

# **ANNUAL REPORT on MILITARY JUSTICE**



**INCLUDING SEPARATE REPORTS  
of the  
U.S. COURT OF APPEALS FOR THE ARMED FORCES,  
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, 1993 to September 30, 1994**

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



**ANNUAL REPORT**  
**SUBMITTED TO THE**  
**COMMITTEE ON ARMED SERVICES**  
**of the U.S. Senate**  
**and the**  
**COMMITTEE ON NATIONAL SECURITY**  
**of the U.S. 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, 1993 to September 30, 1994**



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# REPORT OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

October 1, 1993 to September 30, 1994<sup>1</sup>

The Judges of the United States Court of Appeals for the Armed Forces submit their fiscal year 1994 report on the administration of the Court and military justice to the Committee on Armed Services of the United States Senate, the Committee on National Security of the United States House of Representatives, and the Secretaries of Defense, Transportation, Army, Navy, and Air Force in accordance with Article 146, Uniform Code of Military Justice, 10 USC § 946.

## THE BUSINESS OF THE COURT

The number of cases carried over on the Court's Petition Docket at the end of fiscal year 1994 reflected a decrease of 18% from the number of cases pending at the end of fiscal year 1993. (See Appendix A.) The Court also succeeded in decreasing the number of cases carried over on its Master Docket by 20% during the same period. (See Appendix B.)

During this reporting period the number of petitions for grant of review filed with the Court decreased by 6%. (See Appendix J.) The number of oral arguments increased by 18% to a 10-year high of 144 during fiscal year 1994 and the number of opinions released by the Court also increased to a 10-year high of 144 during this same period. (See Appendices C and D.)<sup>2</sup>

The average processing time from the date of filing a petition during the fiscal year to the date of a grant by the Court showed a slight decrease from the same comparative processing time period for the previous fiscal year. (See Appendix E.) There was also an increase during the fiscal year in the average processing time between the

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<sup>1</sup> Effective October 5, 1994, the United States Court of Military Appeals was renamed the United States Court of Appeals for the Armed Forces pursuant to Pub. L. No. 103-337, § 924, 108 Stat. 2663.

<sup>2</sup> Although not part of the business of the Court, it is noted that during fiscal year 1994 the Court was notified that petitions for writ of certiorari were filed with the Supreme Court of the United States in 42 Master Docket cases in which the Court issued a final decision.

date of a grant and the date of oral argument and between the date of oral argument and the date of final decision. (See Appendices F and G.) The average processing time from the filing of a petition to a final decision likewise increased slightly during fiscal year 1994 as compared with fiscal year 1993. (See Appendices H and I.)

The Chief Justice of the United States, acting pursuant to Article 142(f), Uniform Code of Military Justice (UCMJ), 10 USC § 942 (f), designated a judge of the United States District Court for the District of Columbia to sit in place of a judge of this Court during fiscal year 1994. In addition, Senior Judge Robinson O. Everett was recalled and participated in the review and decision of several cases during this same reporting period.

During fiscal year 1994 the Court admitted 386 attorneys to practice before its Bar, bringing the cumulative total of admissions before the Bar of the Court to 29,638.

## **PUBLIC AWARENESS PROJECT (PROJECT OUTREACH)**

Pursuant to its practice established in 1988, the Court scheduled several special sessions and heard oral arguments in selected cases outside its permanent Courthouse in Washington, D.C., as part of its "Project Outreach" Program, a public awareness project developed to demonstrate not only the operation of a Federal appellate court but also the effectiveness and quality of the criminal justice system of the Armed Forces of the United States. Hearings were conducted without objection of the parties at the United States Military Academy, West Point, New York; the United States Air Force Academy, Colorado Springs, Colorado; and the University of North Dakota School of Law, Grand Forks, North Dakota. As in prior years these hearings promoted an increased public awareness of the fundamental fairness of the military justice system and the role of the Court in the overall administration of military justice throughout the world. The Court hopes that those who attend these hearings from both military and civilian communities will realize that the United States is a democracy that can maintain an armed force instilled with the appropriate discipline to make it a world power and yet afford each member of that armed force a fair and impartial justice system which provides the full protection of the Constitution of the United States and federal law to all its members.

## **JUDICIAL VISITATIONS**

During fiscal year 1994, the Judges of the Court, consistent with past practice and their ethical responsibility to oversee and improve the military justice system, participated in professional training pro-



grams for military and civilian lawyers, spoke to professional groups of judges and lawyers, and visited staff judge advocates and commanders at various military installations throughout the world.

## **SUPREME COURT JUSTICE VISITATION PROGRAM**

On May 17, 1994, Justice Clarence Thomas visited the Court and on September 1, 1994, Justice Ruth Bader Ginsburg visited the Court. On both occasions these Associate Justices of the Supreme Court of the United States met with the Judges and Staff of the Court concerning matters relating to the judicial administration of the military justice system under the Uniform Code of Military Justice.

## **THE JUDICIAL CONFERENCE**

On May 12 and 13, 1994, the Court held its annual Judicial Conference at the George Washington University Marvin Center. The program for this Judicial Conference was certified for credit to meet the continuing legal education requirements of various State bars throughout the United States and was designed to assist both military and civilian practitioners in maintaining those professional skills necessary to practice before trial and appellate courts. The Conference opened with a presentation by the Honorable Eugene R. Sullivan, Chief Judge, United States Court of Appeals for the Armed Forces, on the "State of the Court." The Honorable William C. Bryson, Deputy Solicitor General of the United States, spoke on "Recent Developments in the U.S. Supreme Court"; the Honorable Lawrence E. Jahnke, Associate Judge on the North Dakota District Court, presented a program on "Courtroom Security"; the Honorable Charles E. Moylan, Associate Judge on the Maryland Court of Special Appeals, delivered an address on "The Fourth Amendment"; Ms. Linda Greenhouse, Reporter for The New York Times-Washington Bureau, spoke on "The Supreme Court at Work"; Dr. Jonathan Lurie, Historian to the Court and Professor of History at Rutgers University, spoke on the "Appointment of Judges to the U.S. Court of Military Appeals"; and Professor Paul Rothstein, Georgetown University Law School, delivered a lecture on character evidence in a criminal trial. In addition, Major Kevan F. Jacobson, Judge Advocate General's Corps, United States Army, spoke on "Current Ethical Issues"; Professor Stephen A. Saltzburg, George Washington University School of Law, spoke on "Scientific Evidence" and "Oral Appellate Advocacy"; the Honorable Jamie Gorelick, General Counsel, Department of Defense, delivered an address on "Criminal Law from the DoD Perspective"; Professor Fredric I. Lederer, William and Mary School of Law, spoke on

“Article 31, Speedy Trial and the Fifth Amendment” and “Military Rules of Evidence 800-804, Confrontation and Cross-Examination”; and Colonel Lee D. Schinasi, Judge Advocate General’s Corps, United States Army, spoke on “Evidentiary Issues During Sentencing.”

The Judicial Conference was attended by numerous military and civilian lawyers as well as judges of the various Courts of Military Review,<sup>3</sup> legal scholars and commentators in the field of military justice. In addition, during the Conference the Robinson O. Everett Writing Award was presented to Major Robert Nuneley, United States Marine Corps.

## **SIGNIFICANT DECISIONS AFFECTING THE ADMINISTRATION OF MILITARY JUSTICE WITHIN THE ARMED FORCES <sup>4</sup>**

### **EXTRAORDINARY RELIEF**

In *Samples v. Vest*, 38 MJ 482 (CMA 1994), the Court denied a petition for extraordinary relief filed on behalf of an accused involved in the “Tailhook” incident. The Court concluded that the evidence sustained a finding by the military judge that the accused had not been given an enforceable promise of transactional immunity. In *Garrett v. Lowe*, 39 MJ 293 (CMA 1994), the Court revisited a case in the context of a petition for extraordinary relief in the nature of a writ of error *coram nobis* where relief had previously been rejected during the normal appellate review of the accused’s case. See *United States v. Garrett*, 24 MJ 413 (CMA 1987). The Court rejected a government argument that *coram nobis* could only be used to correct factual errors and held that such a writ could also encompass constitutional and other fundamental errors. The Court also noted that the petitioner remained in confinement and that, thus, the proceedings could be resolved in the context of a writ of habeas corpus. In ruling on the merits of this petition the Court held that the petitioner’s sentence was defective because the trial judge had erroneously instructed the court members that only two-thirds of the members were required to agree on the sentence when three-fourths of the members were actually required to cast their votes on

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<sup>3</sup> Effective October 5, 1994, the Courts of Military Review were renamed the Courts of Criminal Appeals pursuant to Pub.L. No. 103-337, § 924, 108 Stat. 2663.

<sup>4</sup> This section of the Court’s annual report is prepared solely as an informational tool by the staff of the Court. It is included for the convenience of the reader to assist in easily locating cases of particular interest during the term. The case summaries are not of precedential value and should not be cited in briefs filed with the Court.

the sentence which, in this case, included a mandatory punishment of confinement for life.

The Court also exercised its extraordinary writ jurisdiction in *Gray v. Mahoney*, 39 MJ 299 (CMA 1994), over a court-martial that had resulted in an acquittal where a military judge attempted to issue an order, after trial had concluded, which restricted the disposition and copying of various tapes that had been utilized as evidence during the trial. Concluding that the judge's order was inappropriate under the circumstances in this case, the Court quashed various portions of the order which were challenged on appeal. Finally, in *Spriggs v. United States*, 40 MJ 158 (CMA 1994), the Court resolved a controversy concerning the petitioner's claim that his suspended sentence, which included confinement, had been improperly vacated. The Court noted that although the pretrial agreement, providence inquiry, and a copy of the terms and conditions of the suspension provision that was served on the petitioner purported to apply conditions to all elements of his sentence, the convening authority's action after trial did not condition the suspension of the confinement. The Court thus ruled that vacating the suspension of confinement was improper in this case. Additionally, the Court held that the suspension of other components of the sentence was predicated on an excessively long period of time and therefore violated Rule for Courts-Martial (RCM) 1108(d). However, after examining other aspects of the petitioner's guilty plea, the Court accepted the view of the parties that a period of five years constituted a reasonable period of time as the outermost limit of the suspension period applicable to petitioner's bad-conduct discharge and reduction in grade below pay grade E-4.

## EVIDENCE

In *United States v. Chandler*, 39 MJ 119 (CMA 1994), the Court examined the facts and circumstances of a pretrial statement uttered by an assault victim and concluded that it qualified as an "excited utterance" exception to the hearsay rule under Military Rule of Evidence (Mil.R.Evid.) 803(2). Furthermore, the Court rejected a defense argument that the prosecutor had improperly used the statement during closing argument as a prior consistent statement by observing that the statement was consistent with the assault victim's trial testimony. The Court held in this regard that when evidence is otherwise admissible under a hearsay exception, the requirements for admissibility as a prior consistent statement need not be met. In *United States v. McGrath*, 39 MJ 158 (CMA 1994), the Court ruled that the military judge properly admitted a sexual assault victim's pretrial statements under the residual hearsay requirements of Mil. R. Evid. 804(b)(5) since the accused had attempted to block the victim from testifying at his court-martial

and declined an opportunity to cross-examine such victim. Additionally, the Court distinguished *Idaho v. Wright*, 497 U.S. 805, 110 S.Ct. 3139, 111 L. Ed. 2d 638 (1990), in ruling that the military judge did not abuse his discretion when he considered independent corroborating evidence in finding that the pretrial statements were admissible because here, unlike *Idaho v. Wright*, live confrontation by cross-examination of the declarant had been waived by the defense. In *United States v. Gibson*, 39 MJ 319 (CMA 1994), the Court considered the propriety of admitting certain government evidence to impeach the testimony of the alleged victim of sexual offenses and the correctness of the military judge's instructions on the permissible use of such impeachment evidence. Observing that while the general rule precluded the admissibility of prior inconsistent statements of a witness where the witness admitted making the statements, the Court held that the interests of justice may require their admissibility under Mil. R. Evid. 613(b). However, the Court declined to resolve the question of their admissibility under Mil. R. Evid. 613(b) in the case at hand because reversible error was committed in any event where the trial judge instructed the court members that they could consider the alleged victim's prior consistent statements as evidence of the truth of the matters asserted therein. Thus, the Court held the use of such out-of-court statements as substantive evidence was clearly wrong and reversal was required.

In *United States v. Quigley*, 40 MJ 64 (CMA 1994), the Court addressed an issue which concerned the admissibility of a statement under Mil. R. Evid. 803(4). The Court held that the finding that the declarant had an expectation of receiving medical treatment was supported by the evidence of record and that other witnesses could provide information to satisfy the requirement that the statement was in fact made with the expectation of receiving medical treatment. Contrarily, in *United States v. Faciane*, 40 MJ 399 (CMA 1994), the Court held in a child sex abuse case that the evidence failed to establish that the child's out-of-court statements made to members of a hospital's child protective committee were admissible under the medical-diagnosis exception to the hearsay rule.

In *United States v. Coleman*, 41 MJ 46 (CMA 1994), the Court held that a trial judge did not abuse his discretion by denying a defense counsel an opportunity to cross-examine a government witness under Mil. R. Evid. 803(18) by using statements in a magazine article because the defense failed to establish that the article in question was an authoritative publication.

## **ARTICLE 31 AND RIGHT TO COUNSEL**

In *United States v. Bowerman*, 39 MJ 219 (1994), the Court considered the applicability of Article 31, UCMJ, to a situation where an enlisted accused was questioned by a medical doctor who held

the rank of major. The Court noted that the doctor was a supervising pediatrician and encountered the enlisted accused when the latter brought his four-week-old son to the medical facility for treatment. After reviewing the facts and circumstances the Court held that the military judge did not err by finding that the major's questioning of the accused was in her roll as a pediatrician and was for the purpose of medical diagnosis of a seriously injured baby. The Court specifically ruled that warnings under Article 31(b) were not required and that even if the doctor thought that child abuse was a distinct possibility, her questioning of the accused father to ascertain the facts for protective measures and curative purposes did not violate Article 31.

Addressing an issue of whether an accused had asserted his right to counsel under *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966), the Court held in *United States v. Schroeder*, 39 MJ 471 (CMA 1994), that the accused's request to speak with an attorney before providing a non-consensual urine sample was too little and too early to qualify as an invocation of such right where the accused had not yet been read his warnings or even subjected to custodial interrogation. The Court observed that the arresting officer's query as to whether the accused would consent to a urinalysis did not constitute a custodial interrogation within the meaning of *Miranda*. The Court did hold, however, that the questioning of the accused during the booking process before he had been given his *Miranda* warnings did violate the mandate of *Miranda*. The Court further held that a statement by the accused that he would "eventually get a lawyer" did not invoke his right to counsel under *Miranda* where the statement was made after he was advised of his rights to counsel and had unequivocally waived those rights. Rather, the Court held that the statement only asserted an intent to secure counsel in the future and that the investigator acted properly in stopping the interview to clarify the accused's intent. The Court also held that an unwarned admission did not taint a later confession where the facts and circumstances reflected that the prior admission had no substantial impact on a subsequent voluntary and informed decision to speak with the police agent.

In *United States v. LeMasters*, 39 MJ 490 (CMA 1994), the Court considered the requirement of an investigator to notify an accused's counsel before taking a statement which is set forth in Mil.R.Evid. 305(e). After noting that the accused himself initiated the contact with the investigators with knowledge of his *Miranda* and Article 31 rights and that he waived those rights, the Court held that there was no duty to notify counsel prior to taking the accused's statement. The Court ruled that the record indicated the accused had been aware of his rights and had affirmatively waived those rights and that there was no evidence of police overreaching or badgering

or attempting to surreptitiously deprive the accused of his right to counsel in this case.

In *United States v. Dock*, 40 MJ 112 (CMA 1994), the Court addressed the admissibility of a pretrial statement in the context where the accused had invoked his right to counsel while being interviewed by foreign police officials in Germany. The Court held that the doctrine of *Edwards v. Arizona*, 451 U.S. 477, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981), did not preclude the admissibility of statements subsequently given by such accused to officials of the United States. Relying on prior case law, the Court held that there was a limited overseas exception to *Edwards* for a military accused and that the facts of the case at hand validated the conclusions of earlier decisions that an accused's request for counsel during a foreign interrogation may result merely from the American suspect's unfamiliarity with the foreign legal system and does not necessarily mean that the suspect is unwilling to talk to an American investigator until he has been provided counsel. The Court further held that the statements of the accused in this case were admissible because after he was turned over to American authorities he was advised of his rights under American military law, was offered counsel, declined counsel and agreed to talk with the American investigators.

#### **LESSER INCLUDED OFFENSES**

In *United States v. Foster*, 40 MJ 140 (CMA 1994), the Court held that the "elements test" earlier adopted in *United States v. Teters*, 37 MJ 370 (CMA 1993), to decide whether one offense was multiplicitous with another for purposes of findings of guilt, would also be used in determining whether one offense is a lesser-included offense of another. The Court observed that Article 79, UCMJ, was virtually identical with the language of Federal Rule of Criminal Procedure 31(c) but noted a unique issue in military jurisprudence for an offense charged under Article 134. After noting that it was mere historical accident that some offenses would be specifically enumerated within the Uniform Code of Military Justice while others were encompassed within the "general" Article 134, the Court further held that the specifically enumerated offenses involved conduct which is *per se* either prejudicial to good order and discipline or of a nature to bring discredit upon the armed forces. Accordingly, the Court held that an offense under Article 134 could be a lesser-included offense of one of the specifically enumerated offenses under Articles 80-132 of the Uniform Code. Thus, the Court held under the aforementioned standard that the offense of committing an indecent act was a lesser-included offense of both indecent assault and sodomy.

## MILITARY JUDGES

In *United States v. McCants*, 39 MJ 91 (CMA 1994), the Court was presented an issue which questioned whether the accused was entitled to credit for pretrial confinement pursuant to RCM 305(k). The Court observed that although the issue was presented to the military judge, he had declined to rule on the request and urged the convening authority to take the appropriate action on the matter. After concluding that the accused was entitled to some of the requested credit, the Court described as inexplicable the refusal of the military judge to rule on the request for pretrial confinement credit despite clear authority to do so. The Court further indicated that it considered a military judge to be a real judge as commonly understood in the American legal tradition. Finally, the Court stated that it expected military judges to exercise their authority and not “pass the buck” to the staff judge advocate or convening authority.

An issue was raised in *United States v. Mitchell*, 39 MJ 131 (CMA 1994), which sought to disqualify the judges of the United States Navy-Marine Corps Court of Criminal Appeals on the basis that the Judge Advocate General participated in the fitness report evaluations of the judges of that court. The Court rejected an argument that such system deprived the Court of Criminal Appeals of independence or the appearance of independence as well as a separate argument that the Judge Advocate General or the Assistant Judge Advocate General holds a prosecutorial office or that the duties of that position imply bias in favor of the Government. The Court also quoted a portion of the recent decision of the Supreme Court in *Weiss v. United States*, \_\_\_ U.S. \_\_\_, 114 S.Ct. 752, 762 (1994), as follows: “By placing judges under the control of Judge Advocates General, who have no interest in the outcome of a particular court-martial, we believe Congress has achieved an acceptable balance between independence and accountability.” Furthermore, the Court ruled that the *de novo* application of the civilian constitutional standard to determine a servicemember’s right to a judicial tribunal was inappropriate since the appropriate standard was to determine whether the circumstances are so extraordinarily weighty as to overcome the balance struck by Congress.

In *United States v. Martinez*, 40 MJ 82 (CMA 1994), the Court concluded that a sentence rehearing was necessary where the military judge in a judge-alone court-martial was approached by a bailiff after he had closed the court for sentence deliberations and informed of matters pertaining to the accused’s uncharged misconduct. Since the judge was the sentencing authority in this case, the Court held that the judge should have opened court and submitted himself to questions from counsel for both parties involved in the case. The Court held in *United States v. Carter*, 40 MJ 102 (CMA 1994), that the trial

judge did not abuse his discretion in refusing to recall witnesses for the court members where such request occurred after arguments and instructions on findings. The Court observed that many of the questions were irrelevant and objectionable and that, therefore, there was no violation of Article 46, UCMJ, by the trial judge's ruling.

### **ARTICLE 133 - CONDUCT UNBECOMING AN OFFICER**

The Court affirmed the conviction of an officer for violating Article 133, UCMJ, in *United States v. Hartwig*, 39 MJ 125 (CMA 1994), where the offense arose from a letter written by appellant to a school girl which contained sexually suggestive comments. While the Court held that the "clear and present danger" standard articulated in *Schenck v. United States*, 249 U.S. 47, 39 S.Ct. 247, 63 L. Ed. 470 (1919), applied to military members in assessing First Amendment rights, the Court further held that the standard required a different application in the military context. The Court held that when the Article 133 violation is based on the officer's private speech, the test in the military is whether the officer's speech poses a clear and present danger that the speech will, in dishonoring or disgracing the officer personally, seriously compromise the person's standing as an officer. Citing paragraph 59c(2), Part IV, Manual for Courts-Martial, United States, 1984, the Court further held that there was no requirement of publication, that private communication was sufficient to give rise to an Article 133 violation, and that appellant was on notice that his conduct under the circumstances would risk bringing disrepute upon himself and his profession. The Court affirmed another conviction based on an Article 133 violation in *United States v. Bilby*, 39 MJ 467 (CMA 1994), for soliciting another to violate a federal child pornography statute. The Court held that it was unnecessary to decide whether the statute in question (18 USC § 2252) was constitutional since the solicitation to violate a federal statute was in itself sufficient to give rise to an Article 133 violation.

### **FREE SPEECH**

The Court rejected a defense claim in *United States v. Stone*, 40 MJ 420 (CMA 1994), that the First Amendment precluded the accused's conviction under Article 134 for making a false speech before an audience of high school students while in uniform concerning his military accomplishments in Iraq during Operation Desert Shield. The Court upheld the conviction on the basis that the evidence was sufficient to sustain a finding that the Army was discredited under the circumstances of this case.

### **COMMAND INFLUENCE**

The Court addressed an issue in *United States v. Kropf*, 39 MJ 107 (CMA 1994), concerning whether a trial counsel's reference in his



closing argument on sentencing to the Navy's zero tolerance policy toward drugs constituted the injection of improper command policy considerations into the deliberative process of the court members. After examining the facts and circumstances contained in the record, the Court rejected the defense argument that the comment in question constituted plain error. However, the Court noted that this was an area in which trial counsel are well advised to tread lightly and that the danger of injecting the command structure into the court members' deliberations is ever present. Addressing an issue of command influence raised in *United States v. Johnston*, 39 MJ 242 (CMA 1994), the Court held that such an issue was not waived by the accused's failure to raise the issue at trial. The Court distinguished its earlier ruling in *United States v. Jeter*, 35 MJ 442 (CMA 1992), cited by the Government in support of its waiver argument, on the basis that *Jeter* involved an issue of a commander's disqualification rather than unlawful influence. However, the Court rejected the accused's claim of command influence and the necessity for a limited hearing by holding that, even if some coercion in the preferral of charges against the accused had occurred at the special court-martial level, this case was convened by the next superior level of command and the general court-martial convening authority acted independently with the advice of another staff judge advocate who was not at all involved at the lower level.

In *United States v. Stombaugh*, 40 MJ 208 (CMA 1994), the Court distinguished between unlawful interference with access to witnesses and command influence which is contrary to Article 37, UCMJ, noting that if there was no mantle of official command authority, only private interference was involved and not command influence. Examining the facts of this case the Court held that where one of the defense witnesses was an officer and was approached by junior officers who did not represent the command or belong to an officially sponsored organization, any improper conduct by these junior officers could properly be considered as unlawful interference with access to the witnesses rather than unlawful command influence. However, the Court further held that where one of the other witnesses, a petty officer, was approached by a division officer, such conduct could fairly be construed as unlawful command influence. But since numerous witnesses testified for the defense, the Court held that the record indicated beyond a reasonable doubt that any unlawful command influence did not affect the findings or sentence and, thus, affirmed the decision of the lower court.

In *United States v. Hamilton*, 41 MJ 32 (CMA 1994), the majority distinguished among the various stages at which unlawful command influence may occur: preferral, forwarding with recommendations, referral, trial, and post-trial review. Although unlawful command influence was alleged to have occurred at the preferral and forward-

ing stages, the Court held that appellant had not made out his case for command influence. A majority of the Court also held that the Court of Military Review did not err by resolving appellant's claims of unlawful command influence on the basis of affidavits instead of an evidentiary hearing under *United States v. DuBay*, 17 USCMA 147, 37 CMR 411 (1967). Finally, a majority of the Court held that the Court of Military Review did not err by refusing to submit to voir dire regarding possible grounds for disqualification.

## MISCELLANEOUS

In *United States v. Barnes*, 39 MJ 230 (CMA 1994), the Court held that in a court-martial for the accused's failure to go, the defense of inability to return was reasonably raised by the evidence and that the military judge had a duty to instruct on such defense. The Court further held that the duty to instruct on an affirmative defense was not waived by a failure to request such instruction and that under the facts and circumstances of this case, the failure to instruct required reversal of the conviction as to the charge and specification involved in the omitted instruction. In *United States v. Olivero*, 39 MJ 246 (CMA 1994), the Court considered an issue involving a grant of testimonial immunity and a decision to prosecute the immunized accused. The Court held under military law that the Government may not prosecute the accused in question unless it could be shown by a preponderance of the evidence that the prosecutorial decision to prosecute was untainted by the immunized testimony. In this particular case the Court held the Government had failed to meet such burden and reversed the accused's conviction of marijuana use. However, the Court held that the immunized testimony could be used to prosecute the accused on a separate charge of perjury but that the evidence in this case was insufficient to sustain the accused's conviction on the perjury charge.

In *United States v. Thomas*, 40 MJ 252 (CMA 1994), the Court rejected a defense claim that reference to his religious beliefs was precluded by Mil. R. Evid. 610 at his court-martial on marijuana use charges, ruling that the military judge properly allowed testimony that the accused had uttered a pretrial statement to the effect that members of his religion used marijuana. The Court held that the accused's pretrial statement concerning his religious beliefs was an integral part of his pretrial admission involving the use of marijuana and that such statement was not prohibited by Mil. R. Evid. 610 since it was not offered to impeach the accused's credibility but, rather, as part of his admission to his commanding officer explaining his reason for using marijuana. In *United States v. Brown*, 41 MJ 1 (CMA 1994), the Court held that the military judge erred by refusing to admit the accused's evidence that his alleged drug use would be contrary to his strong opposition to drugs as a matter of

religious principle. The Court regarded such evidence as going to the heart of the accused's "good soldier" defense, and its exclusion deprived the accused of his constitutional right to present a defense. In *United States v. Felix*, 40 MJ 356 (CMA 1994), the Court rejected an accused's claim that his case was improperly considered *en banc* by the Court of Military Review. The Court noted that the requirements for *en banc* consideration were set forth in Rule 17 of the Courts of Military Review Rules of Practice and Procedure and held that the issue of whether a case came within the requirements of that rule was properly within the power of the Court of Military Review to decide and that its decision should not be disturbed. Finally, in *United States v. Valdez*, 40 MJ 491 (CMA 1994), the Court upheld a conviction of unpremeditated murder of a child where such conviction was predicated on the failure of the accused to obtain proper medical care for his daughter. In so doing the Court reviewed the history of the crime of murder under the Uniform Code of Military Justice and prior military law and ruled that there was no evidence of congressional intent to shield parents from criminal accountability for killing their helpless children by the withholding of vital medical attention and that, thus, a conviction of murder could be properly predicated on either an act or an omission.

EUGENE R. SULLIVAN  
*Chief Judge*

WALTER T. COX III  
*Associate Judge*

SUSAN J. CRAWFORD  
*Associate Judge*

H.F. "SPARKY" GIERKE  
*Associate Judge*

ROBERT E. WISS  
*Associate Judge*

# STATISTICAL REPORT

Fiscal Year 1994

## CUMULATIVE SUMMARY

### CUMULATIVE PENDING OCTOBER 1, 1993

Master Docket .....	248
Petition Docket .....	353
Miscellaneous Docket.....	3
<b>TOTAL</b> .....	<b>604</b>

### CUMULATIVE FILINGS

Master Docket .....	546
Petition Docket .....	1514
Miscellaneous Docket.....	114
<b>TOTAL</b> .....	<b>2174</b>

### CUMULATIVE TERMINATIONS

Master Docket .....	675
Petition Docket .....	1576
Miscellaneous Docket.....	116
<b>TOTAL</b> .....	<b>2367</b>

### CUMULATIVE PENDING OCTOBER 1, 1994

Master Docket .....	119
Petition Docket .....	291
Miscellaneous Docket.....	1
<b>TOTAL</b> .....	<b>411</b>

## OPINION SUMMARY

CATEGORY	SIGNED	PER CURIAM	MEM/ ORDER	TOTAL
Master Docket .....	135	4	536	675
Petition Docket.....	0	0	1576	1576
Miscellaneous Docket.....	5	0	111	116
<b>TOTAL</b> .....	<b>140</b>	<b>4</b>	<b>2223</b>	<b>2367</b>

### FILINGS (MASTER DOCKET)

Remanded from Supreme Court .....	0
Returned from Court of Military Review.....	2
Mandatory appeals filed .....	1
Certificates filed .....	12
Reconsideration granted.....	0
Petitions granted (from Petition Docket).....	531
<b>TOTAL</b> .....	<b>546</b>

TERMINATIONS (MASTER DOCKET)

Findings & sentence affirmed .....	628		
Reversed in whole or in part .....	32	Signed .....	135
Granted petitions vacated .....	1	Per curiam .....	4
Other disposition directed .....	14	Mem/order .....	536
<b>TOTAL</b> .....	<b>675</b>	<b>TOTAL</b> .....	<b>675</b>

PENDING (MASTER DOCKET)

Awaiting briefs .....	45
Awaiting oral argument .....	61
Awaiting lead case decision (trailer cases) .....	12
Awaiting final action.....	1
<b>TOTAL</b> .....	<b>119</b>

FILINGS (PETITION DOCKET)

Petitions for grant of review filed .....	1499
Art. 62 petitions filed .....	4
Petitions for new trial filed.....	2
Cross-petitions for grant filed .....	7
Petitions for reconsideration granted .....	2
Returned from Court of Military Review.....	0
<b>TOTAL</b> .....	<b>1514</b>

TERMINATIONS (PETITION DOCKET)

Petitions for grant dismissed .....	16		
Petitions for grant denied.....	1000		
Petitions for grant granted.....	531		
Petitions for grant remanded .....	10	Signed .....	0
Petitions for grant withdrawn.....	19	Per curiam .....	0
Other .....	0	Mem/order .....	1576
<b>TOTAL</b> .....	<b>1576</b>	<b>TOTAL</b> .....	<b>1576</b>

PENDING (PETITION DOCKET)

Awaiting briefs .....	136
Awaiting Central Legal Staff review .....	58
Awaiting final action.....	97
<b>TOTAL</b> .....	<b>291</b>

FILINGS (MISCELLANEOUS DOCKET)

Writs of error coram nobis sought.....	1
Writs of habeas corpus sought .....	4
Writs of mandamus/prohibition sought .....	10
Other extraordinary relief sought.....	83
Writ appeals sought.....	16
<b>TOTAL</b> .....	<b>114</b>

TERMINATIONS (MISCELLANEOUS DOCKET)

Petitions withdrawn .....	0		
Petitions remanded.....	0		
Petitions granted.....	4		
Petitions denied.....	110	Signed .....	5
Petitions dismissed .....	2	Per curiam .....	0
Other .....	0	Mem/order .....	111
<b>TOTAL</b> .....	<b>116</b>	<b>TOTAL</b> .....	<b>116</b>

**PENDING (MISCELLANEOUS DOCKET)**

Awaiting briefs .....	1
Awaiting Writs Counsel review.....	0
Awaiting final action.....	0
<b>TOTAL.....</b>	<b>1</b>

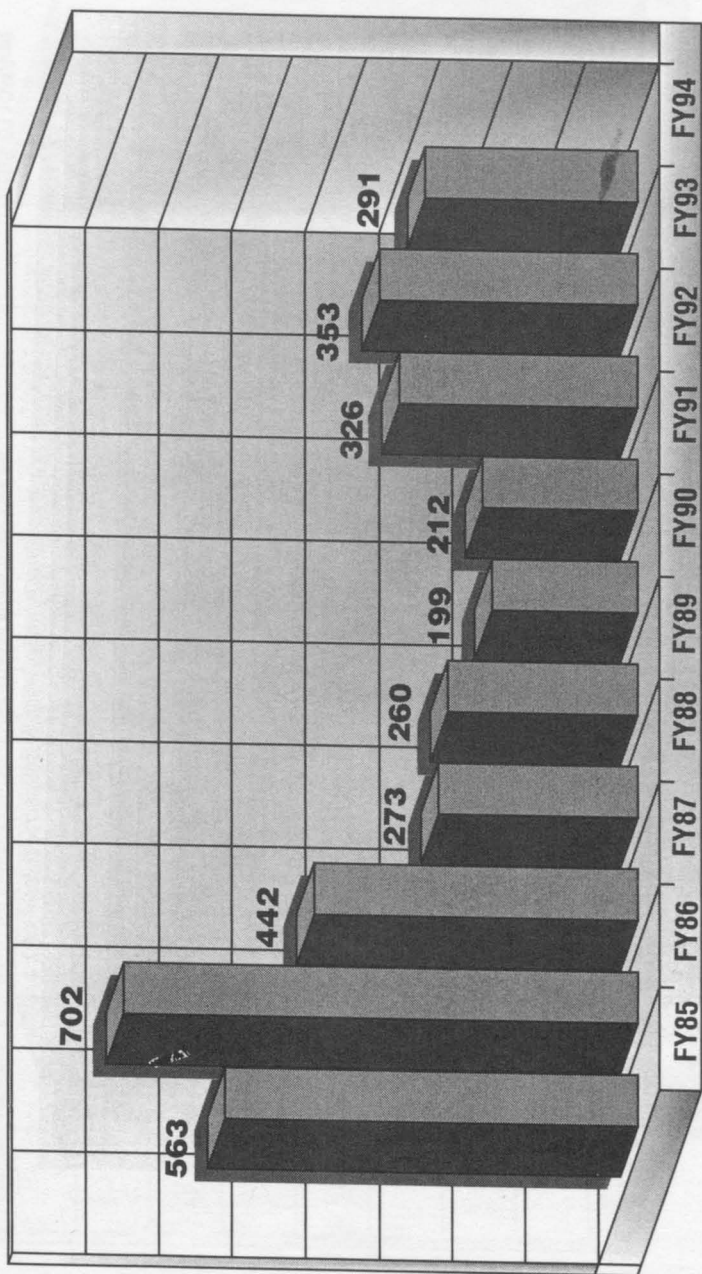
**RECONSIDERATIONS & REHEARINGS**

CATEGORY	BEGIN PEND- ING	FILINGS	END PEND- ING	DISPOSITIONS		
				Granted	Denied	Total
Master Docket.....	0	11	2	0	9	9
Petition Docket .....	1	5	0	2	4	6
Misc. Docket.....	0	2	0	0	2	2
<b>TOTAL .....</b>	<b>1</b>	<b>18</b>	<b>2</b>	<b>2</b>	<b>15</b>	<b>17</b>

**MOTIONS ACTIVITY**

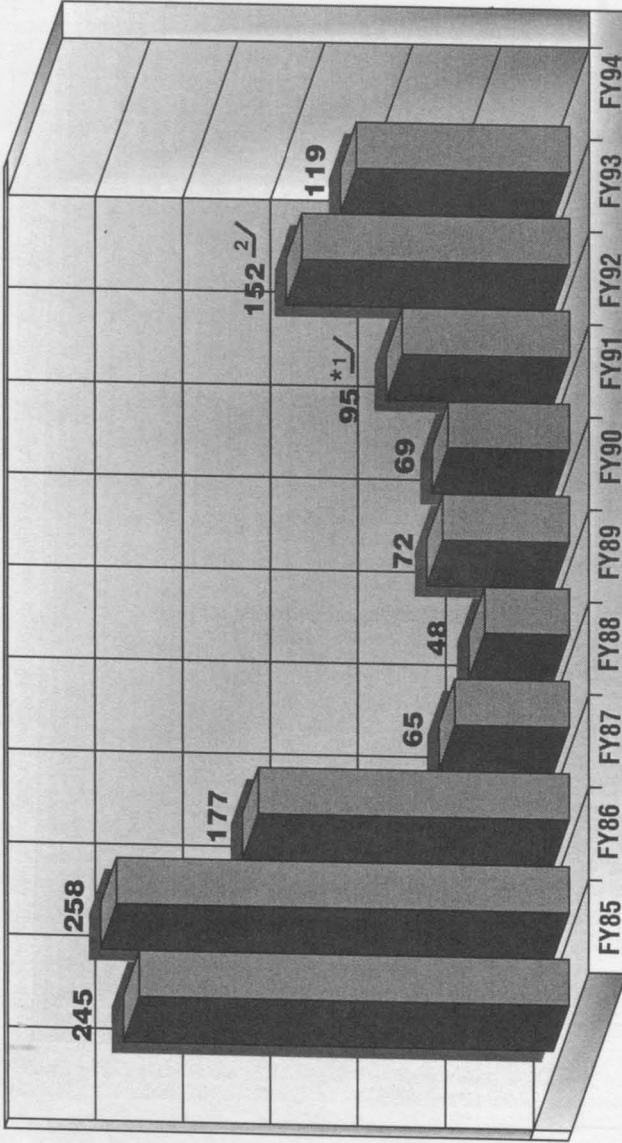
CATEGORY	BEGIN PEND- ING	FIL- INGS	END PEND- ING	Grant- ed	DISPOSITIONS		
					Denied	Other	Total
All motions.....	8	1127	17	1054	64	0	1118

# Petition Docket Year End Pending



95-0110/2/kat

# Master Docket Year End Pending



**1** / \* This figure does not include 16 trailer cases to *United States v. Watson*, No. 68206/MC, and 8 trailer cases to *United States v. Weiss*, No. 67869/MC.

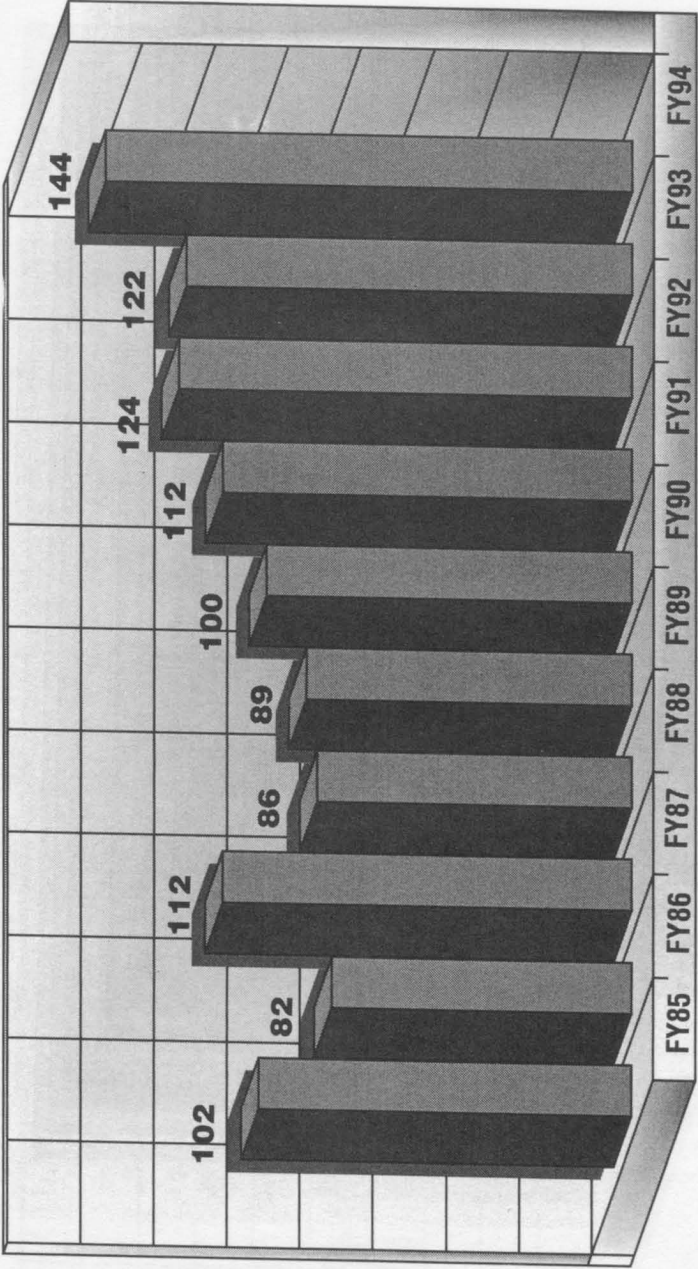
**2** / This figure does not include 87 trailer cases to *United States v. Mitchell*, No. 93-1044/NA, and 9 trailer cases to *United States v. Rexroat*, No. 93-5007/AR.

95-0110/4/kat



# Oral Arguments Per Year

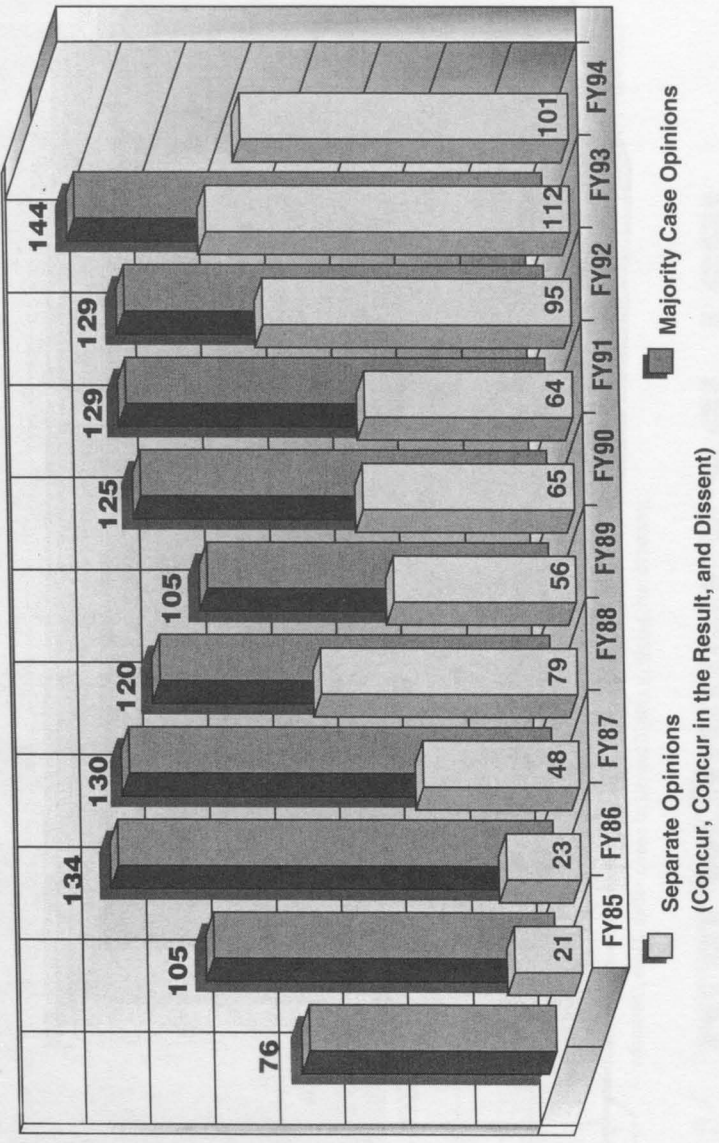
## APPENDIX C



95-0110/3/kat

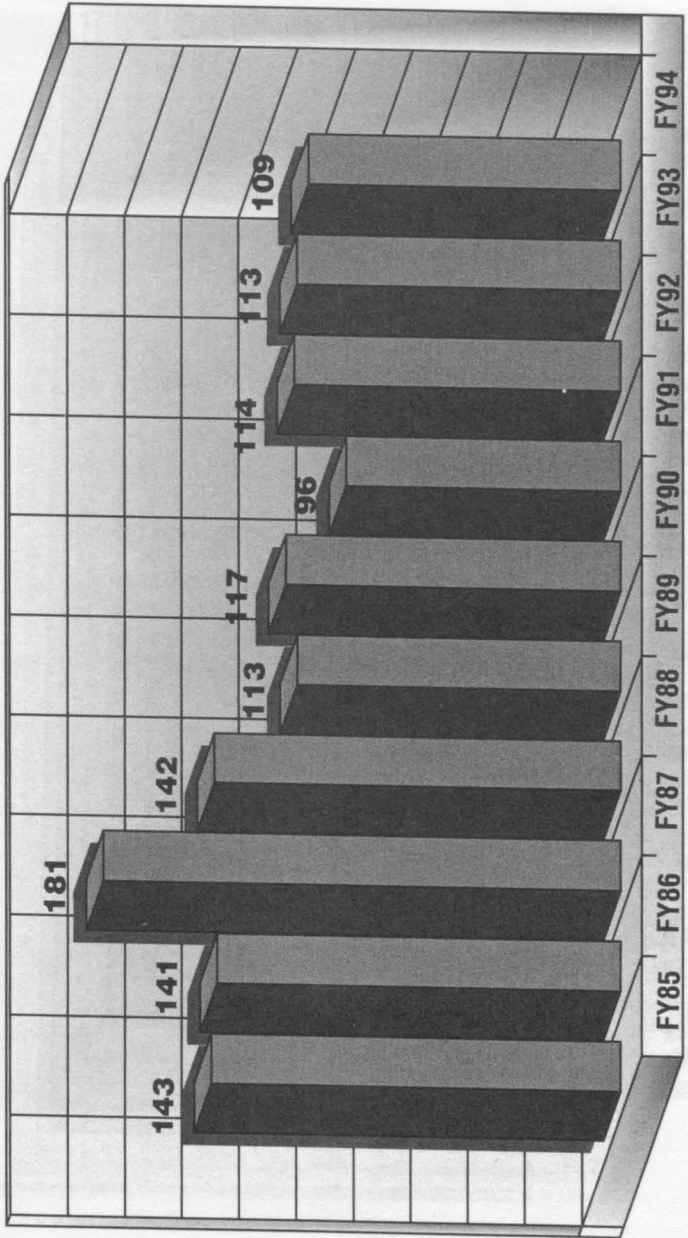
# Total Opinions Per Year

## APPENDIX D



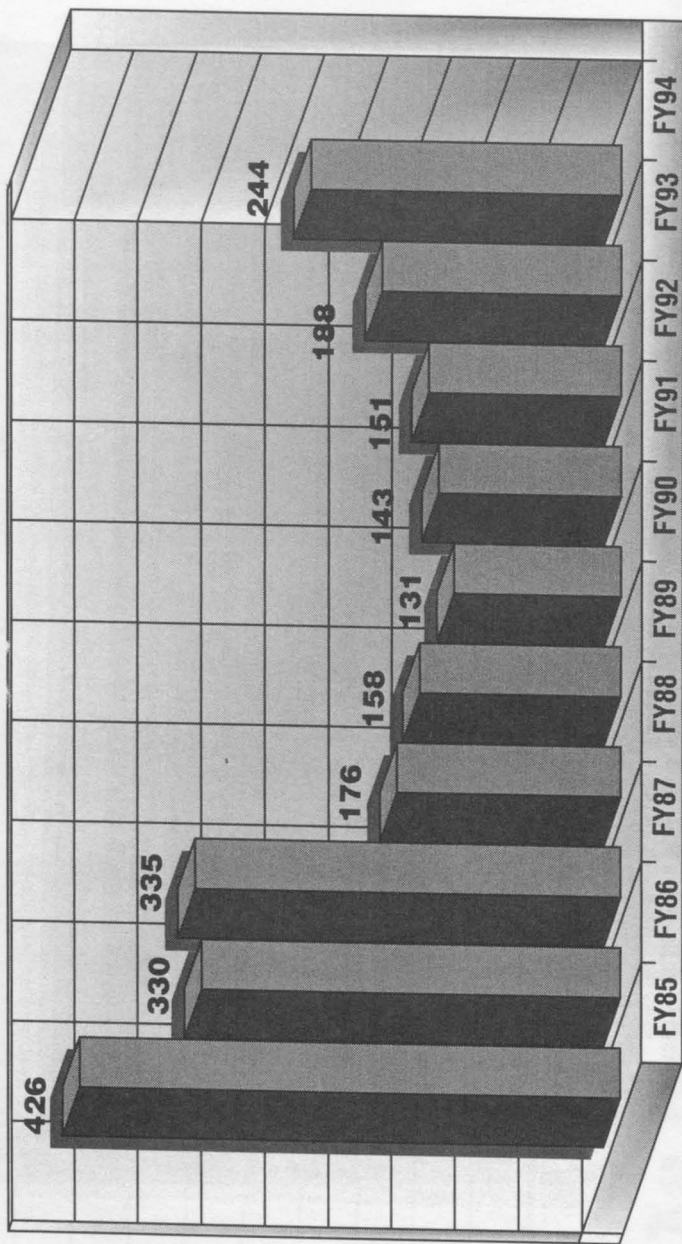
# Days from Petition Filing to Grant

## APPENDIX E



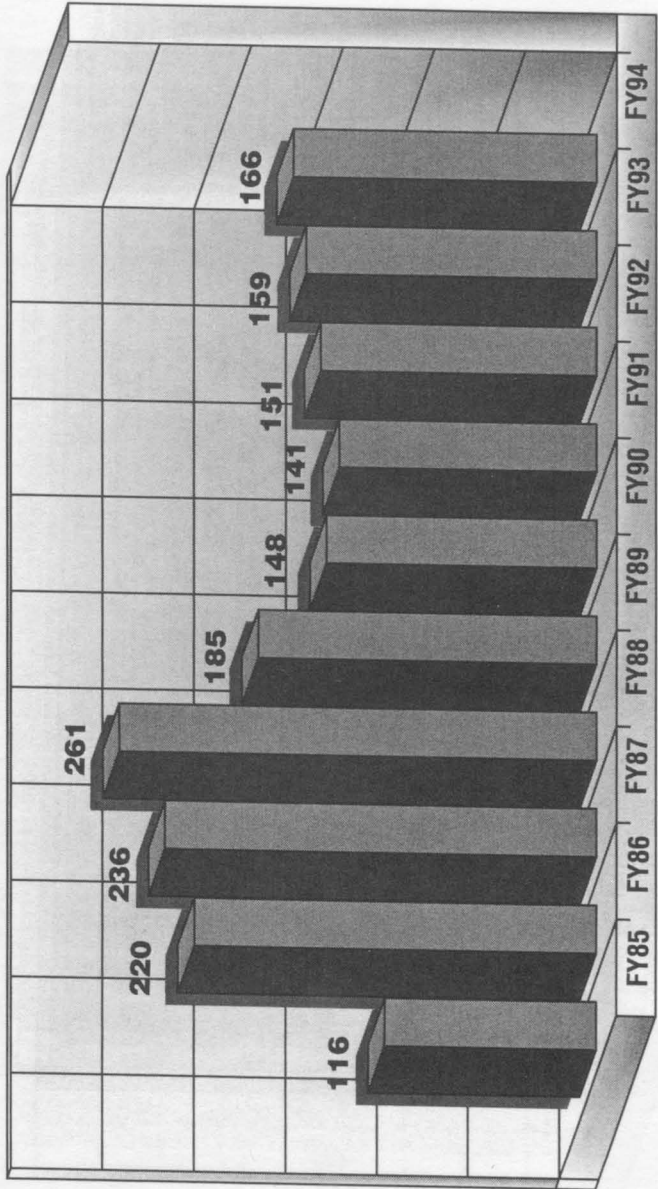
95-0110/6/kat

# Days from Petition Grant to Oral Argument



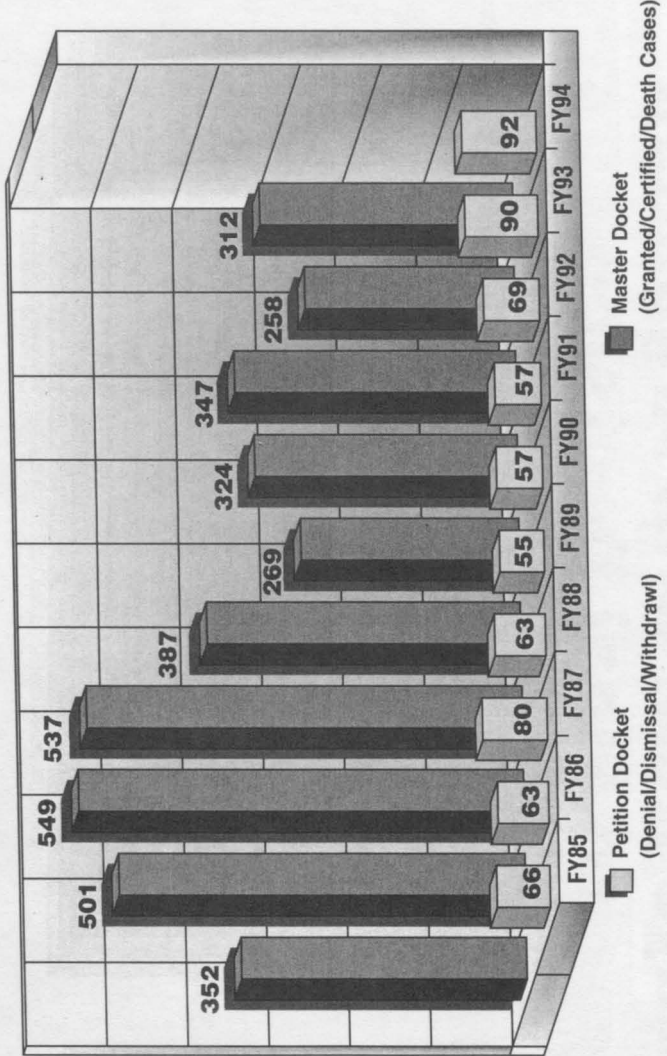
# APPENDIX G

## Days from Oral Argument to Final Decision



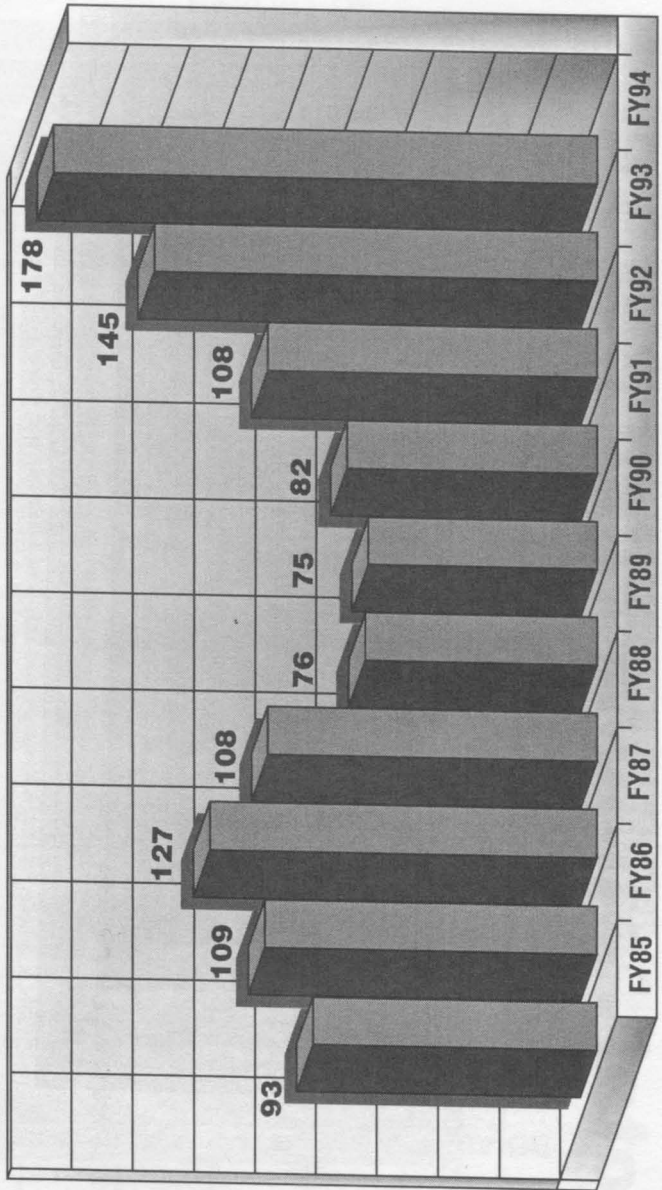
95-0110/8/kat

# Days from Petition Filing to Final Decision



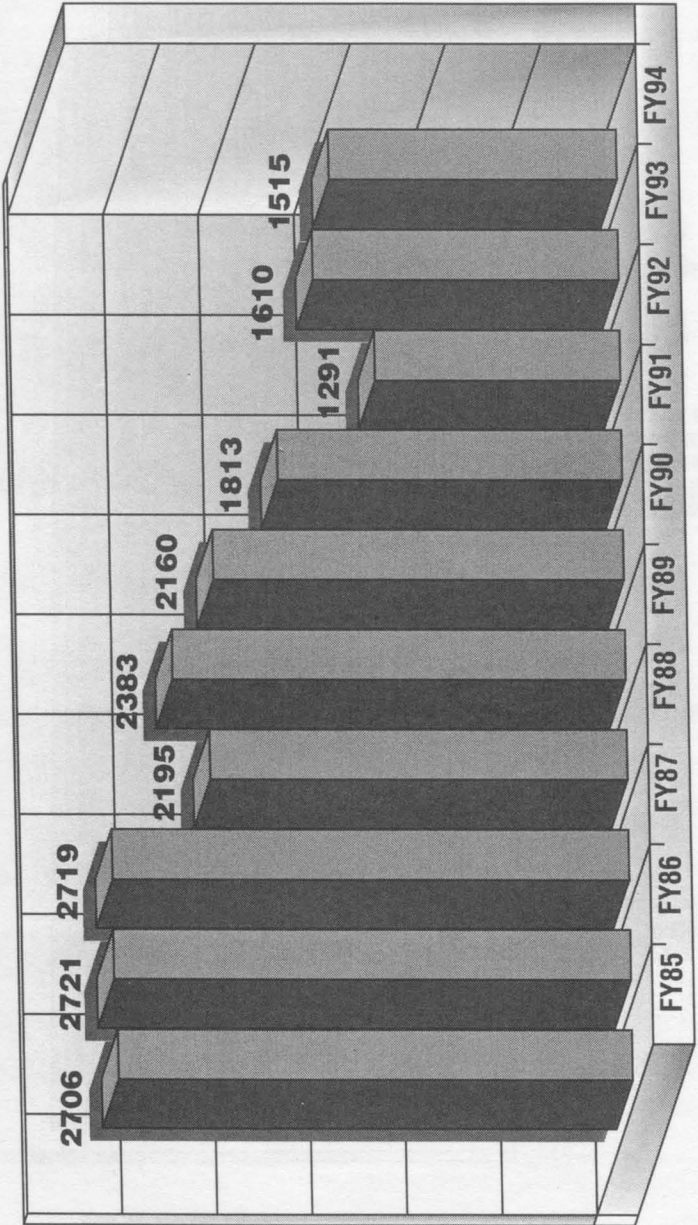


# Days from Filing to Final Decision in All Cases



APPENDIX J

# Total Petitions Filed Per Year



95-0110/1/kat



# **REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY OCTOBER 1, 1993, TO SEPTEMBER 30, 1994**

During fiscal year 1994 (FY 94), the Office of The Judge Advocate General (OTJAG) continued to monitor courts-martial, review and prepare military publications and regulations, and develop and draft changes to the Manual for Courts-Martial (MCM) and the Uniform Code of Military Justice (UCMJ). Through its Field Operating Agencies, OTJAG provided judicial and appellate services, advice, assistance, and professional education to ensure the orderly and efficient administration of military justice. Numbers in this report are based on a military end strength of 557,516 in FY 94 and 586,149 in FY 93.

## **MILITARY JUSTICE STATISTICS STATISTICAL SUMMARY: FY 94 (See table insert, attached)**

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

The U.S. Army Legal Services Agency, a field operating agency of OTJAG, includes the following organizations involved in the administration of military justice: the U.S. Army Judiciary, the Government Appellate Division, the Defense Appellate Division, the Trial Defense Service, and the Trial Counsel Assistance Program.

### **U.S. ARMY JUDICIARY**

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

### **U.S. ARMY TRIAL DEFENSE SERVICE**

During FY 94, the United States Army Trial Defense Service (USATDS) continued to provide high-quality, professional defense counsel services to soldiers throughout the Army. USATDS workload data for the most recent FYs is displayed below.

	FY 93	FY 94
General Courts-Martial.....	982	814
Special Courts-Martial.....	412	374
Administrative Boards.....	783	629
Nonjudicial Punishment.....	36,273	32,682
Adverse Administrative Actions.....	20,362	28,111

USATDS provided support to the Multi-National Force in the Sinai, and to troops in Southwest Asia, Macedonia, Somalia, Haiti, and Kuwait. While affected by a continued drawdown of TDS counsel, USATDS continued to man over 70 offices world-wide to place defense counsel in proximity to the units they served. This close unit support included defense counsel deployment on command training exercises. At specified locations, USATDS maintained inter-service agreements to provide mutual support along with judge advocates of other services.

## **TRIAL COUNSEL ASSISTANCE PROGRAM**

During FY 94, the U.S. Army Trial Counsel Assistance Program (TCAP) performed its mission by providing information, advice, training, and trial assistance to military prosecutors world-wide. In addition to services provided to Army attorneys, TCAP had an expanded constituency among prosecutors in the Air Force, Navy, Marine Corps, and Coast Guard. Attorneys from our sister services continue to be among the most ardent users of TCAP services. Four basic categories of TCAP services were provided during FY 1994: (1) telephone inquiry assistance; (2) training seminars and conferences; (3) the TCAP Memo; and (4) trial assistance. During FY 94, TCAP attorneys responded to 924 telephonic requests for advice and assistance (compared to 1,147 in FY 93), conducted seven advocacy training courses in the Continental United States (CONUS), Korea/Hawaii, and Germany; held one video teleconference; and published and distributed to approximately 350 subscribers, twelve editions of the TCAP Memo. TCAP also provided instructional assistance for trial counsel attending the U.S. Army Europe (USAREUR) Criminal Law Conferences and the Criminal Law New Developments Course and Criminal Law Advocacy Courses at The Judge Advocate General's School, U.S. Army.

## **SIGNIFICANT MILITARY JUSTICE ACTIONS**

Criminal Law Division, OTJAG, advised The Judge Advocate General on military justice policy, legislation, opinions and related criminal law actions. Specific responsibilities included: promulgating military justice regulations and reviewing Army regulations for legal sufficiency; military corrections; the Army's drug testing program;

federal felony and magistrate court prosecutions; legal opinions for the Army Staff; statistical analysis and evaluation; and Congressional inquiries.

Criminal Law Division workload data for the last two fiscal years is displayed below:

	FY 93	FY 94
White House inquiries.....	77	110
Congressional inquiries.....	93	105
Legal Opinions for Army Board for .....	11	6
Correction of Military Records		
Secretary of Defense, Secretary of the ....	149	97
Army, Chief of Staff of the Army, and		
The Judge Advocate General inquiries		
Miscellaneous inquiries.....	29	26
Clemency Petitions, Article 74, UCMJ....	3	2
Officer Dismissal Actions .....	16	24
Freedom of Information/Privacy Act .....	22	23

During FY 94, the Criminal Law Division participated with the International Law Division in the 1st International Convention on Military Justice in Lima, Peru; represented TJAG on a DoD/DoJ task force revising the Federal Crime Victim and Witness Assistance Program; attended meetings of the American Bar Association committees dealing with military law matters; and contributed to the 1994 Judicial Conference of the U.S. Court of Appeals for the Armed Forces and the annual meeting of the Code Committee.

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

The Chief, Criminal Law Division, OTJAG, serves as the Army representative to the Joint-Service Committee on Military Justice (JSC) established by the Judge Advocates General and the Secretary of Transportation (Coast Guard) on August 17, 1972. The JSC conducts an annual review of the MCM, as required by Executive Order 12473 and DoD Directive 5500.17. The JSC proposes and evaluates amendments to the UCMJ and MCM, while serving as a forum for exchanging military justice information.

During FY 94, Change 7 (the 1991 and 1992 annual reviews) was promulgated by the President as Executive Order 12936, effective 9 December 1994. Highlights of Change 7 include a substantial increase in permissible punishments for homicides and sex offenses, and a revision of the sentencing rules relating to evidence of rehabilitative potential. The Military Rules of Evidence also were amended by Change 7 to conform military practice to recent Supreme Court

decisions in the area of custodial requests for counsel and searches and seizures incident to apprehension.

During FY 94, the JSC also completed its ninth (1993) annual review of the MCM. This review was submitted for public comment, and was forwarded in July to the DoD General Counsel for evaluation. The tenth (1994) annual review of the MCM was completed in November, and also forwarded to the DoD General Counsel for evaluation. Both reviews were subsequently merged and forwarded to the Office of Management and Budget as Change 8 to the MCM.

Highlights of Change 8 include: the sentencing authority, upon rehearing or new trial, may adjudge any lawful sentence, but the convening authority action is limited to the sentence originally approved; members may not reconsider any finding announced in open court; confinement on bread and water or on diminished rations is no longer an authorized court-martial punishment; and the SJA must inform the convening authority of a recommendation for clemency made by the sentencing authority. Change 8 permits court-martial sentences to run consecutively with sentences adjudged by civilian or foreign jurisdictions and allows the convening authority to correct minor errors in actions before the record is forwarded for appellate review.

Change 8 clarifies the standards for review of search authorizations based on false statements and clarifies that the intent element of espionage is not satisfied merely because the accused acted without lawful authority. It amends the procedures concerning the handling and admissibility of privileged government information other than classified, and changes the definition of inherently dangerous acts to cover acts dangerous to "another" as opposed to "others." Change 8 extends the definition of drunken or reckless driving to the operation of aircraft and vessels and establishes a 0.10 blood alcohol level as proof of intoxication. Change 8 also makes rape gender neutral and adds spousal rape as an offense.

The Army acts as Executive Agent for the Joint Service Committee on Military Justice. Consequently, besides forwarding proposed changes to the MCM to DoD, the Army also arranged for publication of a new soft-cover Manual for Courts-Martial. The new MCM's user-friendly format also resulted in significant cost savings to DoD.

## **FOREIGN CRIMINAL JURISDICTION**

As executive agent for the Department of Defense, the Department of the Army, through the International and Operational Law Division, OTJAG, maintains information concerning the exercise of foreign criminal jurisdiction over U.S. personnel.

The data below, while not coinciding with the FY used in other

parts of this report, nonetheless gives an accurate picture of foreign criminal jurisdiction during this reporting period:

	1 DEC 1991 to 30 NOV 1992	1 DEC 1992 to 30 NOV 1993
Foreign Offense Citations .....	10,766	7,486
Total Civilian .....	2,155	1,646
Total Military.....	8,611	5,840
Exclusive Foreign Jurisdiction .	828	293
Concurrent Jurisdiction .....	7,783	5,547
Traffic/Other Minor Offenses....	789	511
Foreign Jurisdiction Recalls .....	1,009	831
Total Foreign Criminal Trials.....	1,815	1,494

The overall decline in numbers in each category reflects the overall decline of Army personnel stationed overseas.

This year, foreign authorities released 67 of the 293 exclusive foreign jurisdiction cases involving military personnel to U.S. military authorities for disposition. Because the concurrent jurisdiction offenses involved violations of both U.S. military and foreign laws, the foreign countries had authority to assert primary jurisdiction. This year, however, U.S. military authorities were able to obtain waivers of foreign jurisdiction in 4,942 of these incidents. Overall, waivers were obtained in 89.0 percent of exclusive or concurrent foreign jurisdiction cases. A total of 1,646 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 U.S. has no effective jurisdiction over these offenses. Last year, when there were 2,155 offenses involving civilian employees and dependents, foreign authorities released 807, or 37.4 percent of the total, to U.S. military authorities for administrative or other disposition. This year foreign authorities released 371, or 22.5 percent of the total, to U.S. military authorities.

Foreign authorities tried a total of 1,494 cases. Ten trials, or 0.7 percent, resulted in acquittals, and 1,374, or 92 percent, resulted in sentences to fines or reprimands. The remainder included 35 executed sentences to confinement and 75 suspended sentences to confinement.

## PROFESSIONAL RESPONSIBILITY

The Professional Responsibility Branch, Standards of Conduct Office, was created in August 1991. It is charged with managing TJAG's professional responsibility program, previously a responsibility of the OTJAG Criminal Law Division.

In 1987 the Army published AR 27-26, Rules of Professional

Conduct for Lawyers (Army Rules). These rules, which closely parallel the ABA's Rules of Professional Conduct for Lawyers, apply to all active and Reserve Component judge advocates, all Department of the Army civilian attorneys, and non-government attorneys who practice before courts-martial. The Army Rules were revised in 1992.

The Professional Conduct Branch maintains its records on a calendar year basis. During the past year, professional conduct inquiries initiated into alleged violations of the Army Rules decreased by 20 percent compared to the average for the previous five years. Based on the numbers for the first 10 months of calendar year 1994, the number of professional conduct inquiries will decrease an additional 20 percent compared to CY 1993. Almost seventy-five percent of the inquiries resulted in findings of no violations. In those cases where violations were found, the majority were minor, technical violations. About 30 percent of all inquiries concerned the conduct of trial or defense counsel.

## LITIGATION

Civil litigation against the Department of the Army and its employees continued to increase during FY 94. Suits requiring the civilian courts to interpret the UCMJ, and the validity of actions taken pursuant to it, constitute a small but significant portion of the litigation. A majority of these cases seek collateral review of court-martial proceedings. Most remaining cases present challenges to the general conditions of confinement, specific actions taken by confinement facility personnel, or parole and clemency proceedings

## EDUCATION AND TRAINING

The Judge Advocate General's School, US Army, located in Charlottesville, Virginia, remains a vibrant, busy and unique academic institution. During FY 94, the School provided education in the law and related subjects to more than 6,515 lawyers, commanders, other officers, enlisted personnel, and to civilians of the military services and other federal agencies.

The School conducted 46 resident courses this year, one more than last year. During FY 94, 3,401 students, 1,160 of whom were Active Army, graduated compared to 3,648 (1,461 Active Army) during FY 93. During FY 94, 637 students were members of the Reserve Components, a decrease of 20 from FY 93. Federal Civilian Employees attending resident courses at the School numbered 821 in FY 94 and 802 in FY 93. Other military departments sent 724 students (355 Air Force, 128 Marine, and 241 Navy) in FY 94 compared with 802 in FY 93. Also attending classes in FY 94 were 42 members of the Coast Guard and 17 International Military Students. All states with

mandatory Continuing Legal Education requirements awarded CLE credit for these courses, which provide attorneys with practice-oriented education and training emphasizing recent developments in the areas of administrative and civil law, government contract law, criminal law, and international and operational law.

In addition to the 46 resident courses offered during FY 94, 23 courses were conducted on-site at locations around the world. More than 3,114 students attended the School's on-site instruction this year, compared to 2,494 last year. This year six classes were presented in Europe and the Far East and attended by 280 students. Last year twelve classes were presented in Europe and the Far East and attended by 453 students. The 17 Reserve Component training sessions presented in FY 94 throughout the United States were attended by 2,834 students. The 18 Reserve Component training sessions presented in FY 93 were attended by 2,059 students.

The "flagship" educational experience of the School remains the Judge Advocate Officer Graduate Course. The Judge Advocate General's School is the only government entity statutorily authorized to grant the degree of Master of Laws (LL.M.) in Military Law. In 1988, the American Bar Association recognized the demanding scholastic standards of the Graduate Course and concurred in the School's awarding the LL.M. degree in Military Law.

On May 14, 1994, 75 students of the 42d Graduate Class received The Judge Advocate General's School Master of Laws in Military Law. In addition to 52 Army judge advocates, the class consisted of 10 Marine, 5 Navy, 5 Air Force, 1 US Army Reserve, and 2 international military students, 1 from Canada and 1 from Israel. The 41st Graduate Class graduated 76 students.

Three Judge Advocate Officer Basic Courses, twelve weeks in length, introduced a total of 134 students (127 Active Army, 2 US Army Reserve, 2 Army National Guard, and 3 International Military students) to the practice of law in the military. The School provided instruction to these new judge advocate officers on the responsibilities of a military officer, ethics, and substantive military law subjects. The Basic Course curriculum is carefully designed to prepare new practitioners for what they are likely to encounter in their first assignments.

The Basic Course criminal law instruction was restructured to more accurately reflect the needs of the military. Substantial parts of the Basic Course clinical training program consisting of six trial technique exercises were transferred to a new course entitled the Criminal Law Advocacy Course. This course, held for the first time this Spring, was created to provide newly assigned trial and defense counsel an intensive two-week trial advocacy course once assigned to a trial slot. The biannual Criminal Law Advocacy Course is com-

posed of substantive and procedural instruction in the first week, followed by several trial technique exercises and a fully contested mock trial.

The core curriculum for the Graduate Course familiarized all students with criminal law subjects during the first two quarters and included small-group seminars on various areas of evidence and procedure. Instruction in the final two quarters consisted of advanced criminal law electives. The final session of the Criminal Trial Advocacy Course was offered to trial and defense counsel in the fall (the course was replaced by the Criminal Law Advocacy Course); the Military Judge Course was offered to selected officers from all armed services, including both active and reserve components; and the Basic Procurement Fraud Course was offered to military and civilian employees of the Department of Defense. The Contract Law Division participated in cross-disciplinary education by teaching with the Criminal Law Division at the Basic Procurement Fraud Course. The Criminal Law Division presented instruction to judge advocates from all services on recent criminal law developments during the Criminal Law New Developments Course.

In addition to resident instruction, the Criminal Law Division taught criminal law at reserve on-site locations, in Panama, and in Europe. The division also supported a two week resident phase of the Judge Advocate Triennial Training and the Judge Advocate Officer Advanced Course for members of the Reserve Components.

The Criminal Law Division updates and publishes deskbooks on criminal law subjects. Included within the division's publications are the Crimes and Defenses Deskbook, the Trial Counsel and Defense Counsel Handbook, the U.S. Attorneys Prosecutions Deskbook, Department of the Army Pamphlet 27-173 (Trial Procedure), and Department of the Army Pamphlet 27-7 (Guide for Summary Court-Martial Trial Procedure). Criminal Law instructors also regularly contributed articles and short notes for publication in *The Army Lawyer* and the *Military Law Review*.

Criminal Law instruction was complemented by an exceptional guest speaker program that included Judge Walter T. Cox, III, and Judge Herman F. Gierke, from the U.S. Court of Military Appeals; Mr. John F. Depue, Senior Attorney, Terrorism and Violent Crimes Division, Department of Justice; Major General (U.S. Army, retired) Kenneth J. Hodson, Washington, D.C.; Professor Fredrick I. Lederer, William & Mary School of Law; and Professor Thomas A. Mauet, University of Arizona College of Law. Other distinguished trial attorneys from the private sector including Mr. Steve Berry, Lincoln, Nebraska, also participated in the guest speaker program. The Honorable Jo Ann Harris, Assistant Attorney General, Department of Justice, Criminal Law Division, presented the 23d Kenneth J. Hodson Lecture in Criminal Law.



The goal of the International Law Division was to instruct military attorneys in the international and domestic law applicable to military operations. To this end, the division continued to focus on practical international legal issues that directly affect the judge advocate during peacetime and combat deployments. Consequently, the Division incorporated into the Graduate Course curriculum the lessons learned from Somalia, the Gulf, Panama, and two domestic situations, Los Angeles (riots) and Florida/Hawaii (hurricane disaster relief). Similarly, lessons and experiences from training exercises in Latin America, Europe, and the Middle East have been incorporated into the instruction. Teaching responsibilities have further expanded to include counter-drug operations, military aid to law enforcement, peacekeeping and peace enforcement, humanitarian assistance, human rights, and intelligence law.

Additionally, the School is playing an important role assisting the Department of Defense teach democratic, human rights, and rule of law concepts throughout the developing world. Under various United States Government programs, the School has sent faculty to Albania, Estonia, Hungary, Latvia, Rwanda, Senegal, Sierra Leone, Zimbabwe, Honduras, and other nations in support of these very important missions.

The Developments, Doctrine, and Literature Department continued to coordinate the production of top quality Department of the Army Pamphlets, Field Manuals, Training Circulars, and Graphic Training Aids. The Department developed and secured HQDA approval of a new table of organization and equipment for the Judge Advocate General Service Organization (JAGSO). The JAGSO is a Reserve Component organization designed to supplement legal services provided in a theater of operations by JAGC personnel organic to the Army units and commands in theater. The Department also began work on a new study analyzing paralegal and administrative support requirements for legal specialists and court reporters.

The *Military Law Review* and *The Army Lawyer* continued to provide quality articles that informed and educated judge advocates in the active Army and the Reserve Components. In October 1993, TJAGSA's Alumni Association presented its Professional Writing Award to Major Walter G. Sharp, Sr., for his article, "The Effective Deterrence of Environmental Damage During Armed Conflict: A Case Analysis of the Persian Gulf War," which appeared at 137 Mil. L. Rev. 1 (1992).

The Guard and Reserve Affairs Division (GRA) hosts the Annual Reserve Component Workshop at the School each April. GRA also supports reserve component Judge Advocate Triennial Training as well as the resident Phase II of the Judge Advocate Officer Advanced Course. Over 350 Army judge advocates attend these courses. GRA coordinates reserve component attendance at "invita-

tion only” courses at TJAGSA. These courses include the Military Judge Course, Staff Judge Advocate Course, and Senior Officer Legal Orientation Courses. Applications for reserve component attendance at the Graduate Course are approved by GRA.

The Judge Advocate General’s School is responsible for developing and providing military legal and related instruction to support training of Army National Guard and United States Army Reserve Judge Advocate personnel. A number of Reserve Component units have missions that require their activation and deployment within seventy-five days of alert. These missions require resident legal training for the commanders, attorneys, and paralegal personnel of those units who will be asked to perform them. The School has initiated a Reserve Component General Officer/Senior Officer Legal Orientation course for National Guard and United States Army Reserve commanders. Additionally, an Operational Law Workshop and a Domestic Operational Law Workshop for the Reserve Component legal communities are being developed.

## **PERSONNEL, PLANS, AND POLICIES**

The strength of the Judge Advocate General’s Corps at the end of FY 94 was 1,575. This total includes 43 officers (39 captains and 4 first lieutenants) participating in the Funded Legal Education Program during FY 94 compared to 34 officers (31 captains and 3 first lieutenants) in FY 93. The composition of the Judge Advocate General’s Corps included 86 African-Americans, 32 Hispanics, 24 Asian and Native Americans, and 281 women. The FY 94 end strength of 1,575 compares with an end strength of 1,646 in FY 93, 1,710 in FY 92, 1,752 in FY 91, and 1,771 in FY 90. The grade distribution of the Corps was 6 general officers, 129 colonels, 192 lieutenant colonels, 334 majors, 880 captains, and 35 first lieutenants. Sixty-two warrant officers, 307 civilian attorneys, and 1,703 enlisted soldiers supported legal operations worldwide.

To ensure selection of the best qualified candidates for initial commission, career status, and service schools, The Judge Advocate General convened advisory boards several times during the year. Newly accessed officers were commissioned as first lieutenants.

One hundred and ninety-eight Judge Advocate officers completed the following service schools:

U.S. Army War College .....	2
National War College .....	1
Industrial College of the Armed Forces .....	2
Department of Justice Fellowship .....	1
U.S. Army Command and General Staff College.....	13
The Judge Advocate Officer Graduate Course.....	52
The Judge Advocate Officer Basic Course .....	127

During FY 94, four officers completed fully funded study for Master of Law (LL.M.) degrees in specialized fields of law.

As a separate competitive category under the Department of Defense Officer Personnel Management Act, officers of The Judge Advocate General's Corps compete among themselves for promotion. During FY 94, the Secretary of the Army convened seven selection boards to recommend Judge Advocate officers for promotion to higher grades.

MICHAEL J. NARDOTTI, JR.  
*Major General, USA*  
*The Judge Advocate General*

# TABLE 1

Period: **FISCAL YEAR 1994**

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

TYPE COURT	TRIED [A]	CONVICTED	ACQUITTALS [B]	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	843	783	60	- 7.9%
BCD SPECIAL	345 [C]	310	35	+ 5.5%
NON-BCD SPECIAL	32	20	12	-28.9%
SUMMARY	349	321	28	- 4.1%
<b>OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT</b>				<b>- 5.0%</b>

**PART 2 - DISCHARGES APPROVED [D]**

<b>GENERAL COURTS-MARTIAL (CA LEVEL)</b>			
NUMBER OF DISHONORABLE DISCHARGES		182	
NUMBER OF BAD CONDUCT DISCHARGES		443	
<b>SPECIAL COURTS-MARTIAL (SA LEVEL)</b>			
NUMBER OF BAD CONDUCT DISCHARGES		146	

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	658
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	152
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	77

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

<b>TOTAL ON HAND BEGINNING OF PERIOD [F]</b>		155
GENERAL COURTS-MARTIAL	[G]	
BCD SPECIAL COURTS-MARTIAL		
<b>REFERRED FOR REVIEW</b>		815
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
<b>TOTAL CASES REVIEWED</b>		924 [H]
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
<b>TOTAL PENDING AT CLOSE OF PERIOD</b>		46
GENERAL COURTS-MARTIAL	[G]	
BCD SPECIAL COURTS-MARTIAL		
<b>RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD</b>		<b>-26.1%</b>

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

NUMBER	810 [I]
PERCENTAGE	100%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	54.1%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+1.1%
PERCENTAGE OF TOTAL PETITIONS GRANTED	8.1% [J]
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-32.1%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	6.1%
<b>RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD</b>	<b>-22.0% [L]</b>

# TABLE 1 (CONT'D)

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		6
RECEIVED		38
DISPOSED OF		34
GRANTED	3	
DENIED	26	
NO JURISDICTION	4	
WITHDRAWN	1	
TOTAL PENDING AT END OF PERIOD		10
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL		544
SPECIAL COURTS-MARTIAL		217
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		299
SPECIAL COURTS-MARTIAL		160
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS		
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	557,516	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		41,753
RATE PER 1,000		74.9
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-.5/1,000

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### EXPLANATORY NOTES

- [A] Original trials only.
- [B] All cases terminated other than by conviction.
- [C] Cases convened by GCM convening authority in which Army SPCM specifically empowered to impose a BCD.
- [D] Based on records of trial received during report period (PART 3), not cases tried (PART 1). In addition to DDs shown, 18 dismissals of officers were approved.
- [E] Does not include cases in which appellate review was waived (None in FY 94).
- [F] Includes only cases briefed and at issue before the Court. At year end, briefs were awaited in an additional 314 cases.
- [G] Cases pending before USACMR (which may include government appeals and petitions for extraordinary relief) are not routinely accounted for by type of court-martial.
- [H] Includes 6 appeals in which withdrawal from appellate review was granted. Also includes 14 writ cases. No Government appeals were filed.
- [I] Total appellants represented by counsel. Of that number, 17 were also represented by civilian counsel.
- [J] Based only on petitions acted upon during the report period.
- [K] Average of monthly strengths shown in report DCSPER-46.
- [L] Previous year includes 220 "trailer cases" involving constitutionality of method of designating military trial and appellate judges.



**ANNUAL REPORT**  
**of**  
**THE JUDGE ADVOCATE GENERAL OF THE NAVY**  
**pursuant to the**  
**Uniform Code of Military Justice**  
**FISCAL YEAR 1994**

**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 made frequent inspections of legal offices in the United States, Europe, and the Far East in supervision of the administration of military justice.

**ARTICLE 69(a), UCMJ, EXAMINATIONS**

Sixty-three general court-martial records of trial, not statutorily eligible for automatic review by the Navy-Marine Corps Court of Military Review, were forwarded for examination in the Office of the Judge Advocate General in fiscal year 1994. One case required corrective action by the Judge Advocate General. Seven cases are pending review.

**ARTICLE 69(b), UCMJ, APPLICATIONS**

In fiscal year 1994, 31 applications under Article 69(b), Uniform Code of Military Justice, were received for review. Of these, 15 applications were denied on the merits, while relief was granted in whole or in part in 4 cases. Twelve cases are pending review.

**ARTICLE 73, UCMJ, PETITIONS**

In fiscal year 1994, six petitions for new trial were received by the Office of the Judge Advocate General. Five petitions were granted and one petition is pending review.

## APPELLATE GOVERNMENT DIVISION

*Appellate Representation.* The 11 Navy and 4 Marine Corps judge advocates assigned to the Appellate Government Division filed a total of 2256 pleadings last year; 1705 with the Navy-Marine Corps Court of Criminal Appeals and 551 with the U.S. Court of Appeals for the Armed Forces. These numbers exclude cases which were submitted to the courts without specific assignments of error. This number represents an overall decline of 7% over last year's workload. Additionally, the Division filed 8 briefs in opposition to petitions for writ of certiorari and 1 final brief for the United States Supreme Court and 10 briefs in Government appeals.

*Field Assistance.* The Trial Counsel Assistance Program (TCAP), is a function within the Appellate Government Division which provides a central coordinating point to assist field trial counsel and staff judge advocates in the effective prosecution of courts-martial. Four appellate counsel are detailed to implement this program. Prompt assistance (usually the same day) is provided in response to telephone calls or electronic messages from trial counsel and staff judge advocates in the field requesting advice or information about cases pending or being tried. Additional assistance is provided through training presentations, the periodic publication of *Electronic Viewpoint*, and a computer bulletin board. Through these proactive and effective methods, there has been a 3% increase in assistance calls over the last year.

*Presentations.* Government counsel also participated in the 1994 Judicial Conference of the United States Court of Appeals for the Armed Forces in Washington, D.C., and made presentations at the Army Judge Advocate General's School's Graduate Course, the Army-Navy Reserve Conference in Minneapolis, Minnesota, and before the Courts of Criminal Appeals Judge's Conference in Washington, D.C.

*Reserves.* The Appellate Government Division continued to provide and support 12 Navy reservists and 9 Marine Corps reservists assigned to the Division. The Reservists assigned continued to make a significant contribution to the successful completion of the Division's mission, including the presentation of 5 oral arguments before the Navy-Marine Corps Court of Criminal Appeals and the U.S. Court of Appeals for the Armed Forces.

## APPELLATE DEFENSE DIVISION

*Appellate Defense Practices.* A total of 2154 cases were reviewed during fiscal year 1994 by the 20 active duty Navy and Marine judge advocates and their reserve counterparts assigned to the Appellate Defense Division. Of that total, 618 were fully briefed to the Navy-



Marine Corps Court of Criminal Appeals, while 770 were summarily assigned. The briefing percentage rose from 24% in fiscal year 1993 to 29% in fiscal year 1994, signifying that, although total caseload has dropped slightly, the complexity of cases has increased. Four hundred and thirty-three cases were petitioned to the Court of Appeals for the Armed Forces. The two active death-penalty appeals continued their progress through the appellate system. *United States v. Curtis* is currently pending before the Court of Appeals for the Armed Forces, and *United States v. Thomas* is currently pending oral argument before the Navy-Marine Corps Court of Criminal Appeals. Additionally, the Division is contemplating the receipt of two more death-penalty cases which are currently awaiting post-trial action by the convening authority.

*Supreme Court practice.* The Division's practice before the United States Supreme Court was particularly active during fiscal year 1994. Two cases were orally argued. *United States v. Weiss* involved a systemic attack on the method of appointing military trial and appellate judges. *United States v. Davis* involved a *Miranda* issue concerning police practices after a suspect makes an ambiguous comment regarding a desire for counsel in the midst of an interrogation. Although the government prevailed in both cases, each of them will have a significant impact on military practice, and *Davis* will serve as landmark precedent for every jurisdiction in the country.

*Trial Defense Assistance.* The Field Department continued to provide immediate, on-call advice to field defense counsel on trends and developments in appellate litigation and suggestions on trial tactics in pending cases. On average, the Division receives one such field call per day and the response has ranged from rather routine advice taking only a few minutes to the filing of extraordinary writs involving several months of litigation.

*Reserves.* The Division continues to rely heavily upon the outstanding support provided by its reserve assets. Reserves remain involved in approximately 25% of the Division's case load. The use of a senior active duty appellate attorney as Reserve Coordinator provides excellent centralized case management and ensures quality control of the reserve docket.

## NAVY-MARINE CORPS TRIAL JUDICIARY

The Navy-Marine Corps Trial Judiciary (NMCTJ) provided military judges for 582 general courts-martial and 2571 special courts-martial during fiscal year 1994. These numbers represent a decrease of 152 general courts-martial (-20.7%) and a decrease of 480 special courts-martial (-15.7%). Despite the overall decrease in cases tried, the total numbers of hours expended trying cases increased from 27312 in fiscal year 1993 to 28042 in fiscal year 1994, a 2.6%

increase. Of the general courts-martial tried, 37.1% were contested cases, and of the special courts-martial tried, 19.8% were contested. The *average* GCM tried during fiscal year 1994 required 3.5 times more judicial time than the *average* SPCM (21.2 hrs/GCM v. 6.1 hrs/SPCM). Total travel time was 3503 hours for 1023 cases. Cases were tried world-wide, including such places as Bahrain and Iceland, as well as at sea. The NMCTJ is comprised of 14 circuit offices, 7 subsidiary branch offices, 38 active duty judges, and 23 reserve judges.

Military judges received continuing legal education at the East and West Coast NMCTJ Military Judges' Meetings, the Air Force-sponsored Interservice Military Judges Seminar, the National Judicial College, and the Military Judges' Course at the Army JAG School. Military judges served as lecturers or seminar leaders at the Navy-Marine Corps Senior Officer Courses in Military Law, offered by the Naval Justice School at numerous locations world-wide as well as for various in-service courses.

## **NAVAL LEGAL SERVICE COMMAND**

Naval Legal Service Command (NAVLEGSVCCOM) provides a wide range of legal services to afloat and ashore commands, active duty naval personnel, dependents, and retirees from 43 offices world-wide. Specific functions include the provision of counsel for courts-martial and administrative boards, counsel to commands, claims processing and adjudication, counsel at physical evaluation boards, and legal assistance. In addition, the command also includes the Naval Justice School at Newport, Rhode Island, charged with training sea service judge advocates, and paralegals/court reporters for all services, as well as foreign military and civilian defense personnel through the Expanded International Military Education and Training Program.

In fiscal year 1994, NAVLEGSVCCOM completed the second year of a three year reorganization plan. When completed, NAVLEGSVCCOM would consist of 12 Naval Legal Service Offices (NLSOs) (down from 16 at the beginning of the fiscal year and 21 when implementation began) and 28 detachments and branch offices. At the end of the fiscal year, NAVLEGSVCCOM stood at 15 NLSOs and 27 detachments and branch offices. NAVLEGSVCCOM is commanded by the Deputy Judge Advocate General of the Navy and includes 320 officer, 207 enlisted, and 170 civilian personnel. The command constitutes about 40% of the Navy's total judge advocate strength.

Commander Naval Legal Service Command (COMNAVLEGSVCCOM) and the Judge Advocate General initiated a study of ways to improve litigation services within NAVLEGSVCCOM. As a result of that study, COMNAVLEGSVCCOM proposed establishment of a

prototype Trial Service Office (TSO) in the southeastern United States. The new TSO would assume all trial counsel (prosecution), court reporting and command service functions formerly provided by four NLSOs in the area; the NLSOs would retain defense counsel, personal representation, legal assistance and claims functions. The purpose of the TSO is to completely separate prosecution and defense functions in the Navy military justice system, allowing TSO and NLSO commanding officers for the first time to become directly involved in trial advocacy, advising their junior counsel in court-martial cases without giving rise to a conflict of interest. COMNAVLEGSVCCOM hopes that the new organization, by allowing more direct mentoring of junior counsel by senior leadership, will improve the litigation skills of judge advocates who prosecute and defend cases at courts-martial while enhancing the ability of Naval Legal Service Command to provide litigation services to both client commands and individuals. The prototype is expected to start up at the beginning of fiscal year 1995 and be studied over a period of about two years; if adopted, it would require extension of the current reorganization plan.

NAVLEGSVCCOM activities rely upon the Judge Advocate General Management Information System (JAGMIS) to facilitate high quality and responsive legal services. JAGMIS is a personal computer based system which tracks each activity's work load from receipt to disposition. Following last year's successful implementation of the headquarters module of the Military Justice Management Information System (MJMIS - a consolidated tracking system for courts-martial through the appellate process), this year saw approximately 50% of the necessary work completed on the field version of MJMIS which will extend the appellate level cradle-to-grave case tracking capability all the way back to the initial receipt of charges.

The Naval Legal Affairs World Wide Support Strategy (NAVLAWSS) is an ongoing program to provide business tools to foster the efficient delivery of services throughout NAVLEGSVCCOM. Phase I of this program, delivery of a personal computer for each member of the command, Phase II, site preparation of Local Area Network (LAN) cable plant installation at 30 NAVLEGSVCCOM activities, plus the Office of the Judge Advocate General, were completed in prior fiscal years. Phase III, implementation of LANs at each of the remaining 13 NAVLEGSVCCOM sites, was completed on schedule and on budget in fiscal year 1994, tying all NAVLEGSVCCOM activity LANs together into a wide area network (WAN). Fiscal year 1994 also saw many NAVLEGSVCCOM activities working with area Staff Judge Advocates to tie them into the local LAN and, through the WAN, place them in communication with much of the rest of the uniformed Navy legal community. In addition, NAVLEGSVCCOM participation in an electronic mail system

has continued to expand.

Finally, NAVLEGSVCCOM has continued to explore ways to make its personnel more productive through use of innovative electronic technology. NAVLEGSVCCOM activities have already been provided with electronic infobase versions of twelve of their most frequently used references, and a pilot project to produce and distribute updated versions of those references, plus many other Navy and Marine Corps directives, by compact disk throughout the Navy are well along. Combined with planned purchases of CD-ROM capable portable computers for those judge advocates most often called upon to travel, these compact disks will furnish the sea service judge advocate a compact and thorough research library, allowing him or her to practice effectively in even the most remote locations.

## **NAVAL JUSTICE SCHOOL**

ORGANIZATION. Naval Justice School (NJS) is organized and operates in accordance with the Naval Justice School Standard Organizational Manual, NAVJUSTSCOLINST 5400.1I (SORM), and the JAG CORPS TRAINING PLAN, JAGINST 1500.4 (TRAINING PLAN). The Commanding Officer also serves as the Assistant Judge Advocate General for Training (JAG 005). He is responsible for all JAG Corps training and for the legal training of the non-JAG communities.

LOCATION. The NJS facilities at Newport, Rhode Island contain the mixture of computer labs, computer aided teaching technology, lecture halls, court rooms, and seminar rooms which legal training requires. The NJS Detachment in San Diego is a tenant of the Fleet Training Center (FTC) and is suitable for teaching the non-lawyer Legal Officer Course and the two week enlisted Legal Clerk Course which are offered to reduce training costs for west coast commands seeking officer and enlisted legal training.

ACADEMIC PROGRAMS. NJS trains four categories of students: Judge Advocates, paralegals, non-legal line and staff corps officers, and foreign officers. NJS is the primary legal training school for Navy, Marine, and Coast Guard Judge Advocates, both active duty and Reserve. NJS also teaches court-reporting to Army, Navy, and Coast Guard enlisted personnel, both active duty and Reserve. New initiatives include:

1. Intermediate Trial Advocacy Course. The Intermediate course gives experienced practitioners a chance to refine and hone their skills. Focusing on communication skills and advanced evidentiary issues, the course uses NJS instructors and a civilian expert and is offered six times per year at sites throughout the continental United States.

2. Advanced Environmental Law. This five day course provides in-

depth coverage of all the major environmental law statutes and is designed for attorneys who work extensively in the environmental law field. Fundamental familiarity with environmental law is a prerequisite.

3. Continuing Legal Education (CLE) Course. Designed to provide judge advocates serving in overseas locations with required legal training, the two-day CLE course is taught jointly with the other service legal schools.

4. Tort Claims Symposium. This four-day course is given once each year in Norfolk, VA. The course is taught by active duty and civilian attorneys currently working in tort litigation and is designed to provide fundamental claims training to judge advocates.

5. Capital Litigation Training for the Defense. This three day course will be taught at NJS by civilian and military experts and will cover the aspects of defending a client which are unique to a military death penalty case.

6. Capital Litigation for the Prosecution. This three day course will be taught at NJS by government and military experts and will cover the aspects of prosecuting a military death penalty case.

## **MARINE CORPS ACTIVITIES**

During fiscal year 1994, two Marine Corps judge advocates graduated from top level schools. There is currently one judge advocate studying at the Naval War College, one studying Japanese at the Top Level School Tokyo, and two judge advocates at the Marine Corps Amphibious Warfare School. One judge advocate is studying at the Industrial College of the Armed Forces. Eight judge advocates graduated from the Judge Advocate General's School of the Army (TJAGSA) in Charlottesville, Virginia. There are currently eight judge advocates at TJAGSA studying for a LLM in military law.

Ten judge advocates in the Funded Legal Education Program (FLEP) graduated from a law school with their JD, and one judge advocate in the Excess Leave Program (ELP) graduated with JDs. There are currently four FLEP and twenty-five ELP students in law school.

One judge advocate is currently attending school in the Advances Degree Completion program (ADP), at George Washington University and three judge advocates graduated from the University of Washington.

All funding for continuing legal education (CLE) has shifted to local commands because of downsizing and a decrease in available funds.

During fiscal year 1994, one hundred and fourteen Marine Corps Reserve judge advocates were staffed in individual mobilization augmented detachment billets Marine Corps wide.

In conjunction with the Reserve Individual Mobilization Augmented Detachment, Headquarters Marine Corps, the Chief Defense Counsel of the Marine Corps organized and supported several three and four day intensive courses in trial advocacy at bases on the East and West coasts in Hawaii and Okinawa. Continuing efforts are underway to provide more professional legal education through cooperation between the reserve establishment and the NJS, bringing the training to the judge advocates in the field.

Harold E. Grant

*Rear Admiral, USN*

*Judge Advocate General of the Navy*

# APPENDIX A

Period: Fiscal Year 1994

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	582	542	40	-21%
BCD SPECIAL	1496	1496		-5%
NON-BCD SPECIAL	1075	965	110	-27%
SUMMARY	1472	1439	33	-49%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-25.5%

## PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)			
NUMBER OF DISHONORABLE DISCHARGES		176	
NUMBER OF BAD CONDUCT DISCHARGES		229	
SPECIAL COURTS-MARTIAL (SA LEVEL)			
NUMBER OF BAD CONDUCT DISCHARGES		1478	

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	430
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	1474
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	55

## PART 4 - WORKLOAD OF THE *NAVY PARALEGALS CORPS* COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD		1848
GENERAL COURTS-MARTIAL		547
BCD SPECIAL COURTS-MARTIAL		1301
REFERRED FOR REVIEW		1907
GENERAL COURTS-MARTIAL		448
BCD SPECIAL COURTS-MARTIAL		1459
TOTAL CASES REVIEWED		2301
GENERAL COURTS-MARTIAL		571
BCD SPECIAL COURTS-MARTIAL		1730
TOTAL PENDING AT CLOSE OF PERIOD		1475
GENERAL COURTS-MARTIAL		426
BCD SPECIAL COURTS-MARTIAL		1049
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		

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

NUMBER	N/A
PERCENTAGE	N/A

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	22%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+3.9%
PERCENTAGE OF TOTAL PETITIONS GRANTED	68%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+33%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	21.9%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+15.6%

# APPENDIX A (CONT'D)

<b>PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69</b>		
PENDING AT BEGINNING OF PERIOD		15
RECEIVED		31
DISPOSED OF		19
GRANTED	4	
DENIED	15	
NO JURISDICTION	0	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		25
<b>PART 8 - ORGANIZATION OF COURT</b>		
TRIALS BY MILITARY JUDGE ALONE		418
GENERAL COURTS-MARTIAL		
SPECIAL COURTS-MARTIAL		2289
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		164
SPECIAL COURTS-MARTIAL		282
<b>PART 9 - COMPLAINTS UNDER ARTICLE 138</b>		
NUMBER OF COMPLAINTS	163	
<b>PART 10 - STRENGTH</b>		
AVERAGE ACTIVE DUTY STRENGTH	673,650	
<b>PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)</b>		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		27,634
RATE PER 1,000		41.02
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-.9

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**REPORT OF  
THE JUDGE ADVOCATE GENERAL  
OF THE AIR FORCE  
OCTOBER 1, 1993 TO SEPTEMBER 30, 1994**

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

**THE AIR FORCE COURT OF CRIMINAL APPEALS**

At the beginning of fiscal year 1994 the number of cases pending before the Air Force Court of Military Review was 6 percent less than the year before. There was an 11 percent drop in the number of cases forwarded for review and personnel changes that left the Court two judges short of its authorized strength for nearly three months, as a result cases reviewed by this Court also dropped by 9 percent.

The trend toward more complex cases, higher percentages of cases referred for trial by general courts-martial and lengthier records of trial continues. Further reductions in the Court's caseload are anticipated during the coming fiscal year absent any unforeseen circumstances.

One of the positive developments during this year was the new appellate judges training course jointly initiated by the courts of military review from each service. By combining our resources, we have devised a way to ensure newly appointed judges receive timely, efficient, and effective training for their appellate duties.

On 1 August 1994, the Air Force Court of Criminal Appeals hosted an open house to celebrate the 25th anniversary of the creation of the courts of review. Among the honored guests were Chief Judge Sullivan from the United States Court of Appeals for the Armed Forces, Chief Judges from two other services, three members of the initial Air Force Court of Military Review, and eighteen other former judges from this Court.

## **MILITARY JUSTICE STATISTICS AND USAF JUDICIARY ACTIVITIES**

The Judiciary Directorate of the Air Force Legal Services Agency has overall responsibility for supervising the administration of military justice throughout the United States Air Force, from nonjudicial proceedings to the appellate review of courts-martial. Additionally, the Directorate has the staff responsibility of the Air Force Legal Services Agency in all military justice matters which arise in connection with programs, special projects, studies and inquiries generated by the Department of Defense (DoD), Headquarters USAF, members of Congress, and various 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 on applications submitted to the Air Force Board for Correction of Military Records. The board was provided 142 formal opinions concerning applications.

b. The Directorate received 612 inquiries in specific cases requiring either formal written replies or telephonic replies to senior officials, including the President and members of Congress.

c. The Directorate provided representatives to all interservice activities involving military justice and support for the Code Committee.

d. The Directorate removed a regulatory restriction on the use of summary court-martial which required the accused to first demand trial by court-martial in response to an offered Article 15 action.

e. The military justice regulations, AFR 111-1 and AFR 111-9, were completely revised and issued as Air Force Instructions 51-201 and 51-202 respectively.

f. The information programs office brought the Automated Military Justice Analysis and Management System (AMJAMS) II on line in an interim form. The final version, which will provide near real time information on military justice matters, is expected to be operational in FY 1995.

## **LEGAL INFORMATION SERVICES**

During FY 94, the Legal Information Services Directorate completed its first full year of operation collocated with the Air Force Judge Advocate General's School at the Dickinson Law Center, Maxwell Air Force Base, Alabama.

Nearly 400 new personal computers and 275 notebook computers were purchased for legal offices throughout the Air Force, including the Air Force Judiciary. New and upgraded Local Area Network (LAN) systems were purchased for 71 Air Force legal offices, giving them state of the art data communications capability within their

offices and, through their base-wide LANs, to other installation activities and services accessible through the Defense Information Services Network (DISN). In addition, 250 external CD-ROM readers were purchased, one for every Air Force legal office, so as to enable them to take advantage of new publications, including Air Force Policy Directives and Air Force Instructions, being distributed on CD-ROM.

The Federal Legal Information Through Electronics (FLITE) on-line computer assisted legal research system completed its first year of operation at Maxwell AFB, Alabama, where it resides on a Sun minicomputer owned and operated by the Legal Information Services Directorate. As of 30 Oct 94, there were nearly 3,000 registered FLITE users, including Air Force, Army, Navy, Air National Guard, and DoD personnel, with numbers increasing daily. New FLITE provides more current data and constant additions of special interest items, such as the Joint Ethics Regulation, Air Force Policy Directives and Instructions, DoD Directives and Instructions, as well as rosters including Air Force Reserve, Air National Guard, and active duty judge advocates and paralegals. Most court decisions are now received directly from the courts themselves. The decisions of the Court of Appeals for the Armed Forces and the service's Courts of Criminal Appeals are loaded as soon as they are received from the courts. FLITE research attorneys perform about 150 to 200 on-line searches per month in support of clients throughout the DoD and also provide Service Desk support to on-line FLITE users.

Throughout the year, work continued on development of the new Automated Military Justice Analysis and Management System (AMJAMS II). The system resides on the same minicomputer as does FLITE. After field testing, an interim version of the system was to be opened for field use during October 1994. The new system will reduce manpower required to track military justice cases, increase timeliness of management information, and provide automated generation of documents as data is entered into the system.

In addition to continued support of the Defense Emergency Authorities Analysis and Retrieval System (DEAARS), the FLITE staff produced additional CD-ROM products, using the in-house equipment. A prototype containing all DoD Directives and Instructions was delivered in September and is expected to be distributed throughout DoD. Mastering of a CD-ROM containing specially tailored assortments of data of particular interest to Air Force legal offices neared completion. The CD-ROMs can be used on any PC with a CD-ROM reader.

The Project REFLEX portable law library software was updated and distributed to the major commands for deployment contingencies and exercises. It will migrate to the CD environment in the near

future. The Air Force Claims Information Management System (AFCIMS) software was operational on 1 Oct 93, and became the sole Air Force claims management program on 1 Oct 94.

## TRIAL JUDICIARY

The Air Force Trial Judiciary had an average of 22 active duty trial judges, 6 reserve trial judges, 12 noncommissioned officers, and 4 secretaries assigned throughout 5 trial judiciary circuits worldwide; the Chief Trial Judge, his military judge assistant, a court reporter, and a secretary are assigned to the Trial Judiciary headquarters. The military judges' duties include presiding over all general and special courts-martial tried in the United States Air Force, in addition to serving as investigating officers under Article 32, UCMJ, legal advisors for officer discharge boards, and hearing officers at public hearings held to consider draft environmental impact statements. During the year, military judges spent approximately 125 days on temporary duty at locations, other than their bases of assignment, to perform these functions.

The Chief Trial Judge made supervisory visits to all CONUS circuits to review workload and facilities. The DICTA, the Trial Judiciary newsletter for military judges, was published quarterly.

The Trial Judiciary's court reporter completed 24 months of a trial program converting her from closed microphone reporting to stenotype/computer-assisted transcription reporting (CAT). The training program was extended to twenty-four months to match the training given Marine Corps CAT reporters. This training was begun to determine baseline cost and feasibility of converting closed microphone reporters to CAT. She is now reporting cases full-time.

The Twentieth Interservice Military Judges' Seminar was conducted by the Trial Judiciary at the Air Force Judge Advocate General's School, Maxwell AFB, Alabama, from 2 to 6 May 1994. This seminar was attended by nearly 50 military judges from the trial judiciaries of the Army, Navy, Marine Corps, Coast Guard, and Air Force.

Four active duty judges and two reserve judges attended the three-week Military Judges' Course conducted by The Army Judge Advocate General's School at Charlottesville, Virginia, from 16 May through 3 June 1994. Also in April, three trial judges attended the one-week Advanced Special Problems in Criminal Evidence Course at the National Judicial College, Reno, Nevada. One trial judge attended the Forensic, Medical, and Scientific Evidence Course in July 1994, while another attended the Handling Capital Cases Course in February 1994. All of the judicial circuits conducted two or three day workshops during the year. All workshops were held in conjunction with trial and defense counsel workshops for their

respective circuits; the Chief Trial Judge attended and participated in the Central and Western Circuit judicial workshops.

The Chief Trial Judge attended the mid-year and annual meetings of both the American Bar Association (National Conference of Special Court Judges) and the American Judges Association. These interactions with civilian judges are most beneficial in promoting a greater, mutual understanding of the military and civilian justice systems and the roles of military and civilian judges.

## **CIRCUIT TRIAL COUNSEL PROGRAM**

During fiscal year 1994, the number of assigned circuit trial counsel was reduced to 18, due to the consolidation of the circuits. Throughout the Air Force, circuit trial counsel tried 281 general courts-martial and 47 special courts-martial. To update circuit trial counsel on the latest developments in the law and further enhance their trial skills, Chief Circuit Trial Counsel (CCTC) from all five circuits also attended the annual Criminal Law New Developments Course held at the Army JAG School in Charlottesville, Virginia. While there, the CCTCs also participated in a CCTC workshop. Workshops for base-level prosecutors were conducted by the circuit trial counsel in all the judicial circuits. The workshops were timed to coincide with defense counsel workshops and included joint sessions involving The Judge Advocate General, the Director of the Judiciary, and military trial judges.

## **APPELLATE GOVERNMENT COUNSEL**

In November 1994, several appellate defense and appellate government counsel attended the annual Criminal Law New Developments Course held at the Army JAG School in Charlottesville, Virginia. The course covered the latest military cases in all significant areas of criminal law. Additionally, in order to keep appellate government counsel current in trial practice, an initiative was undertaken to detail them as trial counsel in courts-martial whenever their schedules permitted. During fiscal year 1994, government appellate counsel prosecuted two general court-martial, 1 special court-martial, and 2 officer discharge boards.

In March 1994, The Judge Advocate General implemented the Advocacy Continuing Education Program (ACE) to develop a comprehensive continuing education program in the area of trial advocacy. One government appellate counsel was designated as the ACE Program manager. This individual devotes most of her time to preparing monthly newsletters, comprehensive "off-the-shelf" training packages, and assisting in training throughout the Air Force.

Appellate practice before the Air Force Court of Criminal Appeals

was varied. As noted below, although the number of briefs filed with the court increased by approximately 10 percent, the number of oral arguments fell by almost 24 percent. However, appellate practice before the United States Court of Appeals for the Armed Forces increased in both categories. The biggest increase was in the area of oral arguments, which increased by 64 percent.

	FY 93	FY 94
AFCMR (AFCCA)		
Briefs Filed .....	34	369
Cases Argued .....	33	25
COMA (COAAF)		
Briefs Filed .....	85	96
Cases Argued .....	28	46
Supreme Court		
Petition waivers Filed .....	1	6
Briefs Filed .....	4	5

## DEFENSE SERVICES

The Trial Defense Division is responsible for providing all defense services within the Air Force through Area Defense Counsel (ADC), Defense Paralegals (DPs), Circuit Defense Counsel (CDC), and Chief Circuit Defense Counsel (CCDC), reporting ultimately to the Chief, Trial Defense Division.

Base closures and realignments, as well as the 1 July 1992 reconfiguration of the judicial circuits, continued to reduce and reshape the Trial Defense Division team. As presently configured, there are 86 ADCs stationed at 75 locations worldwide. They are supported by 77 defense paralegals. Spread throughout the 5 judicial circuits are 21 CDCs and 7 CCDCs; all of the CCDCs and all but 5 of the CDCs are assigned to the circuit offices at Yokota AB, Sembach AB, Bolling AFB, Randolph AFB, and Travis AFB. Four CDCs are co-located with ADCs at Kadena AB, Ramstein AB, Rhein-Main AB, and Hurlburt AFB; a fifth CDC is located at RAF Mildenhall district office.

The division continued its multimedia campaign to educate Air Force personnel about the ADC mission and role and its independence. The Division completed work with AF News to feature the 20th anniversary of the Area Defense Counsel Program, culminating in an article in the June 1994 issue of the Airman magazine. The high point of the commemorating events took place on 23 June with TJAG hosting a luncheon at the Bolling AFB Officers' Open Mess. Among the 140 attendees were 20 SES and general officers including the Chief Judge of the United States Court of Appeals for the Armed Forces and two Associate Judges, the General Counsel for the Department of Defense, the Air Force Inspector General, The Judge Advocate General of the Navy, the Assistant Judge Advocate

General of the Army for Civil Law and the Deputy Judge Advocate General of the Air Force. The guest speaker for the luncheon was Representative Ike Skelton (a reserve judge advocate) from Missouri. A special feature was a videotape with congratulatory messages from the Chief Judge of the United States Court of Appeals for the Armed Forces; Air Force Chief of Staff; the Commanders of Air Mobility Command, Air Combat Command, and Air Education and Training Command; Robinson O. Everett, former Chief Judge of the United States Court of Appeals for the Armed Forces; Major Generals Cheney and Vague, TJAGs who implemented the Program; and Mr. F. Lee Bailey. This tape, as well as a longer version that will include messages from additional present and former senior leaders in the Air Force, has been distributed worldwide. General Sklute presented plaques to each of the CCDCs in recognition of the 20 years of dedicated service by defense personnel.

Trial defense counsel training remained one of the Division's highest priorities. Currently, the training continues to take several forms: an ADC Orientation Course for new ADCs and ADC-selects; annual circuit-level workshops; the Trial and Defense Advocacy Course and the Advanced Trial Advocacy Course, both of which are conducted at Maxwell AFB; and on-the-job training conducted by CDCs and CCDCs. The Division also hosted the annual CCDC Conference at Andrews AFB in June.

## APPELLATE DEFENSE COUNSEL

AFCMR	FY 92	FY 93	FY 94
Cases Reviewed.....	554	455	484
Oral Arguments .....	36	14	18
Other Motions .....	392	183	162
<b>COMA</b>			
Supplements to Petitions .....	440	323	390
Grant Briefs .....	18	48	38
Oral Arguments .....	27	18	36
Other Motions .....	167	154	66
SUPREME COURTS PETITIONS..	4	14	14

## CONFINEMENT FACILITIES

At the end of FY 94, a total of 593 Air Force personnel were in confinement, seven fewer than at the end of FY 93 and again, well below the totals over most of the past decade. A total of 556 of those inmates were in post-trial confinement, including 290 in long-term confinement at the United States Disciplinary Barracks (USDB), Fort Leavenworth, Kansas, and two who are serving time in the Federal Bureau of Prisons (BOP) system. There were three inmates in the Return-to-Duty Rehabilitation (RTDR) Program, with two

graduating and being returned to duty during this period. The number of Air Force inmates on parole at the end of this fiscal year was 190, an eight percent decrease from last fiscal year.

During FY 96, the Army will begin construction of a new facility to replace the aging USDB. Since the new facility will have less than half as many bed spaces as the USDB, select inmates will be transferred into the BOP system. Current plans are to transfer 20 to 25 inmates per month over the next three years, beginning in March 1995. Although the respective services will retain jurisdiction with respect to granting or denying clemency, authority for determining custody level and place of confinement within the federal system will rest with the BOP. While the federal system no longer offers parole consideration for new inmates, transferred military inmates will be entitled to such consideration by boards convened at the respective federal facilities.

## **PREVENTIVE LAW AND LEGAL ASSISTANCE PROGRAM**

The Legal Assistance Division continued to oversee the preventive law and legal assistance services worldwide. During 1993, Air Force legal offices served 404,622 clients, provided 72,304 wills, and furnished notarial services in 464,509 cases. The number of client office visits totaled 905,308.

One of the Division's significant projects involved the establishment of the Pentagon Legal Assistance Office. In late 1993, the Air Force, Army and Navy agreed to consolidate legal assistance services at the Pentagon in one office, called the Pentagon Legal Assistance Office, versus each service having its own office as existed in the past. The Pentagon Legal Assistance Office began seeing clients on 22 February 1994. Each service has provided one attorney and one legal technician in support of the Pentagon Legal Assistance Office and are equally sharing the cost of running the office. All Pentagon personnel from all the services desiring legal assistance now receive support from this office. The Pentagon Legal Assistance office has enabled the services to continue to provide the full range of legal assistance services despite resource reductions.

## **EDUCATION & TRAINING**

The Judge Advocate General's Department provided numerous continuing legal education (CLE) and advanced degree programs to its personnel, and those of its sister services. Air Force attorneys occupied more than 2000 training slots in courses held at varying locations. Air Force attorneys attended courses at:



- The Air Force Judge Advocate General's School, Maxwell Air Force Base, Alabama
- The Army Judge Advocate General's School, Charlottesville, Virginia
- The Naval Justice School, Newport, Rhode Island
- Georgetown University, Washington, D.C.
- George Washington University, Washington, D.C.
- McGill University, Montreal, Canada
- The National Judicial Conference in Reno, Nevada

## **AIR FORCE JUDGE ADVOCATE GENERAL'S SCHOOL**

The Air Force Judge Advocate Generals' School (AFJAGS), is part of Air University's Ira C. Eaker Center for Professional Development at Maxwell Air Force Base, Alabama. The William L. Dickinson Law Center is home to the school and the Morehouse Center supports Paralegal Studies. The building is named for former Representative William L. Dickinson, who served Alabama in Congress from 1964 to 1993.

### **Resident Courses**

The School conducted nearly 30 classes in more than 20 different courses, attended by more than 1600 students. Courses included:

- Advanced Environmental Law
- Advanced Trial Advocacy
- Claims and Tort Litigation
- Environmental Law
- Environmental Law Update
- Federal Employees Labor Law
- Federal Income Tax Law
- Fiscal Law
- International Law
- Judge Advocate Staff Officers' Course
- Military Judge's Seminar
- Operations Law Seminar
- Paralegal Advanced Course
- Paralegal Specialists Course
- Reserve Forces Judge Advocate Course
- Staff Judge Advocates' Course
- Trial and Defense Advocacy Course

### **Nonresident Courses**

The AFJAGS offered nonresident courses approved for CLE credit by various states. The amount of credit allowed for completion of these courses is determined by individual state bar associations. Courses included:

- Ethics for Air Force Lawyers
- Ethics for Claims Officers
- Estate Planning
- Basic Income Tax Law
- Current Income Tax Law
- Government Contract Law
- International Law
- Supreme Court Trends in Criminal Justice

### **Off-Campus Courses**

The AFJAGS faculty also teaches several courses at other locations. These courses included the Air Reserve and Air National Guard Annual Survey of the Law and the Reserve Forces Paralegal Course.

### **Publications**

The AFJAGS published the Master Operations Law Edition of The Air Force Law Review.

The AFJAGS also published a quarterly legal periodical, The Reporter, which provided timely, practical information on various topics of interest to Air Force lawyers. Each issue contained articles on 15 areas of the law, including 3 military justice topics. The AFJAGS continued to publish The Military Commander and the Law, an 800-page compendium of legal topics addressing the issues confronting today's Air Force commanders.

### **ARMY JUDGE ADVOCATE GENERAL'S SCHOOL**

The Army Judge Advocate General's School (AJAGS) is located on the campus of the University of Virginia in Charlottesville, Virginia. CLE courses attended by Air Force attorneys included:

- Contract Attorneys Course
- Criminal Law Advocacy Course
- Federal Labor Relations
- Federal Litigation Course
- Fiscal Law
- Government Contract Law Symposium
- Law of War Workshop
- Legal Assistance Course
- Military Judge Course
- Operations Law Seminar
- Procurement Fraud Course

### **Naval Justice School**

Air Force attorneys attended the Navy's Law of Military Operations Course offered at their facility in Newport, Rhode Island.

## **LL.M. Program**

Twenty-three Air Force attorneys pursued LL.M. degrees. Their majors included Environmental, Procurement, International, space and labor law.

## **National Judicial Conference**

Air Force military judges attended several specialized courses in military justice conducted by the National Judicial Conference.

## **PERSONNEL**

As of 30 September 1994, there were 1,323 judge advocates on active duty. This number included one major general, four brigadier generals, 132 colonels, 192 lieutenant colonels, 290 majors, 630 captains and 74 first lieutenants. In addition, there were 245 civilian attorneys, 820 enlisted legal technicians and 720 civilian support personnel assigned to the Department.

**NOLAN SKLUTE**

*Major General, USAF*

*The Judge Advocate General*

# APPENDIX A

Period: Fiscal Year 1994

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT
GENERAL	492	450	42	-14%
BCD SPECIAL	368	337	31	+7%
NON-BCD SPECIAL	-	-	-	A
SUMMARY	1	1	0	-83%
OVERALL RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT				

## PART 2 - DISCHARGE APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)	83
• NUMBER OF DISHONORABLE DISCHARGES	
NUMBER OF BAD CONDUCT DISCHARGES	265
SPECIAL COURTS-MARTIAL (SA LEVEL)	112
NUMBER OF BAD CONDUCT DISCHARGES	

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	418
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	112
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	64

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

TOTAL ON HAND BEGINNING OF PERIOD	703
GENERAL COURTS-MARTIAL	565
BCD SPECIAL COURTS-MARTIAL	138
REFERRED FOR REVIEW	557
GENERAL COURTS-MARTIAL	459
BCD SPECIAL COURTS-MARTIAL	98
TOTAL CASES REVIEWED	599
GENERAL COURTS-MARTIAL	467
BCD SPECIAL COURTS-MARTIAL	132
TOTAL PENDING AT CLOSE OF PERIOD	661
GENERAL COURTS-MARTIAL	557
BCD SPECIAL COURTS-MARTIAL	100
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	530
PERCENTAGE	100%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCA	509/599	85%
PERCENTAGE OF INCREASE (+) / DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+17%
PERCENTAGE OF TOTAL PETITIONS GRANTED	52/509	10%
PERCENTAGE OF INCREASE (+) / DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-6%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	52/599	9%
RATE OF INCREASE (+) / DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-2%

# APPENDIX A (CONT'D)

## PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		4	
RECEIVED		85	
DISPOSED OF		90	
GRANTED	1		
DENIED	82		
NO JURISDICTION	0		
WITHDRAWN	5		
TOTAL PENDING AT END OF PERIOD		1	

## PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		226	
SPECIAL COURTS-MARTIAL		153	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		266	
SPECIAL COURTS-MARTIAL		215	

## PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	25	
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## PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	409,522	
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## PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	7562	
RATE PER 1,000	18.47	
RATE OF INCREASE (+) / DECREASE (-) OVER PREVIOUS PERIOD	.48	

Page 2 of 2

[ A ] No SPCMs were referred as non-BCD



**REPORT OF THE CHIEF COUNSEL OF THE  
U. S. COAST GUARD  
October 1, 1993 to September 30, 1994**

The table below shows the number of court-martial records received and filed at Coast Guard Headquarters during FY-94 and the five preceding years.

Fiscal Year	94	93	92	91	90	89
General Courts-Martial .....	9	14	16	9	14	5
Special Courts-Martial .....	23	31	26	34	42	40
Summary Courts-Martial .....	15	11	25	18	47	48
Total .....	47	56	67	61	103	93

**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 Chief Trial Judge and full-time general courts-martial judge. When the Chief Trial Judge 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 nine accused tried by general courts-martial this fiscal year, six were tried by military judge alone. One of the six accused tried by military judge alone received a dishonorable discharge and three received bad conduct discharges. One of the three accused tried by courts with members received a sentence which included a bad conduct discharge. None of the accused elected to be tried by a court which included enlisted members. Seven of nine general courts-martial resulted in convictions. One of the accused whose charges were referred to general courts-martial was nonrated (pay grades E-1 through E-3), six were petty officers (pay grades E-4 through E-6), one was a junior officer (pay grades W-2 through O-3), and one was a senior officer (pay grades O-4 through O-10).

The following is a breakdown of the sentences adjudged in general courts-martial tried by military judge alone (five convictions).

Sentence	Cases Imposed
dishonorable discharge.....	1
bad conduct discharge .....	3
confinement.....	5
reduction in rate .....	4

The following is a breakdown of sentences adjudged in general courts-martial tried by members (two convictions).

Sentence	Cases Imposed
dismissal.....	1
bad conduct discharge .....	1
confinement.....	2
forfeiture of all pay and allowances.....	1
reduction in rate .....	1
fine (\$3,707.13 total).....	1

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

FY	Number of Convictions	Forfeitures	Confinement	Reduction in Grade	Punitive Discharge/Dismissal
94	7	1 (15%)	7 (100%)	6 (90%)	6 (90%)
93	14	7 (50%)	13 (93%)	11 (78%)	9 (64%)
92	16	11 (69%)	14 (88%)	14 (88%)	12 (75%)
91	8	4 (50%)	7 (88%)	5 (63%)	5 (63%)
90	14	10 (71%)	12 (86%)	9 (64%)	12 (86%)

The following table shows the distribution of the 76 specifications referred to general courts-martial.

Violation of the UCMJ, Article	No. of Specs.
86 (unauthorized absence).....	2
92 (violation of order or regulation) .....	7
107 (false official statement) .....	9



109	(waste, spoilage or destruction of property other than property of the U. S. ....	1
121	(larceny or wrongful appropriation).....	24
123	(forgery).....	2
125	(sodomy).....	2
128	(aggravated assault).....	2
132	(frauds against the United States).....	1
133	(conduct unbecoming an officer and a gentleman .....	3
134	(general).....	23

## SPECIAL COURTS-MARTIAL

Eighteen of the 23 accused tried by special courts-martial this fiscal year were tried by military judge alone. Eleven bad conduct discharges were adjudged, all eleven of the accused were tried by military judge alone. Two accused elected to be tried by a court which included enlisted members. Two special courts-martial resulted in acquittals and another was declared a mistrial. Eight of the accused whose charges were referred to special courts-martial were nonrated (pay grades E-1 through E-3), thirteen were petty officers (pay grades E-4 through E-6) and two were chief petty officers (pay grade E-7).

The following table shows the distribution of the 250 specifications referred to special courts-special.

Violation of the UCMJ, Article		No. of Specs.
80	(attempts).....	7
83	(fraudulent enlistment).....	2
85	(desertion).....	1
86	(unauthorized absence).....	8
87	(missing movement).....	1
89	(disrespect toward superior commissioned officer.....	1
92	(failure to obey order or regulation).....	26
93	(cruelty and maltreatment).....	8
107	(false official statement).....	4
108	(sale, loss, damage, destruction, or wrongful disposition of military property of the U.S.).....	2
112(a)	(controlled drug offenses).....	16
116	(riot or breach of peace).....	2
120	(rape and carnal knowledge).....	3
121	(larceny or wrongful appropriation).....	28
123	(forgery).....	13
123(a)	(making, drawing, or uttering check, draft, or order without sufficient funds).....	46
125	(sodomy).....	4
128	(aggravated assault).....	5
132	(frauds against the United States).....	1
134	(general).....	72

The following is a breakdown of sentences adjudged in special courts-martial tried by military judge alone (16 convictions). In nine of these 16 convictions, the accused pled guilty to all charges and specifications.

Sentence	Cases Imposed
bad conduct discharge .....	11
confinement.....	14
reduction in rate .....	16
forfeiture of pay (\$9,320 total) .....	6
fine (\$11,351).....	4
restriction .....	2
reprimand.....	1

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

Sentence	Cases Imposed
confinement.....	3
reduction in rate .....	4
forfeiture of pay (\$8,544 total) .....	2

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

FY	Number of Convictions	Forfeitures	Confinement	Reduction in Grade	BCD
94	20	6 (30%)	17 (85%)	20 (100%)	11 (55%)
93	27	8 (29%)	19 (70%)	20 (74%)	14 (52%)
92	23	11 (48%)	18 (78%)	19 (83%)	9 (39%)
91	26	16 (62%)	22 (85%)	21 (81%)	15 (58%)
90	36	16 (44%)	18 (50%)	31 (86%)	17 (47%)

## SPECIAL COURTS-MARTIAL SUMMARY

Eighty percent of the accused tried by special courts-martial were tried by military judge alone. Fifty-six percent of these accused pled

guilty to all charges and specifications. Twenty-five percent of the accused tried by special courts-martial with members pled guilty to all charges and specifications. There was a twenty-two percent decrease 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 170 officers designated as law specialists (judge advocates) serving on active duty - 133 are serving in legal billets and 37 are serving in general duty billets. Nineteen Coast Guard officers are currently undergoing postgraduate studies in law and will be certified as law specialists at the completion of their studies. Seventeen Coast Guard officers who recently graduated from law school completed the Navy Basic Lawyer Course in Newport, Rhode Island. Of these officers, all but one have been or are in the process of being certified under Article 27(b), UCMJ. One officer did not pass the bar examination on his first attempt. A total of 102 additional training quotas were filled by attorneys, paralegals, yeomen and secretaries assigned to Coast Guard legal offices. Approximately \$115,000 was spent on legal training during the fiscal year.

## **U. S. COAST GUARD COURT OF MILITARY REVIEW**

An amendment to the Uniform Code of Military Justice that became effective the first month of FY95 changed the name of all the service courts of military review to courts of criminal appeals. Accordingly, FY94 was the last year for this Court to be known as the U. S. Coast Guard Court of Military Review. For the past year, the Court was composed of five appellate military judges, all of whom were commissioned officers. Three of the judges are active duty Coast Guard captains and the other two are retired officers, who are also civilian employees of the Coast Guard. The Court is divided into six panels with the Chief Judge sitting on each panel as the only judge with primary duty as a judge. The six-panel organization of the Court has enabled each judge to routinely decide cases with every other judge on a panel of three. The court consisted of the following judges at the close of FY94:

Chief Judge Joseph H. Baum

Judge Alfred F. Bridgman, Jr.

Judge John H. Fearnow

Judge Mark A. O'Hara

Judge John P. Wiese

Issues challenging the status of the Court and its judges, that were initially raised in FY92 and explained in last year's report, continued to be asserted before this court, the Court of Military Appeals and the U. S. Supreme Court over the past year, since the decision in *Weiss v. U.S.*, 114 S. Ct. 752 (1994) left unresolved the issues unique to the Coast Guard Court. At the end of FY94, three petitions for certiorari dealing with these issues in eight Coast Guard cases were pending at the U. S. Supreme Court. On 6 January 1995, the Supreme Court granted the petition in *U.S. v. Ryder*, 34 M.J. 1077 (CGCMR 1992), affirmed on reconsideration, 34 M.J. 1259 (CGCMR 1992), affirmed 39 M.J. 454 (CMA 1994), pet. for cert. granted, 63 U.S.L.W. 3513 (U.S. January 6, 1995), which raised the following question:

May the de facto appointment rationale be relied upon to affirm the acts of civilians improperly appointed to serve as military appellate judges by the Judge Advocate General of an Armed Force, who is not authorized to make appointments under the Appointments Clause of the Constitution, when those acts include affirming criminal conviction on direct appeal?

That case is expected to be argued in April 1995 and, when decided, presumably will resolve the issues left unanswered by *U.S. v. Weiss*, supra. Meanwhile, cases continue to be referred and acted upon by the Court.

The attached statistics reflect the Court's work for FY94 and show a decline in the number of cases decided. That decrease resulted from the loss of full time clerical and administrative support for a significant period of time as part of the Coast Guard's ongoing efforts to comply with Government mandated budget and employment level reductions. The Court is now at full strength. This development, along with internal streamlining that has been effected, should result in a better than ever production year in FY95.

One of the cases referred to the Court in FY94 constituted a first for the Coast Guard. It was the first referral of a special court-martial record which did not qualify for review under Article 66, UCMJ. Article 69, UCMJ, which was amended a few years ago to allow such referrals, provided the authority to refer this case to the Court after an application for relief under Article 69 had been received by the Chief Counsel. Upon referral, it was joined with a petition for an extraordinary writ that had been filed with the Court earlier, while action on the accused's application for relief under Article 69, UCMJ

was pending.

In addition to the decisional work, as reflected in Appendix A, the judges on the Court have participated in various professional conferences, committees and seminars during the past fiscal year. Starting the year off in October 1993, all of the judges attended the two-day All Services Appellate Military Judges' Conference hosted by the Army Court of Military Review at the Army Judge Advocate General's School in Charlottesville, Virginia. In May 1994, the Chief Judge attended the two-day Judicial Conference of the U.S. Court of Military Appeals at George Washington University. In June 1994, Judge O'Hara represented the Court on a panel of Court of Military Review judges as part of the instruction for the 37th Military Judges Course at the Army Judge Advocate General's School in Charlottesville, Virginia. In September 1994, Judge Wiese, the most recently appointed judge to the Court, attended a three-day Appellate Military Judges' Training Seminar at the Washington Navy Yard.

That training seminar was a continuation of the highly successful appellate military judges training program that was presented the previous year at Bolling Air Force Base by Chief Judge Frank Nebeker of the Court of Veterans Appeals. As before, a joint training committee composed of judges from each of the courts of military review, and chaired by Chief Judge Baum of this Court, oversaw the preparations for the seminar, which was hosted this year by the Navy-Marine Corps Court. Again, the seminar was deemed to be of such benefit to both new and experienced judges alike that it was decided to make it an annual event, possibly at the Army Judge Advocate General's School. In addition to chairing the training committee, Chief Judge Baum acted as moderator for one of the seminar's panel discussions.

This past year, Chief Judge Baum also participated in formulating proposed rules changes for the U.S. Court of Military Appeals as a member of that court's rules advisory committee. He also continued to play an active role in the Federal Bar Association as Chair-Elect of that association's Judiciary Division and as chair of that division's Long Range Planning Committee.

In the spring of last year, the Court's judges were actively involved in the Coast Guard's Legal Officers Conference, which was convened by the Chief Counsel to examine ways to improve legal services in the Coast Guard. Utilizing "total quality management" methodology, the Chief Counsel was able to engage the Coast Guard's senior military and civilian attorneys in discussions which ultimately produced viable courses of action to enhance the Coast Guard's legal program in a variety of important areas, including military justice advocacy. All of the Court's judges contributed to this highly successful conference.

## **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. SHKOR**

*Rear Admiral, USCG*

*Chief Counsel, U.S. Coast Guard*

# APPENDIX A

Period: 01 October 1993 - 30 September 1994

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	9	7	2	-7%
BCD SPECIAL	23	20		-8%
NON-BCD SPECIAL	0	0	0	UNCHANGED
SUMMARY	15	15	0	+40%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-20%

## PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)			1	
NUMBER OF DISHONORABLE DISCHARGES				
NUMBER OF BAD CONDUCT DISCHARGES			4	
SPECIAL COURTS-MARTIAL (SA LEVEL)			11	
NUMBER OF BAD CONDUCT DISCHARGES				

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	7	
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	11	
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		14
GENERAL COURTS-MARTIAL	5	
BCD SPECIAL COURTS-MARTIAL	8	
REFERRED FOR REVIEW		20*
GENERAL COURTS-MARTIAL	8	
BCD SPECIAL COURTS-MARTIAL	11	
TOTAL CASES REVIEWED		17*
GENERAL COURTS-MARTIAL	7	
BCD SPECIAL COURTS-MARTIAL	9	
TOTAL PENDING AT CLOSE OF PERIOD		17
GENERAL COURTS-MARTIAL	8	
BCD SPECIAL COURTS-MARTIAL	9	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-23%

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

NUMBER	16	
PERCENTAGE	100%	

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	4/16	25%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-56%
PERCENTAGE OF TOTAL PETITIONS GRANTED	1/4	25%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-9%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	1.4	25%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-75%

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\*One extra-ordinary writ related to pretrial actions before referral to either a GCM or SPCM.

# APPENDIX A (CONT'D)

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		None
RECEIVED		One
DISPOSED OF		One*
GRANTED	None	
DENIED	None	
NO JURISDICTION	None	
WITHDRAWN	None	
TOTAL PENDING AT END OF PERIOD		One**
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		6
GENERAL COURTS-MARTIAL		21
SPECIAL COURTS-MARTIAL		
TRIALS BY MILITARY JUDGE WITH MEMBERS		3
GENERAL COURTS-MARTIAL		2
SPECIAL COURTS-MARTIAL		
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	4	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	33,173	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	897	
RATE PER 1,000	27.18	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-2%	

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\*Referred to CGCMR under Article 69(d)

\*\*At end of period, CGCMR had not acted on record referred to it under Article 69(d)