REPORT OF THE

UNITED STATES COURT OF APPEALS

FOR THE ARMED FORCES

October 2, 1998 to September 30, 1999

The Judges of the United States Court of Appeals for the Armed Forces submit their annual report on the administration of the Court and military justice during the 1999 Term of Court to the Committees on Armed Services of the United States Senate and the United States House of Representatives, and to the Secretaries of Defense, Transportation, Army, Navy, and Air Force in accordance with Article 146, Uniform Code of Military Justice, 10 USC § 946.

THE BUSINESS OF THE COURT

The number of cases carried over on the Court's Petition Docket at the end of the 1999 Term of Court reflected a decrease of 22% from the number of cases pending at the end of the prior reporting period. (See Appendix A.) The number of cases carried over on the Master Docket decreased by 27% during the same period. (See Appendix B.)

During the 1999 Term of Court the number of petitions for grant of review filed with the Court decreased by 12% compared with the prior reporting period. (See Appendix J.) Although the number of oral arguments also decreased by 11% during the 1999 Term of Court, the number of opinions released by the Court remained fairly constant. (See Appendices C and D.)*

The overall average processing time from filing to final decision in all cases during the 1999 Term of Court decreased 16% compared with the prior reporting period. (See Appendix I.) The average processing time from the date of filing a petition to the date of a grant by the Court increased by 16% compared with the prior reporting period. (See Appendix E.) However, the processing time

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* Although not part of the business of the Court, it is noted that during its 1999 Term the Court was notified that petitions for writ of certiorari were filed with the Supreme Court of the United States in 9 Master Docket cases in which the Court issued a final decision.

from the date of grant to the date of oral argument decreased by 12% when compared with this average during the prior Term of Court. (See Appendix F.) The average processing time from the date of oral argument to final decision remained fairly constant compared with the prior reporting period. (See Appendix G.) The average processing time from the filing of a petition to final decision on the Petition Docket remained fairly constant, but the same overall average on the Master Docket increased by 15%. (See Appendix H.)

Senior Judge Robinson O. Everett was recalled and participated in the review and decision of several cases during the 1999 Term of Court.

During its 1999 Term the Court admitted 547 attorneys to practice before its Bar, bringing the cumulative total of admissions before the Bar of the Court to 31,707.

EXPANSION OF COURT WEB SITE

During the past year the Court has expanded its Internet web site to provide users immediate access to a special Digest of each Court opinion filed during the 1999 Term; an up-to-date Daily Journal of its workload; and a separate up-to-date listing of all granted and certified case issues as well as all summary disposition order cases. These special features offer greater access by the general public to the Court's work and provide an opportunity for prompt legal research by military justice practitioners. In addition to the new Digest of each Court opinion, Appendix K to this report contains a list of all opinions released during the 1999 Term.

RETIREMENT OF CHIEF JUDGE WALTER T. COX III

On September 30, 1999, the judicial term of Chief Judge Walter T. Cox III as a judge of the United States Court of Appeals for the Armed Forces ended. His retirement marked the end of his 15-year term on the Court and the conclusion of his 4-year tenure as its Chief Judge. Throughout his term he authored numerous opinions which significantly contributed to the substantive and procedural areas of military criminal law. While serving as Chief Judge during the past 4 years he continued on the innovative path of his predecessors by establishing the Court's Internet web site, replacing its case management system with a state-of-the-art computerized system, and

overseeing a major courthouse renovation project to provide for increased office space for Court operations. Consistent with his dedication to the Court and at the request of Chief Judge Susan J. Crawford, Judge Cox has consented to continue to serve on the Court as a senior judge in active service pending nomination and confirmation of his replacement. The judges and staff of the Court wish to convey to Congress their gratitude and appreciation to Chief Judge Cox for his outstanding leadership and scholarship while leaving his imprint for judicial excellence on the Court.

PUBLIC AWARENESS PROJECT (PROJECT OUTREACH)

In furtherance of a practice established in 1987, the Court scheduled several special sessions and heard oral arguments in selected cases outside its permanent Courthouse in Washington, D.C., during the 1999 Term of Court. This practice, known as "Project Outreach," was developed as part of a public awareness program to demonstrate the operation of a Federal Court of Appeals, and the quality of the military's criminal justice system. The Court conducted hearings during this period, without objection of the parties, at Emory University School of Law, Atlanta, Georgia; The Citadel, Charleston, South Carolina; William and Mary School of Law, Williamsburg, Virginia; Georgetown University Law Center, Washington, D.C.; the United States Air Force Academy, Colorado Springs, Colorado; Maxwell Air Force Base, Montgomery, Alabama; and the United States Military Academy, West Point, New York.

"Project Outreach" has continued to promote an increased public awareness of the fundamental fairness of the military criminal justice system and the role of the Court in the overall administration of military justice throughout the world. The Court hopes that those who attend these hearings from both military and civilian communities will realize that the United States is a democracy that can maintain an armed force instilled with the appropriate discipline to make it a world power, while affording all its members the full protection of the Constitution of the United States and Federal law.

JUDICIAL VISITATIONS

During the 1999 Term of Court, the Judges of the Court, consistent with past practice and their ethical

responsibility to oversee and improve the entire military criminal justice system, participated in professional training programs for military and civilian lawyers, spoke to professional groups of judges and lawyers, and visited with judge advocates and other military personnel at various military installations throughout the world.

JUDICIAL CONFERENCE

On May 6 and 7, 1999, the Court held its annual Judicial Conference at the George Washington University Marvin Center, Washington, D.C. The program for this Judicial Conference was certified for credit to meet the continuing legal education requirements of numerous State Bars throughout the United States. The Conference opened with welcoming remarks and a presentation by the Honorable Walter T. Cox III, Chief Judge, United States Court of Appeals for the Armed Forces, on the "State of the Court," followed by speakers who included Professor Christopher Slobogin, Professor of Law, University of Florida College of Law; Mr. Francis A. Gilligan, Senior Legal Advisor to Judge Susan J. Crawford, United States Court of Appeals for the Armed Forces; Colonel Clinton C. Pearson, USAF (Ret.), Former Judge, U.S. Air Force Court of Criminal Appeals; Dr. Jonathan Lurie, Historian to the United States Court of Appeals for the Armed Forces and Professor of History, Rutgers University; and Mr. Stephen D. Smith, Staff Counsel in the Central Legal Staff of the United States Court of Appeals for the Armed Forces, who moderated a panel discussion on Military Rule of Evidence 606(b) with Colonel Kevin Sandkuhler, USMC, Chief, Government Appellate Division, U.S. Navy-Marine Corps Court of Criminal Appeals, Colonel Russell Estey, USA, Chief, Government Appellate Division, U.S. Army Court of Criminal Appeals, Captain Michael Devine, USCG, Chief, Office of Military Justice, U.S. Coast Guard, Colonel Douglas H. Kohrt, USAF, Chief, Defense Appellate Division, U.S. Air Force Court of Criminal Appeals, and Commander Richard Bagley, USN, Defense Appellate Division, U.S. Navy-Marine Corps Court of Criminal Appeals. Additional speakers included Major Maurice A. Lescault, Jr., Professor, Administrative and Civil Law Department, The Judge Advocate General's School, U.S. Army; Major Norman F.J. Allen, III, USA, Professor, Criminal Law Department, The Judge Advocate General's School, U.S. Army; Professor Stephen A. Saltzburg, Professor of Law, George Washington University National Law Center; Major Del Grissom, USAF, Instructor, Military Justice Division, The Judge Advocate General's School, U.S. Air Force; Professor Gary D. Solis, Professor of Law,

United States Military Academy; Charles W. Gittins, Esquire; Lieutenant Colonel J. Kevin Lovejoy, USA, Chief, Criminal Law Department, The Judge Advocate General's School, U.S. Army; Major Martin Sitler, USMC; and Major Lewis J. Puleo, USMC, Director of the Evidence and Environmental Law Divisions, Naval Justice School, U.S. Navy.

The Judge Advocates Association Awards for outstanding career attorneys in each of the Armed Forces were presented by Colonel William R. Hagan, USA (Ret.) to the following: Lieutenant Colonel Thomas K. Emsweiler, JAGC, USA; Commander David A. Wagner, JAGC, USN; Lieutenant Colonel Anthony J. Wolusky, USAF; Lieutenant Colonel Walter S. Michael, USAFR; Major Steven D. Lindsey, USAFR; Major Daniel J. Lecce, USMC; Commander William D. Baumgartner, USCGR; and Lieutenant Colonel Charles D. Roberts and Major Elizabeth C. Masters, Florida National Guard.

SUSAN J. CRAWFORD
Chief Judge

EUGENE R. SULLIVAN
Associate Judge

H.F. "SPARKY" GIERKE
Associate Judge

ANDREW S. EFFRON
Associate Judge

WALTER T. COX III
Senior Judge

USCA STATISTICAL REPORT

1999 TERM OF COURT

CUMULATIVE SUMMARY

CUMULATIVE PENDING OCTOBER 2, 1998

Master Docket	105
Petition Docket	290
Miscellaneous Docket	3
TOTAL	398

CUMULATIVE FILINGS

Master Docket	157
Petition Docket	1051
Miscellaneous Docket	32
TOTAL	1240

CUMULATIVE TERMINATIONS

Master Docket	185
Petition Docket	1115
Miscellaneous Docket	32
TOTAL	1332

CUMULATIVE PENDING OCTOBER 1, 1999

Master Docket	77
Petition Docket	226
Miscellaneous Docket	3
TOTAL	306

OPINION SUMMARY

CATEGORY	SIGNED	PER CURIAM	MEM/ORDER	TOTAL
Master Docket	116	6	63	185
Petition Docket	0	0	1115	1115
Miscellaneous Docket	0	1	31	32
TOTAL	116	7	1209	1332

FILINGS (MASTER DOCKET)

Remanded from Supreme Court	1
Returned from Court of Criminal Appeals	2
Mandatory appeals filed	0
Certificates filed	6
Reconsideration granted	1
Petitions granted (from Petition Docket)	147
TOTAL	157

TERMINATIONS (MASTER DOCKET)

Findings & sentence affirmed	138		
Reversed in whole or in part	45	Signed	116
Granted petitions vacated	0	Per curiam	6
Other disposition directed	2	Mem/order	63
TOTAL	185	TOTAL	185

PENDING (MASTER DOCKET)

Awaiting briefs	29
Awaiting oral argument	43
Awaiting lead case decision (trailer cases)	4
Awaiting final action	1
TOTAL	77

FILINGS (PETITION DOCKET)

Petitions for grant of review filed	1047
Petitions for new trial filed	2
Cross-petitions for grant filed	1
Petitions for reconsideration granted	0
Returned from Court of Criminal Appeals	1
TOTAL	1051

TERMINATIONS (PETITION DOCKET)

Petitions for grant dismissed	5		
Petitions for grant denied	917		
Petitions for grant granted	147		
Petitions for grant remanded	27	Signed	0
Petitions for grant withdrawn	13	Per curiam	0
Other	6	Mem/order	1115
TOTAL	1115	TOTAL	1115

PENDING (PETITION DOCKET)

Awaiting briefs	63
Awaiting Central Legal Staff review	94
Awaiting final action	69
TOTAL	226

FILINGS (MISCELLANEOUS DOCKET)

Remanded from Supreme Court	1
Writs of error coram nobis sought	4
Writs of habeas corpus sought	1
Other extraordinary relief sought	2
Writ appeals sought	24
TOTAL	32

TERMINATIONS (MISCELLANEOUS DOCKET)

Petitions withdrawn	1		
Petitions remanded	0		
Petitions granted	2		
Petitions denied	28	Signed	0
Petitions dismissed	1	Per curiam.	1
Other	0	Mem/order..	31
TOTAL	32	TOTAL	32

PENDING (MISCELLANEOUS DOCKET)

Awaiting briefs	1
Awaiting Writs Counsel review	0
Awaiting final action	2
TOTAL	3

RECONSIDERATIONS & REHEARINGS

CATEGORY	BEGIN PENDING	FILINGS	END PENDING	DISPOSITIONS Granted	Denied	Total
Master Docket	6	9	3	1	11	12
Petition Docket	0	7	2	0	5	5
Misc. Docket	0	4	0	0	4	4
TOTAL	6	20	5	1	20	21

MOTIONS ACTIVITY

CATEGORY	BEGIN PENDING	FILINGS	END PENDING	DISPOSITIONS Granted	Denied	Other	Total
All motions	25	926	12	874	65	0	939