

ANNUAL REPORT 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, 1987 to September 30, 1988**

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



ANNUAL REPORT
SUBMITTED TO THE
**COMMITTEES ON ARMED
SERVICES**

of the
U.S. Senate and House of Representatives
and to the
SECRETARY OF DEFENSE,
SECRETARY OF TRANSPORTATION,
and
SECRETARIES OF THE
ARMY, NAVY, AND AIR FORCE

PURSUANT TO THE
UNIFORM CODE OF MILITARY JUSTICE
For the Period
October 1, 1987-September 30, 1988

CONTENTS

| | |
|---|----|
| REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS | 1 |
| REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY | 27 |
| REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY | 43 |
| REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE | 57 |
| REPORT OF THE CHIEF COUNSEL OF THE COAST GUARD | 67 |

REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS October 1, 1987 to September 30, 1988

The Judges of the United States Court of Military Appeals submit their fiscal year 1988 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 USC § 867(g).

THE BUSINESS OF THE COURT

During fiscal year 1988 the Court accomplished a significant reduction in its case backlog. Specifically, at the end of fiscal year 1988, only 273 cases remained on the Court's Petition Docket. This represents a reduction of 38% in the number of cases remaining at the end of fiscal year 1987, when 442 such cases were pending, and a reduction of 61% over the five-year high of 702 cases which were pending at the close of fiscal year 1986. (See Appendix A.) A similar five-year trend in the Master Docket reflects a dramatic reduction in year-end pending cases. Although 258 cases were pending at the end of fiscal year 1986, and 177 cases were pending at the end of fiscal year 1987, only 65 such cases were pending at the end of fiscal year 1988. This represents a reduction of 74% in the number of Master Docket cases pending at the end of fiscal year 1986 and a 63% reduction in the same category of cases pending at the end of fiscal year 1987. (See Appendix B.) This reduction in the case backlog paralleled a dramatic reduction in the time required to schedule Master Docket cases for oral argument. That period was reduced from a five-year high of 426 days in fiscal year 1985 to only 176 days in fiscal year 1988—a reduction of 59%. (See Appendix C.)

There were 2360 cases filed with the Court during fiscal year 1988, which represents a reduction of 15% in total filings over fiscal year 1987 when 2769 cases were filed. However, the Court acted on 2638 cases during fiscal year 1988, which contributed to the significant reduction in the number of pending cases previously discussed. In addition, the Court heard oral argument in 86 cases during fiscal year 1988. Although this number represents a reduction in the number of oral arguments heard during the preceding

year, it appears to indicate that the Court's docket is nearing a current status and that the number of cases warranting oral argument is declining. (See Appendix D.) Additionally, the Court released a total of 130 signed and per curiam opinions during fiscal year 1988.¹ (See Appendix E.) As a result of the significant reductions already discussed, only eight cases were awaiting final action on the Master Docket at the end of fiscal year 1988.

The significant improvement in the Court's docket as reflected in Appendices A through E over the last five years is in large part attributable to the fact that, although there was a substantial period during fiscal years 1984, 1985 and 1986 in which only two Judges were in active service, the Court has been working with a full complement of three Judges since May 1986.

In addition to its case review workload, the Court admitted 517 attorneys to practice before its Bar during fiscal year 1988, bringing the cumulative total of admissions before the Bar of the Court to 26,801.

TERM OF COURT ESTABLISHED

After working for over two years to achieve a substantial reduction in the number of cases carried over at the end of each fiscal year and to approach a current caseload status, the Court on September 30, 1988, established an annual Term of Court to be designated, initially, as the October 1988 Term of Court and, thereafter, to be designated as the October Term of Court for each succeeding year. By order issued on September 30, 1988, the Court determined, on due consideration, that establishment of such a Term of Court would have a beneficial effect on the prompt and timely disposition of those cases in which plenary consideration is warranted and which have thus been placed on the Court's Master Docket.

PUBLIC AWARENESS PROJECT (Project Outreach)

The Court has determined that it is important for people within the Armed Services, as well as those in the civilian community throughout the United States, to gain a greater appreciation of the procedural safeguards Congress has provided in the military justice system, and particularly in the appellate review of court-martial convictions and sentences. To this end the Court had a documenta-

¹ Although not part of the business of the Court, it is noted that during Fiscal Year 1987, the Court was notified that petitions for writ of certiorari were filed with the Supreme Court of the United States in 32 Master Docket cases in which the Court took final action.

ry videotape program produced for use by military judge advocate educational institutions, as well as for distribution and use by civilian law schools and community education programs both in the United States and overseas. This videotape explains the entire process of trial and appellate procedures in a military court-martial case, with particular emphasis on the appellate judicial responsibilities of the civilian United States Court of Military Appeals.

In addition, the Court for the first time in its history travelled outside its own courthouse to hear oral arguments in several actual appeal cases. Modelling this action on the practice of the United States Court of Appeals for the Eighth Circuit, as well as some State appellate courts, the Judges of the Court on November 13, 1987, heard oral argument in two Army appeals at the University of Virginia School of Law, which is adjacent to the U.S. Army Judge Advocate General's School in Charlottesville, Virginia. Although the cases selected would otherwise have been heard by the Court at its courthouse in Washington, D.C., this occasion, which occurred at the invitation of the Judge Advocate General's School, provided an opportunity for senior members of the School's staff, as well as civilian professors and law students from the University of Virginia, to meet with the Judges and view how cases are presented by appellate advocates for decision by the Court.

Motivated by the widespread favorable reception of this historic event, the Court accepted a similar invitation to hear oral argument in two Air Force cases at Wake Forest University School of Law, Winston-Salem, North Carolina, on March 17, 1988. In view of the positive educational results of these two off-site oral argument programs, the Court plans to continue this public awareness effort.

JUDICIAL VISITATIONS

The Judges of the Court continued during fiscal year 1988, consistent with the past practice of the Court, to encourage and promote continuing legal education programs for military lawyers throughout the world. By their visits to numerous military installations and their participation in military as well as civilian legal education programs and seminars, the Judges continued to promote a more informed awareness of the Court's work and a deeper appreciation of the overall administration of justice within the Armed Services.

Consistent with this objective, Chief Judge Robinson O. Everett gave the 1988 Law Day Speech at Dover Air Force Base, Delaware; addressed the General Practice Section at the American Bar Association Mid-Winter Meeting in Philadelphia, Pennsylvania; the Military Law Section of the Texas Bar; the Committee on Military Justice of the Association of the Bar of the City of New York; the

International Military Judges Seminar at Maxwell Air Force Base, Alabama; the Air Force Circuit Trial Counsel's Workshop at Randolph Air Force Base, Texas; the 31st Military Judges Course at the Army Judge Advocate General's School in Charlottesville, Virginia; the National Guard Judge Advocates Conference at Fairfax, Virginia; the U.S. Army Sergeant Majors Academy at Fort Bliss, Texas; and the Fourth Circuit Conference of the Federal Bar Association at Norfolk, Virginia. He also gave remarks to students at North Carolina State University and the Southern Methodist University and the University of Texas Law Schools. Chief Judge Everett attended the Judicial Conferences of the Fourth Circuit and the District of Columbia Circuit; the Annual Meetings of the American Bar Association and the Federal Bar Association; and the Appellate Judges Seminar Advanced Refresher Course at New York University Law School; and he judged the finals of two Moot Court Competitions.

Judge Walter T. Cox, III, addressed civilian judges and lawyers at the Mid-Year Meeting of the American Bar Association and the Annual Convention of the Federal Bar Association. He also attended the Judicial Conference of the Fourth Circuit and spoke to military lawyers and judges at the Army Judge Advocate General's School; Fort Shafter and Schofield Barracks, Hawaii; Keesler Air Force Base, Mississippi; Fort Bragg, North Carolina; and the Air Force Judge Advocate General's School in Alabama. Judge Cox delivered a paper on the evolution of military justice under the U.S. Constitution to senior military officers attending the Industrial College of the Armed Forces. In addition, he accompanied Judge Sullivan on an official visitation of Army, Navy and Air Force Commands in South Carolina.

Judge Eugene R. Sullivan attended the Army Judge Advocate General's Conference, the Coast Guard-State Department Anti-Drug Seminar, and the Missouri Bar Judicial Conference. He also visited various commands, including Headquarters, Strategic Air Command, 9th Air Force Command, Charleston Naval Base, Fort Jackson, South Carolina, the Army Criminal Investigation Command, the Berlin Brigade, and V Corps units. In addition, Judge Sullivan gave speeches to students at Carnegie Mellon University, Georgia Military College, and the West Point Honor Conference. He also addressed the Pacific Commander's (PACOM) Legal Conference, the Military Airlift Command Staff Judge Advocates Conference, and the Army JAG Reserve Component Workshop at Charlottesville, Virginia.

HOMER FERGUSON CONFERENCE

The Thirteenth Annual Homer Ferguson Conference was held at the George Washington University Marvin Center on May 19-20, 1988. As in previous years, this conference was jointly sponsored by the Court and the Military Law Institute. This year's conference was certified for credit to meet the continuing legal education requirements of various State Bars and was designed to help both military and civilian practitioners maintain those professional skills necessary to practice before trial and appellate courts.

The speakers for this year's conference included Major General Robert W. Norris, The Judge Advocate General, United States Air Force; The Honorable Wayne E. Alley, United States District Court, Western District of Oklahoma; The Honorable William C. Bryson, Deputy Solicitor General of the United States; Eugene R. Fidell, Esquire, and Jan Horbaly, Esquire, of Washington, D.C.; Dr. Jonathan Lurie, Historian to the United States Court of Military Appeals and Professor of History, Rutgers University; Mr. Steven Pomerantz, Chief of Counter-terrorism Section, Criminal Investigative Division, FBI Headquarters; Mr. Thomas S. Markiewicz, Special Assistant for Clemency and Rehabilitation, Office of the Judge Advocate General of the Air Force; Dr. Robert Friedlander, Minority Special Counsel of the Committee on Foreign Relations of the United States Senate and Professor of Law, Ohio Northern University; Major General Eugene R. Cromartie, Commander, United States Army Criminal Investigation Command; Rear Admiral Hugh D. Campbell, The Judge Advocate General, United States Navy; Commissioner Ilene H. Nagel, United States Sentencing Commission; Mr. Thomas W. Taylor, Deputy General Counsel (Installations and Operations), Department of Defense; Dr. Robert W. Noelker, Licensed Clinical Psychologist; Professor Robert P. Mosteller, Professor of Law, Duke University Law School; Mr. Thomas E. Flynn, District of Columbia Bar Counsel; and The Honorable Kathleen A. Buck, General Counsel of the Department of Defense.

In addition, The Honorable Eugene R. Sullivan, Associate Judge, United States Court of Military Appeals, served as moderator of a conference panel on Current Forensic Techniques with panelists Major Robert Thibault, United States Air Force; Dr. Neil S. Hibler, a recognized expert on forensic hypnosis; Dr. Charles P. McCowell, a recognized expert on crime victimology; and Dr. Nancy D. Slicner, an experienced medical specialist in the field of child sexual abuse.

The Honorable Walter T. Cox, III, Associate Judge, United States Court of Military Appeals, served as moderator of a conference panel on the Law of Evidence which included Professor Stephen A. Saltzburg of the University of Virginia School of Law; Lieutenant

Colonel Lee D. Schinasi, Judge Advocate General's Corps, United States Army; and Professor David A. Schlueter, Associate Dean and Professor of Law, St. Mary's University School of Law, San Antonio, Texas.

This year's conference concluded with a series of seminars under the direction of Captain Robert H. McLeran, Judge Advocate General's Corps, United States Navy, which included presentations on "Command Influence" by Major Gary Terrell, United States Army, and Colonel Woody Bon, United States Marine Corps; "Current Topics on AIDS" by Major Paul Capofari, United States Army, and Major Kathryn Taylor, United States Air Force; and "DNA—From a Technological Point-of-View" by Dr. Robert C. Schuler, with the indicated speakers serving as experts in their respective disciplines.

The invocation was offered by Captain I. Carroll Starling, United States Navy, District Chaplain, Naval District of Washington. The conferees were welcomed by The Honorable Robinson O. Everett, Chief Judge, United States Court of Military Appeals, on behalf of the Court; Colonel Walter L. Lewis, United States Air Force (Ret.), on behalf of the Military Law Institute; and Dean John S. Jenkins, on behalf of The National Law Center, George Washington University.

The conferees included numerous military and civilian lawyers as well as Judges of the various Courts of Military Review, legal scholars, and commentators in the field of military justice. As in prior years, the conference was videotaped to provide a medium of education for those interested in the administration of military justice. In addition, C-SPAN, the Cable Satellite Public Affairs Network, filmed and televised major portions of the conference on its public broadcasting network throughout the United States.

SIGNIFICANT DECISIONS AFFECTING THE ADMINISTRATION OF MILITARY JUSTICE WITHIN THE ARMED FORCES ²

Jurisdiction

A very significant case concerning the Court's subject-matter jurisdiction was decided during fiscal year 1988. In *United States Navy-Marine Corps Court of Military Review v. Carlucci*, 26 MJ 328 (CMA 1988), the Court resolved a petition for extraordinary relief filed by members of the United States Navy-Marine Corps Court of

² 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 not of precedential value and should not be cited in briefs filed with the Court.

Military Review alleging that the Inspector General of the Department of Defense was improperly proceeding in an investigation predicated on an anonymous informant in a manner which would infringe upon the decision-making process of the Court of Military Review concerned. After conducting a prompt hearing on the matter, the Court unanimously concluded that Congress had conferred authority upon the Court under Article I, § 8, cl. 14 of the United States Constitution, to prevent officials of the Executive Branch from improperly interfering with the administration of military justice. That conclusion was predicated upon a historical analysis of the legislation creating the Court and case law interpreting such legislation. The Court observed that the Inspector General concerned was utilizing an order from the Judge Advocate General of the Navy to implement her investigation of allegations concerning the Court of Military Review and that, since any disobedience of such order potentially involved punishment within the parameters of the Uniform Code of Military Justice, potential appellate jurisdiction over the members of the Court of Military Review was apparent. In addition, the Court concluded that the exercise of its jurisdiction was appropriate, as the facts and circumstances involved a potential chilling effect on the Court of Military Review's exercise of its appellate judicial responsibilities under the Uniform Code of Military Justice, and that unpopular decisions may invoke examination of the decisional process whenever a disgruntled individual made an anonymous allegation against the court concerned. As the judges of the Court of Military Review had the duty and responsibility to uphold the integrity and independence of the Court of Military Review, the Court reasoned that such judges were placed in the untenable position of either abrogating that responsibility by obeying an order which may infringe upon the integrity and independence of their court or disobeying such an order at the risk of facing disciplinary proceedings within the parameters of the Uniform Code of Military Justice. The Court recognized a qualified privilege concerning investigation of the judicial decisional processes of the Court of Military Review, holding that the privilege extended only to the decisional process itself. In this regard the Court noted that the facts and circumstances of the case at hand presented some risk that the investigation of the Inspector General would infringe upon the deliberative judicial process and concluded that, in view of its position as the highest tribunal in the military justice system, the United States Court of Military Appeals should exercise authority to judicially supervise any investigative infringement upon this qualified privilege. Accordingly, to protect the judicial integrity of the Court of Military Review while at the same time recognizing that judges are not immune from investigations, the Court concluded that a judicial commission in the

form of a Special Master was required to examine the Inspector General's investigation to determine whether the qualified judicial privilege should yield to the need of the Inspector General to appropriately investigate the allegations of misconduct. To effectuate this remedy the Court appointed the Honorable Walter T. Cox, III, a member of the Court, to serve as Special Master with full authority to resolve any controversies arising out of or incident to the Inspector General's investigation.

In a case involving jurisdiction over a military accused, the Court held in *United States v. Garvin*, 26 MJ 194 (CMA 1988), that the mistaken delivery of a discharge certificate to an accused which had no legal effect and which had previously been revoked did not terminate court-martial jurisdiction. The Court reasoned that because the discharge certificate under the facts of this case did not effect a valid discharge, the present case was clearly distinguishable from those cases where the delivery of such a certificate did effect a valid discharge.

Answering the question of whether the decision of the Supreme Court of the United States in *Solorio v. United States*, 483 U.S. 435, 107 S.Ct. 2924, 97 L.Ed.2d 364 (1987), should be applied retroactively, the Court held in *United States v. Avila*, 27 MJ 62 (CMA 1988), that the decision of the Supreme Court concerning military jurisdiction over the person should be applied retroactively. The Court held that Articles 2 and 17, UCMJ, originally established court-martial jurisdiction over all members of regular components of the armed forces; that these statutory provisions have remained substantially unchanged from their inception; and that *Solorio* simply recognized this jurisdiction was pre-existing to the extent that *Avila* was subject to court-martial for the same reason as was *Solorio*.

Command Influence

Since its inception, the United States Court of Military Appeals has been sensitive to the issue of command influence, which it views as the mortal enemy of military justice. During the fiscal year 1988 term, the Court continued its policy of eradicating command influence from the military justice system. In *United States v. Cruz*, 25 MJ 326 (CMA 1987), the Court was faced with an allegation of command influence where a commander conducted a mass unit formation during which suspected drug abusers were identified. The record revealed that their unit crests were removed; that they were called various names by the commander; that they were otherwise degraded in public; and that they were handcuffed in full view of the entire formation. The Court ruled that although such actions may have reflected an attempt to insure that such soldiers receive severe punishment, there was no direct or indirect attempt

to orchestrate the findings portion of the court-martial where each accused entered pleas of guilty. However, although the actions taken did not affect the findings, the Court further held that such actions constituted pretrial punishment and that, accordingly, the sentence must be set aside and the case returned for a rehearing on sentence.

Interpreting Article 37, Uniform Code of Military Justice, 10 USC § 837, in *United States v. Levite*, 25 MJ 334 (CMA 1987), the Court held that the prohibition against unlawful command influence applied even where command personnel other than the convening authority were involved in an attempt to improperly influence a court-martial. Citing the test for unlawful command influence set forth in *United States v. Thomas*, 22 MJ 388 (CMA 1986), *cert. denied*, ___ U.S. ___, 107 S.Ct. 1289, 94 L.Ed. 2d 146 (1987), the Court ordered the findings and sentence set aside where the evidence reflected that officer and enlisted personnel in the accused's command attempted to influence a court-martial and such influence was not rendered harmless where no post-trial hearing was conducted, command lectures were conducted which polluted the environment of the court-martial, various witnesses were subjected to improper influences, and no purging action was taken by the Court of Military Review.

Witnesses

In *United States v. Vanderwier*, 25 MJ 263 (CMA 1987), the Court emphasized the requirements of the Confrontation Clause of the Sixth Amendment, Article 49, UCMJ, and Military Rule of Evidence (Mil.R.Evid.) 804(b) in holding that the military judge should consider all circumstances to determine if a witness is unavailable for the purpose of accepting a pretrial deposition in lieu of live testimony at the accused's court-martial. Here, where the circumstances reflected that the government witness involved would be available within only two days after the accused's trial concluded, the Court held that the pretrial deposition was improperly admitted into evidence. However, after examination of the entire record, the Court further held that the accused had not been prejudiced by the erroneous admission of such deposition.

Addressing the appropriate scope of the testimony of expert witnesses, the Court held in *United States v. Tolppa*, 25 MJ 352 (CMA 1987), that an expert witness, if properly qualified, could testify as to a child's ability to separate truth from fantasy and could discuss various patterns of consistency in the stories of child sex abuse victims and compare those patterns with patterns in the victim's story. However, the Court held in *Tolppa* that the expert could not specifically testify as to the truthfulness of a particular child victim's report of sexual abuse.

Answering the question of whether pretrial statements of a child to a grandparent concerning the accused father's sexual misconduct were admissible, the Court held in *United States v. Williamson*, 26 MJ 115 (CMA 1988), that such statements were not admissible where the child was available to testify although the child denied under oath that such misconduct occurred. The Court observed that there was no exception for such admissibility under Mil.R.Evid. 804(b)(5), nor was there any guarantee of trustworthiness under the circumstances within the provisions of Mil.R.Evid. 803(24).

Citing Mil.R.Evid. 801(d)(1)(B), the Court held in *United States v. Jones*, 26 MJ 197 (CMA 1988), that a social worker could testify as to a teenage victim's out-of-court statements concerning the accused's alleged indecent assault in order to rehabilitate the victim's testimony after she had been impeached by evidence reflecting that she was severely retarded and susceptible to suggestion. Additionally, the Court held in *Jones* that the behavior patterns and responses of severely retarded people were a proper subject of expert testimony.

In *United States v. Hill-Dunning*, 26 MJ 260 (CMA 1988), the Court noted that Mil.R.Evid. 704 abolished the "ultimate issue" rule but further observed that opinion testimony embracing an ultimate issue still must meet the test of admissibility set forth in the other Military Rules of Evidence. Thus, the Court held that while an expert witness may assume the truth of the assertion of a person being examined for the purposes of evaluation and diagnosis, that expert cannot thereby also testify that, in his or her opinion, the person in question is truthful.

Resolving the question of when the Government must produce a defense-requested expert witness in a court-martial on drug use charges, the Court held in *United States v. Van Horn*, 26 MJ 434 (CMA 1988), that the employment of a defense-requested expert witness was required where such witness would testify that the Government had not followed proper procedures in analyzing the accused's urine sample which gave rise to a charge of use of a controlled substance.

Military Judges

In *United States v. Elzy*, 25 MJ 416 (CMA 1988), the Court held that a military judge did not err by failing to *sua sponte* recuse himself under circumstances where a trial defense counsel attempted to withdraw from the case in a manner indicating that he did not believe the accused. However, in *United States v. Sherrod*, 26 MJ 30 (CMA 1988), the Court held that where a military judge was disqualified from presiding over an accused's court-martial, his disapproval of the accused's request for trial by judge alone constitut-

ed reversible error. The Court observed that while an accused's right to be tried by a judge alone under Article 16, UCMJ, was not absolute, it was a right conferred by the Uniform Code of Military Justice which could not be summarily denied without some justification.

Court Members

The responsibility of a deputy staff judge advocate who later served as an acting staff judge advocate to reveal to the defense before trial of an accused the fact that one of the court members was his sister-in-law was addressed by the Court in *United States v. Glenn*, 25 MJ 278 (CMA 1987). Therein the Court observed that where a court member was the deputy staff judge advocate's sister-in-law, such relationship did not constitute a *per se* disqualification to sit on the court-martial, but the matter was subject to *voir dire* examination. Therefore, the Court held that the deputy staff judge advocate had an affirmative duty to inform the staff judge advocate, the trial counsel, and the defense counsel of such a relationship. The Court emphasized that under military practice a party has only one peremptory challenge and that challenges for cause should be liberally construed. In *United States v. Murphy*, 26 MJ 454 (CMA 1988), the Court held that a court member was not *per se* disqualified solely on the fact that as a senior member of a court-martial panel, he wrote or endorsed the performance or the efficiency reports of a junior member of the same panel.

Courts of Military Review

Citing Article 66, UCMJ, the Court held in *United States v. Turner*, 25 MJ 324 (CMA 1987), that a Court of Military Review must resolve a case both factually and legally. As the record of the case under consideration was unclear whether the Court of Military Review had determined the factual sufficiency of the evidence as well as its legal sufficiency, the case was remanded to the intermediate appellate court for further proceedings under Article 66.

Military Procedure

Concerning the obligation of the staff judge advocate to prepare a written pretrial advice for the convening authority under Article 34, the Court held in *United States v. Murray*, 25 MJ 445 (CMA 1988), that failure to comply with this requirement was not a jurisdictional defect. Thus, while the failure to provide such advice was held to be error, the Court ruled that reversal was not required where the accused was not prejudiced and the defense made no motion at trial concerning such deficiency. The question when or if a party in a court-martial is entitled to additional peremptory challenges was addressed by the Court in *United States v. Carter*, 25

MJ 471 (CMA 1988). Therein the Court held that where the membership of a court-martial was reduced below the requisite quorum after the exercise of peremptory challenges and challenges for cause, the military judge must exercise his discretion in determining whether additional peremptory challenges should be allowed after other members are added to the court. As the record in this case reflected that the selection process was conducted in a painstaking manner, the Court held that there had been no abuse of discretion in the military judge's failure to grant additional peremptory challenges. However, the Court in *Carter* specifically overruled *United States v. Holley*, 17 MJ 361 (CMA 1984), wherein it was previously held that the trial judge could not grant additional peremptory challenges.

In *United States v. Healy*, 26 MJ 394 (CMA 1988), the Court held that its earlier decision in *United States v. Grostefon*, 12 MJ 431 (CMA 1982), did not change the rules under Article 66, Uniform Code of Military Justice, as to what the Court of Military Review must review for sentence appropriateness. Thus, the Court held that the Court of Military Review did not err by denying a defense motion to submit documents to that court on the issue of sentence appropriateness. In *United States v. Wynn*, 26 MJ 405 (CMA 1988), the Court addressed the procedural uncertainty as to whether a military accused has a right to file a petition for writ of certiorari with the Supreme Court of the United States after the United States Court of Military Appeals granted a petition for grant of review and subsequently returned the case to a lower level of authority for corrective action. In view of the uncertainty and to preserve an accused's right to file a petition for certiorari at a later date, the Court adopted a rule whereby it would grant a second petition for grant of review filed by an accused upon assertion by appellate defense counsel that a previous petition for grant of review had been granted in the same case and the accused asserted that the corrective action below was inadequate.

Citing Rule for Courts-Martial (RCM) 913(c)(5), the Court held in *United States v. Ray*, 26 MJ 468 (CMA 1988), that a military judge did not err by allowing the Government to reopen its case after the defense rested without presenting any evidence.

In *United States v. Smith*, 27 MJ 25 (CMA 1988), the Court held that a military judge did not abuse his discretion by precluding a trial defense counsel from advising or questioning the court-martial members during the *voir dire* portion of the trial to the effect that confinement for life was a mandatory penalty for the charge of premeditated murder.

After analyzing the historical development of the role of the military judge within the context of the military justice system, the Court held in *United States v. Griffith*, 27 MJ 42 (CMA 1988), that

a military judge could not set aside the findings of court members solely on the basis that he disagreed with their findings of fact, such as credibility. However, the Court noted that a military judge could set aside such findings if the findings were insufficient as a matter of law.

Instructions

The responsibility of the military judge to instruct the members consistent with the evidence of record was addressed by the Court in *United States v. Wilson*, 26 MJ 10 (CMA 1988). Therein the Court observed that the trial judge was obligated to instruct on the lesser offense of involuntary manslaughter to the charged offense of murder where the accused denied an attempt to kill, although the evidence reflected the use of a deadly weapon which could raise an inference of an attempt to kill. However, the Court noted that such an inference was not a conclusive presumption and that a death under Article 118, UCMJ, involving an aggravated assault was not automatically murder. Rather, the Court concluded that the court members could have held that the offense was involuntary manslaughter under Article 119(b)(2), UCMJ, because there was no intent to kill the victim. Additionally, the Court held in *Wilson* that although the accused was convicted of murder, the court members thereby rejecting voluntary manslaughter, the military judge improperly rejected a defense requested sentencing instruction on provocation, noting that although the evidence may have been insufficient to reduce a homicide offense from murder to voluntary manslaughter, such evidence was proper extenuation and mitigation.

The question of whether knowledge was an element of an offense charged under Article 112a, UCMJ, for offenses involving the use or possession of contraband substances was addressed by the Court in *United States v. Mance*, 26 MJ 244 (CMA 1988). Therein the Court observed that there was some confusion as to whether knowledge was an element of the offense or whether it was merely an affirmative defense which had to be raised by an accused. After analyzing the statute in question and its historical precedents, the Court concluded that two elements of knowledge were required for a conviction for either the possession or use of a contraband substance: knowledge of the presence of the substance and knowledge that the substance either used or possessed was contraband. Accordingly, the Court held that a military judge must instruct upon the two components of knowledge as elements of the offense. The Court noted in *Mance*, however, that the opinion did not preclude a permissible inference of knowledge where the evidence justified such an inference.

Military Rules of Evidence

Citing Mil.R.Evid. 401, the Court held in *United States v. Mann*, 26 MJ 1 (CMA 1988), that magazines depicting sexual conduct involving children were admissible in the accused's court-martial on charges of committing indecent acts with a child to show the requisite sexual desire. The Court observed that the magazines were shown to be in the possession of the accused around the time of the charged offenses. In *United States v. Melvin*, 26 MJ 145 (CMA 1988), the Court addressed the question of the degree of evidence required to corroborate a confession under Mil.R.Evid. 304. The Court noted therein, after citing civilian cases concerning the same issue, that the requisite evidence was "very slight" and that the evidence in the case at hand was sufficient to corroborate the confession in question. Citing *Huddleston v. United States*, ___ U.S. ___, 108 S.Ct. 1496, 99 L.Ed.2d 771 (1988), and Mil.R.Evid. 404, the Court held in *United States v. Mirandes-Gonzalez*, 26 MJ 411 (CMA 1988), that the standard for admitting extrinsic evidence of other misconduct which was otherwise admissible was whether there is sufficient evidence for a reasonable court member to believe that the accused in fact committed the extrinsic offense. Applying the standard of *Mirandes-Gonzalez* in *United States v. Cuellar*, 27 MJ 50 (CMA 1988), the Court held that the military judge properly admitted evidence of prior uncharged acts of sexual molestation for which the accused had been previously tried and acquitted in state courts. However, the Court further held that the military judge erred by not allowing the defense to introduce evidence of such acquittals but found no prejudice in view of the other overwhelming evidence of guilt in the case.

Search and Seizure

In *United States v. Clow*, 26 MJ 176 (CMA 1988), the Court held that a military accused's husband who had moved out of the accused's apartment but who returned on numerous occasions by retaining a key to such apartment could give a valid consent to a search of the apartment as he exercised sufficient control over the premises for such purpose. Additionally, the Court held that the officials could have relied on his apparent authority to grant the consent in question. The issue of whether an accused retained some reasonable expectation of privacy in his former residence was addressed by the Court in *United States v. Ayala*, 26 MJ 190 (CMA 1988). The Court concluded that the accused in this case had not retained such expectation of privacy since he was clearing his residence and had surrendered his keys to a third-party cleaning service, even though he retained some residual responsibility over such residence. Additionally, the Court held in *Ayala* that the entry into the accused's hotel room and his apprehension therein by criminal

investigators did not require prior command authorization under *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980), because there were exigent circumstances, including the murder of the accused's wife and the ensuing danger to other persons in the hotel room, which justified his arrest without prior command authorization.

Mental Responsibility

The Court addressed the question of the admissibility of evidence pertaining to an accused's state of mind and whether such evidence was barred by RCM 916(k)(1) in *Ellis v. Jacob*, 26 MJ 90 (CMA 1988). Therein it was argued that an accused should not be allowed to introduce evidence that he was unable to form a specific intent to kill as a result of extreme sleep deprivation because the accused was not asserting an issue of mental responsibility as set forth in Article 50a, UCMJ. However, the Court ruled that although the accused was not raising an issue of mental responsibility, an intent to kill was an element of the charged offense and, thus, there was a distinction between the defense of mental responsibility and defense evidence attacking an element of the Government's proof. Therefore, the Court concluded that RCM 916(k)(2), which addresses the admissibility of evidence pertaining to mental responsibility, did not preclude the proffered defense evidence in this case.

Substantive Law

The question of whether an accused could be convicted of arson under Article 126, UCMJ, where the owner of the property had entered into an agreement with the accused to burn such property, was addressed by the Court in *United States v. Banta*, 26 MJ 109 (CMA 1988). The Court ruled that the malice involved in arson need not be directed toward any particular being or entity and that, therefore, the owner's consent for the burning in order to defraud an insurance company was more than sufficient to constitute malice and did not preclude the accused's conviction of arson. In *United States v. Johnson*, 26 MJ 415 (CMA 1988), the Court held that the accused's alleged conduct of attempting suicide to avoid prosecution was sufficient to constitute the offense of malingering under the provisions of Article 115, UCMJ. Subsequently, in *United States v. Mervine*, 26 MJ 482 (CMA 1988), the Court held that an attempted larceny was not committed when the accused attempted to obtain a cancellation of a debt by improper means. Examining the definition of larceny under Article 121, UCMJ, the Court concluded that the term was used in the same manner as at common law and required the taking of some form of tangible property. As such conduct was not involved in the case under consideration, the conviction for attempted larceny was set aside.

Right Against Self-Incrimination

Although accepting the military judge's findings that an accused made no statement before he was advised by an investigator of his rights under Article 31, UCMJ, the Court held in *United States v. Byers*, 26 MJ 132 (CMA 1988), that the investigator acted improperly by interviewing such accused for approximately 20 to 40 minutes prior to advising him of his rights, since the conduct of the investigator did constitute an interrogation. However, the Court further held that the investigator's tactics did not create a presumptive taint so great that it could not be cut off by a proper warning of the accused's rights. Thus, the Court upheld the military judge's decision to admit the statement, but observed that the investigator's conduct in failing to comply with Article 31(b) was one of the circumstances to be considered along with others in determining whether the statements made by the accused after receiving the warning were voluntary.

The Court ruled in *United States v. Holt*, 27 MJ 57 (CMA 1988), that an accused's statements during a providence inquiry could be used as an admission at the sentencing hearing, since such accused waived his Article 31, UCMJ, rights as to the charged misconduct.

Hypnosis

In *United States v. Robinson*, 26 MJ 361 (CMA 1988), the Court was required to resolve a claim by an accused that his previous interviews, which were conducted while he was under hypnosis, rendered his subsequent statements involuntary. The Court agreed that statements uttered while under a hypnotic state were intrinsically unreliable but rejected the accused's claim that his subsequent statements were a product of such hypnotic state. The Court noted that there was an interval of approximately six months between the hypnotic interviews and the statements in question and, upon examination of the remaining evidence, concluded that the statements were not involuntary and that the military judge properly accepted them into evidence.

Discrimination

In *United States v. Santiago-Davila*, 26 MJ 380 (CMA 1988), the Court held that *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986), applied to court-martial proceedings. Noting that *Batson* is based on an equal-protection right to be tried by a jury from which no "cognizable racial group" has been excluded, and that the Armed Services of the United States have been a leader in eradicating racial discrimination, the Court held that this equal-protection right must apply to court-martial proceedings. As the record indicated that the trial counsel peremptorily challenged the only court member who had an Hispanic surname and had grown

up in Puerto Rico, the Court held that the record reflected a prima facie showing of discrimination against the accused, who also had an Hispanic surname and had grown up in Puerto Rico. The Court therefore remanded the case for a limited hearing to determine if the Government could articulate a neutral explanation for the trial counsel's exercise of his peremptory challenge and, thus, establish a proper basis for the exclusion of the court member in question.

In *United States v. Boyd*, 27 MJ 82 (CMA 1988), the Court emphasized that the prosecution bears a heavy burden to demonstrate under the standard of *Kastigar v. United States*, 406 U.S. 441, 92 S.Ct. 1653, 32 L.Ed.2d 212 (1972), that the decision to prosecute as well as new evidence against an accused was developed wholly independently of such accused's previous immunized testimony in another court-martial. After examining the record in *Boyd* the Court held that the prosecution had failed to meet this heavy burden and reversed the accused's conviction.

Speedy Trial

After examining the purpose of the requirements for a speedy trial set forth in *United States v. Burton*, 21 USCMA 112, 44 CMR 166 (1971), the Court held in *United States v. McCallister*, 27 MJ 138 (CMA 1988), that "the part of *Burton* which sets out a distinct right to a speedy trial based simply on an accused's demand therefor is overruled, prospectively." The Court noted in this regard that the adoption of speedy trial standards set forth in RCM 707, the accused's Sixth Amendment rights, and the 90-day incarceration rule in *Burton* fully met the purpose sought to be served originally by the "demand prong" of *Burton*.

Robinson O. Everett
Chief Judge

Walter T. Cox, III
Associate Judge

Eugene R. Sullivan
Associate Judge

USCMA STATISTICAL REPORT

Fiscal Year 1988

CUMULATIVE SUMMARY

| | |
|------------------------------------|-----------|
| CUMULATIVE PENDING OCTOBER 1, 1987 | |
| Master Docket..... | 177 |
| Petition Docket..... | 442 |
| Miscellaneous Docket..... | <u>0</u> |
| TOTAL..... | 619 |
| CUMULATIVE FILINGS | |
| Master Docket..... | 130 |
| Petition Docket..... | 2195 |
| Miscellaneous Docket..... | <u>35</u> |
| TOTAL..... | 2360 |
| CUMULATIVE TERMINATIONS | |
| Master Docket..... | 242 |
| Petition Docket..... | 2364 |
| Miscellaneous Docket..... | <u>32</u> |
| TOTAL..... | 2638 |
| CUMULATIVE PENDING OCTOBER 1, 1988 | |
| Master Docket..... | 65 |
| Petition Docket..... | 273 |
| Miscellaneous Docket..... | <u>3</u> |
| TOTAL..... | 341 |

OPINION SUMMARY

| CATEGORY | SIGNED | PER CURIAM | MEM/ORDER | TOTAL |
|---------------------------|--------|------------|-----------|-------|
| Master Docket..... | 121 | 6 | 115 | 242 |
| Petition Docket..... | 0 | 0 | 2364 | 2364 |
| Miscellaneous Docket..... | 2 | 1 | 29 | 32 |
| TOTAL..... | 123 | 7 | 2508 | 2638 |

FILINGS (MASTER DOCKET)

| | |
|---|------------|
| Mandatory appeals filed..... | 0 |
| Certificates filed..... | 13 |
| Reconsideration granted..... | 0 |
| Petitions granted (from Petition Docket) ¹ | <u>117</u> |
| TOTAL | 130 |

TERMINATIONS (MASTER DOCKET)

| | | | |
|-----------------------------------|------------|--------------------|------------|
| Findings & sentence affirmed..... | 114 | | |
| Reversed in whole or in part..... | 87 | Signed..... | 121 |
| Granted petitions vacated..... | 0 | Per curiam..... | 6 |
| Other disposition directed..... | <u>41</u> | Mem/order..... | <u>115</u> |
| TOTAL | 242 | TOTAL | 242 |

PENDING (MASTER DOCKET)

| | |
|-----------------------------|-----------|
| Awaiting briefs..... | 11 |
| Awaiting oral argument..... | 46 |
| Awaiting final action..... | <u>8</u> |
| TOTAL | 65 |

FILINGS (PETITION DOCKET)

| | |
|--|-------------|
| Petitions for grant of review filed..... | 2185 |
| Petitions for new trial filed..... | 6 |
| Cross-petitions for grant filed..... | <u>4</u> |
| TOTAL | 2195 |

TERMINATIONS (PETITION DOCKET)

| | | | |
|------------------------------------|-------------|--------------------|-------------|
| Petitions for grant dismissed..... | 6 | | |
| Petitions for grant denied..... | 2196 | | |
| Petitions for grant granted..... | 117 | | |
| Petitions for grant remanded..... | 28 | Signed..... | 0 |
| Petitions for grant withdrawn..... | 16 | Per curiam..... | 0 |
| Other..... | <u>1</u> | Mem/order..... | <u>2364</u> |
| TOTAL | 2364 | TOTAL | 2364 |

PENDING (PETITION DOCKET)

| | |
|--|------------|
| Awaiting briefs..... | 151 |
| Awaiting Central Legal Staff review..... | 93 |
| Awaiting final action..... | <u>29</u> |
| TOTAL | 273 |

¹ In 16% of these cases, the Court specified issues which were not raised by the appellant.

FILINGS (MISCELLANEOUS DOCKET)

| | |
|--|-----------|
| Writs of error coram nobis sought..... | 0 |
| Writs of habeas corpus sought | 3 |
| Writs of mandamus/prohibition sought | 22 |
| Other extraordinary relief sought | 4 |
| Writ appeals sought | 6 |
| TOTAL | 35 |

TERMINATIONS (MISCELLANEOUS DOCKET)

| | | | |
|---------------------------|-----------|--------------------|-----------|
| Petitions withdrawn..... | 1 | | |
| Petitions remanded..... | 3 | | |
| Petitions granted..... | 3 | Signed | 2 |
| Petitions denied..... | 25 | Per curiam | 1 |
| Petitions dismissed | 0 | Mem/order..... | 29 |
| TOTAL | 32 | TOTAL | 32 |

PENDING (MISCELLANEOUS DOCKET)

| | |
|-------------------------------------|----------|
| Awaiting briefs..... | 1 |
| Awaiting Writs Counsel review | 0 |
| Awaiting final action | 2 |
| TOTAL | 3 |

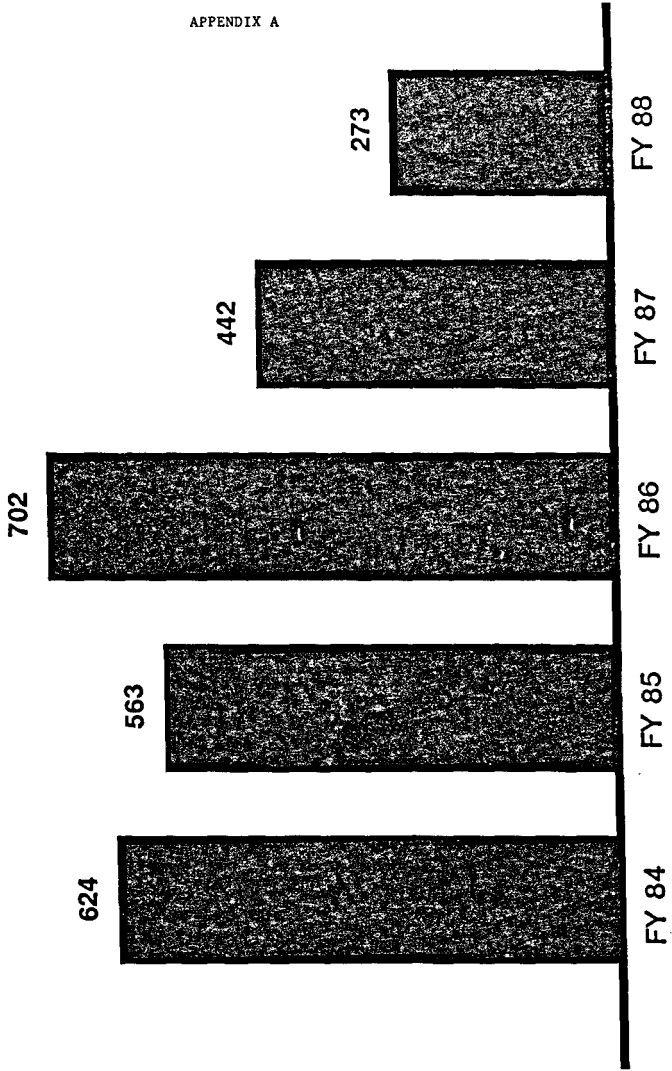
RECONSIDERATIONS & REHEARINGS

| CATEGORY | BEGIN PEND- ING | FILINGS | END PEND- ING | DISPOSITIONS | | |
|-----------------------|-----------------------|-----------|---------------------|--------------|-----------|-----------|
| | | | | Granted | Rejected | TOTAL |
| Master Docket..... | 2 | 11 | 0 | 2 | 11 | 13 |
| Petition Docket | 1 | 11 | 0 | 1 | 11 | 12 |
| Misc. Docket | 0 | 4 | 0 | 0 | 4 | 4 |
| TOTAL | 3 | 26 | 0 | 3 | 26 | 29 |

MOTIONS ACTIVITY

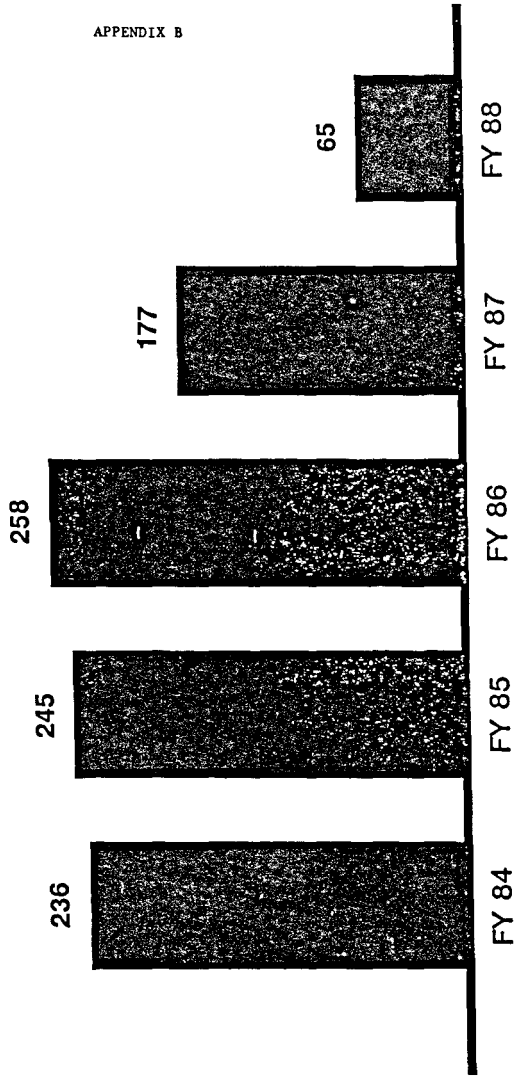
| CATEGORY | BEGIN PEND- ING | FILINGS | END PEND- ING | DISPOSITIONS | | |
|-------------------|-----------------------|---------|---------------------|--------------|----------|-------|
| | | | | Granted | Rejected | TOTAL |
| All motions | 21 | 537 | 26 | 433 | 99 | 532 |

PETITION DOCKET YEAR END PENDING



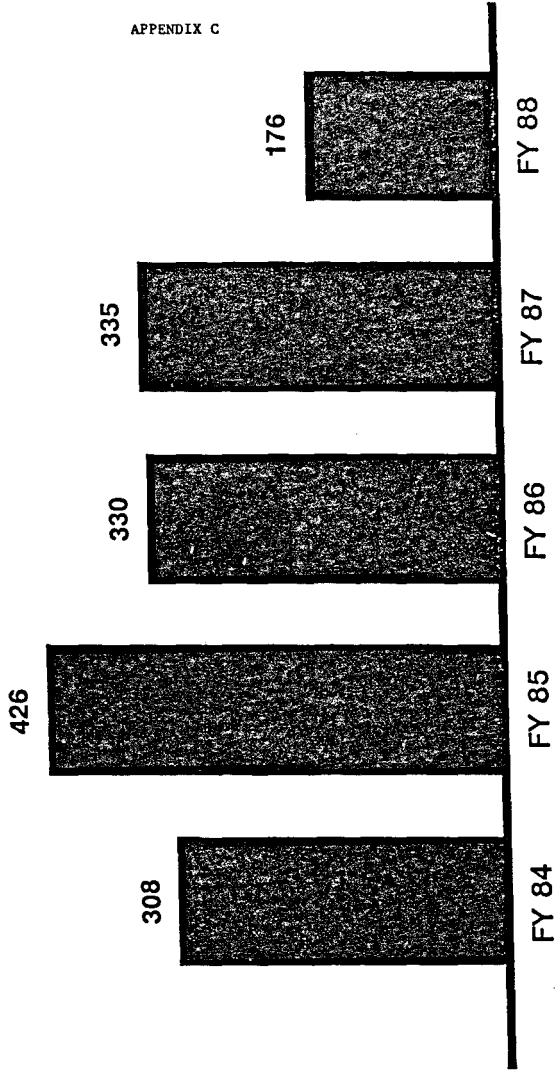
MASTER DOCKET YEAR END PENDING

APPENDIX B

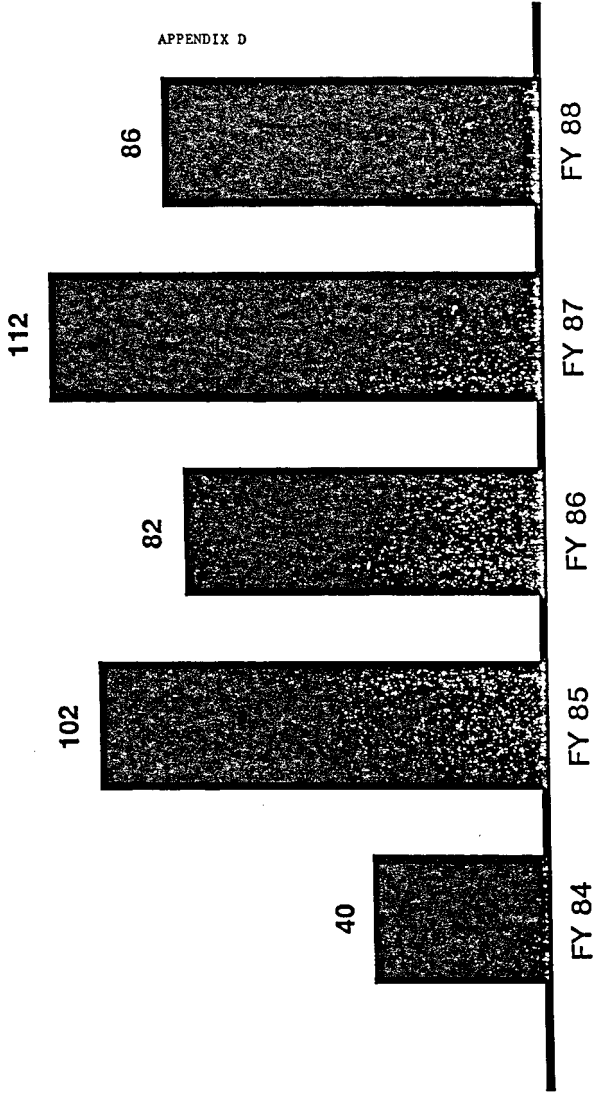


**DAYS FROM PETITION GRANTED
TO ORAL ARGUMENT**

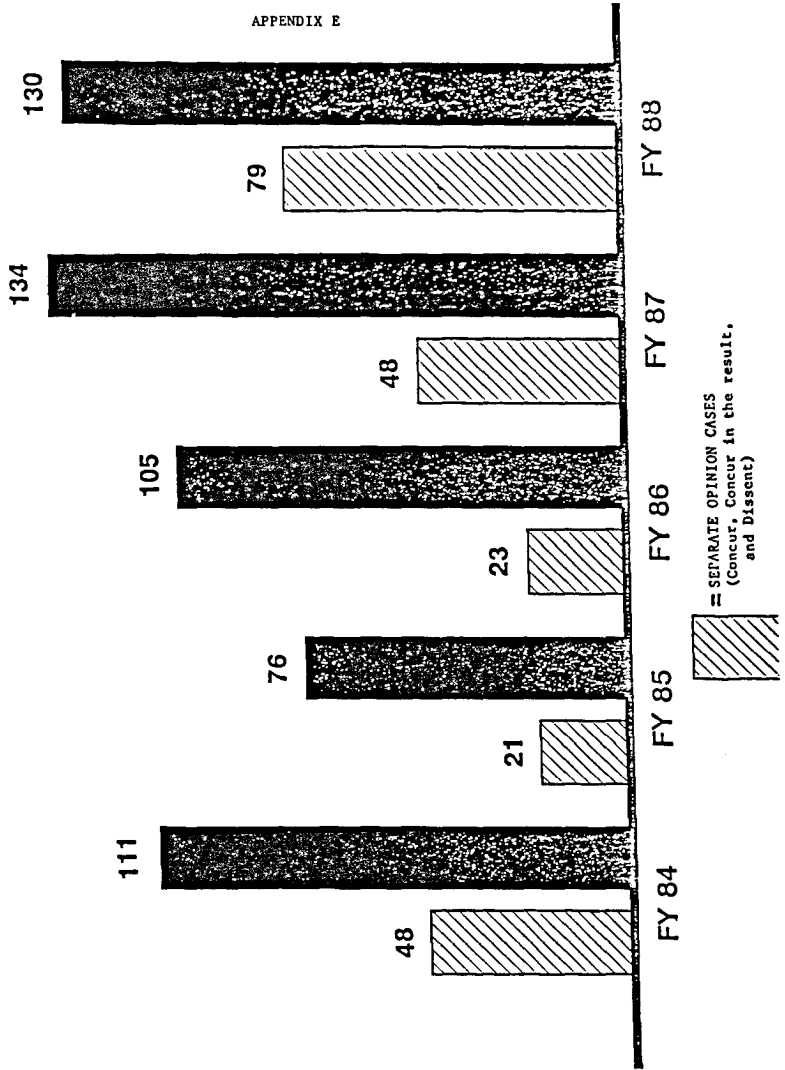
APPENDIX C



ORAL ARGUMENTS PER YEAR



TOTAL OPINIONS PER YEAR



**REPORT OF
THE JUDGE ADVOCATE GENERAL OF THE ARMY
OCTOBER 1, 1987 TO SEPTEMBER 30, 1988**

During fiscal year 1988, 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 JUDICIAL ACTIVITIES**

During fiscal year 1988, 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 1988 was 1.8% lower than for 1987. This overall decrease reflects primarily a decrease in special and summary courts-martial (i.e., a 12.2% decrease in special courts-martial empowered to adjudge a bad-conduct discharge (BCD), a 15.4% decline in non-BCD special courts-martial and a 5.5% decline in summary courts-martial). There was an 11.6% increase in the number of general courts-martial. The overall conviction rate for fiscal year 1988 was 95.6% which represents a slight increase from the 94.5% conviction rate for the previous fiscal year. The decrease in the overall courts-martial rate for the last few years is consistent with the U.S. Army Court of Military Review having 75 fewer cases referred for its review and a 7.2% decrease in the number of cases reviewed (from 2119 to 1966) during fiscal year 1988.

**STATISTICAL SUMMARY: FISCAL YEAR 1988
(See Appendix A)**

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, the Litigation

Division, the Procurement Fraud Division, the Environmental Law Division and the Professional Recruiting Office. The latter seven sections have no function related to the U.S. Army Judiciary and its courts-martial mission, but the Litigation Division does play a significant role in the military justice system through its defense in various federal civil courts of actions taken pursuant to the Uniform Code of Military Justice. 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 Litigation Division is responsible for representing Army interests in defensive and affirmative Federal civil litigation. The Procurement Fraud Division is responsible for asserting and monitoring the prosecution of government remedies against fraud and irregularities in the Army acquisition process. The Environmental Law Division, established August 5, 1988 by order of the Secretary of the Army, is responsible for providing advice and guidance to the ARSTAF on environmental legal issues, as well as serving as the agency counsel in environmental litigation in coordination with the Office of the General Counsel and Department of Justice. The Professional Recruiting Office coordinates the recruitment of lawyers in the Army. An Information Management Office facilitates automation of the Agency.

U.S. ARMY JUDICIARY

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

U.S. ARMY TRIAL DEFENSE SERVICE

During fiscal year 1988, the United States Army Trial Defense Service (USATDS) continued to provide high-quality, professional defense counsel services to soldier clients world-wide. USATDS counsel represented 2017 clients at proceedings conducted under Article 32, UCMJ, 1708 clients at general courts-martial, and 1201 clients at special courts-martial. USATDS counsel advised 74,910 clients regarding nonjudicial punishment under Article 15, UCMJ, and 33,690 clients regarding a variety of administrative separation actions.

USATDS continued to send a counsel to the Sinai in support of the Multi-National Force while other counsel participated in command training exercises and numerous deployments. Additionally,

USATDS established a defense counsel position at Cakmakli, Turkey. USATDS initiated cross-service agreements with judge advocates of other US Armed Forces to provide mutual support at specified locations overseas. In May 1988, USATDS published specific guidelines for providing defense counsel services under expanded military justice jurisdiction over reserve components.

TRIAL COUNSEL ASSISTANCE PROGRAM

During fiscal year 1988, the U.S. Army Trial Counsel Assistance Program (TCAP) served as a source of information, advice, and training for U.S. Army prosecutors world-wide. The program responded to nearly 1200 requests for assistance, participated in five major special prosecutions, and provided written guidance on all areas of criminal trial advocacy. The program conducted two-day training seminars at nine locations in the United States, four in the Federal Republic of Germany, and one in Korea. While the vast majority of the attendees were Army prosecutors, attendees included members of the Navy, Marine Corps, Coast Guard, and Air Force. Additionally, a large number of reserve judge advocates began attending these seminars. Starting in July, Staff Judge Advocate offices were unable to fund trial counsel attendance at TCAP seminars. To continue its mission, TCAP conducted 13 one day assistance visits/training seminars at the installation level. Throughout the year, TCAP trained in excess of 450 counsel. The program continues to publish a monthly TCAP Training Memorandum informing all trial counsel of new criminal law developments and trial techniques. A more analytical review of new developments is provided through the TCAP's Trial Counsel Forum portion of *The Army Lawyer*.

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 to include military corrections, the Army's drug testing program, professional responsibility of attorneys and expanded UCMJ jurisdiction over reservists; rendering opinions for the Army Staff; reviewing various aspects of criminal cases for action by the Army Secretariat and Staff; and evaluation of ongoing major projects. During fiscal year 1988, Criminal Law Division responded to 120 White House inquiries, 298 Congressional inquiries, 23 requests for legal opinions from the Army Board for the Correction of Military

Records, 443 letters relating to military justice matters written to the Secretary of Defense, Secretary of the Army, and 12 other miscellaneous inquiries. The office also processed 62 clemency petitions under Article 74, Uniform Code of Military Justice (UCMJ), 27 officer dismissal cases for Secretary of the Army approval, 12 requests for Presidential pardon and 13 Freedom of Information Act/Privacy Act requests.

CHANGE OF MILITARY JUSTICE REGULATION

Army Regulation (AR) 27-10, Military Justice was revised effective April 18, 1988. This regulation now contains a new Chapter 21, Military Justice within the Reserve Components. This chapter was needed to implement Title VIII, National Authorization Act for fiscal year 1987 (Military Justice Amendments of 1987). It sets out the procedures for the imposition of punishment under Article 15, UCMJ, by Reserve Component Commanders, and the procedures for the involuntary active duty of a reserve soldier when action under the UCMJ is contemplated.

Other AR 27-10 revisions: incorporate the Single Source Data Item program and change the procedures for filing records of punishment under Article 15; provide guidance for the granting of Court-Martial Convening Authority; reference the Army Rules of Professional Conduct for Lawyers as the applicable standard of ethical conduct, replacing the ABA Model Code of Professional Responsibility; authorize military judges to conduct hearings pursuant to AR 190-47 at USDB to determine the need for psychiatric care; include, in the list of victim services, the use of transportation and household goods shipment for family members of soldiers; and correct an error in printing of the last change in the procedural rules for the filing of an Article 138 complaint.

JOINT-SERVICE COMMITTEE ON MILITARY JUSTICE

The Judge Advocates General and 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 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 public comment period on the third annual review of the Manual concluded on October 5, 1987. The Joint-Service Committee considered the comments received, made minor modifications to proposals contained in the review, and submitted a revised proposed executive order to the Office of the General Counsel, Department of Defense on February 19, 1988. In May 1988, the proposal was coordinated with the services, and on July 17, 1988, the proposed executive order was submitted to the Office of Management and Budget for evaluation and interdepartmental coordination.

The fourth annual review of the Manual was completed on April 29, 1988. The proposed amendments included establishing Article 32 witness availability limits, allowing unsworn witness statements at Article 32 investigations in time of war, permitting pretrial conferences over objection of a party, authorizing capital punishment in certain felony-murder cases, requiring defense counsel advice to accused of post-trial and appellate rights, increasing the authorized maximum punishment for escapes from post-trial confinement, and clarifying staff judge advocate's post-trial recommendation requirements. Other minor technical amendments were also included. The public comment period began on July 11, 1988 and concluded on September 26, 1988. The Joint-Service Committee considered the comments received and, on October 21, 1988, submitted a revised proposed executive order to the Office of the General Counsel, Department of Defense. In November 1988, the proposal was coordinated with the services, and on November 25, 1988, the proposed executive order was submitted to the Office of Management and Budget for evaluation and interdepartmental coordination.

The Joint-Service Committee approved the following three legislative proposals and submitted them to the Office of the General Counsel, Department of Defense for interdepartmental coordination and submission to Congress. On March 11, 1988, a Navy proposal to amend Article 57(a), UCMJ, to make, absent Secretarial regulation to the contrary, forfeiture of pay and allowances and reductions in grade effective upon announcement of the sentence was approved. On September 21, 1988, an Army proposal to amend Article 136, UCMJ, to allow civilian legal assistance attorneys to act as notaries public and to allow all persons eligible for legal assistance to use notarial services within the United States and abroad was approved, and a CMA proposal to amend Article 48, UCMJ, concerning the appropriate scope of military contempt powers was approved.

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 December 1, 1986 through November 30, 1987, a total of 152,562 United States personnel, military and civilian, were charged with offenses subject to the primary or exclusive jurisdiction of foreign tribunals. A total of 135,544 of these offenses were charged against military personnel. Of this number 117,966 of the charges against military personnel were subject to exclusive foreign jurisdiction. Nonetheless, foreign authorities released 915 of the exclusive foreign jurisdiction offenses to United States military authorities for appropriate disposition.

The rest of the military offenses subject to foreign jurisdiction, totaling 17,578 offenses, were concurrent jurisdiction offenses involving alleged violations of both United States military law and foreign law over which the foreign country had the primary right to exercise jurisdiction. United States military authorities obtained a waiver of primary foreign jurisdiction in 15,808 of these incidents, for a world-wide waiver rate of 89.9 percent.

Foreign authorities reserved for their disposition a total of 118,821 offenses allegedly committed by military personnel. A total of 117,864 of these offenses were relatively minor (simple assault, disorderly conduct, and traffic offenses). Traffic violations comprised 99.5 percent, or 117,402 of these offenses.

A total of 17,018 civilian employees and dependents were charged with offenses subject to foreign jurisdiction. As civilians are not subject to trial by courts-martial in peacetime, the United States had no effective jurisdiction over these offenses. Nonetheless, foreign authorities released 332 of these offenses, or 1.95 percent of the total, to United States military authorities for administrative or other appropriate disposition.

There were 135,469 final results of trial, i.e., final acquittals or final convictions for military, civilian and dependents. Of this number 360 (.3 percent of the final results) were acquittals and 131,576 (99.6 percent) were sentences to a fine or reprimand. The remainder of the final results of trial consisted of 60 sentences to confinement and 96 suspended sentences to confinement.

LITIGATION

Civil litigation against the Department of the Army and its employees continued to increase during FY 88. Challenges affecting the civilian courts' interpretation of the Uniform Code of Military Justice and the validity of actions taken pursuant to it, continue to provide a small but significant portion of those actions. In addition there were numerous proceedings seeking collateral review of the merits of courts-martial. Such litigation included challenges to the

validity of nonjudicial punishments, challenges to the conditions of confinement, and challenges to the statutory scheme requiring a hearing by the Court of Military Appeals as a prerequisite to seeking a writ of certiorari from the United States Supreme Court for direct review of the results of a court-martial.

EDUCATION AND TRAINING

During fiscal year 1988, The Judge Advocate General's School, located in Charlottesville, Virginia, provided legal education to lawyers of the military services and other federal agencies. Forty-two resident courses were conducted with 3,159 students in attendance. Courses were attended by 1,503 Army, 79 Navy, 68 Marine, 146 Air Force, 22 Coast Guard, 495 Army Reserve, 57 Army National Guard officers, 73 enlisted soldiers, 695 civilian, and 21 international military students. Three Basic Course Classes, the 114th, 115th, and 116th, graduated with a total of 206 Judge Advocate General's Corps (JAGC) officers.

On December 4, 1987, The Judge Advocate General's School became the nation's only government entity statutorily authorized to confer the degree of Master of Laws in Military Law. The School's degree conferring authority was included in the Defense Authorization Act, signed into law by President Reagan. As stipulated in 10 U.S.C. 4315:

Under regulations prescribed by the Secretary of the Army, the Commandant of The Judge Advocate General's School of the Army may, upon the recommendation of the faculty of such school, confer the degree of Master of Laws (LL.M.) in Military Law upon the graduates of the school who have fulfilled the requirements for that degree.

On May 20, 1988, the 71 students of the 36th Graduate Class became the first officers to receive The Judge Advocate General's School Master of Laws in Military Law. In addition to 62 Army judge advocates, the class consisted of five Marines, one Navy, and three international military students. The 37th Graduate Class began on August 1, 1988. This class contains 47 Army, five Marines, one Navy, and four international military students.

During fiscal year 1988, the School continued to provide senior officers with legal orientations prior to their assumption of command. Twenty-three general officers attended General Officer Legal Orientation Courses, and 254 battalion and brigade command designees attended one of five resident Senior Officers Legal Orientation Courses. Additionally, instructors from the School participated in twelve Pre-Command Courses conducted at Fort Leavenworth, Kansas, for battalion and brigade command designees. The

School also provided orientations on Army legal issues to the DOD General Counsel and an Assistant DOD General Counsel.

The Criminal Law Division sponsored four resident continuing legal education (CLE) courses in fiscal year 1988. The Criminal Trial Advocacy Course was presented twice, in November and February, the Military Justice Course in May-June, and the Criminal Law New Developments Course in August. Outstanding guest speakers for these courses included Chief Judge Robinson O. Everett, Court of Military Appeals; Judge Walter T. Cox, Court of Military Appeals; Brigadier General Ronald M. Holdaway, Commander, U.S. Army Legal Services Agency and Chief Judge of the U.S. Army Court of Military Review; and noted trial attorneys F. Lee Bailey, Eugene R. Fidell, and Donald L. Wolff. In addition to sponsoring these CLE courses, three nonresident courses were presented in Germany in October and nonresident instruction was provided in five different countries during the Pacific Command trip in September.

The International Law Division sponsored five resident CLE courses, each lasting one week, in fiscal year 1988. The Law of War Workshop, held three times, continued to provide practical law of war training to legal officers from all four armed forces and to several international military students. The Legal Aspects of Terrorism course offered by the Division continued the tradition, established in prior courses, of augmenting the School's instruction with presentations by experts from the Department of Defense, the Department of State, the Department of Justice, and the Federal Bureau of Investigation. A representative of the Ministry of Defense of the Federal Republic of Germany attended the course and also gave a presentation on terrorism counteraction in the Federal Republic. All involved actively discussed the various legal issues confronted during terrorism counteraction operations, whether conducted domestically or overseas. The Third Judge Advocate and Military Operations Seminar and the second quarter International Law instruction to the 36th Graduate Course presented the concept of Operational Law (OPLAW) as a fully evolved legal discipline focusing on those legal issues, both domestic and international, associated with the preparation for and deployment of U.S. forces overseas, in both peacetime and combat environments. The Division also presented instruction to the Judge Advocate Triennial Training and Judge Advocate Officer Advanced Courses, both attended by Reserve officers. All courses sponsored by the Division continued to stress the practical application of International Law, an approach designed to prepare judge advocates to serve as valuable members of a commander's operations team.

The Contract Law Division sponsored eleven CLE courses in fiscal year 1988. These courses were designed to meet the needs of

all attorneys involved in the federal acquisition process, from the novice to the most experienced professional. Courses addressed contract law as practiced at military installations and at commands devoted to research, development and acquisition of weapons and major end items. They included the two-week Contract Attorneys Course, which was offered three times to a total of 197 students. The Division also presented two Fiscal Law Courses to 176 students and the annual week-long Government Contract Law Symposium, attended by 164 attorneys from throughout the Department of Defense. The Division also presented the Advanced Acquisition Courses providing in-depth instruction to 74 students in the acquisition of weapons and other supplies. Additionally, the Division presented the Contract Claims, Litigation and Remedies Course to 32 attorneys, and the Commercial Activities Program Course to 63 attorneys. Two new courses were also added to the contract law curriculum in fiscal year 1988. The First Advanced Installation Contracting Course was presented to 57 attorneys who practice contract law at military installations. Also, the First Program Managers' Attorneys Course was presented to 41 attorneys whose responsibilities include providing legal advice to program managers of major weapon systems. Finally, personnel of the Contract Law Division presented contract law instruction at ten Reserve Component Technical Training sites, a CLE course on New Developments in Contract Law to military and civilian personnel stationed in Europe, and the Fiscal Law Course to the Corps of Engineers in Europe.

The Administrative and Civil Law Division conducted six continuing legal education courses, including two presentations of the Legal Assistance Course, two presentations of the Federal Labor Relations Course, the Administrative Law for Military Installations Course, and the Federal Litigation Course. In addition, instructors presented classes at the Administrative Law, Tax, and Legal Assistance Conferences in Europe. One instructor taught installation commanders during five separate Army Installation Management Courses at Fort Lee, Virginia. The Division also provided an instructor for the Western Pacific Command (WESTPAC) CLE trip, presenting instruction at five locations. Two instructors from the Administrative and Civil Law Division taught classes at the Army Management Staff College.

The Legal Assistance Branch of the Administrative and Civil Law Division developed a package of proposed legislation to implement a federal statutory will act, and it wrote and coordinated a major revision and expansion of the wills and power of attorney portions of the Legal Automation Army-wide System (LAAWS) software. New and revised publications that were developed include the *Tax Information Series* and the *Legal Assistance Officer's*

Federal Income Tax Supplement, and a member of the Branch published an article in the *Military Law Review* on divorce taxation. The Branch also conducted a national study to develop the JAGC policy concerning the use of *inter vivos* trusts as estate planning devices and developed policies on referral of clients to civilian attorneys.

The Judge Advocate Guard and Reserve Affairs Department (GRA) sponsored two resident courses for Reserve Component Judge Advocates in fiscal year 1988. Approximately 139 Army Reserve and National Guard judge advocates attended Triennial Training between 13 and 24 June 1988. This year the Contract Law and International Law/Claims Teams were trained. Phase VI of the Judge Advocate Officer-Advanced Course was attended by 148 students during this same period. The attendance by Army National Guard at Triennial Training reflects the Guard's continued strong participation in School programs. The 2072nd U.S. Army Reserve Forces School in Philadelphia, Pennsylvania, provided administrative support for both courses. The Department also sponsored the CLE (On-Site) Training Program. Between October 1987 and May 1988, the School provided CLE to 2463 officers in 23 regional population centers throughout the United States. Attendees represented all services and all components. On-Site attendance was up a strong sixteen percent in 1987-88, highlighted by strong showings by Active Army and Army National Guard judge advocates. The Guard hosted On-Sites this year in New Orleans, Puerto Rico, and in Park City, Utah. Interaction of Active and Reserve Component judge advocate officers in the On-Site Program continues to be invaluable. The last major training program hosted by GRA was the 1988 Judge Advocate General's Reserve Component Workshop during 12-15 April 1988. One hundred and thirty-nine senior Active and Reserve Component judge advocates met to discuss the significant legal and military issues facing the Reserve Components. Guest Speakers included Professor Graham Lilly, University of Virginia School of Law; Mr. Hays Parks, International Affairs Division, Office of The Judge Advocate General; Colonel Arthur Abercrombie, State Judge Advocate, Headquarters, State Area Command, Louisiana Army National Guard; Judge Eugene R. Sullivan, United States Court of Military Appeals; BG Paul L. Babiak, Commander, Army Reserve Personnel Center; and Mr. Tom Taylor, Office of the General Counsel, Department of the Army.

MAJOR PROJECTS

The School hosted the 1987 Judge Advocate General's Conference and Annual Continuing Legal Education Program during October 4-7, 1988. Over 170 senior judge advocates from posts throughout

the world conferred on areas of interest and discussed recent developments in 17 areas of military law. Guest speakers included the Honorable John O. Marsh, Secretary of the Army; Mr. John W. Matthews, Deputy Assistant Secretary of the Army (Army Military Review Boards and Equal Opportunity Compliance & Complaints Review Agency); Mrs. Susan Crawford, Army General Counsel; General Arthur E. Brown, Jr., Vice Chief of Staff, U.S. Army; and the Honorable Arnold I. Burns, Deputy Attorney General, U.S. Department of Justice.

The Fifth Gilbert A. Cuneo Lecture in Government Contract Law was presented on January 11, 1988, by Chief Judge Loren A. Smith, United States Claims Court. The Cuneo Lecture was entitled "A Judge's View of the Judicialization of the Administrative Process."

On April 20, 1988, the Fifth Waldemar A. Solf Lecture in International Law was presented by Professor Louis Henkin, Professor at Columbia University Law School. His presentation, "The President and Congress in Foreign Affairs," was well received.

On March 24, 1988, the 17th Annual Kenneth J. Hodson Lecture in Criminal Law was presented by Chief Justice Harry L. Carrico of the Supreme Court of Virginia. Chief Judge Carrico gave an outstanding lecture entitled "George Mason, John Marshall, and the Constitution."

The Twelfth Charles L. Decker Lecture was given on February 25, 1988, by Senator Strom Thurmond. Senator Thurmond's presentation was entitled "The Military Officer and the Constitution."

New editions of DA Pamphlet (Pam) 27-21, *Military Administrative Law Handbook*; DA Pam 27-153, *Contract Law*; DA Pam 27-173, *Military Justice: Trial Procedure*; and DA Pam 27-xx, *Crimes and Defenses*, will soon be issued. Revisions of several other publications are ongoing. A total of thirty-five instructional deskbooks are now 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*.

Combat Developments completed the development process of two JAGC Tables of Organization and Equipment (TOEs) with receipt of Department of the Army approval for both structures. The first TOE, Legal Services Command (26602L), will convert Table of Distribution and Allowance (TDA) requirements to TOE requirements. It will provide defense counsel and military judge assets to various TOEs on the AirLand Battlefield. The second TOE, Judge Advocate General's Service Organization (JAGSO), provides for the redistribution of assets within the current organization. The redesignated JAGSO TOE provides for more judge advocates; enhancing our ability to provide total legal services and legal support to deploying

TOE units that have no embedded legal assets. A proposal to add a mobilization and land defense of CONUS mission for CONUS-based JAGSO was presented at Force Structure Conference I (TAA 96). The proposal was approved for further development and presentation at Force Structure Conference II. Manpower Requirements Criteria studies for JAGC enlisted military occupational specialties (MOSs) were completed and boarded at Headquarters, Training and Doctrine Command. Studies for judge advocate and legal administrator areas of concentration (AOCs) continued from the prior fiscal year. The combat portion of the Legal Automation Army-wide System (LAAWS) was refined and expanded for continued use at the Army test site for the Battalion Personnel Administration Center Study located at the 24th Infantry Division (Mechanized), Fort Stewart, Georgia. This user-friendly program provides battalion and brigade-level legal personnel with a variety of frequently used legal formats and memoranda.

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 the fiscal year 1988 was 1759. Representing minority groups were 108 blacks, 30 Hispanics, 23 Asian and Native Americans, and 212 women. The fiscal year 1988 end strength compares with an end strength of 1820 in fiscal year 1987, 1825 in fiscal year 1986, and 1824 in fiscal year 1985. The grade distribution of the Corps at the end of the fiscal year was six general officers, 132 colonels, 211 lieutenant colonels, 354 majors, 985 captains, and 77 first lieutenants. There were 34 officers (30 captains and four first lieutenants) participating in the Funded Legal Education Program. There were also 69 warrant officers.

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

In November 1987 a selection board was convened to select 15 active duty commissioned officers to commence law school under the Funded Legal Education Program.

Eighty-six 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..... | 14 |
| Armed Forces Staff College..... | 3 |

| | |
|---|----|
| The Judge Advocate Officer Graduate Course..... | 62 |
| Defense Language Institute..... | 1 |
| Defense Project Manager's Course..... | 2 |

During fiscal year 1988, 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 is a separate competitive category, and selects and promotes its officers based on Judge Advocate General's Corps grade vacancies as they occur.

HUGH R. OVERHOLT
Major General, USA
The Judge Advocate General

APPENDIX A

Period: Fiscal Year 1988

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons) [A]

| TYPE COURT | TRIED | CONVICTED | ACQUITTALS | RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT |
|--|-------|-----------|------------|---|
| GENERAL | 1,631 | 1,560 | 71 | +11.6% |
| BCD SPECIAL [B] | 923 | 873 | 50 | -12.2% |
| NON-BCD SPECIAL | 181 | 154 | 27 | -15.4% |
| SUMMARY | 1,410 | 1,313 | 97 | - 5.5% |
| OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT | | | | - 1.8% |

PART 2 - DISCHARGES APPROVED [C]

| GENERAL COURTS-MARTIAL (CA LEVEL) | | |
|---------------------------------------|--|-----|
| NUMBER OF DISHONORABLE DISCHARGES [D] | | 532 |
| NUMBER OF BAD CONDUCT DISCHARGES | | 762 |
| SPECIAL COURTS-MARTIAL (SA LEVEL) | | |
| NUMBER OF BAD CONDUCT DISCHARGES | | 542 |

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

| | |
|---|-----------|
| FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL | 1,366 [E] |
| FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL | 594 [F] |
| FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL | 159 |

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

| | | |
|---|--------------|-------|
| TOTAL ON HAND BEGINNING OF PERIOD | 117 [G] | |
| GENERAL COURTS-MARTIAL [H] | | |
| BCD SPECIAL COURTS-MARTIAL | | |
| REFERRED FOR REVIEW | 2,068 [G, I] | |
| GENERAL COURTS-MARTIAL | | |
| BCD SPECIAL COURTS-MARTIAL | | |
| TOTAL CASES REVIEWED | 1,966 [J] | |
| GENERAL COURTS-MARTIAL | | |
| BCD SPECIAL COURTS-MARTIAL | | |
| TOTAL PENDING AT CLOSE OF PERIOD | 219 [G] | |
| GENERAL COURTS-MARTIAL | | |
| BCD SPECIAL COURTS-MARTIAL | | |
| RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD | | -7.2% |

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE U. S. ARMY COURT OF MILITARY REVIEW

| | |
|------------|-------|
| NUMBER | 1,949 |
| PERCENTAGE | 99.4% |

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

| | | |
|---|--------|--------|
| PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA | 45.9% | |
| PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD | - 2.7% | |
| PERCENTAGE OF TOTAL PETITIONS GRANTED | 6.9% | |
| PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD | - 1.8% | |
| PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR | 3.2% | |
| RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD | | - 2.1% |

APPENDIX A—CONTINUED

| PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69 | | |
|--|---------|-------|
| PENDING AT BEGINNING OF PERIOD | | 7 |
| RECEIVED | | 56 |
| DISPOSED OF | | 54 |
| GRANTED | 5 | |
| DENIED | 50 | |
| NO JURISDICTION [K] | 0 | |
| WITHDRAWN | 0 | |
| TOTAL PENDING AT END OF PERIOD | | 9 |
| PART 8 - ORGANIZATION OF COURT [L] | | |
| TRIALS BY MILITARY JUDGE ALONE | | |
| GENERAL COURTS-MARTIAL | | 1,102 |
| SPECIAL COURTS-MARTIAL | | 792 |
| TRIALS BY MILITARY JUDGE WITH MEMBERS | | |
| GENERAL COURTS-MARTIAL | | 523 |
| SPECIAL COURTS-MARTIAL | | 309 |
| PART 9 - COMPLAINTS UNDER ARTICLE 138 | | |
| NUMBER OF COMPLAINTS | 48 | |
| PART 10 - STRENGTH | | |
| AVERAGE ACTIVE DUTY STRENGTH | 775,583 | |
| PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15) | | |
| NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED | 91,915 | |
| RATE PER 1,000 | 118.51 | |
| RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD | -7.1% | |

PAGE 2 OF 2

NOTES

- [A] Original trials, not rehearings and new trials.
- [B] Referred to BCD-empowered SPCM.
- [C] Compiled from records received (Part 3).
- [D] In addition, 22 dismissals were approved.
- [E] Appellate review waived in 2 cases.
- [F] Appellate review waived in 1 case.
- [G] Includes only briefed cases at issue.
- [H] Pending cases are not accounted for by type of court.
- [I] Includes 7 writ petitions, 3 Article 62 appeals, 1 Article 69 referral, and 1 petition for certificate of innocence.
- [J] Two cases at issue withdrawn from review (plus 7 cases not at issue).
- [K] Applications filed out of time without good cause.
- [L] Compiled from cases in Part 1 of report.

**ANNUAL REPORT
of
THE JUDGE ADVOCATE GENERAL OF THE NAVY
pursuant to the
Uniform Code of Military Justice
for
FISCAL YEAR 1988**

**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 furtherance of the supervision of the administration of military justice.

TRAINING AT MILITARY JUDGES COURSES

Seven Navy officers (including one Reserve) and six Marine officers (including two Reserves) were trained at the Naval Justice School and one Navy officer was trained at the Army JAG School.

ARTICLE 69(a), UCMJ, EXAMINATIONS

Sixty-three general courts-martial, not statutorily eligible for automatic review by the Navy-Marine Corps Court of Military Review, were examined in the Office of the Judge Advocate General in fiscal year 1988. One required corrective action by the Judge Advocate General.

ARTICLE 69(b), UCMJ, APPLICATIONS

Fifty-five applications were received in fiscal year 1988 pursuant to Article 69(b), Uniform Code of Military Justice. Fifty-nine applications were denied on the merits, while relief was granted, in whole or in part, in 7 cases. Six cases are pending review.

ARTICLE 73, UCMJ, PETITIONS

In fiscal year 1988 seven petitions for new trial were reviewed by the Office of the Judge Advocate General. Six petitions were denied.

ARTICLE 74(b), UCMJ, PETITIONS

Six petitions were considered in fiscal year 1988 by the Secretary of the Navy. No relief was granted in any of the cases.

APPELLATE GOVERNMENT DIVISION

The Appellate Government Division filed a total of 944 pleadings with the Navy-Marine Corps of Military Review and the U.S. Court of Military Appeals. This excludes cases which were submitted to the courts without specific assignment of error. Additionally, the Division filed 5 briefs in opposition to petitions for writs of certiorari with the U.S. Supreme Court.

The Trial Counsel Assistance Program (TCAP) is a program established within the Appellate Government Division, Navy-Marine Corps Appellate Review Activity, and provides a central point of coordination to assist trial counsel in the effective prosecution of courts-martial. Four appellate counsel are detailed to implement this program which provides assistance through field calls, presentations, newsletters, a computer bulletin board, and a digest of major unpublished decisions. Field calls—in which a team concept is used to provide advice and assistance—totaled 561 for the year, an average of 47 per month, up from an average of 28 per month in FY 86 and 42 per month in FY 87.

Presentations:

a. October 87—Director, Appellate Government Division and two attorneys gave presentations to a combined Army-Navy Reserve Judge Advocate Conference at Minneapolis, MN.

b. June 88—Director, Appellate Government Division and one attorney gave presentations at a Military Justice Seminar in Philadelphia, PA, co-sponsored by the Naval Legal Service Office and the Federal Bar Association.

The Appellate Government Division also provided training during the fiscal year to reservists tasked to support the Division.

APPELLATE DEFENSE DIVISION

Appellate Defense Practice: The 18 officers assigned to the Appellate Defense Division reviewed a total of 3,634 cases in fiscal year

1988. Of that number, 482 cases were submitted to the U.S. Navy-Marine Corps Court of Military Review with specific assignments of error. The Division also raised specific assignments of error in 102 cases submitted to the U.S. Court of Military Appeals. Additionally, the Division submitted 4 writs of certiorari to the United States Supreme Court.

Trial Defense Training: The Appellate Defense Division has created a one-day trial advocacy seminar entitled Trial Advocacy and New Developments in Military Law. In the past 11 months, the course has been presented to 7 naval legal service offices (NLSOs) and 3 Marine Corps law centers in the United States. Additional trips are now being planned to present the course, which is taught by 5 of this Division's most experienced officers, to all remaining NLSOs and Marine Corps law centers worldwide.

Although the course is presented by the Appellate Defense Division, the materials and presentations are "content neutral"—i.e., this is not a defense-oriented course, but rather it is intended for all judge advocates who are in any way involved in litigating or reviewing courts-martial. The topics and problems selected for discussion are taken directly from cases reviewed by this Division, and cover such areas as speedy trial, search and seizure, extraordinary relief, post-trial review, child-abuse litigation, use of expert witnesses, residual hearsay, and extrinsic misconduct evidence.

NAVY-MARINE CORPS TRIAL JUDICIARY

The Navy-Marine Corps Trial Judiciary provided military judges for 880 cases referred for trial by general courts-martial (GCM) during fiscal year 1988, an increase of 47 general courts-martial from the fiscal year 1987 level. In fiscal year 1988, 695 (79%) of these general courts-martial were tried by military judge alone, as compared with 80% in fiscal year 1987.

There were 5,908 special courts-martial conducted during fiscal year 1988, an increase of 485 special courts-martial from the fiscal year 1987 level. In fiscal year 1988, 5,494 (93%) of these special courts-martial were tried by military judge alone. The fiscal year 1987 percentage of military judge alone cases was also 93%.

During fiscal year 1988, total in-court hours for all judges was 21,759 hours, which is 2,170 hours less than fiscal year 1987. For fiscal year 1988, total travel was 5,952 hours, which is a decrease of 105 hours.

1. Military Judges Attending Continuing Legal Education/ Seminars/Lectures/Meetings/Conferences.

- a. East Coast Military Judges' meeting
—Naval Air Station, Norfolk, VA

- 25 active-duty Navy and Marine Corps judges; 12 reserve Navy and Marine Corps judges; 1 active-duty Air Force judge and 1 active-duty Army judge
- b. West Coast Military Judges' Meeting
 - Naval Training Center, San Diego, CA
 - 19 active-duty Navy and Marine Corps judges; 8 reserve Navy and Marine Corps judges; 1 active-duty Air Force judge
- c. Fifteenth Interservice Military Judges' Seminar
 - Maxwell Air Force Base, Montgomery, AL
 - 10 active-duty Navy and Marine Corps judges; 4 reserve Navy and Marine Corps judges
- d. National Judicial College, Reno, NV
 - Advanced Evidence
 - 2 active-duty Marine Corps judges
- e. Department of Justice
 - The Legal Education Institute, Washington, DC
 - Advocacy Skills: Expert Witnesses and Trial Evidence: A Videotaped Lecture Series by Irving Younger
 - 3 active-duty Navy and Marine Corps judges
- f. Military Judges' Course
 - U.S. Army JAG School, Charlottesville, VA
 - 4 active-duty Navy and Marine Corps judges
- g. Military Judges' Course
 - Naval Justice School, Newport, RI
 - 3 active-duty Navy and Marine Corps judges
 - 4 Navy and Marine Corps reserve judges
- h. U.S. Army Judge Advocate Officer Graduate Course
 - U.S. Army JAG School, Charlottesville, VA
 - 1 active-duty Marine Corps judge
- i. Winter Leadership Conference
 - United States Marine Corps, Greensboro, NC
 - 1 active-duty Marine Corps judge
- j. Senior Officer Short Courses in Military Justice
 - Various times and locations
 - presented by 1 active-duty Navy or Marine Corps judge
- k. American Correctional Association, College Park, MD
 - American Correctional Association Meeting, Denver, CO
 - Chief Judge participated with Army and Air Force judges
- l. Military Law Institute
 - 13th Annual Homer Ferguson Conference
 - 5 active-duty Navy judges
- m. National Institute of Trial Advocacy (NITA)
 - various locations and times
 - 5 active-duty Navy and Marine Corps judges have participated in training trial advocates
- n. Computer Training

- DOD Computers Institute, Washington Navy Yard
- Automated Information Systems Management for Intermediate Executives
- 2 active-duty Navy judges
- o. Trial Advocate Training Evolutions
 - Long Beach, CA
 - 3 active-duty Navy judges and one active duty Army judge; 14 reserve Navy judges and 1 reserve Army judge
 - Philadelphia, PA
 - 3 active-duty Navy and Marine Corps judges; 1 reserve Navy judge; 1 civilian judge
- p. Reserve judge training for contested cases
 - Chicago, IL
 - 15 reserve Navy and Marine Corps judges
- q. Military Judges' Seminar
 - Quantico, VA
 - 3 active-duty Navy and Marine Corps judges; 2 former Marine Corps judges
- r. Island Judicial Circuit Trial Advocacy Training
 - Pearl Harbor, HI
 - 3 active-duty Navy and Marine Corps judges; 1 active-duty Army judge; 1 USCMA Judge
- s. Evidence
 - University of San Diego, sponsored by the San Diego Bar Assn.
 - “A Look at the Expert Witness and the Testimony of Children”
 - 1 active-duty Navy and 1 active-duty Marine Corps judge
- t. 8th Texas Biennial Institute on Law
 - Fort Sam Houston, sponsored by the U.S. District Court
 - “Federal Sentencing Guidelines”
 - 1 active-duty Navy judge

Visits by the Judiciary

The Chief Judge presented administrative briefings for students at the military judges' courses at both Charlottesville and Newport.

The Circuit Military Judge, Atlantic Judiciary Circuit, Washington, DC, made a working visit and participated in the instruction of students at the military judges' course at Naval Justice School.

The Chief Judge visited the Chief Judges of the Army and the Air Force frequently to work toward uniformity in judicial practice and discuss matters of mutual concern.

The Chief Judge visited and inspected the following judicial circuits and branch offices: Northeast (Philadelphia); Northeast branch (Newport); Tidewater (Norfolk); Piedmont (Camp Lejeune); Midsouth (Charleston); Southeast branches (Mayport and Jackson-

ville); Sierra (Camp Pendleton); Southwest (San Diego); Island (Pearl Harbor); Transatlantic (Naples); and Transatlantic branch (Rota).

Generally

The Chief Judge's continued visits to naval legal service offices, convening authorities and staff judge advocates indicate that the overall quality of judicial services remains excellent. A continuing emphasis is placed on judicial and advocate training. Trial judges are encouraged to motivate young advocates in trial work. Currently, all judges provide post-trial critiques for counsel.

The Trial Judiciary continues to seek economical ways to deliver quality judicial services. Navy and Marine Corps reserve judges provide exceptionally good support as needed.

Economy is the watchword as the activity continues to lose judge billets in response to the critical need to draw down on end strength. Billets at Island (Pearl Harbor), Northwest (Bremerton) and WESTPAC North (Yokosuka) were reduced by one judge. The activity has now been reduced from 54 to 50 and further reductions are projected.

Streamlining document requirements, specialized computer programs for judicial reports and other software have increased productivity and communication within the circuits and their support activities.

NAVAL LEGAL SERVICE COMMAND

Naval Legal Service Command (NAVLEGSVCCOM) consists of 21 naval legal service offices and 21 detachments, located in areas of naval concentration throughout the world; a new detachment, at Kings Bay, Georgia, opened in September 1988. NAVLEGSVCCOM also includes the Naval Justice School, located in Newport, Rhode Island, and the Office of Legal Counsel, located at the Naval Academy, Annapolis, Maryland. NAVLEGSVCCOM manning strength extended to 398 officers (down from 417), 254 enlisted, and 235 civilian employees in fiscal year 1988; Navy judge advocates assigned to NAVLEGSVCCOM comprise about 41% of the Navy's total judge-advocate strength.

The Judge Advocate General of the Navy also serves as Commander, NAVLEGSVCCOM. NAVLEGSVCCOM provides a wide range of legal services to afloat and shore commands, to individual servicemembers, and to dependents and retirees. Specific services performed include the provision of court-martial services, administrative discharge board services to respondents, advice to commands on a broad spectrum of legal issues, claims processing and

adjudication, counsel at physical evaluation boards, and legal assistance.

In support of the efforts to provide quality and timely legal services, NAVLEGSVCCOM activities continue to rely upon the Judge Advocate General Management Information System (JAGMIS), which tracks each activity's caseload from receipt to disposition. This system is possible due to the growing number of personal computers available at each activity. In the future, the planned Navy Legal Affairs World-wide Support System (NAVLAWS) will refine and expand the automation of the claims, legal assistance, budgeting, and office-administration functions within NAVLEGSVCCOM, enhancing its ability to perform its mission. NAVLEGSVCCOM's communications ability continues to be enhanced; more than 150 electronic-mail (E-Mail) accounts were brought on-line this past year. These accounts permit rapid communication with and between NAVLEGSVCCOM activities, staff judge advocates, and Marine Corps legal centers around the world.

As part of the fiscal year 1989 Department of Defense Military Construction program, four projects were approved for NAVLEGSVCCOM; two new legal service office buildings at Pearl Harbor, Hawaii, and Mayport, Florida, and additions to present structures at the legal service office in Norfolk, Virginia, and the Naval Justice School, Newport, Rhode Island. Also, major renovations were accomplished this past year at the legal service offices in Subic Bay, Republic of the Philippines; Long Beach, California; and Bremerton, Washington.

NAVAL JUSTICE SCHOOL

During fiscal year 1988, the Naval Justice School provided instruction to 6,505 students worldwide, (1,096 in resident courses ranging in length from three days to nine weeks). Additionally, the school prepared and edited the content of volume 37 of the *Naval Law Review* which is scheduled for distribution in mid-January 1989. Other noteworthy developments include the installation of a state-of-the-art computer facility in the paralegal classroom and the approval of Congress and the President for the MILCON addition to the Naval Justice School, which will almost double the size of the school. An update of the school's courses follows:

Law of Naval Operations Workshop. Offered once a year, this course was expanded from one week to two weeks in fiscal year 1988. Its purpose is to train judge advocates who are responsible for advising commanders on international law matters and their impact on plans and operations. The course consisted of 30 hours of classroom instruction and 32 hours of practical exercises and seminars. Attendees completing the two-week course in fiscal year 1988

included judge advocates from the Navy (44), Air Force (1), and Coast Guard (1).

Staff Judge Advocate Course. Also offered once a year, this two-week course was expanded to three weeks in fiscal year 1988. Its purpose is to provide training in specific aspects of military and administrative law likely to be encountered by a command legal advisor. Included in 1988 were 81 hours of classroom instruction and 21 hours of practical exercises and seminars. This past year, attendees included judge advocates from the Navy (25), Marine Corps (1), and Army (4).

Senior Legalman Course. This two-week course, offered annually, was also expanded to three weeks in fiscal year 1988. It provides senior legalman with the specialized training in budget matters, civilian and military personnel management, and other management skills required of mid-level supervisors at naval legal service offices. Included are 61 hours of classroom instruction and 13 hours of workshops and seminars. Twenty-one senior enlisted personnel (18 Navy, 1 Marine Corps, 1 Air Force, and 1 Army) attended this course in fiscal year 1988.

Lawyer Course. The Naval Justice School conducted four sessions of the nine-week lawyer course during fiscal year 1988. This course, which provides basic training in military justice and military administrative and civil law to incoming Navy, Coast Guard, and Marine Corps judge advocates/law specialists, consists of 166 hours of classroom instruction and 55 hours of practical exercises, including 2 moot courts and 14 seminars designed to enhance trial advocacy skills. In fiscal year 1988, the course was completed by 114 Navy, 42 Marine Corps, and 15 Coast Guard judge advocates/law specialists.

Legal Officer Course. During fiscal year 1988, the school held eight sessions of this course (four five-week courses and four four-week courses). The legal officer syllabus is designed for the nonlawyer junior Navy and Marine Corps officers or senior Navy and Coast Guard enlisted paralegals about to assume legal duties with a ship, aircraft squadron, small station, or other military unit with no judge advocate attached. Included in the course are 126 hours of classroom instruction and 79 hours of practical exercises and seminars. Attendees in fiscal year 1988 consisted of 228 Navy officers, 28 Navy legalmen, 28 Marine Corps officers, and one Coast Guard enlisted.

Senior Officer Course. This one-week course, sponsored by the Chief of Naval Operations, prepares commanding officers, executive officers, and officers in charge to handle appropriate command legal responsibilities. Six sessions of the course were held at Newport, Rhode Island, with 165 students attending. An additional 25 offerings of the course were held at the following worldwide loca-

tions: Jacksonville and Mayport, Florida; Charleston, South Carolina (twice); Norfolk, Virginia (twice); Whidbey Island, Washington; San Francisco (twice), San Diego (twice), Long Beach and Camp Pendleton, California; Rota, Spain; Pearl Harbor, Hawaii; Subic Bay, Philippines; Yokosuka and Okinawa, Japan; Parris Island, South Carolina; Camp Lejuene, North Carolina; New London, Connecticut; Quantico, Virginia (twice); Annapolis, Maryland; and Memphis, Tennessee. The 1,475 students attending these classes included:

| | | |
|-------|-----|--------|
| USN: | 918 | (62%) |
| USMC: | 496 | (34%) |
| USCG: | 38 | (2%) |
| USA: | 17 | (1%) |
| USAF: | 4 | (§ 1%) |
| CIV: | 2 | (§ 1%) |

Military Judge Course. This three-week course, offered once a year, trains active-duty judge advocates to serve as special and general court-martial military judges. The syllabus includes 74 hours of lecture and 30 hours of practical exercises and seminars, during which students preside as military judges during various stages of moot courts-martial. In fiscal year 1988, 7 Navy, 8 Marine Corps, and 5 Air Force judge advocates completed this course.

Trial Advocacy Instructor Clinic. The Naval Justice School conducted a trial advocacy instructor clinic in March 1988. This three-day course prepares experienced trial practitioners to conduct trial advocacy training programs in the field. Seven attendees were trained in the National Institute of Trial Advocacy (NITA) teaching method and have since conducted highly successful training programs at naval legal service offices in various locations. Future instructor clinics will be conducted annually, with field training programs conducted regularly throughout the Naval Legal Service Command.

Legalman Course. This nine-week course, offered two times in fiscal year 1988, provides instruction in military law and electronic court reporting to Navy enlisted personnel selected for conversion to the legalman rating as well as certain Coast Guard personnelman (as the Coast Guard does not have a legalman rating). Included are 162 hours of lecture, 188 hours of practice transcription, and 52 hours of seminars and other practical exercises. As in past years, the Army continues to use the Naval Justice School's legalman course to train its court reporters. In fiscal year 1988, 45 Navy, 4 Coast Guard, and 35 Army students completed this course.

Legal Clerk Course. This two-week course is designed to train members of the Navy, Coast Guard, Army (equivalent) yeoman

rating to process routine legal matters at small or isolated commands. During fiscal year 1988, the school offered five sessions of this course. Included in the legal clerk curriculum are 51 hours of lecture and 25 hours of practical exercises. In fiscal year 1988, 198 students completed this course.

Reserve Courses. In addition to training active-duty personnel, the Naval Justice School also presents a number of courses each year to train inactive-duty reservists. The two-week Reserve Lawyer Course prepares inactive-duty lawyers of the Naval and Marine Corps Reserve to perform the duties of active-duty judge advocates. Similarly, the two-week Reserve Legalman Course, offered in three phases, prepares enlisted personnel in the inactive-duty Reserve to serve as legalmen. During fiscal year 1988, 75 students completed a course of Reserve instruction at the school.

Specialized Briefings and Presentations. In addition to the formal courses listed above, the Naval Justice School presented more than 640 hours of instruction on court-martial procedures, search and seizure, confessions and admissions, non-judicial punishment, investigations, administrative separations, law of the sea, the law of armed conflict, and rules of engagement to 4,099 members of selected Reserve units and students at the Surface Warfare Officers School, Chaplains School, Officer Indoctrination School, Officer Candidate School, Senior Enlisted Academy, and the Naval War College.

MARINE CORPS ACTIVITIES

During fiscal year 1988, Reserve legal support for the active forces continued to grow. The law Mobilization Training Units (MTU) provided invaluable support consistent with their assigned missions to specified commands and Headquarters, U.S. Marine Corps staff agencies. The assignment last year of the San Francisco MTU to provide support to the Naval Legal Service Office, Treasure Island, was model of cooperation between legal support units of the Naval Service.

The Chief Defense Counsel of the Marine Corps (CDCMARCOR) and Regional Defense Counsel conducted frequent command visitations and inspections at all locations where defense counsel were assigned.

The Marine Corps, through the auspices of the CDCMARCOR, sponsored trial advocacy training programs at major bases and stations throughout the world using National Institute of Trial Advocacy (NITA) methods and experienced active duty and Reserve judge advocates as instructors. Marine judge advocates assigned to both prosecution and defense billets, as well as Army, Navy, and Air Force lawyers, participated. Our goal of sending a sufficient

number of Marine judge advocates to NITA-instructor training courses was achieved last year, and we are now able to conduct trial advocacy programs using only Marine Corps assets.

Eleven Marine judge advocates attended year-long service schools, including the Naval War College, the Marine Corps Command and Staff College, the College of Naval Command and Staff, the Amphibious Warfare School, and the U.S. Army Judge Advocate General's School. Seven judge advocates received Master of Laws degrees from the Judge Advocate General's School and civilian law schools through the Special Education Program. Two hundred forty-three judge advocates received continuing legal education at civilian and military schools through courses funded by Headquarters, U.S. Marine Corps, and their parent commands. Ten Marine officers earned law degrees through the Funded Legal Education Program. Fifty-eight of the 502 judge advocates served in command or staff (nonlawyer) assignments.

EVERETT D. STUMBAUGH

Rear Admiral, USN

Judge Advocate General of the Navy

APPENDIX A

Period: Fiscal Year 1988

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

| TYPE COURT | TRIED | CONVICTED | ACQUITTALS | RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT |
|--|-------|-----------|------------|---|
| GENERAL | 880 | 832 | 48 | +5.6% |
| BCD SPECIAL | 3541 | 3541 | | +2.8% * |
| NON-BCD SPECIAL | 2367 | 2073 | 294 | -22.2% ** |
| SUMMARY | 2606 | 2497 | 109 | -16.0% |
| OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT | | | | -9.94% |

PART 2 - DISCHARGES APPROVED

| GENERAL COURTS-MARTIAL (CA LEVEL) | | |
|-----------------------------------|--|------|
| NUMBER OF DISHONORABLE DISCHARGES | | 244 |
| NUMBER OF BAD CONDUCT DISCHARGES | | 293 |
| SPECIAL COURTS-MARTIAL (SA LEVEL) | | |
| NUMBER OF BAD CONDUCT DISCHARGES | | 1972 |

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

| | |
|---|------|
| FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL | 787 |
| FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL | 3468 |
| FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL | 63 |

PART 4 - WORKLOAD OF THE Navy/Marine Corps COURT OF MILITARY REVIEW

| | | |
|---|------|-----------|
| TOTAL ON HAND BEGINNING OF PERIOD | | 447 (ADJ) |
| GENERAL COURTS-MARTIAL | 138 | |
| BCD SPECIAL COURTS-MARTIAL | 309 | |
| REFERRED FOR REVIEW | | 4089 |
| GENERAL COURTS-MARTIAL | 767 | |
| BCD SPECIAL COURTS-MARTIAL | 3322 | |
| TOTAL CASES REVIEWED | | 3480 |
| GENERAL COURTS-MARTIAL | 584 | |
| BCD SPECIAL COURTS-MARTIAL | 2896 | |
| TOTAL PENDING AT CLOSE OF PERIOD | | 1056 |
| GENERAL COURTS-MARTIAL | 321 | |
| BCD SPECIAL COURTS-MARTIAL | 735 | |
| RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD | | -21% |

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE Navy/Marine Corps COURT OF MILITARY REVIEW

| | |
|------------|-------|
| NUMBER | 3346 |
| PERCENTAGE | 81.8% |

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

| | |
|---|------|
| PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA | 19% |
| PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD | -4% |
| PERCENTAGE OF TOTAL PETITIONS GRANTED | 2% |
| PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD | -10% |
| PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR | .4% |
| RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD | -87% |

PAGE 1 OF 2

*Percentage reflects adjusted figure of 3443 BCD specials tried in FY 1987

**Percentage reflects adjusted figure of 3044 NON-BCD specials tried in FY 1987

APPENDIX A—CONTINUED

| PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69 | | |
|--|---------|------|
| PENDING AT BEGINNING OF PERIOD | | 33 |
| RECEIVED | | 118 |
| DISPOSED OF | | 144 |
| GRANTED | 13 | |
| DENIED | 131 | |
| NO JURISDICTION | | |
| WITHDRAWN | | |
| TOTAL PENDING AT END OF PERIOD | | 7 |
| PART 8 - ORGANIZATION OF COURT | | |
| TRIALS BY MILITARY JUDGE ALONE | | |
| GENERAL COURTS-MARTIAL | | 695 |
| SPECIAL COURTS-MARTIAL | | 5494 |
| TRIALS BY MILITARY JUDGE WITH MEMBERS | | |
| GENERAL COURTS-MARTIAL | | 185 |
| SPECIAL COURTS-MARTIAL | | 414 |
| PART 9 - COMPLAINTS UNDER ARTICLE 138 | | |
| NUMBER OF COMPLAINTS | 188 | |
| PART 10 - STRENGTH | | |
| AVERAGE ACTIVE DUTY STRENGTH | 803,165 | |
| PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15) | | |
| NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED | 59,457 | |
| RATE PER 1,000 | 74.02 | |
| RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD | -10% | |

PAGE 2 OF 2

**REPORT OF
THE JUDGE ADVOCATE GENERAL OF THE
AIR FORCE
OCTOBER 1, 1987 TO SEPTEMBER 30, 1988**

In compliance with the requirement of Article 6(a), Uniform Code of Military Justice (UCMJ), The Judge Advocate General, Major General Keith E. Nelson, and Deputy Judge Advocate General, Major General David C. Morehouse, 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
U.S. AIR FORCE JUDICIARY ACTIVITIES**

The Judiciary Directorate of the Office of The Judge Advocate General 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 of the 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 105 applications.

b. The Directorate received 776 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 a representative to all interservice activities involving military justice. This included the Joint Service Committee and support for the Code Committee.

DATA AUTOMATION UPGRADES

The Directorate of Legal Information Services (AF/JAS) plans, develops and manages automated management information systems in support of claims, military justice, office automation, computer assisted legal research and other Air Force and Department of Defense legal services programs. During FY 88, initial procurement of Local Area Network systems began to provide an automated office environment for larger Air Force legal offices. An improved version of a program to accomplish electronic data entry at the base level for the Automated military Justice Administrative Management System was tested and fielded at two major air commands. A comprehensive office management system was developed and tested, with fielding to begin shortly. The replacement system for the Claims Automated Management System (CAMP) was under full development as the Air Force Claims Information Management System (AFCIMS). The Directorate also operated the Federal Legal Information Through Electronics (FLITE) system and the Defense Emergency Retrieval and Analysis System (DERAS) as DoD's executive agent for computer assisted legal research. The old batch FLITE system was terminated on 30 September 1988, and transition to the new on-line interactive FLITE system was begun.

TRIAL JUDICIARY

The Air Force Trial Judiciary had an average of 31 military active duty and 6 reserve military judges, including one Chief Trial Judge and his assistant, assigned to 11 locations worldwide. In addition to presiding over courts-martial and administrative discharge boards, military judges are actively involved as hearing officers in public hearings held to consider draft environmental impact statements.

The Trial Judiciary completed the upgrade of its computer management and docketing program. In addition, it is refining procedures used in our electronic data transfer and E-Mail systems.

The Trial Judiciary has received ten laptop computers and is now preparing software and formats to permit trial judges to utilize these computers in the trial of courts-martial. These computers will permit the trial judges to generate written instructions for court members for both findings and sentencing, and will facilitate electronic mail communications with their circuit offices.

CIRCUIT TRIAL COUNSEL PROGRAM

The number of assigned circuit trial counsel (CTC) remained at 22 during FY 1988. The average number of days TDY per case in

FY 1988 was seven. The percentage of all courts prosecuted by CTC decreased from 38% in FY 1987 to 35% in FY 1988. The total number of general courts-martial tried by CTC decreased from 505 in FY 1987 to 483 in FY 1988, while the total number of special courts-martial tried by CTC increased from 97 in FY 1987 to 104 in FY 1988. The percentage of general courts-martial tried by circuit trial counsel also fell from 66% in FY 1987 to 56% in FY 1988, while the percentage of special courts-martial tried by circuit trial counsel rose from 12% in FY 1987 to 13% in FY 1988. This change is due partly to the increase in general courts-martial worldwide from 687 in FY 1987 to 891 in FY 1988, as well as an increase in the average number of TDY days per case.

In support of the urinalysis program, a workshop was conducted to familiarize circuit trial and defense counsel with the Brooks AFB urinalysis testing laboratory. Urinalysis continues to support the important fight against drug abuse in the Air Force. A working knowledge of the Brooks urinalysis laboratory procedures by both the prosecution and defense is essential to a just result in all urinalysis courts-martial and administrative proceedings.

APPELLATE GOVERNMENT COUNSEL

Direct U.S. Supreme Court review of the decisions of the U.S. Court of Military Appeals (COMA) significantly increased appellate government counsel (JAJG) workload in FY 1988 over FY 1987. More petitions of writs of certiorari were filed by Air Force petitioners in FY 1988 than the sister services combined. A 180% increase occurred in FY 1988 over FY 1987. Briefs in opposition increased over 400% between the two periods. Briefs in opposition were filed in 80% of all cases and accounted for 50% of the total briefs filed by all the services. In addition, pleadings and positions of 15 sister service Supreme Court cases were reviewed by JAJG in FY 1988. Under Article 62, UCMJ, two cases were evaluated for the filing of government appeals of adverse rulings by military trial judges. Additionally, four cases were certified to COMA by The Judge Advocate General in accordance with Article 67(b)(2), UCMJ. Finally, 10 appellate update briefings and lectures were given at various workshops and conferences worldwide by JAJG personnel.

AREA DEFENSE COUNSEL PROGRAM

Due to the continued high rate of turnover in area defense counsel, the Defense Services division (JAJD) renewed its emphasis on training the fundamentals of trial practice through the Area Defense Counsel Orientation course. In addition, counsel acquired

knowledge in the more complex areas of practice including, but not limited to, handling of experts and the presentation of expert testimony in a wide variety of scientific areas. Because child abuse problems remain on the rise, area defense counsel receive frequent updates on providing effective assistance to all family members involved. AIDS-related cases appear to be one of the fastest rising and highly complicated realms of practice, and all counsel receive up-to-date developments in this sensitive new area. Finally, JAJD is attempting to augment the area defense counsel program through the use of reservists as circuit defense counsel. These seasoned practitioners serve as defense attorneys in the more serious courts-martial and are used to train the newer area defense counsel. This pilot program began at the start of FY 1989.

APPELLATE DEFENSE COUNSEL

Appellate practice before the United States Supreme Court nearly doubled from last year. In this most demanding aspect of appellate work, counsel filed 16 petitions of certiorari, as opposed to only 9 in FY 1987. Errors and appeals filed with the Air Force Court of Military Review (AFCMR) and the United States Court of Military Appeals (COMA) also rose. The breakdown follows:

| AFCMR | FY 87 | FY 88 |
|-------------------------------|-------|-------|
| ERRORS FILED | 1012 | 1059 |
| ORAL ARGUMENTS | 15 | 12 |
| OTHER MOTIONS..... | 321 | 331 |
| COMA | | |
| SUPPLEMENTS TO PETITIONS..... | 556 | 600 |
| BRIEFS IN SUPPORT | 164 | 219 |
| GRANT BRIEFS..... | 13 | 27 |
| ORAL ARGUMENTS..... | 29 | 22 |
| OTHER MOTIONS/PETITIONS..... | 215 | 225 |

Air Force Reserve judge advocates contributed significantly to the development of the law. The major change in the requirements for court instructions in urinalysis cases stemmed from two appellate cases prepared and one later argued before COMA by a reservist assigned to JAJD.

CONFINEMENT FACILITIES

Last available figures during the fiscal year showed 1,111 Air Force personnel were in confinement; 90 pretrial and 1021 post-trial. The figure 1,111 represents a nearly 10% increase over last

year. More officers and women were being confined than ever before. In addition, the latest data revealed that 225 Air Force prisoners were on parole, 15% more than last year.

Considerable pressure continued to be placed on our central confinement facilities. Since the end of the last fiscal year, the Air Force secured an additional 10 firm bed spaces at the Fort Lewis IDF, bringing our total there to 185. There was a small backlog of about 20 prisoners awaiting transfer to the USDB at the end of the fiscal year, with the average wait approaching 120 days. Plans to acquire additional minimum bed spaces at Lowry were approved. Twenty bed spaces were to be available beginning in November 1988 offering an option to transfer selected prisoners who had achieved minimum custody status from the USDB and freeing up USDB bed spaces for other long-term prisoners. These 20 spaces can be increased to 80 if and when additional manpower is secured.

The return to duty rehabilitation (RTDR) program at the 3320th CRS, Lowry Air Force Base, continued to operate successfully. Seven Air Force members were restored to duty following completion of the RTDR program in FY 1988.

PREVENTIVE LAW AND LEGAL ASSISTANCE PROGRAM

The Preventive Law and Legal Aid Group (JACA) oversaw the providing of legal services to over 425,000 clients worldwide. Top categories continued to be wills, domestic relations, and consumer matters. The Chief of JACA served as liaison to the American Bar Association's Standing Committee on Legal Assistance for Military Personnel.

The Air Force Judge Advocate General School is now responsible for the continued development and expansion of the Preventive Law Uniform Notebook System. JACA continues to be responsible for policy and procedures concerning the Preventive Law and Legal Assistance programs worldwide.

During January through April 1987, tax assistance programs were run by legal offices throughout the world. Over 129,000 members of the Air Force community were helped. Air Force attorneys and the tax advisors they trained and supervised helped Air Force members complete 18,390 Form 1040EZs, 29,204 Form 1040As, 43,558 Form 1040s, and 29,149 state tax returns.

THE REPORTER, AFRP 110-2

The Reporter continued to provide timely information on a wide variety of legal issues. Lead articles focused attention on such diverse subjects as: the proper use of safety mishap and accident re-

ports, DNA fingerprinting, operational law, and military family housing leasing.

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 1988.

THE AIR FORCE JUDGE ADVOCATE GENERAL SCHOOL

In accordance with the new preventive law regulation, AFR 110-27, the Commandant appointed a faculty member as the Preventive Law Program Director. A new format was instituted for the Shortbursts newsletter and the School published four Shortbursts, covering all Uniform Notebook System categories in FY 1988. The School will expand publication of Shortbursts to six issues in FY 1989 to better serve legal offices worldwide.

Resident Courses

The Air Force Judge Advocate General School, Ira C. Eaker Center for Professional Development, Maxwell AFB, Alabama, conducted the following courses affecting military justice in FY 1988.

a. Advance Trial Advocacy Course—This 1-week course provides training in advanced advocacy skills to judge advocates currently serving as or selected for circuit trial or defense counsel. Thirty-five judge advocates attended this course.

b. Judge Advocate Staff Officer Course—A course providing seven weeks of instruction on the basics of military law. This course was offered four times during FY 1988 and was attended by 145 judge advocates

c. 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 offered twice in FY 1988 and was attended by 123 Reservists and Air National Guard personnel.

d. 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 on recent developments. A total of 59 judge advocates attended this course.

e. Trial and Defense Advocacy Course—This 1-week course, offered four times during FY 1988, provides basic advocacy training to judge advocates actively engaged in trial practice and was attended by 127 judge advocates.

f. **Military Judges' Seminar**—This 1-week advanced seminar provides military judges a forum in which to present and discuss new developments in military justice. This course was offered once in FY 1988 and was attended by 56 military judges from all services.

g. **Aerospace Operational Law**—This course provided judge advocates with training in the domestic and internal legal issues associated with planning and execution of peacetime and combat military operations. Fifty-nine judge advocates attended.

Videotape and Seminar Programs

The following videotape and seminar programs affecting military justice were offered:

| | |
|---|-----------|
| Trial Advocacy..... | 13 Hours |
| International Law—Conduct of Armed Conflict..... | 3.5 Hours |
| Supreme Court Trends in Criminal Law..... | 4 Hours |
| Expert Witnesses | 3 Hours |
| Impeachment under the Military Rules of Evidence..... | 3 Hours |
| Character Evidence | 4 Hours |
| Advanced Advocacy..... | 5 Hours |
| Advanced Trial Techniques | 6 Hours |
| Sentencing..... | 2.5 Hours |
| Search and Seizure | 3.5 Hours |
| Government Lawyer and Professional Responsibility | 3 Hours |
| Litigating Insanity..... | 5 Hours |
| Post-Trial and Appellate Process..... | 6 Hours |

Professional Military Education

Ten area defense counsels were selected to attend Squadron Officers' School in residence.

Short Courses at Civilian Institutions

Sixteen military judges attended courses at the National Judicial College at the University of Nevada at Reno during FY 1988.

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

Six military judges attended the basic military judges course at the Army Judge Advocate General (Army JAG) School, Charlottesville, Virginia, and five military judges attended the basic military judges course at the Naval Military Justice School, Newport, Rhode Island. Approximately 245 other Air Force attorneys received training at the Army JAG School in numerous courses including the Criminal Trial Advocacy Course, Advanced Federal Litigation Course, Judge Advocate and Military Operations Seminar, Law of War Workshop, Legal Aspects of Terrorism Course, and the Alternative Disputes Resolution Course.

Master of Law (LL.M.) Program

Seventeen judge advocates participated in this government funded program designed to provide specialized training in the fields of procurement law, environmental law, labor law, and international law through the acquisition of an LL.M degree through curriculum offered by civilian law schools.

PERSONNEL

As of 1 October 1988, there were 1,355 judge advocates on active duty. This total included 5 generals, 121 colonels, 217 lieutenant colonels, 340 majors, 632 captains and 40 first lieutenants.

KEITHE E. NELSON

Major General, USAF

The Judge Advocate General

APPENDIX A

Period: 1 Oct 1987 - 30 Sept 1988

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

| TYPE COURT | TRIED | CONVICTED | ACQUITTALS | RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT |
|--|-------|-----------|------------|---|
| GENERAL | 891 | 847 | 44 | +29.7% |
| BCD SPECIAL | 343 | 343 | | - 9.5% |
| NON-BCD SPECIAL | 460 | 413 | 47 | - 2.7% |
| SUMMARY | 27 | 25 | 2 | N/C |
| OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT | | | | |

PART 2 - DISCHARGES APPROVED

| | | | |
|-----------------------------------|--|-----|--|
| GENERAL COURTS-MARTIAL (CA LEVEL) | | | |
| NUMBER OF DISHONORABLE DISCHARGES | | 127 | |
| NUMBER OF BAD CONDUCT DISCHARGES | | 597 | |
| SPECIAL COURTS-MARTIAL (SA LEVEL) | | 335 | |
| NUMBER OF BAD CONDUCT DISCHARGES | | | |

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

| | | |
|---|-----|--|
| FOR REVIEW UNDER ARTICLE 88 - GENERAL COURTS-MARTIAL | 751 | |
| FOR REVIEW UNDER ARTICLE 88 - BCD SPECIAL COURTS-MARTIAL | 316 | |
| FOR EXAMINATION UNDER ARTICLE 89 - GENERAL COURTS-MARTIAL | 76 | |

PART 4 - WORKLOAD OF THE Air Force COURT OF MILITARY REVIEW

| | | | |
|---|--|------|--|
| TOTAL ON HAND BEGINNING OF PERIOD | | 213 | |
| GENERAL COURTS-MARTIAL | | 143 | |
| BCD SPECIAL COURTS-MARTIAL | | 70 | |
| REFERRED FOR REVIEW | | 1141 | |
| GENERAL COURTS-MARTIAL | | 798 | |
| BCD SPECIAL COURTS-MARTIAL | | 343 | |
| TOTAL CASES REVIEWED | | 1118 | |
| GENERAL COURTS-MARTIAL | | 761 | |
| BCD SPECIAL COURTS-MARTIAL | | 357 | |
| TOTAL PENDING AT CLOSE OF PERIOD | | 236 | |
| GENERAL COURTS-MARTIAL | | 180 | |
| BCD SPECIAL COURTS-MARTIAL | | 56 | |
| RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD | | | |

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE Air Force COURT OF MILITARY REVIEW

| | | |
|------------|-------|--|
| NUMBER | 1067 | |
| PERCENTAGE | 95.4% | |

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

| | | |
|---|----------|--------|
| PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USMA | 621/1118 | 55.5% |
| PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD | | + 9.3% |
| PERCENTAGE OF TOTAL PETITIONS GRANTED | 41/621 | 6.6% |
| PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD | | -4.6% |
| PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR | 41/1118 | 3.7% |
| RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD | | -0.7% |

APPENDIX A—CONTINUED

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

| | | | |
|--------------------------------|----|----|--|
| PENDING AT BEGINNING OF PERIOD | | 1 | |
| RECEIVED | | 41 | |
| DISPOSED OF | | 39 | |
| GRANTED | 1 | | |
| DENIED | 26 | | |
| NO JURISDICTION | 10 | | |
| WITHDRAWN | 2 | | |
| TOTAL PENDING AT END OF PERIOD | | 3 | |

PART 8 - ORGANIZATION OF COURT

| | | | |
|---------------------------------------|--|-----|--|
| TRIALS BY MILITARY JUDGE ALONE | | | |
| GENERAL COURTS-MARTIAL | | 607 | |
| SPECIAL COURTS-MARTIAL | | 488 | |
| TRIALS BY MILITARY JUDGE WITH MEMBERS | | | |
| GENERAL COURTS-MARTIAL | | 284 | |
| SPECIAL COURTS-MARTIAL | | 315 | |

PART 9 - COMPLAINTS UNDER ARTICLE 138

| | | | |
|----------------------|----|--|--|
| NUMBER OF COMPLAINTS | 26 | | |
|----------------------|----|--|--|

PART 10 - STRENGTH

| | | | |
|------------------------------|---------|--|--|
| AVERAGE ACTIVE DUTY STRENGTH | 579,536 | | |
|------------------------------|---------|--|--|

PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

| | | | |
|--|--------|--|--|
| NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED | 17,658 | | |
| RATE PER 1,000 | 30.47 | | |
| RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD | -8.1% | | |

PAGE 2 OF 2

**REPORT OF THE CHIEF COUNSEL OF THE
U.S. COAST GUARD
October 1, 1987 to September 30, 1988**

The table below shows the number of court-martial records received and filed at Coast Guard Headquarters during FY-88 and the 5 preceding years.

| Fiscal Year | 88 | 87 | 86 | 85 | 84 | 83 |
|------------------------------|----|----|----|-----|-----|-----|
| General Courts-Martial | 13 | 11 | 5 | 5 | 6 | 10 |
| Special Courts-Martial..... | 25 | 24 | 19 | 43 | 33 | 68 |
| Summary Courts-Martial | 35 | 63 | 50 | 77 | 105 | 128 |
| Total | 73 | 98 | 74 | 125 | 144 | 206 |

COURTS-MARTIAL

Attorney counsel were detailed to all special courts-martial. Military judges were 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 used for special courts-martial. Control of the detail of judges was centrally exercised by the Chief Trial Judge, and all requirements were met in a timely fashion.

GENERAL COURTS-MARTIAL

Of the 13 accused tried by general courts-martial this fiscal year, four were tried by military judge alone. Of these four, one received a dishonorable discharge, two received bad conduct discharges, and one officer received a dismissal. Of the nine accused tried by courts with members, two received sentences which included a dishonorable discharge, and two received bad conduct discharges. Seven of the accused whose charges were referred to general courts-martial were nonrated (pay grades E-1 through E-3), three were petty officers (pay grades E-4 through E-6), one was a chief petty officer (pay grade E-7), one was a chief warrant officer (W-2), and one was a chief warrant officer (W-3).

The following is a breakdown of sentences awarded by the military judge alone in general courts-martial (4 convictions). In 3 of

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

| Sentence | Cases Imposed |
|------------------------------|---------------|
| dismissal | 1 |
| dishonorable discharge | 1 |
| bad conduct discharge | 2 |
| confinement | 4 |
| reduction in rate | 3 |
| fine (\$4,000 total) | 2 |

The following is a breakdown of sentences awarded in general courts-martial with members (8 convictions).

| Sentence | Cases Imposed |
|--|---------------|
| dishonorable discharge | 2 |
| bad conduct discharge | 2 |
| confinement | 8 |
| reduction in rate | 6 |
| partial forfeiture of pay (\$20,300 total) | 4 |
| fine (\$8,000 total) | 1 |

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

| FY | Number of Convictions | Forfeitures | Confinement | Reduction in grade | Punitive Discharge/Dismissal |
|----|-----------------------|-------------|-------------|--------------------|------------------------------|
| 88 | 12 | 8 (75%) | 12 (100%) | 9 (75%) | 8 (75%) |
| 87 | 11 | 5 (45%) | 8 (73%) | 8 (73%) | 6 (55%) |
| 86 | 5 | 5 (100%) | 5 (100%) | 4 (80%) | 5 (100%) |
| 85 | 9 | 6 (67%) | 7 (78%) | 5 (56%) | 6 (67%) |

The following table shows the distribution of the 143 specifications referred to general courts-martial.

| Violation of the UCMJ, Article | No. of Specs. |
|---|---------------|
| 80 (attempts) | 1 |
| 81 (conspiracy) | 4 |
| 85 and 86 (desertion and UA) | 3 |
| 91 (insubordinate conduct toward a petty officer) | 1 |

| | | |
|--------|--|----|
| 92 | (violation of order or regulation) | 11 |
| 107 | (false official statement) | 7 |
| 108 | (sale, loss, damage, destruction, or wrongful disposition of military property of the U.S.) | 8 |
| 112(a) | (controlled drug offenses) | 4 |
| 121 | (larceny and wrongful appropriation) | 45 |
| 123 | (forgery) | 9 |
| 126 | (arson) | 4 |
| 130 | (housebreaking) | 12 |
| 132 | (frauds against the United States) | 21 |
| 134 | (general) | 13 |

SPECIAL COURTS-MARTIAL

Fifteen of the 25 accused tried by special courts-martial this fiscal year were tried by the military judge alone. Eight bad conduct discharges were awarded; six to accused tried by military judge alone, and two to accused tried by a court with members. Twelve of the accused whose charges were referred to special courts-martial were nonrated (pay grades E-1 through E-3), ten were petty officers (pay grades E-4 through E-6), and three were chief petty officers (pay grade E-7).

The following table shows the distribution of the 123 specifications referred to special courts-martial.

| Violation of the UCMJ, Article | No. of Specs. | |
|--------------------------------|--|----|
| 80 | (attempts) | 1 |
| 81 | (conspiracy) | 2 |
| 85 and 86 | (desertion and UA) | 30 |
| 87 | (missing movement) | 3 |
| 91 | (insubordinate conduct toward a petty officer) | 1 |
| 92 | (violation of order or regulation) | 16 |
| 107 | (false official statement) | 4 |
| 108 | (sale, loss, damage, destruction, or wrongful disposition of military property of the U.S.) | 5 |
| 122(a) | (controlled drug offenses) | 9 |
| 121 | (larceny and wrongful appropriation) | 26 |
| 123 | (forgery) | 1 |
| 125 | (sodomy) | 1 |
| 128 | (assault) | 1 |
| 130 | (housebreaking) | 2 |
| 132 | (frauds against the United States) | 3 |
| 134 | (general) | 18 |

The following is a breakdown of sentences awarded by the military judge alone in special courts-martial (15 convictions). In 8 of

these 15 convictions, the accused pled guilty to all charges and specifications.

| Sentence | Cases Imposed |
|---|---------------|
| bad conduct discharge..... | 6 |
| confinement..... | 10 |
| hard labor without confinement..... | 3 |
| reduction in rate..... | 11 |
| forfeiture of pay (\$10,030 total)..... | 7 |
| restriction..... | 3 |

The following is a breakdown of sentences awarded in special courts-martial with members (10 convictions). In one of these 10 convictions, the accused pled guilty to all charges and specifications.

| Sentence | Cases Imposed |
|--|---------------|
| bad conduct discharge..... | 2 |
| confinement..... | 3 |
| hard labor without confinement..... | 2 |
| reduction in rate..... | 7 |
| restriction..... | 2 |
| forfeiture of pay (\$1,150 total)..... | 2 |
| fine (\$6,254 total)..... | 2 |

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

| FY | Number of Convictions | Forfeitures | Confinement | Reduction in grade | BCD |
|----|-----------------------|-------------|-------------|--------------------|---------|
| 88 | 25 | 9 (36%) | 13 (52%) | 18 (72%) | 8 (32%) |
| 87 | 23 | 10 (43%) | 13 (57%) | 21 (91%) | 3 (13%) |
| 86 | 16 | 10 (63%) | 7 (44%) | 9 (56%) | 3 (19%) |
| 85 | 36 | 24 (67%) | 18 (50%) | 28 (78%) | 7 (19%) |

SPECIAL COURTS-MARTIAL SUMMARY

Sixty percent of the accused tried by special court-martial were tried by military judge alone. Fifty-three percent of these accused pled guilty to all charges and specifications. Ten percent of the accused tried by special courts-martial with members pled guilty to

all charges and specifications. There was a 4 percent increase in special courts-martial from last fiscal year.

CHIEF COUNSEL ACTION UNDER ARTICLE 69, UCMJ

In addition to the required reviews of courts-martial conducted as a result of petitions filed under Article 69, UCMJ, a discretionary review was conducted under Article 69 of *all* courts-martial not requiring appellate review.

PERSONNEL, ORGANIZATION, AND TRAINING

The Coast Guard has 161 officers designated as law specialists (judge advocates) serving on active duty. 120 are serving in legal billets and 41 are serving in general duty billets. Twenty-two Coast Guard officers are currently undergoing postgraduate studies in law, and will be certified as law specialists at the completion of their studies.

The Coast Guard has one full-time general court-martial trial judge. Senior law specialists, most serving as district legal officers, are used as military judges in special courts-martial, when required.

U.S. COAST GUARD COURT OF MILITARY REVIEW

During fiscal year 1988, the Court was composed of five appellate military judges assigned by the General Counsel, Department of Transportation in his capacity as Judge Advocate General. The Chief Judge and one other Judge are civilians. The remaining three Judges are Coast Guard commissioned officers. On 30 June 1988, Captain Michael C. Grace, USCG, who previously served on the Court, was sworn in again as an appellate military judge, having been reappointed as a replacement for retiring Captain Frederick F. Burgess, Jr., USCG. The Court is presently constituted as follows:

Chief Judge Joseph H. Baum
Judge Alfred F. Bridgman, Jr.
Judge Carl Josephson
Judge Kevin J. Barry
Judge Michael C. Grace

In addition to the decisional work reflected in Appendix A, the Court also filed an amicus curiae brief with the U.S. Court of Military Appeals in the case of *United States Navy-Marine Corps Court of Military Review v. Hon. Frank C. Carlucci III, The Secretary of Defense and Hon. June Gibbs Brown, Inspector General, Department*

of Defense, an unprecedented petition for extraordinary relief by the Navy-Marine Corps Court of Military Review to enjoin the Department of Defense Inspector General from intruding into the Court's deliberative process.

The Judges on the Coast Guard of Military Review have also participated in a number of professional conferences, committees and seminars during the past fiscal year. In December 1987, the Court planned and hosted the Third Annual All Services Appellate Military Judges Conference held at the National Lawyer's Club in cooperation with the U.S. Court of Military Appeals. That conference was sponsored by the Military Judges Committee of the Federal Bar Association, which is chaired by the Chief Judge. In keeping with the Coast Guard's role in this year's conference, the Chief Counsel of the Coast Guard made the principal address as the conference's luncheon speaker.

Chief Judge Baum, as a newly appointed member of the U.S. Court of Military Appeals' Rules Advisory Committee, attended meetings of that committee in February, March and April. Along with Judges from the other Courts of Military Review, Judge Bridgman, representing the Coast Guard Court, participated in a panel presentation in March 1988 at the Fourteenth Interservice Military Judges Seminar at the Air Force Judge Advocate General School, Maxwell Air Force Base, Alabama. In May 1988, Judges from the Court attended the Thirteenth Annual Homer Ferguson Conference in Washington, D.C. As Chairman of the Federal Bar Association Military Judges Committee, the Chief Judge oversaw and hosted a luncheon in June 1988 under that committee's auspices at Fort Myer Officers' Club, with the Honorable Joseph M. F. Ryan, Jr. of the District of Columbia Superior Court as the guest speaker. In July 1988, the Chief Judge and Judge Bridgman attended a seminar in Washington, D.C. sponsored by the Federal Bar Association on Drug Testing: Constitutional, Legislative and Regulatory Issues. In September 1988, the Chief Judge and Judge Barry attended the Federal Bar Association Annual National Meeting in Washington, D.C. Throughout the year, Judges from the Court regularly attended and supported the monthly Federal Bar Association Pentagon Chapter luncheon meetings.

Judge Barry, on October 1, 1988 succeeded the Chief Judge as Chairman of the Federal Bar Association's Military Judges Committee.

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.

J.E. VORBACH

Rear Admiral, U.S. Coast Guard

Chief Counsel

APPENDIX A

Period: 1 October 1987 - 30 September 1988

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

| TYPE COURT | TRIED | CONVICTED | ACQUITTALS | RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT |
|--|-------|-----------|------------|---|
| GENERAL | 13 | 12 | 1 | +18% |
| BCD SPECIAL | 25 | 24 | | + 4% |
| NON-BCD SPECIAL | 0 | 0 | 0 | Unchanged |
| SUMMARY | 35 | 35 | 0 | -44% |
| OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT | | | | -26% |

PART 2 - DISCHARGES APPROVED

| | | | |
|-----------------------------------|--|---|---------------|
| GENERAL COURTS-MARTIAL (CA LEVEL) | | | |
| NUMBER OF DISHONORABLE DISCHARGES | | 4 | ^{1/} |
| NUMBER OF BAD CONDUCT DISCHARGES | | 4 | |
| SPECIAL COURTS-MARTIAL (CA LEVEL) | | | |
| NUMBER OF BAD CONDUCT DISCHARGES | | 6 | |

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

| | |
|---|----|
| FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL | 10 |
| FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL | 6 |
| FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL | 2 |

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

| | | | |
|---|----|----|---------------|
| TOTAL ON HAND BEGINNING OF PERIOD | | 12 | ^{2/} |
| GENERAL COURTS-MARTIAL | 9 | | |
| BCD SPECIAL COURTS-MARTIAL | 3 | | |
| REFERRED FOR REVIEW | | 25 | ^{3/} |
| GENERAL COURTS-MARTIAL | 17 | | |
| BCD SPECIAL COURTS-MARTIAL | 6 | | |
| TOTAL CASES REVIEWED / Acted Upon | | 23 | ^{4/} |
| GENERAL COURTS-MARTIAL | 15 | | |
| BCD SPECIAL COURTS-MARTIAL | 6 | | |
| TOTAL PENDING AT CLOSE OF PERIOD | | 14 | |
| GENERAL COURTS-MARTIAL | 11 | | |
| BCD SPECIAL COURTS-MARTIAL | 3 | | |
| RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD | | | +109% |

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

| | | |
|------------|------|---------------|
| NUMBER | 22 | ^{3/} |
| PERCENTAGE | 100% | |

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

| | | | |
|---|-------|-----------|---------------|
| PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA | 10/22 | 45% | ^{2/} |
| PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD | | +150% | |
| PERCENTAGE OF TOTAL PETITIONS GRANTED | | 0 | |
| PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD | | Unchanged | |
| PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR | 0/22 | 0 | ^{2/} |
| RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD | | | Unchanged |

PAGE 1 OF 2

^{1/} One of the four dishonorable discharges is in fact a dismissal.

^{2/} Included within this total are ten Article 66, UCMJ, one Article 69, UCMJ, and one extraordinary writ for review.

^{3/} Included within this total are 18 Article 66, UCMJ referrals; one Article 62, UCMJ Government Appeal; 5 extraordinary writ petitions, which included U.S. Navy-Marine Corps Court of Military Review v. Carlucci; and one motion

APPENDIX A—CONTINUED

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

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

PART 8 - ORGANIZATION OF COURT

| | | | |
|---------------------------------------|--|----|--|
| TRIALS BY MILITARY JUDGE ALONE | | | |
| GENERAL COURTS-MARTIAL | | 4 | |
| SPECIAL COURTS-MARTIAL | | 15 | |
| TRIALS BY MILITARY JUDGE WITH MEMBERS | | | |
| GENERAL COURTS-MARTIAL | | 9 | |
| SPECIAL COURTS-MARTIAL | | 10 | |

PART 9 - COMPLAINTS UNDER ARTICLE 138

| | | |
|----------------------|---|--|
| NUMBER OF COMPLAINTS | 5 | |
|----------------------|---|--|

PART 10 - STRENGTH

| | | |
|------------------------------|--------|--|
| AVERAGE ACTIVE DUTY STRENGTH | 37,175 | |
|------------------------------|--------|--|

PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

| | | |
|--|-------|--|
| NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED | 1,763 | |
| RATE PER 1,000 | 47.42 | |
| RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD | +4% | |

PAGE 3 OF 3

- ^{3/} for assignment of another appellate defense counsel. The difference between the total of 25 "referred for review" and the sum of 23 from 17 general courts-martial and 6 BCD special courts-martial results from the fact that one extraordinary writ petition did not relate to a court-martial at all - U.S. Navy-Marine Corps Court of Military Review v. Carlucci - and one Article 62 Government Appeal was from a special court-martial with no conviction or sentence yet.
- ^{4/} Included within this total are 15 cases referred under Article 66, UCMJ, one referred under Article 69, UCMJ, one Article 62, UCMJ Government Appeal, five extraordinary writ petitions, and one motion for assignment of another appellate defense counsel. One of the extraordinary writs was U.S. Navy-Marine Corps Court of Military Review v. Carlucci, in which the Coast Guard Court of Military Review filed an Amicus Brief with the U. S. Court of Military Appeals. The difference between the total of 23 "total cases reviewed/acted upon" and the sum of 21 from 15 general courts-martial and 6 BCD special courts-martial results from the fact that one extraordinary writ petition did not relate to a court-martial at all - U.S. Navy-Marine Corps Court of Military Review v. Carlucci - and one Article 62 Government Appeal was from a special court-martial with no conviction or sentence yet.
- ^{5/} U.S. Navy-Marine Corps Court of Military Review v. Carlucci Amicus Brief not included in total, thus the difference of one between Total Cases Reviewed/ Acted Upon and this block.