

ANNUAL REPORT
of the
CODE COMMITTEE
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, 1995 to September 30, 1996

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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, 1995 to September 30, 1996

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JOINT ANNUAL REPORT OF THE CODE COMMITTEE PURSUANT TO THE UNIFORM CODE OF MILITARY JUSTICE October 1, 1995 to September 30, 1996

The Judges of the United States Court of Appeals for the Armed Forces; the Judge Advocates General of the Army, Navy and Air Force; the Chief Counsel of the Coast Guard; the Director, Judge Advocate Division, Headquarters, United States Marine Corps; Eugene R. Fidell, Esquire, and Professor Fredric I. Lederer, Esquire, Public Members appointed by the Secretary of Defense, submit their annual report on the operation of the Uniform Code of Military Justice pursuant to Article 146, Uniform Code of Military Justice, 10 USC § 946.

The Code Committee met during fiscal year 1996 to consider numerous matters pertaining to the administration of the Uniform Code of Military Justice. This meeting was open to the public and interested attendees participated in the proceedings. Code Committee members from the Armed Forces presented reports on pending cases and trends in court-martial activity within their respective Armed Forces. Reports and discussions also took place concerning various proposals to amend the Uniform Code of Military Justice and the Manual for Courts-Martial. Other subjects considered by the Code Committee included the supervision of military counsel, the representation of military accused by counsel, the reduction of mistakes in the post-trial processing of court-martial cases, and the desirability of a unified judiciary in the military justice system. The Committee also discussed the purpose and scope of its statutory responsibilities and reviewed the analysis and response by the Department of Defense to various proposals relating to military justice which were under consideration by the American Bar Association. Finally, the Committee considered a proposal to study judicial independence within the military justice system.

The Code Committee also welcomed three new members: the Honorable Andrew S. Effron, who became a member of the United States Court of Appeals for the Armed Forces on August 1, 1996; Professor Fredric I. Lederer, who was appointed as a public member of the Code Committee by the Secretary of Defense on January 1, 1996; and Eugene R. Fidell, Esquire, who was appointed as a public member of the Code Committee by the Secretary of Defense on September 1, 1996.

Separate reports of the United States Court of Appeals for the Armed Forces and the individual Armed Forces address further items of special interest to the Committee on Armed Services of the

United States Senate and the Committee on National Security of the United States House of Representatives, as well as the Secretaries of Defense, Transportation, Army, Navy, and Air Force.

WALTER T. COX III

Chief Judge

EUGENE R. SULLIVAN

Associate Judge

SUSAN J. CRAWFORD

Associate Judge

H.F. "SPARKY" GIERKE

Associate Judge

ANDREW S. EFFRON

Associate Judge

Major General MICHAEL J. NARDOTTI, JR., USA

The Judge Advocate General of the Army

Rear Admiral HAROLD E. GRANT, USN

The Judge Advocate General of the Navy

Major General BRYAN G. HAWLEY, USAF

The Judge Advocate General of the Air Force

Rear Admiral PAUL M. BLAYNEY, USCG

Chief Counsel, U.S. Coast Guard

Brigadier General MICHAEL C. WHOLLEY, USMC

Director Judge Advocate Division

Headquarters, United States Marine Corps

Professor FREDRIC I. LEDERER

Public Member

EUGENE R. FIDELL, Esquire

Public Member

REPORT OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES October 1, 1995 to September 30, 1996

The Judges of the United States Court of Appeals for the Armed Forces submit their fiscal year 1996 report on the administration of the Court and military justice to the Committee on Armed Services of the United States Senate and the Committee on National Security of the United States House of Representatives, and to the Secretaries of Defense, Transportation, Army, Navy, and Air Force in accordance with Article 146, Uniform Code of Military Justice, 10 USA § 946.

THE BUSINESS OF THE COURT

The number of cases carried over on the Court's Petition Docket at the end of fiscal year 1996 (379) reflected an increase of 28% from the pending Petition Docket caseload at the end of the prior fiscal year. (See Appendix A.) This increase was mainly attributable to a significant increase in the number of petitions filed with the Court during the current fiscal year (1435) over the petition filings during the preceding fiscal year (1251). (See Appendix J.) However, the number of cases carried over on the Master Docket (73) reflected a decrease of 30% from the pending Master Docket caseload at the end of the prior fiscal year. (See Appendix B.) The number of oral arguments presented to the Court and the number of opinions released by the Court reflected a slight increase compared with these respective categories for the prior fiscal year. (See Appendices C and D.)^{1/}

The average processing time from the date of filing a petition to the date the Court granted such petition decreased slightly from the previous year. (See Appendix E.) However, the Court achieved a dramatic reduction of 23% in the average processing time between a grant and oral argument compared with the previous year. (See Appendix F.) There was some increase in the average processing time between oral argument and release of a final opinion on the Master Docket and from the initial filing of a petition to the issuance of a final decision on the Master Docket. (See Appendices G and H.) However, the overall processing time from filing to final disposition of a case on the Petition Docket was reduced by 17%.

¹ Although not part of the business of the Court, it is noted that during fiscal year 1996 the Court was notified that petitions for writ of certiorari were filed with the Supreme Court of the United States in 25 Master Docket cases in which the Court issued a final decision.

(See Appendix H.) When considering the average processing time for all cases decided by the Court, including those finally decided on both the Petition Docket and the Master Docket, there was an overall decrease of 13% in the Court's case processing time compared with the prior fiscal year. (See Appendix I.)

The Chief Justice of the United States, acting pursuant to Article 142(f), Uniform Code of Military Justice, 10 USC § 942(f), designated Judges of the United States Courts of Appeals for the Fourth, Seventh, District of Columbia and Federal Circuits and the United States District Courts for the District of Columbia, the District of Colorado, and the District of South Carolina to sit as Judges of the United States Court of Appeals for the Armed Forces during fiscal year 1996. In addition, Senior Judge Robinson O. Everett was recalled and participated in the review and decision of several cases during the same reporting period.

During fiscal year 1996 the Court admitted 362 attorneys to practice before its Bar, bringing the cumulative total of admissions before the Bar of the Court to 30,530.

In addition to its workload report, the Court is saddened to report that, on October 23, 1995, Judge Robert E. Wiss died from a lengthy illness. Judge Wiss had joined the Court in January 1992, and up to the very date on which his illness at last took him, he was a dedicated and hardworking member of the Court. His scholarship, his good and ready sense of humor, his love of the law, and his devotion to this Court were characteristics that will long live in the memories of those fortunate enough to know him. Memorial proceedings conducted by the Court on June 3, 1996, are reported in full at 43 MJ CLIX.

On August 1, 1996, Andrew S. Effron took the oath of office as a Judge of the United States Court of Appeals for the Armed Forces, filling the vacancy created by the death of Judge Wiss.

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. during this report period. This practice, known as "Project Outreach," has developed as part of a public awareness program 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. The Court conducted appellate hearings, without objection of the parties, at the Ames Courtroom, Harvard Law School, Cambridge, Massachusetts; Catholic University of America Columbus School of Law, Washington, D.C.; Will-

iam and Mary School of Law, Williamsburg, Virginia; United States Military Academy, West Point, New York; United States Air Force Academy, Colorado Springs, Colorado; and United States Marine Corps Research Center, Marine Corps Base, Quantico, Virginia. This program has continued to promote an increased public awareness of the fundamental fairness of the military criminal 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, while affording all its members the full protection of the Constitution of the United States and federal law.

JUDICIAL VISITATIONS

During fiscal year 1996, the Judges of the Court, consistent with past practice and their ethical responsibility to oversee and improve the entire military criminal justice system, participated in professional training programs for military and civilian lawyers, spoke to professional groups of judges and lawyers, and visited with staff judge advocates and commanders at various military installations throughout the world.

JUDICIAL CONFERENCE

On May 9 and 10, 1996 the Court held its annual Judicial Conference in the Marvin Center, George Washington University School of Law, Washington, D.C. The Judicial Conference program was certified for credit to meet the continuing legal education requirements of various State Bars throughout the United States in order to assist both military and civilian practitioners in maintaining those professional skills necessary to practice before trial and appellate courts. The Conference opened with welcoming remarks by the Honorable Walter T. Cox III, Chief Judge, United States Court of Appeals for the Armed Forces, followed by speakers for this year's Conference who included Dr. Jonathan Lurie, Historian to the United States Court of Appeals for the Armed Forces and Professor of History, Rutgers University; Professor Paul Giannelli, Case Western University School of Law; Brigadier General John S. Cooke, USA, Chief Judge, United States Army Court of Criminal Appeals; Mr. John Mackenzie, Solicitor at the Bar of London, England; Professor Stephen A. Saltzburg, George Washington University School of Law, Washington, D.C.; Professor Lee D. Schinasi, Director, Center for Legal Education, University of Miami School of Law; Professor Fredric I. Lederer, William and Mary School of Law, Williamsburg, Virginia; and Major William Barto, USA, The Judge

Advocate General's School, United States Army. Additionally, Colonel Stephen D. Smith, Chief, Defense Appellate Division, United States Army; Colonel John M. Smith, Chief, Government Appellate Division, United States Army; and Colonel Michael B. Neveu, Standards of Conduct Office, United States Army, participated in a seminar on Ethics conducted during this year's Conference. The Judge Advocates Association Awards for outstanding career attorneys in each of the Armed Services were presented by Major General Keith E. Nelson, USAF (Ret.).²

WALTER T. COX III

Chief Judge

EUGENE R. SULLIVAN

Associate Judge

SUSAN J. CRAWFORD

Associate Judge

H.F. "SPARKY" GIERKE

Associate Judge

ANDREW S. EFFRON

Associate Judge

² The section of the annual report entitled "Significant Decisions Affecting the Administration of Military Justice Within the Armed Forces" may be found at Appendix K.

USCA STATISTICAL REPORT FISCAL YEAR 1996 CUMULATIVE SUMMARY

CUMULATIVE PENDING OCTOBER 1, 1995

Master Docket	105
Petition Docket	295
Miscellaneous Docket	<u>2</u>
TOTAL	402

CUMULATIVE FILINGS

Master Docket	143
Petition Docket	1435
Miscellaneous Docket	<u>22</u>
TOTAL	1600

CUMULATIVE TERMINATIONS

Master Docket	175
Petition Docket	1351
Miscellaneous Docket	<u>23</u>
Total	1549

CUMULATIVE PENDING OCTOBER 1, 1996

Master Docket	73
Petition Docket	379
Miscellaneous Docket	<u>1</u>
TOTAL	453

OPINION SUMMARY

CATEGORY	SIGNED	PER CURIAM	MEM/ ORDER	TOTAL
Master Docket	111	6	58	175
Petition Docket	0	0	1351	1351
Miscellaneous Docket	<u>1</u>	0	<u>22</u>	<u>23</u>
TOTAL	112	6	1431	1549

FILINGS (MASTER DOCKET)

Remanded from Supreme Court	1
Returned from Court of Criminal Appeals	2
Mandatory appeals filed	0
Certificates filed	14
Reconsiderations granted	1
Petitions granted (from Petition Docket).....	<u>125</u>
TOTAL	143

TERMINATIONS (MASTER DOCKET)

Findings & sentence affirmed	128		
Reversed in whole or in part.....	39	Signed	111
Granted petitions vacated.....	0	Per curiam	6
Other disposition directed	<u>8</u>	Mem/order	<u>58</u>
TOTAL	175	TOTAL	175

PENDING (MASTER DOCKET)

Awaiting briefs	18
Awaiting oral argument	36
Awaiting lead case decision (trailer case)	5
Awaiting final action	<u>14</u>
TOTAL	73

FILINGS (PETITION DOCKET)

Petitions for grant of review filed	1430
Petitions for new trial filed	2
Cross-petitions for grant filed	2
Petitions for reconsideration granted	0
Returned from Court of Criminal Appeals	<u>1</u>
TOTAL	<u>1435</u>

TERMINATIONS (PETITION DOCKET)

Petitions for grant dismissed	11		
Petitions for grant denied	1201		
Petitions for grant granted	125		
Petitions for grant remanded	3	Signed	0
Petitions for grant withdrawn	11	Per curiam	0
Other	<u>0</u>	Mem/order	<u>1351</u>
TOTAL	1351	TOTAL	1351

PENDING (PETITION DOCKET)

Awaiting briefs	150
Awaiting Central Legal Staff review	101
Awaiting final action	128
TOTAL	<u>379</u>

FILINGS (MISCELLANEOUS DOCKET)

Writs of error coram nobis sought	1
Writs of habeas corpus sought	1
Writs of mandamus/prohibition sought	4
Other extraordinary relief sought	1
Writ appeals sought	<u>15</u>
TOTAL	22

TERMINATIONS (MISCELLANEOUS DOCKET)

Petitions withdrawn	1	
Petitions remanded	0	
Petitions granted	3	
Petitions denied	18	Signed 1
Petitions dismissed	1	Per curiam 0
Other	<u>0</u>	Mem/order <u>22</u>
TOTAL	23	TOTAL 23

PENDING (MISCELLANEOUS DOCKET)

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

RECONSIDERATIONS & REHEARINGS

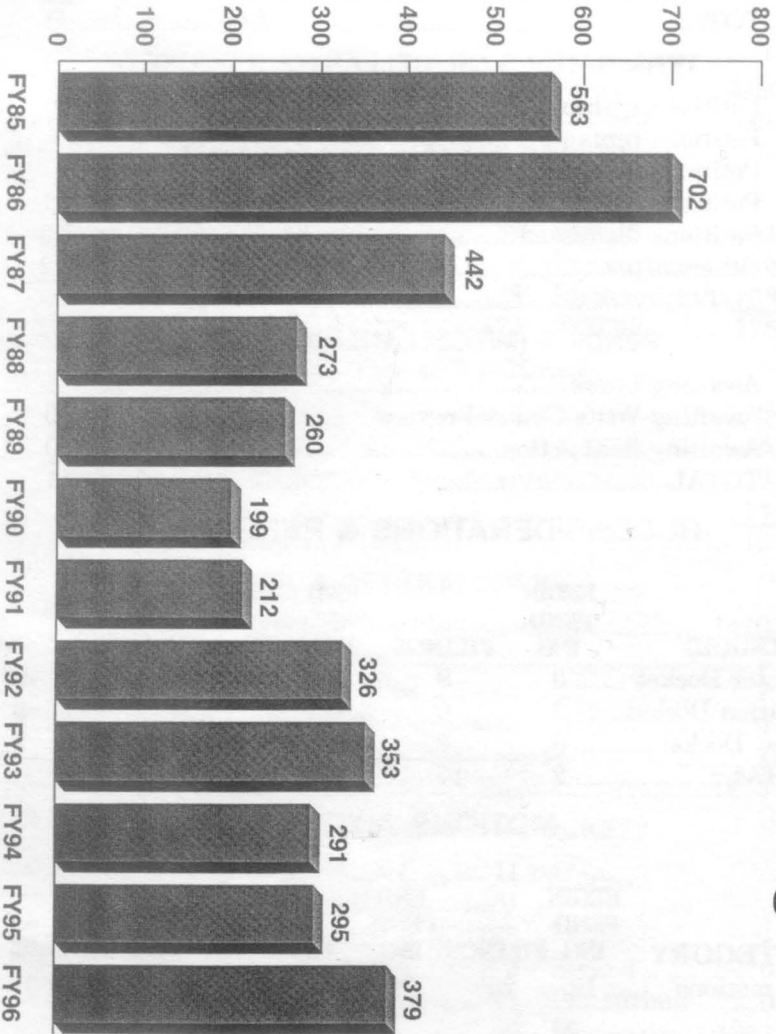
CATEGORY	BEGIN	FILINGS	END	DISPOSITIONS		
	PEND- ING		PEND- ING	Granted	Denied	Total
Master Docket	0	9	3	1	5	6
Petition Docket	2	6	0	0	8	8
Misc. Docket	0	2	0	0	2	2
TOTAL	2	17	3	1	15	16

MOTIONS ACTIVITY

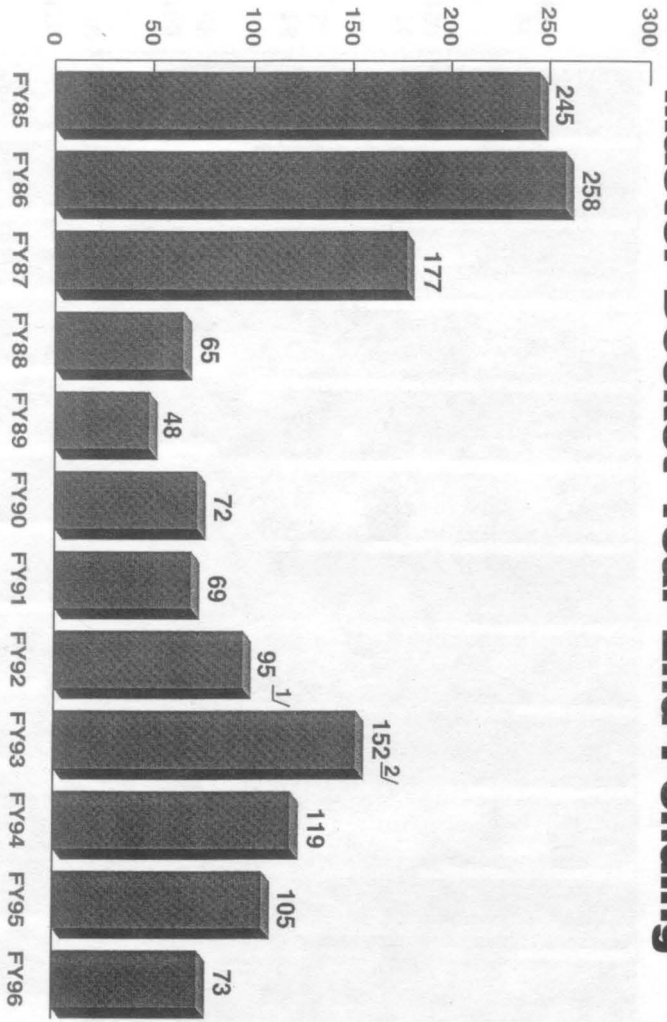
CATEGORY	BEGIN	FILINGS	END	DISPOSITIONS			
	PEND- ING		PEND- ING	Granted	Denied	Other	Total
All motions	12	757	19	663	75	12	750

APPENDIX A

Petition Docket Year Pending



Master Docket Year End Pending



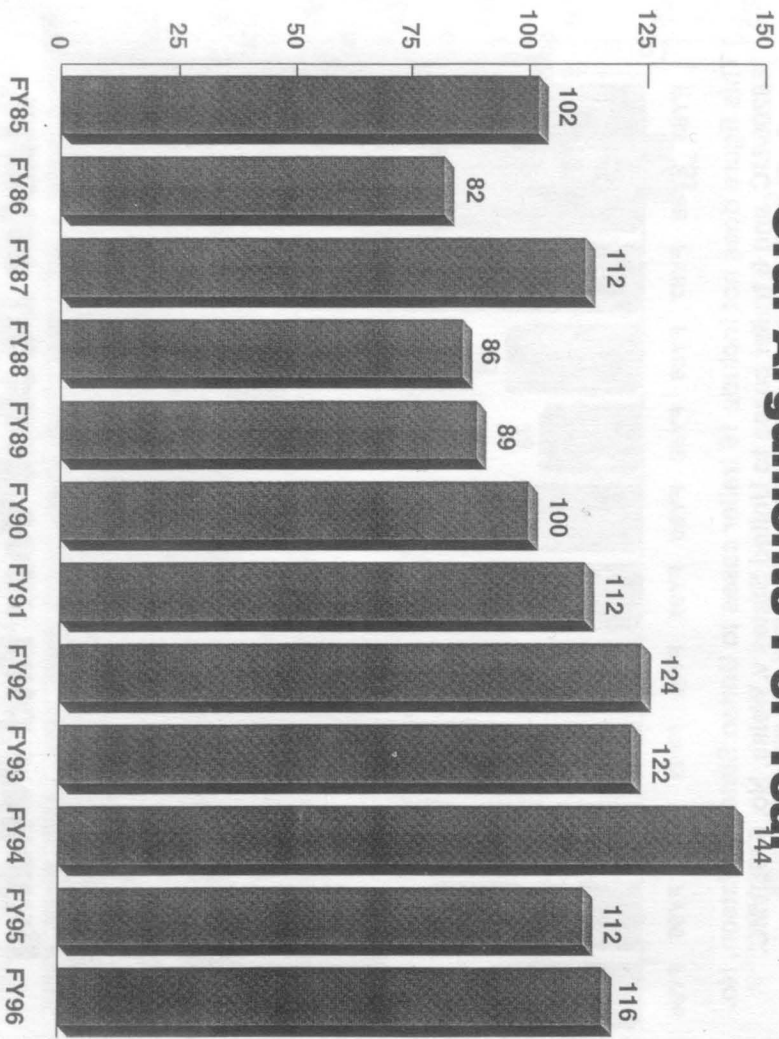
¹ This figure does not include 16 trailer cases to United States v. Watson, No. 68206/MC, and 8 trailer cases to United States v. Weiss, No. 67869/MC.

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.

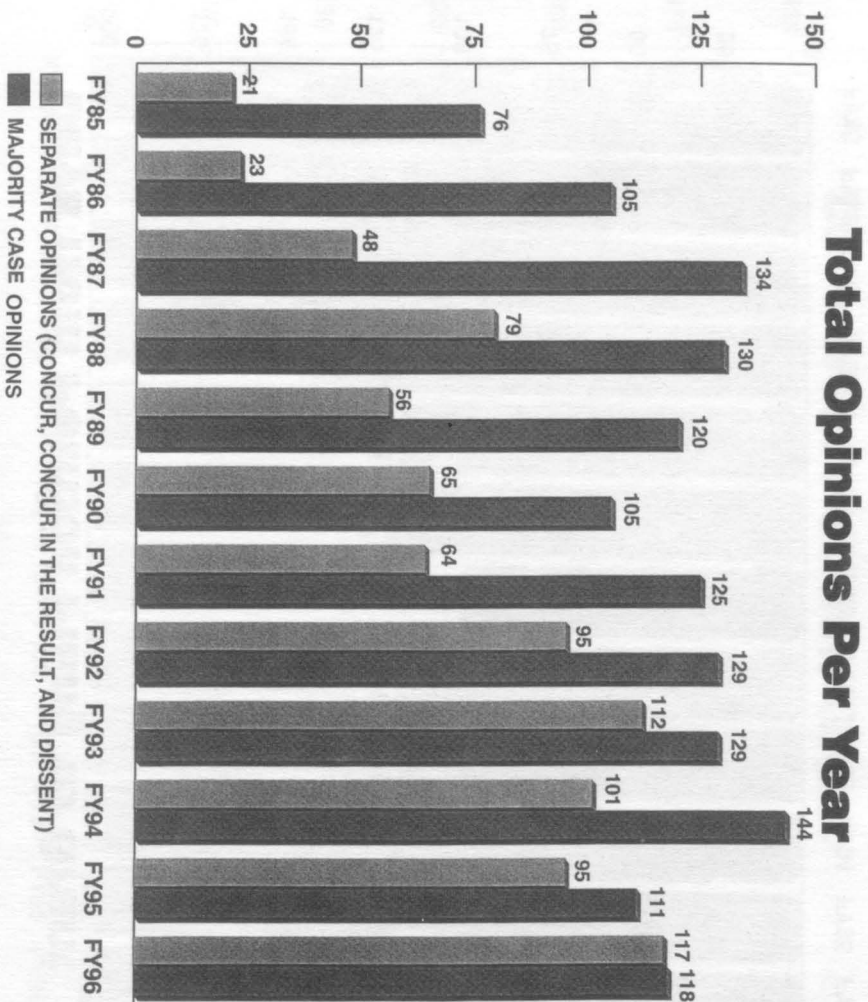
APPENDIX B

APPENDIX C

Oral Arguments Per Year

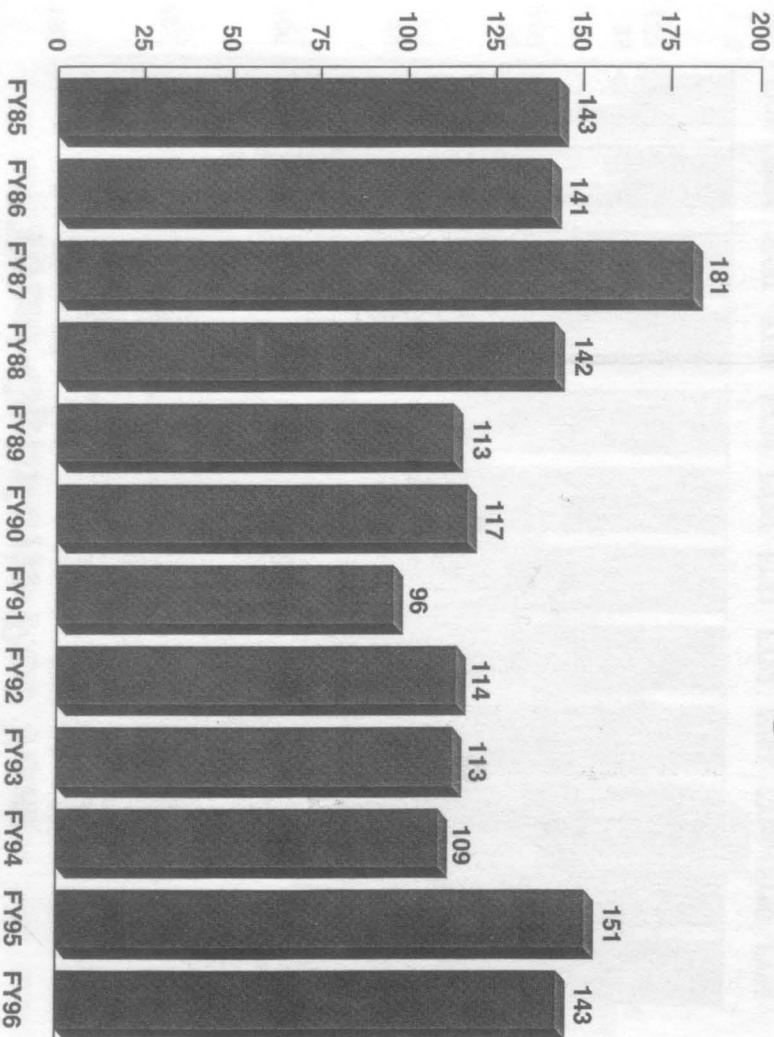


APPENDIX D



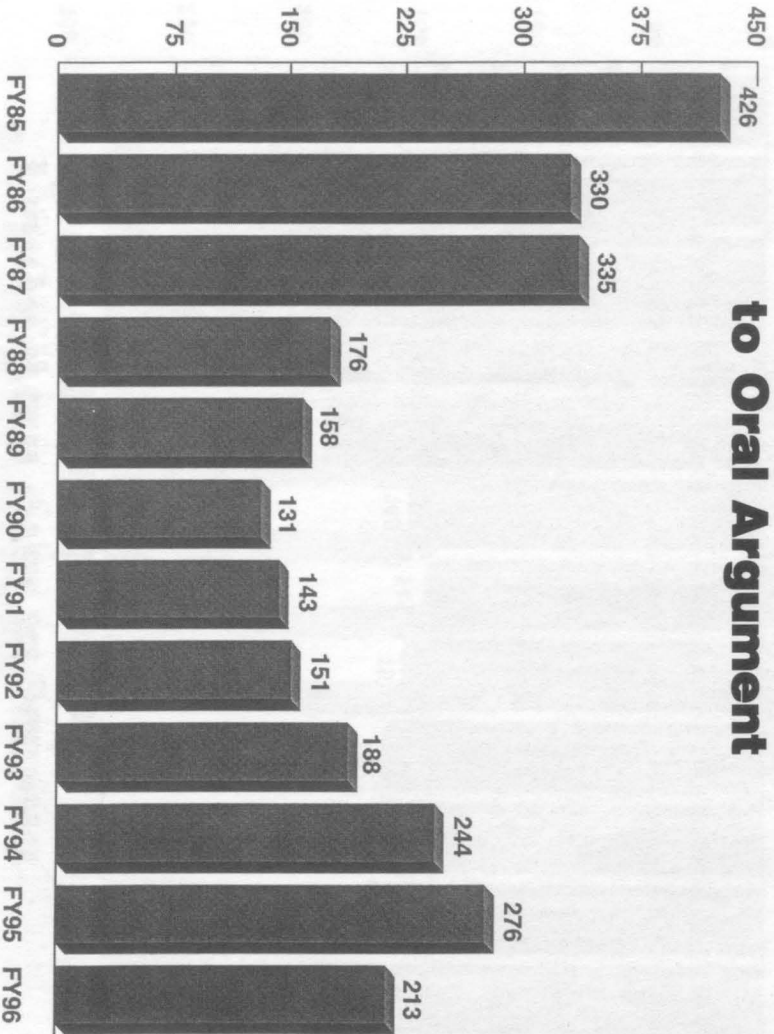
APPENDIX E

Days from Petition Filing to Grant



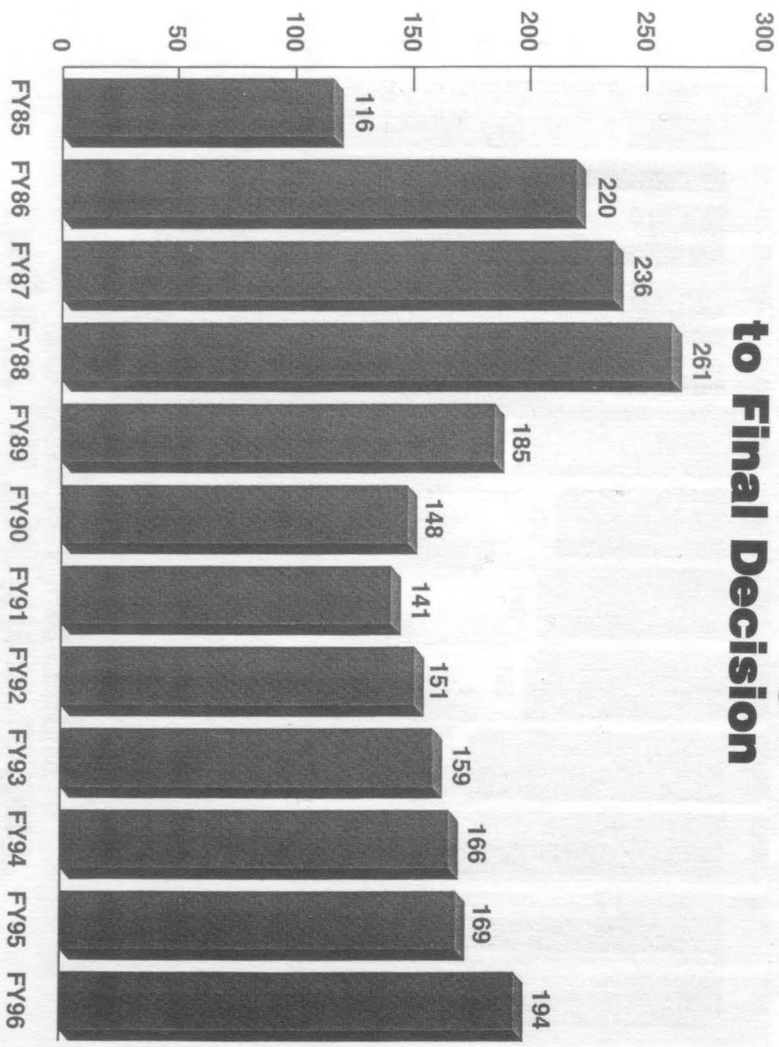
APPENDIX F

Days from Petition Grant to Oral Argument



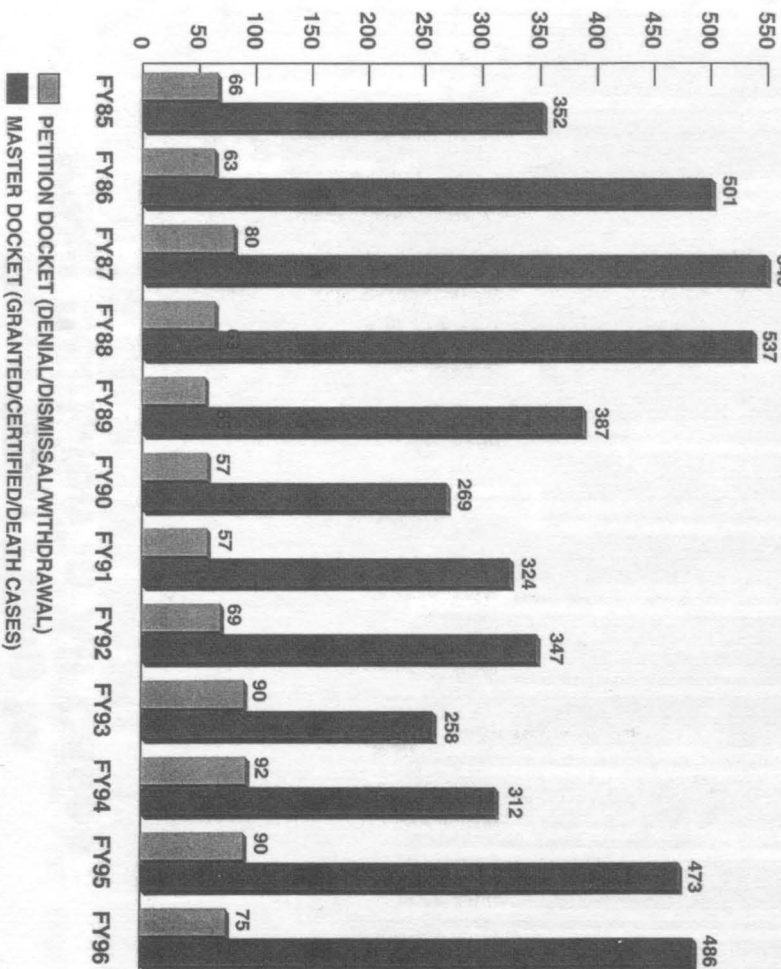
APPENDIX G

Days from Oral Argument to Final Decision



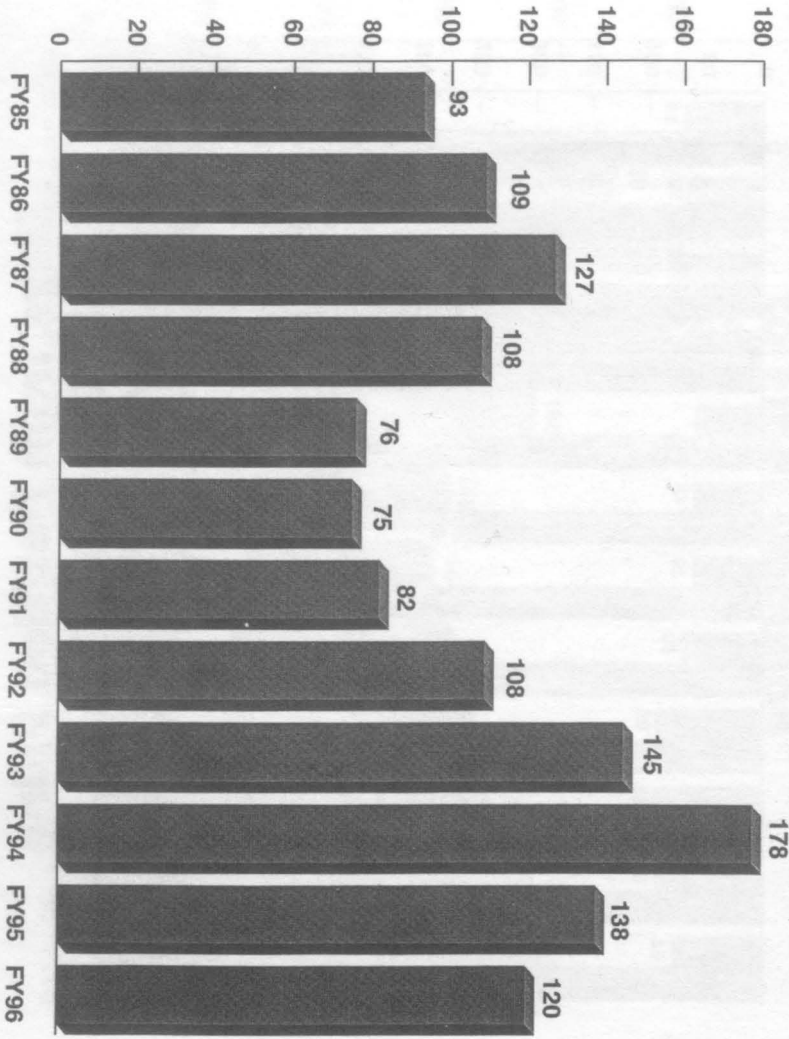
APPENDIX H

Days from Petition Filing to Final Decision



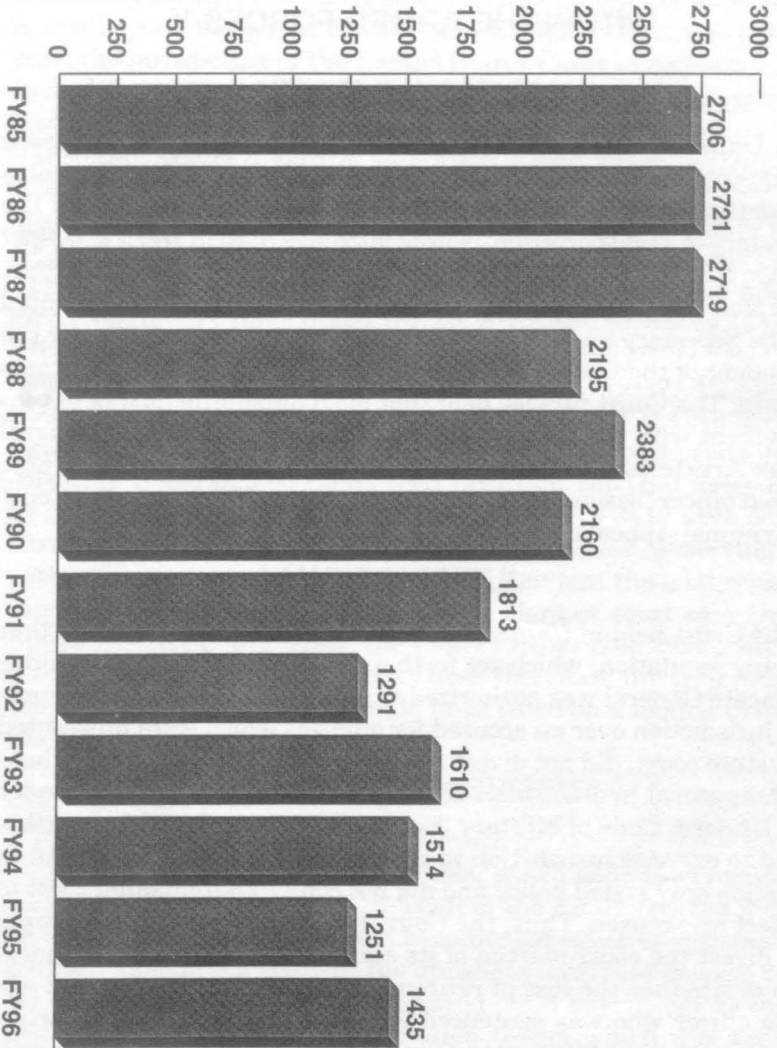
APPENDIX I

Days from Filing to Final Decision in All Cases



APPENDIX J

Total Petitions Filed Per Year



APPENDIX K

SIGNIFICANT DECISIONS AFFECTING THE ADMINISTRATION OF MILITARY JUSTICE WITHIN THE ARMED FORCES ^{1/}

MILITARY JUDGES

In *United States v. Ryder*, 44 MJ 9 (1996), the Court addressed the question of whether a civilian judge sitting on the United States Coast Guard Court of Criminal Appeals could be appointed by the Secretary of Transportation. Noting language used in *Weiss v. United States*, 510 US 163, 114 S. Ct 752, 127 L.Ed2d 1 (1994), the Court held that the judge was an inferior officer who could be appointed by the Secretary and, thus, he did not have to be nominated by the President of the United States and confirmed by the United States Senate. The Court further held that such appointment was not inconsistent with the responsibilities of the Judge Advocate General under Article 66, Uniform Code of Military Justice, 10 USC § 866, as that officer “assigned” rather than “appointed” judges to the Court of Criminal Appeals.

JURISDICTION

The Court held in *United States v. Kohut*, 44 MJ 245 (1996), that a Navy regulation, which set forth a procedure whereby the Judge Advocate General was authorized to approve exercise of court-martial jurisdiction over an accused for offenses which were prosecuted in a state court, did not divest a court-martial of jurisdiction where such approval had not been obtained. The Court ruled that under the Uniform Code of Military Justice the court-martial was authorized to exercise jurisdiction in the case and that the regulation in question only stated policy and did not confer an individual right to protect an accused. Thus, the Court held that the regulation could not divest the court-martial of its statutory jurisdiction. The question of whether the loss of retirement benefits to a retirement eligible officer who was sentenced to a dismissal by a court-martial was invalid was addressed by the Court in *United States v. Sumrall*, 45 MJ 207 (1996). Therein the Court observed that the loss of re-

¹ 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.

tirement benefits did not violate due process, did not constitute cruel and unusual punishment, and did not constitute an excessive fine. Concerning the argument as to whether it violated the Double Jeopardy Clause where the retirement benefits could be denied under a statute which was not within the parameters of the Uniform Code of Military Justice, the Court observed that such a consequence, as it was beyond the parameters of the Uniform Code, was also beyond the jurisdiction of the United States Court of Appeals for the Armed Forces as it involved a matter of civil rather than criminal law.

In *United States v. Curtin*, 44 MJ 439 (1996), the Court held that it had jurisdiction to review a decision by a Court of Criminal Appeals which denied a government petition for extraordinary relief where the Judge Advocate General certified such case to the Court. The Court held that the Government had a right to file a petition for extraordinary relief under the All Writs Act, 28 USC § 1651 (a), citing *Dettinger v. United States*, 7 MJ 216 (CMA 1979). The Court further noted under the provisions of Article 67 (a) (2), UCMJ, the Court shall review "all cases reviewed by a Court of Criminal Appeals which" are submitted to the Court by the appropriate Judge Advocate General. The Court then held that the trial judge erred by ruling that subpoenas issued under 12 USC § 3410 were administrative because they were issued by a trial counsel, observing that within the context of the military justice system the trial counsel's functions parallel the functions of the clerk of court of a United States District Court. Thus, the Court further held that such subpoenas were judicial in character and, therefore, the trial judge of the court-martial involved should have ruled on a motion to quash the subpoenas in question.

CAPITAL PUNISHMENT

The Court affirmed a sentence of death in *United States v. Curtis*, 44 MJ 106 (1996), in a lengthy opinion which addressed numerous issues raised by the accused.^{2/} Therein the Court rejected a claim on appeal that the accused had been denied effective assistance of counsel, including a claim at the appellate level that defense counsel should have presented an abused child psychological theory rather than the racial discrimination theory which was actually presented at the trial level. The Court, after assessing the evidence,

² In its 1997 Term the Court reconsidered and reversed its decision as to sentence in this case on the ground that the accused was denied effective assistance of counsel during his sentencing hearing. 46 MJ 129 (1997).

held that defense counsel's choice was appropriate and further observed that the handling of a separate intoxication issue was likewise appropriate at the trial level. The Court rejected other arguments concerning the effective assistance of counsel and rejected a claim that defense counsel in a death penalty case must be qualified within the guidelines set forth by the American Bar Association. Additionally, the Court held that the Court of Military Review (now the Court of Criminal Appeals) was not required to agree unanimously on the findings and sentence even though, under Article 66, UCMJ, it had fact-finding powers. The Court also upheld the proportionality review conducted by the Court of Military Review in this case.

POLYGRAPH EXAMINATIONS

In *United States v. Scheffer*, 44 MJ 442 (1996), the Court addressed the issue of whether the results of polygraph examinations could be absolutely excluded from courts-martial as set forth in Military Rule of Evidence 707. Noting that the Court had previously held in *United States v. Gipson*, 24 MJ 246 (CMA 1987), that a military accused was entitled to attempt to lay a foundation for the admissibility of favorable polygraph evidence, the Court held, where an accused testified, that the *per se* exclusion of polygraph evidence under Military Rule of Evidence 707 was unconstitutional as it violated the Sixth Amendment. The Court ruled that where the accused's credibility was attacked, he was entitled to an opportunity to attempt to lay a foundation for the admissibility of favorable polygraph evidence under the standard of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). The Court also ruled in related cases that where an accused tenders an *ex parte* polygraph examination, the military judge may require such accused to submit to a government polygraph examination, and that where a conflict between two expert polygraph examiners is anticipated, such conflict does not negate the probative value of such evidence. *United States v. Mobley*, 44 MJ 453 (1996), and *United States v. Nash*, 44 MJ 456 (1996).

OTHER EVIDENCE ISSUES

The Court held in *United States v. Taylor*, 44 MJ 254 (1996) that a military judge had erred by prohibiting the presentation of defense evidence of intervening negligence where a crime of negligent homicide was involved. Rejecting the Government's argument that medical malpractice only breaks the chain of causation if it is a substantial or the sole cause of death, the Court held that such standard only applied where an accused inflicts dangerous wounds

designed to destroy human life. Interpreting Military Rule of Evidence 804 (b) (3) concerning an admission against penal interest, the Court held in *United States v. Jacob*, 44 MJ 301 (1996) that the declaration against penal interest was a “firmly-rooted” hearsay exception which would by itself permit an inference of its reliability. However, following *Williamson v. United States*, 512 U.S. 594, 114 S.Ct. 2431, 129 L.Ed.2d 476 (1994), the Court further held that only those portions of the statement or declaration that were truly self-inculpatory were admissible under this hearsay exception and, thus, the case was remanded for further proceedings.

IMMUNITY

The Court rejected a defense claim in *United States v. Wilson*, 44 MJ 223 (1996), that an accused was not criminally responsible for the use of drugs as a drug addict where such drug usage occurred after his performance as a government drug informant. The Court held that its earlier decision in *United States v. Flannigan*, 31 MJ 240 (1990), did not preclude this prosecution on the basis that the accused’s activities were lawful because that case did not grant *carte blanche* immunity to one-time police informants.

VOLUNTARY INTOXICATION

In *United States v. Hensler*, 44 MJ 184 (1996), the Court held that while an accused raised the defense of involuntary intoxication as to the first of several episodes of drinking and fraternization, this defense was not available for subsequent improper activities once the accused was put on notice that she acted inappropriately to consumption of alcohol.

ARTICLE 31 RIGHTS

In *United States v. Oxfort*, 44 MJ 337 (1996), the Court held that the requirement in 18 USC § 793 (e) for someone in possession of classified materials without proper authorization to deliver them to an authorized person did not violate Article 31 (a), UCMJ, or the Fifth Amendment since the act of delivering them did not have testimonial significance and, thus, was not compelled testimony. The Court rejected a defense argument in *United States v. Bell*, 44 MJ 403 (1996), that Article 31, UCMJ, precluded an accused’s conviction of perjury resulting from testimony during an Article 32, UCMJ, investigation since such investigation was a “judicial proceeding” rather than a disciplinary or law enforcement proceeding and, therefore, Article 31 warnings were not required. The Court also held that an Article 32 investigation was the military equivalent of a grand jury for purposes of determining whether Fifth

Amendment warnings were constitutionally required and that, accordingly, failure to give a witness such warnings did not preclude a subsequent prosecution for perjury.

CRIMES

In *United States v. Riddle*, 44 MJ 282 (1996), the Court held that attempted conspiracy was a crime under the Uniform Code of Military Justice, particularly where there was no general solicitation statute or conspiracy statute embodying the unilateral theory of conspiracy. The Court held in *United States v. Greig*, 44 MJ 356 (1996), that an accused's statement, uttered during the providence inquiry, that he threatened to kill officers in the presence of a psychiatrist and a psychiatric nurse for the purpose of prolonging his stay in the hospital did not render his pleas of guilty improvident since the offense of communicating a threat did not require the Government to prove that the accused actually entertained the intent expressed in the utterance.

ATTORNEY/CLIENT PRIVILEGE

Interpreting the requirements of confidentiality between an attorney and a client as set forth in Military Rule of Evidence 502, the Court held in *United States v. Godshalk*, 44 MJ 487 (1996), that under circumstances where an individual threatened suicide, there was no breach of confidentiality between an attorney and such individual since there was an imminent-death exception to the rule of confidentiality.

RESTRICTION

In *United States v. Perez*, 45 MJ 323 (1996), the Court held that the requirements of *United States v. Rexroat*, 38 MJ 292 (1993), which mandate a hearing by impartial magistrate or commander within 48 hours of ordering an individual into pretrial confinement, did not apply to pretrial restriction. The Court observed that, unlike confinement, commanders may restrict service members for a variety of nonjudicial reasons, *i.e.*, to ensure readiness, presence for duty, compliance with orders, or otherwise. However, the Court emphasized that existing rules and procedures provided adequate remedies for service members against unconstitutional deprivations of liberty as far as such deprivations relate to restriction.

SPEEDY TRIAL

Interpreting a recent change to RCM 707, Manual for Court-Martial, 1984 (Change 5, effective July 6, 1991), which set forth the parameters of excludable delay when computing the number of days

accountable to the Government in assessing a speedy trial issue, the Court observed in *United States v. Dies*, 45 MJ 376 (1996), that the previous version of this rule, which specifically listed a multitude of events, had been abandoned in apparent reaction to the Court's criticism of the vast amount of litigation spawned by the earlier version. The Court noted that the more recent version provided for application for pretrial delays to either the convening authority or the military judge and held that, although no such application had been made in this case, an accused in an unauthorized absentee status was estopped from asserting a denial of a speedy trial during the period of his absence.

STARE DECISIS

The Court held in *United States v. Kelly*, 45 MJ 259 (1996), that a Court of Criminal Appeals had no authority to disregard the Court's decisions because it concluded that the basis for those earlier decisions (*United States v. Mack*, 9 MJ 300 (1980) and *United States v. Booker*, 5 MJ 238 (1997)) had been eroded due to a change in circumstances which warranted departure from them. Citing *United States v. Allbery*, 44 MJ 226 (1996), the Court held that the intermediate appellate court should rather express its viewpoint and urge the Court to reconsider its precedent. The Court noted in this regard that "[t]he driving force behind the firmness of our position in *Allbery*—which we reiterate here—has nothing to do with judicial ego; rather, it has everything to do with judicial order."

**REPORT OF THE JUDGE ADVOCATE
GENERAL OF THE ARMY
OCTOBER 1, 1995, TO SEPTEMBER 30, 1996**

During fiscal year 1996 (FY 96), 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 493,700 in FY 96 and 523,500 in FY 95.

**MILITARY JUSTICE STATISTICS
STATISTICAL SUMMARY: FY 96**

(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 96, 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 FY 95 and 96 is displayed below.

	<u>FY 95</u>	<u>FY 96</u>
General Courts-Martial	825	789
Special Courts-Martial	353	357
Administrative Boards	841	778
Nonjudicial Punishment	35,303	32,053
Consultations	36,653	33,634

USATDS provided support to the Multi-National Force in the Sinai, and to troops in Southwest Asia, Macedonia, Haiti, Kuwait, Hungary, and Bosnia. USATDS counsel manned 56 offices worldwide. At certain locations, USATDS maintained inter-service agreements to provide mutual support along with Judge Advocates of other services. Pursuant to support agreements, TDS has also undertaken support of soldiers in Physical Evaluation Boards (PEB) at two selected locations.

TRIAL COUNSEL ASSISTANCE PROGRAM

Each year, the U.S. Army's Trial Counsel Assistance Program (TCAP) conducts mandatory three-day advocacy courses for Army prosecutors at central locations around the world. The advocacy courses address all aspects of court-martial practice and use active cases from students to enhance the course of instruction. In addition, TCAP publishes a monthly memo detailing trends in case law and practice tips, provides a telephonic hotline to assist prosecutors, and acts as a clearing house to ensure that jurisdictions requesting support are put in contact with subject matter experts and Army prosecutors who have developed specialized case expertise.

During FY 96, TCAP personnel responded to more than 900 requests for assistance, which included sending written materials to assist counsel on more than 150 occasions. In addition, TCAP conducted 12 three-day advocacy training courses for 195 Judge Advocates from all services in the continental United States, Korea, Hawaii, and Germany. TCAP provided technical and trial assistance in two courts-martial, and published and distributed six editions of the TCAP Memo to approximately 360 subscribers. TCAP transmitted a live video teleconference to 19 installations and provided videotape copies of the conference to four other installations. TCAP provided instructional assistance on five occasions at The Judge Advocate General's School, including presentations to new Judge Advocates attending The Basic Course and to trial counsel and military justice managers attending the Criminal Law New Developments and Military Justice Managers courses.

TCAP entered the electronic information era with the creation of an indexed TCAP Memo library on the Army's Judge Advocate General's Corps LAAWS BBS system. Trial counsel can now access all copies of the TCAP Memo via the Internet. The library is updated each time a new memo is published. To enhance worldwide communication among prosecutors and support personnel, TCAP published e-mail addresses for all TCAP staff and a generic TCAP help address for use by trial counsel in the field.

In addition to their extensive support to trial counsel, TCAP attorneys prepared nine Answers and Returns to Habeas Corpus pe-

titions filed in United States District Courts in the District of Kansas, the Middle District of Pennsylvania, and the Northern District of Florida. TCAP attorneys reviewed, monitored, and responded to nine Extraordinary Writs filed with the Army Court of Criminal Appeals or the Court of Appeals for the Armed Forces. Finally, they presented oral argument as amicus curiae on a total of three occasions before the Army Court of Criminal Appeals and the Court of Appeals for the Armed Forces.

SIGNIFICANT MILITARY JUSTICE ACTIONS

Criminal Law Division, OTJAG, advises The Judge Advocate General on military justice policy, legislation, opinions, and related criminal law actions. Specific responsibilities include: 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:

	<u>FY 95</u>	<u>FY 96</u>
White House inquiries	405	573
Congressional inquiries	121	151
Secretary of Defense, Secretary of the Army, Chief of Staff of the Army, and The Judge Advocate General inquiries	155	349
Miscellaneous inquiries	9	14
Legal Opinions for Army Board of Correction of Military Records	5	0
Clemency Petitions, Article 74, UCMJ	21	19
Officer Dismissals	27	18
Freedom of Information Act/ Privacy Act	19	24

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). The JSC was established by the Judge Advocates General and the Secretary of Transportation (Coast Guard) on August 17, 1972. It 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, MCM, and serves as a

forum for exchanging military justice information among the services.

The Army acts as Executive Agent for the JSC on a permanent basis. In addition, through FY 98, the Army representative is the Chairman of the Joint Service Committee.

During FY 95, the JSC completed its twelfth annual review of the MCM. This review was published in the Federal Register for public comment and a public meeting was held to receive comments from interested parties.

The most significant legislative project undertaken by the JSC was development of new and amended Rules for Courts-Martial to implement Congressional changes to the UCMJ. Major changes included provisions imposing automatic forfeiture of pay and allowances for soldiers serving certain sentences to confinement, enabling convening authorities to direct a finance office to pay automatic forfeiture funds to family members for up to six months, expanding the powers of Article 32 Investigating Officers to allow them to investigate uncharged additional misconduct, and establishing a limited mistake of fact defense as to age in carnal knowledge cases.

In addition, the Committee conducted a substantial study and analysis of the military implications of the psychotherapist-patient privilege discussed in the Supreme Court case of *Jaffee v. Redmond*. Study of the issue included review of proposals submitted by the various services and outside agencies. The Joint Service Committee has not completed its work on this important issue and continues its careful study of whether such a privilege should be established under military law and, if so, to whom such a privilege should extend. The Committee is also reviewing a proposal to provide increased punishment for "hate crime" offenses.

FOREIGN CRIMINAL JURISDICTION

As executive agent for the Department of Defense, the Department of the Army, through the International and Operational Law Division, OTJAG, compiles 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, does provide an accurate picture of the exercise of foreign criminal jurisdiction during this reporting period:

	1 Dec 1993 to <u>30 Nov 1994</u>	1 Dec 1994 to <u>30 Nov 1995</u>
Foreign Offense Citations	6,937	5,796
Total Civilian	1,263	1,428
Total Military	5,674	4,368
Exclusive Foreign Jurisdiction	183	984
Concurrent Jurisdiction	5,491	3,384
Traffic/Other Minor Offenses	353	341
Foreign Jurisdiction Recalls	1,157	1,125

Apart from an increase in the number of total Civilian Foreign Offense Citations and Exclusive Foreign Jurisdiction cases, the decline in numbers in each category of cases cited would appear to reflect the drawdown of U.S. Armed Forces overseas. The increase in total Civilian Foreign Offense Citations may well demonstrate the additional stress placed on family members whose sponsors have been deployed on an increasing number of operations.

The significant increase over last year's figures in the Exclusive Foreign Jurisdiction category reflects a 72 percent increase in the number of Navy cases reported. While the Army and Air Force figures also show an increase in this particular category, it is a proportional increase. This increase correlates directly with the increased number of serious offenses, such as manslaughter, robbery, larceny, simple assaults, and drug offenses committed by service members against foreign nationals.

This year, foreign authorities released 191 of the 984 exclusive foreign jurisdiction cases involving military personnel to U.S. authorities for disposition. In concurrent jurisdiction cases in which foreign countries had the authority to assert primary jurisdiction, U.S. military authorities were able to obtain waivers of the exercise of this jurisdiction in 3,059 cases. Overall, waivers were obtained by the U.S. in 90.3 percent of all exclusive and concurrent jurisdiction cases. This figure reflects an increase in such waivers from 1993-1994, when the figure was 81.6 percent.

During the last reporting period, civilian employees and dependents were involved in 1,263 offenses. Foreign authorities released 53 of these cases, or 4.2 percent of this total, to U.S. military authorities for administrative action or some other form of disposition. This year, foreign authorities released a significantly greater number (326) of these cases, or 22.8 percent of the total number of civilian employees and dependents charged.

Foreign authorities tried a total of 1,440 cases. Six trials, or .6 percent, resulted in acquittals. This is a decrease over last year's figures, which reflected that 22 trials, or 2 percent of the cases tried, ended in acquittal. A total of 1,336, or 92.8 percent, of foreign trials resulted in sentences of fines or reprimands. The remaining number of trials ended in 25 executed sentences to confinement and 73 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 promulgated AR 27-26, *Rules of Professional Conduct for Army 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 1995, professional conduct inquiries initiated into alleged violations of the *Army Rules* were constant compared to the previous year, and decreased by 41 percent compared to the average for the years 1987 to 1993. Based on the numbers for the first 10 months of calendar year 1996, the number of professional conduct inquiries should again decrease. Of the cases opened in 1995, 80 percent of the allegations of attorney ethical violations were, after a full inquiry, determined to be unfounded. Among the 20 percent determined to be founded, the majority involve only minor or inadvertent violations of attorney ethics rules. On average, about 30% of the attorney ethics inquiries concern the conduct of trial or defense counsel. Each year since 1987, we have conducted an average of one ethics inquiry into allegations concerning a military judge.

LITIGATION

The number of civil actions against the Department of the Army and its employees remains high, with 819 new lawsuits filed during FY 96 (compared with 811 in FY 95). Civil actions requiring the civilian courts to interpret the UCMJ constitute a small but significant portion of the litigation. The majority of these cases seek collateral review of court-martial proceedings. Most of the remaining lawsuits present challenges to the general conditions of confine-

ment, specific actions taken by confinement facility personnel, or parole and clemency proceedings.

EDUCATION AND TRAINING

The Judge Advocate General's School, U.S. Army, located in Charlottesville, Virginia, is a busy and unique academic institution. During FY 96, the School provided education in the law and related subjects to more than 9,600 lawyers, commanders, other officers, enlisted personnel, and Federal civilian employees.

The School conducted 50 resident courses. Approximately 4,089 students attended: 2,328 Army, 447 Air Force, 123 Navy, 92 Marine, 58 Coast Guard, 30 International Military Students, and 922 Federal civilian employees. These courses provide attorneys with practice-oriented education and training emphasizing recent developments in the areas of administrative and civil law, criminal law, and international and operational law. All states with mandatory Continuing Legal Education requirements grant credit for these courses.

In addition to the 50 resident courses offered during FY 96, 34 classes were presented to almost 4,707 students at on-site locations around the world. One course was presented via satellite to an audience of approximately 850 students.

The flagship course 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. The School has enjoyed American Bar Association accreditation since 1958. Following the passage of statutory authority to award an advanced law degree, the ABA recognized the demanding scholastic standards of the Graduate Course, accepted its Accreditation Committee's 1988 site evaluation recommendation, and concurred in allowing the School to award the LL.M. degree in Military Law. The ABA Accreditation Committee conducted a site evaluation of The Judge Advocate General's School in 1995. The Committee recommended continued accreditation in 1996.

On May 10, 1996, 76 students of the 44th Graduate Class received The Judge Advocate General's School Master of Laws in Military Law. In addition to 53 Army judge advocates, the class consisted of 8 Marine, 5 Navy, 5 Air Force, 1 U.S. Army Reserve, and 4 international military students from Egypt, Hungary, Kenya, and Thailand.

Three Judge Advocate Officer Basic Courses, twelve weeks in length, introduced a total of 163 students to the practice of law in the military: 150 Active Army, 2 U.S. Army Reserve, 6 Army National Guard; and 5 international military students. The School

provided instruction to these new judge advocates on the responsibilities of a military officer, ethics, and substantive military law subjects. The Basic Course curriculum is carefully designed to prepare new counsel for what they are likely to encounter in their first assignments. The course emphasizes practice oriented education tailored to entry level Judge Advocates.

The Criminal Law Department has continued to fine tune its core instruction to the Graduate Course. After introducing an expanded seminar format in fall 1995, the Department decided to modify its approach by combining lectures and seminars in fall 1996. Subjects are taught in two and four-hour blocks. During the first half of the block, the professor addresses the entire Graduate Course in the traditional lecture-conference fashion. This recognizes the variety of criminal law backgrounds and experiences in the Graduate Course. It enables the professor to review the fundamentals and bring the students up to date, so that seminar discussions are advanced and meaningful. The students then separate into smaller groups for intensive study and discussion of selected topics in each subject area. Professors conduct seminars in their areas to ensure that the subject-matter expert teaches the students. The seminars focus on evolving, unresolved, or controversial issues in the law. This new approach was developed in response to student needs, many of whom now arrive at the Graduate Course with little or no criminal law experience.

The Criminal Law Department has also added a new elective to the Graduate Course curriculum, New Developments in Criminal Law. This elective discusses the latest cases from the Court of Appeals for the Armed Forces and the service courts of criminal appeals, and addresses the impact such cases will have on the practice of military justice. It will be offered for the second time in spring 1997. A one-time elective in designing advocacy training programs will be offered in spring 1997 as part of the JAG Corps' effort to improve advocacy training.

The Military Justice Managers Course was offered for the second time this year. This course, which has been received with great enthusiasm in the field, is designed to orient new chiefs of military justice to the unique management challenges of that job. It was created in part because many of these officers have not yet attended the Graduate Course. The New Developments, Military Judge, and Criminal Law Advocacy Courses all continue to be very popular. These courses are open to all the services, as well as to the Reserve Components. In fact, The Judge Advocate General's School constitutes the sole source of initial training for new military trial judges.

The Leadership and Management Program, for which the Criminal Law Department assumed responsibility last year, has under-

gone significant changes. The number of hours has expanded, and the director of the program, MAJ Greg Coe, invited a series of speakers from the University of Virginia Curry School of Education to lead discussions of leadership and management theories. Prominent members of the Curry School faculty present lectures, which are followed by seminars in which Criminal Law faculty act as facilitators for in-depth discussion of the topics just presented.

Criminal Law instruction has been complemented by a series of impressive guest speakers, focusing on the needs and abilities of the students in particular courses. The two Criminal Law Advocacy Courses featured prominent criminal defense attorneys from the civilian bar, Joseph DiGenova and Kenneth Robinson, both from Washington, D.C. Judge Susan Crawford, Court of Appeals for the Armed Forces, addressed the 19th Criminal Law New Developments Course in November 1995. Major General Michael J. Nardotti, Jr., was the 25th Hodson Lecturer and delivered a stirring tribute to the late MG Kenneth J. Hodson. The School was fortunate to have LTG Henry H. Shelton, then commander of XVIII Airborne Corps and Fort Bragg, as the Clausen Lecturer in Leadership. Mr. Donald R. Lee, Jr., of the Virginia Capital Representation Resource Center, and Mr. Alvin Hazan, CID Crime Lab at Fort Gillem, Georgia, addressed students in Graduate Course electives. Judge Walter Cox, Court of Appeals for the Armed Forces, and Captain (USNR) Thomas Poch spoke to the Military Judge Course. A host of speakers involved with the administration of justice talked to the Military Justice Managers Course, including Mr. William J. Fulton, Clerk of Court for the Army Court of Criminal Appeals; COL Charles Trant, Chief, Criminal Law, Office of The Judge Advocate General; COL James N. Hatten, SJA, XVIII Airborne Corps; LTC Eva Novak, Deputy Chief, Government Appellate Division; and MAJ Fred Taylor, Chief, Trial Counsel Assistance Program.

In the Department's effort to keep attorneys in the field updated on recent developments in criminal law, the Military Justice Symposium appeared in the March issue of *The Army Lawyer*. Each member of the department authored one or more articles featuring thoughtful discussion of opinions issued in the past year by both military and civilian courts. This effort was well received by Judge Advocates throughout the Army, especially those in remote locations who find it difficult to attend CLE courses. The Department plans to publish the symposium annually.

During the past year, Criminal Law professors taught at a variety of locations away from the School, including reserve on-site locations throughout the United States and the USAREUR CLE in Germany. MAJ Barto addressed the Judicial Conference in May 1996. Several members of the department participated in the Ex-

panded International Military Education Training (E-IMET) program: LTC Morris visited Russia, LTC Wright visited Madagascar, and MAJ Henley visited Mali. MAJ Coe participated in a planning session for training in Uganda.

The Judge Advocate Guard and Reserve Affairs Division (GRA), Office of The Judge Advocate General, is the principal advisor to The Judge Advocate General on matters affecting the education and training of Reserve Component Judge Advocates and legal administrators. GRA exercises certain personnel management functions for the reserve components and is the proponent for specified Army Regulations. Judge Advocates from the three components serve together in this integrated office as Director, Special Assistant for Reserve Affairs, and Senior Army National Guard Advisor. GRA is also served by a senior civilian Chief of Personnel Actions who holds a doctorate degree in education. GRA provides guidance and advice regarding Reserve Component course attendance at TJAGSA, which includes the Reserve Component Workshop, Military Judge Course, Staff Judge Advocate Course, and RC General Officer Legal Orientation Course. GRA selects the Reserve Component Judge Advocates for the Graduate Course.

The School is the proponent for all enlisted legal education, including Active Army and Reserve Components. Significant progress has been made in the area of revising and updating the enlisted training program. The Advanced Individual Training (AIT) Program of Instruction was completely rewritten and the training was fully implemented. All training support packages for the Basic Noncommissioned Officers Course (BNCOC) and the Advanced Noncommissioned Officers Course (ANCOC) were rewritten and changes were implemented. As a result, both courses were accredited by the Sergeants Major Academy.

The Combat Developments Division of the Developments, Doctrine, and Literature (DDL) Department developed and secured approval of allocation rules for Judge Advocate Service Organizations (JAGSOs) during the Total Army Analysis process for the year 2005 (TAA05). The TAA process generates the combat support and combat service support forces necessary to support the combat forces. These allocation rules generate the appropriate mix of JAGSO units to sustain training, administration, recruiting, and retention of qualified Reserve Component personnel. DDL's new liaison officer at the Combined Arms Support Command (CASCOC), Ft. Lee, Virginia, has been instrumental in representing the JAG Corps in the TAA05 process.

The Combat Developments Division has also taken the lead on several other major projects. First, it secured U.S. Army Force Management Support Agency approval of a new Manpower Require-

ments Criteria (MARC) study for JAGC personnel in units throughout the Army. The MARC standardizes personnel requirements for TOE units. Second, it developed and briefed the JAGC's plan to restructure NCOs in the 71D MOS – part of an Army-wide initiative. Third, it represented the JAGC in Force XXI studies and has participated in the Division XXI redesign process. Fourth, the Combat Developments Officer, LTC Gaylen Whatcott, deployed twice to Bosnia this year as part of a team from the Army Center for Lessons Learned (CALL), Ft. Leavenworth, to study the doctrinal implications of JAGC operations in a large scale deployment.

The Literature Division's *Military Law Review* and *The Army Lawyer* continued to advance the tradition of providing quality articles that inform and educate Judge Advocates in the active Army and the Reserve Components. *The Army Lawyer* is a monthly publication designed to inform and assist judge advocates in the field with timely articles on current legal issues. *The Military Law Review*, issued quarterly, publishes scholarly and thought provoking articles on dynamic military legal subjects.

Of special note in promoting the utility of *The Army Lawyer*, the Criminal Law Department published a symposium issue addressing significant developments in military criminal law. To commemorate the fiftieth anniversary of the Nuremberg War Crimes Trials, the *Military Law Review* published the papers and remarks presented at the conference "Nuremberg and the Rule of Law: A Fifty Year Verdict," which was held at The Judge Advocate General's School.

Moving into the electronic publishing age and promoting the practical focus of *The Army Lawyer*, the editorial staff began uploading issues of *The Army Lawyer* on-line in the Legal Automation Army-Wide System, giving Judge Advocates in the field constant access to a valuable research tool. Electronic publishing initiatives include CD ROMs and publishing on the World Wide Web. To increase public availability of the publications, subscription forms are now available in each publication.

Honoring scholarship, MAJ Mark S. Martins was awarded TJAGSA's Alumni Association Professional Writing Award for his work "Rules of Engagement for Land Forces: A Matter of Training, Not Lawyering," which appeared in volume 143 of the *Military Law Review*.

The Literature Division also continued to coordinate the production of top quality Department of the Army pamphlets, field manuals, training circulars, and graphic training aids on military legal

subjects for distribution to Judge Advocates and soldiers world wide for training.

The Army Law Library Service (ALLS) continued to provide needed library materials to Army law libraries worldwide. Efforts of the advisory panel that reviewed law library services throughout the JAGC resulted in the creation of a revised Minimum Functional Inventory. ALLS created a new database to better track law library holdings and costs worldwide.

PERSONNEL, PLANS, AND POLICIES

The strength of the Judge Advocate General's Corps at the end of FY 96 was 1,502. This total includes 48 officers participating in the Funded Legal Education Program. The diverse composition of the Judge Advocate General's Corps included 98 African-Americans, 42 Hispanics, 32 Asians and Native Americans, and 313 women. The FY 96 end strength of 1,502 compares with an end strength of 1,561 in FY 95; 1,575 in FY 94; 1,646 in FY 93; and 1,710 in FY 92. The grade distribution of the Corps was 5 general officers; 128 colonels; 208 lieutenant colonels; 311 majors; 805 captains; and, 45 first lieutenants. Sixty warrant officers, 332 civilian attorneys, and 1,526 enlisted soldiers supported legal operations world-wide.

To ensure selection of the best qualified candidates for appointment, career status, and service schools, The Judge Advocate General convened advisory boards several times during the year. Competition for appointment in the Corps remains keen with more than 10 applicants applying for each opening.

Two hundred and eleven Judge Advocates completed the following resident 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	16
The Judge Advocate Officer Graduate Course	53
The Judge Advocate Officer Basic Course	136

During FY 96, seven officers completed funded study for LL.M. degrees in environmental law, international law, and government procurement 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 96, the Secretary of the Army convened seven selection boards to recommend Judge Advocates for promotion to higher grades.

MICHAEL J. NARDOTTI, JR.

Major General, USA

The Judge Advocate General

U.S. ARMY MILITARY JUSTICE STATISTICS

Period: FISCAL YEAR 1996

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	789	738	51	-4.4%
BCD SPECIAL [A]	329	287	42	-1.2%
NON-BCD SPECIAL	28	20	8	+40.0%
SUMMARY	238	214	24	-21.7%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				

PART 2 - DISCHARGES APPROVED [B]

GENERAL COURTS-MARTIAL (ICA LEVEL)	
NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)	176 (+18)
NUMBER OF BAD CONDUCT DISCHARGES	429
SPECIAL COURTS-MARTIAL [A]	
NUMBER OF BAD CONDUCT DISCHARGES	166

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 86 - GENERAL COURTS-MARTIAL	638
FOR REVIEW UNDER ARTICLE 86 - BCD SPECIAL COURTS-MARTIAL	168
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	97

PART 4 - WORKLOAD OF THE U.S. ARMY COURT OF CRIMINAL APPEALS

TOTAL ON HAND BEGINNING OF PERIOD (AT ISSUE)	145 [C] [146]
GENERAL COURTS-MARTIAL	[D]
BCD SPECIAL COURTS-MARTIAL	[D]
REFERRED FOR REVIEW (AT ISSUE)	785 [C]
GENERAL COURTS-MARTIAL	
BCD SPECIAL COURTS-MARTIAL	
TOTAL CASES REVIEWED	833 [E]
GENERAL COURTS-MARTIAL	
BCD SPECIAL COURTS-MARTIAL	
TOTAL PENDING AT CLOSE OF PERIOD (AT ISSUE)	97 [C]
GENERAL COURTS-MARTIAL	
BCD SPECIAL COURTS-MARTIAL	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+8.5%

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE U.S. ARMY COURT OF CRIMINAL APPEALS

NUMBER	792 [F]
PERCENTAGE	100%

PART 6 - ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES

PERCENTAGE OF CCA REVIEWED CASES FORWARDED TO USCAAF	398 of 833 [G]	47.8%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+0.3%
PERCENTAGE OF TOTAL PETITIONS GRANTED	28 of 382 [G]	7.3%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-2.4%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY USACCA	[G]	3.4%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD (41 in FY 95; 39 in FY 96) [H]		-4.9%

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

ENDING AT BEGINNING OF PERIOD		3	
RECEIVED		31	
DISPOSED OF		25	
GRANTED	1		
DENIED	15		
NO JURISDICTION	9		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		9	

PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		516	
SPECIAL COURTS-MARTIAL		220	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		273	
SPECIAL COURTS-MARTIAL		137	

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	37	
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	493,700	
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	36,622	
RATE PER 1,000	74.2	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	0.5 increase	

PAGE 2 OF 2

EXPLANATORY NOTES

- [A] Cases convened by GCM convening authority.
- [B] Based on records of trial received during FY for appellate review.
- [C] Includes only cases briefed and at issue.
- [D] No reason being seen for distinguishing, GCM and BCDSPCM appeals are not tracked separately.
- [E] Includes Article 62 appeals, All Writs Act cases, and appeals withdrawn.
- [F] Includes 14 represented by civilian, as well as military, counsel.
- [G] Refers only to cases actually forward and petitions acted upon in FY
- [H] Includes all Army cases decided (including remands) in FY, whether petitioned, certified, or mandatory review.

**ANNUAL REPORT
OF
THE JUDGE ADVOCATE GENERAL OF THE NAVY
pursuant to the
UNIFORM CODE OF MILITARY JUSTICE
FISCAL YEAR 1996**

**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 order to supervise the administration of military justice.

ARTICLE 69 (a), UCMJ, EXAMINATIONS

Sixty-five general court-martial records of trial, not statutorily eligible for automatic review by the Navy-Marine Corps Court of Criminal Appeals, were forwarded for examination in the Office of the Judge Advocate General in fiscal year 1996. One case required corrective action by the Judge Advocate General. Thirteen cases are pending review.

ARTICLE 69 (b), UCMJ, APPLICATIONS

In fiscal year 1996, 19 applications under Article 69 (b), Uniform Code of Military Justice, were received for review. Thirteen such applications remained pending from fiscal year 1995. Of these 32 applications, 23 were denied on the merits, while relief was granted in whole or in part in one case. Eight cases are currently pending review.

ARTICLE 73, UCMJ, PETITIONS

In fiscal year 1996, four petitions for new trial were received by the Office of the Judge Advocate General. All petitions were denied.

APPELLATE GOVERNMENT DIVISION

Appellate Representation. The 11 Navy and five Marine Corps judge advocates assigned to Appellate Government Division filed a total of 1640 pleadings last year; 1305 with the Navy-Marine Corps Court of Criminal Appeals and 335 with the Court of Appeals for the Armed Forces.

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. Nine 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 requesting advice or information about cases pending or being tried. Additional assistance is provided through training presentations. Because of these proactive and effective methods, Appellate Government Division has been able to provide assistance to almost 900 calls from the field.

Presentations. Government counsel participated in the 1996 Judicial Conference of the United States Court of Appeals for the Armed Forces and made presentations at the Army Judge Advocate General's School Criminal Law New Developments Course, Naval Justice School, the Army-Navy Reserve Conference in Minneapolis, Minnesota, and the Courts of Criminal Appeals Judge's Conference in Washington, D.C.

Reserves. The Appellate Government Division provided training and support to 11 Naval reserves and six 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.

APPELLATE DEFENSE DIVISION

Appellate Defense Practices. A total of 2097 of the 2193 cases received were reviewed during fiscal year 1996 by an average of 16 active duty Navy and Marine Corps judge advocates along with the 18 reserve Navy and Marine Corps judge advocates assigned to the Appellate Defense Division. This figure represents a decrease of 9% over the cases reviewed the previous fiscal year. Of that total, 401 (19%) were fully briefed to the Navy-Marine Corps Court of Criminal Appeals, while 596 (28%) were summarily assigned. There were 356 cases petitioned to the Court of Appeals for the Armed Forces.

Capital Litigation. This was another active year for litigation of capital cases at the appellate level. The opinion in the case of *United States v. Curtis* was issued by the Court of Appeals for the Armed Forces, and a motion for reconsideration and reargument before the full court is pending.

The Division assisted in the second annual Death Penalty Defense Course at the Naval Justice School. This course presented a "how to" look at trial-level capital litigation.

The Division also assisted with telephonic advice to the counsel

assigned to the six Marine Corps cases which could potentially be referred as capital offenses.

Development has also begun on procedures to more efficiently and effectively represent capital clients. Planning for the formation of a capital litigation resource center has begun and will hopefully be implemented during the next fiscal year.

Supreme Court Practice. During fiscal year 1996, five petitions for writ of certiorari were submitted.

Trial Defense Assistance. The assistance to trial defense counsel in the field continued to be a primary service offered by Appellate Defense. In addition to telephonic advice, the Division also electronically provided summaries of cases both from the Court of Appeals for the Armed Forces and the Navy-Marine Corps Court of Criminal Appeals to the field counsel. Advice on current topics and litigation issues were also disseminated.

Reserves. The reserve team continues to be an integral part of our appellate practice. Approximately 18 reservist attorneys in both the Navy and Marine Corps reserve components reviewed approximately 40% of the Division docket.

NAVY-MARINE CORPS TRIAL JUDICIARY

The Navy-Marine Corps Trial Judiciary (NMCTJ) is comprised of 13 circuit offices, 4 subsidiary branch offices, 32 active duty judges, and 24 reserve judges. NMCTJ provided military judges for 529 general courts-martial and 2787 special courts-martial during fiscal year 1996. These numbers represent an increase of 26 general courts-martial and an increase of 161 special courts-martial. Considering the downward trend in the overall number of courts-martial over the last several years, this year's increase of 6% overall, may well mark a leveling off.

Fiscal year 1996 saw a reduction in the number of active duty judges, from 35 to the present 32. Two judicial offices were closed, Midsouth Judicial Circuit (Charleston) and the Transatlantic Judicial Circuit Branch Office (Rota). Cases continue to be tried worldwide, including such places as Bahrain and Iceland, as well as at sea.

Military judges received continuing legal education at the annual NMCTJ training conference, 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 Navy Justice School at numerous locations world-wide as well as for various in-service courses. Additionally, military judges took an active part in the continuing education of judge advocates practicing before them

by conducting training through exercises and lectures designed by themselves as well as under the auspices of the National Institute of Trial Advocacy.

NAVAL LEGAL SERVICE COMMAND

Naval Legal Service Command (NAVLEGSVCCOMM) provides a wide range of legal services to afloat and ashore commands, active duty naval personnel, dependents, and retirees from 57 offices worldwide (12 Naval Legal Service Offices (NLSOs), 3 Trial Service Offices (TSOs) and 42 detachments and branch offices). Specific functions include the provision of counsel for courts-martial and administrative boards, advice to commands, claims processing and adjudication, counsel at physical evaluation boards, and legal assistance.

On 1 November 1996 NAVLEGSVCCOM added two new TSOs—TSO East (Norfolk) and TSO West (San Diego) – to the original TSO Southeast (Mayport, Florida). The new TSO commands are assuming all trial counsel (prosecution), court reporting and command service functions formerly provided by the corresponding NLSOs in the area; the NLSOs retained defense counsel, personal representation, legal assistance, and claims functions. The purpose of the TSO is to more completely separate prosecution and defense functions in the Navy's military justice system and allow TSO and NLSO commanding officers to become directly involved in trial advocacy, advising their junior counsel in court-martial cases without giving rise to a conflict of interest. The new organization, by allowing more direct mentoring of junior counsel by senior leadership, will improve the litigation skills of judge advocates and enhance the ability of NAVLEGSVCCOM to provide litigation services to both client commands and individual members.

The field version of the Military Justice Management Information System (MJMIS) has been developed and will be implemented in our NLSOs and TSOs in 1997. This will provide a consolidated tracking system for courts-martial from the initial receipt of charges through the appellate process.

NAVLEGSVCCOM continues to upgrade the hardware and software assets of its personnel, purchasing hundreds of 486 (and most recently, Pentium) computers and creating a Navy JAG CD-ROM. In early 1997 the entire JAG Corps will have access to the Internet and a Navy JAG Home Page on the World Wide Web.

NAVLEGSVCCOM is commanded by the Deputy Judge Advocate General of the Navy and includes 328 officers, 222 enlisted, and 185 civilian personnel. The command constitutes about 40% of the Navy's total judge advocate strength.

NAVAL JUSTICE SCHOOL

Organization. The Naval Justice School (NJS) reports to Commander, Naval Legal Service Command for military command, administrative, and operational control. The main NJS schoolhouse is located in Newport, Rhode Island. Teaching detachments are based in San Diego, California, and Norfolk, Virginia (areas of fleet concentration). Also reporting to Commanding Officer, NJS is the International Training Detachment, operating under the Expanded International Military Education and Training (EIMET).

Mission Statement. The mission of NJS is:

1. To oversee training of Navy judge advocates, limited duty officers (law), and legalmen to ensure their career-long professional development and readiness;
2. To provide comprehensive formal training to all Sea Service judge advocates and other legal personnel to promote justice and ensure the delivery of quality legal advice and other legal services; and
3. To train Sea Service commanders and senior officers in the practical aspects of military law to enable them to perform their command and staff duties, and train other Sea Service personnel to assist in the sound administration of military justice.

Coordination. Through the InterService Legal Education Review Committee (ISLERC), the Commanding Officer of NJS meets with the Commandants of the Army and Air Force JAG Schools semiannually to discuss new initiatives and opportunities for cross-training, and to increase cooperation and efficiency in the training of legal personnel within the Department of Defense.

Academic Programs. NJS has five "core" courses, all of which contain substantial blocks of instruction relating to military justice and operation of the UCMJ. These courses are:

1. Accession Judge Advocate Course. The nine-week course is offered four times per year and is the accession level course in military justice for all judge advocates of the Navy, Marine Corps, and Coast Guard. The majority of the course is dedicated to military justice and court-martial advocacy training (other topical areas include legal assistance and administrative law.) Upon graduation from NJS, judge advocates are certified in accordance with Article 27 (b), UCMJ. In fiscal year 1996, the following numbers were graduated from NJS:

Navy:	92
Marine Corps:	43
Coast Guard:	15

2. Accession Legalman Course. This nine-week course is offered three times per year. In fiscal year 1996, the course consisted of two phases: a paralegal phase, dedicated to training Navy legalmen in military justice practice (four weeks), and a court reporting phase, wherein Navy, Army, and Coast Guard personnel train in court reporting procedures (five weeks). In fiscal year 1996, the following numbers were graduated from NJS:

Navy:	70
Army:	23
Coast Guard	5

3. Senior Officer Course in Military Justice and Civil Law. This four-day course is taken to the fleet by mobile training teams. In fiscal year 1996, it was offered 19 times, at 11 different locations. This course is designed to prepare senior officers in execution of the legal responsibilities of command. As such, the majority of the course focuses on the areas of nonjudicial punishment (Article 15, UCMJ) and court-martial procedures. In fiscal year 1996, the following numbers were trained by NJS instructors:

Navy:	624
Marine Corps:	159
Coast Guard:	17
Civilian	3

4. Legal Officer Course. In the Navy, non-lawyer "legal officers" perform a host of military justice functions in those commands not large enough to warrant assignment of a judge advocate. This four-week course is geared toward these collateral duty legal officers (typical paygrade is 0-1 to 0-3) and prepares them to assume legal duties in the parent command. This course is offered 16 times per year, at Newport, San Diego, and Norfolk. In fiscal year 1996, the following numbers were trained at NJS:

Navy:	359
Marine Corps:	82
Coast Guard	1
Civilian	9

5. Legal Clerk Course. Typically assigned to assist a non-lawyer legal officer within the command is a "legal clerk," usually a collateral duty for a command yeoman or personnelman. This two-week course is designed to provide training in the area of legal forms and reports, service record entries post-mast and post-court paperwork, etc. In fiscal year 1996, the course was

offered 17 times, at Newport, San Diego, and Norfolk, and trained the following numbers of personnel:

Navy:	319
Marine Corps:	6
Coast Guard:	3
Civilian:	1

In addition to the "core" courses described above, NJS offered numerous continuing legal education programs throughout fiscal year 1996 which included detailed instructions relating to the operation of the UCMJ. These include:

Officer Courses

Reserve Judge Advocate Course	(two weeks)
Staff Judge Advocate Course	(two weeks)
Capital Litigation Course	(three days)
(Separate offerings for both Prosecution and Defense)	
Intermediate Trial Advocacy Course	(one week)
Advanced Trial Advocacy Course	(two days)
Coast Guard Law Specialist Course	(one week)
Reserve JAGC Military Law Workshop	(two days)

Enlisted Courses

Reserve Legalman Course	(two weeks)
Army Reserve Court Reporting Course	(two weeks)
Mid-Career Legalman Course	(two weeks)

International Programs. Within the EIMET program, the NJS International Training Detachment plays an important role in developing educational programs for foreign military and civilian officials in the areas of military justice, human rights, disciplined military operations, and civilian control of the military. In many of these programs, the structure and operation of the UCMJ is used both to initiate discussion and as a comparative model. In fiscal year 1996, the NJS International Training Detachment was involved in training delegations from over 50 countries and assisted several developing democracies in drafting their own military justice codes.

Publications. NJS is responsible for publication of the *Naval Law Review*, all materials in support of academic programs, and any additional materials directed by higher authorities. In fiscal year 1996, Volume 43 of the *Naval Law Review* was published, and contained several articles related to the operation of the UCMJ. NJS also updated several of its "study guides," manuals designed to assist judge advocates with discussion of the UCMJ and relevant case law. Fiscal year 1996 also saw development of a *Commander's Quick Reference Manual for Legal Issues*, several sections of which discuss a commander's responsibility under the UCMJ.

MARINE CORPS ACTIVITIES

The Marine Corps judge advocate community consisted of approximately 400 certified judge advocates throughout fiscal year 1996. More than half of all judge advocates were company grade officers, in paygrade O-3 or below. Thirty-five officers were new accessions, ordered to begin their period of active duty at The Basic School in Quantico, Virginia. In addition to the new accessions, 13 officers graduated from ABA accredited law schools from law education programs. Five officers graduated from the Funded Law Education Program (FLEP) and eight others graduated from the Excess Leave Program (LAW) (ELP). Thirteen officers are currently assigned to FLEP and 15 are attending law school under the ELP.

Thirteen judge advocates attended resident professional military education courses in fiscal year 1996. One colonel graduated from the National War College, one lieutenant colonel graduated from the Naval War College, one major completed the Command and Staff Course, four majors and four captains received LL.M. degrees from the graduate course at The Judge Advocate General's School of the Army, and two captains completed the Amphibious Warfare School in Quantico, Virginia. Eleven officers are currently attending resident professional military education courses and two are assigned to the Special Education Program (SEP).

As unrestricted officers, Marine Corps judge advocates continue to fill numerous non-legal billets. During fiscal year 1996, two judge advocates assumed commands. Lieutenant Colonel Karl J. Woods assumed command of Headquarters Battalion, Marine Corps Air-Ground Combat Center, 29 Palms, California. Lieutenant Colonel Kevin H. Winters is the commanding officer of Infantry Support Battalion at Marine Corps Recruit Depot, Parris Island, South Carolina. Three lieutenant colonel judge advocates were approved for command for fiscal year 1996. Beyond our sea service and joint arena support, Major Mike Keegan is serving as a prosecutor in the United Nations War Crimes Tribunal.

The Marine Corps reserve judge advocate community averaged 385 officers throughout fiscal year 1996. Approximately 300 of these officers were actively participating in the Reserve. Four colonel reserve judge advocates serve as appellate judges on the Navy-Marine Corps Court of Criminal Appeals. Fifteen reserve judge advocates, major through colonel, serve as military judges in the Navy-

Marine Corps Trial Judiciary. Sixteen officers serve as appellate counsel with the Navy-Marine Corps Appellate Review Activity. Reserve judge advocates are also found serving in non-legal billets at various combat arms and supporting commands.

HAROLD E. GRANT

Rear Admiral, USN

Judge Advocate General of the Navy.

APPENDIX A

Period: FISCAL YEAR 1996

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	529	494	35	+5%
BCD SPECIAL	2787	2698	89	+11%
NON-BCD SPECIAL	0	0	0	-----
SUMMARY	1569	1547	22	+11%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+11%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)			
NUMBER OF DISHONORABLE DISCHARGES			189
NUMBER OF BAD CONDUCT DISCHARGES			199
SPECIAL COURTS-MARTIAL (SA LEVEL)			
NUMBER OF BAD CONDUCT DISCHARGES			1867

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL		406
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL		1689
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL		71

PART 4 - WORKLOAD OF THE NAVY MARINE CORPS COURT OF CRIMINAL APPEALS

TOTAL ON HAND BEGINNING OF PERIOD		1537
GENERAL COURTS-MARTIAL	431	
BCD SPECIAL COURTS-MARTIAL	1106	
REFERRED FOR REVIEW		2199
GENERAL COURTS-MARTIAL	434	
BCD SPECIAL COURTS-MARTIAL	1765	
TOTAL CASES REVIEWED		2090
GENERAL COURTS-MARTIAL	435	
BCD SPECIAL COURTS-MARTIAL	1655	
TOTAL PENDING AT CLOSE OF PERIOD		1646
GENERAL COURTS-MARTIAL	430	
BCD SPECIAL COURTS-MARTIAL	1216	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD 2276/2090		-8.9%

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE THE NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

NUMBER	2199
PERCENTAGE	100%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USMA	355	17%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		0%
PERCENTAGE OF TOTAL PETITIONS GRANTED	25	7%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-2%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR		1.2%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-.4%

APPENDIX A (CONT'D)

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		13
RECEIVED		19
DISPOSED OF		24
GRANTED	1	
DENIED	23	
NO JURISDICTION	----	
WITHDRAWN	----	
TOTAL PENDING AT END OF PERIOD		8
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		364
GENERAL COURTS-MARTIAL		
SPECIAL COURTS-MARTIAL		2542
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		165
SPECIAL COURTS-MARTIAL		245
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	177	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	596,864	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		30,905
RATE PER 1,000		51.77
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		+21%

PAGE 2 OF 2

**REPORT OF
THE JUDGE ADVOCATE GENERAL
OF THE AIR FORCE
OCTOBER 1, 1995 TO SEPTEMBER 30, 1996**

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 civic, professional, and military organizations.

THE AIR FORCE COURT OF CRIMINAL APPEALS

The Court achieved one of its most successful years in terms of productivity. As a result, dramatic reductions in the Court's backlog were made. With the reduced backlog, the average time it takes for a case to complete the appellate process within the Air Force was reduced by approximately 50%.

The Court has not noticed any substantial changes in the types of offenses charged; however, the Court noticed an increase in the number of post-trial processing errors. The Court's opinions have indicated the types of errors most frequently made and how they can be alleviated in the future.

**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 Judiciary provided 97 formal opinions concerning such applications.
- b. The Judiciary Directorate received 1,485 inquiries in specific cases requiring either formal written replies or telephonic replies to senior officials, including the Presi-

dent and members of Congress.

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

LEGAL INFORMATION SERVICES

The Federal Legal Information Through Electronics (FLITE) on-line computer assisted legal research system completed its third full year of operation at Maxwell AFB, Alabama, where it resides on a Sun 1000 minicomputer owned and operated by the Directorate of Legal Information Services Agency (AFLSA/JAS). In fiscal year 1996, AFLSA/JAS added a web site (called WebFLITE) which allows registered users to search FLITE databases using any standard web browser, such as Netscape, Internet Explorer, Oracle Power Browser, etc. Users may now access FLITE via modem, Telnet or world wide web, providing maximum flexibility and ease of use. As of 30 October 1995, there were approximately 5,040 registered users. In the month of October alone, 1,683 users accessed the system for a total of 63, 350 FLITE sessions in this one month. They accounted for 756 hours of usage. WebFLITE usage is on the rise, from a low of 146 users accounting for 40,098 accesses in January 1996, to a high of 1,656 users accounting for 589,045 accesses in October 1996. In fiscal year 1996, FLITE distributed CDs with DoD Directives, TJAG #1 CDs with AFRs and other databases, TJAG #2 CDs with AFIs and other databases, the complete set of Comptroller General Opinions on CD, a Military Justice CD, as well as special purpose CDs for offices such as Federal Emergency Management Agency (FEMA), Defense Emergency Authorities Retrieval and Analysis (DEARAS), and a FLITE tutorial on CD-ROM. Most court decisions are now forwarded directly from the courts to FLITE. The decisions of the United States Supreme Court, United States Court of Appeals for the Armed Forces, and the service Courts of Criminal Appeals are added as soon as they are received. FLITE research attorneys perform between 100 and 200 on-line searches per month in support of clients throughout the Department of Defense and also provide Service Desk support to FLITE users.

TRIAL JUDICIARY

The Air Force Trial Judiciary had an average of 20 active duty trial judges, 6 reserve trial judges, and 10 noncommissioned officers assigned throughout 5 judiciary circuits worldwide. The Chief Trial Judge and his military judge assistant 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; serving as investigating officers under

Article 32, UCMJ; legal advisors for officer discharge boards and other administrative boards; and hearing officers at public hearings held to consider draft environmental impact statements. During the year, military judges averaged approximately 145 days on temporary duty to perform these functions at locations other than their bases of assignment.

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

The Twenty-Second Interservice Military Judges' Seminar was conducted by the Trial Judiciary at The Air Force Judge Advocate General's School, Maxwell AFB, Alabama, from 1 to 5 April 1996. This seminar was attended by 70 military judges from the trial judiciaries of the Army, Navy, Marine Corps, Coast Guard, and the Air Force, and by a military trial judge from Canada.

In November 1996, three judges attended the Advanced Evidence Course in Reno, Nevada, conducted by the National Judicial College. Six trial judges, four active duty and two reserve, attended the three-week Military Judges' Course conducted by The Army Judge Advocate General's School in Charlottesville, Virginia, from 13 through 31 May 1996. In August, one judge attended the Forensic, Medical, and Scientific Evidence Course at the National Judicial College. Finally, each of the judicial circuits conducted two or three day educational workshops during the year.

The Chief Trial Judge attended the mid-year and annual meetings of 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.

APPELLATE GOVERNMENT COUNSEL

In November 1995, the Chief, Trial and Appellate Government Counsel Division and 3 appellate counsel traveled to The Army Judge Advocate General School to attend the Criminal Law New Developments Course. This course covered the latest military cases in all significant areas of criminal law. In addition to providing our newest Circuit Counsel an update in the most recent criminal law developments, it was an opportunity for both appellate counsel and trial counsel to spend several hours together and discuss ways to better serve the base legal offices.

One appellate government counsel continues to devote a great deal of her time in managing the Advocacy Continuing Education (ACE) Program. In addition to publishing the monthly newsletter, during the last fiscal year, the program manager also prepared a

comprehensive guide to the prosecution of urinalysis cases. Working closely with the attorneys at JAS the ACE material together with the *Appellate Update*, which is a review of recent appellate court decisions, is available on Web-Flite. Ready access to this material supplements the briefings provided at both the Trial and Defense Advocacy Course (TDAC), the Advanced Trial and Defense Advocacy Course (ATAC), and the Major Command Staff Judge Advocate Conferences.

Appellate government counsel have contributed to "Project Outreach," sponsored by USCAAF and the AFCCA, by conducting oral arguments before audiences at the United States Air Force Academy and Howard University Law School, demonstrating the fairness and professionalism of the military justice system.

Currently there are six reserve judge advocates assigned as appellate counsel. They have continued to provide excellent support, especially since active duty manning has been below full strength. In addition to preparing written briefs, three of the reserve counsel have presented oral argument before the Court of Appeals for the Armed Forces during its current term.

Appellate practice before USCAAF and AFCCA is cyclic as indicated below.

AFCCA	<u>FY 94</u>	<u>FY 95</u>	<u>FY 96</u>
Briefs Filed	369	412	329
Cases Argued	25	33	27
USCAAF	<u>FY 94</u>	<u>FY 95</u>	<u>FY 96</u>
Briefs Filed	96	71	80
Cases Argued	25	33	52
SUPREME COURT	<u>FY 94</u>	<u>FY 95</u>	<u>FY 96</u>
Petition Waivers Filed	6	24	4
Briefs Filed	5	2	0

CIRCUIT TRIAL COUNSEL

During fiscal year 1996, Circuit Trial Counsel tried 271 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, 4 of the 5 Chief Circuit Trial Counsel and several Circuit Trial Counsel attended the Criminal Law New Developments course at the Army JAG School in Charlottesville, Virginia. 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, USAF Judiciary; and military trial judges.

DEFENSE SERVICES

The Trial Defense Division is responsible for providing all defense services within the Air Force through Area Defense Counsel (ADC), Defense Paralegals (DP), Circuit Defense Counsel (CDC), and Chief Circuit Defense Counsel (CCDC). They report to the Chief, Trial Defense Division, who in turn reports directly to the Director, USAF Judiciary.

As has been the case for the past several years, the Trial Defense Division continued its realignment of personnel in conjunction with base closures. As of 30 September 1996, there were 81 ADCs stationed at 70 installations worldwide. They received support from 70 DPs. Spread throughout the 5 circuits were 19 CDCs and 5 CCDCs. The CCDCs, along with all but four of the CDCs, are stationed at the circuit offices at Bolling AFB, DC; Randolph AFB, TX; Travis AFB, CA; Ramstein AB, Germany; and Yokota AB, Japan.

One of the most welcome personnel developments in many years was the approval by The Judge Advocate General of the assignment of Circuit Defense Paralegals to the three CCDCs located in the United States. Due to the large number of bases and personnel assigned to those circuits, these paralegals have proven to be invaluable in assisting the CCDCs to manage their formidable legal and administrative workloads.

Trial defense counsel training remained one of the division's highest priorities. This training includes periodic ADC Orientation Courses for new ADCs and annual one-week workshops at each of the circuits. The Division also provided adjunct faculty members for the Trial and Defense Advocacy Course and the Advanced Trial Advocacy Course, both of which are conducted at The Air Force Judge Advocate General School, Maxwell AFB, AL. In addition, on-the-job training is continuously conducted by CDCs and CCDCs.

APPELLATE DEFENSE DIVISION

The Appellate Defense Division continues to assist trial defense counsel in the field by providing them with current updates concerning important areas of the law affecting their practice. The division periodically publishes the *Defense Herald*, a newsletter containing the latest developments from the appellate courts. During the last year, Appellate Defense Counsel taught portions of the Area Defense Counsel orientation courses held for new trial defense practitioners. In addition, Appellate Defense Counsel attend all the circuit conferences and brief new developments in military case law to the practitioners in the field. Appellate Defense Counsel keep current by attending seminars in military law and death penalty litigation.

The Air Force Court of Criminal Appeals just issued its decision upholding the death sentence in *United States v. Simoy*, the Air Force's only capital case. The division is now preparing its submission to the Court of Appeals for the Armed Forces.

The following figures reflect the division's workload over fiscal year 1996:

AFCCA	<u>FY 96</u>
Cases Reviewed	534
Oral Arguments	23
Other Motions	197
USCAAF	
Supplement to Petitions	589
Grant Briefs	39
Oral Arguments	45
Other Motions	110
Supreme Court Petitions	5

CONFINEMENT FACILITIES

At the end of fiscal year 1996, a total of 421 Air Force personnel were in post-trial confinement. Of those, 256 inmates were in long-term confinement at the United States Disciplinary Barracks (USDB), Fort Leavenworth, Kansas, and 18 are serving time in the Federal Bureau of Prisons (BOP) system. There were five 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 142, a ten percent decrease from last fiscal year.

LEGAL ASSISTANCE AND PREVENTIVE LAW PROGRAM

The Legal Assistance Division continued to oversee preventive law and legal assistance services worldwide. During 1995, Air Force legal offices served over 275,000 clients, provided over 56,000 wills, and furnished notary services in almost 400,000 cases.

During the 1996 tax season, 85 Air Force bases offered electronic tax filing services to airmen and their families, almost doubling the number of bases participating in 1995. This year the IRS provided free electronic filing software to base legal offices to encourage participation in the program. In 1996, over 55,000 returns were electronically filed, saving airmen an estimated \$3.3 million in commercial preparation costs. Electronic returns from overseas bases increased by over 100%. The top five bases in number of returns electronically filed were Nellis AFB, Shaw AFB, Kadena AB, Dyess AFB, and Robins AFB.

On 20 March 1996, the President signed legislation which treats military service in a "qualified hazardous duty area" in the same

way as service in a combat zone. The bill provides that members of the Armed Forces serving in Bosnia and Herzegovina, Croatia, or Macedonia will get the same tax benefits as if they were serving in a combat zone. In another important provision, Congress raised the amount of the monthly combat pay exclusion for officers from \$500 per month to the highest amount payable to an enlisted member (about \$4,250).

The successful passage of this legislation was due, in large part, to the efforts of the Armed Forces Tax Council. This group, composed of an Air Force executive director and representatives from the legal assistance divisions of the services, was instrumental in crafting this legislation. Based on current estimates, their efforts will ultimately result in savings of \$83 million to our airmen, soldiers, sailors, and marines.

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 School, Maxwell Air Force Base, Alabama

- The Army Judge Advocate General School, Charlottesville, Virginia

- The Naval Justice School, Newport, Rhode Island

- Georgetown University

- George Washington University

- Harvard University

- The University of Utah

- The National Judicial Conference in Reno, Nevada

The 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 Attorney

- Criminal Law Advocacy

- Federal Courts and Boards

- Federal Labor Relations

- Federal Litigation

- Fiscal Law

- Government Contract Law Symposium

- Law of War Workshop

- Legal Assistance

- Military Judge

Operations Law
Procurement Fraud

Naval Justice School

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

LL.M. Program

Twenty-one Air Force attorneys pursued Masters of Law degrees. Their specialties included Environmental, Procurement, Health, 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.

AIR FORCE JUDGE ADVOCATE GENERAL SCHOOL

The Air Force Judge Advocate General School (AFJAGS), is one of seven professional continuing education schools organizationally aligned as 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 David C. Morehouse Center supports Paralegal Studies. The AFJAGS conducts legal education for attorneys and paralegals from all military services; provides instruction at other Air University schools and colleges; publishes *The Reporter* and *The Air Force Law Review*; manages HQ USAF's Preventive Law Clearinghouse; and maintains JAG Department liaison with civilian professional organizations, law schools, and states requiring continuing legal education.

Resident Courses

The school conducted more than 34 classes in residence covering more than 20 different courses (some courses are held more than once a year); which were attended by over 2,500 students. Courses and seminars conducted at the AFJAGS included:

- Advanced Environmental Law
- Advanced Trial Advocacy
- Claims and Tort Litigation
- Deployed Air Reserve Components Operations Law
- Environmental Law
- Environmental Law Update
- Federal Employee Labor Law
- Federal Income Tax
- Information Warfare

International Law
Interservice Military Judges' Seminar
Judge Advocate Staff Officer
Labor and Employment Law
Law Office Managers' Seminar
Operations Law
Paralegal Apprentice
Paralegal Craftsman
Reserve Forces Judge Advocate
Reserve Forces Paralegal
Staff Judge Advocate
Trial and Defense Advocacy

Distance Learning Courses

The AFJAGS utilizes distance learning for those educational offerings that lend themselves to effective teaching through this medium. The school presented two courses via satellite downlink to over 50 locations attended by more than 1,000 attendees. The courses were:

Air Force Logistics and Contracting
Fiscal Law

Outside Teaching

In addition to the resident courses, the AFJAGS faculty provided military justice instruction in the following colleges, schools, academies, and courses within Air University: Air War College, Air Command and Staff College, Squadron Officer School, Senior Noncommissioned Officer Academy, Support Group Commanders' Course, Logistics Group Commanders' Course, Chaplain Orientation Course, Contingency/Wartime Planning Course, National Institute for Trial Advocacy courses.

The AFJAGS conducts four "Surveys of the Law" annually for both judge advocates and paralegals in the reserve components. The surveys are conducted at a civilian conference center in Denver, Colorado. The surveys provide concentrated legal updates and include extensive reviews of recent developments in military justice. During calendar year 1996, over 600 reserve judge advocates and paralegals attended an AFJAGS Survey of the Law.

The AFJAGS participated in the Expanded International Military Education and Training Program (E-IMET), one of several Security Assistance Programs mandated by Congress (22 U.S.C. 2347). The program is designed to further U.S. foreign policy goals as established in the Foreign Assistance Act. The E-IMET Program involves U.S. military teaching teams sent abroad to teach human rights, military justice, civilian control of the military, law of armed

conflict, rules of engagement, and general democratic principles. In fiscal year 1996, faculty from the AFJAGS participated in E-IMET program missions to Hungary, Madagascar, Belarus, Sierra Leone, Rwanda, Slovakia, Ethiopia, Czech Republic, El Salvador, Uzbekistan, Honduras, Bangladesh, Lebanon, Central African Republic, and Mali.

Publications

The school published two issues of *The Air Force Law Review*, a professional legal journal consisting of articles of interest to Air Force judge advocates, civilian attorney advisors, and other military lawyers. *The Law Review* is a scholarly publication which encourages frank discussion of relevant legislative, administrative, and judicial developments. Additionally, four issues of *The Reporter*, the JAG Department's quarterly legal publication containing articles of general interest, were distributed in March, June, September, and December. Each issue of *The Reporter* has two sections dedicated to contemporary military justice issues. A third section addresses ethical issues which have surfaced in the military justice context. The school revised and republished *The Military Commander and the Law* in 1996, a 500+ page compendium of legal topics addressing the issues confronting today's Air Force commanders.

PERSONNEL

As of 30 September 1996, there were 1319 judge advocates on active duty. This number included 2 major generals, 3 brigadier generals, 131 colonels, 195 lieutenant colonels, 313 majors, 638 captains and 37 first lieutenants. In addition, there were 329 civilian attorneys, 994 enlisted legal technicians and 459 civilian support personnel assigned to the Department.

GENERAL LITIGATION DIVISION

The Air Force prevailed against an attack on commanders' use of financial information provided by American Express under the government travel card (GTC) program in disciplinary proceedings. In *Russell, et. al v. Air Force, et. al*, the plaintiff brought suit under the Right to Financial Privacy Act (RFPA) alleging that the government, in using his GTC records, without his permission, as evidence in an Article 32 investigation, had violated his right to financial privacy. Plaintiff also requested an injunction which would have, if granted, prevented the Air Force from using, photocopying, or disseminating any individual's GTC financial records as a part of a disciplinary action. The court denied plaintiff's request finding that the RFPA applies to the government travel card program, but, based

on well-established principles of agency law, and the language of the relevant GSA contracts, that the government is an authorized representative of the holders of the government travel card program. Thus, the Air Force may receive information from American Express on delinquent accounts and use it for court-martial or administrative purposes. In addition to circumstances found in the Russell case, the RFPA, which, in the past, has received little attention with regard to civil litigation, is the source of a number of collateral attacks on military justice actions involving financial records.

ENVIRONMENTAL LAW AND LITIGATION DIVISION

The Environmental Law and Litigation Division continued to oversee the implementation and execution of the nation's various environmental laws by Air Force installations. The Division continued to provide rule comments to the Environmental Protection Agency in its implementation of the Clean Air Act, Resource Conservation and Recovery Act, CERCLA and the Clean Water Act among others. Among the more significant actions was active participation in the Range Rule, which could affect operations at both active and inactive ranges. In addition, the three Regional Counsels continued to assist Air Force installations in complying with state regulatory programs, and worked actively with the various states in implementing their regulations which affect Air Force operations.

The litigation section, in conjunction with the United States Department of Justice defended the Air Force in 35 Federal court actions, 5 Federal Administrative actions and seven state court actions. The regional counsels assisted in defending various administrative actions (including Notices of Violation) issued against various installations during the course of the year.

BRYAN G. HAWLEY

Major General, USAF

The Judge Advocate General

APPENDIX A

Period: Fiscal Year 1996

PART 1 - BASIC COURTS-MARTIAL STATUS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+) OR DECREASE (-) OVER LAST REPORT
GENERAL	517	482	35	-15%
SGD SPECIAL (A)	180	180	0	+29% (B)
NON-SGD SPECIAL	220	197	23	-28%
SUMMARY	45	42	3	+29%
OVERALL RATE OF INCREASE (+) OR DECREASE (-) OVER LAST REPORT			-12%	

PART 2 - DISCHARGE APPROVED

GENERAL COURTS-MARTIAL (GA LEVEL)	70
• NUMBER OF DISHONORABLE DISCHARGES	283
NUMBER OF BAD CONDUCT DISCHARGES	174
SPECIAL COURTS-MARTIAL (SA LEVEL)	
NUMBER OF BAD CONDUCT DISCHARGES	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	381
FOR REVIEW UNDER ARTICLE 66 -SGD SPECIAL COURTS-MARTIAL	189
FOR EXAMINATION UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	75

PART 4 - WORKLOAD OF THE AIR FORCE COURT OF CRIMINAL APPEALS

TOTAL ON HAND BEGINNING OF PERIOD	608
GENERAL COURTS-MARTIAL	506
SGD SPECIAL COURTS-MARTIAL	102
REFERRED FOR REVIEW	495
GENERAL COURTS-MARTIAL	328
SGD SPECIAL COURTS-MARTIAL	167
TOTAL CASES REVIEWED	795
GENERAL COURTS-MARTIAL	495
SGD SPECIAL COURTS-MARTIAL	300
TOTAL PENDING AT CLOSE OF PERIOD	308
GENERAL COURTS-MARTIAL	231
SGD SPECIAL COURTS-MARTIAL	77
RATE OF INCREASE (+) OR DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+28%

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE THE AIR FORCE COURT OF CRIMINAL APPEALS

NUMBER	534
PERCENTAGE	99.6%

PART 6 U.S. COURT OF APPEALS FOR THE ARMED FORCES

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCA	666/795	84%
PERCENTAGE OF INCREASE (+) OR DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-2%
PERCENTAGE OF TOTAL PETITIONS GRANTED	55/666	8%
PERCENTAGE OF INCREASE (+) OR DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-2%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	55/795	7%
RATE OF INCREASE (+) OR DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-1%

APPENDIX A (CONT'D)

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		2	
RECEIVED		13	
DISPOSED OF		13	
GRANTED	1		
DERIED	12		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		2	

PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		251	
SPECIAL COURTS-MARTIAL		121	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		266	
SPECIAL COURTS-MARTIAL		279	

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	24	
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	385,268	
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	9,099	
RATE PER 1,000	23.61	
RATE OF INCREASE (+) / DECREASE (-) OVER PREVIOUS PERIOD	+2.66	

Page 2 of 2

- [A] SPCMs in which BCD is adjudged.
 [B] Includes BCD specials and non-BCD specials.

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

October 1, 1995 to September 30, 1996

The table below shows the number of court-martial records received and filed at Coast Guard Headquarters during FY-96 and the five preceding years.

Fiscal Year	96	95	94	93	92	91
General Courts-Martial	22	11	9	14	16	9
Special Courts-Martial	16	8	23	31	26	34
Summary Courts-Martial	14	14	15	11	25	18
Total	52	33	47	56	67	61

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, a 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

Eighteen of the 22 accused tried by general courts-martial this fiscal year were tried by military judge alone. Five of the 18 accused tried by military judge alone received dishonorable discharges, 12 received bad conduct discharges and one received a dismissal. None of the accused tried by courts with members received a sentence which included a punitive discharge. One accused elected to be tried by a court which included enlisted members and three accused elected to be tried by a court which included only officer members. All of the general courts-martial resulted in convictions. Eight of the accused whose charges were referred to general courts-martial were nonrated (pay grades E-1 through E-3), nine were petty officers (pay grades E-4 through E-6), four were chief petty officers (pay grade E-7) and one was a junior officer (pay grades W-2 through O-3).

The following is a breakdown of the sentences adjudged in general courts-martial tried by military judge alone (18 convictions):

<u>Sentence</u>	<u>Cases Imposed</u>
dishonorable discharge	5
bad conduct discharge	12
dismissal	1
confinement.....	18
reduction in rate	16
forfeiture of all pay and allowances	11
partial forfeiture of pay	3
fined (\$29,500.00 total)	3

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

<u>Sentence</u>	<u>Cases Imposed</u>
confinement.....	1
reduction in rate	4
restriction	1
fined (\$16,491.00)	1
partial forfeiture of pay	1

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

<u>FY</u>	<u>No. of Con- victions</u>	<u>Forfeitures</u>	<u>Confinement</u>	<u>Reduction in Grade</u>	<u>Punitive Discharge/ Dismissal</u>
96	22	15 (68%)	19 (89%)	20 (91%)	18 (82%)
95	11	6 (55%)	10 (91%)	9 (82%)	7 (64%)
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%)

The following table shows the distribution of the 483 specifications referred to general courts-martial.

Violation of the UCMJ, Article	No. of Specs.
80 (attempts)	3
81 (conspiracy).....	2
83 (fraudulent enlistment, appointment, or separation)	1
85 (desertion)	3
86 (absence without leave)	2
87 (missing movement)	4
90 (willfully disobeying superior commissioned officer)	1
92 (failure to obey order or regulation).....	61
93 (cruelty and maltreatment)	21
107 (false official statement)	15
108 (military property of the U.S. – loss, damage, destruction, or wrongful disposition)	12
112a (wrongful use, possession, etc. of controlled substances).....	45
120 (rape or carnal knowledge)	4
121 (larceny or wrongful appropriation)	152
123 (forgery)	54
123a (making, drawing or uttering check, draft, or order without sufficient funds).....	12
125 (sodomy)	2
127 (extortion)	1
128 (assault)	12
129 (burglary)	2
130 (housebreaking)	1
132 (frauds against the United States)	3
134 (general).....	70

GENERAL COURTS-MARTIAL SUMMARY

Eighty two percent of the accused tried by general courts-martial were tried by military judge alone. Eleven percent of these accused pleaded guilty to all charges and specifications. Seventy five percent of the accused tried by general courts-martial with members pleaded guilty to all charges and specifications. There was a 100% increase in general courts-martial records received and filed at Coast Guard Headquarters in this fiscal year over last fiscal year.

SPECIAL COURTS-MARTIAL

Thirteen of the 16 accused tried by special courts-martial this fiscal year were tried by military judge alone. Seven bad conduct discharges were adjudged, all by the military judge. Two accused elected to be tried by a court which included enlisted members and one accused was tried by a special court-martial which included only officer members. Two special courts-martial resulted in acquittal. Four of the accused whose charges were referred to special courts-martial were nonrated (pay grades E-1 through E-3), seven were petty officers (pay grades E-4 through E-6), two were chief petty officers (pay grade E-7) and three were junior officers (CWO to O-3).

The following is a breakdown of sentences adjudged in special courts-martial tried by military judge alone (13 convictions).

Sentence	Cases Imposed
bad conduct discharge	7
confinement	9
reduction in rate	12
partial forfeiture of pay	10
restriction	1
reprimand	4
hard labor without confinement	1
fined (total fines \$10,350.00)	4
loss of lineal numbers	1

The following is a breakdown of sentences adjudged in special courts-martial tried by members (one conviction and two acquittals).

Sentence	Cases Imposed
confinement	1
reprimand	1
reduction in rate	1
partial forfeiture of pay (\$1,000.00)	1

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

FY	No. of Convictions	Forfeitures	Confinement	Reduction in Grade	BCD
96	14	11 (79%)	10 (71%)	13 (93%)	7 (50%)
95	7	3 (43%)	5 (71%)	6 (86%)	2 (29%)
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%)

The following table shows the distribution of the 181 specifications referred to special courts-martial.

Violation of the UCMJ, Article	No. of Specs.
80 (attempts)	3
81 (conspiracy)	2
86 (unauthorized absence)	3
92 (failure to obey order or regulation)	24
93 (cruelty and maltreatment)	2
107 (false official statements)	8
108 (sale, loss, damage, destruction, or wrongful disposition of military property of the U.S.)	11
112a (wrongful use, possession, etc., of controlled substance)	21
121 (larceny or wrongful appropriation)	66
123 (forgery)	8
128 (aggravated assault)	1
130 (housebreaking)	1
132 (frauds against the United States)	10
133 (conduct unbecoming an officer)	3
134 (general)	18

SPECIAL COURTS-MARTIAL SUMMARY

Eighty one percent of the accused tried by special courts-martial were tried by military judge alone. Fifteen percent of these accused pleaded guilty to all charges and specifications. None of the accused tried by special courts-martial with members pleaded guilty to all charges and specifications. There was a 100% increase in special courts-martial received and filed at Coast Guard Headquarters this fiscal year over last fiscal year.

CHIEF COUNSEL ACTION UNDER ARTICLE 69, UCMJ

In addition to the required review 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 164 officers designated as law specialists (judge advocates) serving on active duty – 126 are serving in legal billets and 38 are serving in general duty billets. Eighteen Coast Guard officers are currently undergoing postgraduate studies in law and 17 will be certified as law specialists at the completion of their studies. Eleven Coast Guard officers who recently graduated from law school completed the Navy Basic Lawyer Course in Newport, Rhode Island. All have been or are in the process of being certified under article 27 (b), UCMJ. A total of 136 additional training quotas were filled by attorneys, paralegals, yeomen and secretaries assigned to Coast Guard legal offices. Approximately \$80,000.00 was spent on legal training during the fiscal year.

U. S. COAST GUARD COURT OF CRIMINAL APPEALS

The Court consisted of the following judges at the close of fiscal 1996:

Chief Judge Joseph H. Baum

Judge John H. Fearnow

Judge Mark A. O'Hara

Judge David J. Kantor

Judge Ronald R. Weston

Issues challenging the status of the Court and its judges, that were initially raised in fiscal year 1992 and explained in previous reports, continued to be asserted before this Court, the Court of Appeals for the Armed Forces, and the U.S. Supreme Court over the past year. On 12 June 1995, the U.S. Supreme Court in *Ryder v. United States*, __U.S.__, 115 S. Ct. 2031 (1995), declined to apply the *de facto* officer rationale which had been relied upon by the former Court of Military Appeals to affirm the action of judges of this Court found to be defectively appointed. The record was remanded to the Court of Appeals for the Armed Forces for further transmittal to this Court in order that it could be reviewed by a properly appointed panel of this Court. Writs of certiorari were granted in seven other petitioned cases and, based on *Ryder* summarily remanded to the Court of Appeals for the Armed Forces for further action also. Before remand to this Court, the Court of Appeals issued an order in *United States v. Ryder* noting that the Secretary of Transportation had appointed judges of this Court without a specific provision in Article 66, UCMJ so authorizing the Sec-

retary. Consequently, the Government was ordered to show cause whether the Secretary of Transportation has the statutory authority to appoint judges of this Court. At the end of fiscal year 1995 briefs had been filed in response to that order, and argument was held at the end of October. On 15 April 1996, those issues were decided in *U.S. v. Ryder*, 44 M.J. 9 (1996) with the Court holding that the Secretary of Transportation has statutory authority to appoint civilian judges of the Coast Guard of Criminal Appeals and that his appointment of civilians as appellate military judges is consistent with the Appointments Clause of the U.S. Constitution. As a result, the *Ryder* record and the other cases remanded from the Supreme Court were returned to this Court for further review. Despite the ruling in *Ryder*, challenges to the composition of this Court continue to be raised in every case briefed, pending decision of the issues by the Supreme Court. Those issues have been raised in a petition for *certiorari* to the Supreme Court captioned *Edmond Et Al, v. United States*, which was filed in August 1996. The petition was granted on November 8, 1996 with oral argument scheduled for February 24, 1997. Action on the petition should lead to final resolution of this matter.

In addition to the decisional work indicated in Appendix A, the judges on the Court have participated in various professional conferences, committees, and seminars during the past fiscal year.

In May 1996, all the judges of the Court attended the two-day Judicial Conference of the U.S. Court of Appeals for the Armed Forces at George Washington University. Judge Wiese in May 1996 represented the Court on a panel of Court of Criminal Appeals Judges as part of the instruction for the 39th Military Judges Course at the Army Judge Advocate General's School in Charlottesville, Virginia. This was one of Judge Wiese's last official acts as an appellate military judge before his retirement at the end of September 1996. In September, 1996, Chief Judge Baum, Judge Kantor, and Judge Weston, who is the most recently appointed judge to the Court, attended a three-day Appellate Military Judges Training Seminar at Bolling Air Force Base, Washington, D.C.

This seminar was a continuation of the highly successful appellate military judges training program created expressly for the military appellate courts by Chief Judge Frank Nebeker of the Court of Veterans Appeals and first held in 1993. As before, a joint training committee composed of judges from each of the courts of criminal appeals and chaired by Chief Judge Baum of this Court, oversaw the preparations for the seminar, which was hosted this year by the Air Force Court and presented again by Chief Judge Nebeker. This highly beneficial seminar is now an annual event for new and experienced judges alike. In addition to chairing the training commit-

tee, Chief Judge Baum participated in the program as a member of one of the seminar's discussion panels.

This past year, Chief Judge Baum also continued his participation in formulating proposed rule changes for the U.S. Court of Appeals for the Armed Forces as a member of that Court's rules advisory committee. He also participated this past year with representatives of the other courts of criminal appeals in finalizing a set of changes to the joint rules of practice and procedure for the courts of criminal appeals, which resulted in promulgation of the new rules by the Judge Advocate General on 1 May 1996. Chief Judge Baum continues to play an active role in the Federal Bar Association and Chaired the association's Judiciary Division in fiscal 1996. He commenced his second year as Chair of the Division on 1 October 1996.

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.

PAUL M. BLAYNEY

Rear Admiral, U.S. Coast Guard

Chief Counsel

APPENDIX A

Period: 1 OCTOBER 1995 - 30 SEPTEMBER 1996

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	22	22	0	+100%
BCD SPECIAL	16	13		+100%
NON-BCD SPECIAL	0	0	0	UNCHANGED
SUMMARY	14	13	1	UNCHANGED
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+100%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES		5
NUMBER OF BAD CONDUCT DISCHARGES		12
SPECIAL COURTS-MARTIAL (SA LEVEL)		
NUMBER OF BAD CONDUCT DISCHARGES		7

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	19
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	7
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	3

PART 4 - WORKLOAD OF THE COAST GUARD COURT OF CRIMINAL APPEALS

TOTAL ON HAND BEGINNING OF PERIOD		9
GENERAL COURTS-MARTIAL	8	
BCD SPECIAL COURTS-MARTIAL	1	
REFERRED FOR REVIEW		37*
GENERAL COURTS-MARTIAL	29	
BCD SPECIAL COURTS-MARTIAL	7	
TOTAL CASES REVIEWED		20*
GENERAL COURTS-MARTIAL	16	
BCD SPECIAL COURTS-MARTIAL	3	
TOTAL PENDING AT CLOSE OF PERIOD		26
GENERAL COURTS-MARTIAL	21	
BCD SPECIAL COURTS-MARTIAL	5	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		0% (No change from FY 95)

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE COAST GUARD COURT OF CRIMINAL APPEALS

NUMBER	8
PERCENTAGE	100%

PART 6 - U. S. COURT OF APPEALS FOR THE ARMED FORCES ACTIONS

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCA	9/3	33%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-47%
PERCENTAGE OF TOTAL PETITIONS GRANTED	3/1	33%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+ 7%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	1/9	10%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-40%

* This total includes one petition for extraordinary relief filed and acted upon before referral of the case to either a SPCM or GCM.

NOTE: A BCD Special or BCD Special Court-Martial is a court-martial authorized to impose a BCD, whether or not a BCD was imposed by the court-martial.

APPENDIX A (CONT'D)

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

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

PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		18	
SPECIAL COURTS-MARTIAL		13	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		4	
SPECIAL COURTS-MARTIAL		3	

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS		4	
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH		34,190	
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		805	
RATE PER 1,000		23.54	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-0.88%	