

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

OCTOBER 1, 1997 TO SEPTEMBER 30, 1998

**SUPERVISION OF THE ADMINISTRATION OF
MILITARY JUSTICE**

In compliance with the requirement of Article 6(a), Uniform Code of Military Justice (UCMJ), 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-four general courts-martial records of trial not statutorily eligible for automatic review by the Navy-Marine Corps Court of Criminal Appeals (NMCCA) were forwarded for examination to the Office of the Judge Advocate General in fiscal year 1998. Three required corrective action by the Judge Advocate General. One was forwarded by the Judge Advocate General to NMCCA for review pursuant to Article 69(d), UCMJ. Twenty-one cases were pending review at the close of fiscal year 1998.

ARTICLE 69(b), UCMJ, APPLICATIONS

In fiscal year 1998, 20 applications under Article 69(b), UCMJ, were received for review. Additionally, seven such applications remained pending from fiscal year 1997. Of these 27 applications, 14 were denied on the merits, while relief was granted in whole or in part in one case. Twelve cases are currently pending review.

ARTICLE 73, UCMJ, PETITIONS

In fiscal year 1998, one petition for new trial was received by the Office of the Judge Advocate General and that petition was denied.

APPELLATE DEFENSE DIVISION

Appellate Defense Practice. Appellate Defense received 1982 records of trial in fiscal year 1998. A total of 2249 cases were filed, ending the backlog generated over previous years. This accomplishment was the work of the 17 active duty and 25 reserve Navy and Marine Corps judge advocates assigned to Appellate Defense. A total of 27% were fully briefed to the Navy-Marine Corps Court of Criminal Appeals, and another 13% were summarily assigned. In addition, 353 cases were petitioned to the Court of Appeals for the Armed Forces, and three to the Supreme Court of the United States.

Capital Litigation. The Defense Capital Litigation Center completed its first full year of work in this most visible area of law. The Center, headed by Captain Henry Lazzaro, JAGC, USNR provides advice on trial and plea strategies, including research, motion-drafting, identification of expert witness issues, and expert witness identification. In fiscal year 1998, the Center provided its expertise in seven Navy and Marine Corps trial level cases where the death penalty was sought or seriously considered.

The Center also provided advice, coordination, and the procurement of Reserve counsel and funding for four pending appellate level cases in which the death penalty was approved in the initial action. The Center maintained liaison with and provided mutual assistance to its counterparts in the Army and Air Force concerning the three capital cases on appeal in those services. Finally, the Center plays a large role in training trial defense counsel and appellate counsel both at the Naval Justice School in Newport, Rhode Island and at Marine Corps Air Station, Cherry Point, North Carolina.

Trial Defense Assistance. Appellate Defense provides advice to trial defense counsel in the field on a continuing basis. The advice is available electronically via extremely current reports on the status of appellate case law and by telephone with the senior Appellate Division who are detailed as field liaison officers.

Reserve Support. The reserve component continues to provide outstanding support to the Appellate Defense Division. The reserve units include: NAMARA (Defense) 111 in Oklahoma City, Oklahoma, which has six reserve attorneys (plus one additional duty attorney) and is headed by Captain Kristy L. Christen, JAGC, USNR;

NAVJAG 109 in Columbus, Ohio, which has four reserve attorneys (plus 1 part-time additional duty attorney), headed by Captain Ben J. Piazza, JAGC, USNR; and NR VTU 0614, which has three reserve attorneys; and six independent Marine Corps Reservists. These twenty-one reserve attorneys reviewed 1314 cases in 1998, nearly 60% of the Division's caseload. In addition, several reserve attorneys provided specialized assistance in capital cases. The Appellate Defense Division supplies a tremendous example of reserve and active duty commands working as a team to accomplish a mission that neither could possibly do alone.

APPELLATE GOVERNMENT DIVISION

Appellate Representation. The eight Navy and five Marine Corps judge advocates assigned to the Appellate Government Division filed a total of 1753 pleadings last year; 1416 with the Navy-Marine Corps Court of Criminal Appeals and 337 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 that 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 1998, prompt assistance was provided in response to almost 750 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 12 Electronic Viewpoints to the field dealing with a variety of current legal issues.

Presentations. Government counsel participated in the 1998 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., the Trial Services Office, Pearl Harbor, Hawaii, the Trial Services Office, Seattle, Washington, 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.

NAVY-MARINE CORPS TRIAL JUDICIARY

The Navy-Marine Corps Trial Judiciary (NMCTJ) consists of 34 active duty judges and 24 reservists serving in 13 circuit and four branch offices. During fiscal year 1998, NMCTJ provided judicial services in 470 general courts-martial and 2322 special courts-martial. These numbers represent a decrease in general courts-martial (78) and special courts-martial (376), compared to fiscal year 1997.

NMCTJ provided judicial services to Fleet and Shore activities, and Marine Forces in the United States and around the world. Additionally, NMCTJ provided judicial services to Coast Guard activities in Alaska.

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 Inter-Service Military Judges' Seminar. NMCTJ also provided training at various levels,

including the Navy-Marine Corps Senior Officer Course 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 58 offices world-wide: eight Navy Legal Service Offices (NLSOs), five Trial Service Offices (TSOs), the Naval Justice School, and 45 detachments and branch offices. NAVLEGSVCCOM provides counsel for courts-martial, administrative separation 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/DON personnel.

Over the last year NAVLEGSVCCOM closed several NLSO and TSO detachments and branch offices. NLSO Southwest Branch Office, Guantanamo Bay and NLSO Europe and Southwest Asia Branch Office, London closed. TSO East Branch Offices, Brunswick, Earle, and Newport closed. TSO Southeast Detachments, Memphis and Gulfport closed, as well as the Branch Office at Guantanamo Bay. TSO West Branch Office, Port Hueneme closed, as well as TSO Pacific Branch Office, Guam. These closures were necessary due to a loss of funding in fiscal year 1999 for 20 enlisted and 18 officers, which forced NAVLEGSVCCOM to consolidate functions into regional hubs.

The field version of the Military Justice Management Information System (MJMIS) was not as successful as we originally anticipated. We have reverted back to JAGMIS for the tracking of services provided and courts-martial and hope to implement a new management information system in the near future.

NAVLEGSVCCOM is commanded by the Deputy Judge Advocate General of the Navy and includes 311 officers, 218 enlisted, and 250 civilians.

NAVAL JUSTICE SCHOOL

Organization. Naval Justice School (NJS) reports to Commander, Naval Legal Service Command, for administrative and operational control. The main NJS facility 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 Defense Institute of International Legal Studies (DIILS), operating under the Expanded International Military Education and Training (EIMET) Program.

Mission Statement. NJS oversees training of judge advocates, Limited Duty Officers (Law), and Legalmen to ensure their career-long professional development and readiness; provides 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 trains 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 and the Commandants of the Army and Air Force JAG Schools meet semi-annually 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, each containing substantial blocks of instruction relating to the UCMJ and operation of the military justice system. These courses are:

1. Accession Judge Advocate Course. This nine-week course, offered four times per fiscal year, 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 courts-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. Fiscal year 1998 graduates include:

Navy:	84
Marine Corps:	50
Coast Guard:	19
Air Force:	2
International:	3

2. Accession Legalman Course. This nine-week course, offered three times per fiscal year, trains enlisted personnel selected for conversion to the legalman rating. In fiscal year 1998, the course consisted of two phases: (a) Paralegal, dedicated to training Navy legalmen in military justice practice (six weeks), and (b) Court Reporters (three weeks). There were 43 fiscal year 1998 graduates.

3. Senior Officer Course (SOC) in Military Justice and Civil Law. This four-day course is taught in Newport, Rhode Island, and other areas of Fleet and Fleet Marine Force concentration. In fiscal year 1998, the course was offered 18 times at 11 different locations. The course prepares senior officers (typically O4-O6) to execute their legal responsibilities inherent in command. The majority of the course focuses on such areas as nonjudicial punishment and courts-martial procedures. Fiscal year 1998 participants in SOCS included:

Navy:	678
Marine Corps:	210
Coast Guard:	8
Civilian:	7
Air Force:	4

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 prepares these collateral duty legal officers (typically pay grades 0-1 to 0-3) to assume legal duties in their respective commands. This course is offered a total of 16 times per fiscal year at Newport, Rhode Island, San Diego, California, and Norfolk, Virginia. Fiscal year 1998 legal officers trained included:

Navy:	422
Marine Corps:	55
Coast Guard:	1
International:	3

5. Legal Clerk Course. Legal clerks are typically assigned to assist non-lawyer legal officers within a command. This is usually a collateral duty for a command yeoman, or personnelman, or a Marine Corps legal services specialist. This two-week course provides training in the preparation of legal forms and reports, service record entries, post-mast and post courts-martial procedures. In fiscal year 1998, the course was offered a total of 20 times at Newport, Rhode Island, San Diego, California, and Norfolk, Virginia. Fiscal year 1998 participants included:

Navy:	276
Marine Corps:	19
Civilian:	3

In addition to the above "core" courses, NJS offered numerous continuing legal education programs throughout the fiscal year that contained detailed instructions relating to UCMJ functions. These included:

<u>Officer Courses</u>	<u>Length</u>
Reserve Judge Advocate Course	Two weeks
Staff Judge Advocate Course	Two weeks
Capital Litigation Course	Three days
(Separate offerings for Prosecution and Defense)	each
Intermediate Trial Advocacy Course	One week
Advanced Trial Advocacy Course	Two days
Coast Guard Law Specialist Course	One week
Reserve JAGC Military Law Update Workshops	Two days
Computer Crimes	Two days
National College of District Attorneys Course	One week
Senior Leadership Military Justice Refresher	Two days

<u>Enlisted Courses</u>	<u>Length</u>
Reserve Legalman Course	Two weeks
Army Reserve Court Reporting Course	Two weeks
Mid-Career Legalman Course	Two weeks
Coast Guard Legal Clerk Course	Three weeks
Senior Legalman Course	One week

International Programs. DIILS provides expertise in over 150 legal topics related to Military Law, justice systems, and the rule of law, with an emphasis on the execution of disciplined military operations. DIILS has presented programs to over 9,600 senior military and civilian government officials in 66 countries worldwide since its inception in late 1992. Teams consisting of judge advocates from all uniformed services utilize the UCMJ and personal experiences to compare, contrast, and develop military justice systems in emerging democracies. In fiscal year 1998, DIILS presented 53 weeks of seminars in 39 developing nations. Significantly, 24 percent of the participants have been civilian members of these governments who determine policy and create new 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 1998, Volume 45 of the *Naval Law Review* was published and contained several articles related to Operational and International Law. NJS also updated several of its study guides.

MARINE CORPS ACTIVITIES

The Marine Corps judge advocate community consisted of approximately 392 judge advocates during fiscal year 1998. Nearly half of all judge advocates were company grade officers, in pay grade 0-3 or below. Forty-one 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, ten 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 (ELP)(LAW). Twelve officers are currently assigned to FLEP and 15 are now attending law school under the ELP(LAW).

Twelve judge advocates attended resident professional military education courses in fiscal year 1998. Six majors and two lieutenant colonels 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 lieutenant colonels completed top level schools and two majors received LL.M. degrees through the Special Education Program (SEP). Fifteen officers are currently attending resident professional military education courses and two are assigned to the SEP. As unrestricted officers, Marine

Corps judge advocates continued to fill numerous non-legal billets. Two judge advocates serve in command billets, one at Company F, Marine Security Guard Battalion, Frankfurt, Germany, and the other at Headquarters Battalion, Marine Corps Base, Hawaii. During fiscal year 1998, two judge advocates (one colonel and one lieutenant colonel) were approved for command. Ten judge advocates continued to serve in joint billets.

The Marine Corps Reserve judge advocate community averaged 393 officers during fiscal year 1998. Approximately 300 of these officers were actively participating in the Reserve. One reserve colonel judge advocate currently serves as appellate judge on the Navy-Marine Corps Court of Criminal Appeals. Eleven reserve judge advocates, major through colonel, serve as appellate counsel in 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, California. Reserve judge advocates are also found serving in non-legal billets at various combat arms and supporting commands.

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The Judge Advocate General of the Navy