

ANNUAL REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

OCTOBER 1, 1998, TO SEPTEMBER 30, 1999

**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

Thirty-six 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 1999. Twenty-one were pending at the end of fiscal year 1998. Out of the 37 cases completed, none required corrective action by the Judge Advocate General. Twenty cases were pending review at the close of fiscal year 1999.

ARTICLE 69(b), UCMJ, APPLICATIONS

In fiscal year 1999, 21 applications under Article 69(b), UCMJ, were received for review. Twelve such applications remained pending from fiscal year 1998. Of these 33 applications, 15 were denied on the merits, while relief was granted in whole or in part in one case. Seventeen cases are currently pending review.

ARTICLE 73, UCMJ, PETITIONS

In fiscal year 1999, the Office of the Judge Advocate General received four petitions for a new trial. All petitions were denied.

APPELLATE DEFENSE DIVISION

Active Duty Personnel. The Navy-Marine Corps Appellate Review Activity, Defense Division (Code 45) was staffed by 19 active duty officers and four civilian staff employees at the close of fiscal year 1999. Commander Richard W. Bagley, Jr., JAGC, USN, relieved Captain Carol J. Cooper, JAGC, USN, as Division Director in October 1998. Table 1 illustrates officer distribution by branch of service and grade. Active duty personnel are usually assigned for three-year tours of duty. During fiscal year 1999, six new attorneys reported for duty including three Navy judge advocates reporting for their first tour of duty as judge advocates.

Table 1
Active Duty Personnel Assigned on board
Navy-Marine Corps Appellate Review Activity
Appellate Defense Division

Service	CDR/LtCol (0-5)	LCDR/Maj (0-4)	LT/Capt (0-3)	First Tour (0-2/0-3)	Totals
Navy	1	4	5	5	15
Marine Corps	0	3	1	0	4
Totals	1	7	6	5	19

Reserve Personnel. The Appellate Defense Division was supported by three Naval Reserve units and a number of U.S. Marine Corps Reserve judge advocates. Table 2. Utilizing flexible drilling (flex-drill) these Reservists are mailed records of trial which they review at their homes and return with pleadings to be filed. They also routinely spend two weeks of active duty training per year at Appellate Defense Division headquarters. These Reserve elements accounted for 65% of all cases reviewed and filed with the Navy-Marine Corps Court of Criminal Appeals in fiscal year 1999. NR NAVJAG 109 in Columbus, Ohio, was commanded by Captain Ben J. Piazza, JAGC, USNR. NR NAMARA (Defense) 111 in Oklahoma City, Oklahoma, was commanded by Captain Kristy L. Christen, JAGC, USNR. In fiscal year 2000, the Appellate Defense Division will be augmented by two additional Naval Reserve units headquartered in Fort Worth, Texas, and Long Beach, California.

Table 2
Naval and Marine Corps Reserve Units/Personnel Supporting
Navy-Marine Corps Appellate Review Activity
Appellate Defense Division

Unit	CAPT/Col (0-6)	CDR/LtCol (0-5)	LCDR/Maj (0-4)	LT/Capt (0-3)	Totals
NAVJAG 109 Columbus, OH	1	1	3	0	5
NAMARA 111, Okla. City, OK	1	2	2	2	7
VTU 0614, Wash. DC	1	1	0	0	2
USMCR IMA	0	0	5	1	6
Totals	3	4	10	3	20

Navy-Marine Corps Court of Criminal Appeals Practice. The Appellate Defense Division received 1764 records of trial docketed for Article 66, UCMJ, review by the Navy-Marine Corps Court of Criminal Appeals in fiscal year 1999. This represents a decline of 218 records when compared to fiscal year 1998. The Appellate Defense Division reviewed and filed 1798 cases with the Navy-Marine Corps Court of Criminal Appeals in fiscal year 1999. This represented a decline of 452 cases compared to fiscal year 1998. Tables 3-5 reflect the numbers and types of pleadings filed in fiscal year 1999 and fiscal year 1998. Appellate Defense Division attorneys also argued 31 times before the Navy-Marine Corps Court of Criminal Appeals, including 1 *en banc* argument. This represented an increase of 14 arguments over fiscal year 1998.

Table 3
Cases Filed by Active Duty
Navy-Marine Corps Appellate Defense Counsel
at the Navy-Marine Corps Court of Criminal Appeals

Fiscal Year	Fully Briefed	Summary Assignment	Submitted on Merits	Total Records Reviewed
FY-99	278	94	253	625
FY-98	415	223	304	942

Table 4
Cases Filed by Reserve
Navy-Marine Corps Appellate Defense Counsel
at the Navy-Marine Corps Court of Criminal Appeals

Fiscal Year	Fully Briefed	Summary Assignment	Submitted on Merits	Total Records Reviewed
FY-99	70	84	1019	1173
FY-98	61	182	1065	1308

Table 5
Cases Filed by Combined Active Duty - Reserve
Navy-Marine Corps Appellate Defense Counsel
at the Navy-Marine Corps Court of Criminal Appeals

Fiscal Year	Fully Briefed	Summary Assignment	Submitted on Merits	Total Records Reviewed
FY-99	348	178	1272	1798
FY-98	476	405	1369	2250

United States Court of Appeals for the Armed Forces Practice.

Table 6 reflects a sizable increase in the number of Navy-Marine Corps cases reviewed by the Court of Appeals for the Armed Forces in fiscal year 1999, and a dramatic increase in the number of Navy-Marine Corps cases argued before, and decided by, the Court. In fiscal year 1999, Appellate Defense represented, or assisted in the representation, of four cases certified by the Judge Advocate General to the Court: United States v. Curtis, 52 M.J. 166 (1999) (affirming the lower court's opinion); United States v. Finster, 51 M.J. 185 (1999) (affirming the lower court's opinion); United States v. Byrd, 50 M.J. 754 (N.M.Ct.Crim.App. 1999) cert. ___ M.J. ___ (U.S.C.A.A.F. May 7, 1999) (pending argument on issue of whether proper execution of appellant's punitive discharge in accordance with Article 71(c), UCMJ, made appellant's case final under Article 76, UCMJ, and terminated military appellate court jurisdiction over the case); and United States v. Townes, 50 M.J. 762 (N.M.Ct.Crim.App. 1999) cert. ___ M.J. ___ (U.S.C.A.A.F. June 18, 1999) (pending argument on issue of whether the lack of appellant's personal request for enlisted members, on the record, pursuant to Article 25, UCMJ, defeated the court-martial's jurisdiction).

Table 6
Representation by
Navy-Marine Corps Appellate Defense Counsel
before the U.S. Court of Appeals for the Armed Forces

Fiscal Year	Petitions for Review Filed	Petitions Granted/ Briefs Filed	Oral Argument	Published Opinions
FY-99	323	45	55	54
FY-98	353	35	24	28

Capital Litigation. In fiscal year 1999, the Appellate Defense Division was actively involved in the appeals of four capital cases. In United States v. Private Ronnie Curtis, USMC, 52 M.J. 166 (1999), military appellate defense counsel assisted Private Ronnie Curtis' civilian defense counsel in responding to the Government's motions for reconsideration of the Navy-Marine Corps Court of Criminal Appeals' decision affirming a life sentence in lieu of ordering a resentencing hearing. Military appellate counsel also assisted civilian counsel in representing Private Curtis before the Court of Appeals for the Armed Forces when the Judge Advocate General certified to the Court a question as to whether the Navy-Marine Corps Court could affirm a life sentence without ordering a resentencing hearing. The defense brief in United States v. Private Kenneth G. Parker, USMC, NMCM No. 95-1500 was filed with the Navy-Marine Corps Court of Criminal Appeals on July 23, 1999, and is awaiting the Government's answer. Appellate defense

teams are currently researching and writing their briefs in United States v. Private Wade L. Walker, NMCM No. 95-1607 (a companion case to Parker) and United States v. Private Jesse Quintinilla, USMC, No. 98-1632, for the Navy-Marine Corps Court.

The Navy-Marine Corps Defense Capital Litigation Resource Center (CLRC) completed its second full year of operations. Captain Henry Lazzaro, JAGC, USNR, remained the director. The CLRC, unique among the services, is co-located with the Appellate Defense Division and provides advice on pretrial, trial, and sentencing strategies. It also serves as a research and resource clearinghouse with banks of motions relating to capital litigation as well as information on expert consultants and witnesses. In fiscal year 1999, the CLRC provided its expertise in four cases where the death penalty was sought or seriously considered. In two of those cases the charges were ultimately referred non-capital, another case concluded with the withdrawal of the capital referral as part of a pretrial agreement, and the fourth case is pending. The CLRC also provided advice, coordination and procurement of Reserve counsel for three Marine Corps cases awaiting appellate review where a death sentence was approved by the convening authority. The CLRC maintains liaison with the Army and Air Force appellate divisions. Finally, the CLRC plays a large role in training trial and appellate defense counsel at the annual Defense Capital Litigation Course taught at the Naval Justice School, Newport, Rhode Island.

Trial Defense Assistance. The Appellate Defense Division provides advice and support to Navy and Marine Corps trial defense counsel on a continuing basis. Beginning in October 1998, the Division began publication of a monthly newsletter, entitled *Timely Objection*, which summarizes and analyzes all recent Court of Appeals for the Armed Forces and Navy-Marine Corps Court of Criminal Appeals cases. The newsletter also summarizes and analyzes recent federal and state appellate decisions involving criminal justice. It also contains a "trial tips" section designed to aid the trial practitioner and training section highlighting military and civilian training relevant to courts-martial practice.

The Appellate Defense Division also maintains a rotating watch of experienced appellate attorneys who answer short-fused questions from the field and assist in filing extraordinary writs.

APPELLATE GOVERNMENT DIVISION

Appellate Representation. The eight Navy and five Marine Corps judge advocates assigned to the Appellate Government Division filed a total of 852 pleadings last year, 616 with the Navy-Marine Corps Court of Criminal Appeals and 236 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 1999, 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 1999 Judicial Conference of the United States Court of Appeals for the Armed Forces and made presentations at William and Mary College, The George Washington Law Center, 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, San Diego, California, the Trial Services Office, Norfolk, Virginia, 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, and received outstanding support from, eight 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 accomplishment of the Division's mission.

NAVY-MARINE CORPS TRIAL JUDICIARY

The Navy-Marine Corps Trial Judiciary (NMCTJ) consists of 33 active duty judges and 22 reservists serving in 13 circuit and four branch offices. During fiscal year 1999, NMCTJ provided judicial services in 349 general courts-martial and 2102 special courts-martial. These numbers represent a decrease in general courts-martial (121) and special courts-martial (220), compared to fiscal year 1998.

NMCTJ provided judicial services to Fleet and Shore activities, and Marine Forces in the United States and around the world. Members of the Trial Judiciary participated in continuing 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) is commanded by the Deputy Judge Advocate General of the Navy and includes 327 officers, 203 enlisted, and 204 civilians. NAVLEGSVCCOM provides a wide range of legal services to afloat and ashore commands, active duty naval personnel, dependents, and retirees from 55 offices world-wide: eight Naval Legal Service Offices (NLSOs), five Trial Service Offices (TSOs), the Naval Justice School, and 42 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. During fiscal year 1999, NAVLEGSVCCOM provided counsel for 225 general courts-martial, 818 special courts-martial, 269 Article 32 investigations, and 911 Administrative Boards; processed over 30,000 claims; provided over 500,000 legal assistance services; and provided command assistance services for over 3,900 commands.

Over the last year NAVLEGSVCCOM closed some offices where regionalization was more conducive to the mission. NLSO Southeast Branch Office Orlando was closed. TSO Southeast Detachment Corpus Christi and TSO Southeast Branch Offices Kings Bay and Roosevelt Roads were closed.

NAVLEGSVCCOM is currently beta testing a new management record tracking system and hopes to adopt this new system throughout NAVLEGSVCCOM in 2000. Additionally, NAVLEGSVCCOM developed a new quarterly productivity statistical report that should provide more reliable information and reduce the amount of time required to complete the report.

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 shall:

1. Oversee training of judge advocates, Limited Duty Officers (law), and Legalmen to ensure their career-long professional development and readiness.

2. 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.

3. 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 and the Commandants of the Army and Air Force JAG Schools, meet semiannually to discuss new initiatives and opportunities for crosstraining, 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 military justice and operation of the UCMJ. 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 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. Fiscal year 1999 graduates:

Navy	96
Marine Corps	63
Coast Guard	19
International	4

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 FY 1999, 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). Fiscal year 1999 graduates: 36.

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 1999, the course was offered 17 times, at nine locations. The course prepares senior officers in the execution of their legal responsibilities of command. The majority of the course focuses on such areas as nonjudicial punishment and court-martial procedures. Fiscal year 1999 participants in SOC:

Navy	484
Marine Corps	78
Coast Guard	12
Civilian	5
Air Force	2

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 paygrades 0-1 to 0-3) to assume legal duties in their respective commands. This course is offered 16 times per fiscal year, at Newport, Rhode Island, San Diego, California, and Norfolk, Virginia. Fiscal year 1999 legal officers trained:

Navy	543
Marine Corps	77
Coast Guard	5
International	1

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, and post-mast and post court-martial procedures. In fiscal year 1999, the course was offered 19 times at Newport, Rhode Island, San Diego, California, and Norfolk, Virginia. Fiscal year 1999 participants:

Navy	330
Marine Corps	50
Civilian	2

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

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

<u>Enlisted Courses</u>	<u>Length</u>
Reserve Legalman Course	Two weeks
Legalman Legal Writing	One week
Army Reserve Court Reporting Course	Two weeks
Military Justice Course for the Staff Judge Advocate/Command Judge Advocate/Shipboard LN	One week
NLSO/TSO Legalman Course	Three days
Coast Guard Legal Clerk Course	Three weeks
Senior Legalman Course	One week

International Programs. In fiscal year 1998, NJS introduced the *Legal Considerations for Peacekeeping and Military Operations* Course. In fiscal year 1999, 51 students from 32 countries attended the Fall and Spring offerings of this five-week resident course held in Newport, Rhode Island. The course covers topics including International Law, UN Organizations, UN Charter, Regional Organizations, Humanitarian Relief Organizations, Non-Governmental Organizations, Law of Armed Conflict, Rules of Engagement, Status of Forces Agreements, National Policy for Peace Operations, Legal Issues Regarding Demining and Preventive Diplomacy. The students hear from notable guest speakers, engage in interactive group problems and take field trips to Washington, D.C. and UN Headquarters in New York City. In the past two years, 106 students have completed the course.

The Defense Institute of International Legal Studies (DIILS) has presented programs to over 11,000 senior military and civilian government officials in 70 countries worldwide since its inception in late 1992. Teams, consisting of judge advocates from all uniformed services, utilize the UCMJ and their experiences to compare, contrast and develop military justice systems in emerging democracies. In fiscal year 1999, DIILS presented 43 weeks of seminars in 31 developing nations. Significantly, 25 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. NJS will be publishing Volume 46 of the *Naval Law Review* which will contain several articles related to Operational and International Law and Military Justice. NJS is constantly updating study guides and other textual material.

MARINE CORPS ACTIVITIES

The Marine Corps judge advocate community consisted of approximately 402 judge advocates during fiscal year 1999. Nearly half of all judge advocates were company grade officers, in pay grade 0-3 or below. Forty-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 (ELP)(LAW). Twelve officers are currently assigned to FLEP and 16 are now attending law school under the ELP(LAW).

Thirteen judge advocates attended resident professional military education courses in fiscal year 1999. Five majors and two lieutenant colonels received LL.M. degrees from the graduate course at the Army Judge Advocate General's School, Charlottesville, Virginia. Three captains completed the Amphibious Warfare School, Quantico, Virginia, and one lieutenant colonel completed the Marine Corps Command and Staff Course, Quantico, Virginia. One lieutenant colonel and one colonel completed top-level schools and 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 continued to fill numerous non-legal billets. At the end of the fiscal year, five judge advocates were serving in command billets: Company F, Marine Security Guard Battalion, Frankfurt, Germany; Marine Corps Security Forces, Kings Bay, Georgia; Headquarters Battalion, Marine Corps Base, Hawaii; Headquarters and Service Battalion, Marine Corps Recruit Depot, San Diego, California; and Security Battalion, Marine Corps Base, Quantico, Virginia. Ten judge advocates continued to serve in joint billets.

The Marine Corps Reserve judge advocate community averaged 395 officers during fiscal year 1999. Approximately 275 of these officers were actively participating in the Reserves. Fourteen 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 also serve in non-legal billets at various combat arms and supporting commands.

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