure

Relying on its earlier decision in *United States v. McGraner*, 13 M.J. 408 (C.M.A. 1982), the Court held in *United States v. Foust*, 17 M.J. 85 (C.M.A. 1983), that a service regulation which required an oath to be administered to military investigative agents seeking a search authorization did not require the exclusion of evidence obtained from a search which was authorized without first administering the required oath to the agents seeking the search authorization. The Court observed in *Foust* that the search was authorized by a person empowered to do so and that such authorization was predicated on probable cause.

## Pretrial Confinement Credit

In *United States v. Allen*, 17 M.J. 126 (C.M.A. 1984), the Court held that in light of a Department of Defense instruction which required that procedures employed by the Armed Services for computing a court-martial sentence be in conformity with those published by the Department of Justice, a military accused was entitled to sentence credit for the period of pretrial confinement where such an accused was sentenced to confinement by the court-martial.

## Appellate Counsel Responsibilities

The question of the parameters of an appellate counsel's responsibilities to identify issues where an accused insists that they be raised was addressed by the Court in *United States v. Arroyo*, 17 M.J. 224 (C.M.A. 1984). The Court held that an appellate defense counsel's responsibilities as set forth in *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), required such counsel merely to identify such issues as an accused desired to be presented to the appellate court and that the extent to which such issues warranted any argument or briefing was a matter residing within the sound professional judgment of the counsel.

## Gender-Based Charges

The question of whether the offense of indecent assault was an unconstitutionally gender-based offense was addressed by the Court in

*United States v. Johnson*, 17 M.J. 251 (C.M.A. 1984). A male accused in that case argued that the offense of indecent assault was unconstitutional because it could be applied only against males. The Court ruled that while the language in paragraph 213, Manual for Courts-Martial, United States, 1969 (Revised edition), describes the offense of indecent assault in the context of a male perpetrator, such language was only illustrative and the offense could be applied against a female offender as well. Furthermore, the Court observed that the offense of committing indecent or lewd acts with another was gender-neutral and that such offense carried the same maximum penalty as did indecent assault. Thus, the Court rejected the accused's argument that he could not be convicted of indecent assault and upheld the constitutionality of such offense.

### **Extraordinary Relief**

A question concerning the trial counsel's authority to withdraw a charge which had been referred to trial by court-martial was addressed by the Court in *Satterfield v. Drew*, 17 M.J. 269 (C.M.A. 1984). The facts presented to the Court in a petition for extraordinary relief reflected that, after the military judge granted a defense motion to suppress urine test results in this drug case, the trial counsel notified the military judge that the charge was withdrawn. Subsequently, the military judge was asked to reconsider his ruling and, on reconsideration, ruled that the test results were admissible and directed that the court-martial continue. However, relying on principles of agency, the Court granted the petition for extraordinary relief filed by the accused and held that the trial counsel had implied authority to withdraw the charge and that, in the absence of a re-referral, the charge was no longer legally before the court-martial.

### **Post-Trial Hearing by Military Judge**

The authority of a military judge to conduct a post-trial hearing under Article 39(a), Uniform Code of Military Justice, 10 U.S.C. §839(a), was addressed by the Court in *United States v. Carr*, 18 M.J. 297 (C.M.A. 1984). The Court held in this case that a military judge could conduct such a hearing to inquire into an allegation that a court member had engaged in misconduct by exerting unlawful command influence during the deliberations of the court-martial. The Court reached this conclusion by holding that the military judge misperceived his power in ruling that he did not believe he could take any such post-trial action.

### **Sufficiency of Evidence**

In *United States v. Sargent*, 18 M.J. 331 (C.M.A. 1984), the Court held that an accused could not be convicted of involuntary

manslaughter under Article 119(b)(2), UCMJ, 10 U.S.C. §919(b)(2), on evidence which showed merely that the accused sold someone a drug and that the purchaser later died from an overdose of that drug. The Court grounded its ruling on the basis that the sale of contraband was not “an offense directly affecting the person” under the express provision of Article 119(b)(2).

ROBINSON O. EVERETT

*Chief Judge*

ALBERT B. FLETCHER, JR.

*Judge*

WALTER T. COX, III

*Judge*

# USCMA STATISTICAL REPORT

Fiscal Year 1984

## CUMULATIVE SUMMARY

### CUMULATIVE BEGINNING PENDING

Master Docket .....	254
Petition Docket .....	916
Miscellaneous Docket .....	<u>1</u>
<b>TOTAL</b> .....	<b>1171</b>

### CUMULATIVE FILINGS

Master Docket	
Mandatory appeals filed .....	0
Certificates filed .....	13
Reconsiderations granted .....	3
Petition Docket	
Petitions for grant filed .....	3226
Cross-petitions for grant filed .....	7
Petitions for new trial filed .....	3
Miscellaneous Docket .....	<u>44</u>
<b>TOTAL</b> .....	<b>3296</b>

### CUMULATIVE TERMINATIONS

Master Docket .....	467
Petition Docket .....	3528
Miscellaneous Docket .....	<u>43</u>
<b>TOTAL</b> .....	<b>4038</b>

### CUMULATIVE END PENDING

Master Docket .....	236
Petition Docket .....	624
Miscellaneous Docket .....	<u>2</u>
<b>TOTAL</b> .....	<b>862</b>

## OPINION SUMMARY

CATEGORY	SIGNED	PER CURIAM	MEM/ORDER	TOTAL
Master Docket .....	87	21	359	467
Petition Docket .....	0	0	3528	3528
Miscellaneous Docket .....	<u>3</u>	<u>0</u>	<u>40</u>	<u>43</u>
<b>TOTAL</b> .....	<b>90</b>	<b>21</b>	<b>3927</b>	<b>4038</b>



**FILINGS (MASTER DOCKET)**

Mandatory appeals filed	0
Certificates filed	13
Reconsideration granted	3
Petitions granted (from Petition Docket) <sup>3</sup>	<u>433</u>
<b>TOTAL</b>	<b>449</b>

**TERMINATIONS (MASTER DOCKET)**

Findings & sentence affirmed	222	Signed	87
Reversed in whole or in part	220	Per curiam	21
Granted petitions vacated	8	Mem/order	<u>359</u>
Other disposition directed	<u>17</u>	<b>TOTAL</b>	<b>467</b>
<b>TOTAL</b>	<b>467</b>		

**PENDING (MASTER DOCKET)**

Assigned Opinions pending	63
Judges' conference pending	0
Oral argument pending	28
Preargument conference pending	13
Calendar committee pending	108
Final briefs pending	<u>24</u>
<b>TOTAL</b>	<b>236</b>

**FILINGS (PETITION DOCKET)**

Petitions for grant of review filed	3226
Petitions for new trial filed	3
Cross-petitions for grant filed	<u>7</u>
<b>TOTAL</b>	<b>3236</b>

**TERMINATIONS (PETITION DOCKET)**

Petitions for grant dismissed	22	Signed	0
Petitions for grant denied	2947	Per curiam	0
Petitions for grant granted	433	Mem/order	<u>3528</u>
Petitions for grant remanded	107	<b>TOTAL</b>	<b>3528</b>
Petitions for grant withdrawn	13		
Other	<u>6</u>		
<b>TOTAL</b>	<b>3528</b>		

**PENDING (PETITION DOCKET)**

Petition briefs pending	323
Staff attorney action pending	111
Court action pending	<u>190</u>
<b>TOTAL</b>	<b>624</b>

<sup>3</sup> In 31 percent of these cases, the Court specified issues which were not raised by the appellant.

**FILINGS (MISCELLANEOUS DOCKET)**

Writs of error coram nobis sought . . . . .	2
Writs of habeas corpus sought . . . . .	10
Writs of mandamus/prohibition sought . . . . .	19
Other extraordinary relief sought . . . . .	7
Writ appeals sought . . . . .	6
<b>TOTAL . . . . .</b>	<b>44</b>

**TERMINATIONS (MISCELLANEOUS DOCKET)**

Petitions withdrawn . . . . .	2		
Petitions remanded . . . . .	0		
Petitions granted . . . . .	1	Signed . . . . .	3
Petitions denied . . . . .	33	Per curiam . . . . .	0
Petitions dismissed . . . . .	7	Mem/order . . . . .	40
<b>TOTAL . . . . .</b>	<b>43</b>	<b>TOTAL . . . . .</b>	<b>43</b>

**PENDING (MISCELLANEOUS DOCKET)**

Briefs pending . . . . .	1
Action by Writs Counsel pending . . . . .	0
Show cause action by Court pending . . . . .	0
Show cause response pending . . . . .	1
Other final action pending . . . . .	0
<b>TOTAL . . . . .</b>	<b>2</b>

**RECONSIDERATIONS & REHEARINGS**

CATEGORY	FILINGS	PENDING	DISPOSITIONS		TOTAL
			Granted	Rejected	
Master Docket . . . . .	9	1	2	10	12
Petition Docket . . . . .	22	1	6	20	26
Miscellaneous Docket . . . . .	2	1	0	1	1
<b>TOTAL . . . . .</b>	<b>33</b>	<b>3</b>	<b>8</b>	<b>31</b>	<b>39</b>

**MOTIONS ACTIVITY**

CATEGORY	BEGIN PENDING	FILINGS	END PENDING	DISPOSITIONS		TOTAL
				Granted	Rejected	
All motions . . . . .	42	1036	48	819	211	1030



**REPORT OF  
THE JUDGE ADVOCATE GENERAL OF THE ARMY  
October 1, 1983 to September 30, 1984**

During fiscal year 1984 the Office of The Judge Advocate General continued to monitor the proceedings of courts-martial, to review and to prepare military publications and regulations, and to develop and draft changes to the Manual for Courts-Martial and the Uniform Code of Military Justice.

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

During fiscal year 1984, the court-martial rates show an Army wide decrease in the number of courts-martial. The total number of persons tried by all types of courts-martial in fiscal year 1984 is 32% lower than the year before. This overall decrease reflects primarily a decrease in special and summary courts-martial (i.e., a 32.4% decrease in special courts-martial empowered to adjudge a bad-conduct discharge, a 40% decline in non-BCD special courts-martial and a 42.3% decrease in summary courts-martial). There was a 8.8% decrease in the number of general courts-martial, which had remained relatively constant in recent years. The overall conviction rate for fiscal year 1984 was 93.4%, which represents a slight rise from the 93.2% conviction rate for the previous fiscal year.

**STATISTICAL SUMMARY: FISCAL YEAR 1984  
(See table insert attached.)**

**THE U.S. ARMY LEGAL SERVICES AGENCY**

The U.S. Army Legal Services Agency includes the U.S. Army Judiciary, the Government Appellate Division, the Defense Appellate Division, the Trial Defense Service, the Trial Counsel Assistance Program, the Contract Appeals Division, the Regulatory Law Office, Patents, Copyrights and Trademarks Division, and the Professional Recruiting Office. The latter four 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 and regulatory disputes before commissions and boards. The Patents, Copyrights and Trademarks Division controls and coordinates the named subject area and related activities of the Department of the Army. The Professional Recruiting Office coordinates the recruitment of lawyers for the Army. An Information Management Office function has been manned and funded in order to facilitate automation of the Agency.

## THE U.S. ARMY JUDICIARY

The U.S. Army Judiciary consists of the U.S. Army Court of Military Review, the Clerk of Court, the Examinations and New Trials Division, and the Trial Judiciary.

## U.S. ARMY TRIAL DEFENSE SERVICE

During fiscal year 1984 the United States Army Trial Defense Service (USATDS) identified and litigated the issue of unlawful command influence in over 150 cases arising in one jurisdiction in Germany. In a footnote of the leading case, the Army Court of Military Review lauded USATDS counsel for the dedication and professionalism displayed by USATDS counsel in bringing the issue to light. In addition, USATDS was directed to provide assistance to those service members and former service members identified as drug users as a result of faulty urinalysis testing procedures during the period April 1982-November 1983. USATDS lawyers advise these clients and assist them in preparing and submitting their applications for relief to the Army Board for the Correction of Military Records.

USATDS continued to develop its deployment capability. Counsel were deployed to the Sinai in support of the Multi-National Force and Observers, to Grenada in support of the combat effort, and to Japan, Germany, Spain, and Honduras in support of training exercises.

## TRIAL COUNSEL ASSISTANCE PROGRAM

During fiscal year 1984, the Trial Counsel Assistance Program, U.S. Army Legal Services Agency, provided advice and training for trial counsel. The program responded to almost 1400 requests for assistance by providing trial counsel with verbal advice and written authorities. The program conducted training seminars at 13 locations in the United States and overseas. The program's monthly updates, designed to keep trial counsel current in criminal law, have now been incorporated into a newly created "Advocacy Section" of the *Army Lawyer*. This change in format will result in cost efficiencies and increased circulation.

## **SIGNIFICANT MILITARY JUSTICE ACTIONS**

Actions involving military justice handled by the Criminal Law Division, Office of The Judge Advocate General, included: evaluating and drafting legislation, Executive Orders, pamphlets and regulations affecting 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; reviewing various aspects of criminal cases for action by the Army Secretariat and Staff; and responding to White House, Congressional and other inquiries relating to military justice.

## **CHANGE OF MILITARY JUSTICE REGULATION**

Army Regulation 27-10, Military Justice, is being revised to implement minor changes. The projected effective date is March 1, 1985. The changes will continue the process of implementing the revised Manual for Courts-Martial, 1984, and the Military Justice Act of 1983.

## **STUDY OF MILITARY JUSTICE SYSTEM UNDER COMBAT CONDITIONS**

In 1983, the Wartime Legislation Team, under the supervision of the Criminal Law Division, completed a major study of the military justice system, with a view toward ensuring that the system will function fairly and efficiently in an armed conflict, without unduly burdening commanders or unnecessarily utilizing resources. Summaries of the study were published in the Spring 1984 issue of the *Military Law Review* (Volume 104) and the May 1984 issue of the *Military Review*, published by the US Army Command and General Staff College. Some of the Team's recommendations were incorporated in the new Manual. Additional recommendations suitable for peacetime implementation have been forwarded to the Joint-Service Committee on Military Justice.

## **JOINT-SERVICE COMMITTEE ON MILITARY JUSTICE**

The Judge Advocates General and the General Counsel of the Department of Transportation established the Joint-Service Committee on Military Justice on August 17, 1972. The Army, Navy, Air Force, Marine Corps, and Department of Transportation (Coast Guard) provide representatives and a nonvoting representative is provided by the U.S. Court of Military Appeals. The Joint-Service Committee on Military Justice primarily prepares and evaluates proposed amendments and changes to the Uniform Code of Military Justice and the Manual for Courts-Martial. The Committee also serves as a forum for the exchange of ideas relating to military justice matters among the services.

The Committee completed the final draft of the revision of the Manual for Courts-Martial in January 1984. This draft, which incorporated the provisions of the Military Justice Act of 1983 (P.L. 98-209), was signed by President Reagan on April 13, 1984, as Executive Order 12473, with an effective date of August 1, 1984. The new Manual uses a reorganized format. Separate sections are included for rules of procedure, rules of evidence, punitive articles, and nonjudicial punishment. The rules of procedure, entitled Rules for Courts-Martial, are organized chronologically and separate legal requirements from nonbinding guidance. The section on the punitive articles draws together the legal discussion of each article, the maximum punishments, lesser included offenses, and the format for drafting specifications. Several new offenses under Article 134, UCMJ, are defined, and some maximum punishments are changed.

The Army served as executive agent for printing the new Manual. A new, more usable binder was designed in conjunction with this project.

The Military Justice Act of 1983 contains several significant changes to the UCMJ. Cases decided by the United States Court of Military Appeals may now be appealed directly to the United States Supreme Court. New articles have been added to the Code, to include an article for drug offenses (Article 112a), and several burdensome administrative procedures have been simplified.

### **MILITARY JUSTICE ACT OF 1983 ADVISORY COMMISSION**

As part of the 1983 Act, Congress directed that the Department of Defense form a commission to study six issues:

1. Whether the military judge should exercise the sentencing authority in all non-capital courts-martial.
2. Whether there should be suspension power for military trial judges and the Courts of Military Review.
3. Whether trial and appellate military judges should be given tenure.
4. Whether special courts-martial should be allowed to impose up to one year confinement at hard labor.
5. Whether there should be reconstitution of the United States Court of Military Appeals to a court organized under Article III of the Constitution of the United States.
6. How to establish of a fair and equitable retirement system for judges of the United States Court of Military Appeals.

The Commission is composed of a senior judge advocate from each service, a staff attorney from the United States Court of Military Ap-

peals, and three civilian attorneys. The Commission has heard testimony from numerous persons and has circulated detailed questionnaires to several thousand military officers directly involved in the military justice system. The Commission's report will be submitted in December 1984.

### DATA COLLECTION PROJECT

Congress also directed that the Department of Defense, working with the Code Committee, establish a uniform process and format to collect data on key operational military justice indicators that will permit useful analysis of military justice trends and issues. To this end, DOD directed formation of an *ad hoc* Data Collection Working Group. The Working Group's report was submitted to the Joint-Service Committee on Military Justice in September 1984, and is now being studied for implementation.

### FOREIGN CRIMINAL JURISDICTION

As executive agent for the Department of Defense, the Department of the Army, through International Affairs Division, Office of The Judge Advocate General, maintains information concerning the exercise of foreign criminal jurisdiction over U.S. personnel. During the reporting period, 1 December 1982 through 30 November 1983, a total of 101,772 U.S. personnel, military and civilian, were charged with offenses subject to either the exclusive or primary (concurrent) jurisdiction of foreign tribunals. Of these offenses, 92,924 were charged against military personnel. Of this number, 70,510 of the charges against military personnel were subject to exclusive foreign jurisdiction. Foreign authorities released 987 of the exclusive foreign jurisdiction offenses to U.S. military authorities for administrative or other appropriate disposition.

The remainder of the military offenses subject to foreign jurisdiction, totaling 22,414 offenses, were concurrent jurisdiction offenses involving alleged violations of both U.S. military law and foreign law, over which the foreign country had the primary right to exercise jurisdiction. Foreign authorities waived their primary jurisdiction to U.S. military authorities in 19,779 of these incidents, for a worldwide waiver rate of 88.2%.

Thus, during the reporting period, foreign authorities reserved for their disposition a total of 72,158 offenses allegedly committed by military personnel, of which 69,523 charges were reported as subject to the exclusive jurisdiction of foreign authorities. It is significant to note that 70,477 or 97.7% of the military offenses reserved for disposition by foreign authorities involved traffic violations.

A total of 8,848 civilian employees and dependents were charged



with offenses subject to foreign jurisdiction. As civilians may not be tried by court-martial under normal, peacetime conditions, the United States had no jurisdiction over these offenses. Nonetheless, foreign authorities released 403 of these offenses, or 4.6% of the total, to U.S. military authorities for administrative or other appropriate disposition.

During the current reporting period, there were 74,901 final convictions and 615 acquittals (about .8% of all final results) for both military and civilian trials in foreign courts. The majority of convicted U.S. personnel—74,715 or 98.9%—received only a sentence to fine or reprimand, consistent with the large percentage of traffic violations. The remaining final results included 116 suspended sentences to confinement and 70 unsuspended sentences to confinement by foreign courts.

## LITIGATION

Litigation involving the Army during fiscal year 1984 had a limited impact upon military justice.

## EDUCATION AND TRAINING

During fiscal year 1984, The Judge Advocate General's School, located in Charlottesville, Virginia, provided legal education to lawyers of the military services and other federal agencies. Forty-five resident courses were conducted with 2,806 students in attendance. Courses were attended by 1,801 Army, 76 Navy, 100 Marine, 152 Air Force, 47 Coast Guard, 95 Army National Guard, 523 civilian, and 12 foreign students. Three Basic Classes, the 102d, 103d, and 104th were conducted. A total of 216 Army JAGC officers graduated.

The 32d Graduate Course, with an enrollment of 77 students, graduated on 18 May 1984. In addition to 69 Army Judge advocates, the class consisted of five Marines, one Navy, and two foreign officers. The 33d Graduate Course began on 1 August 1984. This class contains 60 Army, five Marines, one Navy, and three foreign officers.

During fiscal year 1984, the School continued to provide senior officers with a legal orientation prior to their assumption of command. Sixteen general officers attended General Officer Legal Orientation Courses, and 340 battalion and brigade command designees attended one of five resident Senior Officer Legal Orientation Courses. Additionally, instructors from the School participated in eleven Pre-Command Courses conducted at Fort Leavenworth, Kansas, for battalion and brigade command designees.

The Criminal Law Division sponsored five resident continuing legal education courses in fiscal year 1984. The New Developments in Criminal Law Course was taught once, the three week Military Judge

Course was presented once, and the Criminal Trial Advocacy Course was presented three times. The advocacy courses combine instruction on new developments in criminal trial practice, seminars, and videotaped workshops to improve and polish experienced trial attorneys' advocacy skills before courts-martial. The major portion of these offerings is devoted to student participation workshops and exercises to refine the attorney's courtroom skills and their techniques of persuasion. Well known guest speakers such as Irving Younger, Patrick A. Williams, and Professor Edward J. Imwinkelried enhanced the advocacy training. Additionally, the Division presents instruction in four nonresident courses—two criminal law courses in Germany, one in the Pacific to bring the latest legal developments to Army, Navy, and Marine Corps lawyers serving there, and the Advanced Noncommissioned Officer Course at Fort Benjamin Harrison, Indiana.

The International Law Division sponsored four one week courses on the Law of War, a one week Advanced Law of War Seminar which focused on the Grenada military operation, a new, one week Judge Advocate Operations Overseas Course which concentrated on status of forces agreements, and one 2½ day course on the Legal Aspects of Terrorism. The Legal Aspects of Terrorism Course will be extended to one week next year. Additionally, the Division provided instructor support for a one week course in the Federal Republic of Germany on the Law of War sponsored by U.S. Army Europe and a five week swing through the Pacific sponsored by Pacific Command, bringing the latest international legal developments to Army, Air Force, Navy, Marine, Coast Guard, and allied officers. 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 on lecture. Similar instruction was presented to both active and reserve forces to ensure that they were prepared to provide timely, accurate legal advice on military operations.

The Contract Law Division and Administrative Law Division also conducted full agendas of resident courses of instruction. The Judge Advocate Guard and Reserve Affairs (formerly Reserve Affairs) Department sponsored two resident courses for Reserve Component Judge Advocates in fiscal year 1984. Approximately 140 Army Reserve and National Guard judge advocates attended Triennial Training in Administrative and Civil Law between 18 and 29 June 1984. Phase IV of the Judge Advocate Officer Advanced Course (Administrative and Civil Law) was attended by 110 students during this same period. The attendance by Army National Guardsmen at Triennial Training, their first, reflects the Guard's expanded participation in School programs. Judge Advocate Triennial Training replaces JAGSO Team Training as the title of this instruction. The 1036th U.S. Army Reserve School in Farrell, Pennsylvania, provided administrative sup-

port for both courses. The Department also sponsored the Reserve Component Technical (On-Site) Training Program. Between October 1983 and May 1984, the School provided continuing legal education to over 1800 persons in 25 regional population centers throughout the United States. Attendees represented all services and all components. On-site attendance was up 20% in 1983-84, highlighted by strong showings by Active Army and Army National Guard judge advocates. The inaugural, Guard-hosted, on-site instruction was a great success, and more is planned for the future. Expansion of most on-sites to two days has proven to be an excellent improvement; interaction of Active and Reserve Component officers has been invaluable.

### MAJOR PROJECTS

On 20 March 1984, the 13th Kenneth J. Hodson Lecture in Criminal Law was presented by Professor Joseph W. Bishop, Jr., Sam Harris Professor of Law at Yale Law School.

On 10 November 1983, the First Waldemar A. Solf Lecture in International Law was presented by Professor John Norton Moore of the University of Virginia School of Law. His presentation, "The Legal Aspects of the Conflict in Central and South America," was timely and enlightening.

The Eighth Charles L. Decker Lecture was given on 4 May 1984. This year's lecture was presented by the Honorable Robert H. Bork, Judge for the United States Court of Appeals for the District of Columbia Circuit, who spoke on the First Amendment and the military.

The School hosted the 1983 Worldwide Judge Advocate General's Conference during 11-14 October 1983. Over 100 senior judge advocates from posts throughout the world conferred on areas of interest and discussed recent developments in all areas of military law.

New editions of AR 27-3, *Legal Assistance*, and TC 27-2, *Military Justice-Enlisted Personnel Training*, for which the School is responsible, were published during fiscal year 1984. The revisions of DA Pam 27-162, *Claims*, TC 27-1, *Your Conduct in Combat*, ASUBJSCD 27-1, *The Geneva Conventions of 1949 and the Hague Convention No. IV of 1907*, and GTA 27-1-2, *Army Rules for Imposing Nonjudicial Punishment*, were also completed and will soon be issued. Revision of several other publications is ongoing. Fourteen instructional deskbooks were made available to attorneys in the field through the Defense Technical Information Center. Articles of interest to military attorneys continue to be distributed to the field through the DA PAM 27-100 series, *Military Law Review*, and the DA PAM 27-50 series, *The Army Lawyer*.

The Combat Developments Office has been heavily involved in designing the "Army of Excellence", the total reorganization of the Army which replaces the "Army 86" concept. All division SJA offices,

including the new, light Infantry Division, have been redesigned to support the streamlined Army of Excellence. This office continues to investigate all new material offered with a view toward providing all worthwhile items to the field.

The strength of the Judge Advocate General's Corps Reserve Components increased to approximately 2500 in fiscal year 1984. The program is managed by the School's Judge Advocate Guard and Reserve Affairs Department (formerly Reserve Affairs Department). Progress was made in filling Individual Mobilization Augmentee positions with judge advocates released from active duty, officers transferring from other branches, and new accessions. The number of filled increased from 518 to 578.

### 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 1984 was 1916. Representing minority groups were 80 blacks, 19 Hispanics, 14 Asian and Native Americans, and 167 women. The fiscal year 1984 end strength compares with an end strength of 1821 in fiscal year 1983, 1815 in fiscal year 1982, and 1781 in fiscal year 1981. The grade distribution of the Corps at the end of the fiscal year was: 6 general officers, 111 colonels, 203 lieutenant colonels, 402 majors, 971 captains, and 48 first lieutenants. There were 58 officers (50 captains and 8 first lieutenants) participating in the Funded Legal Education Program. There were also 70 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 November 1983 a selection board was convened to select ten active duty commissioned officers to commence law school under the Funded Legal Education Program.

Ninety-eight Judge advocate officers completed the following service schools:

U.S. Army War College . . . . .	2
National War College . . . . .	1
Industrial College of the Armed Forces . . . . .	1
U.S. Army Command & General Staff College . . . . .	11
Armed Forces Staff College . . . . .	4
The Judge Advocate Officer Graduate Course . . . . .	79

During fiscal year 1984, five officers completed fully-funded study for LL.M. degrees in specialized fields of law. As a result of the Defense Officer Personnel Management Act (DOPMA), newly-appointed judge advocates accessed for the fiscal year were commissioned as first

lieutenants. The Judge Advocate General's Corps, now a separate competitive category, selects and promotes its officers based on Judge Advocate General's Corps grade vacancies as they occur.

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

# APPENDIX A: U.S. ARMY COURTS-MARTIAL/NJP STATISTICS FOR FISCAL YEAR 1984

Period: FISCAL YEAR 1984

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	1442	1383	59	- 8.8%
BCD SPECIAL	1403	1329	74	- 32.4%
NON-BCD SPECIAL	461	403	58	- 40.0%
SUMMARY	1645	1510	135	- 42.3%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				- 32.0%

## PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)	553
NUMBER OF DISHONORABLE DISCHARGES	668
NUMBER OF BAD CONDUCT DISCHARGES	
SPECIAL COURTS-MARTIAL (SA LEVEL)	1008
NUMBER OF BAD CONDUCT DISCHARGES	

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	1250
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	1008
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	244

## PART 4 - WORKLOAD OF THE U.S. ARMY COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD	1685 (adjusted)
GENERAL COURTS-MARTIAL	Not. Avail.
BCD SPECIAL COURTS-MARTIAL	Not. Avail.
REFERRED FOR REVIEW	2403
GENERAL COURTS-MARTIAL	Not. Avail.
BCD SPECIAL COURTS-MARTIAL	Not. Avail.
TOTAL CASES REVIEWED	2998
GENERAL COURTS-MARTIAL	1559
BCD SPECIAL COURTS-MARTIAL	1427
TOTAL PENDING AT CLOSE OF PERIOD	1084
GENERAL COURTS-MARTIAL	Not. Avail.
BCD SPECIAL COURTS-MARTIAL	Not. Avail.
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	

## PART 5 - APPELLATE COUNSEL REQUESTS BEFORE THE US ARMY COURT OF MILITARY REVIEW

NUMBER	2204
PERCENTAGE	97.6%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	45.5%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+ 0.3%
PERCENTAGE OF TOTAL PETITIONS GRANTED	14.9%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+ 5.2%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	6.7%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+ 2.3%

# APPENDIX A—CONTINUED

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		20
RECEIVED		149
DISPOSED OF		143
GRANTED	15	
DENIED	127	
NO JURISDICTION	0	
WITHDRAWN	1	
TOTAL PENDING AT END OF PERIOD		26
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		1000
GENERAL COURTS-MARTIAL		
SPECIAL COURTS-MARTIAL		1367
TRIALS BY MILITARY JUDGE WITH MEMBERS		442
GENERAL COURTS-MARTIAL		
SPECIAL COURTS-MARTIAL		497
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	40	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	787,445	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	113,914	
RATE PER 1,000	144.7	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-24.0%	

PAGE 2 OF 2

**ANNUAL REPORT**  
**of**  
**THE JUDGE ADVOCATE GENERAL OF THE NAVY**  
**pursuant to the**  
**UNIFORM CODE OF MILITARY JUSTICE**  
**for**  
**FISCAL YEAR 1984**

*Supervision of the Administration of Military Justice.*

In compliance with the requirement of Article 6(a), Uniform Code of Military Justice, the Judge Advocate General and the Deputy Judge Advocate General continued to visit commands within the United States, Europe, and the Far East in the supervision of the administration of military justice.

*Court-Martial Workload.*

There has been a small decrease in the total number of courts-martial during fiscal year 1984. (See Exhibit A, attached to this report.) During fiscal year 1984, the U.S. Navy-Marine Corps Court of Military Review received for review 4,676 new court-martial cases, consisting of 749 general courts-martial and 3,927 special courts-martial, as compared with 5,807 courts-martial and 3,927 special courts-martial, as compared with 5,807 courts-martial, consisting of 717 general courts-martial and 5,090 special courts-martial during fiscal year 1983. Of the 4,676 new cases received by the U.S. Navy-Marine Corps Court of Military Review in fiscal year 1984, 4,198 accused requested appellate counsel (90%).

*Navy-Marine Corps Trial Judiciary.*

The Navy-Marine Corps Trial Judiciary provided military judges for 770 general courts-martial during fiscal year 1984, a decrease of 35 cases from the fiscal year 1983 level of 805 general courts-martial. In fiscal year 1984, 70% (539 of 770 cases) of the general courts-martial



were tried by military judge alone. This represents a continuing trend from fiscal year 1983, when 66% of the general courts-martial tried (536 of 805 cases) were tried by military judge alone.

The Trial Judiciary provided military judges for 7,438 special courts-martial during fiscal year 1984, a decrease of 1,759 cases from the fiscal year 1983 level of 9,197 cases. In fiscal year 1984, 90% (6,663 of 7,438 cases) of special courts-martial were tried by military judge alone. This represents a 1% increase over fiscal year 1983 (9,265 of 9,197 cases) of special courts-martial tried by military judge alone.

Military judges attending continuing legal education/seminars/lectures/conferences during fiscal year 1984:

U.S. Army JAG School, Charlottesville, Virginia:

Military Judges Course (21 May-8 June 1984), 13 military judges (3 USMC Reserve military judges also attended).

Naval Justice School, Newport, Rhode Island:

Military Judges Course (23 July-10 August 1984) 10 military judges (1 USMC Reserve military judge also attended).

10th Interservice Military Trial Judges Seminar:

Maxwell AFB, Montgomery, Alabama (2-6 April 1984) 10 military judges

National Judicial College, Reno, Nevada:

Criminal Evidence Course (13-18 May 1984) two military judges

Medical-Scientific Evidence Course (23-28 September 1984) one military judge

Advanced Evidence Course (28-30 September 1984) one military judge

Association of Trial Lawyers of America, Atlantic City, New Jersey:

Criminal Trial Techniques Seminar (23-24 March 1984) one military judge

Federal Bar Association, Washington, DC:

Newly Appointed District Court Judges Seminar (1-7 April 1984) one military judge

Law for Military Attorneys Institute, Fort Sam Houston, Texas:

General Seminar (24 April-4 May 1984) one military judge

U.S. Army Trial Judiciary (European Division), Garmish, West Germany:

Conference (5-17 September 1984) one military judge

Captain Price, Chief Judge until his retirement from the naval service on 29 July 1984, presented an administrative briefing for students to the Military Judges Course at the U.S. Army JAG School, Charlottesville.

ville, Virginia on 7 and 8 June 1984. He also paid "working" visits to the Southeast Judicial Circuit Branch Office, Corpus Christi, Texas (9-15 July 1984), Transatlantic Judicial Circuit Office, Naples, Italy (19-31 March 1984), Southwest Judicial Circuit Office, San Diego, California [also participated in change-of-command ceremonies for that office's circuit military judge (14 November 1983)], Sierra Judicial Circuit Office, Camp Pendleton, California (14 November 1983), and courtesy visits to the Commanding Officer, Naval Station, San Diego, California, the Staff Judge Advocate, Naval Air Force, U.S. Pacific Fleet, and the Chief Judge, Superior Court of San Diego County, California (14 November 1983). Also, on 14 November 1983, Captain Price presented a 3-hour lecture to retired Navy and Marine Corps JAG officers at Las Vegas, Nevada, entitled "Updating Military Trial Law and Procedure."

Captain Edward M. Byrne, who assumed the duties of Chief Judge on 29 July 1984, presented an administrative briefing for students attending the Military Judges Course at the Naval Justice School, Newport, Rhode Island, between 7 and 9 August 1984.

Captain Maitland G. Freed, the Circuit Military Judge, Tidewater Judicial Circuit, Norfolk, Virginia, paid a "working" visit to the Military Judges Course at the Naval Justice School, Newport, Rhode Island, between 7 and 11 August 1984.

In response to a projected decline in caseload, two military judge billets will be left unfilled at both the Tidewater Judicial Circuit, Norfolk, Virginia, and the Southwest Judicial Circuit, San Diego, California. The judge's billet at the Midsouth Judicial Circuit Branch Office, Memphis, Millington, Tennessee, will also be left unfilled.

During fiscal year 1984, total in-court time for all military judges was 27,044 hours, 6,210 hours less than in fiscal year 1983.

No major events are anticipated during this fiscal year which would adversely affect the performance of the Navy-Marine Corps Trial Judiciary.

#### *Naval Legal Service Command*

During fiscal year 1984, the Naval Legal Service Command (NAVLEGSVCCOM) consisted of 20 Naval Legal Service Offices, and 21 Naval Legal Service Office Detachments, located in areas of naval concentration throughout the world. NAVLEGSVCCOM activities also include the Naval Legal Service Trial Defense Activity, located in Jacksonville, Florida, and its two detachments in Charleston, South Carolina, and Orlando, Florida; the Naval Justice School located in Newport, Rhode Island; and the Office of Legal Counsel at the Naval Academy, Annapolis, Maryland. The total manpower authorization for the NAVLEGSVCCOM includes 420 officers, 222 enlisted legalmen and 239 civilian employees (including 24 direct-hire foreign nationals

and 8 indirect-hire foreign nationals). Navy judge advocates in the NAVLEGSVCCOM comprise approximately 40% of the Navy's total judge advocate strength.

The NAVLEGSVCCOM, under the command of the Judge Advocate General in his capacity as Commander, NAVLEGSVCCOM, continues to provide a broad range of legal services to afloat and ashore commands and to individual servicemembers. These services include court-martial trial and defense counsel; administrative discharge board counsel for respondents; recording and preparation of records of trial; advice to commands on military justice and other legal aspects of the functioning of command; claims processing and adjudication; counsel for the party at physical evaluation boards; and legal assistance to servicemembers and their dependents. The demand for legal services has risen dramatically during the past few years, particularly in the military justice area, partially as a result of the Navy's "zero-tolerance" policy towards substance abuse. Specifically, the combined number of general and special courts-martial has risen from 4,092 in fiscal year 1978 to 6,236 in fiscal year 1984.

The NAVLEGSVCCOM underwent the following organizational changes during fiscal year 1984:

- a. It acquired command responsibility over the Naval Justice School.
- b. The Naval Legal Service Office Detachment at Gulfport, Mississippi, was established on 1 April 1984.

Significant events during fiscal year 1984:

- a. Naval Legal Service Command Instruction 5450.2, promulgated on 3 January 1984, contains procedures for providing legal services to remote commands and deployed units, and tasks the Naval Legal Service Offices with providing on-site legal services to requesting commands.
- b. The Judge Advocate General's Management Information System (JAGMIS) proceeded smoothly through the development phase and into the operational phase. The pilot program was implemented at the Naval Legal Service Office, Pensacola, in August 1984. Additionally, personal computers and associated peripherals were procured and distributed throughout the Naval Legal Service Command during October 1984. It is expected that JAGMIS will be operational by March 1985 and will provide a more effective military justice case tracking and management capability.

#### *Naval Justice School*

The Naval Justice School in Newport, Rhode Island, experienced two major changes during fiscal year 1984. On 1 October 1983, the school changed claimancy from the Chief of Naval Education and Training to the Commander, Naval Legal Service Command; and on 1

March 1984, the school moved to new quarters in a renovated building at the Naval Education and Training Center, Newport, Rhode Island.

The Naval Justice School, with a teaching staff of 16 officers and 6 enlisted instructors, provided instruction to a total of 5,498 students worldwide. The following courses of instruction in military law, administrative and civil law, and court reporting were taught during the fiscal year.

*Lawyer Course.* Five 9-week lawyer courses 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 164 hours of classroom instruction and 53 hours of practical exercises, including 2 moot courts and various trial advocacy practical exercises. Training was provided to 123 Navy lawyers, 63 Marine Corps lawyers, and 1 foreign national lawyer from Indonesia.

*Legal Officer Course.* Seven 5-week courses were presented during the year. This course is designed for the nonlawyer, such as a junior officer about to assume duties as a legal officer of a ship, aircraft squadron, small station, or other military unit with no military lawyer assigned. Included in the course curriculum are 125 hours of classroom instruction and 75 hours of practical exercises and seminars. Training was provided to 225 Navy officers, 51 Marine Corps officers, and 2 Coast Guard officers.

*Senior Officer Course.* This 1-week course, sponsored by the Chief of Naval Operations, is designed primarily for commanding officers and executive officers and is intended to prepare those officers to handle the legal problems normally faced by senior officers in the areas of military justice and civil law. Six courses were held in Newport, Rhode Island, and 159 students attended. An additional 25 courses were held in the following locations: Jacksonville and Mayport, Florida; Charleston, South Carolina (2); Norfolk, Virginia (2); Whidbey Island and Bangor, Washington; San Francisco, California (2); San Diego, California (2); Camp Pendleton, California; Rota, Spain; Pearl Harbor, Hawaii; Subic Bay, Republic of the Philippines; Yokosuka, Japan; Paris Island, South Carolina; Camp Lejeune, North Carolina; Annapolis, Maryland; Memphis, Tennessee; New London, Connecticut (2); Sigonella, Italy; and Quantico, Virginia. The officers attending these remote courses were as follows:

NAVY:	863
USMC:	367
USCG:	69
USA:	14
USAF:	2
Civilians:	4

*Military Judges Course.* This 3-week course of instruction is offered once each summer to train active duty judge advocates to perform duties as special and general court-martial military judges. It provides intensive training in areas of military criminal procedure, rules of evidence, and military criminal law, including 30 hours of practical exercises and seminars wherein students preside as military judges in various stages of moot courts-martial. Training was provided to 10 Navy officers, 7 Marine Corps officers, 3 Air Force officers and 1 Army officer.

*Reserve Legalman Course.* This 2-week course of instruction is offered each summer for enlisted personnel in the inactive-duty Reserve who are in an in-training status for the legalman rating. The course is divided into three phases and offered in alternate years. Phase I is an introduction to legal clerk duties and familiarization with court reporting equipment. Phase II is advanced paralegal training in such matters as legal assistance, standards of conduct, claims, investigations, search and seizure, and use of court reporting equipment. Phase III deals exclusively with court reporting techniques and procedures. The intended growth pattern is for Reserve students to attend all three phases in a 4-year period. During fiscal year 1984, training was provided to 20 students in phase I and 18 students in phase II. Phase III will be conducted in July 1985 with an expected participation of approximately 20 students.

*Legal Clerk Course.* Four 3½-week classes were conducted during the year. This course is designed to train enlisted personnel to serve as legal yeomen or legal clerks at their respective commands. Graduation from the subsequent 5½-week court reporter course was previously required for conversion to the legalman rating in the Navy. For the Legal Clerk Course commencing 4 August 1984, the course length was reduced to 12 days, the syllabus was changed to basic legal clerkship, and the requirement to attend this course as a prerequisite to becoming a legalman was dropped. See "Legalman Course" below. There were 280 Navy personnel attending the Legal Clerk Course during this fiscal year.

*Court Reporter Course.* Three 5½-week courses were presented during fiscal year 1984. The purpose of this course was to train enlisted personnel in the field of closed-mask court reporting. This course, coupled with the Legal Clerk Course, now provides the necessary training for advancing to the legalman rating. Training was provided 72 Navy and 9 Army personnel. See "Legalman Course" below.

*Legalman Course.* This course was created by combining the 3½-week Legal Clerk Course and the 5½-week Court Reporter Course into one 9-week course of instruction. The subject matter contained in the two courses was combined and augmented to provide training in the military justice system, administrative and civil law matters, legal assistance, legal research, trial/defense paralegal techniques, and court

reporting. Students graduating from this course possess a high level of professional paralegal skills. Twenty-two Navy and three Army students graduated from the first Legalman Course on 26 October 1984.

In addition to the formal courses of instruction listed above, the Naval Justice School also presented 503 lecture hours of instruction in the areas of search and seizure, confessions and admissions, non-judicial punishment, investigations, administrative separations, and command relations with civil authorities, to 3,079 students at the Surface Warfare Officers School, Chaplains School, Officer Indoctrination School, Senior Enlisted Academy, Naval War College, and Naval Academy Preparatory School in Newport, Rhode Island.

The 1 August 1984 implementation date for the *Manual for Courts-Martial, 1984*, prompted revisions in virtually every publication authored at the Naval Justice School. The revised Chapter I of the *Manual of the Judge Advocate General* necessitated further revisions. The revisions involved over 4 months of intense rewriting and required administrative, clerical, and printing support. Course content was revised accordingly, and the 1 August 1984 changes were heavily emphasized in the fleet courses.

The Naval Justice School acquired the West Automatic Law Terminal (WALT) system this fiscal year. This computer-assisted legal research system is primarily used by staff instructors in publication updating, but introductory training is offered on a voluntary basis to all interested lawyer students.

#### *Marine Corps Activities.*

a. During fiscal year 1984, the Director, Judge Advocate Division, became a full voting member of the Code Committee established under the authority of Article 67(g), Uniform Code of Military Justice. This change was effected by the Military Justice Act of 1983.

b. Throughout fiscal year 1984, increased emphasis was given to the activities of Reserve Mobilization Training Units (MTUs). Twelve Law MTUs have provided over 8,000 hours of legal services to over 60 active and Reserve units, dependents, and retirees. MTU (Law) VA-05 recently placed first in the military category of the ABA Young Lawyers Division for Comprehensive Achievements and received special ABA recognition for their project on minority recruitment. To prepare for the increased demand for experienced judges in the event of mobilization, five Reserve officers are assigned to mobilization billets as certified military judges in the Navy-Marine Corps Trial Judiciary.

c. On 2 August 1984, the Marine Corps published Marine Corps Order 3300.3. It addresses a comprehensive Law of War (LOW) Program, consolidating all pre-existing LOW-related subjects and providing an extensive reference index. The order provides general

guidance and establishes Headquarters, U.S. Marine Corps, cognizance over LOW training. In confirming command responsibility for LOW violations, it requires judge advocates to render to commanders, during exercises, advice including appropriate actions to be taken and sample specifications for charging LOW violations.

d. A Marine Corps representative participated in the *Manual for Courts-Martial, 1984*, Teaching Team, which gave detailed briefs to commanders and judge advocates at 39 locations throughout the world concerning major changes effected by the *Manual for Courts-Martial, 1984*.

e. Furnishing Marine Corps defense counsel services was the subject of a recent Marine Corps order, which established a Chief Defense Counsel of the Marine Corps and three Regional Defense Counsel who supervise defense counsel performance and prepare defense counsel fitness reports. Command flexibility is retained, however, as staff judge advocates will still have authority to reassign judge advocates to meet requirements generated by local caseloads without time-consuming prior references to Headquarters, U.S. Marine Corps.

f. During fiscal year 1984, nine Marines attended year-long schools, including the Naval War College, the Armed Forces Staff College, the Command and Staff College, and the Army JAG School at Charlottesville. One hundred and forty-six Marine judge advocates attended civilian and military schools for courses lasting from 3 days to 3 weeks.

g. The Director, Judge Advocate Division, visited commands at Parris Island and Beaufort, South Carolina; Quantico, Virginia; El Toro, California; Yuma, Arizona; Hawaii; Okinawa and Iwakuni, Japan; and the Naval Justice School and Army JAG School.

h. Twenty-three of our 409 judge advocates are serving in command or staff (nonlawyer) assignments.

i. On 12 October 1984, the Honorable Walter Cox III, Judge, U.S. Court of Military Appeals, visited the Judge Advocate Division and was given detailed briefings. At the Annual Marine Corps General Officers Symposium, each commanding general extended an invitation to Judge Cox to visit the bases and commands of interest to him. A schedule is being arranged.

#### *Article 69, UCMJ, Applications.*

a. The number of applications 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 become final in the sense of Article 76, but have not been reviewed by the U.S. Navy-Marine Corps Court of Military Review, increased by 25 percent during fiscal year 1984.

b. In fiscal year 1984, 73 applications were received by the Judge Advocate General. Ten applications were pending from prior years. Of these 83 cases, 51 were reviewed during fiscal year 1984. Of those ap-

plications reviewed, 41 were denied, while relief was granted, in whole or in part, in 6 cases. Four cases were returned for compliance with the *Manual of the Judge Advocate General*. Thirty-two were pending review at the close of fiscal year 1984.

c. In addition, 81 general court-martial cases which were not statutorily eligible for automatic review by the U.S. Navy-Marine Corps Court of Military Review were examined in the Office of the Judge Advocate General in fiscal year 1984.

*Article 73, UCMJ, Petitions.*

In fiscal year 1984, five petitions for new trials were submitted for review pursuant to Article 73, Uniform Code of Military Justice. No petitions were pending from fiscal year 1983. One petition was denied by the Judge Advocate General, and one petition was forwarded to the U.S. Court of Military Appeals for appropriate review. One petition is pending receipt of the record of trial, one petition was returned for compliance with procedural requirements, and one petition was denied after the end of the fiscal year.

*Article 74(b), UCMJ, Petitions.*

Four new petitions were submitted in fiscal year 1984 requesting the Secretary of the Navy to substitute an administrative discharge for the punitive discharge executed pursuant to the sentence of a court-martial. One case was pending from the prior fiscal year. The Secretary granted one petition and denied one. Three petitions are pending review.

T. E. FLYNN  
*Rear Admiral, JAGC, USN*  
*Judge Advocate General of the Navy*



**APPENDIX A: U.S. NAVY-MARINE CORPS COURTS-MARTIAL/NJP  
STATISTICS  
FOR FISCAL YEAR 1984**

Period: Fiscal Year 1984

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	765	721	44	-10 (-1%)
BCD SPECIAL	3812	3812		-840 (-18%)
NON-BCD SPECIAL	3316	2976	340	-1302(-28%)
SUMMARY	4699	4552	147	-1816(-27%)
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-3968(-23%)

**PART 2 - DISCHARGES APPROVED**

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES		229
NUMBER OF BAD CONDUCT DISCHARGES		420
SPECIAL COURTS-MARTIAL (SA LEVEL)		
NUMBER OF BAD CONDUCT DISCHARGES		3840

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	639
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	3927
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	70

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

TOTAL ON HAND BEGINNING OF PERIOD		959
GENERAL COURTS-MARTIAL	228	
BCD SPECIAL COURTS-MARTIAL	731	
REFERRED FOR REVIEW		4711
GENERAL COURTS-MARTIAL	694	
BCD SPECIAL COURTS-MARTIAL	4017	
TOTAL CASES REVIEWED		5267
GENERAL COURTS-MARTIAL	825	
BCD SPECIAL COURTS-MARTIAL	4442	
TOTAL PENDING AT CLOSE OF PERIOD		403
GENERAL COURTS-MARTIAL	97	
BCD SPECIAL COURTS-MARTIAL	306	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-13%

**PART 5 - APPELLATE COUNSEL REQUESTS BEFORE  
REVIEW**

COURT OF MILITARY

NUMBER	4198
PERCENTAGE	90%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	26%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	- 4%
PERCENTAGE OF TOTAL PETITIONS GRANTED	11%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+37%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	10%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	14%

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Note: Parts 1,2,8 and 11 contain manual figures for 4th Quarter (1 Jul-30 Sep 84)

# APPENDIX A—CONTINUED

## PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		10	
RECEIVED		73	
DISPOSED OF		47	
GRANTED	6		
DENIED	41		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		32	

## PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		512	
SPECIAL COURTS MARTIAL		6378	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		253	
SPECIAL COURTS-MARTIAL		750	

## PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	113	
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## PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	607,692	
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## PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	93376	
RATE PER 1,000	153.65	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-19%	

PAGE 2 OF 2



**REPORT OF**  
**THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE**  
**OCTOBER 1, 1983 TO SEPTEMBER 30, 1984**

In compliance with the requirements of Article 6(a), Uniform Code of Military Justice, The Judge Advocate General, Major General Thomas B. Bruton, and Deputy Judge Advocate General, Major General Robert W. Norris made official staff inspections of field legal offices in the United States and overseas. They also attended and participated in various bar association meetings and addressed many civil, professional and military organizations.

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

During fiscal year (FY) 1984; the Judiciary Directorate of the Office of the Judge Advocate General processed over 3844 actions involving military justice. The Directorate has the overall responsibility for supervising the administration of military justice throughout the United States Air Force, from nonjudicial proceedings to appellate review of courts-martial. Additionally, the Directorate has the staff responsibility of the Office of The Judge Advocate General in all 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 federal, state and civil agencies. Several of the Directorate's activities are discussed below:

a. The Judiciary Directorate serves as the action agency for the review of military justice issues in applications submitted to the Air Force Board for Correction of Military Records. Formal opinions were provided to the Secretary of the Air Force concerning 189 applications.

b. The Directorate received 1113 inquiries in specific cases requiring either formal written replies or telephonic replies to senior executive officials, including the President and members of Congress.

c. The Directorate provided representatives to all interservice activities involving military justice. This included the Joint Service Committee and support for the Code Committee. As directed by the

Secretary of Defense, the Air Force acted as executive agent for the Military Justice Act of 1983 Advisory Commission. The Directorate provided chairmen for both the Commission and its working group and administrative support for all commission activities.

### **Automated Military Justice Analysis and Management System**

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 concerning courts-martial and nonjudicial punishment. This information is used to provide current statistical reports as a management tool 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 on various aspects of military justice administration, as required by Congress and other governmental agencies.

During FY 1984 the system produced approximately 30 standard reports on a monthly and quarterly basis. The system was also used to answer many individual requests for particular statistical information. These special requests were received from such activities as the Senate Armed Services Committee, Air Force Security Police and the Air Force Military Personnel Center.

### **Trial Judiciary**

The Air Force Trial Judiciary had an average of 33 military trial judges, including the Chief Trial Judge and his assistant, assigned to 12 locations worldwide. A new district office with one assigned military judge was opened at Torrejon AB, Spain, to alleviate travel difficulties and the workload in the Sixth Circuit.

A pilot program of selected Reserve judge advocates serving as special court-martial judges was a success. It is now a permanent addition to the Trial Judiciary and has been expanded to permit the Reserve officers to sit as general court-martial judges as they become qualified. Two additional Reserve officers were added so that each of the five circuits in the United States has an assigned Reserve military judge.

### **Circuit Trial Counsel Program**

To directly support the urinalysis drug control program three additional circuit trial counsel were authorized through the end of FY 1985, raising the number to 23. Thereafter, a headquarters reduction caused the number to be cut by two, to 21. The percentage of time that these counsel were TDY increased from 45% to 49.5% of assigned days. The

average number of TDY days per case increased from 6.65 days in FY 1983 to 8.1 days per case in FY 1984, a jump of almost 22%. As a result, the percentage of general courts-martial that could be tried by circuit trial counsel was down for the sixth consecutive year. The number and percentage of special courts-martial tried by circuit trial counsel was up slightly due to urinalysis prosecutions.

#### No. and (%) Cases Prosecuted by Circuit Trial Counsel

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
General	229(96)	345(92)	323(90)	378(88)	385(84)	349(82)
Special	292(27)	229(17)	219(16)	119(9)	55(5)	73(7)
Total	521(46)	574(38)	542(31)	497(25)	440(25)	422(29)

In support of the urinalysis program at least one circuit trial counsel from each circuit was specially trained. The enforced policy was that only trained counsel would prosecute the complex cases involving scientific evidence of drug abuse. The prosecution of urinalysis drug cases continues to meet with success.

#### Appellate Government Counsel

In preparation for practice before the United States Supreme Court, our appellate government counsel worked with their counterparts in the sister services and the Department of Justice to formulate a plan for this certiorari practice. A complete plan establishing responsibilities, coordination requirements, and suspenses was accomplished. The Court of Military Appeals did not decide any Air Force cases suitable for certiorari petition in FY 1984. Thus, there were no Air Force cases submitted to the Supreme Court.

#### Area Defense Counsel Program

The Area Defense Counsel Program celebrated its 10th Anniversary in 1984. A recent survey of major command (MAJCOM) commanders confirmed the outstanding success and acceptability of this program, and its operational practices will remain the same into the foreseeable future. There are now about 120 defense counsel assigned at 104 installations. Due to increased operations resulting from the deployment of ground-launched cruise missiles, efforts are in progress to obtain two additional defense counsel.

The Reserve Area Defense Counsel Augmentation Test Program commenced in the summer of 1984. Five reservists attached to the Area Defense Counsel offices at Chanute AFB, Illinois, McGuire AFB, New Jersey, Langley AFB, Virginia, Andrews AFB, Maryland, and Randolph AFB, Texas, were certified pursuant to the provisions of Article 27(b), UCMJ (10 USC 827(b)), by JAG Order on 21 August 1984.

These individuals have been actively involved in all phases of the Area Defense Counsel Program from advisement of suspects to defending a general court-martial.

### **Confinement Facilities**

The most significant development in the confinement area involved the implementation of the "Easy Reading" copy of instructions for parole and clemency consideration for prisoners not at the United States Disciplinary Barracks (USDB). For the first time *all* Air Force prisoners, wherever they are confined, are treated alike for purposes of parole and clemency consideration. Under the program for clemency and parole consideration integrated under the 3320th CRS, Lowry AFB, Colorado, disposition boards are convened in all cases where confinement exceeds four months.

The Fort Lewis Installation Detention Facility (IDF), which began accepting Air Force prisoners in the latter part of FY 1983, received its full allocation of 125 Air Force prisoners by May 1984. An average of 20 prisoners are turned over each month. The original agreement with the Army was to confine prisoners with between 60 days and 18 months time remaining in their sentence. During FY 1984 the upper limit was increased to 24 months. In limited situations, prisoners awaiting entry to the USDB may be approved for transfer to the Fort Lewis IDF and confined there until space becomes available at the USDB.

The rehabilitation program at the 3320th CRS, Lowry Air Force Base, continues to operate successfully, but with a much reduced population. The average load in the program is about half what it was in FY 1983. Use of this program for convicted airmen who show promise for restoration is consistent with a quality force and continues to be Air Force policy.

At the end of the fiscal year, 747 Air Force personnel were in confinement, 80 pretrial and 667 post-trial. There were 71 Air Force prisoners on parole and 78 on leave.

## **PREVENTIVE LAW AND LEGAL ASSISTANCE PROGRAMS**

The Air Force Legal Assistance Program continued to grow, not only in terms of total numbers of clients and cases (over 473,000 clients and 1.1 million cases during calendar year 1983) but also in the legal research resources available to legal assistance providers. Quick reference guides to the laws of the fifty states on domestic relations, wills and estates, consumer protection, garnishment and recognition of notarial acts were distributed by the Preventive Law and Legal Aid Group. Moreover, a microfiche bank of selected legal articles from base

newspapers was developed and distributed to legal assistance offices of all Services. Also, the Preventive Law Clearinghouse doubled in the volume of materials submitted from the field.

Several innovative steps were taken to improve the overall efficiency of Air Force preventive law programs: Reserve and Air Guard units were added to the crossfeed addressee rolls; a system of world-wide centralized state tax form distribution was developed using Air Force publications distribution channels; and certain noncommissioned officers overseas were authorized to perform notarial acts for military personnel and their dependents.

Finally, the Preventive Law and Legal Aid Group played a major role in sensitizing Air Force family housing occupants to the nature and extent of their potential liability to the United States for damage to their assigned quarters or government provided furniture. A complementary initiative, still underway, involves educating the insurance industry to the special insurance needs of military housing occupants with a view to the development of a policy tailored to such needs.

These programs have contributed to improved morale, a client community more sensitive to the legal implications of their personal activities and the timely resolution of countless individual legal problems which, if allowed to fester, could have adversely affected the accomplishment of the Air Force mission.

### FEDERAL LEGAL INFORMATION THROUGH ELECTRONICS (FLITE)

The Office of The Judge Advocate General continued to expand FLITE's data bases during FY 1984. Plans were laid to create a Directorate of Legal Information Services to manage the TJAG Office Automation Project as well as successor information management systems to AMJAMS and CAMPS. Lt Col Raymond R. Flowers, Jr. arrived in August of 1984 to assume the dual roles of Director and Automated Data Processing Single Manager for the Legal Services Center. A new Program Management Division was also created and manned. Initial project funding will be in FY 1985.

Funds were received from the Department of Defense to develop a Defense Emergency Authorities Retrieval and Analysis System (DEARAS). This system will be maintained on microcomputers using laser disk storage in order to be independent of telecommunications. The data base will consist of selected statutes, regulations, decisions, and "shelf legislation" related to emergency authority and operations.

New key-word-in-context (KWIC) indexes of the Federal Acquisition Regulation (FAR) and of statutes and Comptroller General Decisions related to Nonappropriated Fund Instrumentalities were created and distributed in microfiche format.



## THE REPORTER, AFRP 110-2

*The Reporter* continues to provide timely information on a wide variety of legal issues. Topics given in-depth analysis in FY 1984 included: Space Law, Debarment Procedures, Review of Recent United States Supreme Court Cases, The Resource Conservation and Recovery Act, and various historical articles of the Department's 35 years. *The Reporter* is praised by government lawyers, both military and civilian, as an extremely valuable communications forum that promotes crossfeed and a better prepared Department. In FY 1984, a review of publications conducted by DoD resulted in *The Reporter* being reduced to a one color publication. However, due to our appeal of the above decision and the time-sensitivity of our publication contract, *The Reporter* will remain in multiple colors through FY 1985.

## EDUCATION AND TRAINING

The Judge Advocate General's Department provided numerous continuing legal education (CLE) opportunities to its personnel, as well as its sister services, during FY 1984.

### The Air Force Judge Advocate General School

#### Resident Courses

The Air Force Judge Advocate General School, Leadership and Management Development Center, Maxwell AFB, Alabama, conducted the following courses in FY 1984.

a. Advanced Trial Advocacy Course - A 1-week course, first offered in 1984, providing training in advanced advocacy skills to judge advocates currently serving as or selected for circuit trial or defense counsel. Thirty-six judge advocates attended this course.

b. Claims and Tort Litigation Course - This course provides instruction to supervisory personnel assigned to litigation and claims positions. This course was offered to both lawyers and non-lawyers and was attended by 58 attorneys and 70 paralegals.

c. Environmental Law Course - This 1-week course, attended by 55 attorneys, provided specialized instruction to attorneys responsible for addressing and resolving environmental problems.

d. Federal Employee Labor Law Course - This course provides specialized instruction to lawyers who represent the Air Force in administrative proceedings involving complaints against management or labor negotiations. Sixty attorneys received training in labor law through this course.

e. Judge Advocate Staff Officer Course - A course providing 7 weeks of instruction on the basics of military law. This course was offered 4 times in FY 1984 and was attended by 193 judge advocates and 1 foreign officer.

f. Reserve Forces Judge Advocate Course - A 2-week course which provides Air Force Reserve personnel and National Guardsmen with up-to-date information on recent developments in military law. This course was attended by 97 Reservists and 15 Air National Guardsmen.

g. Staff Judge Advocate Course - This 2-week course provides recently assigned staff judge advocates with both a refresher course in military law and an update of recent developments. A total of 68 judge advocates attended this course, including 10 reservists and 9 National Guardsmen.

h. Trial and Defense Advocacy Course - A 1-week course, first offered in FY 1984 providing basic advocacy training to 60 judge advocates actively engaged in trial practice.

i. Military Judge's Seminar - This 1-week seminar provides military judges a forum in which to present and discuss new developments in military justice. This course was offered once in FY 1984 and was attended by 59 military judges from all services.

j. Legal Services Advanced Course - This 2-week course provides law office management education to Noncommissioned Officers (NCOs). It was offered once to 47 Air Force NCOs and 8 NCOs from the Army, Navy, and Marine Corps.

k. Basic Legal Services Specialist Training. This training is conducted at the Legal Services Specialist Course at Keesler AFB, Mississippi. It was offered 11 times during FY 1984 to 144 airmen and NCOs. Legal Services refresher training is also conducted at Keesler AFB, Mississippi.

### Videotape and Seminar Programs

Laws of Federal Labor/Management Relations . . . . .	15 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
Computer Assisted Legal Research . . . . .	3 hours
Estate Planning . . . . .	3.5 hours
Expert Witnesses . . . . .	3 hours
Impeachment under the Military Rule of Evidence . . . . .	3 hours
Character Evidence . . . . .	5 hours
Advanced Advocacy . . . . .	5 hours
Advanced Trial Techniques . . . . .	6 hours
Sentencing . . . . .	3 hours
Search and Seizure . . . . .	3 hours
Government Lawyer & Professional Responsibility . . . . .	6 hours
Government Contract Law . . . . .	7 hours

### **Professional Military Training**

During FY 1984, five judge advocates attended the Air Command and Staff College, and two attended the Air War College at Maxwell Air Force Base, Alabama. Two officers attended the Armed Forces Staff College, and one attended the National War College.

### **Short Courses at Civilian Universities**

Fifteen judge advocates attended courses at the National Judicial College at the University of Nevada during FY 1984.

### **Masters in Law Program**

During FY 1984, six judge advocates received their Master of Law degrees in government contract law, three in environmental law, two in international law, two in labor law, one in criminal law, and one in space law.

### **U.S. Army JAG School and Naval Justice School Courses**

Eighty-one judge advocates attended the basic procurement law course, twenty attended the advanced procurement law course, and six attended the military judge's course at the U.S. Army JAG School, Charlottesville, Virginia. Judge advocates also attended the Law of War Workshop, Advanced Law of War Seminar, the Criminal Trial Advocacy Course, and the Fiscal Law Course at the U.S. Army JAG School. Three judge advocates attended the military judge's course at the Naval Justice School, Newport, Rhode Island.

## **PERSONNEL**

As of 30 September 1984, there were 1332 judge advocates on active duty. This total included 5 generals, 105 colonels, 206 lieutenant colonels, 310 majors, 652 captains, and 54 first lieutenants.

**THOMAS B. BRUTON**  
*Major General, USAF*  
*The Judge Advocate General*

**APPENDIX A: U.S. AIR FORCE COURTS-MARTIAL/NJP  
STATISTICS  
FOR FISCAL YEAR 1984**

Period: 1 Oct 83 - 30 Sep 84

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	379	359	20	- 10.2%
BCD SPECIAL	375	375		- 9.9%
NON-BCD SPECIAL	687	613	74	- 19.7%
SUMMARY	30	22	8	+ 7.1%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				- 14.5%

**PART 2 - DISCHARGES APPROVED**

GENERAL COURTS-MARTIAL (CA LEVEL)	98
NUMBER OF DISHONORABLE DISCHARGES	211
NUMBER OF BAD CONDUCT DISCHARGES	
SPECIAL COURTS-MARTIAL (SA LEVEL)	363
NUMBER OF BAD CONDUCT DISCHARGES	

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	347
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	394
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	41

**PART 4 - WORKLOAD OF THE AIR FORCE COURT OF MILITARY REVIEW**

TOTAL ON HAND BEGINNING OF PERIOD	193
GENERAL COURTS-MARTIAL	103
BCD SPECIAL COURTS-MARTIAL	90
REFERRED FOR REVIEW	730
GENERAL COURTS-MARTIAL	358
BCD SPECIAL COURTS-MARTIAL	372
TOTAL CASES REVIEWED	774
GENERAL COURTS-MARTIAL	363
BCD SPECIAL COURTS-MARTIAL	411
TOTAL PENDING AT CLOSE OF PERIOD	149
GENERAL COURTS-MARTIAL	88
BCD SPECIAL COURTS-MARTIAL	61
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+ 1.7%

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

NUMBER	735
PERCENTAGE	99%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	528/774	68.2%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+ 7.79%
PERCENTAGE OF TOTAL PETITIONS GRANTED	60/528	11.3%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+ 2.6%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	60/774	7.7%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+ 2.5%

# APPENDIX A—CONTINUED

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		4
RECEIVED		48
DISPOSED OF		48
GRANTED	3	
DENIED	45	
NO JURISDICTION	--	
WITHDRAWN	--	
TOTAL PENDING AT END OF PERIOD		- 4 -
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL		203
SPECIAL COURTS-MARTIAL		622
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		176
SPECIAL COURTS-MARTIAL		438
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	36	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	580,265	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		25,682
RATE PER 1,000		44.26
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		- 14.4%

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**REPORT OF  
THE CHIEF COUNSEL OF THE  
U.S. COAST GUARD**

**October 1, 1983 to September 30, 1984**

The table below shows the number of court-martial records received and filed at Coast Guard Headquarters during FY-84 and the five preceding years.

Fiscal Year	84	83	82	81	80	79
General Courts-Martial .....	6	10	9	2	3	2
Special Courts-Martial .....	33	68	79	58	67	47
Summary Courts-Martial .....	105	128	151	192	169	122
Total .....	144	206	239	252	239	171

**COURTS-MARTIAL**

Attorney 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 for special courts-martial. Control of the detail of judges is centrally exercised by the Chief Trial Judge, and all requirements have been met in a timely fashion.

**General Courts-Martial**

Charges referred to the six general courts-martial convened this year included 21 specifications alleging violations of Articles 86, 92, 108, and 134 (only two of these courts involved marijuana or other controlled drugs). One accused was tried by military judge alone at his request and he received a sentence which included a bad conduct discharge. Of the five accuseds tried by courts with members, two received a sentence which included a bad conduct discharge.

## Special Courts-Martial

Nine of the thirty-three accused tried by special courts-martial this fiscal year were tried by the military judge alone. One of the twenty-four accuseds, tried by members, was acquitted of all charges and specifications. Three bad conduct discharges were awarded, one to an accused tried by military judge alone and two to accuseds tried by courts with members. One of the punitive discharges was disapproved by the supervisory authority. Sixteen of the accused whose charges were referred to special courts-martial were nonrated (pay grades E-1 thru E-3), fourteen were petty officers (pay grades E-4 thru E-6), and three were chief petty officers (pay grade E-7).

The following table shows the distribution of the 109 specifications referred to special courts-martial.

Violation of the UCMJ, Article	No. of Spec's
85 and 86 (desertion and UA)	18
87 (missing movement)	4
91 (willful disobedience or disrespect)	2
92 (violation of order or regulation)	14
107 (false official statement)	1
121 (larceny and wrongful appropriations)	11
128 (assault)	3
134 (General)	14
134 or 92 (marijuana offenses)	17
134 or 92 (other controlled drug offenses)	20
other offenses	5

The following is a breakdown of sentences awarded by the military judge alone in special courts-martial (9 convictions).

Sentence	Cases Imposed
bad conduct discharge	1
confinement at hard labor	7
reduction in rate	8
forfeiture of pay (\$5,850 total)	7
others	1

In 4 of these 9 convictions, the accused pled guilty to all charges and specifications.

The following is a breakdown of sentences awarded in special courts-martial with members (23 convictions).

Sentence	Cases Imposed
bad conduct discharge	2
confinement at hard labor (3 maximum)	11
hard labor without confinement	1
reduction in rate	17
restriction	6
forfeiture of pay (\$20,238 total)	14
fine (\$481.39 total)	2
others	9

In 6 of these 23 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	BCD
84	32	21(66%)	18(56%)	26(81%)	3( 9%)
83	62	35(56%)	35(56%)	49(79%)	16(26%)
82	74	48(65%)	41(55%)	46(62%)	9(12%)

### Summary

Three of the six general courts-martial, two with members and one with military judge alone, adjudged a sentence which included a bad conduct discharge. Twenty-seven percent of the accused tried by special court-martial were tried by military judge alone, and forty-four percent of them pled guilty to all charges and specifications. Twenty-five percent of the accused tried by special court-martial with members pled guilty to all charges and specifications. There was a thirty percent decrease in the total courts-martial this fiscal year from last year.

### 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 discretionary review is conducted under Article 69 of *all* courts-martial not requiring appellate review. Five actions were taken as a result of these reviews, as follows:

Findings of guilty and sentence set aside, charges could be referred to another court-martial convened by proper authority or could be dismissed	1
Findings of guilty and sentence set aside, charges dismissed	1



Findings of guilty to one charge and its specification set aside and charge dismissed. The sentence was reassessed on the basis of offenses for which the accused was properly convicted, sentence found to be nonetheless appropriate . . . . . 3

**PERSONNEL AND TRAINING**

The Coast Guard has 167 law specialists serving on active duty. One hundred and twenty-five are serving in a legal capacity and forty-two 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 in special courts-martial when required.

The Ninth Coast Guard Basic Law Specialist Course was held at the Coast Guard Reserve Training Center, Yorktown, Virginia, from 16 September 1984 through 2 November 1984. The seven week course normally introduces 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. Nineteen Coast Guard officers are currently undergoing post-graduate studies in law and will be certified as law specialists at the completion of their studies.

Court Reporting Course. A two week experimental course in court reporting was held at the Coast Guard Reserve Training Center, Yorktown, Virginia, from 17 through 28 October 1983. The purpose of this experimental course was to determine whether the Coast Guard could train its own enlisted personnel in the field of open microphone reporting in a relatively short period of time. A second experimental course is scheduled for October 1984 and will be expanded to three weeks in duration.

**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.

EDWIN H. DANIELS  
*Rear Admiral, USCG*  
*Chief Counsel, U.S. Coast Guard*

# APPENDIX A: U.S. COAST GUARD COURTS-MARTIAL/NJP STATISTICS FOR FISCAL YEAR 1984

Period: 1 OCT 83-30 SEP 84

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	6	6	0	-40%
BCD SPECIAL	33 <sup>1</sup>	32		-51%
NON-BCD SPECIAL	00	00	00	00
SUMMARY	105	103	02	-17.9
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-30%

## PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)			
NUMBER OF DISHONORABLE DISCHARGES		00	
NUMBER OF BAD CONDUCT DISCHARGES		03	
SPECIAL COURTS-MARTIAL (SA LEVEL)			
NUMBER OF BAD CONDUCT DISCHARGES		03	

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	03
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	03
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	03

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

TOTAL ON HAND BEGINNING OF PERIOD		18
GENERAL COURTS-MARTIAL	07	
BCD SPECIAL COURTS-MARTIAL	11	
REFERRED FOR REVIEW		06
GENERAL COURTS-MARTIAL	03	
BCD SPECIAL COURTS-MARTIAL	03	
TOTAL CASES REVIEWED		14
GENERAL COURTS-MARTIAL	04	
BCD SPECIAL COURTS-MARTIAL	10	
TOTAL PENDING AT CLOSE OF PERIOD <u>2</u>		09
GENERAL COURTS-MARTIAL	04	
BCD SPECIAL COURTS-MARTIAL	05	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+100

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

NUMBER	06
PERCENTAGE	100%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	8/14	57%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+100%
PERCENTAGE OF TOTAL PETITIONS GRANTED	0/8	00%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-100%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	0/14	00
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-100%

# APPENDIX A—CONTINUED

<b>PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69</b>		
PENDING AT BEGINNING OF PERIOD		05
RECEIVED		05
DISPOSED OF		09
GRANTED	02	
DENIED	07	
NO JURISDICTION		
WITHDRAWN		
TOTAL PENDING AT END OF PERIOD		01

<b>PART 8 - ORGANIZATION OF COURT</b>		
<b>TRIALS BY MILITARY JUDGE ALONE</b>		
GENERAL COURTS-MARTIAL		01
SPECIAL COURTS-MARTIAL		09
<b>TRIALS BY MILITARY JUDGE WITH MEMBERS</b>		
GENERAL COURTS-MARTIAL		05
SPECIAL COURTS-MARTIAL		24

<b>PART 9 - COMPLAINTS UNDER ARTICLE 138</b>		
NUMBER OF COMPLAINTS	04	

<b>PART 10 - STRENGTH</b>		
AVERAGE ACTIVE DUTY STRENGTH	38,853	

<b>PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)</b>		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	3468	
RATE PER 1,000	89.2	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	+7.9	

PAGE 2 OF 2

1. Military judges are assigned to all cases referred to special court-martial. The Coast Guard, therefore, considers all special courts-martial potential BCD cases.

2. In one general court-martial case before the CMR, the proceedings were abated due to the death of the member while on appellate leave.