

**ANNUAL REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY
OCTOBER 1, 1996, TO SEPTEMBER 30, 1997**

**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

Fifty-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 to the Office of the Judge Advocate General in fiscal year 1997. Three cases required corrective action by the Judge Advocate General. One case was pending review at the close of fiscal year 1997.

ARTICLE 69(b), UCMJ, APPLICATIONS

In fiscal year 1997, 25 applications under Article 69(b), Uniform Code of Military Justice, were received for review. Additionally, eight such applications remained pending from fiscal year 1996. Of these 33 applications, 20 were denied on the merits, while relief was granted in whole or in part in six cases. Seven cases are currently pending review.

ARTICLE 73, UCMJ, PETITIONS

In fiscal year 1997, one petition for new trial was received by the Office of the Judge Advocate General and that petitioned was denied.

APPELLATE DEFENSE DIVISION

Appellate Defense Practices. A total of 2240 cases of the 2406 cases received were reviewed during fiscal year 1997 by an average of 16 active duty Navy and Marine Corps judge advocates and 25 Naval and Marine Corps Reserve judge advocates assigned to the Appellate Defense Division. The number of cases reviewed represents an increase of 6.8% over the cases reviewed the previous fiscal year. Of that total, 487 (22%) were fully briefed to the Navy-Marine Corps Court of Criminal Appeals, while 1268 (57%) were summarily assigned. Three hundred and forty-five cases were petitioned to the Court of Appeals for the Armed Forces.

Capital Litigation. This was another active year for the Division in this area of the law. Two decisions were issued by the Court of Appeals for the Armed Forces in which new sentence hearings were ordered: United States v. Curtis and United States v. Thomas.

The Division assisted in the third annual Death Penalty Defense Course at the Naval Justice School. This course presented a "how to" look at trial level litigation. Civilian and military experts taught the basics on how to prepare and defend capital cases.

The year also saw the implementation of the Defense Capital Litigation Resource Center. The Center is headed by Captain Henry Lazzaro, JAGC, USNR, a Naval Reserve judge advocate with an extensive background as a criminal litigator. He is actively assisting Navy, Marine, and Army trial defense counsel who are currently assigned to defend service members in three pending death penalty cases. Captain Lazzaro and the Center's resources are available for judge advocates from any branch of the armed forces.

Supreme Court Practice. During fiscal year 1997, seven petitions for writ of certiorari were submitted.

Trial Defense Assistance. Assistance to trial defense counsel continued to be a primary service offered by the Appellate Defense Division. This year the Division implemented its own electronic advisory in which summaries of appellate cases were provided to the field counsel. Litigation tips and advice regarding trial procedures or tactics are also included in these advisories. In addition to the electronic advisories, counsel at the Appellate Defense Division continue to be available to assist trial defense counsel with telephonic advice.

Reserves. The reserve team continues to be an integral part of our appellate practice. When the Appellate Defense Division turned over almost 75% of its personnel this summer, the reserves stepped in and provided the support needed to keep the cases moving. Approximately 25 Naval and Marine Corps Reserve judge advocates reviewed 1423 cases; almost 60% of the Division docket.

APPELLATE GOVERNMENT DIVISION

Appellate Representation. The eight Navy and five Marine Corps judge advocates assigned to the Appellate Government Division filed a total of 1601 pleadings last year; 1282 with the Navy-Marine Corps Court of Criminal Appeals and 319 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. Eleven appellate counsel are detailed to implement this program. In

fiscal year 1997, prompt assistance was provided in response to almost 800 telephone calls or electronic messages from trial counsel and staff judge advocates requesting advice or information about cases pending or being tried. Additional assistance was provided through training presentations. The Appellate Government Division also published six Electronic Viewpoints to the field dealing with a variety of current legal issues.

Presentations. Government counsel participated in the 1997 Judicial Conference of the United States Court of Appeals for the Armed Forces and made presentations at the Army Judge Advocate General's School; the Navy-Marine Corps Trial Judiciary Conference in San Diego, California; the Army-Navy Reserve Conference in Minneapolis, Minnesota; the Courts of Criminal Appeals Judge's Conference in Washington, D.C.; and multiple presentations at the Naval Justice School in Newport, Rhode Island. These presentations included extensive support of the Government's Capital Litigation Course.

Reserves. The Appellate Government Division provided training to, while receiving outstanding support from, 13 Naval reservists assigned to NAMARA (Govt 116) and NAVJAG 113 and six Marine Corps reservists. The reservists continued to make a significant contribution to the successful completion of the Division's mission. Additionally, the Division was honored by receiving the Rear Admiral Hugh H. Howell Award for Excellence for its integration of reserve personnel with the active duty judge advocates.

NAVY-MARINE CORPS TRIAL JUDICIARY

The Navy-Marine Corps Trial Judiciary (NMCTJ) consists of 33 active duty judges and 26 reservists serving in 13 circuit offices.

In addition, the judiciary staffs four branch offices. The Northeast Judicial Circuit billet is currently gapped, with the cases from that area of responsibility being handled by judges from the Tidewater and Atlantic Circuits.

During fiscal year 1997, NMCTJ provided judicial services in 548 general courts-martial and 2698 special courts-martial. These numbers represent a slight increase in general courts-martial (17) and a decrease in special-martial (96), as compared to fiscal year 1996.

NMCTJ provided judicial services to fleet, Fleet Marine Force, and shore activities in the Continental United States and around the world, including Iceland, the Pacific islands, and at sea.

Members of the Trial Judiciary participated in continuing judicial education at the Trial Judiciary's annual training conference, the Naval Justice School, the Army Judge Advocate General's School, and the Air Force-sponsored Interservice Military Judges' Seminar. NMCTJ also provided training at various levels, including the Navy-Marine Corps Senior Officer Courses and other in-service courses. NMCTJ also performed an active role in mentoring judge advocates through both formal and informal training sessions.

NAVAL LEGAL SERVICE COMMAND

Naval Legal Service Command (NAVLEGSVCCOM) provides a wide range of legal services to afloat and ashore commands, active duty naval personnel, dependents, and retirees from 68 offices world-wide: eight Naval Legal Service Offices (NLSOs), five Trial Service Offices (TSOs), the Naval Justice School, and 54 detachments and branch offices. NAVLEGSVCCOM provides counsel for courts-martial, administrative boards, physical evaluation boards, legal assistance, and local commanders. NAVLEGSVCCOM also provides assistance for

claims processing and adjudication, and training judge advocates, legalmen, and other DoD personnel.

Over the last year NAVLEGSVCCOM added two new TSOs--TSO Pacific (Pearl Harbor) and TSO Europe and Southwest Asia (Naples). The NLSOs at San Francisco, Pearl Harbor, Great Lakes, and Groton stood down, but NLSO detachments remain at the latter three locations. The new TSOs are assuming all trial counsel (prosecution), court reporting, and command service functions formerly provided by the corresponding NLSO in their area. The NLSOs retained defense counsel, personal representation, legal assistance, and claims functions.

The field version of the Military Justice Management Information System (MJMIS) has been developed and was implemented in our CONUS NLSOs and TSOs. Additional installation at CONUS sites is scheduled for the second quarter of fiscal year 1998. MJMIS provides 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 Pentium computers and creating a Navy JAG CD-ROM. The JAG Corps offices now 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 325 officers, 218 enlisted, and 218 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 the Commander, Naval Legal Service Command, for administrative and operational control. The main NJS facility is located in Newport,

Rhode Island. Teaching detachments are also based in San Diego, California, and Norfolk, Virginia (areas of fleet concentration). Also reporting to the Commanding Officer, NJS, is the Defense Institute of International Studies, operating under the Expanded International Military Education and Training (EIMET) Program.

Mission Statement. The mission of NJS is:

1. To oversee training of Navy judge advocates, limited duty officers (law), and legalmen to enhance their career-long professional development and readiness;

2. To provide comprehensive formal training to all sea service (Navy, Marine Corps, and Coast Guard) 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 Inter-Service 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 DoD.

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.* This 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 1997, the following numbers of judge advocates graduated from NJS:

Navy:	88
Marine Corps:	48
Coast Guard:	12
International:	1

2. *Accession Legalman Course.* This nine-week course is offered four times per year. In fiscal year 1997, the course consisted of two phases: a paralegal phase, dedicated to training Navy legalmen in military justice practice (six weeks), and a court reporting phase (three weeks). In fiscal year 1997, 89 legalmen graduated from NJS.

3. *Senior Officer Course in Military Justice and Civil Law (SOC).* This four-day course is taught both in Newport and in other areas of fleet and Fleet Marine Force concentration. In fiscal year 1997, it was offered 21 times, at 13 different locations. The course is designed to prepare senior officers in the execution of the legal responsibilities of command. As such, the majority of the course focuses on such areas as nonjudicial punishment and court-martial procedures. In fiscal year 1997, the following numbers of senior officers participated in SOCs:

Navy:	695
Marine Corps:	185
Coast Guard	21
Civilian	3
Air Force	1

4. *Legal Officer Course.* In the sea services, non-lawyer "legal officers" perform a host of military justice functions in many commands that are 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 their respective commands. This course is offered 16 times per year, at Newport, San Diego, and Norfolk. In fiscal year 1997, the following numbers of legal officers were trained at NJS:

Navy:	427
Marine Corps:	73
Coast Guard:	2
Civilian:	1
International:	3

5. *Legal Clerk Course.* Typically assigned to assist a non-lawyer legal officer within a command is a "legal clerk," usually a collateral duty for a command yeoman, personnelman, or (in the Marine Corps a legal services specialist). 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-martial procedures. In fiscal year 1997, the course was offered 23 times, at Newport, San Diego, and Norfolk, and trained the following numbers of personnel:

Navy:	359
Marine Corps:	12
Coast Guard:	0
Civilian:	3
Army:	1

In addition to the "core" courses described above, NJS offered numerous continuing legal education programs throughout fiscal year 1997 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)
Computer Crimes	(two days)
National College of District Attorneys Course	(one week)
Senior Leadership Military Justice Refresher	(two days)

Enlisted Courses:

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

International Programs. Within the EIMET program, the NJS Defense Institute of International Legal Studies 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 1997, 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 the publication of the Naval Law Review, all materials in support of academic programs, and any additional materials directed by higher authorities. In fiscal year 1997, Volume 44 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.

MARINE CORPS ACTIVITIES

The Marine Corps judge advocate community consisted of approximately 392 certified judge advocates during fiscal year 1997. Nearly half of all judge advocates were company grade officers, in pay

grade 0-3 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, 10 officers graduated from ABA accredited law schools by way of government sponsored law education programs. Four of these officers graduated from the Funded Law Education Program (FLEP) and six graduated from the Excess Leave Program (LAW) (ELP). Thirteen officers are currently assigned to FLEP and fifteen are now attending law school under the ELP.

Ten judge advocates attended resident professional military education courses in fiscal year 1997. Six majors and one captain received LL.M. degrees from the graduate course at the Army Judge Advocate General's School. Two captains completed the Amphibious Warfare School in Quantico, Virginia, and one major completed the Command and Staff Course. Two majors received LL.M. degrees through the Special Education Program (SEP). Twelve officers are currently attending resident professional military education courses and two are assigned to the SEP.

As unrestricted officers, Marine Corps judge advocates continue to fill numerous non-legal billets. Two judge advocates serve in command billets at Marine Corps Recruit Depot, Parris Island, South Carolina, and Marine Corps Air-Ground Combat Center, 29 Palms, California. Three colonel judge advocates are chiefs of staff at major commands. During fiscal year 1997, three judge advocates (one colonel and two lieutenant colonels) were approved for command. Ten judge advocates continue to serve in joint billets.

The Marine Corps reserve judge advocate community averaged 393 officers during fiscal year 1997. Approximately 300 of these officers were actively participating in the Reserve. Two colonel reserve judge advocates currently 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 reserve judge advocates serve as appellate counsel with the Navy-Marine Corps Appellate Review Activity. Reserve judge advocates serve at bases and stations throughout the country and overseas. They provide legal support alongside, and are indistinguishable from, their active duty counterparts in billets ranging from instructors at Naval Justice School to legal assistance attorneys at Marine Corps Base, Camp Pendleton. Reserve judge advocates are also found serving in non-legal billets at various combat arms and supporting commands.

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