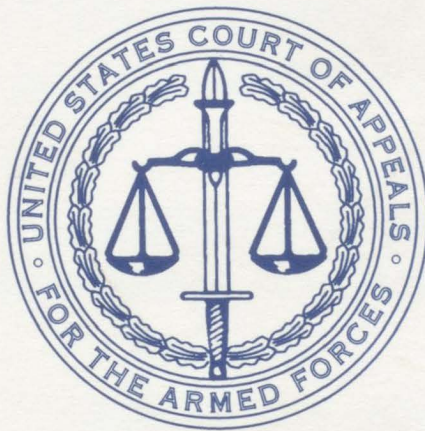


**ANNUAL REPORT**  
of the  
**CODE COMMITTEE**  
on  
**MILITARY JUSTICE**



**INCLUDING SEPARATE REPORTS**  
of the  
**U.S. COURT OF APPEALS FOR THE ARMED FORCES,**  
**THE JUDGE ADVOCATES GENERAL**  
**OF THE U.S. ARMED FORCES,**  
**AND THE CHIEF COUNSEL**  
**OF THE U.S. COAST GUARD**

For the Period  
October 1, 1994 to September 30, 1995

**PROPERTY OF U.S. ARMY**  
**THE JUDGE ADVOCATE GENERAL'S SCHOOL**  
**LIBRARY**

**ANNUAL REPORT**  
**SUBMITTED TO THE**  
**COMMITTEE ON ARMED SERVICES**  
**of the U.S. Senate**  
**and the**  
**COMMITTEE ON NATIONAL SECURITY**  
**of the U.S. House of Representatives**  
**and to the**  
**SECRETARY OF DEFENSE,**  
**SECRETARY OF TRANSPORTATION,**  
**and**  
**SECRETARIES OF THE**  
**ARMY, NAVY, AND AIR FORCE**

**PURSUANT TO THE**  
**UNIFORM CODE OF MILITARY JUSTICE**  
**For the Period**  
**October 1, 1994 to September 30, 1995**

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**JOINT ANNUAL REPORT OF THE CODE  
COMMITTEE PURSUANT TO THE  
UNIFORM CODE OF MILITARY JUSTICE  
October 1, 1994 to September 30, 1995**

The Judges of the United States Court of Appeals for the Armed Forces; the Judge Advocates General of the Army, Navy, and Air Force; the Chief Counsel of the Coast Guard; the Director, Judge Advocate Division, Headquarters, United States Marine Corps; F. Lee Bailey, Esquire, and Terrence O'Donnell, Esquire, Public Members appointed by the Secretary of Defense, submit their annual report on the operation of the Uniform Code of Military Justice pursuant to Article 146, Uniform Code of Military Justice, 10 USC § 946.

The Code Committee met during fiscal year 1995 to consider numerous matters pertaining to the administration of the Uniform Code of Military Justice. This meeting was open to the public and interested visitors attended and participated in the proceedings. Representatives of all the Armed Forces reported on the number and status of cases and trends concerning the administration of military justice within their respective Armed Forces. The Chairman of the Joint-Service Committee was invited to brief the Committee on various proposals to amend the Uniform Code of Military Justice and the Manual for Courts-Martial.

Additionally, the Committee reviewed and considered a number of proposals to amend the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces. The Judges of the Court briefed the other members of the Committee on its workload, including the oral argument schedule for the year. Finally, the Committee considered a report on a meeting recently held at the Army Judge Advocate General's School concerning a proposal to encourage the teaching of military law in civilian law schools throughout the United States.

Separate reports of the United States Court of Appeals for the Armed Forces and the individual Armed Forces address further items of special interest to the Committee on Armed Services of the United States Senate and Committee on National Security of the United States House of Representatives, as well as the Secretaries of Defense, Transportation, Army, Navy, and Air Force.

WALTER T. COX III <sup>1</sup>  
*Chief Judge*

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<sup>1</sup> Chief Judge Cox assumed the position and duties of Chief Judge by operation of law on October 1, 1995.

EUGENE R. SULLIVAN  
*Associate Judge*

SUSAN J. CRAWFORD  
*Associate Judge*

H.F. "SPARKY" GIERKE  
*Associate Judge*

ROBERT E. WISS <sup>2</sup>  
*Associate Judge*

Major General MICHAEL J. NARDOTTI, USA  
*The Judge Advocate General of the Army*

Rear Admiral HAROLD E. GRANT, USN  
*The Judge Advocate General of the Navy*

Major General BRYAN G. HAWLEY, USAF  
*The Judge Advocate General of the Air Force*

Captain D. J. KANTOR, USCG  
*Acting Chief Counsel, U.S. Coast Guard*

Brigadier General MICHAEL C. WHOLLEY, USMC  
*Director, Judge Advocate Division*  
*Headquarters, United States Marine Corps*

F. LEE BAILEY, Esquire  
*Public Member*

TERRENCE O'DONNELL, Esquire  
*Public Member*

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<sup>2</sup> Judge Wiss passed away on October 23, 1995.

**REPORT OF THE  
UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES  
October 1, 1994 to September 30, 1995**

The Judges of the United States Court of Appeals for the Armed Forces submit their fiscal year 1995 report on the administration of the Court and military justice to the Committee on Armed Services of the United States Senate and the Committee on National Security of 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 fiscal year 1995 (295) showed little change from the number of cases pending on that docket at the end of fiscal year 1994 (291). (See Appendix A.) However, number of cases carried over on the Master Docket at the end of this fiscal year (105) decreased by 12% from the pending Master Docket caseload at the end of the prior fiscal year. (See Appendix B.) This was in some measure because the number of petitions for grant of review filed with the Court during this reporting period decreased by 17% from 1514 in fiscal year 1994 to 1251 during this fiscal year. (See Appendix J.) The number of oral arguments similarly decreased by 22% during this fiscal year (112) from the number of cases argued during fiscal year 1994 (144) when the Court heard more oral arguments per year than it had during the preceding 10 years. (See Appendix C.) The number of Court opinions also decreased from 144 in fiscal Year 1994 to 111 in fiscal Year 1995.<sup>1</sup> (See Appendix D.)

Due to the complexity of legal issues raised in cases filed with the Court the average processing time from the date of filing a petition to the date of a grant increased from the previous fiscal year. (See Appendix E.) There was also an increase during this fiscal year in the average processing time between the date of a grant and the date of oral argument. (See Appendix F.) However, the average processing time between oral argument and issuance of a final

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<sup>1</sup> Although not part of the business of the Court, it is noted that during fiscal year 1995 the Court was notified that petitions for writ of certiorari were filed with the Supreme Court of the United States in 41 Master Docket cases in which the Court issued a final decision.

decision in a case during fiscal year 1995 remained fairly constant compared with the same measurement period for fiscal year 1994. (See Appendix G.) Although the processing time for resolution of cases on the Petition Docket during fiscal year 1995 remained fairly constant when compared with fiscal year 1994, there was an increase in the overall average processing time for resolution of cases on the Master Docket. (See Appendix H.) However, this increase is attributable to the resolution of many granted cases being held on the Master Docket to await the resolution of issues in several lead cases which were ultimately resolved by the Supreme Court of the United States. Despite these Master Docket increases, the overall total average case processing time for all cases filed with the Court decreased significantly during fiscal year 1995. (See Appendix I.)

Senior Judge Robinson O. Everett was recalled and participated in the review and decision of several cases during fiscal year 1995 in which various Judges on the Court had recused themselves.

During fiscal year 1995 the Court admitted 530 attorneys to practice before its Bar, bringing the cumulative total of admissions before the Bar of the Court to 30,168.

## **PUBLIC AWARENESS PROJECT (PROJECT OUTREACH)**

Pursuant to its practice established in 1988, the Court scheduled several special sessions and heard oral arguments in selected cases outside its permanent Courthouse in Washington, D.C. This practice, known as "Project Outreach," has developed as part of a public awareness program to demonstrate not only the operation of a Federal appellate court but also the effectiveness and quality of the criminal justice system of the Armed Forces of the United States. The Court conducted appellate hearings, without objection of the parties, at the University of Virginia School of Law, Charlottesville, Virginia; the United States Military Academy, West Point, New York; the Association of the Bar of the City of New York, New York; the United States Air Force Academy, Colorado Springs, Colorado; the United States Naval Training Center, Great Lakes, Illinois; and the Federal Courthouse, Chicago, Illinois, during the Annual Meeting of the American Bar Association. This program 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 fiscal year 1995, 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 staff judge advocates and commanders at various military installations throughout the world.

## **JUDICIAL CONFERENCE**

On May 18 and 19, 1995, the Court held its annual Judicial Conference in the Marvin Center, George Washington University School of Law, Washington, D.C. The Judicial Conference program was certified for credit to meet the continuing legal education requirements of various State Bars throughout the United States in order to assist both military and civilian practitioners in maintaining those professional skills necessary to practice before trial and appellate courts. The Conference opened with a presentation by the Honorable Eugene R. Sullivan, Chief Judge, United States Court of Appeals for the Armed Forces, on the "State of the Court", followed by speakers for this year's Conference who included Professor Edward J. Imwinkelried, University of California Davis School of Law; Dr. Jonathan Lurie, Historian to the United States Court of Appeals for the Armed Forces and Professor of History, Rutgers University; Professor Michael Noone, Catholic University of America's Columbus School of Law; Mr. Bryan Stevenson, Director, Alabama Capital Representation Resource Center; Professor Stephen A. Saltzburg, George Washington University School of Law; Major R. Peterson Masterton, Judge Advocate General's School, United States Army; Lieutenant Colonel Kevin W. Bond, Judge Advocate General's School, United States Army; and Professor Fredric I. Lederer, William and Mary School of Law. In addition, Colonel John M. Smith, United States Army; Major Roy Hewitt, United States Army; Major David S. Jonas, United States Marine Corps; and Captain Jane M. E. Peterson, United States Air Force, participated in a panel discussion on legal ethics.



# SIGNIFICANT DECISIONS AFFECTING THE ADMINISTRATION OF MILITARY JUSTICE WITHIN THE ARMED FORCES <sup>2</sup>

## CAPITAL PUNISHMENT

In *United States v. Loving*, 41 MJ 213 (1994), the United States Court of Appeals for the Armed Forces affirmed a sentence of death in a comprehensive opinion discussing numerous issues raised by the accused. Initially, the Court rejected a defense claim that post-trial affidavits from some of the court members which were executed several years after the court-martial required further inquiry into the deliberative process. Rather, the Court noted that Military Rule of Evidence 606(b), Manual for Courts-Martial, United States, limited such inquiries into the question of whether extraneous influence or unlawful command influence may have been injected into the trial court deliberations. After reviewing the provisions of Federal Rule of Evidence 606(b), which applied to such inquiries in Federal civilian trials, the Court rejected the defense argument that the limitation on inquiry did not apply to objective factors such as voting procedures. The Court also noted that the affidavits in this case did not raise an issue of unlawful command influence and therefore refused to consider the post-trial affidavits in question. In addition, the Court rejected a claim on appeal that the trial defense counsel were ineffective because they relied on a flawed examination into the accused's mental health. The Court held in this regard that disagreements among professionals do not *per se* show incompetence and that the accused produced nothing to show that the results of the examination were incorrect. The Court also considered numerous other allegations relating to the issue of competency of counsel and rejected each of them on the basis that the accused's trial defense counsel were not shown to be ineffective in this case. The Court further rejected a defense claim that the military judge abandoned his role as a neutral officer of the Court as well as a claim that the prosecution had engaged in some form of misconduct, ruling that neither allegation was supported by the record. After carefully reviewing the process used in selecting the court members in this case, the Court held that the accused had failed to make a *prima facie* showing that either racial or gender discrimination had occurred in the process of selecting members for his court-martial.

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<sup>2</sup> 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 not of precedential value and should not be cited in briefs filed with the Court.

## **SPEEDY TRIAL**

The Court held in *United States v. Reap*, 41 MJ 340 (1995), that the time elapsed from a ruling by the military judge to the filing of an interlocutory appeal by the Government pursuant to Article 62, UCMJ, was not chargeable to the Government under the speedy trial provisions of Rule for Courts-Martial (RCM) 707, since the process of authenticating the record was in the hands of the military judge and not the Government. Another issue concerning the application of the speedy trial provisions of RCM 707 was addressed in *United States v. Edmond*, 41 MJ 419 (1995), wherein the Court considered the action of a military judge in dismissing certain charges without prejudice which resulted in a subsequent trial and conviction of the accused for the same acts. The Court observed that since there was no violation of the accused's constitutional right to a speedy trial under the provisions of RCM 707, the military judge did not abuse his discretion in dismissing the charges in question without prejudice to a subsequent trial where he found very little prejudice to the accused.

## **DEFENSE COUNSEL**

The appropriate methodology for adjudicating a claim of ineffective assistance of counsel was addressed in *United States v. Lewis*, 42 MJ 1 (1995), a case in which the Court held that a Court of Criminal Appeals could properly order trial defense counsel to respond to claims of ineffective assistance of counsel and, if necessary, could have issued a subpoena to enforce its order. However, the Court held it was error for the lower appellate court to consider trial defense counsel's assertions in his motion to stay and quash an order to file affidavits as the functional equivalent of an affidavit from trial defense counsel rebutting the accused's claims of ineffective assistance. Nevertheless, since the information contained in the defense counsel's motion was available from other sources, the Court found the accused had not been prejudiced by this error. The Court further held that although a trial defense counsel may voluntarily respond to an allegation of incompetency of counsel, since such an allegation waives the attorney-client privilege as to matters relating to such claim, the same counsel could not be compelled to respond to such allegations until a court of competent jurisdiction had reviewed the allegation of ineffectiveness and the government response, examined the record, and determined that the allegation and the record contained evidence which, if un rebutted, would overcome the presumption of competence. Only after a court has made such a determination should trial defense counsel be compelled to justify their action. The Court also ruled that an un rebutted *prima facie* case of ineffec-

tive assistance of counsel did not compel a finding of ineffectiveness and upheld the lower court's finding that the accused was not entitled to relief upon examination of the evidence. Finally, the Court held that the Court of Criminal Appeals was not required to conduct a limited evidentiary hearing to resolve such an issue since the methods for obtaining evidence were not limited to such a factfinding hearing.

In *United States v. Murray*, 42 MJ 174 (1995), the Court held that a military judge erred by applying a subjective standard to determine prejudice in analyzing a claim of ineffective assistance of counsel. Rather, the Court held that under *Strickland v. Washington*, 466 U.S. 668, (1984), the test for determining whether an accused has been prejudiced by counsel's deficient performance is an objective one, namely, whether there is a reasonable probability that a reasonable factfinder would have reached different results but for counsel's unprofessional errors.

## **COURT MEMBERS**

The procedures for examining an allegation of improper consideration of extraneous information by members of a court-martial panel were further defined in *United States v. Straight*, 42 MJ 244 (1995). Expanding on its analysis set forth in *United States v. Loving*, *supra*, the Court observed that because Federal Rule of Evidence 606(b) precludes inquiry into the subjective effects of extrinsic influences on jurors, other Federal courts apply a presumption of prejudice from such extrinsic influences. Thus, the Court held that the Government had a burden to rebut the presumption in such a situation. However, recognizing that there may be instances where a court member's personal knowledge would constitute extraneous prejudicial information, the Court held that, under the facts of this case, lay opinions of one or more court members as to the possibility of parole did not fall within the exceptions to Military Rule of Evidence 606(b) concerning the restriction on the use of court members' statements to impeach their sentence. The Court similarly held in *United States v. Brooks*, 42 MJ 484 (1995), that, since none of the exceptions to Military Rule of Evidence 606(b) were triggered in the accused's case, inquiry into the deliberative process of the court members was prohibited.

## **JURISDICTION**

In *United States v. Batchelder*, 41 MJ 337 (1994), the Court held that jurisdiction was not lost when a clerk gave the accused a discharge package contrary to command directives prior to the time specified in the accused's discharge orders. The Court ruled that the personnel separations clerk had no authority to establish a different time for the discharge from that specified in the accused's orders,

namely, midnight of the date in question, and that there was nothing to suggest that such orders were effective a single instant prior to that time.

## OFFENSES

In *United States v. True*, 41 MJ 424 (1995), the Court held that the mistake-of-fact defense as to the woman victim's lack of consent in a prosecution for rape must be honest and reasonable, and that in order to be reasonable the accused must evidence the exercise of due care with respect to the truth of the matter in issue. Thus, the Court held that the military judge did not err by instructing the court members that the accused's mistake-of-fact defense could not be predicated on his own negligence. After reviewing the case law pertaining to the offense of pandering, the Court held in *United States v. Gallegos*, 41 MJ 446 (1995), that this offense did not require arrangements for valuable consideration and, therefore, the accused's statements during his guilty-plea inquiry which did not include an acknowledgment that anyone received any form of monetary compensation for the underlying sexual acts did not suffice to render the guilty pleas improvident. In *United States v. Lennette*, 41 MJ 488 (1995), the Court held that the accused's destruction of two stolen blank military identification cards was sufficient to constitute the offense of obstruction of justice where the accused had learned that his accomplice was apprehended for using a fake identification card provided by the accused and that, thus, the accused was not merely trying to avoid detection or implication. The Court further ruled that where an accused acts to destroy evidence pertaining to a person against whom he had reason to believe there was or would be criminal proceedings, and with the intent to impede those proceedings, such accused has committed the offense of obstructing justice. In *United States v. Martinez*, 42 MJ 327 (1995), the Court upheld a conviction of negligent homicide which was predicated on the accused's act of giving his car keys to a friend and allowing the friend, who was intoxicated, to drive the car, a circumstance which resulted in an accident causing the friend's death. Against the accused's contention that his conduct was not criminal in any jurisdiction the Court ruled that military law had long recognized negligent homicide as a punishable disorder under the general article, Article 134, UCMJ.

In *United States v. Sneed*, 43 MJ 101 (1995), the Court examined the definition of "military property of the United States" as used in Article 108, UCMJ, and the sentence escalation provisions for larceny under Article 121. Thus, the Court held that private property being held by the military in an evidence locker for potential use in a court-martial, or property so used but not yet returned, was mili-

tary property of the United States. The Court stressed that the function to which property was put was the determining factor in this case. In upholding a plea of guilty to aggravated assault through culpable negligence the Court in *United States v. Gibson*, 43 MJ 343 (1995), reviewed the statutory and judicial history of Article 128, UCMJ, emphasizing that case law had traditionally acknowledged the theory of a culpably negligent battery as included within the proscription of the statute and that Congress had not acted to overrule such interpretation.

## EVIDENCE

The Court held in *United States v. Walker*, 42 MJ 67 (1995), that medical evidence showing the accused had a medical condition of sinusitis coupled with expert testimony explaining that such condition could be caused by repeated drug use was relevant under Military Rule of Evidence 404 to rebut a defense of inadvertent use. However, the Court further held that the admission of the evidence was erroneous in a trial with court members where (1) no limiting instruction was given to the court members, (2) such evidence was diminished by the fact that the medical expert did not examine the accused, and (3) the evidence had great potential for prejudicing the accused in a trial for a one-time use of cocaine.

The Court held in *United States v. Huet-Vaughn*, 43 MJ 105 (1995), upon reviewing a conviction of desertion with intent to avoid hazardous duty and shirk important service, that the accused's motives for quitting her unit were irrelevant. Distinguishing between evidence relating to motive and intent, the Court held that any evidence pertaining to the accused's motive relating to moral or ethical reservations concerning the Persian Gulf conflict was irrelevant since such evidence did not negate the requisite intent of the crime in question. The Court also held that the evidence rejected at the trial was not relevant to the "Nuremberg defense" concerning refusal to obey an unlawful order since such defense applied only to individual acts and not to a Government's decision to wage war. Thus, the Court ruled that the intermediate appellate court erred by holding the trial judge was wrong in rejecting such evidence.

In *United States v. Fisiorek*, 43 MJ 244 (1995), the Court held that Rule for Courts-Martial 1210, the newly-discovered evidence rule which implements the statutory provisions for allowing a new trial in Article 73, UCMJ, concerning the standard for ordering a new trial was inappropriately severe where an accused attempted to reopen his case after findings but before sentencing in his court-martial. Rather, the Court held the primary considera-

tion should be whether discovery of the new evidence is *bona fide* and whether the new evidence, if true, casts substantial doubt upon the accuracy of the proceedings.

In *United States v. Youngberg*, 43 MJ 379 (1995), the Court upheld a military judge's ruling which admitted DNA (dioxynucleic acid) evidence for the purpose of identifying the accused as the perpetrator of a crime. The Court ruled that the evidence presented to the trial judge satisfied the requirements set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* 113 S.Ct. 2786 (1993), and *United States v. Gibson*, 24 MJ 246 (CMA 1987).

## EVIDENCE—SENTENCING

In *United States v. Irwin*, 42 MJ 479 (1995), the Court held that the military judge properly allowed the prosecution to play a tape recording of the accused's guilty-plea inquiry during a presentencing hearing before court members. Citing *United States v. Holt*, 27 MJ 57 (CMA 1988), the Court held that the accused's statements constituted aggravating circumstances directly relating to offenses of which he was convicted. The Court further ruled that the military judge's warning to the accused that his statements could be used adversely to him constituted sufficient notice and that a specific reference by the military judge to the fact that such statements could be used during the presentencing hearing was not required.

## DISCOVERY

Reviewing an accused's conviction of larceny which was predicated on a lease agreement signed by the accused, the Court in *United States v. Meadows*, 42 MJ 132 (1995), held that the accused was not denied a fair opportunity to present a defense where the lease agreement offered at the Article 32, UCMJ, investigation differed from the lease agreement offered by the Government at trial. Noting that the handwriting on one form differed from the handwriting on the other form, the Court ruled that this discrepancy did not mislead the defense where both the accused and the alleged landlord signed both versions of the lease and the accused could not have been ignorant of the existence of both of the documents. The Court stated in this regard that it had little patience with appellate calls for a penalty flag from an accused who, when all is said and done, was mugged—if at all—largely by his own lack of candor with his counsel.

## COMMAND INFLUENCE

Addressing an allegation of command influence in *United States v. Campos*, 42 MJ 253 (1995), the Court held that no unlawful command influence arose in the case. Rather, the Court held that the perceived demotion of the military judge who tried the case, due to

his lenient sentencing philosophy, was fully litigated and the record solidly established that the trial judge's replacement as the senior judge in the area was unrelated to any grumbling about the military judge's sentencing. In *United States v. Ayala*, 43 MJ 296 (1995), the Court defined the quantum of evidence necessary to raise an issue of unlawful command influence. It "is the same as that required to submit a factual issue to the trier of fact." In *Ayala*, the Court held, in a split decision, that a post-trial affidavit from a friend of the accused reciting the vacillation and unwillingness of the accused's chain of command to support a clemency petition was insufficient to raise the issue.

## PROCEDURE

In *United States v. Johnson*, 42 MJ 443 (1995), the Court addressed a procedural statement asserted by the Court of Military Review in its second review of this case concerning the practice of remanding a case to the intermediate appellate court to consider a new issue. Noting that the counsel representing the accused before the Court who raised a new issue was not the same appellate counsel who represented the accused before the Court of Military Review on its initial review of this case, the Court held that the question whether an issue was properly raised was a matter solely within its discretion under Article 67, UCMJ, and it was not bound by the rules of procedure established by the Judge Advocates General under Article 66(f), UCMJ. Thus, the Court ruled that in order to insure justice would be done, it determined to exercise its discretion in the form of a remand to consider the newly raised issue.

In *United States v. Connell*, 42 MJ 462 (1995), the Court upheld the action of a general court-martial convening authority which vacated a suspended sentence to a punitive discharge and rejected a defense argument that the procedure for such an action as established by Article 72(a), UCMJ, involved a violation of due process. Rather, the Court held that the special court-martial convening authority who conducted the hearing in this case was not *per se* disqualified from serving as a neutral and detached hearing officer and that, under the facts presented, he was not personally involved in the case.

## BORDER SEARCHES

In *United States v. Ayala*, 43 MJ 296 (1995), the Court held that there is no requirement that customs agents have "reasonable cause" to inspect mail coming into the United States. Following the Third Circuit's decision in *United States v. Glasser*, 750 F.2d 1197 (3d Cir. 1984), the Court held that the "reasonable cause" requirement imposed by 19 U.S.C. § 482 applies only to customs searches other than border searches.

WALTER T. COX III,  
*Chief Judge.*

EUGENE R. SULLIVAN,  
*Associate Judge.*

SUSAN J. CRAWFORD,  
*Associate Judge.*

H.F. "SPARKY" GIERKE,  
*Associate Judge.*

ROBERT E. WISS,<sup>3</sup>  
*Associate Judge.*

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<sup>3</sup> Judge Wiss passed away on October 23, 1995.



# USCA STATISTICAL REPORT

Fiscal Year 1995

## CUMULATIVE SUMMARY

CUMULATIVE PENDING OCTOBER 1, 1994	
Master Docket .....	119
Petition Docket .....	291
Miscellaneous Docket .....	1
TOTAL .....	411
CUMULATIVE FILINGS	
Master Docket .....	154
Petition Docket .....	1251
Miscellaneous Docket .....	30
TOTAL .....	1435
CUMULATIVE TERMINATIONS	
Master Docket .....	168
Petition Docket .....	1247
Miscellaneous Docket .....	29
TOTAL .....	1444
CUMULATIVE PENDING OCTOBER 1, 1995	
Master Docket .....	105
Petition Docket .....	295
Miscellaneous Docket .....	2
TOTAL .....	402

## OPINION SUMMARY

CATEGORY	SIGNED	PER CURIAM	MEM/ ORDER	TOTAL
Master Docket .....	109	1	58	168
Petition Docket .....	0	0	1247	1247
Miscellaneous Docket .....	0	0	29	29
TOTAL .....	109	1	1334	1444

### FILINGS (MASTER DOCKET)

Remanded from Supreme Court .....	8
Returned from Court of Criminal Appeals .....	4
Mandatory appeals filed .....	1
Certificates filed .....	8
Reconsideration granted .....	2
Petitions granted (from Petition Docket) .....	131
TOTAL .....	154

<b>TERMINATIONS (MASTER DOCKET)</b>			
Findings & sentence affirmed .....	133		
Reversed in whole or in part .....	27	Signed .....	109
Granted petitions vacated .....	2	Per curiam .....	1
Other disposition directed .....	6	Mem/order .....	58
<b>TOTAL .....</b>	<b>168</b>	<b>TOTAL .....</b>	<b>168</b>

<b>PENDING (MASTER DOCKET)</b>	
Awaiting briefs .....	19
Awaiting oral argument .....	72
Awaiting lead case decision (trailer cases) .....	11
Awaiting final action .....	3
<b>TOTAL .....</b>	<b>105</b>

<b>FILINGS (PETITION DOCKET)</b>	
Petitions for grant of review filed .....	1243
Petitions for new trial filed .....	4
Cross-petitions for grant filed .....	3
Petitions for reconsideration granted .....	1
Returned from Court of Criminal Appeals .....	0
<b>TOTAL .....</b>	<b>1251</b>

<b>TERMINATIONS (PETITION DOCKET)</b>			
Petitions for grant dismissed .....	8		
Petitions for grant denied .....	1091		
Petitions for grant granted .....	131		
Petitions for grant remanded .....	6	Signed .....	0
Petitions for grant withdrawn .....	8	Per curiam .....	0
Other .....	3	Mem/order .....	1247
<b>TOTAL .....</b>	<b>1247</b>	<b>TOTAL .....</b>	<b>1247</b>

<b>PENDING (PETITION DOCKET)</b>	
Awaiting briefs .....	108
Awaiting Central Legal Staff review .....	43
Awaiting final action .....	144
<b>TOTAL .....</b>	<b>295</b>

<b>FILINGS (MISCELLANEOUS DOCKET)</b>	
Writs of error coram nobis sought .....	5
Writs of habeas corpus sought .....	2
Writs of mandamus/prohibition sought .....	8
Other extraordinary relief sought .....	8
Writ appeals sought .....	7
<b>TOTAL .....</b>	<b>30</b>

<b>TERMINATIONS (MISCELLANEOUS DOCKET)</b>			
Petitions withdrawn .....	1		
Petitions remanded .....	0		
Petitions granted .....	1		
Petitions denied .....	25	Signed .....	0
Petitions dismissed .....	2	Per curiam .....	0
Other .....	0	Mem/order .....	29
<b>TOTAL .....</b>	<b>29</b>	<b>TOTAL .....</b>	<b>29</b>

PENDING (MISCELLANEOUS DOCKET)

Awaiting briefs.....	1
Awaiting Writs Counsel review .....	0
Awaiting final action .....	1
<b>TOTAL .....</b>	<b>2</b>

**RECONSIDERATIONS & REHEARINGS**

CATEGORY	BEGIN		END		DISPOSITIONS		
	PEND- ING	FILINGS	PEND- ING	Granted	Denied	Total	
Master Docket.....	2	1	0	2	1	3	
Petition Docket .....	0	9	2	1	6	7	
Misc. Docket.....	0	1	0	0	1	1	
<b>TOTAL.....</b>	<b>2</b>	<b>11</b>	<b>2</b>	<b>3</b>	<b>8</b>	<b>11</b>	

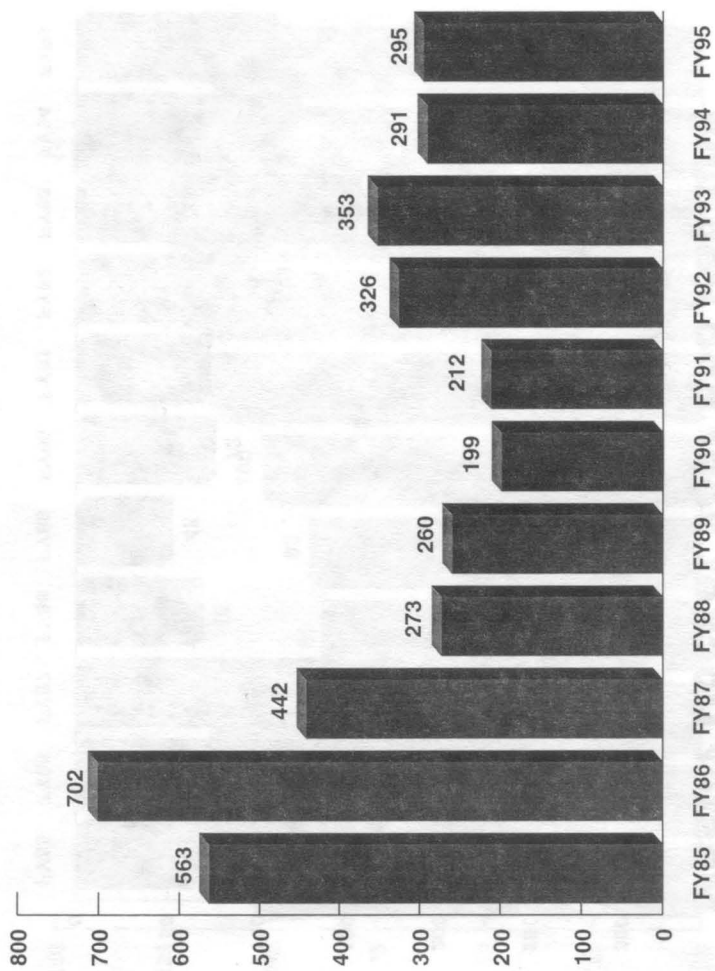
**MOTIONS ACTIVITY**

CATEGORY	BEGIN		END		DISPOSITIONS			
	PEND- ING	FILINGS	PEND- ING	Granted	Denied	Other	Total	
All motions .....	17	786	12	718	68*	5	791	

\*One motion was denied after oral argument in a published opinion. See *United States v. Smith*, 41 MJ 385 (1995).

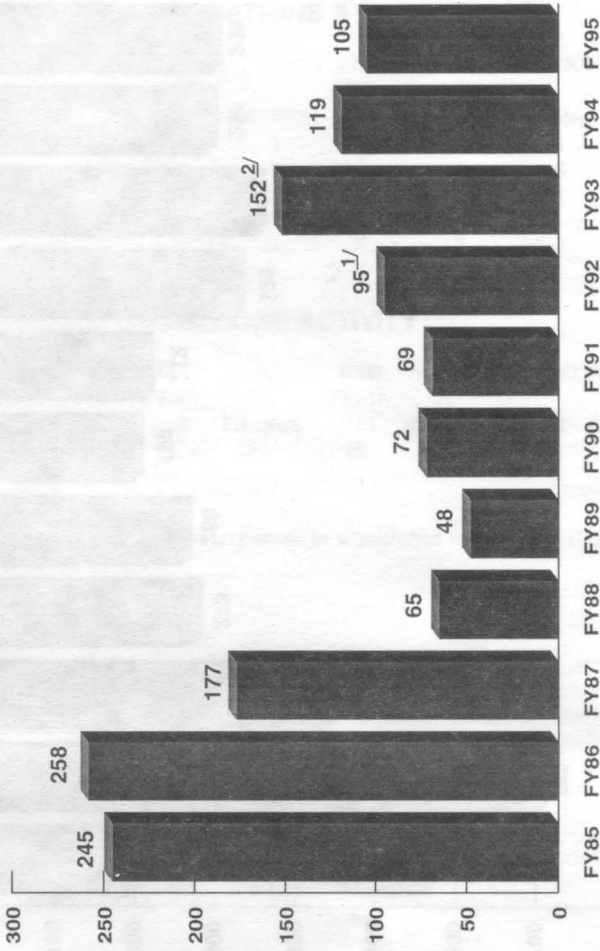
# APPENDIX A

## Petition Docket Year Pending



APPENDIX B

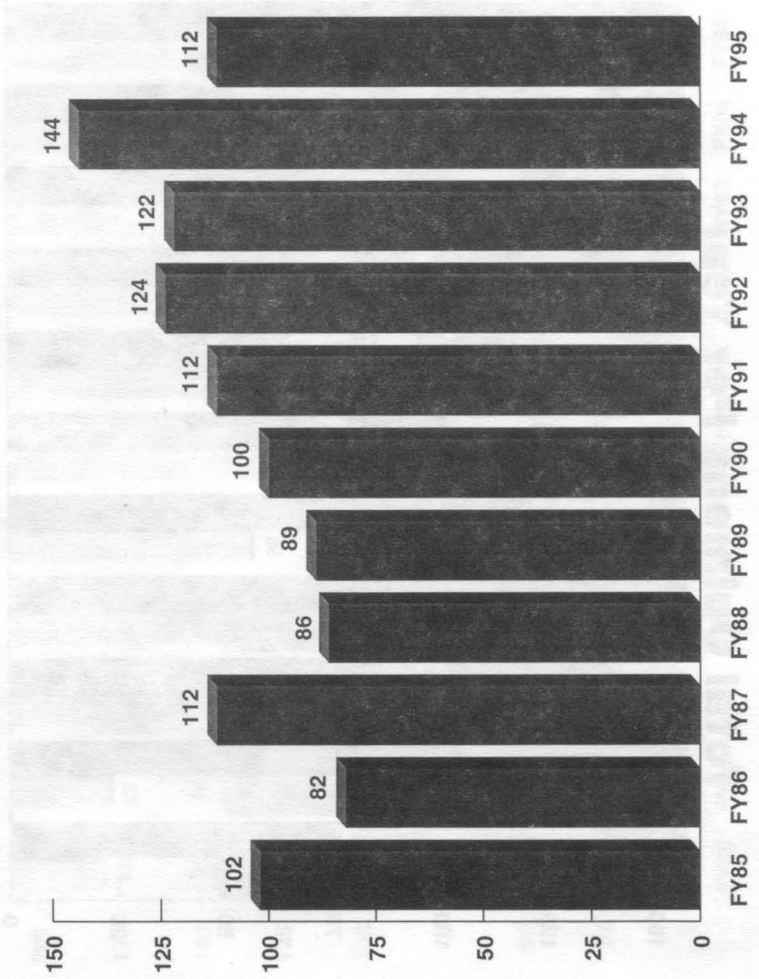
# Master Docket Year End Pending



<sup>1/</sup> This figure does not include 16 trailer cases to United States v. Watson, No. 68206/MC, and 8 trailer cases to United States v. Weiss, No. 67869/MC.

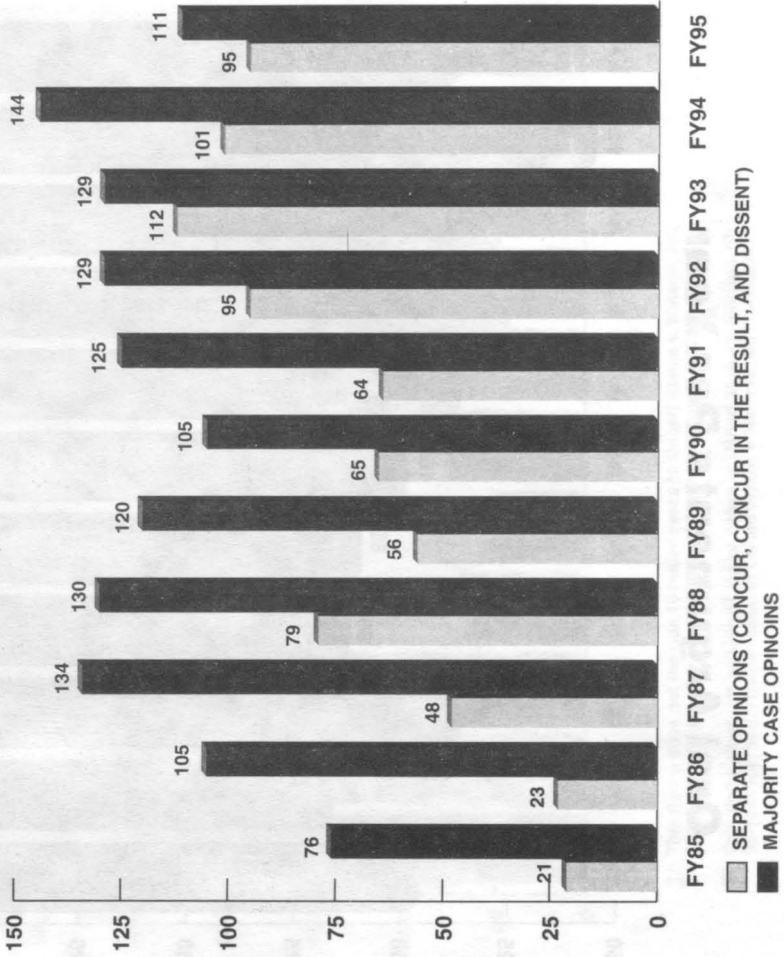
<sup>2/</sup> This figure does not include 87 trailer cases to United States v. Mitchell, No. 93-1044/NA, and 9 trailer cases to United States v. Rexroat, No. 93-5007/AR.

# Oral Arguments Per Year



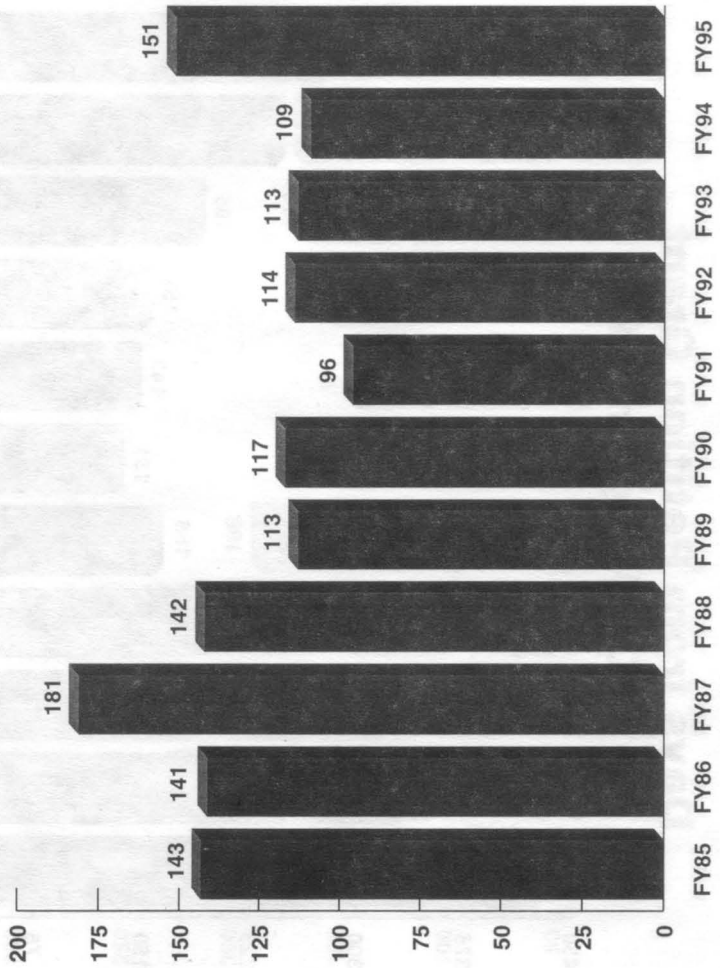
APPENDIX D

Total Opinions Per Year



APPENDIX E

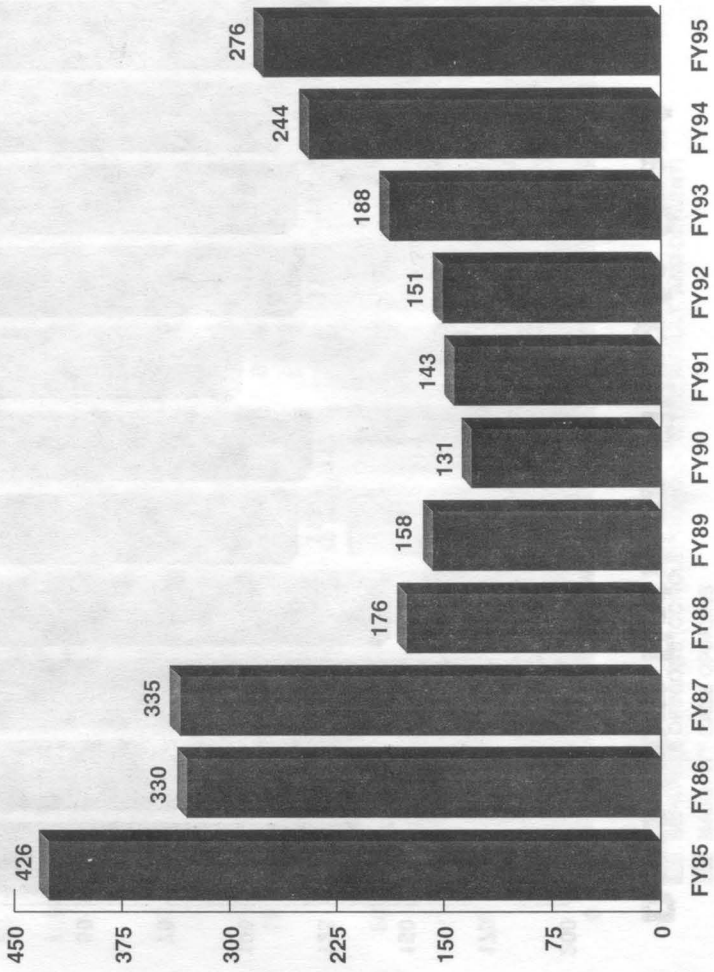
**Days from Petition Filing to Grant**





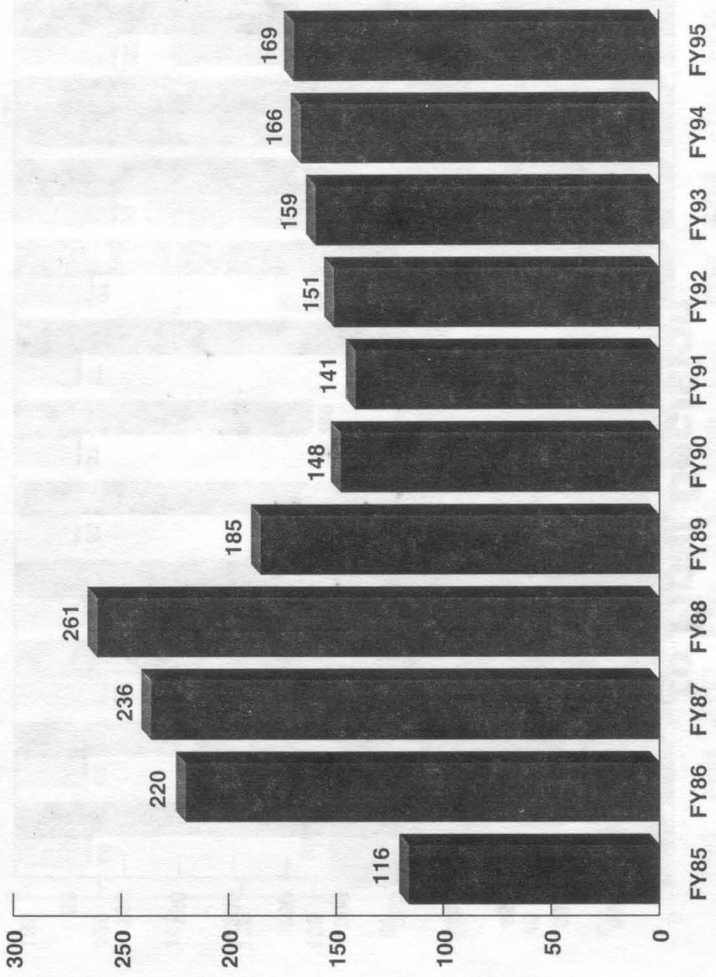
APPENDIX F

**Days from Petition Grant  
to Oral Argument**



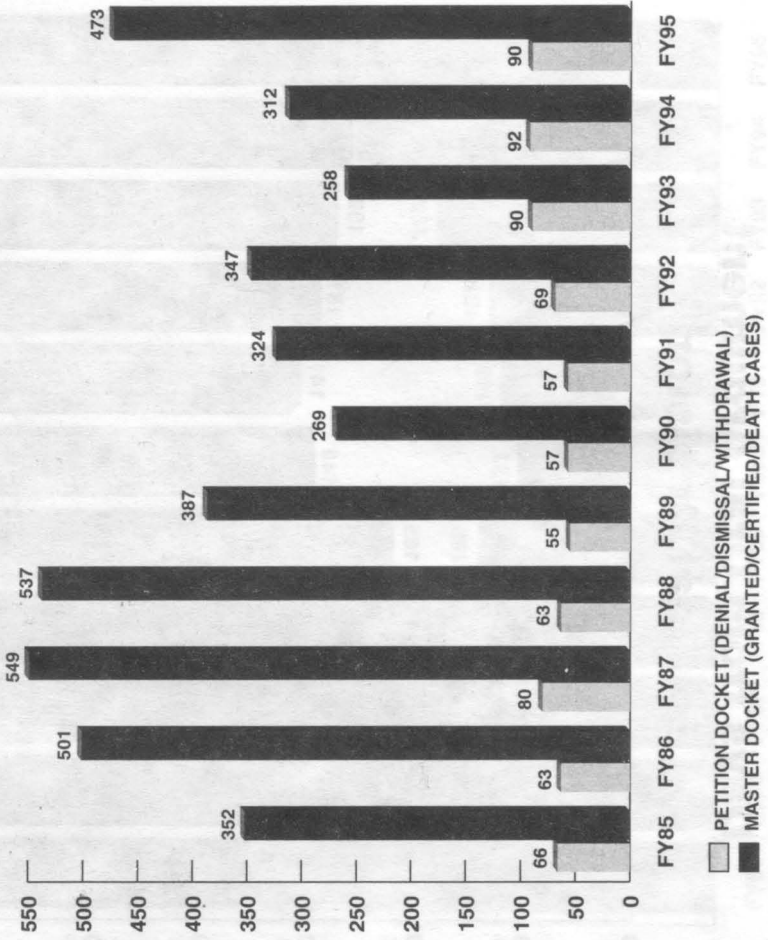
APPENDIX G

**Days from Oral Argument  
to Final Decision**



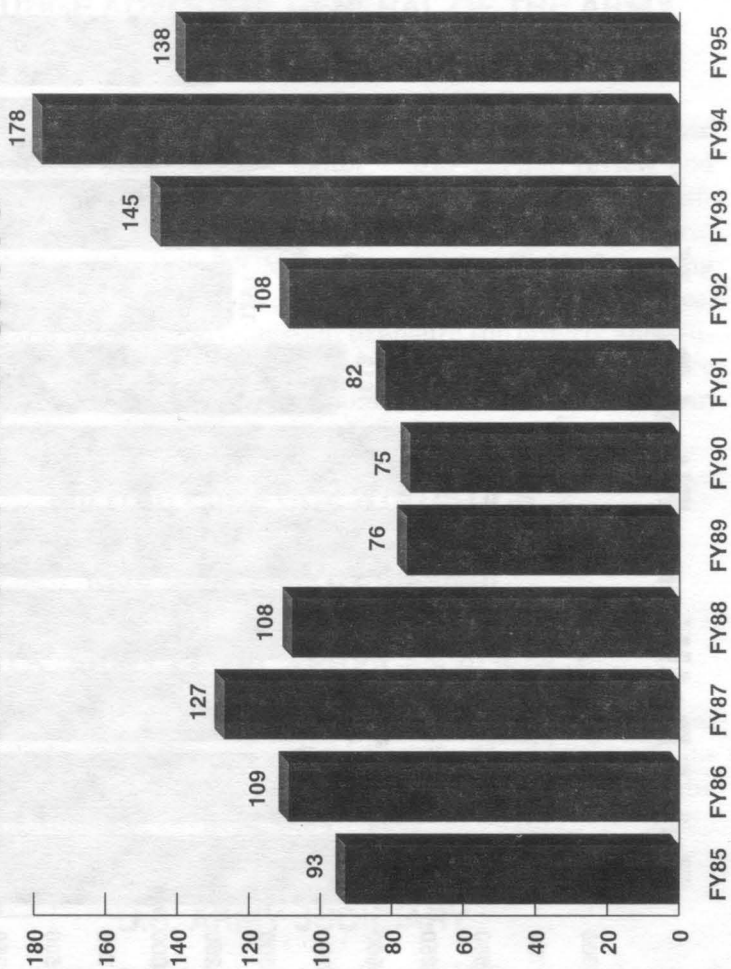
APPENDIX H

# Days from Petition Filing to Final Decision



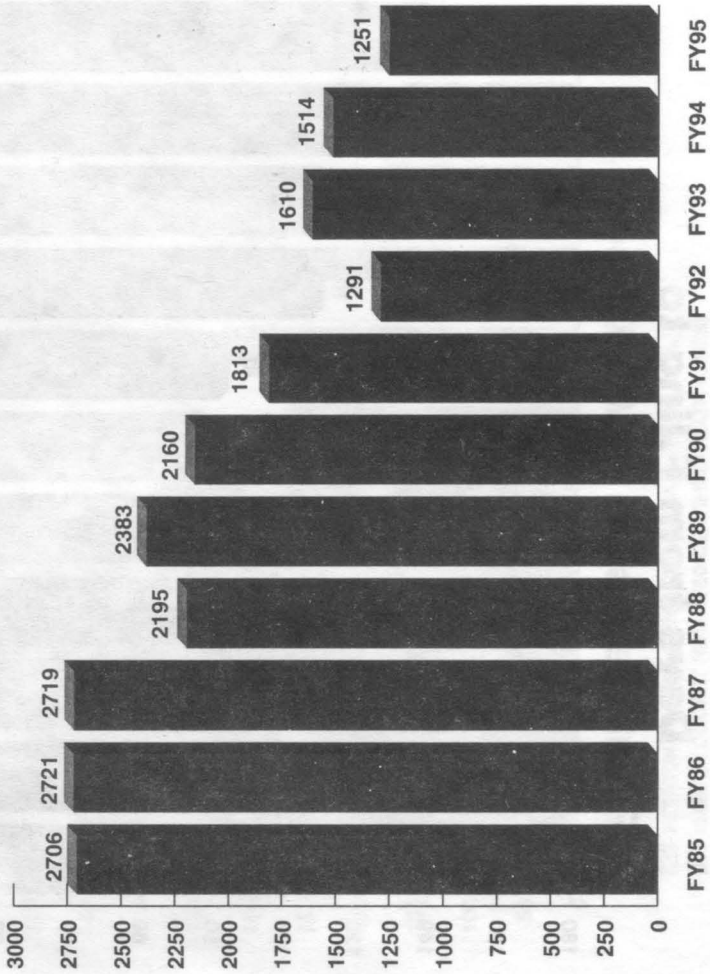
# APPENDIX I

## Days from Filing to Final Decision in All Cases



APPENDIX J

**Total Petitions Filed Per Year**



**REPORT OF  
THE JUDGE ADVOCATE GENERAL OF THE ARMY  
OCTOBER 1, 1994, TO SEPTEMBER 30, 1995**

During fiscal year 1995 (FY 95), the Office of The Judge Advocate General (OTJAG) continued to monitor courts-martial, review and prepare military publications and regulations, and develop and draft changes to the Manual for Courts-Martial (MCM) and the Uniform Code of Military Justice (UCMJ). Through its Field Operating Agencies, OTJAG provided judicial and appellate services, advice, assistance, and professional education to ensure the orderly and efficient administration of military justice. Numbers in this report are based on a military end strength of 523,500 in FY 95 and 557,516 in FY 94.

**MILITARY JUSTICE STATISTICS  
STATISTICAL SUMMARY: FY 95  
(See table insert, attached)**

**U.S. ARMY LEGAL SERVICES AGENCY**

The U.S. Army Legal Services Agency, a field operating agency of OTJAG, includes the following organizations involved in the administration of military justice: the U.S. Army Judiciary, the Government Appellate Division, the Defense Appellate Division, the Trial Defense Service, and the Trial Counsel Assistance Program.

**U.S. ARMY JUDICIARY**

The U.S. Army Judiciary consists of the U.S. Army Court of Criminal Appeals, the Clerk of Court, the Examination and New Trials Division, and the Trial Judiciary.

**U.S. ARMY TRIAL DEFENSE SERVICE**

During FY 95, the United States Army Trial Defense Service (USATDS) continued to provide high-quality, professional defense counsel services to soldiers throughout the Army. USATDS workload data for FY 94 and 95 is displayed below:

	FY 94	FY 95
General Courts-Martial .....	843	825
Special Courts-Martial.....	377	353
Administrative Boards.....	629	841
Nonjudicial Punishment .....	32,682	35,303
Consultations.....	28,111	36,653

USATDS provided support to the Multi-National Force in the Sinai, and to troops in Southwest Asia, Macedonia, Haiti, and Kuwait. While affected by a drawdown of TDS counsel, USATDS counsel manned 56 offices (down from over 70 offices in FY 94) world-wide. At certain locations, USATDS maintained inter-service agreements to provide mutual support along with judge advocates of other services.

## **TRIAL COUNSEL ASSISTANCE PROGRAM**

During FY 95, the U.S. Army's Trial Counsel Assistance Program (TCAP) fulfilled its mission by providing information, advice, training, and trial assistance to military prosecutors world-wide. In addition to services provided to Army attorneys, TCAP had an expanded constituency among prosecutors in the Air Force, Navy, Marine Corps, and Coast Guard. TCAP provided four basic categories of services during FY 95: (1) telephone inquiry assistance; (2) advocacy training courses; (3) the TCAP Memo; and (4) trial assistance. During FY 95, TCAP personnel accomplished the following: responded to 881 telephonic requests for assistance; sent out materials 110 times in response to calls; provided 17 complete sets of TCAP Memos on computer disk; conducted 9 three-day advocacy training courses in the continental United States, Korea, Hawaii, and Germany, trained in excess of 160 military attorneys from all the services at a cost of \$17,000 or \$106 per attorney trained; held 3 video teleconferences; and published and distributed nine editions of the TCAP Memo to approximately 360 subscribers. On two occasions, TCAP provided instructional assistance for trial counsel attending the Criminal Law Advocacy Course and coordinated attendance of a guest speaker on DNA analysis for the Criminal Law New Developments Course. The Criminal Law Advocacy courses and the New Developments Course took place at The Judge Advocate General's School.

Beyond this extensive support to trial counsel, TCAP attorneys prepared 12 Answers and Returns to Habeas Corpus petitions filed with the Office of the U.S. Attorney for the District of Kansas or the United States Court of Appeals for the Tenth Circuit. They reviewed, monitored, and responded to eight Extraordinary Writs filed in either the Army Court of Criminal Appeals or the Court of

Appeals for the Armed Forces. Finally, they prepared briefs and presented oral argument twice before the Army Court of Criminal Appeals and once before the Court of Appeals for the Armed Forces.

## **SIGNIFICANT MILITARY JUSTICE ACTIONS**

Criminal Law Division, OTJAG, advised The Judge Advocate General on military justice policy, legislation, opinions, and related criminal law actions. Specific responsibilities included: promulgating military justice regulations and reviewing Army regulations for legal sufficiency, military corrections, the Army's drug testing program, federal felony and magistrate court prosecutions, legal opinions for the Army Staff, statistical analysis and evaluation, and Congressional inquiries.

Criminal Law Division workload data for the last two fiscal years is displayed below:

	FY 94	FY 95
White House inquiries .....	110	405
Congressional inquiries.....	105	121
Secretary of Defense, Secretary of the Army, Chief of Staff of the Army, and The Judge Advocate General inquiries	97	155
Miscellaneous inquiries.....	26	9
Legal Opinions for Army Board of Correction of Military Records	6	5
Clemency Petitions, Article 74, UCMJ ...	2	21
Officer Dismissals .....	24	27
Freedom of Information Act/Privacy Act.	23	19

During FY 95, the Criminal Law Division represented The Judge Advocate General on a DoD/DoJ task force revising the Federal Crime Victim and Witness Assistance Program, attended meetings of the American Bar Association committees dealing with military law matters, and contributed to the 1994 Judicial Conference of the U.S. Court of Appeals for the Armed Forces and the annual meeting of the Code Committee.

## **JOINT SERVICE COMMITTEE ON MILITARY JUSTICE**

The Chief, Criminal Law Division, OTJAG, serves as the Army representative to the Joint Service Committee on Military Justice (JSC) established by the Judge Advocates General and the Secretary of Transportation (Coast Guard) on August 17, 1972. The JSC conducts an annual review of the MCM, as required by Executive Order 12473 and DoD Directive 5500.17. The JSC proposes and evaluates



amendments to the UCMJ and MCM, while serving as a forum for exchanging military justice information.

During FY 95, the 1995 Amendments (1993 and 1994 annual reviews) were promulgated by the President as Executive Order 12960, effective 10 June 1995. Highlights of the 1995 Amendments include: enabling the sentencing authority, upon rehearing or new trial, to adjudge any lawful sentence (although the convening authority may not approve any sentence in excess of that originally approved); preventing members from reconsidering any finding announced in open court; deletion of confinement on bread and water or on diminished rations as an authorized court-martial punishment; and requiring the SJA to inform the convening authority of a recommendation for clemency made by the sentencing authority. The 1995 Amendments permit courts-martial sentences to run consecutively with sentences adjudged by civilian or foreign jurisdictions and allow the convening authority to correct minor errors in actions before the record is forwarded for appellate review.

The 1995 Amendments clarify the standards for review of search authorizations based on false statements and clarify that the intent element of espionage is not satisfied merely because the accused acted without lawful authority. It amends the procedures concerning the handling and admissibility of unclassified privileged government information, and changes the definition of inherently dangerous acts to cover acts dangerous to "another," as opposed to "others." The 1995 Amendments extend the definition of drunken or reckless driving to the operation of aircraft and vessels and establish a 0.10-blood alcohol level as a *per se* standard for proof of intoxication. The 1995 Amendments also make rape gender neutral and delete the marital "defense" to rape.

During FY 95, the JSC also completed its eleventh annual review of the MCM. This review was submitted for public comment.

The Army acts as Executive Agent for the JSC. In addition to forwarding proposed changes to the MCM to DoD, the Army arranged for publication of the second soft-cover edition of the Manual for Courts-Martial. Changes to the soft cover manual included the addition of Change 7 and the 1995 Amendments, and reorganization of the appendices.

## FOREIGN CRIMINAL JURISDICTION

As executive agent for the Department of Defense, the Department of the Army, through the International and Operational Law Division, OTJAG, maintains information concerning the exercise of foreign criminal jurisdiction over U.S. personnel.

The data below, while not coinciding with the FY used in other

parts of this report, nonetheless gives an accurate picture of foreign criminal jurisdiction during this reporting period:

	1 DEC 1992 to 30 NOV 1993	1 DEC 1993 to 30 NOV 1994
Foreign Offense Citations .....	7,486	6,937
Total Civilian .....	1,646	1,263
Total Military .....	5,840	5,674
Exclusive Foreign Jurisdiction..	293	183
Concurrent Jurisdiction.....	5,547	5,491
Traffic/Other Minor Offenses ....	511	353
Foreign Jurisdiction Recalls.....	831	1,157

Except for the increase in Foreign Jurisdiction Recalls, the overall decline in numbers in each category reflects the overall decline of U.S. Armed Forces stationed overseas.

This year, foreign authorities released 36 of the 183 exclusive foreign jurisdiction cases involving military personnel to U.S. authorities for disposition. Because concurrent jurisdiction offenses involve violations of both U.S. military and foreign laws, the foreign countries had authority to assert primary jurisdiction. This year, however, U.S. military authorities were able to obtain waivers of foreign jurisdiction in 4,481 of these incidents. Overall, waivers were obtained in 81.6 percent of exclusive or concurrent foreign cases. This figure reflects a slight decrease in such waivers from 1992–1993, where the figure was 89 percent.

Last year, when there were 1,646 offenses involving civilian employees and dependents, foreign authorities released 371, or 22.5 percent of the total, to U.S. military authorities for administrative action or other disposition. This year, foreign authorities released only 53 such cases, or 4.2 percent of the total number of civilian employees and dependents charged, to U.S. military authorities.

Foreign authorities tried a total of 1,117 cases. Twenty-two trials, or 2 percent, resulted in acquittals. This is an increase over last year's figures where only ten trials, or 0.7 percent, of the cases ended in an acquittal. A total of 1,010, or 90.4 percent, of foreign trials resulted in sentences to fines or reprimands. The remainder included 26 executed sentences to confinement and 59 suspended sentences to confinement.

## PROFESSIONAL RESPONSIBILITY

The Professional Responsibility Branch, Standards of Conduct Office, was created in August 1991. It is charged with managing

TJAG's professional responsibility program, previously a responsibility of the OTJAG Criminal Law Division.

In 1987 the Army promulgated AR 27-26, *Rules of Professional Conduct for Army Lawyers (Army Rules)*. These rules, which closely parallel the ABA's Rules of Professional Conduct for Lawyers, apply to all active and Reserve Component judge advocates, all Department of the Army civilian attorneys, and non-government attorneys who practice before courts-martial. The *Army Rules* were revised in 1992.

The Professional Conduct Branch maintains its records on a calendar year basis. During 1994, professional conduct inquiries initiated into alleged violations of the *Army Rules* decreased by 26 percent compared to the previous year, and decreased by 37 percent compared to the average for the years 1987 to 1992. Based on the numbers for the first 10 months of calendar year 1995, the number of professional conduct inquiries will again decrease. On a yearly average, of the cases opened, between 73 percent and 80 percent of the allegations of attorney ethical violations are, after a full inquiry, determined to be unfounded. Among the 20 to 27 percent determined to be founded, the majority involve only minor or inadvertent violations of attorney ethics rules. On average, about 30 percent of the attorney ethics inquiries concern the conduct of trial or defense counsel. Each year since 1987, we have conducted an average of one ethics inquiry into allegations concerning a military judge.

## LITIGATION

The number of civil actions against the Department of the Army and its employees remained high, with 811 new lawsuits filed during FY 95. Civil actions requiring the civilian courts to interpret the UCMJ constitute a small but significant portion of the litigation. A majority of these cases seek collateral review of court-martial proceedings. Most remaining cases present challenges to the general conditions of confinement, specific actions taken by confinement facility personnel, or parole and clemency proceedings.

## EDUCATION AND TRAINING

The Judge Advocate General's School, U.S. Army, located in Charlottesville, Virginia, remains a vibrant, busy, and unique academic institution. During FY 95, the School provided education in the law and related subjects to more than 7,000 lawyers, commanders, other officers, enlisted personnel, and Federal civilian employees.

The School conducted 50 resident courses. Approximately 4,500 students attended: 1,792 students were Active Army, 514 U.S. Army Reserve, 234 Army National Guard, 1,071 Federal civilian employ-

ees, 446 Air Force, 127 Marine, 220 Navy, 68 Coast Guard, and 30 international military students. These courses provide attorneys with practice-oriented education and training emphasizing recent developments in the area of administrative and civil law, government contract law, criminal law, and international and operational law. All States with mandatory Continuing Legal Education requirements grant credit for these courses.

In addition to the 50 resident courses offered during FY 95, 28 classes were presented to almost 4,000 students at on-site locations around the world. Additionally, one course was presented as a distance learning course via satellite to an audience of more than 800 students.

The focus of the School, and the source of its greatest pride, remains the Judge Advocate Officer Graduate Course. The Judge Advocate General's School is the only government entity statutorily authorized to grant the degree of Master of Laws (LL.M.) in Military Law. The school has enjoyed American Bar Association accreditation since 1958. Following the passage of statutory authority to award an advanced law degree, the ABA recognized the demanding scholastic standards of the Graduate Course, accepted its Accreditation Committee's 1988 site evaluation recommendation, and concurred in allowing the School to award the LL.M. degree in Military Law. The ABA Accreditation Committee conducted a site evaluation of The Judge Advocate General's School in 1995.

On May 14, 1994, 75 students of the 43d Graduate Class received The Judge Advocate General's School Master of Laws in Military Law. In addition to 52 Army judge advocates, the class consisted of 8 Marine, 5 Navy, 5 Air Force, 1 U.S. Army Reserve, and 4 international military students, from Canada, Singapore, Australia, and Egypt.

Three Judge Advocate Officer Basic Courses, twelve weeks in length, introduced a total of 163 students: 150 Active Army; 2 U.S. Army Reserve; 6 Army National Guard; and 5 international military students, to the practice of law in the military. The School provided instruction to these new judge advocate officers on the responsibilities of a military officer, ethics, and substantive military law subjects. The Basic Course curriculum is carefully designed to prepare new counsel for what they are likely to encounter in their first assignments.

The Judge Advocate General's School is responsible for developing and providing military legal and related instruction to support training of Army National Guard and U.S. Army Reserve Judge Advocate personnel. A number of Reserve Component units have missions that require activation and deployment within seventy-five days of alert. These missions require resident legal training for the commanders,

attorneys, and paralegal personnel. The School initiated a Reserve Component General Officer/Senior Officer Legal Orientation course for National Guard and United States Army Reserve commanders. Operational Law and Domestic Operational Law Workshops for the Reserve Component legal communities are being developed.

The Criminal Law Department continued to teach new judge advocates attending the three Basic Courses. The Criminal Law Advocacy Course (CLAC), initiated in 1993 to compensate for reduced criminal law instruction during the basic course, was offered in April and September 1994 to about 60 students in each session. The course, composed of substantive and procedural instruction in the first week, is followed by several trial technique exercises and a fully contested mock trial. Several Individual Mobilization Augmentees assisted in providing instruction.

The core curriculum for the Graduate Course changed significantly in fall 1994. Though it still familiarized 411 students with criminal law subjects, its approach and, to a lesser degree its content, was changed radically. Virtually all core instruction was conducted in a seminar format. The Graduate Course was divided into four sections, so that each professor taught the same material four times to small groups. Along with the change in format came a shift in emphasis. Although foundational information is still provided, there was much greater emphasis on analysis and evaluation of the military justice system. Professors focused students on the kinds of issues they are likely to confront in future positions as supervisors of trial or defense counsel, deputy staff judge advocates, and military judges. Students were expected to complete substantial reading assignments in preparation for seminar presentations. A take-home exam constituted the bulk of the graded exercise.

The Department offered the first Military Justice Managers' Course in August. This course was designed to fill a long identified need to acquaint justice managers (primarily chiefs of military justice, though TDS representatives also were welcome) with many of the procedural requirements unique to that position. The Course consisted of instruction in most substantive areas with an emphasis on the responsibilities of managers and supervisors. Special emphasis was placed on post-trial processing and other concerns that justice managers may not have encountered in prior tours as counsel. Participants in this course also benefited from two guest speakers, COL John Smith, Chief, Government Appellate Division; and COL (Ret.) William J. Fulton, Clerk of Court, U.S. Army Legal Services Agency.

The Military Judge Course was offered to selected officers from all armed services, including both active and reserve components. The Criminal Law Department presented instruction to judge advocates from all services on recent criminal law developments during the

Criminal Law New Developments Course. The instruction was moved to November so that the substantial number of opinions released by the appellate courts in September could be analyzed and presented.

In addition to resident instruction, the Criminal Law Department taught criminal law at reserve on-site locations in Panama and Europe. The Department also supported a two-week resident phase of the Judge Advocate Triennial Training and the Judge Advocate Officer Advanced Course for members of the Reserve Components. In addition, LTC Kevin W. Bond, Department Chairman, and MAJ Pete Masterton, addressed the Judicial Conference in May 1995. LTC Bond also visited Albania as part of an E-IMET delegation, MAJ Amy Frisk visited Poland, and MAJ Masterton visited Romania, as part of E-IMET delegations. MAJ William T. Barto attended a conference in Washington, D.C. for new professors at law schools in July. In August, MAJ Lawrence J. Morris attended an ABA conference on the death penalty in Chicago, and MAJ Donna Wright attended a national conference on the investigation and prosecution of child abuse in Salt Lake City.

The Criminal Law Department updates and publishes deskbooks on criminal law subjects. Included within the Department's publications are the Crimes and Defenses Deskbook, the Trial Counsel and Defense Counsel Handbook, the U.S. Attorney's Prosecutions Deskbook, and Department of the Army Pamphlets 27-173 (Trial Procedure), and 27-7 (Guide for Summary Court-Martial Trial Procedure). Criminal Law professors also regularly contributed articles and short notes for publication in *The Army Lawyer* and *Military Law Review*.

Criminal Law instruction was complemented by an exceptional guest speaker program that included Hon. Drew S. Days III, the Solicitor General of the United States, who delivered the annual Hodson Lecture in Criminal Law; Judge Herman F. Gierke, Court of Appeals for the Armed Forces, who spoke to the New Developments Course in November 1994; Mr. Steve Berry, an attorney from Lincoln, NE; Judge B. Waugh Cigler, U.S. Magistrate for the Western District of Virginia, and Navy Capt. Glenn Wagner, Deputy Director, Armed Forces Institute of Pathology, both of whom spoke at the 3d CLAC; LTC Frederic L. Borch III, Office of The Judge Advocate General, who spoke frequently about pending changes to the UCMJ and MCM; and Pamela Freyd, Ph.D., executive director, False Memory Syndrome Foundation, who addressed the Advanced Evidence Elective in spring 1995.

The Judge Advocate General's School assumed responsibility for development and oversight of all enlisted legal training for the Army in FY.95. This mission includes all active and reserve component

Legal Specialist and Legal NCO training (MOS 71D), all common soldier legal training, and encompasses both resident and nonresident courses. Training development is a complex, long-term process which minimally includes the separate but overlapping processes of analysis, design, development, implementation, and evaluation. As the proponent for all enlisted legal education, The Judge Advocate General's School is required to provide management, leadership, and resources to perform this vital function. At this time MOS 71D specific training consists of 11 resident courses comprised of 1,382 academic hours, and 8 nonresident courses comprised of 549 credit hours. Nearly all of these courses require extensive updates or total rewriting.

Significant progress has been made in this area. A Sergeant Major and three Senior Legal NCOs have been assigned to the school to initiate the training development process. The Advanced Individual Training (AIT) Program of Instruction has been rewritten and is being implemented. Upon full implementation during FY 96, the Legal Specialist AIT Course will phaseout typewriters and train using up-to-date computer systems and software. All courses of instruction are undergoing extensive review to insure that training is in keeping with current missions and doctrine.

In conjunction with the Developments, Doctrine, and Literature Department, and the Center for Law and Military Operations, the Training Development Section is analyzing the paralegal and administrative duties required for MOS 71D Legal Specialists and Legal NCOs.

The *Military Law Review* and *The Army Lawyer* continued to provide quality articles that informed and educated judge advocates in the active Army and the Reserve Components. In October 1994, TJAGSA's Alumni Association presented the Professional Writing Award to Lieutenant Commander J. Richard Chema, for his article "Arresting Tailhook: The Prosecution of Sexual Harassment in the Military," which appeared at 140 Mill' L. Rev. (1992).

The Developments, Doctrine, and Literature Department continued to coordinate the production of top quality Department of the Army Pamphlets, Field Manuals, Training Circulars, and Graphic Training Aids. At the Department's direction, the Army Law Library Service (ALLS) provided needed library materials to Army law libraries worldwide. To enhance the quality of this service, the Department spearheaded an advisory panel that reviewed law library services throughout the JAGC. The information gained from this study will allow the ALLS to provide better service to over 200 law libraries worldwide.

Guard and Reserve Affairs (GRA) hosts the annual Reserve Component workshop at the school each April, which is attended by

approximately 150 U.S. Army Reserve and Army National Guard staff judge advocates and commanders of Legal Support Organizations. GRA also supports the reserve component Judge Advocate Triennial Training as well as the resident Phase 11 of the Judge Advocate Officer Advanced Course. Over 210 Army judge advocates attended these two courses in 1995. GRA coordinates reserve component attendance at "invitation only" courses at TJAGSA. These courses include the Military Judge Course, Staff Judge Advocate Course, and General Officer/Senior Officer Legal Orientation Courses. Applications for reserve component attendance at the Graduate Course are approved by GRA.

## PERSONNEL, PLANS, AND POLICIES

The strength of the Judge Advocate General's Corps at the end of FY 95 was 1,561. This total includes 50 officers (46 captains and 4 first lieutenants) participating in the Funded Legal Education Program. The diverse composition of the Judge Advocate General's Corps included 91 African-Americans, 42 Hispanics, 30 Asians and Native Americans, and 303 women. The FY 95 end strength of 1,561 compares with an end strength of 1,575 in FY 94, 1,646 in FY 93, 1,710 in FY 92, and 1,752 in FY 91. The grade distribution of the Corps was 5 general officers, 126 colonels, 199 lieutenant colonels, 325 majors, 879 captains, and 27 first lieutenants. Fifty-nine warrant officers, 323 civilian attorneys, and 1,644 enlisted soldiers supported legal operations world-wide

To ensure selection of the best qualified candidates for appointment, career status, and service schools, The Judge Advocate General convened advisory boards several times during the year. Competition for appointment in the Corps remains keen with more than 10 applicants applying for each opening.

Two hundred and nineteen Judge Advocate officers completed the following resident service schools:

U.S. Army War College .....	2
National War College .....	1
Industrial College of the Armed Forces .....	2
Department of Justice Fellowship .....	1
U.S. Army Command and General Staff College .....	13
The Judge Advocate Officer Graduate Course .....	49
Judge Advocate Officer Basic Course.....	151

During FY 95, 10 officers completed funded study for LL.M. degrees in the following disciplines: environmental law, international law, tax law, and government procurement law.

As a separate competitive category under the Department of Defense Officer Personnel Management Act, officers of the Judge



Advocate General's Corps compete among themselves for promotion. During FY 95, the Secretary of the Army convened six selection boards to recommend Judge Advocate officers for promotion to higher grades.

**MICHAEL J. NARDOTTI, JR.**

*Major General, USA*

*The Judge Advocate General*

# TABLE 1

## U.S. ARMY MILITARY JUSTICE STATISTICS

Period: FISCAL YEAR 1995

### PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	825	767	58	-2.1%
BCD SPECIAL [A]	333	291	42	-3.5%
NON-BCD SPECIAL	20	16	4	-3.7%
SUMMARY	304	283	21	-12.9%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-5.5%

### PART 2 - DISCHARGES APPROVED [B]

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES + dismissals	226 (201+25)	
NUMBER OF BAD CONDUCT DISCHARGES	415	
SPECIAL COURTS-MARTIAL (SA LEVEL)		
NUMBER OF BAD CONDUCT DISCHARGES	160	

### PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG [C]

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	648
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	162
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	120

### PART 4 - WORKLOAD OF THE U.S. ARMY COURT OF CRIMINAL APPEALS

TOTAL ON HAND BEGINNING OF PERIOD	46 [D]
GENERAL COURTS-MARTIAL [E]	
BCD SPECIAL COURTS-MARTIAL [E]	
REFERRED FOR REVIEW	868
GENERAL COURTS-MARTIAL	
BCD SPECIAL COURTS-MARTIAL	
TOTAL CASES REVIEWED	768 [F]
GENERAL COURTS-MARTIAL	
BCD SPECIAL COURTS-MARTIAL	
TOTAL PENDING AT CLOSE OF PERIOD	146 [D]
GENERAL COURTS-MARTIAL	
BCD SPECIAL COURTS-MARTIAL	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-16.9%

### PART 5 - APPELLATE COUNSEL REQUESTS BEFORE

#### U.S. ARMY COURT OF CRIMINAL APPEALS

NUMBER [G]	810
PERCENTAGE	100%

### PART 6 - ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES

PERCENTAGE OF CCA REVIEWED CASES FORWARDED TO USCAAF [H]	47.5%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	- 6.6%
PERCENTAGE OF TOTAL PETITIONS GRANTED [H]	9.7%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+ 1.6%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY USACCA	4.8%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-33.9%

# TABLE 1 (CONT'D)

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		10
RECEIVED		24
DISPOSED OF		31
GRANTED	8	
DENIED	16	
NO JURISDICTION	7	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		3
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL		545
SPECIAL COURTS-MARTIAL		227
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		280
SPECIAL COURTS-MARTIAL		126
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	41	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH [I]	523,500	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	38,591	
RATE PER 1,000	73.7	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-7.6%	(-1.2/1,000)

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### EXPLANATORY NOTES

- [A] Cases in which Army SPCM empowered by GCM convening authority to impose a BCD.
- [B] Based on records of trial received during report period (PART 3), not cases tried (PART 1).
- [C] Does not include cases in which appellate review was waived (one GCM, one BCDSPCM in FY 95).
- [D] Includes only cases briefed and at issue before the Court. At year end, briefs were awaited in additional 311 cases not yet at issue.
- [E] Cases pending before USACCA (which may include government appeals and petitions for extraordinary relief) are not routinely accounted for by type of court-martial.
- [F] Includes 11 appeals in which withdrawal from appellate review was granted by the Court. Also includes 11 writ cases and 2 Government appeals.
- [G] Total appellants represented by appointed counsel, including 14 also represented by civilian counsel.
- [H] Number of petitions filed in FY 95 and number of petitions granted in FY 95, as a percentage of decisions issued in FY 95.
- [I] Based on average of monthly strengths reported by U.S. Army Personnel Information Systems Command.

**ANNUAL REPORT**  
**of**  
**THE JUDGE ADVOCATE GENERAL OF THE NAVY**  
**pursuant to the**  
**Uniform Code of Military Justice**  
**FISCAL YEAR 1995**

**SUPERVISION OF THE ADMINISTRATION OF  
MILITARY JUSTICE**

In compliance with the requirement of Article 6(a), Uniform Code of Military Justice, the Judge Advocate General and the Deputy Judge Advocate General made frequent inspections of legal offices in the United States, Europe, and the Far East in supervision of the administration of military justice.

**ARTICLE 69(a), UCMJ, EXAMINATIONS**

Fifty-four general court-martial records of trial, not statutorily eligible for automatic review by the Navy-Marine Corps Court of Criminal Appeals, were forwarded for examination in the Office of the Judge Advocate General in fiscal year 1995. One case required corrective action by the Judge Advocate General. Nineteen cases are pending review.

**ARTICLE 69(b), UCMJ, APPLICATIONS**

In fiscal year 1995, 33 applications under Article 69(b), Uniform Code of Military Justice, were received for review. Of these, 9 applications were denied on the merits, while relief was granted in whole or in part in 3 cases. Twenty-one cases are pending review.

**ARTICLE 73, UCMJ, PETITIONS**

In fiscal year 1995, 7 petitions for new trial were received by the Office of the Judge Advocate General. Four petitions were granted and 2 petitions are pending review. One petition was withdrawn.

**APPELLATE GOVERNMENT DIVISION**

*Appellate Representation.* The eight Navy and four Marine Corps judge advocates assigned to Appellate Government Division filed a total of 1655 pleadings last year; 1258 with the Navy-Marine Corps Court of Criminal Appeals and 397 with the U.S. Court of Appeals for the Armed Forces. Additionally, the Division filed one brief in opposition to a petition for a writ of certiorari.

*Field Assistance.* The trial Counsel Assistance Program (TCAP), is a function within the Appellate Government Division which provides a central coordinating point to assist field trial counsel and staff judge advocates in the effective prosecution of courts-martial. Five appellate counsel are detailed to implement this program. Prompt assistance (usually the same day) is provided in response to telephone calls or electronic messages from trial counsel and staff judge advocates requesting advice or information about cases pending or being tried. Additional assistance is provided through training presentations, the periodic publication of *Electronic Viewpoint* and a computer bulletin board. Because of these proactive and effective methods, there has been a 2% increase in assistance calls over the last year.

*Presentations.* Government counsel participated in the 1995 Judicial Conference of the United States Court of Appeals for the Armed Forces and made presentations at the Army Judge Advocate General School's Graduate Course, the Army-Navy Reserve Conference in Minneapolis, Minnesota, and before the Courts of Criminal Appeals Judge's Conference in Washington, DC.

*Reserves.* The Appellate Government Division continued to provide and support ten Navy reservists and six Marine Corps reservists assigned to the Division. The reservists assigned continued to make a significant contribution to the successful completion of the Division's mission.

## APPELLATE DEFENSE DIVISION

*Appellate Defense Practices.* A total of 2311 cases were reviewed during fiscal year 1995 by the 19 active duty Navy and Marine Corps judge advocates and their reserve counterparts assigned to the Appellate Defense Division. This figure represented an 8.2% increase over the previous fiscal year. Of that total, 503 (22%) were fully briefed to the Navy-Marine Corps Court of Criminal Appeals, while 369 (16%) were summarily assigned. There were 385 cases petitioned to the Court of Appeals For the Armed Forces (CAAF).

*Capital Litigation.* This was a particularly active year for litigation of capital cases at the appellate level. The oral argument at the Court of Appeals for the Armed Forces in *United States v. Curtis* was televised on two national networks, while the number of death penalty cases on direct appeal increased to four.

The Division co-produced the inaugural Death Penalty Defense Course at the Naval Justice School. Appellate defense counsel also delivered presentations on death penalty litigation to the Judge Advocate General's School of the Army, the U.S. Naval Academy, and the Judge Advocate's Association annual meeting.

*Supreme Court Practice.* During fiscal year 1995, 8 petitions for writ of certiorari were submitted. Of particular note, the Division served as

*amicus* on a successful petition for writ of certiorari in *United States v. Loving*, an Army death penalty case.

*Trial Defense Assistance.* The Field Department continued to provide immediate on-call advice to field defense counsel on trends and developments in appellate litigation and suggestions on trial tactics in pending cases. An increasing number of these calls are resulting in extraordinary writs.

*Reserves.* The reserve team, consisting of approximately 18 Navy and Marine Corps judge advocates, continues to be an integral part of the appellate defense team. Although the reserves are generally assigned shorter records, the reserve docket nevertheless accounts for approximately 25% of the Division docket.

## **NAVY-MARINE CORPS TRIAL JUDICIARY**

The Navy-Marine Corps Trial Judiciary (NMCTJ) is comprised of 14 circuit offices, 5 subsidiary branch offices, 35 active duty judges, and 23 reserve judges. NMCTJ provided military judges for 503 general courts-martial and 2626 special courts martial during fiscal year 1995. These numbers represent a decrease of 79 general courts-martial (-14%) and an increase of 55 special courts-martial (+2%). Considering the downward trend in the overall number of courts-martial over the last several years, this year's decline, only 1%, may well mark a leveling off.

As a result of the continued drop in the number of cases over past years, fiscal year 1995 saw a reduction in the number of active duty judges, from 38 to the current 35. Three judicial billets were determined to be unnecessary and were taken from the east coast (Norfolk), the west coast (San Diego), and overseas (Japan). Cases continue to be tried world-wide, including such places as Bahrain and Iceland, as well as at sea.

Military judges received continuing legal education at the annual NMCTJ training conference, the Air Force-sponsored Interservice Military Judges Seminar, the National Judicial College, and the Military Judges' Course at the Army JAG School. Military judges served as lecturers or seminar leaders at the Navy-Marine Corps Senior Officer Courses in Military Law, offered by the Naval Justice School at numerous locations world-wide as well as for various in-service courses. Additionally, military judges took an active part in the continuing education of judge advocates practicing before them by conducting training through exercises and lectures designed by themselves as well as under the auspices of the National Institute of Trial Advocacy.

## **NAVAL LEGAL SERVICE COMMAND**

Naval Legal Service Command (NAVLEGSVCCOM) provides a wide range of legal services to afloat and ashore commands, active duty naval

personnel, dependents, and retirees from 42 Naval Legal Service Offices (NLSO) world-wide (14 NLSOs and 28 detachments and branch offices). Specific functions include the provision of counsel for courts-martial and administrative boards, advice to commands, claims processing and adjudication, counsel at physical evaluation boards, and legal assistance.

In addition, in 1995 NAVLEGSVCCOM initiated the Navy's Trial Service Office (TSO) Prototype. This prototype, which began operating in the southeast region of the United States, created a single TSO in Mayport, Florida, with detachments in Corpus Christi, Texas; Gulfport, Mississippi; Kings Bay, Georgia; Memphis, Tennessee; Jacksonville, Florida; and Pensacola, Florida. The new TSO assumed all trial counsel (prosecution), court reporting and command service functions formerly provided by the corresponding NLSOs in the area; the NLSOs retained defense counsel, personal representation, legal assistance, and claims functions. The purpose of the TSO is to more completely separate prosecution and defense functions in the Navy's military justice system and allow TSO and NLSO commanding officers to become directly involved in trial advocacy, advising their junior counsel in court-martial cases without creating conflicts of interest. The new organization, by allowing more direct mentoring of junior counsel by senior leadership, will improve the litigation skills of judge advocates and enhance the ability of NAVLEGSVCCOM to provide litigation services to both client commands and individual members.

The NAVLEGSVCCOM also includes the Naval Justice School (NJS) at Newport, Rhode Island, charged with training sea service judge advocates, paralegals/court reporters for all services, and foreign military and civilian defense personnel through the Expanded International Military Education and Training Program. Since 1991, we have also been operating a NJS detachment in San Diego with great success.

In November 1995, we established the Naval Justice School Detachment, Norfolk. The Norfolk detachment will allow the Atlantic Fleet to meet their training needs more efficiently by increasing the availability of Fleet training opportunities, while at the same time saving substantial Atlantic Fleet and Navy training dollars.

NAVLEGSVCCOM activities rely upon the Judge Advocate General Management Information System (JAGMIS), a personal computer-based system which tracks each activity's work load and productivity, to facilitate high quality and responsive legal services. Furthermore, the Military Justice Management Information System (MJMIS) has been developed and successfully implemented at the appellate level, providing a consolidated tracking system for courts-martial in the appellate process. In fiscal year 1996, the field version of MJMIS will be implemented, extending the appellate level "cradle to grave case tracking" capability all the way back to the initial receipt of charges.

The NAVLEGSVCCOM previously completed the Naval Legal Affairs World Wide Support Strategy (NAVLAWSS) in 1994. This program pro-

vided for a computer work station for each member of the command, the implementation of a Local Area Network (LAN) at each NAVLEGSVC-COM site, and the tying of all NAVLEGSVCCOM activity LANs together into a wide area network (WAN), allowing for electronic mail and limited file transfer. To enhance the capability of our LAN, NAVLEGSVCCOM has recently embarked upon an upgrade of ADP equipment (e.g., work stations, notebook computers, laser printers, etc.) which should further enhance the utility of the NAVLAWSS program. Many NAVLEGSVCCOM activities continue to work with area Staff Judge Advocates to tie them into the local LAN and, through the WAN, place them in communication with much of the rest of the uniformed Navy legal community. In addition, the NAVLEGSVCCOM participation in an electronic mail system has continued to expand.

Finally, NAVLEGSVCCOM has continued to explore ways to make its personnel more productive through the use of electronic technology. NAVLEGSVCCOM activities have already been provided with CD-ROM compatible computers and multi-bay CD drives (readers) which are LAN compatible, allowing several attorneys to access multiple CDs and share search capacity. CD-ROM compatible portable computers have also been provided to increase flexibility and accommodate the mobile nature of our clients. In-house development of CDs for our most frequently used references is also well underway. Combined with CD-ROM capable portable computers for those judge advocates most often called upon to travel, these CDs will furnish the sea service judge advocate a compact and thorough research library, allowing him or her to practice effectively in even the most remote locations.

NAVLEGSVCCOM is commanded by the Deputy Judge Advocate General of the Navy and includes 328 officers, 222 enlisted, and 172 civilian personnel. The command constitutes about 41% of the Navy's total judge advocate strength.

## **NAVAL JUSTICE SCHOOL**

*Organization.* Naval Justice School (NJS) is organized and operates in accordance with the Naval Justice School Standard Organizational Manual, NAVJUSTSCOLINST 5400.11 (SORM), and the JAG CORPS TRAINING PLAN, JAGINST 1500.4 (TRAINING PLAN). The Commanding Officer also serves as the Assistant Judge Advocate General for Training (JAG 005). He is responsible for all JAG Corps training and for the legal training of the non-JAG communities.

*Location.* The Naval Justice School facilities, located on board Naval Education and Training Center Newport, Rhode Island, are comprised of two buildings with a mixture of lecture halls, computer labs, computer-aided teaching technology, court rooms, seminar rooms, and other such facilities required to provide up-to-date legal training. NJS Detachment in



San Diego is a tenant of the Fleet Training Center (FTC) and maintains facilities suitable for teaching the non-lawyer Legal Officer Course and the two-week enlisted Legal Clerk Course. A new NJS Detachment was established this year for Naval Base, Norfolk with facilities to teach the Legal Officer Course, the two-week enlisted Legal Clerk Course, and to provide waterfront training for East Coast commands. The placement of NJS Detachments at major fleet bases will reduce training costs for commands seeking officer and enlisted legal training.

*Academic Programs.* NJS trains four categories of students: Judge Advocates, paralegal, non-legal line and staff corps officers, and foreign officers. NJS is the primary legal training school for Navy, Marine Corps, and Coast Guard Judge Advocates, both active duty and reserve. NJS also teaches court reporting to Army, Navy, and Coast Guard enlisted personnel, both active duty and reserve. New initiatives include:

1. Capital Litigation Training for the Defense. This three-day course was taught by a team of military and civilian experts and specialists in representing the defense in capital cases. The course provided an overview of military death penalty law, the development and presentation of a defense theory of a case, mental health issues in mitigation, selection of a panel, and other current issues in military death penalty litigation.

2. Capital Litigation Training for the Prosecution. Also a three-day course taught by military and civilian experts, the focus of instruction was the unique aspects of prosecuting a military death penalty case. Specific areas covered included such tropics as the capital referral decision, pre-trial investigation for the penalty phase, pre-trial motions, and death certification of the panel.

3. Advanced Environmental Law for Lawyers. This five-day course proved an in-depth analysis of major environmental law issues affecting the Department of the Navy. Designed to update attorneys assigned to billets with significant environmental law duties, the course focused on early identification of potential environmental law problems, resolution at the local level, and sources of assistance. The class was attended by twenty students from the Navy, Marine Corps, and Office of General Counsel.

4. Expansion of the Legal Assistance Instruction Block in the Basic Lawyer Class. In response to fleet input concerning the benefits to morale and readiness of legal assistance efforts by Navy judge advocates, the legal assistance instruction block on the Basic Lawyer's Class was expanded this year from 14 to 40 hours of instruction. Class 95040, which was graduated in October 1995, was the first class to receive this expanded instruction. In order to facilitate this broadened training, a separate legal assistance division was created within the Civil Law Department with two instructor billets.

5. Legal Assistance Manager's Workshop. NLSO Legal Assistance Department Heads and Senior Paralegals were brought together at the Naval Justice School for this symposium-style course which focused on

development of uniform practices and unity of effort in providing legal services throughout the fleet.

6. Naval Legal Service Office (NLSO) Middle Management Course. This five-day course was geared toward Navy lawyers who have been practicing judge advocates for two to six years. The course prepared them for such managerial billets as division officer, department head, and officer-in-charge.

7. Graduation of First Legal Officer Class from NJS Det Norfolk. The first Legal Officer Class to be taught by the proposed NJS Detachment in Norfolk is scheduled to graduate on 15 December 1995. This event will mark another milestone of improved efficiency in legal training to the fleet.

## **MARINE CORPS ACTIVITIES**

The Marine Corps judge advocate community consisted of approximately 400 certified judge advocates throughout fiscal year 1995. This total strength was consistent with fiscal year 1994 reports and projections for fiscal year 1996. More than half of all judge advocates were company grade officers, in pay grade 0-3 or below. Thirty-three officers were new accessions, ordered to begin their period of active duty at the Basic School in Quantico, Virginia. In addition to the new accessions, ten officers graduated from ABA accredited law schools from law education programs. One officer graduated from the Funded Law Education Program (FLEP) and nine others graduated from the Excess Leave Program (Law) (ELP). Fourteen officers are currently assigned to FLEP and nineteen are attending law school on the ELP.

Thirteen judge advocates attended resident professional military education courses in fiscal year 1995. One colonel graduated from the Naval War College, one colonel graduated from the Industrial College of the Armed Forces, one lieutenant colonel completed top level school in Tokyo, five majors and three captains received LLM degrees from the graduate course at The Judge Advocate General's School of the Army, and two captains completed the Amphibious Warfare School in Quantico, Virginia. One judge advocate was awarded a LLM from George Washington University after a year of full-time study on the Advanced Degree Program. Thirteen officers are currently attending resident professional military education courses and one is assigned to the Advanced Degree Program.

As unrestricted officers, Marine Corps judge advocates continue to fill numerous non-legal billets. During fiscal year 1995 one judge advocate, Colonel Joseph Composto, assumed command of the Marine Security Guard Battalion, Guantanamo Bay, Cuba. Two of five lieutenant colonel judge advocates approved for command were slated to assume command during fiscal year 1996. Beyond our sea service and joint arena support,

Major Mike Keegan is serving as a prosecutor on the United Nations War Crimes Tribunal and one lieutenant colonel served as a Defense and Naval Attache with an Embassy.

The Marine Corps reserve judge advocate community averaged 435 officers throughout fiscal year 1995. Approximately half of these officers were activity participating in the Reserve. Two colonel Reserve judge advocates serve as appellate judges on the Navy-Marine Corps Court of Criminal Appeals. Eleven Reserve judge advocates, major through colonel, serve as military judges in the Navy-Marine Corps Trial Judiciary. Fifteen officers serve as appellate counsel with the Navy-Marine Corps Appellate Review Activity. Reserve judge advocates serve at bases and stations throughout the country and overseas. They provide legal support alongside, and are indistinguishable from their active duty counterparts in billets ranging from instructors at Naval Justice School to legal assistance officers at Marine Corps Base, Camp Pendleton. Reserve judge advocates are also found serving in non-legal billets at various combat arms and supporting commands.

HAROLD E. GRANT

*Rear Admiral, USN*

*Judge Advocate General of the Navy*

# APPENDIX A

Period: Fiscal Year 1995

## PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	503	464	39	-14%
BCD SPECIAL	1661	1661		+11%
NON-BCD SPECIAL	840	715	125	-22%
SUMMARY	1433	1414	19	-3%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-4%

## PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES		174
NUMBER OF BAD CONDUCT DISCHARGES		194
SPECIAL COURTS-MARTIAL (SA LEVEL)		
NUMBER OF BAD CONDUCT DISCHARGES		1661

## PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	417
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	1668
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	64

## PART 4 - WORKLOAD OF THE <sup>NAVY - MARINE</sup> ~~NAVY~~ <sup>CORPS</sup> COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD		1549
GENERAL COURTS-MARTIAL	460	
BCD SPECIAL COURTS-MARTIAL	1089	
REFERRED FOR REVIEW		2265
GENERAL COURTS-MARTIAL	464	
BCD SPECIAL COURTS-MARTIAL	1801	
TOTAL CASES REVIEWED		2276
GENERAL COURTS-MARTIAL	487	
BCD SPECIAL COURTS-MARTIAL	1789	
TOTAL PENDING AT CLOSE OF PERIOD		1538
GENERAL COURTS-MARTIAL	435	
BCD SPECIAL COURTS-MARTIAL	1103	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-9%

## PART 5 - APPELLATE COUNSEL REQUESTS BEFORE <sup>NAVY - MARINE</sup> ~~NAVY~~ <sup>CORPS</sup> COURT OF MILITARY REVIEW

NUMBER	N/A
PERCENTAGE	N/A

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	17%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	24%
PERCENTAGE OF TOTAL PETITIONS GRANTED	36%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	40%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	6%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	47%

# APPENDIX A (CONT'D)

## **PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69**

PENDING AT BEGINNING OF PERIOD		25	
RECEIVED		33	
DISPOSED OF		12	
GRANTED	3		
DENIED	9		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		46	

## **PART 8 - ORGANIZATION OF COURT**

TRIALS BY MILITARY JUDGE ALONE		373	
GENERAL COURTS-MARTIAL			
SPECIAL COURTS-MARTIAL		2356	
TRIALS BY MILITARY JUDGE WITH MEMBERS		130	
GENERAL COURTS-MARTIAL			
SPECIAL COURTS-MARTIAL		270	

## **PART 9 - COMPLAINTS UNDER ARTICLE 138**

NUMBER OF COMPLAINTS	136	
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## **PART 10 - STRENGTH**

AVERAGE ACTIVE DUTY STRENGTH	645,727	
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## **PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)**

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	27,633	
RATE PER 1,000	43	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	+4%	

PAGE 2 OF 2

**REPORT OF  
THE JUDGE ADVOCATE GENERAL  
OF THE AIR FORCE  
OCTOBER 1, 1994 TO SEPTEMBER 30, 1995**

In compliance with the requirements of Article 6(a), Uniform Code of Military Justice (UCMJ), The Judge Advocate General and Deputy Judge Advocate General made official staff inspections of field legal offices in the United States and overseas. They also attended and participated in various bar association meetings and addressed many civic, professional, and military organizations.

**THE AIR FORCE COURT OF CRIMINAL APPEALS**

During fiscal year 1995, the Air Force Court of Criminal Appeals reduced its case load by approximately 10 percent. There were no noticeable changes in the types of offenses being charged; however, the trend toward more complex cases and lengthier records of trial continues.

As a result of the DoD Authorization Act for Fiscal Year 1995, the Court's name was changed from the Air Force Court of Military Review to the Air Force Court of Criminal Appeals (AFCCA).

**MILITARY JUSTICE STATISTICS  
AND USAF JUDICIARY ACTIVITIES**

The Judiciary Directorate of the Air Force Legal Services Agency has overall responsibility for supervising the administration of military justice throughout the United States Air Force, from nonjudicial proceedings to the appellate review of courts-martial. Additionally, the Directorate has the staff responsibility of the Air Force Legal Services Agency in all military justice matters which arise in connection with programs, special projects, studies, and inquiries generated by the Department of Defense (DoD), Headquarters USAF, members of Congress, and various agencies. Several of the Directorate's activities are discussed below:

a. The Judiciary Directorate serves as the action agency for the review of military justice issues on applications submitted to the Air Force Board for Correction of Military Records. The Judiciary provided 112 formal opinions concerning applications.

b. The Judiciary Directorate received 772 inquiries in specific cases requiring either formal written replies or telephonic replies to senior officials, including the President and members of Congress.

c. The Judiciary Directorate provided representatives to all inter-service activities involving military justice and support for the Code Committee.

d. The information programs office brought the Automated Military Justice Analysis and Management System (AMJAMS II) on line. This system, which provides real-time information on military justice matters, became operational in fiscal year 1995.

## **LEGAL INFORMATION SERVICES**

The FLITE on-line computer assisted legal research system completed its second year of operation at Maxwell AFB, Alabama, where it resides on a Sun minicomputer owned and operated by JAS. As of 30 October 1995, there were nearly 3,500 registered users of whom more than 800 use the system regularly each month. The FLITE system will be moved to a Sun 1000 this upcoming year, and its databases will be placed on an Internet WEB site. In fiscal year 1995, FLITE distributed CDs with DoD Directives, TJAG #1 CD with AFRs and other databases, TJAG #2 with AFIs and other databases and the complete set of Comptroller General Opinions on CD. New FLITE provides more current data and constant additions of special interest items, such as the Joint Ethics Regulation, Air Force Policy Directives and Instructions, DoD Directives and Instructions, as well as rosters including Air Force Reserve, Air National Guard, and active duty judge advocates and paralegals. Most court decisions are now forwarded directly from the courts to FLITE. The decisions of the United States Court of Appeals for the Armed Forces (USCAAF) and the services' Courts of Criminal Appeals are loaded as soon as they are received from the courts. FLITE research attorneys perform about 150 to 200 on-line searches per month in support of clients throughout the DoD and also provide Service Desk support to on-line FLITE users.

The new on-line AMJAMS II went into production on 2 November 1994. It runs on a minicomputer operated by JAS and is accessed by all offices with responsibility for military justice. Numerous improvements in reports, data capture, and data validation were implemented. Reports showing statistics and individual status on all courts-martial and nonjudicial punishment actions are run as often as desired, but at least monthly. Development neared completion on the next version, which will divide the processing between the user's microcomputer and the JAS minicomputer in a client/server mode. This version will be faster, allow local generation of all military jus-

tice forms, and provide local storage of data to accommodate use in deployments or other situations where communications to the mini-computer are lost or unavailable.

In addition to continued support of the Defense Emergency Authorities Analysis and Retrieval System (DEARAS), the FLITE staff produced additional CD-ROM products using the in-house equipment.

## **TRIAL JUDICIARY**

The Air Force Trial Judiciary had an average of 22 active duty trial judges, 5 reserve trial judges, 12 noncommissioned officers, and 3 secretaries assigned throughout 5 judiciary circuits worldwide. The Chief Trial Judge, his military judge assistant, and a court reporter are assigned to the Trial Judiciary headquarters. The military judges' duties include: presiding over all general and special courts-martial tried in the United States Air Force; serving as investigating officers under Article 32, UCMJ; legal advisors for officer discharge boards and other administrative boards; and hearing officers at public hearings held to consider draft environmental impact statements. During the year, military judges averaged approximately 145 days on temporary duty at locations other than their bases of assignment to perform these functions.

The Chief Trial Judge made supervisory visits to three CONUS circuits and one of the overseas circuits to review workload and facilities. The DICTA, the Trial Judiciary newsletter for military judges, was published quarterly.

The Twenty-First Interservice Military Judges' Seminar was conducted by the Trial Judiciary at the Air Force Judge Advocate General's School, Maxwell AFB, Alabama, from 3 to 7 April 1995. This seminar was attended by 70 military judges from the trial judiciaries of the Army, Navy, Marine Corps, Coast Guard, and the Air Force, and by a military trial judge from both Canada and Peru.

In January 1995, one judge attended the Handling Capital Cases Course in Orlando, Florida, conducted by the National Judicial College. In April 1995, four judges attended the Special Problems in Criminal Evidence Course at the National Judicial College, Reno, Nevada. Four trial judges, three active duty and one reserve, attended the three-week Military Judges' Course conducted by The Army Judge Advocate General's School in Charlottesville, Virginia, from 15 May through 2 June 1995. In July, one judge attended the Forensic, Medical, and Scientific Evidence Course at the National Judicial College, and in September, one judge attended two mini-courses on Children in the Courtroom and Equal Justice in the Courts, both conducted at the National Judicial College. Finally, each of the judi-



cial circuits conducted two or three day educational workshops during the year.

The Chief Trial Judge attended the mid-year and annual meetings of both the American Bar Association (National Conference of Special Court Judges) and the American Judges Association. These interactions with civilian judges are most beneficial in promoting a greater mutual understanding of the military and civilian justice systems and the roles of military and civilian judges.

## **APPELLATE GOVERNMENT COUNSEL**

The Chief of the Government Trial and Appellate Counsel Division continues to serve as a member of the Rules Advisory Committee of the USCAAF. This committee is actively involved in recommending and reviewing proposed changes to the Rules of Practice for the Court.

In November 1994, all but three of the appellate government counsel attended the annual Criminal Law New Developments Course held at the Army JAG School in Charlottesville, Virginia. The course covered the latest military cases in all significant areas of criminal law.

One appellate government counsel continues to devote most of her time to managing the Advocacy Continuing Education (ACE) Program. In addition to publishing monthly newsletters, during the last fiscal year the program manager also prepared comprehensive guides on sentencing and the Right to Financial Privacy Act. The ACE Program manager has also been called upon to teach at the circuit trial counsel workshops, major command workshops, staff judge advocate conferences and Department of Justice advocacy courses.

Appellate government counsel have contributed to "Project Outreach," sponsored by the USCAAF and the AFCCA, by conducting oral arguments before audiences at the Air Force Academy, and the American Bar Association convention in Chicago, demonstrating to the public the fairness and professionalism of the military justice system.

Appellate practice before the AFCCA increased in both the areas of briefs filed and cases argued. As noted below, the number of briefs filed increased by approximately 12 percent and the number of oral arguments by almost 33 percent. However, appellate practice before the USCAAF dropped in both categories. The most dramatic decrease was in the area of briefs filed, which decreased by 26 percent.

AFCCA	FY 94	FY 95
Briefs Filed .....	369	412
Cases Argued .....	25	33
USCAAF		
Briefs Filed .....	96	71
Cases Argued .....	46	40
SUPREME COURT		
Petition Waivers Filed .....	6	24
Briefs Filed .....	5	2

## **CIRCUIT TRIAL COUNSEL**

During fiscal year 1995, the number of assigned circuit trial counsel was increased to 19. This increase was the result of additional authorizations in both the Western and Central Circuits. The two additional authorizations were necessary to keep up with the increased caseload in those circuits. Throughout the Air Force, circuit trial counsel tried 265 general courts-martial and 53 special courts-martial. To update circuit trial counsel on the latest developments in the law and further enhance their trial skills, at least one circuit trial counsel from all five circuits attended the annual Criminal Law New Developments course held at the Army JAG School in Charlottesville, Virginia. Workshops for base-level prosecutors were conducted by the circuit trial counsel in all the judicial circuits. The workshops were timed to coincide with defense counsel workshops and included joint sessions involving The Judge Advocate General; the Director, USAF Judiciary; and, military trial judges.

## **DEFENSE SERVICES**

The Trial Defense Division is responsible for providing all defense services within the Air Force through Area Defense Counsel (ADC), Defense Paralegals (DP), Circuit Defense Counsel (CDC), and Chief Circuit Defense Counsel (CCDC). They report to the Chief, Trial Defense Division who in turn works for the Director, USAF Judiciary.

As has been the case for the past several years, the Trial Defense Division continued its realignment of personnel in conjunction with base closures. As of 30 September 1995, there were 80 ADCs stationed at 70 installations worldwide. They received support from 71 DPs. Spread throughout the 5 circuits were 21 CDCs and 5 CCDCs. The CCDCs, along with all but five of the CDCs, are stationed in the circuit offices at Bolling AFB, DC; Randolph AFB, TX; Travis AFB, CA; Sembach AB, Germany; and Yokota AB, Japan.

One of the most welcome personnel developments in many years was the approval by The Judge Advocate General of the assignment of DPs to the three CCDCs stationed in the United States. Due to the large number of bases and personnel assigned to those circuits, these DPs will be invaluable in helping the CCDCs manage their formidable legal and management workloads.

Trial defense counsel training remained one of the division's highest priorities. The training included periodic ADC Orientation Courses for new ADCs and annual one-week workshops at each of the circuits. The Division is also providing adjunct faculty members for the Trial and Defense Advocacy Course and the Advanced Trial Advocacy Course, both of which are conducted at The Judge Advocate General's School, Maxwell AFB, AL. In addition, on-the-job training is continuously conducted by CDCs and CCDCs.

## **APPELLATE DEFENSE COUNSEL**

The Appellate Defense Division, as part of its continuing effort to assist trial defense counsel in providing the best possible representation for their clients, inaugurated a series of videotapes titled "Appellate Defense Now" that cover issues and provide guidance on trial tactics and strategy. These videotapes are provided to all Area Defense Counsel offices and have received favorable reviews. In addition, the division produced the first edition of a quarterly publication, "The Defense Herald," designed to keep trial defense counsel current on the latest case law. Appellate defense counsel are keeping themselves current by attending seminars concerning new developments in military caselaw and death penalty litigation.

Our appellate practice continues to be varied and challenging. During the last year, we filed our initial assignment of errors with the AFCCA in the first Air Force death penalty case in the last twelve years. Litigation of this case has presented a great challenge for this division, and we hope to have oral argument before the AFCCA in 1996. The following figures reflect the Division's workload in fiscal year 1995:

<b>AFCCA</b>	<b>FY 95</b>
Cases Reviewed .....	592
Oral Arguments .....	33
Other Motions .....	208
<b>USCAAF</b>	
Supplement to Petitions .....	473
Grant Briefs .....	39
Oral Argument .....	40
Other Motions .....	44
Supreme Court Petitions .....	26

## **CONFINEMENT FACILITIES**

At the end of fiscal year 1995, a total of 540 Air Force personnel were in confinement, 53 fewer than at the end of fiscal year 1994 and again, well below the totals over most of the past decade. A total of 524 of those inmates were in post-trial confinement, including 259 in long-term confinement at the United States Disciplinary Barracks, Fort Leavenworth, Kansas, and 15 who are serving time in the Federal Bureau of Prisons system. There were four inmates in the Return-to-Duty Rehabilitation Program, with three graduating and being returned to duty during this period. The number of Air Force inmates on parole at the end of this fiscal year was 157, a seventeen percent decrease from last fiscal year.

## **PREVENTIVE LAW AND LEGAL ASSISTANCE PROGRAM**

The Legal Assistance Division continued to oversee preventive law and legal assistance services worldwide. During 1994, Air Force legal offices served 323,186 clients, provided 71,626 wills and furnished notary services in 483,006 cases.

The Air Force tax program is in full swing for the 1996 tax season. A new IRS-provided tax software program, "Tax Wise," has been distributed to 95 Air Force bases world-wide. The majority of these bases will use the software to provide electronic filing services. We anticipate that a large number of Air Force personnel will seek help from the JA-sponsored tax programs this year as a result of the new software and because new restrictions have been placed on H&R Block concessions at Army and Air Force installations. The restrictions prohibit H&R Block from offering Rapid Anticipation Loans at on-base sites and from conducting electronic filing from overseas bases.

We recently revised our policies regarding who may exercise the general powers of a notary under 10 U.S.C. 1044a. The notary authority for paralegals was lowered from E-5 to E-4, greatly expanding the availability of notary services. Also, staff judge advocates to general court-martial convening authorities now have authority to appoint commissioned officers or senior non-commissioned officers (MSgt and above) at geographically separated units (GSUs) to act as notaries where legal support is not readily accessible. This solves the problem of clients having to travel, sometimes for hours, to obtain notary service.

## **EDUCATION & TRAINING**

The Judge Advocate General's Department provided numerous continuing legal education (CLE) and advanced degree programs to its personnel and those of its sister services. Air Force attorneys occupied more than 2000 training slots in courses held at varying locations. Air Force attorneys attended courses at:

- The Air Force Judge Advocate General School, Maxwell Air Force Base, Alabama
- The Army Judge Advocate General School, Charlottesville, Virginia
- The Naval Justice School, Newport, Rhode Island
- Georgetown University
- George Washington University
- The University of Utah
- The National Judicial Conference in Reno, Nevada

### **Army Judge Advocate General School**

The Army Judge Advocate General School (AJAGS) is located on the campus of the University of Virginia in Charlottesville, Virginia. CLE courses attended by Air Force attorneys included:

- Contract Attorney
- Criminal Law Advocacy
- Federal Courts and Boards
- Federal Labor Relations
- Federal Litigation
- Fiscal Law
- Government Contract Law Symposium
- Law of War Workshop
- Legal Assistance
- Military Judge
- Operations Law
- Procurement Fraud

### **Naval Justice School**

Air Force attorneys attended the Navy's Law of Military Operations Course offered at the Naval Justice School in Newport, Rhode Island.

### **LL.M. Program**

Twenty-one Air Force attorneys pursued Masters of Law degrees. Their specialties included Environmental, Procurement, International, Space, and Labor Law.

## **National Judicial Conference**

Air Force military judges attended several specialized courses in military justice conducted by the National Judicial Conference.

## **AIR FORCE JUDGE ADVOCATE GENERAL SCHOOL**

The Air Force Judge Advocate General School (AFJAGS), is one of nine professional continuing education schools organizationally aligned as part of Air University's Ira C. Eaker Center for Professional Development at Maxwell Air Force Base, Alabama. The William L. Dickinson Law Center is home to the school, and the Morehouse Center supports Paralegal Studies. The AFJAGS conducts legal education for attorneys and paralegals from all military services; provides instruction at other Air University schools and colleges; publishes The Reporter and The Air Force Law Review; manages HQ USAF's Preventive Law Clearinghouse; and maintains JAG Department liaison with civilian professional organizations, law schools, and states requiring continuing legal education.

### **Resident Courses**

The school conducted more than 30 classes in more than 20 different courses, attended by more than 1600 students. Courses and seminars included:

- Advanced Environmental Law
- Advanced Trial Advocacy
- Claims and Tort Litigation
- Environmental Law
- Environmental Law Update
- Federal Employee Labor Law
- Federal Income Tax
- Fiscal Law
- Information Warfare
- International Law
- Judge Advocate Staff Officer
- Military Judge's Seminar
- Operations Law
- Paralegal Advanced
- Paralegal Specialist
- Reserve Forces Judge Advocate
- Staff Judge Advocate
- Trial and Defense Advocacy

## **Nonresident Courses**

The AFJAGS offered nonresident courses approved for CLE credit by various states. The amount of credit allowed for completion of these courses is determined by individual state bar associations. Courses included:

- Ethics for Air Force Attorneys
- Ethics for Claims Officers
- Estate Planning
- Basic Income Tax Law
- Current Income Tax Law
- Government Contract Law
- International Law
- Supreme Court Trends in Criminal Justice

## **Outside Teaching**

In addition to the resident courses, the AFJAGS faculty provided military justice instruction in the following colleges, schools, academies, and courses within Air University: Air War College, Air Command and Staff College, Squadron Officer School, Senior Noncommissioned Officer Academy, Support Group Commanders' Course, Logistics Group Commanders' Course, Chaplain Orientation Course, Contingency/Wartime Planning Course, National Institute for Trial Advocacy courses, and the USAF Special Operations School.

The AFJAGS participated in the Expanded International Military Education and Training Program (E-IMET), one of several Security Assistance Programs mandated by Congress (22 U.S.C. 2347). The program is designed to further U.S. foreign policy goals as established in the Foreign Assistance Act. The E-IMET Program involves U.S. military teaching teams sent abroad to teach human rights, military justice, civilian control of the military, law of armed conflict, rules of engagement, and general democratic principles. In fiscal year 1995, faculty from the AFJAGS participated in E-IMET program missions to Bolivia, Senegal, Zimbabwe, Slovakia, Honduras, Hungary, Lithuania, Romania, Ghana, Poland, and the Central African Republic.

## **Publications**

The school published two issues of *The Air Force Law Review*, a professional legal journal consisting of articles of interest to Air Force judge advocates, civilian attorney advisors, and other military lawyers. The *Law Review* is a scholarly publication which encourages frank discussion of relevant legislative, administrative, and judicial developments. Additionally, four issues of *The Reporter*, the

JAG Department's quarterly legal publication containing articles of general interest, were distributed in March, June, September, and December. Each issue of *The Reporter* has two sections dedicated to contemporary military justice issues. A third section addresses ethical issues which have surfaced in the military justice context. The school continued to publish *The Military Commander and the Law*, an 800 page compendium of legal topics addressing the issues confronting today's Air Force commanders.

## PERSONNEL

As of 30 September 1995, there were 1341 judge advocates on active duty. This number included 1 major general, 3 brigadier generals, 128 colonels, 194 lieutenant colonels, 308 majors, 622 captains and 85 first lieutenants. In addition, there were 250 civilian attorneys, 932 enlisted legal technicians and 720 civilian support personnel assigned to the Department.

BRYAN G. HAWLEY  
*Major General, USAF*  
*The Judge Advocate General*



# APPENDIX A

Period: Fiscal Year 1995

## PART 1 - BASIC COURTS-MARTIAL STATUS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+) OR DECREASE (-) OVER LAST REPORT
GENERAL	610	547	63	+2%
SCD SPECIAL [A]	140	140	0	+21% [B]
NON-SCD SPECIAL	305	278	27	
SUMMARY	35	33	2	+3,500% [C]
OVERALL RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT				+27%

## PART 2 - DISCHARGE APPROVED

GENERAL COURTS-MARTIAL (GA LEVEL)		60	
• NUMBER OF DISHONORABLE DISCHARGES		219	
NUMBER OF BAD CONDUCT DISCHARGES		131	
SPECIAL COURTS-MARTIAL (SA LEVEL)			
NUMBER OF BAD CONDUCT DISCHARGES			

## PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	376	
FOR REVIEW UNDER ARTICLE 66 - SCD SPECIAL COURTS-MARTIAL	128	
FOR EXAMINATION UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	66	

## PART 4 - WORKLOAD OF THE AIR FORCE COURT OF CRIMINAL APPEALS

TOTAL ON HAND BEGINNING OF PERIOD		661	
GENERAL COURTS-MARTIAL	561		
SCD SPECIAL COURTS-MARTIAL	100		
REFERRED FOR REVIEW		526	
GENERAL COURTS-MARTIAL	395		
SCD SPECIAL COURTS-MARTIAL	131		
TOTAL CASES REVIEWED		575	
GENERAL COURTS-MARTIAL	446		
SCD SPECIAL COURTS-MARTIAL	129		
TOTAL PENDING AT CLOSE OF PERIOD		608	
GENERAL COURTS-MARTIAL	506		
SCD SPECIAL COURTS-MARTIAL	102		
RATE OF INCREASE (+) / DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD			-4%

## PART 5 - APPELLATE COUNSEL REQUESTS BEFORE THE AIR FORCE COURT OF CRIMINAL APPEALS

NUMBER	592	
PERCENTAGE	99.8%	

## PART 6 U.S. COURT OF APPEALS FOR THE ARMED FORCES

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCA4	494/575	86%
PERCENTAGE OF INCREASE (+) / DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-3%
PERCENTAGE OF TOTAL PETITIONS GRANTED	48/494	10%
PERCENTAGE OF INCREASE (+) / DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-9%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	48/575	8%
RATE OF INCREASE (+) / DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-4%

# APPENDIX A (CONT'D)

<b>PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69</b>		
PENDING AT BEGINNING OF PERIOD		3
RECEIVED		7
DISPOSED OF		8
GRANTED	0	
DENIED	8	
NO JURISDICTION	0	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		3
<b>PART 8 - ORGANIZATION OF COURT</b>		
TRIALS BY MILITARY JUDGE ALONE		259
GENERAL COURTS-MARTIAL		
SPECIAL COURTS-MARTIAL		349
TRIALS BY MILITARY JUDGE WITH MEMBERS		351
GENERAL COURTS-MARTIAL		
SPECIAL COURTS-MARTIAL		96
<b>PART 9 - COMPLAINTS UNDER ARTICLE 138</b>		
NUMBER OF COMPLAINTS	17	
<b>PART 10 - STRENGTH</b>		
AVERAGE ACTIVE DUTY STRENGTH	398,098	
<b>PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)</b>		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		8,341
RATE PER 1,000		20.95
RATE OF INCREASE (+) / DECREASE (-) OVER PREVIOUS PERIOD		+2.48

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- [A] SPCMs in which BCD is adjudged.
- [B] Includes BCD specials and non-BCD specials.
- [C] The increase in SCM cases is attributed to the Air Force policy change no longer requiring an Article 15 demand for court-martial prior to convening a SCM.

# REPORT OF THE CHIEF COUNSEL OF THE U.S. COAST GUARD

October 1, 1994 to September 30, 1995

The table below shows the number of court-martial records received and filed at Coast Guard Headquarters during FY-95 and the five preceding years.

Fiscal Year	95	94	93	92	91	90
General Courts-Martial.....	11	9	14	16	9	14
Special Courts-Martial.....	8	23	31	26	34	42
Summary Courts-Martial.....	14	15	11	25	18	47
Total.....	33	47	56	67	61	103

## COURTS-MARTIAL

Attorney counsel were detailed to all special courts-martial. Military judges were detailed to all special courts-martial. For most cases, the presiding judge was the Chief Trial Judge, a full-time general courts-martial judge. When the Chief Trial Judge was unavailable, military judges with other primary duties were used for special courts-martial. Control of the detail of judges was centrally exercised by the Chief Trial Judge and all requirements were met in a timely fashion.

## GENERAL COURTS-MARTIAL

Nine of the 11 accused tried by general courts-martial this fiscal year were tried by military judge alone. Two of the nine accused tried by military judge alone received dishonorable discharges, three received bad conduct discharges and one received a dismissal. One of the two accused tried by courts with members received a sentence which included a bad conduct discharge. One accused elected to be tried by a court which included enlisted members and one accused elected to be tried by a court which included only officer members. All of the general courts-martial resulted in convictions. Three of the accused whose charges were referred to general courts-martial were nonrated (pay grades E-1 through E-3), seven were petty officers (pay grades E-4 through E-6), and one was a junior officer (pay grades W-2 through O-3).

The following is a breakdown of the sentences adjudged in general courts-martial tried by military judge alone (nine convictions):

Sentence	Cases Imposed
dishonorable discharge.....	2
bad conduct discharge .....	3
dismissal.....	1
confinement.....	8
reduction in rate .....	8
forfeiture of all pay and allowances .....	3
partial forfeiture of pay (\$25,200.00 total).....	2
confinement with hard labor.....	1

The following is a breakdown of sentences adjudged in general courts-martial tried by members (two convictions).

Sentence	Cases Imposed
bad conduct discharge .....	1
confinement.....	1
forfeiture of all pay and allowances .....	1
reduction in rate .....	2
restriction.....	1
hard labor without confinement .....	1

The following indicates the four sentences imposed most by general courts-martial in the past five fiscal years.

FY	Number of Convictions	Forfeitures	Confinement	Reduction in Grade	Punitive Discharge/Dismissal
95	11	6 (55%)	10 (91%)	9 (82%)	7 (64%)
94	7	1 (15%)	7 (100%)	6 (90%)	6 (90%)
93	14	7 (50%)	13 (93%)	11 (78%)	9 (64%)
92	16	11 (69%)	14 (88%)	14 (88%)	12 (75%)
91	8	4 (50%)	7 (88%)	5 (63%)	5 (63%)

The following table shows the distribution of the 73 specifications referred to general courts-martial.

Violation of the UCMJ, Article	No. of Specs.
80 (attempts) .....	2
81 (conspiracy).....	2

83	(fraudulent enlistment, appointment or separation).....	1
92	(failure to obey order or regulation) .....	2
107	(false official statement) .....	2
109	(waste, spoilage or destruction to property other than property of the U.S.).....	1
112a	(wrongful use, possession, etc., of controlled substance).....	25
120	(rape or carnal knowledge).....	1
121	(larceny or wrongful appropriation).....	6
125	(sodomy).....	3
130	(housebreaking).....	2
134	(general).....	26

## SPECIAL COURTS-MARTIAL

Five of the eight accused tried by special courts-martial this fiscal year were tried by military judge alone. Two bad-conduct discharges were adjudged, both by the military judge. Two accused elected to be tried by a court which included enlisted members and one accused elected to be tried by a court which included only officer members. One special court-martial resulted in acquittal. One of the accused whose charges were referred to special courts-martial was nonrated (pay grades E-1 through E-3), six were petty officers (pay grades E-4 through E-6) and one was a chief petty officer (pay grade E-7).

The following is a breakdown of sentences adjudged in special courts-martial tried by military judge alone (5 convictions).

Sentence	Cases Imposed
bad conduct discharge .....	2
confinement.....	4
reduction in rate .....	5
partial forfeiture of pay (\$4,000.00 total).....	3
restriction .....	1
reprimand.....	1
hard labor without confinement .....	1

The following is a breakdown of sentences adjudged in special courts-martial tried by members (two convictions and one acquittal).

Sentence	Cases Imposed
confinement.....	1
reprimand.....	1
reduction in rate .....	1
hard labor without confinement .....	1

The following shows the four sentences imposed most by special courts-martial in the past five fiscal years.

FY	Number of Convictions	Forfeitures	Confinement	Reduction in Grade	BCD
95	7	3 (43%)	5 (71%)	6 (86%)	2 (29%)
94	20	6 (30%)	17 (85%)	20 (100%)	11 (55%)
93	27	8 (29%)	19 (70%)	20 (74%)	14 (52%)
92	23	11 (48%)	18 (78%)	19 (83%)	9 (39%)
91	26	16 (62%)	22 (85%)	21 (81%)	15 (58%)

The following table shows the distribution of the 40 specifications referred to special courts-special.

	Violation of the UCMJ, Article	No. of Specs.
80	(attempts) .....	1
81	(conspiracy).....	1
86	(unauthorized absence).....	2
87	(missing movement).....	1
90	(assaulting or willfully disobeying superior commissioned officer .....	1
92	(failure to obey order or regulation) .....	8
93	(cruelty and maltreatment).....	3
108	(sale, loss, damage, destruction, or wrongful disposition of military property of the U.S.).....	1
121	(larceny or wrongful appropriation).....	4
123	(forgery) .....	2
128	(aggravated assault) .....	8
134	(general).....	8

## SPECIAL COURTS-MARTIAL SUMMARY

Sixty three percent of the accused tried by special courts-martial were tried by military judge alone. Sixty percent of these accused pled guilty to all charges and specifications. None of the accused tried by special courts-martial with members pled guilty to all charges and specifications. There was a thirty five percent decrease in special courts-martial from last fiscal year.

## CHIEF COUNSEL ACTION UNDER ARTICLE 69, UCMJ

In addition to the required reviews of courts-martial conducted as a result of petitions filed under Article 69, UCMJ, a discretionary review was conducted under Article 69 of all courts-martial not requiring appellate review.

## PERSONNEL, ORGANIZATION, AND TRAINING

The Coast Guard has 174 officers designated as law specialists (judge advocates) serving on active duty—137 are serving in legal billets and 37 are serving in general duty billets. Nineteen Coast Guard officers are currently undergoing postgraduate studies in law and will be certified as law specialists at the completion of their studies. Eighteen Coast Guard officers who recently graduated from law school completed the Navy Basic Lawyer Course in Newport, Rhode Island. All are in the process of being certified under Article 27(b), UCMJ. A total of 166 additional training quotas were filled by attorneys, paralegals, yeomen and secretaries assigned to Coast Guard legal offices. Approximately \$101,000.00 was spent on legal training during the fiscal year.

### U.S. COAST GUARD COURT OF CRIMINAL APPEALS

The Court consisted of the following judges at the close of fiscal 1995:

Chief Judge Joseph H. Baum  
Judge John H. Fearnow  
Judge Mark A. O'Hara  
Judge John P. Wiese  
Judge David J. Kantor

Issues challenging the status of the Court and its judges, that were initially raised in fiscal year 1992 and explained in previous reports, continued to be asserted before this court, the Court of Criminal Appeals and the U.S. Supreme Court over the past year, since the decision in *Weiss v. U.S.*, 114 S. Ct. 752 (1994) left unresolved issues unique to the Coast Guard. As explained in last year's report, three petitions for certiorari dealing with these issues in eight Coast Guard cases were pending before the U.S. Supreme Court at the end of fiscal year 1994. The petition for certiorari in one of those cases, *United States v. Ryder*, 39 M.J. 454 (CMA 1994), was granted on 6 January 1995, argued on 18 April 1995, and decided on 12 June 1995. In that decision, the Supreme Court declined to apply the *de facto* officer rationale which had been relied upon by the Court of Military Appeals to affirm the action of judges of this Court found to be defectively appointed. The record was remanded to the former Court of Military Appeals, now the Court of Appeals for the Armed Forces, for further transmittal to this court in order that the case could be reviewed by a properly appointed court. Writs of certiorari were also granted in the other petitioned cases and, citing *Ryder v. United States*, 515 U.S.—(1995), they were summarily remanded to the Court of Appeals for the Armed Forces for further action also. Before remand to this Court, the Court of Appeals issued an order in

*United States v. Ryder* on 31 July 1995, noting that the Secretary of Transportation had appointed judges of this Court without a specific provision in Article 66, UCMJ so authorizing the Secretary. Consequently, the Government was ordered to show cause whether the Secretary of Transportation has the statutory authority to appoint judges of this Court. At the end of fiscal year 1995, briefs had been filed in response to that order, with argument to be held at the end of October. As a result, issues pending last year concerning the status of this Court remain unresolved. Nevertheless, cases continue to be decided by this Court, with an increase in number of those in 1994, as reflected in the attached statistics.

In addition to the decisional work indicated in Appendix A, the judges on the Court have participated in various professional conferences, committees, and seminars during the past fiscal year. Starting the year off in November 1994, all of the judges attended the two-day All Services Appellate Military Judges Conference hosted by the Air Force Court of Criminal Appeals at Maxwell Air Force Base, Montgomery, Alabama. In May 1995, the Chief Judge attended the two-day Judicial Conference of the U.S. Court of Appeals for the Armed Forces at George Washington University. In June 1995, Judge Bridgman was designated the first Senior Judge of this Court and also in June he represented the Court on a panel of Court of Criminal Appeals Judges as part of the instruction for the 38th Military Judges Course at the Army Judge Advocate General's School in Charlottesville, Virginia. This was one of Senior Judge Bridgman's last official acts as an appellate military judge before his retirement at the end of July 1995. In September, Chief Judge Baum, Judge Wiese, and Judge Kantor, who is the most recently appointed judge to the Court, attended a three-day Appellate Military Judges Training Seminar at Fort Belvoir, Virginia.

This seminar was a continuation of the highly successful appellate military judges training program created expressly for the military appellate courts by Chief Judge Frank Nebeker of the Court of Veterans Appeals and first held in 1993. As before, a joint training committee composed of judges from each of the Courts of Criminal Appeals, and chaired by Chief Judge Baum of this Court, oversaw the preparations for the seminar, which was hosted this year by the Army Court and presented again by Chief Judge Nebeker. This highly beneficial seminar is now an annual event for new and experienced judges alike. In addition to chairing the training committee, Chief Judge Baum participated in the program as a member of one of the seminar's discussion panels.

This past year, Chief Judge Baum also continued his participation in formulating proposed rule changes for the U.S. Court of Appeals for the Armed Forces as a member of that court's rules advisory com-



mittee. He also participated this past year with representatives of the other Courts of Criminal Appeals in proposing a set of changes to the joint rules of practice and procedure for the Courts of Criminal Appeals. Chief Judge Baum continues to play an active role in the Federal Bar Association and in September 1995, became the Chair of that association's Judiciary Division.

## **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.

**D. J. KANTOR**

*Captain, USCG*

*Acting Chief Counsel. U.S. Coast Guard*

Appendix A: U. S. Coast Guard Courts-Martial/NJP Statistics for October 1, 1994 to September 30, 1995 (Fiscal Year 1995)

# APPENDIX A

Period: 1 October 1994 - 30 September 1995

## PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	11	11	0	+8%
BCD SPECIAL	8	7		-35%
NON-BCD SPECIAL	0	0	0	UNCHANGED
SUMMARY	14	14	0	-1%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-30%

## PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES		2
NUMBER OF BAD CONDUCT DISCHARGES		3
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	8
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	4
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	2

## PART 4 - WORKLOAD OF THE COAST GUARD COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD		17
GENERAL COURTS-MARTIAL	8	
BCD SPECIAL COURTS-MARTIAL	9	
REFERRED FOR REVIEW		12
GENERAL COURTS-MARTIAL	8	
BCD SPECIAL COURTS-MARTIAL	4	
TOTAL CASES REVIEWED		20
GENERAL COURTS-MARTIAL	9	
BCD SPECIAL COURTS-MARTIAL	11	
TOTAL PENDING AT CLOSE OF PERIOD		9
GENERAL COURTS-MARTIAL	8	
BCD SPECIAL COURTS-MARTIAL	1	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+18%

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

NUMBER	12
PERCENTAGE	100%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	16/20	80%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+55%
PERCENTAGE OF TOTAL PETITIONS GRANTED	4/16	25%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+16%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	4/20	20%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+55%

# APPENDIX A (CONT'D)

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		One*
RECEIVED		None
DISPOSED OF		Two**
GRANTED	None	
DENIED	Two**	
NO JURISDICTION	None	
WITHDRAWN	None	
TOTAL PENDING AT END OF PERIOD		None
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL		9
SPECIAL COURTS-MARTIAL		5
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		2
SPECIAL COURTS-MARTIAL		3
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	5	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	36,731	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	879	
RATE PER 1,000	24.42	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-1%	

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\*Referred to CGCCA under Article 69(d).

\*\*Of the two cases disposed of, one was by the Chief Counsel and the other by the CGCCA.