

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

October 1, 1996 to September 30, 1997

The Judges of the United States Court of Appeals for the Armed Forces submit their fiscal year 1997 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 USC § 946.

BUSINESS OF THE COURT

The total number of cases carried over on the Court's Petition Docket at the end of fiscal year 1997 (235) reflected a substantial reduction of 38% compared with the same category at the end of fiscal year 1996. (See Appendix A.) Part of this reduction resulted from a decline in the number of petitions filed with the Court during the current fiscal year, which consisted of a 14% decrease compared with petition filings during the preceding fiscal year. (See Appendix J.) However, the number of cases carried over on the Master Docket increased from 73 cases at the end of fiscal year 1996 to 291 cases at the end of fiscal year

1997. (See Appendix B.) This increase was primarily attributable to the large number of petitions granted by the Court at the end of fiscal year 1997 which involved the same issue that was granted in United States v. Gorski, 47 MJ 370 (1997). The number of oral arguments and the number of opinions filed by the Court remained fairly constant in comparison with these same two categories at the end of fiscal year 1996. (See Appendices C and D.)¹

The average processing time from the date of filing a petition to the date of a grant also remained fairly constant in comparison with the prior fiscal year. (See Appendix E.) However, the processing time from the date of a grant to the date of oral argument was dramatically reduced by 24% compared with this average during the prior fiscal year. (See Appendix F.) Furthermore, there was a significant decrease of 16% in the average time between oral argument and the filing of a final opinion, and a major decrease of 22% in the overall average processing time between the filing of a petition on the Petition Docket and the filing of a final opinion on the Master Docket. (See Appendices G and H.) The average processing time for the total of all cases filed on the Petition, Master, and Miscellaneous Dockets which were decided by the

¹ Although not part of the business of the Court, it is noted that during fiscal year 1997 the Court was notified that petitions for writ of certiorari were filed with the Supreme Court of the United States in 32 Master Docket cases in which the Court issued a final decision.

Court reflected a slight increase in this overall category 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 the Honorable Janet Bond Artherton, United States District Court for the District of Connecticut, and the Honorable Malcolm J. Howard, United States District Court for the Eastern District of North Carolina, to sit with the United States Court of Appeals for the Armed Forces during fiscal year 1997. Additionally, Senior Judges William H. Darden and Robinson O. Everett were recalled and participated in the review and decision of several cases during the same reporting period.

During fiscal year 1997 the Court admitted 311 attorneys to practice before its Bar, bringing the cumulative total of admissions before the Bar of the Court to 30,841.

INTERNET ACCESS TO THE WORK OF THE COURT

In 1997, the Court established an Internet web site to provide the public with prompt access to the Court's opinions, as well as general information about the Court. The internet address of the web site is:

<http://www.armfor.uscourts.gov>

PUBLIC AWARENESS PROJECT

(Project Outreach)

In furtherance of a practice established in 1987, the Court scheduled several special sessions and heard oral arguments in selected cases outside its permanent Courthouse in Washington, D.C. This practice, known as "Project Outreach", was developed as part of a public awareness program to demonstrate not only the operation of a Federal Court of Appeals, but also the effectiveness and quality of the criminal justice system of the Armed Forces of the United States. The Court conducted appellate hearings during this fiscal year, without objection of the parties, at the Dickinson School of Law, Carlisle, Pennsylvania; the Duke University School of Law, Durham, North Carolina; the Howard University School of Law, Washington, D.C.; the United States Air Force Academy, Colorado Springs, Colorado; the United States Coast Guard Academy, New London, Connecticut; and the United States Military Academy, West Point, New York.

This program has continued to promote an increased public awareness of the fundamental fairness of the military justice system and the role of the Court in the overall administration of military justice throughout the world. The Court hopes that those who attend these hearings from both military and civilian communities will realize that the United States is a democracy that can maintain an armed

force instilled with the appropriate discipline to make it a world power, while affording all its members the full protection of the Constitution of the United States and Federal law.

JUDICIAL VISITATIONS

During fiscal year 1997 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 judge advocates and other military personnel at various military installations throughout the world.

JUDICIAL CONFERENCE

On May 8 and 9, 1997, 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 numerous 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 Brigadier General John S. Cooke, USA, Chief Judge, United States Army Court of Criminal Appeals, who delivered remarks on the subject "Military Justice - A Look Back and Ahead"; Colonel Dennis R. Hunt, USA, Professor of Law, United States Military Academy, who spoke on "Legal Reasoning and Military Law"; Professor David A. Schlueter, Saint Mary's University School of Law, who discussed "Character and Credibility Evidence"; Dr. Jonathan Lurie, Historian to the United States Court of Appeals for the Armed Forces and Professor of History, Rutgers University, whose topic was "The Unlikely Undertaking of Writing the Court's History -- Fact? . . . or Fiction?"; Professor Paul C. Giannelli, Case Western University School of Law, who addressed the subject of "Polygraphs"; Major Amy M. Frisk, USA, Professor, Criminal Law Department, The Judge Advocate General's School, United States Army, and Major Maurice Lescault, Jr., USA, Professor, Administrative and Civil Law Department, The Judge Advocate General's School, United States Army, who together presented a program on "Ethics"; Professor Stephen A. Saltzburg, George Washington University National Law Center, who reviewed recent Supreme Court cases; Vaughn E. Taylor, Esquire, who presented a program on "Trial and Appellate Advocacy"; Professor Fredric I. Lederer, College of William and Mary School of Law, who spoke on "Confrontation, Compulsory Process and Command Influence"; and Lieutenant Commander Tammy P. Tideswell, USN, Head,

Trial Advocacy and Criminal Law Division, Naval Justice School, who presented a discussion on "Computer Crimes."

The Judge Advocates Association Awards for outstanding career attorneys in each of the Armed Services were presented by Colonel Eileen Albertson, USMC (Ret.).

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

USCA STATISTICAL REPORT

Fiscal Year 1997

CUMULATIVE SUMMARY

CUMULATIVE PENDING OCTOBER 1, 1996

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

CUMULATIVE FILINGS

Master Docket	385
Petition Docket	1234
Miscellaneous Docket	<u>37</u>
TOTAL	1656

CUMULATIVE TERMINATIONS

Master Docket	169
Petition Docket	1378
Miscellaneous Docket	<u>31</u>
TOTAL	1578

CUMULATIVE PENDING OCTOBER 1, 1997

Master Docket	289
Petition Docket	235
Miscellaneous Docket	<u>7</u>
TOTAL	531

OPINION SUMMARY

<u>CATEGORY</u>	<u>SIGNED</u>	<u>PER CURIAM</u>	<u>MEM/ORDER</u>	<u>TOTAL</u>
Master Docket	107	6	56	169
Petition Docket	0	0	1378	1378
Miscellaneous Docket	<u>0</u>	<u>0</u>	<u>31</u>	<u>31</u>
TOTAL	107	6	1465	1578

FILINGS (MASTER DOCKET)

Remanded from Supreme Court	0
Returned from Court of Criminal Appeals....	4
Mandatory appeals filed	1
Certificates filed	6
Reconsideration granted	1
Petitions granted (from Petition Docket)...	<u>373</u>
TOTAL	385

TERMINATIONS (MASTER DOCKET)

Findings & sentence affirmed	122	
Reversed in whole or in part	35	Signed 107
Granted petitions vacated	1	Per curiam . . 6
Other disposition directed	<u>11</u>	Mem/order .. <u>156</u>
TOTAL	169	TOTAL 169

PENDING (MASTER DOCKET)

Awaiting briefs	49
Awaiting oral argument	39
Awaiting lead case decision (trailer cases)	189
Awaiting final action	<u>12</u>
TOTAL	289

FILINGS (PETITION DOCKET)

Petitions for grant of review filed	1230
Petitions for new trial filed	2
Cross-petitions for grant filed	1
Petitions for reconsideration granted	1
Returned from Court of Criminal Appeals ...	<u>0</u>
TOTAL	1234

TERMINATIONS (PETITION DOCKET)

Petitions for grant dismissed	6	
Petitions for grant denied	981	
Petitions for grant granted	373	
Petitions for grant remanded	8	Signed 0
Petitions for grant withdrawn	8	Per curiam .. 0
Other	<u>2</u>	Mem/order.. <u>1378</u>
TOTAL	1378	TOTAL 1378

PENDING (PETITION DOCKET)

Awaiting briefs	85
Awaiting Central Legal Staff review	35
Awaiting final action	<u>115</u>
TOTAL	235

FILINGS (MISCELLANEOUS DOCKET)

Writs of error coram nobis sought	3
Writs of habeas corpus sought	1
Writs of mandamus/prohibition sought	7
Other extraordinary relief sought	4
Writ appeals sought	<u>22</u>
TOTAL	37

TERMINATIONS (MISCELLANEOUS DOCKET)

Petitions withdrawn	0	
Petitions remanded	0	
Petitions granted	1	
Petitions denied	29	Signed 0
Petitions dismissed	1	Per curiam. 0
Other	<u>0</u>	Mem/order.. <u>31</u>
TOTAL	31	TOTAL 31

PENDING (MISCELLANEOUS DOCKET)

Awaiting briefs	2
Awaiting Writs Counsel review	0
Awaiting final action	<u>5</u>
TOTAL	7

RECONSIDERATIONS & REHEARINGS

<u>CATEGORY</u>	<u>BEGIN</u>	<u>FILINGS</u>	<u>END</u>	<u>DISPOSITIONS</u>		
	<u>PENDING</u>		<u>PENDING</u>	<u>Granted</u>	<u>Denied</u>	<u>Total</u>
Master Docket	3	9	1	1	10	11
Petition Docket ..	0	6	0	1	5	6
Misc. Docket	0	<u>2</u>	0	0	<u>2</u>	<u>2</u>
TOTAL	3	<u>17</u>	<u>1</u>	<u>2</u>	<u>17</u>	<u>19</u>

MOTIONS ACTIVITY

<u>CATEGORY</u>	<u>BEGIN</u>	<u>FILINGS</u>	<u>END</u>	<u>DISPOSITIONS</u>			
	<u>PENDING</u>		<u>PENDING</u>	<u>Granted</u>	<u>Denied</u>	<u>Other</u>	<u>Total</u>
All motions	19	761	23	688	69	0	757