

ANNUAL REPORT
of the
U.S. COURT OF MILITARY APPEALS



and the
JUDGE ADVOCATE GENERALS
of the
ARMED FORCES
and the
GENERAL COUNSEL
of the
DEPARTMENT OF TRANSPORTATION

PURSUANT TO THE
UNIFORM CODE OF MILITARY JUSTICE
For the Period
October 1, 1978–September 30, 1979

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ANNUAL REPORT
SUBMITTED TO THE
COMMITTEES ON ARMED SERVICES
of the
SENATE AND OF THE
HOUSE OF REPRESENTATIVES
and to the
SECRETARY OF DEFENSE
AND SECRETARY OF TRANSPORTATION
and the
SECRETARIES OF THE DEPARTMENTS OF THE
ARMY, NAVY, AND AIR FORCE

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and the
JUDGE ADVOCATES GENERAL
OF THE ARMED FORCES
and the
GENERAL COUNSEL,
DEPARTMENT OF TRANSPORTATION
October 1, 1978 to September 30, 1979

The judges of the U.S. Court of Military Appeals, the Judge Advocates General of the military departments, and the General Counsel of the Department of Transportation submit their Annual Report on the operation of the Uniform Code of Military Justice, pursuant to 10 U.S.C. §867(g).

The Code Committee, consisting of the individuals designated above, continued its tradition of meeting quarterly during the fiscal year to review developments in the field of military justice and to consider proposals designed to improve the operation of the Uniform Code of Military Justice.

Perhaps the most significant accomplishment during FY79 was the Code Committee's review and approval of the Military Rules of Evidence, which subsequently were promulgated by the President pursuant to his rule-making authority under Article 36 of the Uniform Code. The Military Rules of Evidence closely track the Federal Rules of Evidence, upon which they were patterned. The rules will take effect on September 1, 1980.

The Code Committee also devoted substantial effort toward the development of a philosophy for proposing future legislation to the Congress. In addition, the committee reviewed legislation which proposed amendments to Articles 2 and 36 of the Uniform Code. Most of the Code Committee members subsequently testified concerning this legislation before the Military Personnel Subcommittee

of the House Armed Services Committee. Later during the year, the Code Committee also reviewed legislation aimed at providing Supreme Court review of certain decisions of the U.S. Court of Military Appeals as well as legislation aimed at enhancing the operation of the Court. As with the previous legislation, virtually all of the Code Committee members once again were called upon to testify before the House Armed Services Committee which was considering the bill.

The Code Committee also had occasion to resolve whether it was covered by the Sunshine Act and the Freedom of Information Act. With regard to both pieces of legislation, the committee concluded that it was not covered. Concerning the Sunshine Act, the Code Committee reasoned that opening all meetings to the general public would restrict the candor and free interaction among the members which was believed essential to accomplish the legislative objectives which were set by the Congress for the committee. Concerning the Freedom of Information Act, the committee agreed to release copies of available minutes to interested parties despite its conclusion that the Freedom of Information Act does not mandate such a course of action.

Separate reports of the U.S. Court of Military Appeals and the individual services address further items of particular interest to the Committees on Armed Services of the U.S. Senate and House of Representatives as well as the Secretaries of Defense, Transportation, Army, Navy, and Air Force.

ROBINSON O. EVERETT,
Chief Judge.
WILLIAM H. COOK,
Associate Judge.
ALBERT B. FLETCHER, JR.,
Associate Judge.
ALTON H. HARVEY,
The Judge Advocate General, U.S. Army.
CHARLES E. MCDOWELL
The Judge Advocate General, U.S. Navy.
WALTER D. REED
The Judge Advocate General, U.S. Air Force.
LINDA HELLER KAMM,
General Counsel, Department of Transportation.

REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS

October 1, 1978 to September 30, 1979

The judges of the United States Court of Military Appeals submit their FY 1979 report on the administration of the Court and military justice to the Committees on Armed Services of the United States Senate and House of Representatives and the Secretaries of Defense, Transportation, Army, Navy, and Air Force, in accordance with Article 67 (g), Uniform Code of Military Justice, 10 U.S.C. §867(g).

THE BUSINESS OF THE COURT

During the 1979 term, the Court acted on 1,487 petitions for grant of review, granting review in 129 cases (9%). On the master docket of mandatory appeals, certificates, and granted petitions, the Court acted in 336 cases, affirming the Courts of Military Review in 70% of those cases. The master docket cases were decided in 88 signed opinions, 40 per curiam opinions and 208 summary dispositions. The Court also acted upon 76 cases on the miscellaneous docket, granting relief in one case. At the close of the term, 299 cases were pending on the petition docket and subject to the statutory 30-day review rule; 202 cases were pending on the master docket; and 6 cases were pending on the miscellaneous docket. Although terminations lagged slightly behind filings on the petition docket, cumulative terminations widely outpaced cumulative filings, with the largest decrease in backlog occurring in cases on the master docket. A more detailed analysis of the business of the Court for the 1979 term accompanies this report.

The workload of the Court continues to be significantly heavier than the workload experienced in the 11 United States Courts of Appeals. While the Director of the Administrative Office of the United States Court's *Management Statistics for United States Courts, 1979*, credits each of the 323 three-judge panels of the courts of appeals with 626 appeals filed, 287 appeals terminated and 555 pending appeals, the comparable overall workload statistics of

the three-judge Court of Military Appeals reflects 1598 filings (greater by 255%), 1770 terminations (greater by 617%) and 507 pending appeals (less by 9%). This divergence of workload between the two appellate court systems would be further widened if the contributions of some 41 sitting senior judges and an otherwise unreported number of district judges sitting by designation were to be counted in the management statistics for the courts of appeals.

The Court admitted 609 attorneys to practice before the Court during the 1979 term bringing the cumulative total of admissions before the bar of the Court to 22,070.

JUDGE PERRY RESIGNS

Judge Matthew J. Perry resigned on September 22, 1979, in order to accept an appointment as a United States District Judge for the District of South Carolina. Judge Perry had served on the Court since February 18, 1976. Judge Perry's resignation marked the second time in less than 6 years that a judge of this Court has elected to resign to accept a federal district judgeship.

SAFEGUARDING THE RIGHT TO PETITION THE COURT

Petitions which lacked facial timeliness were offered for filing during this term by 58 individual appellants seeking review of their respective Court of Military Review decisions. These apparently untimely petitions prompted the issuance of show cause orders by the Court to determine whether the petitions should be accepted or dismissed as being out of time. An additional 11 petitions were the subject of various motions raising a similar issue concerning the timeliness of filing of each such petition. Inquiry into the circumstances of each case revealed some confusion regarding the appropriateness of the advice given by the various military services to an accused whose court-martial conviction has been reviewed and affirmed by one of the Courts of Military Review concerning the right to petition the United States Court of Military Appeals for further appellate review. The problem appeared to be more prevalent in cases in which a military accused had been permitted to return home on leave pending completion of appellate review. Various service officials met with the Court Executive and Clerk of Court and successfully designed corrective administrative initiatives to eliminate the problem and to assure future compliance with the Court's rules.

JUDICIAL VISITATION

The judges of the Court continued their policy of visiting military installations in an effort to familiarize themselves with the conditions under which military justice is administered in the armed forces. Chief Judge Fletcher visited Holloman Air Force Base, New Mexico, in February; Cherry Point Marine Corps Air Station, North Carolina, in April; and McConnell Air Force Base, Kansas, and Ft. Leavenworth, Kansas, in May. In October, Judge Cook visited Ramstein, Bitburg and Rhein-Main Air Force Bases, Germany; Stuttgart and Heidelberg, Germany; and four air force bases in the United Kingdom. He also visited Ft. Leavenworth, Kansas, in May. Judge Perry visited the Marine Corps Base, Quantico, Virginia, in May. During the preceding December, he visited Ramstein, Bitburg, and Rhein-Main Air Force Bases, Germany; V-Corps, 3d Infantry Division, U.S. Army Europe, and the Berlin Brigade, in Frankfurt, Wurzburg, Heidelberg, and Berlin, as well as air force and naval facilities in the United Kingdom.

The judges also appeared by invitation of Congress to testify concerning several bills affecting military justice. In addition, at the request of the American Bar Association Standing Committee on Military Law, Judges Fletcher and Cook both appeared before the Committee to present their views on statutory reforms concerning the U.S. Court of Military Appeals.

The judges welcome these opportunities to meet with commanders, military lawyers and others involved in the administration of military justice both to present and to receive views concerning the operation on the military justice system and to address the need for modifications in the Uniform Code of Military Justice.

APPELLATE ADVOCACY CONFERENCE

Under the sponsorship of the United States Court of Military Appeals in conjunction with the Military Law Institute, the Fourth Annual Homer Ferguson Conference on Appellate Advocacy was held at the Georgetown University Law Center on May 16-19, 1979. The conference featured a number of distinguished speakers. Chief Judge Edward D. Re of the U.S. Customs Court, spoke on "Appellate Brief Writing." Chief Judge Re is the author of one of the key treatises on appellate advocacy entitled, "Brief Writing and Oral Argument." Professor George S. Prugh of the Hastings College of Law, University of California and formerly the Judge Advocate General of the Army, discussed extraordinary writ practice in the military appellate courts. Eugene R. Fidell, Esquire, addressed the subject of appellate practice and procedure. Mr. Fidell recently au-

thored an exhaustive, annotated handbook on the Court's new rules of practice and procedure. Associate Justice Joseph R. Weisberger of the Supreme Court of Rhode Island again reviewed recent criminal law developments in the United States Supreme Court. Judge Malcolm R. Wilkey of the United States Court of Appeals for the District of Columbia Circuit reviewed the quality of advocacy in the federal courts. H. Elliot Wales, Esquire, presented an address, "Collateral Attack Upon a Court-Martial Conviction in U.S. District Court." Major Steven Eisenberg of the Army Judge Advocate General's School faculty continued the tradition of providing the conference with a scholarly analysis of philosophical trends in the opinions of the Court.

Over two hundred uniformed and civilian appellate lawyers practicing before the Courts of Military Review and this Court, as well as the Judges of the Courts of Military Review and this Court, the Judge Advocates General of the various services, and other scholars and commentators in the field of military justice, were in attendance at the conference. Videotapes of the conference proceedings are available on loan from the Clerk's Office and were provided to the American Bar Association for use at its annual meeting.

USCMA MANAGEMENT INFORMATION SYSTEM

With excellent results, the Court continued to utilize an automated information system to monitor the status of pending cases, to prepare all routine orders and notices, and to provide the judges and staff with timely management reports. The system also is utilized to monitor all of the Court's requisitions as well as the Court's budget, personnel matters, the word processing center operation, and extraordinary writs and motions. It also provides support for the Homer Ferguson Conference, the Code Committee, and certain Congressional projects of interest to the Court.

During fiscal year 1979, the Court Executive, R. Ward Mundy, also presented lectures on the Court's automated information system in seminars sponsored by the Institute for Court Management and the National Conference of Appellate Court Clerks. In addition, over 50 state and federal agencies toured the Court's facilities with a view toward implementing automated information systems patterned on the Court of Military Appeals' model. The basic system design also has served as a model for a number of federal and state appellate courts as well as several U.S. Attorney's offices across the country. Within the past six months, the Fourth, Fifth, and Sixth Circuits all have implemented systems patterned on that in use by this Court.

Because of the data processing and statistical limitations of the present system and the minimal amount of on-line storage capacity,

the Court Executive, at the request of the Chief Judge, conducted a thorough survey of available equipment on the market with a view toward procuring an integrated system which could provide better data processing capability while also assuring state-of-the-art word processing support for all facets of the Court's operation. After surveying numerous vendors' equipment, the Court opted to install a Wang VS system with both data processing and word processing capabilities. The computer also will support the PROMIS management information system, developed under an LEAA grant by the Institute for Law and Social Research. The Court plans to implement the PROMIS software by early FY81.

Long range goals include development of an integrated information system which could support not only the word processing and data processing needs of the Court of Military Appeals but also could provide support to the four Courts of Military Review should they perceive such a need. The Court continues to seek innovative solutions to difficult judicial administration problems through the utilization of modern technology to improve caseload while also providing the judges with the most thorough analysis of pending cases possible.

CENTRAL LEGAL STAFF COMMITTEE

As one of the first appellate courts in the country to utilize a central legal staff, the Court is especially proud that one of its staff attorneys, Carol Wild Scott, was elected chairperson of the National Committee of Appellate Court Staff Counsel. This organization, supported by the Appellate Judges Conference of the American Bar Association Judicial Administration Division, provides a forum for the dissemination of information concerning utilization of professional staff in the appellate court environment while also serving as a vehicle for the exchange of technological and professional ideas of mutual interest. Central legal staffs now are in use in every federal circuit court as well as in intermediate courts and courts of last resort in 26 states.

SIGNIFICANT DECISIONS AFFECTING THE ADMINISTRATION OF MILITARY JUSTICE WITHIN THE ARMED FORCES*

Court-martial practice and procedure: pretrial confinement; constitution of the court-martial panel; record of trial; written request for

*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 of no precedential value and should not be cited in briefs filed with the Court.

trial by judge alone; guilty plea inquiry; recusal of trial judge after withdrawal of guilty plea; sentencing and aftermath

In the case of *United States v. Malia*, 6 M.J. 65 (C.M.A. 1978), the Court decided that a magistrate's decision to release an accused from pretrial confinement cannot be overruled by a commander, but the magistrate may review a decision to release an accused either on his own motion, upon application of the accused, or upon request of command. The Court further ruled that the initial consideration of pretrial confinement by a military magistrate must be immediate, although it need not be an adversary proceeding. However, if an accused is represented by counsel, any consideration leading to a change in the status of the accused is adversary in nature, including a magistrate's receipt of *ex parte* communications of newly discovered evidence without an opportunity for the accused or counsel to respond.

In reviewing a court-martial in which only 6 of 10 members detailed by the convening authority were present for the accused's trial, the Court held that it was error for the military judge to continue with the trial without notifying the convening authority and securing approval for the absence of the court members. While the error did not affect the underlying jurisdiction of the court-martial, the error was fundamental, and the failure of the defense to object did not amount to waiver. The Court held that a voluntary, intelligent waiver would have required the military judge to delineate for the accused his rights concerning panel membership. *United States v. Colon*, 6 M.J. 73 (C.M.A. 1978).

In a case in which the accused was tried before a military judge, where the written request for trial by judge alone inadvertently contained the accused's name on the form rather than the name of the military judge, the Court refused to find jurisdictional error, overturning former caselaw to the contrary, starting with *United States v. Brown*, 21 U.S.C.M.A. 516, 45 C.M.R. 290 (1972). *United States v. Stearman*, 7 M.J. 13 (C.M.A. 1979).

During the term, the Court had the opportunity to clarify the effective date of implementing the decision in *United States v. Green*, 1 M.J. 453 (C.M.A. 1976)), with respect to the inquiry which a military judge must make into the existence of a pretrial agreement in a guilty plea case. Because of confusion which may have existed, the Court announced it would not set aside any guilty pleas for failure to comply with *Green* prior to October 17, 1977, the date of the decision in *United States v. King*, 3 M.J. 458 (C.M.A. 1977), which clarified the mandatory nature of the *Green* decision.

In a trial before a military judge alone in which pleas of guilty had been accepted by the military judge, after the accused successfully withdrew the guilty pleas upon learning that the pretrial investigation under Article 32, UCMJ, contained knowingly unsworn state-

ments, the Court held that the military judge should have recused himself upon motion of the defense, or directed trial before members. *United States v. Bradley*, 7 M.J. 332 (C.M.A. 1979).

The Court extended the holding of *United States v. Booker*, 5 M.J. 238 (C.M.A. 1977), which restricted the subsequent use of summary court-martial convictions which were obtained without providing the accused with the right to counsel, to the use of records of nonjudicial punishment in aggravation of the sentence at a subsequent trial by court-martial. *United States v. Mathews*, 6 M.J. 357 (C.M.A. 1979).

In *United States v. Ludlow*, 5 M.J. 411 (C.M.A. 1978), the Court further clarified the doctrine enunciated in *United States v. Varacalle*, 4 M.J. 181 (C.M.A. 1978), concerning the use of the principle of general deterrence as a factor in sentencing. In a per curiam opinion, the Court held that counsel for the prosecution at sentencing may not argue to the court members for a sentence based primarily on the general deterrence of others.

The procedures by which a suspended sentence is vacated came under scrutiny in *United States v. Hurd*, 7 M.J. 18 (C.M.A. 1979). The Court refused to accept documents created after the suspension was vacated in fulfillment of the constitutional requirement that the convening authority reduce to writing the evidence and reasons for vacating the suspended sentence. Moreover, the documentation supporting the vacation action is not sufficient if it merely contains a synopsis of the evidence of the suspension-breaking conduct, a staff judge advocate's opinion that the evidence is sufficient to warrant vacation of the suspended sentence, and the staff judge advocate's recommendation that the suspended sentence be vacated. The convening authority's vacation proceedings must be supported by a detailed statement of the evidence as well as the reasons why the suspension was being vacated.

In a case certified by the Judge Advocate General of the Army, *United States v. Banks*, 7 M.J. 92 (C.M.A. 1979), the Court had occasion to review the continued need for a rule requiring dismissal of charges for the failure of the convening authority to take final action within 90 days after a trial is completed when the accused is serving in post-trial confinement pursuant to the court-martial sentence. The Court announced that it would no longer require inflexible application of the rule in *Dunlap v. Convening Authority*, 23 U.S.C.M.A. 135, 48 C.M.R. 751 (1974). The Court reasoned that the need for the *Dunlap* rule has not survived the evolution of legal doctrine in such cases as *United States v. Palenius*, 2 M.J. 86 (C.M.A. 1977), defining and clarifying the nature of defense representation after trial, and *United States v. Brownd*, 6 M.J. 338 (C.M.A. 1979), decided this term, which outlined the discretion available to a convening authority in denying applications for de-

ferment of confinement pending appeal. In *Brownd*, the Court adopted the standard for release pending appeal propounded by the American Bar Association, requiring evaluation of the convicted person's risk of flight and potential to commit additional serious crime, the interference that such release would have on the administration of justice or the intimidation of witnesses, as well as the nature of the conviction under review, the sentence imposed, and certain other factors relevant to pretrial release. ABA Standards, Criminal Appeals §2.5(b)(1970).

Court-martial jurisdiction over persons and offenses

The Court made a number of important rulings on the question of court-martial jurisdiction over persons during the term. In *United States v. Hudson*, 5 M.J. 413 (C.M.A. 1978), the Court defined the action which the government must take in order to hold for trial a national guardsman serving on active duty under self-executing orders which would automatically terminate active status at a certain time. When criminal investigators formally charged the accused after questioning and obtaining handwriting samples with two violations and the company commander placed the accused in restriction by imposing restraints upon his freedom of movement which were unquestionably severe, these actions effectively attached court-martial jurisdiction prior to the date of the scheduled return to nonactive status.

The Court also construed regulations governing the enlistment of persons attempting to avoid civilian prosecution. When both the accused's parent and civilian lawyer initiated a proposal of military service as an alternative to prosecution, notwithstanding that regulations of the armed services prohibit enlistment under such circumstances and characterize such a disqualification as nonwaivable, since the disqualification is neither mandated by statute nor destructive of a matter inherent in the substance of the enlistment contract, the contract will not be voided in the absence of affirmative steps by the enlisted person to disavow the enlistment prior to the commission of an offense. Consequently, the Court refused to extend *United States v. Catlow*, 23 U.S.C.M.A. 142, 48 C.M.R. 758 (1974), to void not only an involuntary, coerced enlistment to avoid civilian incarceration but also an enlistment merely in violation of a nonwaivable regulatory disqualification. The Court also declined to extend the holding of *United States v. Russo*, 1 M.J. 134 (C.M.A. 1975), beyond voiding enlistment contracts where a recruit is enlisted in violation of Article 84, UCMJ. Where not a clear violation of a criminal statute designed to preserve the integrity of the enlistment process, but simple negligence on the part of a recruiter in enlisting a recruit who had not attained a satisfactory score on an entrance test is involved, relief from court-martial jurisdiction was

not warranted since the enlistment process neither corrupted the enlistment function nor sullied the court's integrity. *United States v. Valadez*, 5 M.J. 470 (C.M.A. 1978). Likewise, the Court refused to extend the holding in *United States v. Brown*, 23 U.S.C.M.A. 162, 48 C.M.R. 778 (1974), prohibiting a finding of constructive enlistment following serious recruiter misconduct, to a case involving only simple recruiter negligence in failing to ascertain that a recruit was below the statutory enlistment age. In such a case, the Court held that, where the enlisted person fulfills the requirements of a constructive enlistment, subsequent to the time when the statutory disqualification because of age lapsed, court-martial jurisdiction thereafter attached. *United States v. Harrison*, 5 M.J. 476 (C.M.A. 1978). In the final jurisdictional case of the term, *United States v. Torres*, 7 M.J. 104 (C.M.A. 1979), the Court held that a claim of recruiter misconduct survived a two-step enlistment procedure by which a recruit was brought first into the Marine Corps Reserve with the intention that he would shortly thereafter be enlisted in the Regular Marine Corps. Upon an accused's claim that he was initially recruited in violation of regulations which absolutely barred enlistment by reason of his self-disclosure of marihuana usage, the circumstance that the recruiter misconduct of the first recruiter was unknown to the second recruiter does not lessen the prosecution's burden to establish a valid enlistment in the first place.*

Service-connected offenses

The 1978-1979 term had several important opinions further defining service connection in off-post offenses. In *United States v. Clink*, 5 M.J. 404 (C.M.A. 1978), the Court examined the questions of proximity between the situs of an off-base marihuana offense and a nearby military installation. Even though the small civilian community where the offenses occurred was surrounded by the adjacent military installation, the Court ruled that constitutional service-connection cannot be established solely on the basis of proximity for such would disregard the political boundary between the civilian and military communities. In another case involving marihuana use by an officer in the company of enlisted military policemen, the Court declined to find service connection merely because the participants in the incident were military policemen, or because the accused was a superior officer to the enlisted people involved in the

*It should be noted that, at the close of the term, Congress was considering a bill designed to specifically overrule portions of *United States v. Russo*, 1 M.J. 134 (C.M.A. 1975). On November 9, 1979, the President signed into law Public Law 96-107 which significantly amended both Articles 2 and 36 of the Uniform Code of Military Justice.

incident, or because the offense somehow merged into an overall pattern of criminal conduct with other related offenses which were service connected. The prosecution lacked evidence that the off-post, off-duty incident was a specific product of military associations on base, or that the accused had not already blended into the civilian community at the time of the incident, or that the criminal intent to commit the offense had been previously formed on base or during the performance of military duty. *United States v. Conn*, 6 M.J. 351 (C.M.A. 1979). In *United States v. Escobar*, 7 M.J. 197 (C.M.A. 1979), the Court had the opportunity to examine the question of service connection as it applied to an offense having an extended temporal dimension. Charged with larceny from an off-base residence, the Court found service connection in the return of the stolen property onto the military base, holding that the asportation aspect of the larceny was not completed until after the property had been brought onto the military installation. After first declining to find service connection in *United States v. McCollum*, 6 M.J. 224 (C.M.A. 1979), for an off-base sale of marihuana where the record demonstrated the conspiracy to sell was formulated on base but the on-base conspiracy was not pleaded or proved, the Court modified its approach in *United States v. Strangstalien*, 7 M.J. 225 (C.M.A. 1979), where a different majority of the Court found an off-base sale to be service connected because the formation of the contractual agreement occurred on base even though the conspiracy was not charged. Lastly, service connection was found in an off-base transaction in prohibited substances where it was clear that the substances were to be returned to a barracks for further sale or use. *United States v. Chambers*, 7 M.J. 24 (C.M.A. 1979).

Courts of Military Review: extraordinary relief available to prosecution

The Court granted two petitions filed under Rule 3(b)(2), of the Court's Rules of Practice and Procedure, to review decisions by the Air Force Court of Military Review which granted extraordinary relief on applications by the Government to set aside rulings of a military judge which dismissed the charges against each accused. The Court held the Courts of Military Review possess jurisdiction to entertain and, in appropriate cases, to grant petitions for extraordinary relief filed by the Government which seek to confine an inferior court to a lawful exercise of its prescribed jurisdiction. The Court ruled, however, that no grounds existed for issuance of an extraordinary writ by the Air Force Court of Military Review in either of these cases, since the petitions were, in effect, appeals not authorized by Congress under the Uniform Code of Military Justice. *Dettinger v. United States*, 7 M.J. 216 (C.M.A. 1979).

Preinterrogation warnings

The warning of rights against self-incrimination under Article 31, Uniform Code of Military Justice, and the Fifth Amendment, and the warning of the Sixth Amendment right to counsel at custodial interrogations do not apply where an accused was delivered to the German authorities who were investigating offenses committed against civilians within the jurisdiction of the Federal Republic of Germany. The act of delivering a serviceperson to the German authorities upon their request does not amount to such assistance in the ensuing interrogation that any statement given during the interrogation must be excluded from evidence in a subsequent court-martial. Neither the mere presence of American authorities at the interrogation nor furnishing information resulting in such an interrogation constitutes participation in the interrogation such as to require the full panoply of preinterrogation warnings. So long as the civilian or foreign police are not acting as an instrumentality of the military authorities, they are not obliged to comply with the legal requirements applicable to United States military police officials. *United States v. Jones*, 6 M.J. 226 (C.M.A. 1979). In a case involving a claim that a warning of the rights against self-incrimination under Article 31, UCMJ, was required the Court held that Article 31 warnings need not be given to an accused at the extenuation and mitigation hearing prior to the imposition of sentence, except as to matters that might give rise to a charge being laid to a different crime. *United States v. Mathews*, 6 M.J. 357 (C.M.A. 1979).

Right to counsel: post-trial duties, substitution of counsel and severance of attorney-client relationship

The duties of trial defense counsel continue after trial and include receiving service of the staff judge advocate's post-trial review, the Court ruled. Even when the review is prepared in a different jurisdiction, the original trial defense counsel must be served with the review. *United States v. Iverson*, 5 M.J. 440 (C.M.A. 1978). In a related case, the Court resolved several other post-trial counsel issues. Although substitute defense counsel may be appointed if the original trial defense counsel has left the service, the substitute lawyer may not act in the case unless he enters into an attorney-client relationship with the accused. *United States v. Davis*, 5 M.J. 451 (C.M.A. 1978). The Court approved the severance of an attorney-client relationship prior to trial when the uniformed lawyer assumed duties as a military judge. The provision of the Code of Judicial Conduct directing that a judge should not practice law has been adopted as policy by the Marine Corps Special Courts-Martial Judiciary. This policy constituted good cause to terminate the officer's duties as defense counsel, once a substitute de-

fense counsel had been appointed and accepted by the accused. *United States v. Rachels*, 6 M.J. 232 (C.M.A. 1979).

Right to witnesses: securing defense witnesses and confronting prosecution witnesses

The Court had the further opportunity to clarify the question of the right to witnesses in trials by court-martial. In a case in which an accused was denied the presence of a witness at sentencing, the Court held that once a reviewing court determines that the accused was wrongfully denied a material witness, it must order a rehearing on the sentence, rather than merely reassess the sentence to cure the prejudicial error. *United States v. Scott*, 5 M.J. 431 (C.M.A. 1978). However, the Court made clear that it was within the discretion of the trial judge to determine whether the witness must appear in person or whether justice could be guaranteed by some alternative form of testimony. *Id.* at 432. In *United States v. Cumberlandledge*, 6 M.J. 203 (C.M.A. 1979), the Court addressed the subject of the denial of defense access to prosecution witnesses. In cases involving the safe-keeping of prosecution witnesses, the government must be careful to provide access to them by defense counsel, for it is not counsel but others who threaten the witnesses' safety.

Search and Seizure

During the term, the Court confirmed the power of a commanding officer to authorize searches and seizures within the command when based upon constitutional probable cause. Rejecting claims that a commander is per se disqualified as a neutral and detached magistrate, the Court held that a commander can exercise the Fourth Amendment warrant function so long as the commander is not disqualified because of undertaking law-enforcement activities in the case, such as using informants, drug-detection dogs, controlled purchases of drugs, or surveillance operations. However, when a commander not only initiates a search but selects the time and scope of the search and participates in it personally, such a commander cannot be a neutral and detached magistrate with respect to such a search. *United States v. Ezell*, 6 M.J. 307 (C.M.A. 1979).

Substantive Offenses: negligent homicide and Comprehensive Drug Abuse Prevention and Control Act of 1970

An attack on the use of the general article to punish homicide due to simple negligence was rejected in *United States v. Kick*, 7 M.J. 82 (C.M.A. 1979). Citing early precedents under the Uniform Code of Military Justice which affirmed negligent homicide convictions and rejecting an argument that all homicide offenses had been preempted by Articles 118 and 119, UCMJ, the Court distinguished

civilian caselaw outlawing homicide by simple negligence by adopting a theory that the lower standard of negligence is warranted in the armed forces because of the routine handling of dangerous instrumentalities such as weapons, explosives, and military aircraft. The Court also refused to accept an argument that Congress did not wish negligent homicide to be a crime under the UCMJ because it failed to include it among the other homicides prohibited in articles 118 and 119. The failure of Congress either to articulate such an intention or subsequently to repeal the Court's caselaw permitting such prosecution constitutes a sufficient reason to continue homicide through simple negligence as an offense against the general article. The Court also ruled on the use of the general article to charge a service member with wrongful possession of marihuana with intent to distribute under the provisions of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. section 841. Despite the lack of a provision making it extraterritorial in its application, the Court held that the offense was properly charged as having taken place aboard a naval vessel underway in the Mediterranean Sea. A vessel of the United States is an extension of the territory of the United States, especially when the vessel is a war ship. *United States v. Collins*, 7 M.J. 188 (C.M.A. 1979). The Court distinguished caselaw which had denied court-martial, subject-matter jurisdiction over statutory offenses in foreign countries where the underlying statute failed to provide for extraterritorial application.

ROBINSON O. EVERETT

Chief Judge

WILLIAM H. COOK

Judge

ALBERT B. FLETCHER, JR.

Judge

USCMA STATISTICAL REPORT

Fiscal Year 1979

CUMULATIVE SUMMARY

CUMULATIVE BEGINNING PENDING

Master Docket	395
Petition Docket	272
Miscellaneous Docket	<u>12</u>
TOTAL	679

CUMULATIVE FILINGS

Certificates filed	14
Petitions for grant of review filed	1,513
Extraordinary writs sought	70
Reconsideration filings granted	<u>1</u>
TOTAL	1,598

CUMULATIVE TERMINATIONS

Master Docket	336
Petition Docket	1,358
Miscellaneous Docket	<u>76</u>
TOTAL	1,770

CUMULATIVE END PENDING

Master Docket	202
Petition Docket	299
Miscellaneous Docket	<u>6</u>
TOTAL	507

OPINION SUMMARY

CATEGORY	SIGNED	PER CURIAM	MEM/ORDER	TOTAL
MASTER DOCKET	88	40	208	336
PETITION DOCKET	0	0	1,358	1,358
MISCELLANEOUS DOCKET	0	0	76	76
TOTAL	88	40	1,642	1,770

FILINGS (MASTER DOCKET)

Appeals filed	0
Certificates filed	14
Petitions granted	128
Reconsideration granted	<u>1</u>
TOTAL	143

TERMINATIONS (MASTER DOCKET)

Findings and sentence affirmed	235		
Reversed in whole or in part	89	Signed	88
Granted petitions vacated	10	Per curiam	40
Other disposition directed	<u>2</u>	Mem opn/order ...	<u>208</u>
TOTAL	336	TOTAL	336

PENDING (MASTER DOCKET)

Assigned opinions pending	67
Judges' conference pending	3
Oral argument pending	16
Preargument conference pending	106
Calendar committee pending	1
Final briefs pending	<u>9</u>
TOTAL	202

FILINGS (PETITION DOCKET)

Petitions for grant of review filed	1,512
Petitions for grant/new trial filed	<u>1</u>
TOTAL	1,513

TERMINATIONS (PETITION DOCKET)

Petitions for grant dismissed	17	Signed	0
Petitions for grant denied	1,328	Per curiam	0
Petitions for grant remanded	8	Mem opn/order ..	<u>1,358</u>
Petitions for grant withdrawn	<u>5</u>	TOTAL	1,358
TOTAL	1,358		

PENDING (PETITION DOCKET)

Petition briefs pending	172
Staff attorney action pending	77
Court action pending	<u>50</u>
TOTAL	299

FILINGS (MISCELLANEOUS DOCKET)

Writs of error coram nobis sought	2
Writs of habeas corpus sought	18
Writs of mandamus/prohibition sought	28
Other extraordinary writs sought	<u>22</u>
TOTAL	70

TERMINATIONS (MISCELLANEOUS DOCKET)

Petitions withdrawn	1	Signed	0
Petitions remanded	0	Per curiam	0
Petitions granted	1	Mem opn/order ..	<u>76</u>
Petitions denied	61	TOTAL	76
Petitions dismissed	<u>13</u>		
TOTAL	76		

PENDING (MISCELLANEOUS DOCKET)

Briefs pending	1
Action by Writs Counsel pending	2
Show cause action by Court pending	0
Show cause response pending	0
Other final action pending	<u>3</u>
TOTAL	6

RECONSIDERATIONS

CATEGORY	FILINGS	PENDING	DISPOSITIONS		
			Granted	Rejected	TOTAL
MASTER DOCKET	20	4	1	17	18
PETITION DOCKET.....	30	1	2	30	32
MISCELLANEOUS DOCKET ..	3	0	0	3	3
TOTAL.....	53	5	3	50	53

MOTIONS

CATEGORY	FILINGS	PENDING	DISPOSITIONS		
			Granted	Rejected	TOTAL
TOTAL MOTIONS	697	36	594	101	695

REPORT OF
THE JUDGE ADVOCATE GENERAL OF THE ARMY
OCTOBER 1, 1978 TO SEPTEMBER 30, 1979

In fiscal year 1979 Major General Alton H. Harvey assumed the duties of The Judge Advocate General and Major General Hugh J. Clausen assumed the duties of The Assistant Judge Advocate General. Additionally, Brigadier General Hugh R. Overholt assumed the duties of Assistant Judge Advocate General for Military Law and Brigadier General Richard J. Bednar assumed the duties of Assistant Judge Advocate General for Civil Law.

During this reporting period the Office of The Judge Advocate General continued to monitor the proceedings of courts-martial, to review and prepare military justice publications and regulations, and to develop draft legislative changes for the UCMJ.

MILITARY JUSTICE STATISTICS AND U.S.
ARMY JUDICIARY ACTIVITIES

The military justice system continued to experience a decline in the number of courts-martial Army-wide during fiscal year 1979. The total number of persons tried by all types of courts-martial in fiscal year 1979 was 1.4% lower than the year before, and those convicted 1.14% lower. The figures for fiscal year 1978 were a 7.1% decline in persons tried and a 5.3% decline in persons convicted, from the prior year.

The total number of Article 15's imposed during fiscal year 1979 decreased from that of fiscal year 1978 by 5.2%. In fiscal year 1979, there were 146,411 Article 15's imposed, or approximately 19.5 times the total number of courts-martial tried. In fiscal year 1978, there were 154,410 Article 15's imposed, approximately 20.2 times the total number of courts-martial tried during that year.

A factor which contributed to the decline in the courts-martial rate was the continued use of administrative procedures to separate service members who were in trouble or likely to come into conflict with military criminal law. Procedures under Chapter 10, Army Regulation 635-200, were used to separate soldiers facing court-

martial for an offense whose maximum punishment includes a punitive discharge. Expeditious Discharge and Trainee Discharge Programs were used to identify and separate members who could not adjust to Army life.

Statistical Summary: Fiscal Year 1979

Statistical Summary: Fiscal Year 1979

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT (Tried)
GENERAL	1256	1112	144	+ 23.0%
BCD SPECIAL	871	745		+ 7.5%
NON-BCD SPECIAL	3080	2719	361	- 21.9%
SUMMARY	2310	2033	277	+ 25.0%
OVERALL DECREASE IN PERSONS TRIED OVER FY 78				- 1.4%

PART 2 - DISCHARGES APPROVED (BY GCM Convening Authority)

GENERAL COURTS-MARTIAL		
NUMBER OF DISHONORABLE DISCHARGES		231
NUMBER OF BAD CONDUCT DISCHARGES		459
SPECIAL COURTS-MARTIAL		
NUMBER OF BAD CONDUCT DISCHARGES		519

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	768
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	660
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	339

PART 4 - WORKLOAD OF THE ARMY COURT OF MILITARY REVIEW

TOTAL CASES	HAND BEGINNING OF PERIOD		500
	GENERAL COURTS-MARTIAL	312	
	BCD SPECIAL COURTS-MARTIAL	188	
CASES RECEIVED FOR REVIEW			1481
	GENERAL COURTS-MARTIAL	805	
	BCD SPECIAL COURTS-MARTIAL	676	
TOTAL CASES REVIEWED			1584
	GENERAL COURTS-MARTIAL	881	
	BCD SPECIAL COURTS-MARTIAL	703	
TOTAL CASES PENDING AT CLOSE OF FY 79			397
	GENERAL COURTS-MARTIAL	236	
	BCD SPECIAL COURTS-MARTIAL	161	
PERCENT DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING FY 78			1.1%

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE REVIEW

COURT OF MILITARY

NUMBER	1575
PERCENTAGE	99.4%

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

PERCENTAGE OF ACMR REVIEWED CASES FORWARDED TO USCMA	55.1%
PERCENTAGE OF DECREASE (-) OVER PREVIOUS REPORTING PERIOD	3.8%
PERCENTAGE OF TOTAL PETITIONS GRANTED	9.2%
PERCENTAGE OF DECREASE (-) OVER PREVIOUS REPORTING PERIOD	21.8%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY ACMR	5.1%
RATE OF DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	13.1%

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		35	
RECEIVED DURING FY 79		252	
DISPOSED OF		255	
GRANTED	23		
DENIED	229		
NO JURISDICTION	1		
WITHDRAWN	2		
TOTAL PENDING AT END OF PERIOD		32	

PART 8 - ORGANIZATION OF COURT (Based on cases rec'd by ACOMR during reporting period)

TRIALS BY MILITARY JUDGE ALONE		565	
GENERAL COURTS-MARTIAL		476	
SPECIAL COURTS-MARTIAL (BCD)			
TRIALS BY MILITARY JUDGE WITH MEMBERS		542	
GENERAL COURTS-MARTIAL		184	
SPECIAL COURTS-MARTIAL (BCD)			

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS REC'D BY OTJAG	68	
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	758,748	
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	146,411	
RATE PER 1,000	193.0	
DECREASE(-) IN RATE PER 1,000 OVER PREVIOUS PERIOD	7.3	

The U.S. Army Judiciary

The U.S. Army Judiciary is an element of the U.S. Army Legal Services Agency. It consists of the U.S. Army Court of Military Review, the Clerk of Court, the Examinations and New Trials Division, and the Trial Judiciary.

The Agency also includes the Government Appellate Division, the Defense Appellate Division, the U.S. Army Trial Defense Service, the Contract Appeals Division and the Regulatory Law Office. The latter two sections have no function related to the U.S. Army Judiciary and its court-martial mission.

U.S. Army Trial Defense Service

In May 1978, the U.S. Army Trial Defense Service (USATDS), an organization of military defense counsel, began a one-year test at sixteen installations of the U.S. Army Training and Doctrine Command. Initiated at the direction of the Chief of Staff, USATDS was designed, in part, to counter perceptions that defense counsel might be subjected to divided loyalties by assignment to the convening authority's command.

The primary mission of USATDS is to provide specified defense counsel services at the installation level. USATDS counsel represent soldiers in all judicial and administrative actions in which there is an entitlement to legal counsel by law or regulation. They also give advice to soldiers offered nonjudicial punishment and to suspects, as required by law. Secondary USATDS missions are aimed at improving the professionalism and efficiency of defense counsel.

After a year of testing, USATDS was evaluated by over 150 convening authorities, staff judge advocates, military judges, and counsel at the sixteen installations. Based upon those evaluations, USATDS was an operational success. Commanders commented frequently on the high degree of professionalism exhibited by defense counsel. Most felt the program would help cure whatever false impressions of unlawful influence lingered within the military justice system. Military judges found the courtroom performance, appearance and bearing, and overall professionalism of defense counsel to have greatly improved under USATDS.

The successful test results led the Army Chief of Staff, pursuant to a recommendation from The Judge Advocate General, to direct further testing of USATDS, beginning 1 September 1979, at all Army installations in the continental United States, Alaska, Hawaii, and Panama. Implementation of USATDS for early fiscal year 1980 in U.S. Army Europe and Eighth U.S. Army (Korea) was projected.

Under the overall supervision of the Assistant Judge Advocate General for Civil Law, USATDS has a five-man headquarters ele-

ment, headed by a senior Colonel, which is located in the Washington area. The defense counsel, while assigned to the United States Army Legal Services Agency, perform duties in the field. With the September 1979 CONUS expansion, USATDS now has 42 field and branch offices located at 39 CONUS installations. For administrative and supervisory purposes, these offices are divided into five geographic regions. A field grade Regional Defense Counsel supervises operations within each region. Each field office is headed by a Senior Defense Counsel who is responsible for the USATDS mission at that office and subordinate branch offices.

Initial reports on the expanded test received during fiscal year 1979 were as favorable as prior evaluations. The USATDS chain of supervision continues to provide the requisite supervision, training, and evaluation of defense counsel necessary to enhance professionalism and promote the effective use of resources.

SIGNIFICANT MILITARY JUSTICE ACTIONS

Actions involving military justice handled by the Criminal Law Division, OTJAG, included evaluating and drafting legislation, Executive Orders, pamphlets, and regulations impacting on the operation of the Army and the Department of Defense; monitoring the administration of military justice, including evaluation of on-going major projects; rendering opinions for the Army staff; and reviewing various aspects of criminal cases for action by the Army Secretariat and staff.

Change To Military Justice Regulation

Change 18, Army Regulation 27-10, Military Justice, was published with an effective date of 1 March 1979. Some of the significant changes included: providing for a mental status evaluation of accused referred to trial by general or BCD special court-martial; incorporating the designation by the Secretary of the Army of The Judge Advocate General as the authority next superior on Article 15 appeals when no intermediate superior authority is reasonably available; incorporating revised DA Form 2627 (Record of Proceedings under Article 15, UCMJ); adding formulas for determining maximum authorized monthly forfeitures and detentions of pay under Article 15, UCMJ; updating the informational references to various restrictions as to membership of courts-martial and other related military justice duties; and conforming the Advice as to Appellate Rights and the Petition for Grant of Review forms to the current rules of the U.S. Court of Military Appeals.

Immediate Action Interim Change No. I02, Army Regulation 27-10 was published with an effective date of 1 September 1979. It

implemented changes to filing procedures for records of nonjudicial punishment. Some of the key features of the change are: upon approval of a change in status from enlisted to officer or warrant officer, Article 15's received while in enlisted status are filed in the restricted fiche of the Official Military Personnel File (OMPF); wholly set aside Article 15's are filed in the restricted fiches of OMPF's of officers, warrant officers, and enlisted members; and upon an individual's request, Article 15's received by officers or warrant officers while serving in a prior enlisted status and Article 15's wholly set aside prior to implementation of the new policy will be transferred to the restricted fiche of the OMPF. In addition, another major feature of the change is that where only minor punishment is administered for an offense, commanders have the prerogative of filing the original in unit records only or in the OMPF. Commanders exercising special court-martial convening authority determine filing in cases of enlisted personnel in grades E1-E5. Commanders exercising general court-martial convening authority determine filing in cases of enlisted personnel in the grades E6-E9, warrant officers, and officers. Minor punishment is defined as restriction or extra duty for 14 days or less, detention or forfeiture of pay to be applied for not more than one month, correctional custody for seven days or less, admonition or reprimand, or any combination thereof.

FOREIGN CRIMINAL JURISDICTION

As executive agent for DOD, DA (through OTJAG) maintains and collates information concerning the exercise of foreign criminal jurisdiction over U.S. service members. During the period 1 December 1978 through 30 November 1979 out of 16,707 cases (worldwide) involving primary foreign concurrent jurisdiction of U.S. Army personnel, foreign authorities waived their jurisdiction in 16,478 cases for a waiver rate of 98.6 percent. This rate is identical to that of the previous reporting period.

LITIGATION

Litigation involving the Army during fiscal year 1979 had only a limited impact upon military justice matters.

In *Cowden v. United States*, 600 F.2d 1354 (Ct. Cl. 1979) plaintiff, who had served beyond his period of enlistment because of a general court-martial sentence which was invalidated, sought back pay for the period between the expiration of his term of service and the date he was released from military control. He was released from military control after it was decided not to order a rehearing.

In holding for plaintiff the court ruled that when a conviction is invalidated and either no new trial occurs or a new trial results in an acquittal, the pay statutes provide for the payment of pay and allowances from the date of the expiration of term of service until his release from military control.

In *Hatheway v. Secretary of the Army*, Civ. No. C79-0442 SAW (N.D. Cal., 1979), plaintiff, an officer who was dismissed by court-martial after having been convicted of consensual sodomy under Article 125, sought collateral relief attacking, among other issues, the constitutionality of Article 125 and the reasonable doubt form instruction used by courts-martial. He also alleged that the convening authority committed an abuse of prosecutorial discretion, by prosecuting sodomy between persons of the same sex, while declining to prosecute similar acts between persons of different sexes. The district court granted summary judgment for the United States without opinion.

In *Piper v. Alexander*, Civ. No. C-78-2203 SW (N.D. Cal., 1979), plaintiff sought to set aside an Article 15 on the ground that Article 15 is jurisdictionally limited to minor offenses and the offenses for which he was punished were major felonies. The action was dismissed on 12 October 1979 without opinion.

EDUCATION AND TRAINING

During fiscal year 1979, The Judge Advocate General's School (TJAGSA) provided legal education to lawyers of the military services and other federal agencies. Forty-three resident courses were conducted with 2,141 students in attendance. Courses were attended by 1,360 Army, 136 Navy and Marine, 115 Air Force, 74 Coast Guard, 29 Army National Guard, 15 Air National Guard, 401 civilians, and 11 foreign students.

Courses of Instruction

During fiscal year 1979, three Basic Classes, the 88-90th, were conducted. A total of 235 officers—231 Army, and four foreign—were graduated.

The 28th Graduate Class began on 20 August 1979 with 49 Army, two Navy, five Marine, and three foreign officers in attendance.

In November 1978, three instructors from TJAGSA participated in the first Pre-Command Course at Fort Leavenworth, Kansas. Fifty-five battalion and brigade command designees attended the initial offering. Additional Pre-Command Courses were taught in January, March, May, July, and September 1979. In each course, three TJAGSA instructors gave twenty-two hours of instruction on administrative adverse actions and criminal law. In all, 353 students attended the six Pre-Command Courses.

The Criminal Law Division sponsored six continuing legal education (CLE) courses in fiscal year 1979, including three Trial Advocacy courses. The courses combine instruction on new developments in criminal law, seminars, and videotaped workshops to improve and polish the experienced trial attorney's advocacy skills. The major portion of these offerings is devoted to student-participation workshops and exercises designed to enable the attorneys to refine their courtroom skills and techniques of persuasion. The courses are accredited by all states having mandatory CLE requirements. In addition, the Criminal Law Division hosted and co-sponsored a Military Law Institute Trial Advocacy Seminar in June 1979.

The International Law Division presented the 1st Legal Aspects of Terrorism Course in May 1979. This 2½ day course treated the subject along the full spectrum of anti-terrorist planning and response in which judge advocates might become involved. The primary purpose of the course was to train judge advocates to assume their responsibilities under new anti-terrorist directives and to insure the implementation of these directives servicewide.

Beginning in June 1979, the International Law Division undertook the "operationalization" of international law, that is, the translation of the subject into the form most directly amenable to field practice. Thus, beyond instruction in the substance of international law, the major focus of the Division has become instruction on the practical aspects of the successful delivery to command and staff of international law services. To tie this orientation to present field needs, the Division has (1) established close liaison with practicing levels, (2) devised a program for observation and evaluation of readiness exercises with a view toward their development as a major law of war teaching medium, and (3) begun threat research and analysis relevant to the U.S. law of war program.

The 9th Contract Attorney's Advanced Course, 8-12 January 1979, featured contract formation in government contracts. Emphasis was placed on socioeconomic policies and other legislation. The course included discussions of the Federal Acquisition Regulation, minority business enterprise programs, labor surplus set-asides, affirmative action programs, and the Contract Disputes Act of 1978.

The Administrative and Civil Law Division sponsored a number of continuing legal education courses in fiscal year 1979. Legal Assistance, Government Information Practices, Claims, Federal Labor Relations, Military Administrative Law Developments, Environmental Law, Litigation, and Law Office Management were among the courses presented. In addition, the Division sent an instructor to the NCO Advanced Course at Fort Benjamin Harrison to conduct courses in administrative and civil law subjects.

Six resident classes of the Senior Officers' Legal Orientation Course (SOLO) were conducted at TJAGSA for one Major General and 302 senior field grade command and staff officers. TJAGSA also continued to conduct the SOLO Course at the U.S. Army War College, Carlisle Barracks, where 20 students received instruction (30 April-3 May 1979). TJAGSA conducted two Mini-SOLO Courses for three Major Generals on 21 November 1978 and 19-20 July 1979.

Major Projects

In April 1979, the Director of the Judge Advocate Division, Headquarters, Marine Corps, Brigadier General James P. King, USMC, spoke to the Graduate Class on the role of the Marine Judge Advocate.

On 1 May 1979, the third Charles L. Decker Lecture in Administrative and Civil Law was presented by Professor Charles H. Whitebread, Professor of Law at the University of Virginia. Professor Whitebread's topic was "The Revolution in Juvenile Law and Procedure."

The Honorable Romano L. Mazzoli, Congressman, Third District, Kentucky, delivered the Eighth Kenneth J. Hodson Lecture in Criminal Law on 23 March 1979.

The Edward H. Young Lecture in Military Legal Education was presented by Professor Kenneth R. Redden, Professor of Law at the University of Virginia, on 27 September 1979.

The Judge Advocate General's School was the site of The Judge Advocate General's Service Organizations Court-Martial Trial Team training, 18-29 June 1979, and of the Basic Officers Advanced Course Phase VI (International Law and Contract Law) and the Judge Advocate Reserve Components General Staff Course resident phase, 9-20 July 1979. Approximately 250 Reserve judge advocates were trained at these sessions.

The Reserve Components Technical (On-Site) Training Program for the academic year 1978-1979 provided training to 1,044 Reserve judge advocates, 137 enlisted members, and 24 civilian attorneys in 44 cities covered during 21 trips. The Law School Liaison Program was revamped during the last quarter of fiscal year 1979. One-hundred twenty-four law schools now have liaison officers. During calendar year 1978, Reserve judge advocates assigned to USAR troop program units provided over 88,000 manhours of mutual support to the active Army.

The Judge Advocate General's Mobilization Designation program, administered by the Reserve Affairs Department of TJAGSA, has expanded to more than 500 positions CONUS-wide. Officers transferring from Troop Program Units to the Individual Ready Reserve are seeking Mobilization Designation vacancies, and active component Staff Judge Advocates are relying increasingly on the services

of their MOB DES officers. Mobilization designees serve at active component stations throughout the country as well as in the field as trial judges, on the U.S. Army Court of Military Review, at Government and Defense Appellate Divisions, Examination and New Trials Division, and the Office of The Judge Advocate General.

The School hosted the annual Worldwide JAG Conference, 9-13 October 1978. Judge Advocates stationed throughout CONUS and overseas conferred on areas of interest and recent developments in the military legal system.

The Board of Visitors of The Judge Advocate General's School convened at TJAGSA for their annual meeting 23-25 April 1979. Visiting members of the Board were its chairman, The Honorable Robert M. Duncan, Professor Ruth Fleet Thurman, Dean Emerson G. Spies, Mr. James W. Curtis, and Dean Donald T. Weckstein. Dean Chapain D. Clark, the other member of the Board, was unable to attend.

Eighteen German jurists and senior prosecutors, guests of The Judge Advocate General, were briefed on the operation of TJAGSA and the United States Military Legal System, 16-22 May 1979.

On 10 August 1979, Colonel David L. Minton succeeded Colonel Barney L. Brannen, Jr., as 13th Commandant of TJAGSA. Lieutenant Colonel Robert M. Nutt, formerly Chief, Contract Law Division, TJAGSA, succeeded Colonel Minton as Deputy Commandant and Director, Academic Department.

PERSONNEL, PLANS, AND POLICIES

Excluding law students, the average strength of The Judge Advocate General's Corps for fiscal year 1979 was 1,431. Representing minority groups were 55 Blacks, 21 Hispanics, 12 Asian and Native Americans, and 84 women. The fiscal year 1979 average strength compares with an average of 1,440 in fiscal year 1978, 1,514 in fiscal year 1977, 1,588 in fiscal year 1976, and 1,590 in fiscal year 1975. The grade distribution of the Corps at the end of the fiscal year was: 4 general officers, 85 colonels, 143 lieutenant colonels, 235 majors, and 964 captains. There were also 56 warrant officers. In addition, 70 officers were participating in the Funded Legal Education program.

To ensure that the best qualified candidates for initial commission, career status, and The Judge Advocate Officer Graduate Course were selected, formal boards were convened under The Judge Advocate General's written instructions at several times during the year.

In February 1979 a selection board was convened and selected 21 active duty commissioned officers to commence law school under the Funded Legal Education Program.

Notwithstanding recent trends toward a larger percentage of career judge advocates, there is still a shortage of field grade officers. As noted in reports of prior years, on 9 February 1976 the Secretary of the Army approved, for purposes of temporary promotion, separate judge advocate promotion consideration through the grade of colonel, and deeper zones of consideration than on the Army Promotion List. This policy has resulted in a decrease in the shortage of field grade officers in fiscal year 1979 and ultimately will eliminate the shortage in the future.

Fifty-eight officers completed the following schools:

U.S. Army War College	2
Industrial College of the Armed Forces.....	1
U.S. Army Command and General Staff College	8
Armed Forces Staff College.....	1
The Judge Advocate Officer Graduate Course	46

Concurrent with the testing of the U.S. Army Trial Defense Service, the policy of deferred certification of defense counsel described in reports of prior years was discontinued.

ALTON H. HARVEY
Major General, USA
The Judge Advocate General

ANNUAL REPORT
of
THE JUDGE ADVOCATE GENERAL OF THE NAVY
pursuant to
THE UNIFORM CODE OF MILITARY JUSTICE
for
FISCAL YEAR 1979

Supervision of the administration of military justice.— Complying with the requirement of Article 6(a), Uniform Code of Military Justice, the Judge Advocate General and the Deputy Judge Advocate General continued to visit commands within the United States and Europe in the supervision of the administration of military justice.

Court-martial workload.

a. There has been an increase in the total number of courts-martial during fiscal year 1979. (See Exhibit A attached to this report.)

b. During fiscal year 1979, the U.S. Navy Court of Military Review received for review 1,970 new courts-martial cases, consisting of 209 general courts-martial and 1,761 special courts-martial, as compared with 1,746 courts-martial, consisting of 254 general courts-martial and 1,492 special courts-martial, during fiscal year 1978. Of the 1,970 new cases received by the U.S. Navy Court of Military Review in fiscal year 1979, 1,676 accused requested counsel (85 percent).

Navy-Marine Corps Trial Judiciary

a. The Navy-Marine Corps Trial Judiciary (Trial Judiciary), had its inception in SECNAVINST 5813.6 of 9 May 1962. After the effective date of the Military Justice Act of 1968, and prior to 1 May 1979, the Trial Judiciary supplied all military judges for the general courts-martial tried in the naval service, and supplemented the *ad hoc* special courts-martial military judges assigned to Navy commands. In November 1973, however, the vast majority of navy spe-

cial courts-martial military judges were assimilated into the Trial Judiciary. From 1 October 1969 on, the Trial Judiciary also supplemented the Marine Corps *ad hoc* special court-martial military judges who were detailed to Marine Corps special courts-martial prior to 18 June 1974, when the Marine Corps Special Courts-Martial Judiciary was established.

b. On 1 May 1979, pursuant to SECNAVINST 6813.6C, the Marine Corps Special Courts-Martial Judiciary was abolished; its 14 special courts-martial judges were transferred to and its special courts-martial caseload was assumed by the Navy-Marine Corps Trial Judiciary. This action had no impact upon the general courts-martial caseload or general courts-martial military judge strength of the Navy-Marine Corps Trial Judiciary. At the end of fiscal year 1979 the Trial Judiciary consisted of 18 general courts-martial judges, the same as at the end of fiscal year 1978. The addition of the 14 special courts-martial military judges on 1 May 1979, however, brought the strength of the Navy-Marine Corps Trial Judiciary to 34 special courts-martial military judges at the end of fiscal year 1979, up from 20 at the end of fiscal year 1978.

c. Some 22 military judges attended the annual Judge Advocate General's Conference held in Washington, D.C. from 23—27 October 1978. Two military judges attended the regular three-week trial judges' course at the National Judicial College, Reno, Nevada. One military judge attended the Criminal Law Course at the National Judicial College, Reno, Nevada. Two military judges attended the Criminal Evidence Course at the National Judicial College, Reno, Nevada. Eleven judges attended the Tri-Service Military Judges' Seminar at Maxwell Air Force Base, Alabama. Nine military judges attended the East Coast ATLA Seminar held at Camp Lejeune, North Carolina. Thirteen military judges attended the West Coast ATLA Seminar held at Camp Pendleton, California. Five military judges attended a military judges' seminar on Okinawa, held from 5—7 April 1979. One military judge attended a military judges' seminar hosted by the Army Judicial Circuit, and held at Garmisch, Germany.

Naval Legal Service.

a. The Naval Legal Service (NLS) presently consists of eighteen NLS offices and detachments which are located in areas of naval concentration throughout the world. The total manpower strength authorization for the NLS includes 285 judge advocates, 9 warrant officers, 111 legalmen, and, for fiscal year 1979, 162 civilian employees (including 33 direct-hire foreign nationals and 7 indirect-hire foreign nationals). Navy judge advocates in the NLS comprise approximately one-third of the Navy's total judge advocate strength.

b. The NLS, under the direction of the Judge Advocate General as Commander, continues to provide timely response to requests from activities requiring counsel and trial team services. The NLS is providing an ever-increasing amount of necessary legal services to local commands. Periodic command inspections into the operation of each of the various NLS offices and detachments has shown that most line commanders who depend upon the NLS for support are satisfied with the quality and timeliness of services received.

c. The NLS is in the initial stages of adding a new NLS Office in Long Beach, California, to replace the Detachment that exists now. This conversion is necessitated by the projected increase in workload at the Detachment as a result of the homeporting of additional ships in Long Beach. Also, approval has been received from the Chief of Naval Operations to establish Detachments at New Orleans, Louisiana, and Annapolis, Maryland. These new Detachments will become fully operational on 1 April 1980. In addition, initial correspondence has been forwarded to commands concerned seeking inputs to proposed Detachments at Meridian, Mississippi, Gulfport, Mississippi, and Port Hueneme, California.

d. A management initiative was considered necessary, with a goal of providing adequate legal services to the fleet, including an active command-service/command-liaison program, and a legal assistance program more responsive to the needs of the operating forces. An assessment was made of the minimum personnel needs to meet the foregoing goal. Expanded command-services/command-liaison functions are predicated upon a fundamental concept that the liaison judge advocate or member of the command-service division will visit the recipient command, familiarize himself with the command's legal/disciplinary problems, and assist the commanding officer in reaching a timely solution to those problems. This function will not only require additional judge advocates, but will also require additional paralegal/clerical personnel for support. Thirty-eight judge advocates and twenty-five paralegal personnel, plus miscellaneous associated office equipment will be required to accomplish these additional responsibilities. The additional requirements have been included in the POM submission for fiscal year 1982. Pending approval of this POM request, permission has been granted by the Chief of Naval Operations to over-write these billets in the JAG Corps end-strength for a two year period, to permit immediate implementation of these initiatives.

Article 69, UCMJ, Petitions. a. The number of petitions filed pursuant to Article 69, Uniform Code of Military Justice, under which the Judge Advocate General may vacate or modify the findings or sentence of courts-martial which have been finally reviewed under Article 76, but have not been reviewed by the U.S. Navy Court of Military Review, increased during fiscal year 1979.

b. In fiscal year 1979, 89 petitions were received by the Judge Advocate General. Thirty-two petitions were pending from prior years. Of these 121 cases, 114 petitions were reviewed during fiscal year 1979. Of those petitions reviewed, 103 petitions were denied, while relief was granted, in whole or in part, in 11 of the petitions. Pending review at the close of fiscal year 1979 were 7 cases.

Article 73, UCMJ, Petitions. In fiscal year 1979, five petitions for new trials were submitted, three of which were referred to the U.S. Navy Court of Military Review pursuant to Article 73, Uniform Code of Military Justice. Two petitions were denied.

Article 74b, UCMJ, Petitions. Two petitions were submitted requesting the substitution of an administrative discharge for a punitive discharge awarded as part of a sentence by court-martial. Both cases were pending at the close of the fiscal year.

Annual Judge Advocate General's Conference.

a. A conference of judge advocates from all major Navy and Marine Corps commands was held in Washington, D.C. on 23 October—27 October 1978. The conference heard addresses by the Under Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps. The conference included formal presentations on various legal topics; *e.g.*, recent military justice developments; amendments to the Uniform Code of Military Justice and the *Manual for Courts-Martial*, (both those proposed and those still under study by the Joint-Service Committee on Military Justice); standards of conduct; and current civil litigation involving the naval service. In addition to these presentations, seminars were held which discussed the handling of rape and other sex-offense cases, including their psychiatric, investigatory, scientific, evidentiary and instructional aspects; the disability evaluation process, with a discussion of participants' roles and the practical affects upon the service member following the disability decision; *Catlow/Russo* problems, including the Navy's basic enlistment-eligibility requirements; and guidance for judge advocates who may be called upon to advise or act as management representatives in Equal Employment Opportunity administrative hearings. Other seminars were devoted to search-and-seizure problems, including usage of marijuana dogs, and barracks, vehicle, consent, and probable cause searches; current Department of the Navy federal court litigation in the area of civilian-personnel law, with emphasis on the role of judge advocates in supporting such litigation efforts from the discovery stage up to trial; theoretical and practical problems involving legal ethics; the Federal Labor Relations Program under Executive Order 11491; management issues in the Naval Legal Service; and corrections center philosophy. Additional seminars addressed issues of concern and interest to personnel associated with trials by

courts-martial; the law of armed conflict; the Freedom of Information and Privacy Acts; environmental law; Federal Tort Claims; garnishment; labor relations; affirmative claims; personnel claims; foreign criminal jurisdiction; administrative law; finance and retirement law; international law; investigations; admiralty; investigative services of CID and NIS; and legal assistance and taxation, including income, gift, estate, federal, state, and local taxation issues.

b. This annual conference of judge advocates once again demonstrated the tremendous benefit which is derived when judge advocates from all over the world have the opportunity to attend lectures and participate in seminars concerning significant legal matters in areas of mutual concern, which have arisen during the past year. Plans are already underway for a similar conference in fiscal year 1980.

Naval Justice School.

a. The Naval Justice School, in Newport, Rhode Island, with a teaching staff of twelve officers and six enlisted personnel, presented the following courses of instruction in military law and related administrative and civil law matters to a total of 1,709 students during fiscal year 1979.

(1) *Lawyer Course*: Four eight-week lawyer classes were presented during the year. This course, designed to provide basic training in military justice and military administrative and civil law matters to incoming Navy and Marine Corps lawyers, includes 191 hours of classroom instruction and 127 hours of practical exercises, including moot courts and various criminal law practical exercises. Training was provided to 82 Navy lawyers and 54 Marine Corps lawyers.

(2) *Legal Officer Course*: Eight five-week classes were presented during the year (seven classes in Newport and one at Camp Pendleton, California). This course is designed for nonlawyer junior officers about to assume duties as a legal officer of a ship, station or other military unit with no military lawyer assigned. Included in the course curriculum are 150 classroom hours and 44 hours of practical exercises and seminars. Training was provided to 208 Navy officers, 112 Marine Corps officers, and 13 Coast Guard officers.

(3) *Naval-Marine Corps Reserve Officer Basic and Refresher Courses*: These two-week courses of instruction are offered once each summer for Reserve lawyers of the Navy and Marine Corps. The Basic Course serves as an introduction to military law for those lawyers without significant active duty legal experience. The Refresher Course is designed for lawyers who have previously served on extended active duty as judge advocates or military lawyers, or those who previously have attended the Reserve Basic Course, and

provides the student with an update on recent developments in military law. In fiscal year 1979, training was provided to 72 Naval Reserve lawyers, 40 Marine Corps Reserve lawyers, and one U.S. Air Force Reserve lawyer.

(4) *Senior Officer Course*: Nineteen one-week courses were presented during the year, reaching a total of 835 students. Six of the courses were presented in Newport. The other thirteen were presented in Norfolk, Virginia; Charleston, South Carolina; Jacksonville, Florida; San Diego and San Francisco, California; Seattle, Washington; Camp Pendleton, California; Amphibious Warfare School, and Command and Staff College, Quantico, Virginia; Pearl Harbor, Hawaii; Parris Island, South Carolina; and Cherry Point, North Carolina. This course is designed primarily for commanding officers and executive officers, and is intended to prepare these officers to handle the legal problems normally faced by commanding and executive officers in the areas of military justice and administrative and civil law. During fiscal year 1979, training was provided to 456 Navy officers, 316 Marine Corps officers, 47 Coast Guard officers, 12 Army officers, two Air Force officers, and two civilians.

(5) *Legal Clerk Course*: Five three-and-one half-week courses were conducted during the fiscal year. This course is designed to train enlisted personnel to serve as legal yeomen or legal clerks at their respective commands. Graduation from this course, and from the Court Reporting Course, was provided to 170 Navy personnel and 14 Coast Guard personnel.

(6) *Court Reporting Course*: Four five-and-one-half-week courses were presented during fiscal year 1979. The purpose of this course is to train enlisted personnel in the field of closed-mask court reporting. Training was provided to 53 Navy personnel, 22 Army personnel, and 13 Coast Guard personnel.

b. In addition to those formal courses of instruction listed above, the Naval Justice School also presented nearly 250 lecture hours of instruction in the areas of the law of search and seizure, confessions and admissions, nonjudicial punishment, investigations, administrative discharges, and command relations with civil authorities, to 3,024 students at the Surface Warfare Officers School, Officer Candidate School, Chaplains School, Naval Academy Preparatory School, and the Naval War College, all in Newport, Rhode Island, and at the Naval Submarine School in New London, Connecticut.

Article 138, UCMJ, Complaints of Wrongs. In fiscal year 1979, 136 complaints of wrongs were received in the Office of the Judge Advocate General. Two such complaints were pending from fiscal year 1978. One hundred thirty-six complaints of wrongs, including the two pending from fiscal year 1978, were reviewed during fiscal year 1979, leaving two pending review as of 30 September 1979.

Joint-Service Committee on Military Justice.

a. The Joint-Service Committee on Military Justice was established by the Judge Advocates General and the General Counsel of the Department of Transportation, on 17 August 1972. Representatives are provided by the Army, Navy, Air Force, Marine Corps and Department of Transportation (Coast Guard), and a non-voting representative is provided by the U.S. Court of Military Appeals. During fiscal year 1979, the Navy representative was the Committee Chairman. A Navy representative also chaired the Working Group to the Committee. The primary function of the Joint-Service Committee on Military Justice is the preparation and evaluation of proposed amendments and changes to the Uniform Code of Military Justice and the *Manual for Courts-Martial*. It also serves as a forum for the exchange of ideas relating to military justice matters among the services. In the past, the Committee has mainly considered proposals and ideas generated within the military services. In 1976, it was given the additional responsibility for commenting on military justice concerns originating from outside the military services.

b. The proposed legislation on improving the efficiency of the military justice system, noted in last year's report, was submitted by the Department of Defense as part of its legislative program for the first session of the 96th Congress.

The Working Group of the Joint-Service Committee completed a thorough review of the military rules of evidence contained in the *Manual for Courts-Martial* in light of the experience of the Federal courts with the new Federal Rules of Evidence. As a result of that review, a proposed new evidence code for the military was approved by the Joint-Service Committee. It is to be entitled The Military Rules of Evidence and will be submitted in the form of an amendment to the *Manual for Courts-Martial*, as a proposed Executive Order, via the Office of Management and Budget, to the President for signature. The proposed Military Rules of Evidence would become effective on 1 September 1980.

Ethics. Action was taken to maintain high ethical standards for counsel and judges who participate in courts-martial. Incoming judge advocates received instruction at the Naval Justice School on the ABA Code of Professional Responsibility and Canons of Judicial Ethics, and the ABA Standards for the Administration of Criminal Justice. The JAG Ethics Committee was established by section 0141, *Manual of the Judge Advocate General*, to consider ethical questions and make appropriate recommendations to the Judge Advocate General. It is comprised of the Assistant Judge Advocate General (Civil Law); the Assistant Judge Advocate General (Military Law); the Assistant Judge Advocate General (Military Personnel and Management); a representative of the Commandant of the

Marine Corps; and the Executive Assistant to the Judge Advocate General, who acts as recorder. None of the matters considered by the JAG Ethics Committee during fiscal year 1979 were found to constitute unethical conduct or malpractice by any naval service judge advocate.

Period: FISCAL YEAR 1979

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	257	234	23	89 (-26%)
BCD SPECIAL	1918	1918		441 (+30%)
NON-BCD SPECIAL	5365	4879	486	546 (-9%)
SUMMARY	6928	6684	244	1334 (+24%)
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				1140 (+9%)

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES		58
NUMBER OF BAD CONDUCT DISCHARGES		131
SPECIAL COURTS-MARTIAL (SA LEVEL)		
NUMBER OF BAD CONDUCT DISCHARGES		1978

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 86 - GENERAL COURTS-MARTIAL	1970
FOR REVIEW UNDER ARTICLE 86 - BCD SPECIAL COURTS-MARTIAL	54
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	29

PART 4 - WORKLOAD OF THE COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD		424
GENERAL COURTS-MARTIAL	121	
BCD SPECIAL COURTS-MARTIAL	303	
REFERRED FOR REVIEW		2086
GENERAL COURTS-MARTIAL	256	
BCD SPECIAL COURTS-MARTIAL	1830	
TOTAL CASES REVIEWED		2016
GENERAL COURTS-MARTIAL	279	
BCD SPECIAL COURTS-MARTIAL	1737	
TOTAL PENDING AT CLOSE OF PERIOD		494
GENERAL COURTS-MARTIAL	98	
BCD SPECIAL COURTS-MARTIAL	396	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		248 (+14%)

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE U S. NAVY COURT OF MILITARY REVIEW

NUMBER	1676
PERCENTAGE	85%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	24
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+2
PERCENTAGE OF TOTAL PETITIONS GRANTED	5
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-71
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	5
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+25

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		32	
RECEIVED		89	
DISPOSED OF		114	
GRANTED	11		
DENIED	103		
NO JURISDICTION			
WITHDRAWN			
TOTAL PENDING AT END OF PERIOD		7	

PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		143	
SPECIAL COURTS-MARTIAL		6606	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		114	
SPECIAL COURTS-MARTIAL		674	

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	136		
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	711647		
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	138556		
RATE PER 1,000	194.7		
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-2%		

REPORT OF
THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE
OCTOBER 1, 1978 TO SEPTEMBER 30, 1979

In compliance with the requirements of Article 6(a), Uniform Code of Military Justice (UCMJ) Maj General Walter D. Reed and Brig General James Taylor, Jr., made official staff visits to legal offices in the United States and overseas. They also attended and participated in various bar association meetings, and addressed numerous civil, professional, and military organizations.

**MILITARY JUSTICE STATISTICS AND
US AIR FORCE JUDICIARY ACTIVITIES**

During FY 1979, the Judiciary Directorate of the Office of The Judge Advocate General processed in excess of 1,725 actions involving military justice. The Directorate has the overall responsibility of supervising the administration of military justice throughout the United States Air Force from the trial level through the appellate review process, pursuant to the provisions of the Manual for Courts-Martial 1969 (Rev.) and the UCMJ. In addition, the Directorate had the staff responsibility for the Office of The Judge Advocate General in all Air Force military justice matters which arise in connection with programs, special projects, studies and inquiries generated by the Air Staff; Headquarters USAF; the Secretaries, Departments of Defense, Army, Navy, and Air Force; members of Congress; and other interested federal, state and civil agencies. Some of the Directorate's activities are discussed below.

a. The Judiciary Directorate also serves as the action agency for the review of applications submitted to the Board for Correction of Military Records. There were 239 formal opinions provided to the Secretary of the Air Force concerning those applications.

b. The Directorate also received 737 inquiries in specific cases requiring either formal written replies or telephonic replies to senior executive officials, including the President, or to members of Congress.

AMJAMS

The Automated Military Justice Analysis and Management System (AMJAMS) was initially implemented Air Force-wide on 1 July 1974. Its primary purpose was to provide a faster, more efficient means of collecting data pertaining to court-martial and Article 15 activities and storing such data in a manner designed to vastly increase TJAG's ability to analyze such data in a variety of meaningful ways.

During CY 1979, in addition to producing approximately 30 standard reports on a monthly basis and an additional 30 or more products on a quarterly basis, the system was used to answer over 300 individual requests for particular data contained in the database from different offices and agencies both within and outside DOD. These special requests were received from such activities as the General Accounting Office, the Senate Armed Services Committee, Air Force Security Police and Security Service, and the Air Force Military Personnel Center.

Due to difficulties encountered at AFSDC, the conversion of AMJAMS to the H-6000 computer was revised to provide a worldwide implementation date for 1 January 1981. These difficulties related to programming errors discovered during the system testing phase of the conversion schedule which required extensive rewriting of various system programs. Due to the failure of AFSDC to deliver the conversion for 1 January 1980, the revised conversion effort was elevated to a Category III priority level at the design center. A complete functional description was written for the project and it was agreed to add several additional reports to the standard products as part of the conversion effort. Due to the added attention now being given to the AMJAMS project at AFSDC and to the existence of a complete functional description for the system, there should be no question about implementing the conversion on 1 January 1981, as now scheduled.

Trial Judiciary

The Air Force Trial Judiciary had an average of 28 military trial judges assigned at eleven locations. After a closure of one year, it was determined to be necessary to reopen the RAF Mildenhall, England, District office due to the caseload at the bases in England. Serving as legal advisor on officer elimination administrative boards was given equal priority with serving as military judge on courts-martial as a duty for trial judiciary personnel. A limited program providing for joint use of military trial judges in Alaska between the Air Force and Army was begun in January 1979 to reduce costs of sending personnel there for both services.

Period: FY 79

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	171	157	14	+33.6%
BCD SPECIAL	191	191		+46.9%
NON-BCD SPECIAL	779	685	94	+ 2.1%
SUMMARY	32	23	9	+28.0%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+12.1%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		36	
NUMBER OF DISHONORABLE DISCHARGES			
NUMBER OF BAD CONDUCT DISCHARGES		69	
SPECIAL COURTS-MARTIAL (SA LEVEL)		151	
NUMBER OF BAD CONDUCT DISCHARGES			

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 86 - GENERAL COURTS-MARTIAL	118	
FOR REVIEW UNDER ARTICLE 86 - BCD SPECIAL COURTS-MARTIAL	165	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	37	

PART 4 - WORKLOAD OF THE COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD		31	
GENERAL COURTS-MARTIAL		14	
BCD SPECIAL COURTS-MARTIAL		17	
REFERRED FOR REVIEW		283	
GENERAL COURTS-MARTIAL		118	
BCD SPECIAL COURTS-MARTIAL		165	
TOTAL CASES REVIEWED		207	
GENERAL COURTS-MARTIAL		79	
BCD SPECIAL COURTS-MARTIAL		128	
TOTAL PENDING AT CLOSE OF PERIOD		107	
GENERAL COURTS-MARTIAL		53	
BCD SPECIAL COURTS-MARTIAL		54	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD			+6.7%

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE AIR FORCE COURT OF MILITARY REVIEW

NUMBER	256	
PERCENTAGE	90.5%	

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	144/207	69.6%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-2.0%
PERCENTAGE OF TOTAL PETITIONS GRANTED	14/144	9.7%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-64.1%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	14/207	6.8%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	FY 78: 56; FY 79: 31	-44.6%

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		11	
RECEIVED		99	
DISPOSED OF		104	
GRANTED	18		
DENIED	86		
NO JURISDICTION			
WITHDRAWN			
TOTAL PENDING AT END OF PERIOD		6	

PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		60	
SPECIAL COURTS-MARTIAL		432	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		111	
SPECIAL COURTS-MARTIAL		538	

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	43	
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	558,577	
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	24,484	
RATE PER 1,000	43.8	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	+13.6%	

Circuit Trial Counsel Program

The expanded Circuit Trial Counsel (CTC) program, fully funded and operational on 1 October 1978, had a busy year as the court-martial case load continued to increase in the Air Force. This new program, undertaken to improve the quality of trial work in the Air Force by enhancing the prosecution, increased the number of USAF Trial Judiciary prosecutors from 8 to 22. Another officer position was added to the Government Trial and Appellate Counsel Division to manage the expanded program. The Area Defense Counsel Program, in effect since 1974 at each of the bases, was the first step in upgrading trial practice. The accused member of the Air Force receives representation second to none and under the new CTC program the Government is now equally well served. A significant number of favorable communications indicate that this expanded CTC program has been very well received by commanders and staff judge advocates and has filled a need for an active program to enhance the quality of advocacy in courts-martial.

The 22 CTC located around the world at 9 locations within our 7 designated judicial circuits tried 94% of the general courts-martial and 28% of the special courts-martial in addition to acting as the government representative in 21% of the pretrial investigations during FY 79. The circuit trial counsel, specifically selected for their position, are also available to base legal offices for administrative board proceedings, advice and consultation on various military justice matters and the training of less experienced local judge advocates. The CTC have set the example to be followed in professional trial advocacy in the Air Force. The training of new judge advocates as competent trial counsel, either as future defense counsel or prosecutors, is one of the significant features of the expanded CTC program.

Judge advocates are no longer automatically certified under Article 27, UCMJ by The Judge Advocate General as competent to perform duties as trial and defense counsel before general courts-martial upon graduation from the basic judge advocate course at the AF JAG School at Maxwell AFB, AL. This change made in February 1978, now requires demonstrated competency as a trial advocate in actual court-martial cases as attested by military judges and fellow counsel prior to the recommendation by the nominee's staff judge advocate for certification.

Confinement Facilities

The changes in disposition of convicted service members, as placed in effect in 1978, remain in effect. Depending upon the seriousness of the offense, the length of sentence, and the prospects of the individual for valuable further service if restored to duty, most

Air Force prisoners, except those with sentences of less than four months confinement, are confined at the United States Disciplinary Barracks, Ft. Leavenworth, Kansas; Ft. Riley, Kansas; or the 3310th Correction and Rehabilitation Squadron, Lowry Air Force Base, Colorado.

New Military Rules of Evidence

An Executive Order prescribing new rules of evidence will be forwarded to the President for his signature. They are based on the Federal Rules of Evidence and have been adopted verbatim except where the President has determined them to be impractical or inconsistent with the special needs and requirements of the military. New rules governing privileges, search and seizure, confessions and admissions, and identification procedures were also drafted.

PREVENTIVE LAW AND LEGAL ASSISTANCE PROGRAM

The Preventive Law Program goal of problem avoidance through education is being achieved. By various means of communication Air Force personnel learn of their legal obligations as citizens and potential personal legal problems. This education process has resulted in our people seeking the advice of an attorney prior to effecting a change in their legal status. Indicative of how well this program has worked is reflected in the legal assistance statistics for the last reporting period. In excess of 1,000,000 services were provided to 383,000 clients representing an increase of 11% over the prior reporting period. The positive aspects of these programs enhance morale and discipline with the end result being improved accomplishment of the Air Force mission.

EDUCATION AND TRAINING

During calendar year 1979, The Judge Advocate General's Department provided continuing legal and general opportunities to its personnel.

The Air Force Judge Advocate General's School, Air University, Maxwell AFB, Alabama taught the following resident courses:

a. The Judge Advocate Staff Officer Course—This seven week course provides the basic educational tools for an attorney, new to the Air Force, to practice military law. The course was conducted four times during 1979, and 180 judge advocates completed it.

b. The Staff Judge Advocate Course—This course was presented once during 1979, and 42 judge advocates attended the course.

c. The Military Judges' Seminar—This seminar was conducted once during 1979, and 45 judge advocates, who are serving as military judges, participated.

d. The Reserve and Air National Guard Refresher Course—143 Reserve and Air National Guard judge advocates were graduated from this course.

e. The Legal Services Advanced Course—This course was presented once during 1979, and 37 NCO legal technicians and two Navy Chief Petty Officers were graduated. The Department's enlisted personnel received their basic legal training at a special legal technician's school at Keesler, AFB, Mississippi. Seven courses were held in 1979, and 98 students were graduated. In addition two Legal Services Refresher Courses were conducted and graduated 17 students.

Professional Military Training

During 1979, five judge advocates attended the Air Command and Staff College, and two attended the Air War College at Maxwell AFB, Alabama. Two officers attended the Armed Forces Staff College, and one attended the National War College.

Short Courses at Civilian Universities

a. Prosecuting Attorney's Course at Northwestern University—25 judge advocates attended this five-day course in 1979.

b. Defense Attorney's Course at Northwestern University—25 judge advocates attended this five-day course in 1979.

c. National College of State Trial Judges at the University of Nevada. Sixteen judge advocates and one senior NCO, the Chief Court Administrator, attended courses at the National College.

Masters in Law Program

During 1979 two judge advocates received their Master of Law in Labor Law; seven in Government Procurement Law; two in International Law; and one in Environmental Law.

Procurement Law Courses: U.S. Army JAG School

Eighty judge advocates attended the basic procurement law course, and ten judge advocates attended the advanced procurement law course.

CONTINUING LEGAL EDUCATION SEMINARS USING VIDEOTAPE

These seminar programs, specifically developed for C.L.E., provide a current course of study on subjects of special interest to the

Department. Written study and reference materials accompany each program. They are the most widely available source of credit for mandatory state CLE programs, since the seminars are conducted at Air Force bases around the world. Reserve judge advocates and judge advocates of the Army and Navy have also participated. Programs presently available and the number of credit hours are as follows:

Law of Federal Labor/management Relations	15 Hours
Government Lawyer and Professional Responsibility	6 Hours
Trial Techniques	9 Hours
International Law-Conduct of Armed Conflict	6 Hours
Federal Income Tax	4 Hours
Supreme Court Trends in Criminal Law	3 Hours
Appellate Commentary	5 Hours
Environmental Law	6 Hours
Government Contract Law	7 Hours
Computer Assisted Legal Research	3 Hours
Estate Planning	3.5 Hours

THE REPORTER, AFRP 110-2

Interest in the *Reporter* has continued to expand. The public subscription program forecast in last year's report is now in full operation managed by the Government Printing Office. Subscribers include government agencies at federal, state and local levels, private and public libraries, bar associations, and law firms. This enhanced exposure has had a naturally positive effect on the public image of the Air Force judge advocate. Topics with special emphasis in 1979 included the duties and responsibilities of this Department and its personnel and law office management. The *Reporter* continued to be lauded by its readership as an extremely valuable communicative media, promoting crossfeed, sharing streamlined procedures and lessons learned, and promoting a better informed JAG Department prepared to support commanders at all levels. There is certainly not a more necessary and effective recurring publication anywhere in the Department of Defense.

FEDERAL LEGAL INFORMATION THROUGH ELECTRONICS (FLITE)

The Office of The Judge Advocate General, USAF, continued to operate and expand one of the world's largest automated legal research systems. Department of Defense users in 1979 included the Joint Chiefs of Staff, every uniformed service, the Court of Military Appeals and the Armed Services Board of Contract Appeals. The numerous non-DOD users included the Office of the President, Con-

gress, U.S. Courts, The Departments of Justice, Energy, and the International Trade Commission.

PERSONNEL

This department is authorized 9 generals, 104 colonels, 230 lieutenant colonels, 253 majors, and 572 captains. As of 30 September 1979, there were 1121 judge advocates on active duty (5 general officers, 97 colonels, 141 lieutenant colonels, 214 majors and 664 captains).

WALTER D. REED
Major General, USAF
The Judge Advocate General
United States Air Force

REPORT OF
THE GENERAL COUNSEL OF THE
DEPARTMENT OF TRANSPORTATION
(U.S. COAST GUARD)

OCTOBER 1, 1978 to SEPTEMBER 30, 1979

The table below shows the number of court-martial records received and filed at Coast Guard Headquarters during FY-79 and the five preceding years.

	79	78	77	76A	76	75	74
General Courts-Martial	2	3	5	0	4	4	7
Special Courts-Martial	47	58	84	25	181	189	192
Summary Courts-Martial.....	122	180	188	47	221	267	212
	171	241	277	72	406	460	411

COURTS-MARTIAL

As has been the case in the past, counsel and military judges were again detailed to all special courts-martial. For most cases, the presiding judge was the full-time general courts-martial judge. When he was unavailable, military judges with other primary duties were utilized. Control of the detail of judges is centrally exercised, and all requirements have been filled in a timely fashion.

General Courts-Martial

Neither of the accused tried by the two general courts-martial convened in the Coast Guard this fiscal year requested trial by military judge alone. One court, which included enlisted members, found the accused guilty of 12 specifications alleging violations of Article 121 (larceny and wrongful appropriation) and sentenced the accused to pay a fine of \$500. The other Court found the accused guilty of one specification each under Article 128 (assault) and Article 134 (assault with intent to commit murder) and sentenced the accused to confinement, reduction in rate, and forfeitures, totalling \$2,400. Neither sentence required review under Article 66, UCMJ.

Special Courts-Martial

Thirteen of the 47 accused tried by special court-martial this fiscal year were tried by the military judge alone. Of the other 34 accused, four were acquitted of all charges and specifications, and one had all charges dismissed by the military judge. Bad-conduct discharges were awarded three accused tried by military judge alone and two accused tried by courts with members. Only two of these bad-conduct discharges were approved by the convening authorities and supervisory authorities.

The following shows the pay grades of the accused whose charges were referred to the 47 special courts-martial.

Pay Grade	Accused
E-1 through E-3 (Non-Rated)	31
E-4 through E-6 (Petty Officers)	13
E-7 through E-9 (Chief Petty Officers)	2
Commissioned Officers	1

The following table shows the distribution of the 292 specifications referred to the 47 special courts-martial.

Violation of the UCMJ, Article	No. of Spec's
85 and 86 (desertion and UA)	50
87 (missing movement)	2
91 (willful disobedience or disrespect)	5
92 (violation of order or regulation)	16
108 (offenses against USCG property)	5
121 (larceny and wrongful appropriation)	66
123 (forgery)	46
128 (assault)	4
134 (breaking restriction)	1
134 or 92 (marijuana offenses)	49
134 or 92 (other controlled drug offenses)	26
Other offenses	22

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

Sentence	Cases Imposed
bad-conduct discharge	3
confinement at hard labor (1 maximum)	8
reduction in rate	8
restriction	3
forfeiture of pay (\$6,792 total)	10
others	2

In four of these 13 convictions, the accused pleaded guilty to all charges and specifications.

The following is a breakdown of sentences awarded by courts with members (29 convictions).

Sentence	Cases Imposed
bad-conduct discharge	2
confinement at hard labor (3 maximum).....	16
hard labor without confinement	4
reduction in rate	18
restriction	3
forfeiture of pay (\$18,304 total)	20
fine (\$1,950)	2
others	5

In eight of these 29 convictions, the accused pleaded guilty to all charges and specifications.

The following indicates the three sentences imposed most by special courts-martial in the past three fiscal years.

FY	NUMBER OF CONVICTIONS	FORFEITURES	CONFINEMENT	REDUCTION IN GRADE
79	42	30 (71%)	24 (57%)	26 (62%)
78	52	28 (54%)	25 (48%)	28 (54%)
77	76	53 (70%)	44 (58%)	33 (43%)
Average % for 3 yrs:		(65%)	(54%)	(53%)

CONTINUING TRENDS

While enlisted active duty strength in the Coast Guard has remained about the same during the past three years, the number of courts-martial continue to decline. This continuing trend may be linked to the continuing increases in impositions of nonjudicial punishment and administrative discharge of individuals for marginal performance, unsuitability, misconduct, and abuse of drugs and alcohol. The following illustrates these decreases and increases in the past two years.

FY	COURTS-MARTIAL NO. (% OF DECREASE)	NJP NO. (% OF INCREASE)	DISCHARGES NO. (% OF INCREASE)
77	277 —	2,430 —	801 —
78	241 (-13%)	2,615 (+08%)	887 (+10%)
79	171 (-29%)	3,086 (+18%)	1,088 (+23%)

CHIEF COUNSEL ACTION UNDER ARTICLE 69, UCMJ

In addition to the required reviews of courts-martial conducted as a result of petitions filed by accused under Article 69, UCMJ, a review is conducted under Article 69 of all courts-martial not requiring appellate review. Four Article 69 actions were taken as a result of these reviews, in addition to those reported in Par 7 of Appendix A, as follows:

Findings and sentences set aside and charges dismissed	2
Some findings disapproved and sentence reassessed and found to be appropriate	1
Supervisor Authority's Action set aside and record of trial forwarded to other GCM authority for new Article 65(c), UCMJ, review	1

PERSONNEL AND TRAINING

The Coast Guard has 148 law specialists serving on active duty. 123 are serving in a legal capacity and 25 are serving in general duty billets. The junior law specialists serving at district offices perform trial and defense counsel services. Senior law specialists, most serving as district legal officers, are used as military judges when required.

The Fourth Coast Guard Basic Law Specialist Course was held at the Coast Guard Reserve Training Center, Yorktown, Virginia, from 27 August 1979 through 19 October 1979. The eight-week course introduced both the direct commissioned lawyers and the regular officers just completing law school to the many duties they would soon perform as Coast Guard law specialists. One-half of the course was devoted to military justice. Nonjudicial punishment, jurisdiction, professional responsibility and ethics, court procedures, trial/defense counsel duties, and the Articles of the Code most frequently litigated were some of the areas covered. Each student was given an opportunity to demonstrate recently acquired knowledge and skills in moot courts.

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.

LINDA HELLER KAMM
General Counsel
Department of Transportation

**Appendix A: U.S. Coast Guard Courts-Martial/NJP Statistics for
October 1, 1978 to September 30, 1979 (FY-1979)**

Period: Oct. 1, 1978 through Sept. 30, 1979

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	2	2	0	-33%
BCD SPECIAL	5	5		+60%
NON-BCD SPECIAL	42	37	(1 CHGS ⁴ DISMISSED)	-25%
SUMMARY	122	117	(1 CHGS ⁴ DISMISSED)	-32%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-29%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)	NUMBER OF DISHONORABLE DISCHARGES	0
NUMBER OF BAD CONDUCT DISCHARGES	0	
SPECIAL COURTS-MARTIAL (SA LEVEL)	NUMBER OF BAD CONDUCT DISCHARGES	2

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	0
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	2
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	2

PART 4 - WORKLOAD OF THE COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD	6	
GENERAL COURTS-MARTIAL	3	
BCD SPECIAL COURTS-MARTIAL	3	
REFERRED FOR REVIEW	2	
GENERAL COURTS-MARTIAL	0	
BCD SPECIAL COURTS-MARTIAL	2	
TOTAL CASES REVIEWED	7	
GENERAL COURTS-MARTIAL	3	
BCD SPECIAL COURTS-MARTIAL	4	
TOTAL PENDING AT CLOSE OF PERIOD	1	
GENERAL COURTS-MARTIAL	0	
BCD SPECIAL COURTS-MARTIAL	1	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+43%

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE COAST GUARD COURT OF MILITARY REVIEW

NUMBER	5
PERCENTAGE	71%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	29%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-21%
PERCENTAGE OF TOTAL PETITIONS GRANTED	50%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+50%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	14%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+14%

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		1	
RECEIVED		3	
DISPOSED OF		2	
GRANTED	2		
DENIED	0		
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		0	
SPECIAL COURTS-MARTIAL		13	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		2	
SPECIAL COURTS-MARTIAL		34	

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	2	
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	*31,413	
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	3,086	
RATE PER 1,000	98.24	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	+18%	

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*Part 10 - Average active duty strength is that of enlisted only.