



ANNUAL REPORT  
of the  
CODE COMMITTEE  
on  
MILITARY JUSTICE



107158

DING SEPARATE REPORTS  
of the  
JRT OF MILITARY APPEALS,  
DGE ADVOCATES GENERAL  
HE U.S. ARMED FORCES,  
) THE CHIEF COUNSEL  
HE U.S. COAST GUARD

For the Period  
1, 1985 to September 30, 1986

107158

**U.S. Department of Justice  
National Institute of Justice**

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this ~~copyrighted~~ material has been granted by

Public Domain / United States

Courts of Military Appeals

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the ~~copyright~~-owner.

107158

**ANNUAL REPORT**  
**SUBMITTED TO THE**  
**COMMITTEES ON ARMED**  
**SERVICES**

of the  
U.S. Senate and House of Representatives  
and to the  
SECRETARY OF DEFENSE,  
SECRETARY OF TRANSPORTATION,  
and  
SECRETARIES OF THE  
ARMY, NAVY, AND AIR FORCE

**NCJRS**

OCT 1 1987

**ACQUISITIONS**

**PURSUANT TO THE**  
**UNIFORM CODE OF MILITARY JUSTICE**  
For the Period  
October 1, 1985-September 30, 1986

# CONTENTS

JOINT ANNUAL REPORT OF THE CODE COMMITTEE PURSUANT TO THE UNIFORM CODE OF MILITARY JUSTICE	1
REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS	5
REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY	25
REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY	39
REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE	53
REPORT OF THE CHIEF COUNSEL OF THE COAST GUARD	63

**JOINT ANNUAL REPORT**  
**of the**  
**CODE COMMITTEE**  
**PURSUANT TO THE**  
**UNIFORM CODE OF MILITARY JUSTICE**  
**October 1, 1985 to September 30, 1986**

The Judges of United States Court of Military Appeals; 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; Mary Ellen Hanley, Esquire, and Professor A. Kenneth Pye submit their annual report on the operation of the Uniform Code of Military Justice, pursuant to Article 67(g), Uniform Code of Military Justice, 10 U.S.C. §867(g).

During fiscal year 1986, the Code Committee met on three separate occasions to review the administration of military justice. As in the previous fiscal year and consistent with the expression of intent by Congress, all of the meetings were open to the public after being duly noted in the Federal Register. Indeed, various civilian and military attorneys addressed the Code Committee on several occasions concerning numerous issues involving the administration of military justice. As in fiscal year 1985, the members of the Code Committee were pleased with the participation of members of the public in its meetings and found their comments extremely valuable in considering various issues relating to the administration of military justice in the various Armed Services.

The first meeting of the Code Committee during fiscal year 1986 was held on December 18, 1985. During this meeting Chief Judge Everett observed that there had been a limited number of cases which had to be held pending the arrival of the third judge in view of the retirement of Judge Fletcher in September 1985. Additionally, Judge Cox observed that his visits to the United States Army Correctional Facility at Fort Riley, Kansas, and the United States Disciplinary Barracks at Fort Leavenworth, Kansas, were very informative. He further observed that his experience as a civilian trial judge and his visits to civilian confinement facilities reflected that the military facilities were superior in security, cleanliness, space, and rehabilitation programs. Various members of the Code Committee also made

inquiry into the incarceration of United States military personnel in foreign prisons, the average time to process a case by the United States Court of Military Appeals, and the victimizing of United States service members in various terrorist activities. Additionally, the members of the Code Committee examined numerous proposed changes to the Rules for Courts-Martial and the Military Rules of Evidence, as well as a proposed change to the Uniform Code of Military Justice concerning the expansion of court-martial jurisdiction to cover reservists. Finally, Chief Judge Everett observed that various proposed changes to the Rules of Practice and Procedure of the United States Court of Military Appeals were being held pending the arrival of a third judge.

During the second meeting of the Code Committee conducted on April 1, 1986, numerous proposed changes to the Uniform Code of Military Justice were examined and discussed. Specifically, consideration and discussion occurred with respect to proposed amendments to Articles 2 and 3 concerning jurisdiction over reservists; proposed changes to Article 25 to permit oral requests for enlisted members; to Article 43 to change the statute of limitations to five years except for capital offenses and unauthorized absences during periods of war, which would not have any limitation; to Article 60 to simplify the time-limits for post-trial processing of cases; to Article 41 to provide additional challenges to court members; and to Article 50(a) to require an accused to prove lack of mental responsibility by a preponderance of the evidence. The question of whether the status of the United States Court of Military Appeals should be changed to a court constituted under Article III, United States Constitution, was another matter for consideration during this meeting. Issues concerning the appropriateness of changing the rules relating to multiplicity of offenses arising out of the same transaction were thoroughly discussed. The question of whether copies of the minutes of the Code Committee meetings should routinely be distributed to the Chairmen of the Senate and House Armed Services Committees and the General Counsel of the Department of Defense and Department of Transportation was also discussed during this meeting. Additionally, the status and function of the Joint-Service Committee on Military Justice were analyzed.

The final meeting of the Code Committee was conducted on June 9, 1986, wherein the status and function of the Joint-Service Committee were discussed again. Additionally, members of the Code Committee agreed that an executive summary of the minutes, rather than the entire minutes of the meetings of the Code Committee, should be provided to the Chairmen of the Senate and House Armed Services Committees and the General Counsel of the Department of Defense and Department of Transportation. Finally, there was discussion as to whether the Court of Military Appeals should be changed to an

Article III court and whether this matter might profitably be studied by a committee composed of distinguished members of the legal profession and faculty members of several law schools.

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

ROBINSON O. EVERETT

*Chief Judge*

WALTER T. COX, III

*Associate Judge*

EUGENE R. SULLIVAN

*Associate Judge*

Major General HUGH R. OVERHOLT

*The Judge Advocate General, U.S. Army*

Rear Admiral HUGH D. CAMPBELL

*The Judge Advocate General, U.S. Navy*

Major General ROBERT W. NORRIS

*The Judge Advocate General, U.S. Air Force*

Rear Admiral JOSEPH E. VORBACH

*Chief Counsel, U.S. Coast Guard*

Brigadier General DAVID M. BRAHMS

*Director, Judge Advocate Division,*

*Headquarters, U.S. Marine Corps*

MARY ELLEN HANLEY, *Esquire*

Professor A. KENNETH PYE

**REPORT OF THE  
UNITED STATES COURT OF MILITARY APPEALS  
October 1, 1985 to September 30, 1986**

The Judges of the United States Court of Military Appeals submit their fiscal year 1986 report on the administration of the Court and military justice to the Committees on Armed Services of the United States Senate and House of Representatives and to the Secretaries of Defense, Transportation, Army, Navy, and Air Force in accordance with Article 67(g), Uniform Code of Military Justice, 10 U.S.C. §867(g).

**THE BUSINESS OF THE COURT**

During the fiscal year 1986 term of the Court, 2767 petitions for grant of review, certificates for review, cross-petitions, granted reconsideration petitions, petitions for new trial, petitions for extraordinary relief and writ appeal petitions were filed with the Court. This represents only a slight increase from the number of such cases filed with the Court during the fiscal year 1985 term. Additionally, the number of filings reflects a termination of the downward trend of filings experienced in fiscal year 1985 and the reinstatement of the upward trend which had been experienced in fiscal years prior to 1985.

The Court reviewed and acted on 2582 petitions for grant of review during fiscal year 1986, granting the petitions in 267 of these cases, or slightly more than 10% of the cases considered. On the master docket of mandatory appeals, certificates for review, and granted petitions, the Court took final action in 267 cases.<sup>1</sup> Approximately 31% of the Court's actions on these master docket cases resulted in a reversal, in whole or in part, of the decisions of the Courts of Military Review. Although the Court operated with only two sitting judges during most of the fiscal year term, approximately 50% more signed opinions were issued than during fiscal year 1985.

---

<sup>1</sup>Although not a part of the business of the Court, it is noted that, during Fiscal Year 1986, the Court was notified that petitions for writ of certiorari were filed with the Supreme Court of the United States in 33 master docket cases in which the Court took final action.

Additionally, the Court acted on 33 petitions for extraordinary relief and writ appeal petitions during fiscal year 1986, as well as taking action on 853 motions.

In conclusion, the number of filings with the Court during 1986 reflects that the temporary downward trend experienced during fiscal year 1985 has not continued. Rather, the slight increase during 1986 reflects that the downward trend was only a one-year occurrence and is unlikely to continue in the future.

In addition to its case review workload, the Court admitted 504 attorneys to practice before its Bar during the fiscal year 1986 term, bringing the cumulative total of admissions before the Bar of the Court to 25,784.

### **JUDGE EUGENE R. SULLIVAN TAKES OATH OF OFFICE**

On May 27, 1986, Judge Eugene R. Sullivan took the Oath of Office as a Judge of the United States Court of Military Appeals. His investiture ended an almost 2-year period during which the Court operated with only two judges.

Judge Sullivan served on active duty with the United States Army from 1964 to 1969. His active service included duty in Vietnam for which he was awarded the Bronze Star, Air Medal, Army Commendation Medal, Ranger and Parachutist Badges. His civilian experience included a clerkship with the United States Court of Appeals (8th Circuit); private practice of law with a law firm in Washington, D. C.; and public service in the Office of Special Counsel to the President of the United States, in the United States Department of Justice, and as Deputy General Counsel of the Department of the Air Force. Immediately prior to joining the Court, Judge Sullivan served as the General Counsel of the Department of the Air Force.

### **JUDICIAL VISITATIONS**

Consistent with the past practice of the Court, during fiscal year 1986 the Judges of the Court visited numerous military installations and delivered speeches to numerous professional organizations. Previous experience has demonstrated that such visits promote a better understanding of the Court's work and its effect on the overall administration of justice within the Armed Services.

In fulfillment of this responsibility, Chief Judge Robinson O. Everett addressed and visited with the members of the Appellate Government and Appellate Defense Divisions of the Navy-Marine Corps Appellate Review Activity in Washington, D.C.; attended the Army Judge Advocates Conference, Charlottesville, Virginia; spoke

to members of the Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, and to an assembly at Wake Forest University, Winston-Salem, North Carolina; visited the Naval Training Center, San Diego, California, and the Staff Judge Advocate Office at Fort Devens, Massachusetts; and spoke to the Federal Bar Association Chapter in Atlanta, Georgia, to the Tactical Air Command SJA Conference, Langley Air Force Base, Virginia, to the Military Law Committee of the General Practice Section of the American Bar Association at its Mid-Year meeting in Baltimore, Maryland, and to the 1986 National Guard JAG Conference, Arlington, Virginia. He also spoke to the Deep Southeast On-Site JAG Conference, St. Augustine, Florida; to the 1986 Southern Regional Naval Reserve JAG Conference, Atlanta, Georgia; and participated in Law Day programs by speaking at a banquet of military and civilian lawyers and judges at McGuire Air Force Base, New Jersey, and at a dinner of military lawyers and the members of the Riverside Bar Association at March Air Force Base, California; to military lawyers from all Armed Services at Wheeler Air Force Base, Hawaii; and to members of the 363d Tactical Fighter Wing, Shaw Air Force Base, South Carolina. In addition, he addressed the Military Airlift Command Conference, Scott Air Force Base, Illinois; the 29th Military Judges Course, Charlottesville, Virginia; the Annual American Bar Association Meeting and Judge Advocates Association Meeting, New York, New York; the Army's Fifth Circuit Judicial Conference, Garmisch, Germany; and the Sixth Circuit Air Force Area Defense Counsel Conference, Garmisch, Germany. He participated in the 56th Annual Judicial Conference of the Fourth Circuit U.S. Court of Appeals in White Sulphur Springs, West Virginia, and was a panelist in a Seminar entitled "The U.S. Courts and National Security", sponsored by the Center for Law and National Security, University of Virginia, Charlottesville, Virginia.

Judge Walter T. Cox, III, participated in the Army's Worldwide JAG Conference in Charlottesville, Virginia, hosted by the Judge Advocate General of the Army; visited the Naval Justice School, Newport, Rhode Island and the Navy-Marine Corps Appellate Review Activity, Washington, D.C.; attended the U.S. Marine Corps 210th Anniversary - Commemorative Ceremony at the U.S. Marine Corps Memorial, Arlington, Virginia; visited and toured military confinement facilities at Fort Riley and Fort Leavenworth, Kansas; and participated in the All Services Appellate Military Judges Conference, Washington, D.C.; the U.S. Pacific Commanders' Legal Conference in Korea; and the Seventh Annual On-Site JAG Training School and CLE Seminar in Columbia, South Carolina. He also visited with senior staff officials at the U.S. Air Force Academy, Lowry Air Force Base, and the U.S. Space Command in Colorado; attended the annual reception of the Phi Alpha Delta Law Fraternity honoring the

Judiciary and the Congress in Washington, D.C.; addressed the 1986 Interservice Military Judges' Seminar at the Air Force Judge Advocate General's School, Maxwell Air Force Base, Alabama; met with officials and staff of the Army Judge Advocate General's School, Charlottesville, Virginia; and addressed the Military Affairs and Justice Committee of the New York Bar Association in New York City, the Attorney General/Military Lawyers Conference at the Naval Base, Charleston, South Carolina, and the FORCOM Conference, Fort McPherson Army Base, Atlanta, Georgia. In addition, he participated in the Annual Homer Ferguson Conference, George Washington University, Washington, D.C., and attended the National Security Seminar held at the U.S. Army War College, Carlisle, Pennsylvania.

Judge Eugene R. Sullivan attended the Senior Appellate Judges Course at the Institute of Judicial Administration, New York University. In addition, he attended the Army and Air Force Military Judges' Conference and the Air Force Area Defense Counsel's Conference in Germany. Judge Sullivan also visited Scott Air Force Base and the U.S. Court of Appeals (8th Circuit).

### HOMER FERGUSON CONFERENCE

The Eleventh Annual Homer Ferguson Conference was held at the George Washington University Marvin Center on May 28-29, 1986. As in previous years, this conference was jointly sponsored by the Court and the Military Law Institute. This year's conference was certified for credit to meet the continuing legal education requirements of various State Bars and was designed to help both military and civilian practitioners maintain those professional skills necessary to practice before trial and appellate courts.

The speakers for this year's conference included Rear Admiral Edwin H. Daniels, Chief Counsel, United States Coast Guard; Rear Admiral Thomas E. Flynn, The Judge Advocate General, United States Navy; Professor William Van Alstyne, constitutional law scholar and author of "Interpretation of the First Amendment" (1984), Duke University Law School; Dean John Jenkins, Associate Dean of External Affairs, The National Law Center, George Washington University; Brigadier General Emory Sneed, USA (Ret.), former Judge, U.S. Court of Appeals (Fourth Circuit); Mr. Andrew Frey, Deputy Solicitor General of the United States; The Honorable William W. Wilkins, Jr., Chairperson, U.S. Federal Sentencing Commission; Dean Michael F. Noone, Assistant Dean, Columbus School of Law, Catholic University; Professor Stephen A. Saltzburg, University of Virginia Law School; Lieutenant Colonel Lee Schinasi, JAGC, U.S. Army; Professor David Schlueter, St. Mary's Law School; Professor Norman Lefstein, Chairman-elect,

ABA Criminal Justice Section, and former Public Defender, District of Columbia; Mr. John DePue, Appellate Attorney, Criminal Division, Department of Justice; Ms. Victoria Toensing, Deputy Assistant Attorney General, Department of Justice; Dr. Robert Friedlander, Assistant Counsel, Subcommittee on the Constitution, U.S. Senate Judiciary Committee, and Professor of International and Criminal Law, Ohio Northern University Law School; Mr. Steve Bell, ABC News Anchorman; Colonel Robert Bartelt, USA (Ret.); Major Terry R. Kane, U.S. Marine Corps; The Honorable Eugene R. Sullivan, Associate Judge, U.S. Court of Military Appeals; Mr. Albert H. Dyson, III, Office of General Counsel, Department of Defense; Commander M.E. Bowman, JAGC, U.S. Navy; Mr. W. Hays Parks, International Affairs Division, Office of the Judge Advocate General of the Army; Lieutenant Colonel Philip A. Meek, U.S. Air Force; and Abe M. Macher, M.D., U.S. Public Health Service.

Additionally, the invocation was offered by Brigadier General John P. McDonough, Deputy Chief of Chaplains, United States Air Force. The conferees were welcomed by The Honorable Robinson O. Everett, Chief Judge, and The Honorable Walter T. Cox, III, Associate Judge, United States Court of Military Appeals, on behalf of the Court and by Colonel Walter L. Lewis, USAF (Ret.), on behalf of the Military Law Institute.

The conferees included numerous military and civilian lawyers as well as Judges of the Courts of Military Review, legal scholars, and commentators in the field of military justice. As in prior years, the conference was videotaped to provide a medium of education for those interested in the administration of military justice. In addition, portions of this year's conference were later telecast on C-Span.

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

### Jurisdiction

During the fiscal year 1986 term the Court in *United States v. Solorio*, 21 M.J. 251 (C.M.A. 1986), cert. granted, 54 U.S.L.W. 3819 (U.S. June 16, 1986)(No. 85-1581), reviewed, under the provisions of Article 62, Uniform Code of Military Justice, 10 U.S.C. §862, a ruling of the United States Coast Guard Court of Military Review upholding military jurisdiction upon an appeal by the government. In this case the trial judge had concluded that there was no subject matter juris-

---

<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.

diction to court-martial a member of the Coast Guard for child sex-abuse offenses which did not take place on a military reservation. The Court of Military Review reversed the trial judge and held that military jurisdiction had been demonstrated under the facts and circumstances of this case. After observing that the military judge's findings of fact could not be disturbed by the Court of Military Review where the case was reviewed under Article 62 of the Uniform Code, the Court ruled that the facts and circumstances did support the intermediate appellate court's conclusion that military jurisdiction was properly exercised. The Court noted in its opinion that the victims involved were dependents of other Coast Guard members; the offenses in question had some impact on the children's parents who were also Coast Guard members assigned to the same district office to which the accused was assigned; and the prosecution by civilian authorities in view of the accused's transfer to another location was not feasible. The Court also ruled that the pendency of other similar offenses was relevant in determining the exercise of court-martial jurisdiction where the other offenses occurred on a military reservation.

Similarly, in *United States v. Scott*, 21 M.J. 345 (C.M.A. 1986), the Court held that court-martial jurisdiction was appropriately exercised where child sex-abuse offenses were committed off base. The Court held that the offenses constituted the same type of conduct as that which the accused had committed on base and involved female victims who were daughters of retired military members. Additionally, the Court noted that the offenses were committed while the accused was only briefly away from his place of duty. The Court also emphasized in *Scott* that the circumstances reflected that the offenses would adversely affect the reputation and morale of the military service and that the accused was an officer, a fact which enhanced the prejudicial impact on the military community.

However, in *United States v. Barideaux*, 22 M.J. 60 (C.M.A. 1986), the Court held that military jurisdiction was inappropriately exercised to convict the accused of distributing marijuana where such distribution involved a female agent of the Army's Criminal Investigation Division whom the accused had no reason to believe was a soldier; such distribution occurred in a civilian community while the accused was on terminal leave from the service; and the accused received assistance by the intercession of a civilian.

### Public Trial

Citing *United States v. Grunden*, 2 M.J. 116 (C.M.A. 1977), and *United States v. Brown*, 7 U.S.C.M.A. 251, 22 C.M.R. 41 (1956), the Court held in *United States v. Hershey*, 20 M.J. 433 (C.M.A. 1985), that the Sixth Amendment right to a public trial was clearly applicable to courts-martial. The Court further observed that the standards for closing a court-martial from the public are the same as those set

out in *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984). Thus, the Court held that the circumstances and facts of each case must be examined to determine whether closure is appropriate and that a criminal trial should not be closed unless the party seeking closure advances an overriding interest which is likely to be prejudiced. Examining the case at hand, the Court concluded that the trial judge inappropriately closed the trial upon the mere assertion by trial counsel that a 13-year-old victim-witness would be a little bit uncomfortable testifying during the trial. However, the Court further noted that only a portion of the trial was closed, that there was no evidence that members of the public were actually barred during the closed portion, and that the accused did not indicate he expected anyone to attend the proceedings. Accordingly, the Court held there was no constitutional violation under the circumstances, even though the trial judge did not follow appropriate procedures for the closure in question.

### Right to Counsel

The question of when a military accused is entitled to representation by counsel was addressed by the Court in *United States v. Wattenbarger*, 21 M.J. 41 (C.M.A. 1985). The Court held therein that, under the facts of this case, a three-month period between preferral of charges and appointment of counsel during which the accused was psychiatrically evaluated and found to be mentally incompetent was a "critical stage" of the proceedings which required the assistance of counsel. However, the Court refused to apply a *per se* reversible error rule but, rather, assessed the error and concluded that it was harmless beyond a reasonable doubt as trial counsel made no attempt to exploit a lack of representation; the defense suffered no disadvantage in the preparation of the case; and the accused suffered no prejudice in raising a defense of insanity during the trial.

Addressing a claim by an accused of inadequacy of representation by his trial defense counsel, the Court in *United States v. Dicupe*, 21 M.J. 440, 442 (C.M.A. 1986), quoting from *United States v. DeCoster*, 624 F.2d 196, 208 (*en banc*) (D.C. Cir. 1979) (plurality opinion), adopted the standard that "the claimed inadequacy must be a serious incompetency that falls measurably below the performance ordinarily expected of fallible lawyers." Upon examining the case under consideration, the Court held that the defense counsel was well prepared and that he presented evidence and cogent arguments in favor of his client throughout the court-martial proceedings.

As a result of recent legislation amending the provisions of Section 1259, Title 28, United States Code, and Article 67(h), Uniform Code of Military Justice, 10 U.S.C. §867(h), allowing review of certain decisions of the Court by the Supreme Court of the United States, a historic event occurred in fiscal year 1986. The Supreme Court,

pursuant to its certiorari jurisdiction to review decisions of the United States Court of Military Appeals, granted certiorari and remanded a case to the Court for reconsideration. Thus, in *United States v. Goodson*, 22 M.J. 22 (C.M.A. 1986), the Court on remand reversed its earlier decision in *United States v. Goodson*, 18 M.J. 243 (C.M.A. 1984), in view of the intervening decision of the Supreme Court in *Smith v. Illinois*, 469 U.S. 91 (1984). Examining the facts and circumstances in light of *Smith v. Illinois, supra*, the Court held that a pretrial statement executed by the accused should have been suppressed where the accused's requests for counsel prior to such statement were ignored. The Court noted that its earlier opinion, which upheld the admissibility of the statements, "gave excessive weight to subsequent events and too little weight to the close relationship between the events that occurred before Goodson requested counsel and the interview which took place later that day." *United States v. Goodson, supra* at 23.

An issue concerning the severance of an attorney-client relationship was addressed by the Court in *United States v. Gnibus*, 21 M.J. 1(C.M.A. 1985). Therein the Court held that as the accused's lengthy unauthorized absence effected a termination of an earlier established attorney-client relationship, the accused was not entitled to complain that another lawyer was assigned to represent him before another court-martial which tried some of the charges which had given rise to the original attorney-client relationship.

### Speedy Trial

As in preceding fiscal years, the Court was required to adjudicate a number of speedy trial issues. Applying the factors set forth in *Barker v. Wingo*, 407 U.S. 514 (1972), the Court held in *United States v. Grom*, 21 M.J. 53 (C.M.A. 1985), that the accused had not been denied a speedy trial where he was held for approximately five months beyond his term of enlistment. The Court observed that the accused's case was delayed because the Government desired to try another person for the purpose of obtaining his testimony against the accused. Although this endeavor was unsuccessful, the Court ruled that the Government's reason was legitimate and that any prejudice to the accused was minimal.

Addressing the issue of the effective date for Rule of Courts-Martial (R.C.M.) 707, Manual for Courts-Martial, United States, 1984, in a case that was reviewed by the Court as a result of an appeal by the United States under the provisions of Article 62, UCMJ, 10 U.S.C. §862, the Court held in *United States v. Leonard*, 21 M.J. 67 (C.M.A. 1985), that the speedy trial provisions of R.C.M. 707 should be applied to only those cases where the preferral of charges or the imposition of restraint occurred on or after August 1, 1984. In another case involving the proper standards for review of appeals filed by the United

States under Article 62, UCMJ, the Court sustained a trial judge's dismissal of charges in *United States v. Burris*, 21 M.J. 140 (C.M.A. 1985), by holding that the accused was denied a speedy trial. In that case the Court reversed the United States Army Court of Military Review which, on appeal by the United States from the trial judge's ruling, had disagreed with the dismissal action on the basis that there was some evidence to support the ruling of the trial judge and that a review by the Court of Military Review under the provisions of Article 62, UCMJ, was limited to matters of law.

### Military Rules of Evidence

The interpretation and application of the Military Rules of Evidence (Mil.R.Evid.) again occupied a significant portion of the Court's calendar during fiscal year 1986. In *United States v. Cameron*, 21 M.J. 59 (C.M.A. 1985), the Court cited Mil.R.Evid. 608 as a basis for holding that the trial judge committed reversible error by allowing a social worker to testify in effect that she believed a witness. Pursuant to Mil.R.Evid. 401, the Court held in *United States v. Owens*, 21 M.J. 117 (C.M.A. 1985), that it was appropriate for trial counsel to ask an accused on cross-examination questions which asserted or assumed as fact that the accused had been previously convicted of possession of marijuana and an unlicensed firearm and had been arrested for assault and battery. The Court ruled that these were significant factors omitted from the accused's application to become a warrant officer and therefore tended to impeach him by demonstrating a prior act of intentional falsehood. Additionally, the Court found that the military judge properly balanced the probative worth of the questions against the potential for unfair prejudice to the accused under the provisions of Mil.R.Evid. 403. However, the Court held that the cross-examination testimony identifying the victim of the uncharged assault and battery as the accused's second wife should not have been admitted in a court-martial for the murder of the accused's third wife, but that, because of the strong and conclusive proof of guilt, the accused had not been prejudiced. In *United States v. Maxwell*, 21 M.J. 229 (C.M.A. 1986), the Court held that where the trial counsel asked an accused whether he considered himself a peaceful person, the accused's response did not constitute a defense offer of evidence of the accused's character and, therefore, the trial counsel should not have been allowed to present evidence of other incidents of the accused's violent behavior under the provisions of Mil.R.Evid. 404.

Examining an issue concerning the definition of an expert witness, the Court held in *United States v. Mustafa*, 22 M.J. 165 (C.M.A. 1986), that a witness did not have to be an outstanding practitioner in the discipline involved but only someone whose experience and training could help the court members. Therefore, the Court held in

*Mustafa* that a special agent was properly allowed to testify as an expert witness under Mil.R.Evid. 702 as to the flight pattern of blood where he had attended a seminar on the subject, had passed an examination and was exposed to practical experience. The Court further observed that the witness was not required to be a doctor or a chemist.

In *United States v. Deland*, 22 M.J. 70 (C.M.A. 1986), the Court held that statements made by a child to a treating psychiatrist were properly admitted under Mil.R.Evid 803(4). The Court ruled that the trial court appropriately determined that the child believed she was being treated by the physician for the purpose of making her feel better and, therefore, had an incentive to tell the truth; the physician elicited the statements for diagnostic and treatment purposes; and the identity of the person who perpetrated the sexual offenses on her was relevant in the medical treatment. Although finding the statement admissible under the facts presented in this case, the Court emphasized that the statements presented were clearly oriented toward treatment and that if such statements were oriented toward trial testimony, such statements would not be admissible.

#### Availability of Witnesses

The question of access to witnesses and the witnesses' unavailability for the purpose of accepting pretrial statements during trial in lieu of their in-court testimony was addressed by the Court in several cases during the fiscal year 1986 term. In *United States v. Hinton*, 21 M.J. 267 (C.M.A. 1986), a potential alibi witness had been subpoenaed at the request of the defense. However, when this witness failed to appear at trial, the military judge informed defense counsel that there was nothing he could do about granting a continuance to obtain the appearance of the witness in question. After noting that the refusal to comply with a subpoena to appear before a court-martial was itself an offense which may be prosecuted in United States District Court, the Court held that the Government was not powerless to produce a civilian witness who refused to appear and concluded that the accused's conviction required reversal because the Government had not used its power and authority to obtain the witness in question.

Addressing the question of what, if any, inferences may be drawn from the absence of a witness, the Court in *United States v. Swoape*, 21 M.J. 414 (C.M.A. 1986), held that the trial counsel improperly argued in a manner which implied recent fabrication by the accused because a potential defense witness had not been produced. The Court ruled that the accused had testified that he had been given permission to use an automobile by a named individual and this individual was not called as a witness at trial. However, the defense attempted unsuccessfully to introduce evidence to reflect that the witness had been recently located and the failure to locate him on an earlier date

was attributable to inaccurate military records. Additionally, the Court held that the trial judge committed plain error by failing to instruct the court members that no adverse inference should be drawn from the missing witness as there was no evidence to reflect that such witness was particularly available to the defense.

The question of when a witness is unavailable for the purpose of permitting the playing of a videotaped deposition in court was addressed by the Court in *United States v. Crockett*, 21 M.J. 423 (C.M.A. 1986). There the Court noted that the witness' deposition had been videotaped prior to trial but ruled that, because the witness was residing in Florida and refused to appear in the court-martial conducted in Germany, there was no legal way to compel her appearance in the court-martial, citing *United States v. Bennett*, 12 M.J. 463 (C.M.A. 1982). Thus, the Court held that the witness was unavailable for the purpose of accepting former testimony as required by Article 49(d), UCMJ, 10 U.S.C. §849(d), and Mil.R.Evid 804. Additionally, the Court held that the witness was unavailable for the purpose of the confrontation clause of the Sixth Amendment, noting that the Government had made a good-faith effort to produce the witness and that the confrontation clause did not require the relocation of the situs of trial from a foreign country to the state of Florida in view of the military exigencies involved in relocating a court-martial.

A contrary result was reached by the Court in *United States v. Cordeiro*, 22 M.J. 216 (C.M.A. 1986), because the Government, although demonstrating the unavailability of the witness, failed to establish the reliability of the statement which was used in the absence of the witness. There the Court observed that the witness had returned to her home in the Federal Republic of Germany and circumstances indicated that she would not return to the United States for the purpose of testifying during a court-martial. However, the Court concluded that the statement was improperly admitted because it was not executed under circumstances indicating a sufficient degree of reliability. Rather, the Court held that the statement was given to police agents under circumstances which indicated the witness may have had a motive to falsify the statement in question. However, under the circumstances the Court held that the erroneous admission of the pretrial statement was harmless beyond a reasonable doubt. In *United States v. Cokeley*, 22 M.J. 225 (C.M.A. 1986), the Court held that the Government had failed to demonstrate that a witness was unavailable and that, accordingly, the acceptance into evidence of a videotaped deposition which was properly taken was reversible error. The Court noted in this case that the military judge must weigh all the facts and circumstances to determine if the witness is unavailable and that, here, circumstances indicated that while the witness may have been unavailable on the date of trial, additional evidence should

have been presented to determine whether the witness whose unavailability was attributable to medical reasons would sufficiently recover in a reasonable period of time to permit her attendance at the court-martial. As this determination had not been made, the Court held that the deposition was improperly used against the accused.

### Search and Seizure

The question concerning an accused's legitimate expectation of privacy was addressed by the Court in *United States v. Portt*, 21 M.J. 333 (C.M.A. 1986), wherein the Court held that a military accused had no legitimate expectation of privacy in an unlocked locker which was located in a common area where all the other lockers were routinely locked. As there was no reasonable expectation of privacy, the Court further held that there was no requirement to obtain a search authorization prior to opening the locker in question. Therefore, the Court ruled that there was no error committed by the acceptance of evidence found when such locker was entered by police agents. A similar result was reached in *United States v. Wisniewski*, 21 M.J. 370 (C.M.A. 1986), where a sergeant standing in a public walkway observed what he believed to be a drug transaction in a barracks room. Upon examining the facts and circumstances, the Court concluded that the accused in question had no reasonable expectation of privacy in the room of a friend, that the sergeant was in a common area when the activity was observed, and that, after observing such activity, the sergeant acted reasonably in gaining access to the room and obtaining the drugs which were secreted in a locker when he knocked on the door.

### Pretrial Admission

In *United States v. Wheeler*, 22 M.J. 76 (C.M.A. 1986), the Court addressed an issue of whether an accused's pretrial statement was admissible because the agents who interviewed him made some reference to religious beliefs. In upholding the admissibility of the statement, the Court ruled that, under the circumstances of this case, there was no coercive impact on the accused since he himself initially brought up the subject, the interview was of a short duration, the appeal to the accused's religious beliefs was general in nature and amounted to no more than an appeal to his conscience, and the accused voluntarily waived his rights before the subject of religion was mentioned.

### Sufficiency of the Evidence

An accused's criminal culpability for aiding in a suicide was addressed by the Court in *United States v. Varraso*, 21 M.J. 129 (C.M.A. 1985). The evidence therein reflected that the accused's act of positioning a rope and noose around the victim's neck was a proximate

cause of the victim's death. Therefore, the Court ruled that the military judge did not err by rejecting an instruction on intervening cause, even if the victim intended to commit suicide. Additionally, the Court held that the court members could reasonably infer from the evidence that the accused intended to kill the victim or cause serious injury even if the accused's motive for the unpremeditated murder was not clear. Therefore, the accused's conviction of unpremeditated murder was affirmed.

Concerning the sufficiency of the evidence to prove premeditation of a murder, the Court held in *United States v. Redmond*, 21 M.J. 319 (C.M.A. 1986), that there was sufficient evidence to prove premeditation where such evidence reflected that the accused appeared sane to a psychiatrist a few hours before the homicide; the accused disposed of evidence immediately after the murder; there was no evidence of bizarre or unusual conduct by the accused; and the accused had a record as an outstanding soldier.

In *United States v. Harper*, 22 M.J. 157 (C.M.A. 1986), the Court held that laboratory results of urinalysis coupled with expert testimony explaining such results constituted sufficient evidence to find beyond a reasonable doubt that the accused used marijuana. However, the Court reserved for a future case the question of whether the results of laboratory testing would be sufficient standing alone to sustain a conviction.

In *United States v. Jefferson*, 22 M.J. 315 (C.M.A. 1986), the Court analyzed the history of the felony-murder rule and the legislative history of Article 118, UCMJ, 10 U.S.C. §918. After examining such history, the Court held that Congress intended to establish a rule of law that engaging in one of the applicable felonies must be conclusively presumed to be a cause of any death that occurs while such felony is being perpetrated or attempted. Thus, the Court held that the evidence was sufficient to establish the accused's conviction of felony-murder because it was adequate to show that the accused was participating in a robbery when the named victim was killed by a co-felon.

### Fraternization

Distinguishing a contrary earlier holding in *United States v. Johanns*, 20 M.J. 155 (C.M.A. 1985), the Court upheld a conviction for wrongfully fraternizing with enlisted women in *United States v. Mayfield*, 21 M.J. 418 (C.M.A. 1986). The Court noted that, unlike Johanns, the accused in *Mayfield* had been specifically informed that the alleged conduct was prohibited and that his involvement with enlisted trainees was inappropriate for an officer. A similar result was reached in *United States v. Adames*, 21 M.J. 465 (C.M.A. 1986), wherein the Court upheld an officer's conviction for wrongfully fraternizing with female soldiers where he became involved with

subordinate female members of the same company and such members were trainees.

### Appellate Procedure

In *United States v. Muller*, 21 M.J. 205 (C.M.A. 1986), the Court upheld a refusal by the United States Navy-Marine Corps Court of Military Review to consider post-trial assertions from an accused that his pretrial agreement contained provisions which were not discussed or disclosed at trial. The Court noted that, under appropriate military procedure, the terms of the agreement were required to be established at trial and that counsel had an obligation to disclose any agreements which may not be readily apparent to the trial judge. Thus, the Court held that the Court of Military Review appropriately rejected any attempt to contradict the providence inquiry after trial.

Concerning the adequacy of a specification to allege an offense, the Court held in *United States v. Watkins*, 21 M.J. 208 (C.M.A. 1986), that the adequacy of a specification alleging an offense would be liberally construed in favor of its validity where it was challenged for the first time on appeal. The Court further held that where such specification failed to allege "without authority" for an offense of unauthorized absence under Article 86, UCMJ, 10 U.S.C. §886, was challenged for the first time on appeal, and where, as here, the accused pleads guilty and has a pretrial agreement, such specification will not be declared fatally defective. This ruling in effect overruled a contrary decision in *United States v. Fout*, 3 U.S.C.M.A. 565, 13 C.M.R. 121 (1953).

The Court established a procedural rule in *United States v. Sumpter*, 22 M.J. 33 (C.M.A. 1986), which requires an appellant or his counsel both to demonstrate good cause and to raise some appellate issue as prerequisites for the acceptance of a petition for grant of review which is sought on motion to be filed out of time with the Court.

### Consumption or Loss of Evidence

An issue concerning the loss of evidence was addressed by the Court in *United States v. Kern*, 22 M.J. 49 (C.M.A. 1986), wherein the accused was convicted of larceny of government property but, because the property was returned to normal channels prior to trial, the defense had no access to the property in question. The Court held that, where the evidence was not "apparently exculpatory", the burden was on the accused to show some exculpatory value that was or should have been apparent to the Government and that the accused was unable to obtain comparable evidence by other reasonably available means before prosecution would be barred. The Court noted in *Kern* that the evidence was apparently inculpatory rather than exculpatory, that there was no bad faith on the part of the Government, and that there

was comparable evidence in the form of photographs and inventories to show the nature of the lost or destroyed property.

Citing *United States v. Kern, supra*, the Court subsequently held in *United States v. Garries*, 22 M.J. 288 (C.M.A. 1986), that the military judge properly denied a defense motion to suppress the test results of a blood sample which was based on the fact that the blood stain sample had been consumed in the government testing process. The Court noted that the blood sample did not possess an apparent exculpatory value and that there was no bad faith on the part of the Government. However, the Court observed that the better practice would be to inform the defense when the testing may consume the only available sample to enable the defense to have a representative present during the testing procedures.

### Jencks Act

In *United States v. Marsh*, 21 M.J. 445 (C.M.A. 1986), the Court held that the Jencks Act, 18 U.S.C. §3500, did not require the striking of the testimony of government witnesses whose earlier testimony during an Article 32 pretrial investigation had been tape recorded but such tapes had been lost or destroyed. The Court observed that the accused in this case was provided with a summarized transcript of the previous testimony and that there was no evidence the Government had intentionally withheld or destroyed the tapes in question. Similarly, in *United States v. Pena*, 22 M.J. 281 (C.M.A. 1986), the Court held that the Government's failure to preserve the tape recordings of investigative reports of two government agents which were transcribed substantially verbatim into typewritten reports did not constitute a violation of the Jencks Act.

### Appellate Rights Advice

The question of the procedures required to advise a military accused of his appellate rights during a court-martial was addressed by the Court in *United States v. Rogers*, 21 M.J. 435 (C.M.A. 1986). The Court held in that case that a military judge could advise the accused of his appellate rights either orally or in written form under the provisions of Rule for Courts-Martial (R.C.M.) 1010. The Court further held that the trial record must demonstrate that the accused had been advised of such appellate rights either orally or in writing and, if the advice had been given in writing, that he had read and signed the advice form; that the accused understood such rights; and that he acknowledged that he had discussed such rights with his attorney. Additionally, the Court held that the accused must be given an opportunity in open court to request an explanation of any of his appellate rights. The Court also ruled that, even though the record of trial in this case failed to demonstrate the required advice procedures, such

deficiency was not prejudicial to the accused since he had exercised such rights.

### Command Influence

During fiscal year 1986, the Court received fifty-two cases wherein counsel alleged that the same regional convening authority engaged in illegal command influence. In *United States v. Thomas*, 22 M.J. 388 (C.M.A. 1986), the Court issued an opinion analyzing this issue in the context of four different cases and noted that, during one or more briefings with subordinate officers and noncommissioned officers within his command, the Commander of the U.S. Army's Third Armored Division had stated that he found it paradoxical for a unit commander, who had recommended that an accused be tried by a court-martial authorized to adjudge a punitive discharge, to later appear as a defense character witness at the sentencing stage of the trial to testify as to the accused's good character and to recommend that the convicted soldier be retained in the service. Additionally, the Court observed that this commander's remarks were later interpreted, or misinterpreted, to reflect an intent that a subordinate commander, first sergeant, or other person from an accused's unit should not give favorable presentencing testimony on behalf of the accused and that such interpretation may have also been extended to the findings portion of the court-martial. The Court noted in this regard that the United States Army Court of Military Review had taken various kinds of remedial action in these cases, which included sentencing rehearings if the record did not affirmatively show the members were not influenced; rehearings or reassessment of sentences if the record failed to show why the defense counsel did not produce any character witnesses; limited rehearings to determine if the accused had been deprived of character witnesses; rehearings to determine whether the court members heard the convening authority's remarks; the setting aside of the findings and sentences in some cases; and new post-trial reviews and actions by a different convening authority. After analyzing the history of the issue of command influence and Congressional intent to eliminate such influence from the military justice system, the Court concluded that the findings and sentence of a court-martial should not be approved unless the Court was satisfied beyond a reasonable doubt that the command influence did not affect the results of such court-martial. Upon examining the facts, circumstances and evidence pertaining to this issue, the Court concluded that the convening authority was not disqualified from referring any of the cases to trial as he had no personal interest in the cases but was motivated solely by official concerns. Therefore, the Court concluded that the commander was not an accuser within the meaning of Article 1(9), UCMJ, 10 U.S.C. §801(9). The Court further observed that, in view of the extensive procedural safeguards within the military

justice system concerning the acceptance of pleas of guilty, the convening authority's comments and the interpretation of such comments did not adversely affect such pleas. However, concerning pleas of not guilty the Court concluded that, in trials with court members, further evidence should be taken to determine whether such court members were influenced by the convening authority's comments, but that in cases tried by a military judge alone, the Court held that there was no reason to believe that the command influence would have had any impact on the judges, since they were completely independent of this convening authority as well as other commanders in the field.

Concerning the ability of an accused to present favorable evidence, the Court held that the Government bears a heavy burden in establishing at trial that the defense access to witnesses was not impeded by command influence to the extent that it affected the results of the trial.

As to sentencing, the Court held that if the issue of command influence is properly raised, the burden is on the Government to establish beyond a reasonable doubt that favorable evidence in extenuation and mitigation was not curtailed by the convening authority's command activities.

Analyzing the four cases decided in *United States v. Thomas, supra*, the Court concluded that the remedial actions taken by the Court of Military Review and the trial judges in each case had eliminated any possible prejudice from these cases. However, the Court emphasized that it desired to make it clear that incidents of illegal command influence simply must not recur in other commands in the future.

Robinson O. Everett  
*Chief Judge*

Walter T. Cox, III  
*Associate Judge*

Eugene R. Sullivan  
*Associate Judge*

# USCMA STATISTICAL REPORT

Fiscal Year 1986

## CUMULATIVE SUMMARY

### CUMULATIVE BEGINNING PENDING

Master Docket .....	245
Petition Docket .....	563
Miscellaneous Docket .....	<u>3</u>
TOTAL .....	811

### CUMULATIVE FILINGS

Master Docket	
Mandatory appeals filed .....	0
Certificates filed .....	10
Reconsiderations granted .....	3
Petition Docket	
Petitions for grant filed .....	2711
Cross-petitions for grant filed .....	4
Petitions for new trial filed .....	6
Miscellaneous Docket .....	<u>33</u>
TOTAL .....	2767

### CUMULATIVE TERMINATIONS

Master Docket .....	267
Petition Docket .....	2582
Miscellaneous Docket .....	<u>33</u>
TOTAL .....	2882

### CUMULATIVE END PENDING

Master Docket .....	258
Petition Docket .....	702
Miscellaneous Docket .....	<u>3</u>
TOTAL .....	963

## OPINION SUMMARY

CATEGORY	SIGNED	PER CURIAM	MEM/ORDER	TOTAL
Master Docket .....	87	14	166	267
Petition Docket .....	4	0	2578	2582
Miscellaneous Docket .....	<u>0</u>	<u>0</u>	<u>33</u>	<u>33</u>
TOTAL .....	91	14	2777	2882

**FILINGS (MASTER DOCKET)**

Mandatory appeals filed .....	0
Certificates filed .....	10
Reconsideration granted .....	3
Petitions granted (from Petition Docket) <sup>3</sup> ...	<u>267</u>
TOTAL .....	280

**TERMINATIONS (MASTER DOCKET)**

Findings & sentence affirmed .....	168	Signed .....	87
Reversed in whole or in part .....	83	Per curiam .....	14
Granted petitions vacated .....	1	Mem/order .....	<u>166</u>
Other disposition directed .....	<u>15</u>	TOTAL .....	267
TOTAL .....	267		

**PENDING (MASTER DOCKET)**

Assigned Opinions pending .....	92
Judges' conference pending .....	0
Oral argument pending .....	27
Preargument conference pending .....	43
Calendar committee pending .....	78
Final briefs pending .....	<u>18</u>
TOTAL .....	258

**FILINGS (PETITION DOCKET)**

Petitions for grant of review filed .....	2711
Petitions for new trial filed .....	6
Cross-petitions for grant filed .....	<u>4</u>
TOTAL .....	2721

**TERMINATIONS (PETITION DOCKET)**

Petitions for grant dismissed .....	10	Signed .....	4
Petitions for grant denied .....	2262	Per curiam .....	0
Petitions for grant granted .....	267	Mem/order .....	<u>2578</u>
Petitions for grant remanded .....	21	TOTAL .....	2582
Petitions for grant withdrawn .....	17		
Other .....	<u>5</u>		
TOTAL .....	2582		

**PENDING (PETITION DOCKET)**

Petition briefs pending .....	324
Staff attorney action pending .....	147
Court action pending .....	<u>231</u>
TOTAL .....	702

<sup>3</sup>In 20 percent of these cases, the Court specified issues which were not raised by the appellant.

**FILINGS (MISCELLANEOUS DOCKET)**

Writs of error coram nobis sought .....	2
Writs of habeas corpus sought .....	4
Writs of mandamus/prohibition sought .....	18
Other extraordinary relief sought .....	7
Writ appeals sought .....	2
<b>TOTAL .....</b>	<b>33</b>

**TERMINATIONS (MISCELLANEOUS DOCKET)**

Petitions withdrawn .....	0		
Petitions remanded .....	0		
Petitions granted .....	3	Signed .....	0
Petitions denied .....	30	Per curiam .....	0
Petitions dismissed .....	0	Mem/order .....	33
<b>TOTAL .....</b>	<b>33</b>	<b>TOTAL .....</b>	<b>33</b>

**PENDING (MISCELLANEOUS DOCKET)**

Briefs pending .....	0
Action by Writs Counsel pending .....	0
Show cause action by Court pending .....	0
Show cause response pending .....	0
Other final action pending .....	3
<b>TOTAL .....</b>	<b>3</b>

**RECONSIDERATIONS & REHEARINGS**

CATEGORY	FILINGS	PENDING	DISPOSITIONS		TOTAL
			Granted	Rejected	
Master Docket .....	9	2	0	11	11
Petition Docket .....	9	1	4	6	10
Miscellaneous Docket .....	0	0	0	1	1
<b>TOTAL .....</b>	<b>18</b>	<b>3</b>	<b>4</b>	<b>18</b>	<b>22</b>

**MOTIONS ACTIVITY**

CATEGORY	BEGIN	FILINGS	END	DISPOSITIONS		
	PENDING		PENDING	Granted	Rejected	TOTAL
All motions .....	31	842	20	740	113	853

**REPORT OF**  
**THE JUDGE ADVOCATE GENERAL OF THE ARMY**  
**OCTOBER 1, 1985 TO SEPTEMBER 30, 1986**

During fiscal year 1986 the Office of The Judge Advocate General continued to monitor the proceedings of courts-martial, to review and to prepare military publications and regulations, and to develop and draft changes to the Manual for Courts-Martial and the Uniform Code of Military Justice.

**MILITARY JUSTICE STATISTICS AND U.S. ARMY JUDICIAL ACTIVITIES**

During fiscal year 1986, the court-martial rates show an Army wide decrease in the number of courts-martial. The total number of persons tried by all types of courts-martial in fiscal year 1986 is 2% lower than for 1985. This overall decrease reflects primarily a decrease in special courts-martial (i.e., a 4% decrease in special courts-martial empowered to adjudge a bad-conduct discharge, a 25% decline in non-BCD special courts-martial). There was a 1% increase in the number of general courts-martial, and a 5% increase in the number of summary courts-martial. The overall conviction rate for fiscal year 1986 was 93.4%, which represents a slight increase from the 91.9% conviction rate for the previous fiscal year. Although the overall court-martial rate decreased, the U.S. Army Court of Military Review had 38 more cases referred for its review and had a 10% increase in the number of cases reviewed (from 2401 to 2631) during fiscal year 1986.

**STATISTICAL SUMMARY: FISCAL YEAR 1986**  
**(See Appendix A, pp. 36-37)**

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

The U.S. Army Legal Service Agency includes the U.S. Army Judiciary, the Government Appellate Division, the Defense Appellate Division, the Trial Defense Service, the Trial Counsel Assistance Program, the Contract Appeals Division, the Regulatory Law Office, Patents, Copyrights and Trademarks Division, and the Professional

Recruiting Office. The latter four sections have no function related to the U.S. Army Judiciary and its courts-martial mission. The Contract Appeals Division and the Regulatory Law Office represent the Army and the Department of Defense in certain contractual and regulatory disputes before commissions and boards. The Patents, Copyrights and Trademarks Division controls and coordinates the named subject area and related activities of the Department of the Army. The Professional Recruiting Office coordinates the recruitment of lawyers for the Army. An Information Management Office function has been manned and funded in order to facilitate automation of the Agency.

## **U.S. ARMY JUDICIARY**

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

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

During fiscal year 1986 the United States Army Trial Defense Service (USATDS) continued to provide effective defense counsel services for soldier-clients. USATDS counsel represented approximately 2,030 clients at Article 32 proceedings, 1,429 clients at general courts-martial, and 1,515 clients at special courts-martial. In addition, USATDS counsel advised an estimated 62,165 clients regarding nonjudicial punishment, and 40,444 clients facing administrative separation.

USATDS continued to develop its deployment capability. Counsel were sent to the Sinai in support of the Multi-National Force. In addition, counsel actively participated in various command training exercises.

## **TRIAL COUNSEL ASSISTANCE PROGRAM**

During fiscal year 1986, the U.S. Army Trial Counsel Assistance Program served as a source of information, advice, and training for U.S. Army prosecutors world-wide. The program responded to nearly 1,300 request for assistance, participated in three major special prosecutions, and provided written guidance on all areas of criminal trial advocacy. The program conducted training seminars at 13 locations in the United States, Federal Republic of Germany, and Korea. A deskbook designated to provide Army prosecutors with standard guidelines as to trial advocacy and evidentiary matters was published

(at no additional cost to the program) and disseminated to all field offices. A monthly memorandum advising all field offices of new developments in criminal law was initiated as a supplement to major topical articles provided by the program in the monthly edition of *The Army Lawyer*.

## **SIGNIFICANT MILITARY JUSTICE ACTIONS**

Actions involving military justice handled by the Criminal Law Division, Office of The Judge Advocate General, included: evaluating and drafting legislation, Executive Orders, pamphlets and regulations affecting the operation of the Army and the Department of Defense; monitoring the administration of military justice, including evaluation of on-going major projects (e.g., military corrections, Army's urinalysis program, professional responsibility of attorneys, and UCMJ jurisdiction over reservists); rendering opinions for the Army Staff; reviewing various aspects of criminal cases for action by the Army Secretariat and Staff; developing proposed ethical rules for lawyers practicing under the disciplinary authority of The Judge Advocate General; and responding to White House, Congressional and other inquiries relating to military justice.

## **CHANGE OF MILITARY JUSTICE REGULATION**

Army Regulation 27-10, Military Justice, was revised effective October 1, 1986. Revised provisions: provide additional Article 15 filing guidance; require an additional copy of a record of trial for the Army Clemency Board purposes; implement Army Court of Military Review Rule 21d., time for government appeals; change Status of Forces Agreement confinement review procedures; allow victim/witness liaisons to arrange witness interviews, with procedures for arranging civilian travel overseas; incorporate Army Regulations 350-212, Military Justice Training, and 27-14, Complaints Under Article 138, UCMJ. Revisions are also planned for March and October 1987, to keep the regulation current with changes in Army policies, the Manual for Courts-Martial, 1984, applicable federal legislation and judicial decisions.

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

The Judge Advocates General and General Counsel of the Department of Transportation established the Joint-Service Committee on Military Justice on August 17, 1972. The Army, Navy, Air Force,

Marine Corps, and Department of Transportation (Coast Guard) provide representatives and nonvoting representative is provided by the U.S. Court of Military Appeals. The Joint-Service Committee on Military Justice primarily prepares and evaluates proposed amendments and changes to the Uniform Code of Military Justice and the Manual for Courts-Martial. The Committee also serves as a forum for the exchange of ideas relating to military justice matters among the services.

The first annual review of the Manual for Courts-Martial, United States, 1984, completed in 1985, resulted in the issuance of Executive order No. 12550 on 19 February 1986, published as Change No. 2 to the Manual. This change amended the Military Rules of Evidence to reflect recent Supreme Court decisions, notably adoption of the "good faith" and "inevitable discovery" exceptions to the exclusionary rule. Another amendment required unanimous findings of guilty in capital cases before the court members were allowed to consider the death penalty. Other amendments are designed to correct drafting deficiencies in the 1984 Manual and to revise unnecessary provisions of the 1984 Manual.

The second annual review of the Manual was completed in July 1986. Most of the amendments to the Manual recommended by the review made technical corrections, but the amendments also contain provisions allowing clinical psychologists to be members of sanity boards, a correction to the law of self-defense, and a provision to allow evidence of refusal of a lawful order to produce body substances for testing to be used as substantive evidence. The Executive order had not been forwarded by the end of FY 86 for signature, however, because of pending, related amendments to the Uniform Code of Military Justice (UCMJ). UCMJ amendments pending at the end of FY 86, concerned the defense of insanity, jurisdiction over reservists on inactive-duty training, the statute of limitations, oral requests for enlisted court members, and simplification of post-trial case processing. The legislation was awaiting enactment at the end of the fiscal year.

## FOREIGN CRIMINAL JURISDICTION

As executive agent for the Department of Defense, the Department of Army, through International Affairs Division, Office of The Judge Advocate General, maintains information concerning the exercise of foreign criminal jurisdiction over U.S. personnel.

During the reporting period, December 1, 1984, through November 30, 1985, a total of 143,773 United States personnel, military and civilian, were charged with offenses subject to the primary or exclusive jurisdiction of foreign tribunals. A total of 130,915 of these offenses

were charged against military personnel. Of this number, 108,536 of the charges against military personnel were subject to exclusive foreign jurisdiction. Nonetheless, foreign authorities released 668 of the exclusive foreign jurisdiction offenses to United States military authorities for appropriate disposition.

The rest of the military offenses subject to foreign jurisdiction, totaling 22,379 offenses, were concurrent jurisdiction offenses involving alleged violations of both United States military law and foreign law over which the foreign country had the primary right to exercise jurisdiction. United States military authorities obtained a waiver of primary foreign jurisdiction in 19,864 of these incidents, for a worldwide waiver rate of 88.7 percent.

Foreign authorities reserved for their disposition a total of 110,383 offenses allegedly committed by military personnel. A total of 109,582 of these offenses were relatively minor. 109,016 of them, or 99.5 percent, involved traffic violations.

A total of 12,858 civilian employees and dependents were charged with offenses subject to foreign jurisdiction. As civilians are not subject to trial by courts-martial in peacetime, the United States had no effective jurisdiction over these offenses. Nonetheless, foreign authorities released 231 of these offenses, or 1.8 percent of the total, to United States military authorities for administrative or other appropriate disposition.

There were 117,036 final results of trial (i.e., final acquittals and final convictions). Of this number, 387, or .28 percent of the final results, were acquittals. The vast majority of United States personnel who were convicted — 116,478 (i.e., 96.7 percent) — received only a sentence to fine or reprimand. The remainder of the final results of trial consisted of 126 suspended sentences to confinement and 45 unsuspended sentences to confinement.

## LITIGATION

On 14 Nov, a three judge panel of the Ninth United States Circuit Court of Appeals reversed a district court's grant of summary judgment in *Atkinson v. United States*, a case in which a female soldier sued under the Federal Tort Claims Act for alleged medical malpractice incident to pre-natal care received at Tripler Army Medical Center. In its opinion, the court held that the underlying principle of *Feres* is maintenance of military discipline and that the delivery of a baby by a female soldier involves discipline "only in the remotest sense." The court further ruled that the circumstances of this case simply "do not involve the sort of close military judgment calls that the *Feres* doctrine was designed to insulate from judicial review." Appeal of this decision to the Supreme Court is expected.

Last year it was reported that the jurisdiction of U.S. Magistrates to hear on post soldier cases was being challenged in federal courts. In *United States v. Smith*, 614 F. Supp. 454 (D. Maine 1985), the court held that state drunk driving laws are not enforceable against persons subject to the Uniform Code of Military Justice (UCMJ). The issue appears to have been settled in favor of magistrate jurisdiction. The Courts of Appeals for the First and Ninth Circuits held that state codes proscribing drunk driving are assimilated into federal law and are punishable in federal courts, even though service members are also punishable under Article 111, UCMJ. The courts held that the UCMJ is not a generally applicable, specific federal criminal statute precluding the operation of the Assimilative Crimes Act. *United States v. Debevoise*, No. 85-1258 (Sep. 18, 1986), \_\_\_F.2d\_\_(9th Cir. 1986), and *United States v. Marica*, 795 F.2d 1094 (1st Cir. 1986). The concern last year was that if service member drunk driving cases were not heard by U.S. Magistrates, then there would be an increase in the number of drunk driving cases processed as nonjudicial punishments of courts-martial. This is no longer a concern.

## EDUCATION AND TRAINING

During fiscal year 1986, The Judge Advocate General's School, located in Charlottesville, Virginia, provided legal education to lawyers of the military services and other federal agencies. Thirty-six resident courses were conducted with 2,811 students in attendance. Courses were attended by 1,786 Army, 55 Navy, 71 Marine, 145 Air Force, 17 Coast Guard, 158 Army Reserve, 76 Army National Guard, 481 civilian, and 22 foreign students. Three Basic Classes, the 108th, 109th, and 110th were conducted. A total of 281 Army JAGC officers graduated from Basic Courses.

The 34th Graduate Course, with an enrollment of 66 students, graduated on 16 May 1986. In addition to 57 Army judge advocates, the class consisted of five Marines, one Navy, and three foreign officers. The 35th Graduate Course began on 1 August 1986, with 62 Army, five Marines, one Navy, and four foreign officers.

During fiscal year 1986, the School continued to provide senior officers with legal orientations prior to their assumption of command. Twelve general officers attended General Officer Legal Orientation Courses, and 280 battalion and brigade command designees attended one of five resident Senior Officer Legal Orientation Courses. Additionally, instructors from the School participated in twelve Pre-Command Courses conducted at Fort Leavenworth, Kansas, for battalion and brigade command designees.

The Criminal Law Division sponsored three resident continuing legal education courses in fiscal year 1986. In January the Criminal

Trial Advocacy Course was presented, in May the Military Judge Course, and in August the Criminal Law New Developments Course. Outstanding guest speakers for these courses included Charlottesville attorney John C. Lowe, Chief Judge Robinson O. Everett of the Court of Military Appeals, Dean John Jay Douglas of the National College of District Attorneys, and Colonel Kenneth A. Raby of the Army Court of Military Review. In addition to sponsoring these CLE courses, in June the Division taught over 300 Reserve and National Guard attorneys in the two week Judge Advocate Triennial Training and the Judge Advocate Officer Advanced Courses. Three nonresident courses were also presented in Germany during an intense two week period in October 1985. Two Criminal Law CLE Courses of four and one-half days and a three day advocacy course were taught.

The International Law Division sponsored two one week courses on the Law of War and a one week Judge Advocate and Military Operations Seminar, which concentrated on operational law. Additionally, the Division provided instructor support for a one week course in the Federal Republic of Germany on Law of War sponsored by U.S. Army Europe. All courses were designed for and attended by both judge advocates and operational staff officers. In keeping with the "operationalization of interational law", the major focus of the courses was on practical, hands-on training, rather than on lecture. Similar instruction was presented to both active and reserve forces to ensure that they were prepared to provide timely, accurate legal advices on military operations.

Instruction provided by the Contract Law Division is designed to meet the training needs of all attorneys involved in the federal acquisition process, both the novice and the experienced professional. Courses address contract law as practiced at military installations and at commands devoted to research, development and acquisition of weapons and major end items. In fiscal year 1986, the Contract Law Division sponsored eight continuing legal education courses, including the two-week Contract Attorneys Course which was offered four times, with eighty four students in each course. The Division also presented two Fiscal Law Courses, the Contract Attorneys' Workshop, and the annual week-long Government Contract Law Symposium, attended by 180 attorneys from throughout the Department of Defense. For the first time, the Division presented the Advanced Acquisition Course, a two-week course providing in-depth instruction in weapon system and major end item acquisition. Additionally, personnel of the Contract Law Division presented contract law instruction at Reserve Component Technical Training sites and a continuing legal education course in Europe to military and civilian personnel stationed there. Fiscal law courses were presented at sites other than Charlottesville for a number of Army commands and activities, including the Corps of Engineers and the U.S. Army Tank

Automotive Command. Personnel of the Division also participated jointly with the Army Audit Agency and the Criminal Investigation Command in a week-long conference in Korea designed to provide students stationed in the Far East with ways to improve cooperation and coordination between auditors, investigators, and prosecutors in connection with contract fraud cases. The Division also assisted the Department of Defense Inspector General in the presentation at TJAGSA of the DOD IG Course on Procurement Fraud. The depth and breath of each course of instruction was designed to ensure that Government attorneys involved in the acquisition process are prepared to provide timely, accurate, and well-reasoned legal advice, regardless of the complexity or sophistication of the contemplated procurement.

The Administrative and Civil Law Division conducted seven continuing legal education courses, including two presentations of the Legal Assistance Course, the Federal Labor Relations Course, the Administrative Law for Military Installations Course, and the Law Office Management Course. In addition, instructors presented classes at the Tax and Legal Assistance Conferences in Europe. One instructor presented a week of instruction at the Noncommissioned Officer Advanced Course at Fort Benjamin Harrison, Indiana. Finally, one instructor instructed installation commanders during seven separate Army Installation Management Courses at Fort Lee.

The Legal Assistance Branch of the Administrative and Civil Law Division produced the first edition of a new publication, the *Preventive Law Series*, which comprises a set of 31 consumer information handouts ready for duplication and use in local preventive law programs. These materials can also serve as the nucleus for articles in command newspapers. Additionally, the *All States Marriage and Divorce Guide*, *Garnishment Guide*, and *Consumer Law Guide* were revised, updated, and substantially expanded to include important resources materials. A third consumer protection videotape, addressing issues under the Fair Credit Billing Act, was produced. Finally, a special short course was coordinated and conducted at TJAGSA for legal assistance attorneys and survival assistance officers who were involved with the victims of the Gander aircraft disaster.

The Judge Advocate Guard and Reserve Affairs Department sponsored two resident courses for Reserve Component Judge Advocates in fiscal year 1986. Approximately 214 Army Reserve and National Guard judge advocates attended Triennial Training in Criminal Law between 16 and 27 June 1986. Phase II of the Judge Advocate Officer Advanced Course was attended by 140 students during this same period. The attendance by Army National Guards at Triennial Training reflects the Guard's continued strong participation in School programs. The 1036th U.S. Army Reserve Forces School in Farrell, Pennsylvania, provided administrative support for both courses. The

Department also sponsored the Reserve Component Technical (On-Site) Training Program. Between October 1985 and May 1986, the School provided continuing legal education to over 1900 officers in 22 regional population centers throughout the United States. Attendees represented all services and all components. On-site attendance was up 7% in 1985-86, highlighted by strong showings by Active Army and Army National Guard judge advocates. The Guard-hosted St. Augustine, Florida On-site instruction was a great success, and more are planned for the future. Interaction of Active and Reserve Component judge advocate officers in the On-Site Program continues to be invaluable.

## MAJOR PROJECTS

On April 15, 1986, the Third Waldemar A. Solf Lecture in International Law was presented by Ambassador Louis G. Fields. His presentation, "Contemporary Terrorism and the Rule of Law," was well received.

The Tenth Charles L. Decker Lecture was given on April 24, 1986, by Mr. Robert M. O'Neil, President of the University of Virginia, who analyzed the case of *Goldman v. Weinberger* and its implications.

On March 27, 1986, the 15th Annual Kenneth J. Hodson Lecture in Criminal Law was presented by Professor James E. Bond, then of the Wake Forest University School of Law (now Dean of the University of Puget Sound School of Law). The lecture, entitled "A Criminal Justice System Divided Against Itself," was particularly well received and was published in the Summer 1986 Military Law Review, as were the Solf and Decker Lectures.

The Third Gilbert A. Cuneo Lecture in Contract Law was presented by Eleanor R. Spector, Deputy Assistant Secretary of Defense for Procurement, on January 13, 1986.

The School hosted the 1985 Judge Advocate General's Conference and Annual Continuing Legal Education Program during October 2-5, 1985. Over 160 senior judge advocates from posts throughout the world conferred on areas of interest and discussed recent developments in all areas of military law. Guest speakers included General Maxwell R. Thurman, Vice Chief of Staff of the Army; LTG(Ret) Walter F. Ulmer; and Mr. Louis Tice, Pacific Institute.

New editions of DA Pam 27-153, *Legal Services—Contract Law*; DA Pam 27-174, *Legal Services—Jurisdiction*; FM 27-14, *Legal Guide for Soldiers*; and TC 27-2, *Military Justice—Enlisted Personnel Training*, for which the School is responsible, were published during fiscal year 1986. The revisions of AR 27-5, *Legal Services—Army Law Library Service*; AR 10-73, *Organization and Functions—The Judge Advocate General's School, U.S. Army*; and FM 27-1, *Legal Guide for*

*Commanders*, were also completed and will soon be issued. Revisions of several other publications are ongoing. Twenty-five instructional deskbooks were made available to attorneys in the field through the Defense Technical Information Center. Articles of interest to military attorneys continue to be distributed to the field through the DA Pam 27-100-series, *Military Law Review*, and the DA Pam 27-50-series, *The Army Lawyer*.

The Combat Developments Office completed the Army of Excellence redesign initiatives for all staff judge advocate offices in the Active Army. Army of Excellence designs for all division staff judge advocate offices have been approved and are being fielded. The Corps HHC Table of Organization and Equipment, containing a newly designed staff judge advocate office, with a Chief of Operations, Plans, and Training, has been approved by TRADOC and DA and will be fielded soon. The base offices for the Chief Military Judge and the Chief Defense Counsel are also on this document. The design for the TAACOM staff judge advocate office has been submitted for approval by TRADOC and DA. The Combat Developments Office is developing a new Table of Organization and Equipment which, if approved, will convert Table of Distribution and Allowance defense counsel and military judge positions dedicated to supporting the combat force to Table of Organization and Equipment assets. New Table of Organization and Equipment designs based upon Army of Excellence guidance are being prepared for Judge Advocate General Service Organizations in the Reserve Component force. Combat Developments is actively involved in acquiring microcomputers and advanced communications equipment for all legal assets in the combat force structure.

The Judge Advocate Guard and Reserve Affairs Department Published a new edition of *A Career in the Reserve Components*.

## PERSONNEL, PLANS AND POLICIES

With the inclusion of law students participating in the Funded Legal Education Program, the strength of the Judge Advocate General's Corps at the end of fiscal year 1986 was 1825. Representing minority groups were 96 blacks, 29 Hispanics, 18 Asian and Native Americans, and 201 women. The fiscal year 1986 end strength compares with an end strength of 1824 in fiscal year 1985, 1816 in fiscal year 1984, and 1821 in fiscal year 1983. The grade distribution of the Corps at the end of the fiscal year was 6 general officers, 115 colonels, 231 lieutenant colonels, 372 majors, 1047 captains, and 54 first lieutenants. There were 43 officers (38 captains and 15 first lieutenants) participating in the Funded Legal Education Program. There were also 74 warrant officers.

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

In November 1985 a selection board was convened to select ten active duty commissioned officers to commence law school under the Funded Legal Education Program.

Seventy-nine judge advocate officers completed the following service schools:

U.S. Army War College .....	2
National War College .....	1
Industrial College of the Armed Forces .....	1
U.S. Army Command & General Staff College .....	11
Armed Forces Staff College .....	7
The Judge Advocate Officer Graduate Course .....	57

During fiscal year 1986 seven officers completed fully funded study for LL.M. degrees in specialized fields of law. As a result of the Defense Officer Personnel Management Act (DOPMA), newly appointed judge advocates accessed for the fiscal year were commissioned as first lieutenants. The Judge Advocate General's Corps is a separate competitive category, and selects and promotes its officers based on Judge Advocate General's Corps grade vacancies as they occur.

Hugh R. Overholt  
*Major General, USA*  
*The Judge Advocate General*

# APPENDIX A: U.S. ARMY COURTS—MARTIAL/ NJP STATISTICS FOR FISCAL YEAR 1986

Period: FISCAL YEAR 1986

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	1431	1365	67	+1%
BCD SPECIAL	1247	1181	66	-4%
NON-BCD SPECIAL	271	226	45	-25%
SUMMARY	1373	1266	107	+5%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-2%

## PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES		526
NUMBER OF BAD CONDUCT DISCHARGES		753
SPECIAL COURTS MARTIAL (SA LEVEL)		
NUMBER OF BAD CONDUCT DISCHARGES		855

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	1326
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	851(A)
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	106

## PART 4 - WORKLOAD OF THE U.S. ARMY COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD		894 (Adjusted)
GENERAL COURTS-MARTIAL	NA	
BCD SPECIAL COURTS-MARTIAL	NA	
REFERRED FOR REVIEW		2321(B)
GENERAL COURTS-MARTIAL	NA	
BCD SPECIAL COURTS-MARTIAL	NA	
TOTAL CASES REVIEWED		2631(C)
GENERAL COURTS-MARTIAL	NA	
BCD SPECIAL COURTS-MARTIAL	NA	
TOTAL PENDING AT CLOSE OF PERIOD		584
GENERAL COURTS-MARTIAL	NA	
BCD SPECIAL COURTS-MARTIAL	NA	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+10%

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

NUMBER	2165
PERCENTAGE	99%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	51%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+3%
PERCENTAGE OF TOTAL PETITIONS GRANTED	11%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-1%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	5%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-1%

PAGE 1 OF 2

- NOTE A. Does not include 4 cases in which review was waived.  
 B. Includes 9 Miscellaneous Docket cases of which 2 were Government appeals under Article 62.  
 C. Does not include 7 cases withdrawn by the accused. Does not include 8 decisions reconsidered.

## APPENDIX A—CONTINUED

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		9
RECEIVED		88
DISPOSED OF		79
GRANTED	4	
DENIED	73	
NO JURISDICTION	2(D)	
WITHDRAWN	1	
TOTAL PENDING AT END OF PERIOD		18
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL		997
SPECIAL COURTS-MARTIAL		1169
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		435
SPECIAL COURTS-MARTIAL		49
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	41	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	783,343	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		111,750
RATE PER 1,000		144
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-10

PAGE 2 OF 2

NOTE D. Includes 1 application returned for curative action by field authorities and 1 application filed out of time with no good cause shown.

**ANNUAL REPORT**  
of  
**THE JUDGE ADVOCATE GENERAL OF THE NAVY**  
pursuant to the  
**UNIFORM CODE OF MILITARY JUSTICE**  
for  
**FISCAL YEAR 1986**

**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 continued to visit commands within the United States, Europe, and the Far East in furtherance of the supervision of the administration of military justice.

**ABA OUTSTANDING YOUNG MILITARY LAWYER AWARDS**

Lieutenant Patricia Battin-Pfeiffer, Judge Advocate General's Corps (JAGC), U.S. Naval Reserve, and Captain T.D. Brown, U.S. Marine Corps, were the recipients of the 1986 ABA Outstanding Young Military Lawyer award.

**ADVANCED EDUCATION**

During the fiscal year, 14 Navy JAGC officers obtained LLM degrees from various law schools, one JAGC officer attended the year course at The Judge Advocate General's School, U.S. Army, Charlottesville, Virginia, and three JAGC officers attended the Naval War College, Newport, Rhode Island, as part of the Navy JAG advanced education program.

## **COURT-MARTIAL WORKLOAD**

There has been a decrease in the total number of court-martial cases received for review at the Navy-Marine Corps Court of Military Review during fiscal year 1986. (See table, pp. 50-51 attached to this report.) During fiscal year 1986, the Navy-Marine Corps Court of Military Review received for review 4,295 new court-martial cases, consisting of 1,022 general courts-martial and 3,273 special courts-martial, as compared with 4,518 cases consisting of 774 general courts-martial and 3,744 special courts-martial during fiscal year 1985. Of the 4,295 new cases received by the Navy-Marine Corps Court of Military Review in fiscal year 1986, 3,649 accused requested appellate counsel (85%). Overall, there were 9,509 cases of all types tried (including summary court-martial) in the Naval Service during fiscal year 1986.

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

Ninety-five general courts-martial, which were not statutorily eligible for automatic review by the Navy-Marine Corps Court of Military Review were examined in the Office of the Judge Advocate General in fiscal year 1986. Of those, four required corrective action by the Judge Advocate General.

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

Ninety-one applications were reviewed in fiscal year 1986 pursuant to Article 69(b), Uniform Code of Military Justice, under which the Judge Advocate General may vacate or modify the findings or sentence of courts-martial which have become final in the sense of Article 76, but have not been reviewed by the Navy-Marine Corps Court of Military Review. Eighty-one applications were denied on the merits, while relief was granted, in whole or in part, in ten cases.

### **ARTICLE 73, UCMJ, PETITIONS**

In fiscal year 1986, nine petitions for new trial were reviewed by the Office of the Judge Advocate General. Eight petitions were denied and one was granted.

## ARTICLE 74(b), UCMJ, PETITIONS

Three petitions were considered in fiscal year 1986, requesting the Secretary of the Navy to substitute an administrative discharge for a punitive discharge executed pursuant to the sentence of a court-martial. The Secretary denied all three petitions.

### APPELLATE DEFENSE DIVISION

The Appellate Defense Division, Navy-Marine Corps Appellate Review Activity, has expanded its mission responsibilities in two significant areas during the past year.

*Supreme Court Practice:* With passage of the Military Justice Act of 1983, the Division has submitted seven petitions for writs of certiorari to the United States Supreme Court and one amicus curiae brief in support of a granted petition in the U.S. Coast Guard case of *Solorio v. United States*.

*Trial Defense Services:* This Division has established a daily duty section which provides substantive and procedural assistance to trial defense counsel in the field. Approximately 75 calls per month are received. Additionally, the Division occasionally disseminates information from a defense perspective on significant issues and cases, as well as on practice and procedure, to trial defense counsel.

### APPELLATE GOVERNMENT DIVISION

The Appellate Government Division filed 1207 pleadings with the Navy-Marine Corps Court of Military Review and the U.S. Court of Military Appeals. This excludes cases which were submitted to the courts without specific assignments of error.

The Trial Counsel Assistance Program (TCAP) is a program developed within the Appellate Government Division, Navy-Marine Corps Appellate Review Activity, to provide a central point of coordination and focus to assist trial counsel in the effective prosecution of courts-martial. Four appellate counsel have been detailed to implement this program which provides assistance through field calls, presentation, and digests. Field calls totalled 338 for the year, an average of 28 per month.

#### Presentations

a. April 86 - Director, Appellate Government Division and two attorneys participated in seminar for trial counsel at San Diego with the Army TCAP team.

b. May 86 - Government attorney gave a presentation to the Reserve Judge Advocate Conference in Atlanta, Georgia.

c. June 86 - Government attorney gave a presentation to the Reserve military judges as part of their weekend training.

d. August 86 - Director, Appellate Government Division and two attorneys participated in a seminar for trial counsel at Norfolk, VA, with the Army TCAP team.

The Appellate Government Division also provided training during the fiscal year to reservists tasked to support the Division.

## NAVY-MARINE CORPS TRIAL JUDICIARY

The Navy-Marine Corps Trial Judiciary provided military judges for 1,070 general courts-martial during fiscal year 1986; 82% (882 of 1,070) of these general courts-martial were tried by military judge alone.

There were 6,675 special courts-martial conducted during fiscal year 1986, an increase of 33 special courts-martial from the 6,642 cases during fiscal year 1985. In fiscal year 1986, 92% (6,128 of 6,675) of these special courts-martial were tried by military judge alone.

### Military Judges Attending Continuing Legal Education/Seminars/Lectures/Meetings/Conferences

#### a. East Coast Military Judges' Meeting of Those Assigned to the Navy-Marine Corps Trial Judiciary

- Fleet Combat Training Center, Atlantic, Dam Neck, Virginia Beach, VA
- 2-4 October 1985
- 33 active-duty Navy and Marine Corps judges; 10 inactive-duty Reserve Navy and Marine Corps judges.

#### b. West Coast Military Judges' Meeting of Those Assigned to the Navy-Marine Corps Trial Judiciary

- Naval Training Center, San Diego, CA
- 9-22 October 1985
- 24 active-duty Navy and Marine Corps judges; 7 inactive-duty Reserve Navy and Marine Corps judges.

#### c. Twelfth Interservice Military Judges' Seminar

- Maxwell Air Force Base, Montgomery, Alabama
- 30 March - 4 April 1986
- 4 active-duty Navy and Marine Corps judges.

#### d. Various Courses of Instruction at the National Judicial College

- National Judicial College, Reno, Nevada
- 10 active-duty Marine Corps judges.

#### e. Trial Advocacy Instructor Clinic

- Naval Justice School, Newport, RI

- 7-11 September 1986
- 1 active-duty Navy judge.
- f. Advocacy Teacher Training
  - Harvard Law School, Boston, MA
  - 4-6 April 1986
  - 1 active-duty Marine Corps judge
- g. Military Judges' Course
  - U.S. Army JAG School, Charlottesville, VA
  - 19 May - 6 June 1986
  - 5 active-duty Navy and Marine Corps judges; 2 inactive-duty reserve Navy judges.
- h. Military Judges' Course
  - Naval Justice School, Newport, RI
  - 28 July - 14 August 1986
  - 12 active-duty Navy and Marine Corps Judges; 2 inactive-duty Reserve Navy judges.

### Visits by the Judiciary

The Chief Judge presented administrative briefings for students at the Military Judges' Course at both Charlottesville and Newport.

The Circuit Military Judge, Peidmont Judicial Circuit, Camp Lejeune, North Carolina, paid a working visit and participated in the instruction of students at the Military Judges' Course at Naval Justice School.

### Generally

Due to a projected reduction in workload, the judges' billets at Philadelphia, Memphis, Bremerton, and Quantico were not filled.

During fiscal year 1986, total in-court hours for all judges was 26,521 hours, 34 hours less than during fiscal year 1985 (26,555 hours). An increase in travel hours occurred in fiscal year 1986 (5,993) over fiscal year 1985 (5,134) hours.

## NAVAL LEGAL SERVICE COMMAND

Naval Legal Service Command (NAVLEGSVCCOM) consists of 21 naval legal service offices and 20 naval legal service office detachments, located in areas of naval concentration throughout the world. NAVLEGSVCCOM also includes the Naval Justice School, located in Newport, Rhode Island, and the Office of Legal Counsel, located at the Naval Academy, Annapolis, Maryland. The total manpower authorization for NAVLEGSVCCOM includes 421 officers, 240 enlisted, and 254 civilian employees; Navy judge advocates assigned to NAVLEGSVCCOM comprise about 42% of the Navy's total judge advocate strength.

The Judge Advocate General of the Navy also serves as Commander, NAVLEGSVCCOM, which provides a wide range of legal services to afloat and shore commands, to individual servicemembers, and to dependents and retirees. Specific services performed include the provision of court-martial services, administrative discharge board services to respondents, advice to commands on a broad spectrum of legal issues, claims processing and adjudication, counsel at physical evaluation boards, and legal assistance.

In support of the efforts to provide quality and timely legal services, NAVLEGSVCCOM activities rely upon the Judge Advocate General Management Information System, which tracks each activity's case-load from receipt to disposition. This system is possible due to the growing number of personal computers available at each activity. In the future, the planned Navy Legal Affairs World-Wide Support System will refine and expand the automation of the claims, legal assistance, budgeting, and office administration functions within NAVLEGSVCCOM, enhancing its ability to perform its mission. Also, eight test sites will receive state of the art computer assisted transcription equipment during the next year, which will speed the post-trial processing of courts-martial. Finally, greater use is planned of available automated legal research programs, such as WESTLAW.

The NAVLEGSVCCOM Military Construction Program, which targets the need for major construction in support of more than 10 naval legal service offices, will mark its first groundbreaking in early fiscal year 1987. The \$1.3 million dollar facility in Memphis, Tennessee, sponsored by Chief of Naval Operations (OP-05), will be the first new NAVLEGSVCCOM facility designed and built from the ground up as a dedicated legal service building. It will replace an antiquated facility which could not be renovated.

## NAVAL JUSTICE SCHOOL

During fiscal year 1986, the Naval Justice School provided instruction to 8,847 students worldwide (1,034 in resident courses ranging in length from 3 days to 9 weeks). Additionally, the school added a resident course in trial advocacy and published its inaugural issue of the *Naval Law Review* (formerly the *JAG Journal*), the official law journal of the Department of the Navy. Other noteworthy developments included installation of a state-of-the-art audiovisual support system (used primarily to enhance trial advocacy training) and institution of basic computer training for all Navy-Marine Corps lawyer accessions. A review of the school's courses follows:

*Law of Naval Warfare Workshop.* Offered once a year, this one-week course trains judge advocates responsible for advising commanders on international law and its impact on plans and operations. The

course consists of 20 hours of classroom instruction and 11 hours of practical exercises and seminars. Attendees completing this course included 16 Navy, 3 Marine Corps, 3 Coast Guard, and 2 Air Force attorneys.

*Staff Judge Advocate Course.* Also offered once a year, this two-week course provides training in specific aspects of military and administrative law likely to be encountered by a command legal advisor. Included are 56 hours of classroom instruction and 7 hours of practical exercises and seminars. This past year, attendees included judge advocates from the Navy (22), Marine Corps (3), and Army (1).

*Senior Legalman Management Course.* This two-week course, offered annually, provides senior legalmen with the specialized training in budget matters, civilian and military personnel management, and other management skills required of mid-level supervisors at naval legal service offices. Included are 61 hours of classroom instruction and 13 hours of workshops and seminars. Eighteen E-7 through E-9 legalmen attended this course.

*Lawyer Course.* The Naval Justice School conducted five sessions of the nine-week lawyer course during fiscal year 1986. This course, which provides basic training in military justice and military administrative and civil law to incoming Navy and Marine Corps attorneys, consists of 164 hours of classroom instruction and 53 hours of practical exercises, including two moot courts and fourteen seminars designed to enhance trial advocacy skills. The course was completed by 151 Navy and 72 Marine Corps lawyers.

*Legal Officer Course.* During fiscal year 1986, the school held seven sessions of this five-week course. The legal officer syllabus is designed for the nonlawyer junior officer or senior Navy legalman (paralegal) about to assume legal duties with a ship, aircraft squadron, small station, or other military unit with no military lawyer attached. Included in the course are 126 hours of classroom instruction and 79 hours of practical exercises and seminars. Last year's attendees consisted of 238 Navy officers, 17 Navy legalmen, 45 Marine Corps officers, three Coast Guard officers, and two civilian employees of the Department of the Navy.

*Senior Officer Course.* This one-week course, sponsored by the Chief of Naval Operations, prepares commanding officers, executive officers, and officers in charge to handle appropriate command legal responsibilities. Six sessions of the course were held at Newport, Rhode Island, with 186 students attending. An additional 25 offerings of the course were held at the following worldwide locations: Pensacola, Jacksonville and Mayport, Florida; Charleston, South Carolina; Norfolk, Virginia; Whidbey Island, Washington; San Francisco, California; San Diego, California; Camp Pendleton, California; Rota, Spain; Pearl Harbor, Hawaii; Subic Bay, Philippines; Yokosuka, Japan; Parris Island, South Carolina, Camp Lejeune, North Carolina;

New London, Connecticut; Corpus Christi, Texas; Quantico, Virginia; and Annapolis, Maryland. The 1,498 students attending these classes included:

USN:	871	(58%)
USMC:	473	(32%)
USCG:	138	( 9%)
Other:	16	( 1%)

*Military Judges Course.* This three-week course, offered once a year trains active-duty judge advocates to serve as special and general court-martial military judges. The syllabus includes 74 hours of lecture and 30 hours of practical exercises and seminars, during which students preside as military judges during various stages of moot courts-martial. In fiscal year 1986, 11 Navy, 5 Marine Corps, 1 Coast Guard, and 5 Air Force judge advocates completed this course.

*Senior Trial Advocacy Course.* In March 1986, the school offered its first one-week Senior Trial Advocacy Course to provide training in trial advocacy techniques to judge advocates returning to military justice billets after one or two tours of duty outside the courtroom. The course utilized the highly successful method of instruction developed by the National Institute of Trial Advocacy (NITA). Ten judge advocates from the Navy and twelve from the Marine Corps attended this course, which we anticipate will be offered annually.

*Trial Advocacy Instructor Clinic.* The Naval Justice School conducted its first trial advocacy instructor clinic in September 1986. This three-day course prepared experienced trial practitioners to conduct trial advocacy training programs in the field. Eight attendees were trained in the NITA teaching method and have since conducted several highly successful training programs at naval legal service offices located at Norfolk, Virginia; Jacksonville, Florida; San Diego and San Francisco, California. It is anticipated that future instructor clinics will be conducted annually, and that field training programs will be conducted regularly throughout the Naval Legal Service Command.

*Legalman Course.* This nine-week course, offered three times in fiscal year 1986, provides instruction in military law and electronic court reporting to Navy enlisted personnel selected for conversion to the legalman rating. Included are 162 hours of lecture, 118 hours of practice transcription, and 52 hours of seminars and other practical exercises. As in past years, the Army continues to use the Naval Justice School's legalman course to train its court reporters. In fiscal year 1986, 85 Navy and 22 Army students completed this course.

*Legal Clerk Course.* This two-week course is designated to train members of the Navy's yeoman rating to process routine legal matters at small or isolated commands. During fiscal year 1986, the school offered five sessions of this course, and it is anticipated that, in future years, the course will be offered three times each year. Included

in the legal clerk curriculum are 51 hours of lecture and 25 hours of practical exercises. In fiscal year 1986, 227 students completed this course.

*Reserve Courses.* In addition to training active-duty personnel, the Naval Justice School also presents a number of courses each year to train inactive-duty reservists. The two-week Reserve Lawyer Course prepares inactive-duty lawyers of the Naval and Marine Corps Reserve to perform the duties of an active-duty judge advocate. Similarly, the two-week Reserve Legalman Course, offered in three phases, prepares enlisted personnel in the inactive-duty Reserve to serve as legalmen. During fiscal year 1986, 70 students completed a course of Reserve instruction at the school.

*Local Briefings.* In addition to the formal courses listed above, the Naval Justice School presented more than 600 hours of instruction on court-martial procedures, search and seizure, confessions and admissions, nonjudicial punishment, investigations, administrative separations, and the law of armed conflict to 6,315 members of selected Reserve units and students at the Surface Warfare Officers School, Chaplains School, Officer Indoctrination School, Officer Candidate School, Senior Enlisted Academy, Naval War College, Naval Science Institute, and Naval Academy Preparatory School at Newport, Rhode Island.

*Publications.* During fiscal year 1986, the Naval Justice School continued its expanded involvement in JAG Corps publications. Volume 35 of the *Naval Law Review* was edited and published by members of the staff, as was a compilation of commentaries by faculty members on pertinent issues of military law. Additionally, twenty-two teaching modules were prepared or revised as part of a continuing project to provide complete training packages, consisting of instructor notes, student materials, and visual aids, for presentation at local Navy and Marine Corps legal offices. These programs range in subject matter from military justice and administrative law to the law of armed conflict.

## MARINE CORPS ACTIVITIES

During fiscal year 1986, the emphasis on Reserve support for the active forces continued to accelerate. The newly created billet of Deputy Director for Reserve Affairs is providing the Director, Judge Advocate Division with a Reserve colonel to assist and advise in the planning and execution of all Reserve matters relating to judge advocates. Also, the law Mobilization Training Units were assigned six distinct missions directly supporting commands and Headquarters Marine Corps staff agencies. The most significant of those is the mission of the St. Louis Mobilization Training Unit to provide legal sup-

port for the Marine Corps Reserve Support Center. A third important event was the establishment of drilling billets for judge advocates at each of the 52 Marine Corps Mobilization Stations. There are now 175 drilling billets throughout the country for judge advocates.

The year saw the following activity with regard to the new office of the Chief Defense Counsel of the Marine Corps (CDCMARCOR):

a. MCO 5800.11A was issued on 15 Nov 1985. It expanded on ALMAR 231/84 which created the office of the CDCMARCOR.

b. Commencing in December 1985, Reserve Augmentation Unit billets were filled to support the defense organization, including Deputy Chief Defense Counsel, Assistant Regional Defense Counsel, and defense training.

c. CDCMARCOR and Regional Defense Counsel conducted command visitations/inspections at all commands at which defense counsel were assigned, making recommendations for appropriate changes in facilities, etc.

d. CDCMARCOR and Regional Defense Counsel have been made available as individual military counsel in unusual circumstances, e.g. capital cases.

e. Liaison has been established informally with the Army and Air Force defense service organizations and the Navy Appellate Defense Division.

The Marine Corps, through the auspices of the CDCMARCOR, instituted trial advocacy training using NITA methods, with support of NITA faculty. Training was conducted at both Camp Pendleton and Camp Lejeune, with courses approximately one week in length, at approximately three-month intervals. Participants included trial and defense counsel. In the most recent training, participants also included Navy judge advocates.

During Fiscal Year 1986, eight Marine judge advocates attended year-long service schools, including the Naval War College, the Marine Corps Command and Staff College, Amphibious Warfare School, and the U.S. Army JAG School. Four Marine judge advocates received their Master of Laws degrees from civilian law schools in the Special Education Program. Two hundred and twenty-six Marine judge advocates received continuing legal education at civilian and military schools through courses funded by Headquarters, U.S. Marine Corps and their parent commands. Fifty-one the 441 Marine Corps judge advocates served in command or staff (nonlawyer) assignments.

In observance of Law Day, the Judge Advocate Division sponsored a mock court-martial and presented it to a local middle school.

## JOINT-SERVICE COMMITTEE

This Committee, created on August 17, 1972, and consisting of representatives of the Judge Advocates General and the General Counsel of the Department of Transportation and a nonvoting representative provided by the U.S. Court of Military Appeals, is responsible for annually reviewing the Manual for Courts-Martial in light of judicial and legislative developments to ensure that the Manual, Discussion, and Appendices apply the principles of law and rules of evidence generally recognized in the trial of criminal cases in U.S. district courts to the extent practicable and to the extent that such rules and principles are not contrary to or inconsistent with the UCMJ. The Committee also ensures that the Manual reflects current practice and judicial precedent and serves as a forum for the exchange of ideas relating to military justice matters among the services. In May 1986, the Navy representative assumed chairmanship of the Joint-Service Committee.

The first annual review by the Committee was signed on 19 February 1986 by President Reagan, as Executive Order 12550, with an effective date of 1 March 1986. This change effected, *inter alia*, new provisions for espionage, required unanimous findings of guilt for capital offenses, and adopted the "inevitable discovery" and "good faith" exceptions to the exclusionary rule.

On 30 January 1986, the Committee completed its second annual review of the Manual for Courts-Martial, 1984 and drafted proposed legislation. Much of the proposed legislation was enacted as part of the National Defense Authorization Act of 1987, [Pub. L. No. \_\_\_\_\_, \_\_\_\_\_ Stat. \_\_\_\_\_, \_\_\_\_\_ (1986)]. Significant changes included shifting the burden of proving lack of mental responsibility to the accused, revision to the manner in which a request is made for enlisted personnel to serve on a court-martial, extending jurisdiction over Reserve component personnel for offenses committed while on active duty or during drill periods, and increasing the statute of limitations.

Hugh D. Campbell  
*Rear Admiral, USN*  
*Judge Advocate General of the Navy*

# APPENDIX A: U.S. NAVY-MARINE CORPS COURTS-MARTIAL/NJP STATISTICS FOR FISCAL YEAR 1986

Period: FISCAL YEAR 1986

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT	
GENERAL	1036	989	47	+100	(+11%)
BCD SPECIAL	2758	2758		-416	(-14%)
NON-BCD SPECIAL	2678	2418	260	+ 25	(+ 1%)
SUMMARY	3037	2970	67	-935	(-24%)
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-1226	(-12%)

## PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)	321
NUMBER OF DISHONORABLE DISCHARGES	
NUMBER OF BAD CONDUCT DISCHARGES	537
SPECIAL COURTS-MARTIAL (SA LEVEL)	2758
NUMBER OF BAD CONDUCT DISCHARGES	

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	1,022
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	3,273
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	83

## PART 4 - WORKLOAD OF THE Navy/Marine COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD	681
GENERAL COURTS MARTIAL	213
BCD SPECIAL COURTS-MARTIAL	468
REFERRED FOR REVIEW	4138
GENERAL COURTS-MARTIAL	866
BCD SPECIAL COURTS-MARTIAL	3272
TOTAL CASES REVIEWED	4113
GENERAL COURTS-MARTIAL	879
BCD SPECIAL COURTS-MARTIAL	3234
TOTAL PENDING AT CLOSE OF PERIOD	706
GENERAL COURTS-MARTIAL	200
BCD SPECIAL COURTS-MARTIAL	506
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-278 (-18%)

## PART 5 - APPELLATE COUNSEL REQUESTS BEFORE Navy/Marine COURT OF MILITARY REVIEW

NUMBER	3649
PERCENTAGE	85%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	14%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-50%
PERCENTAGE OF TOTAL PETITIONS GRANTED	3%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-17%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	1%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-51%

**APPENDIX A-CONTINUED**

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

PENDING AT BEGINNING OF PERIOD		27	
RECEIVED		223	
DISPOSED OF			
GRANTED	14		
DENIED	172		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		84	

**PART 8 - ORGANIZATION OF COURT**

TRIALS BY MILITARY JUDGE ALONE		869	
GENERAL COURTS-MARTIAL			
SPECIAL COURTS-MARTIAL		5039	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		167	
SPECIAL COURTS-MARTIAL		397	

**PART 9 - COMPLAINTS UNDER ARTICLE 138**

NUMBER OF COMPLAINTS	111	
----------------------	-----	--

**PART 10 - STRENGTH**

AVERAGE ACTIVE DUTY STRENGTH	786,877	
------------------------------	---------	--

**PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)**

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	70334	
RATE PER 1,000	89.39	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-16%	

**REPORT OF  
THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE  
OCTOBER 1, 1985 TO SEPTEMBER 30, 1986**

In compliance with the requirement of Article 6(a), Uniform Code of Military Justice, The Judge Advocate General, Major General Robert W. Norris, and Deputy Judge Advocate General, Major General Keithe E. Nelson 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 civil, professional and military organizations.

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

During fiscal year (FY) 1986, the Judiciary Directorate of the Office of The Judge Advocate General processed over 3406 actions involving military justice. The Directorate has the overall responsibility for supervising the administration of military justice throughout the United States Air Force, from nonjudicial proceedings to appellate review of courts-martial. Additionally, the Directorate has the staff responsibility of the Office of The Judge Advocate General in all military justice matters which arise in connection with programs, special projects, studies and inquiries generated by the Air Staff, Headquarters USAF, the Secretaries, Departments of Defense, Army, Navy, and Air Force, members of Congress and other federal, state and civil 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 in applications submitted to the Air Force Board for Correction of Military Records. Formal opinions were provided to the Secretary of the Air Force concerning 271 applications.

b. The Directorate received 794 inquiries in specific cases requiring either formal written replies or telephonic replies to senior executive officials, including the President and members of Congress.

c. The Directorate provided a representative to all interservice activities involving military justice. This included the Joint Service Committee and support for the Code Committee.

## **AUTOMATED MILITARY JUSTICE ANALYSIS AND MANAGEMENT SYSTEMS**

The Automated Military Justice Analysis and Management System (AMJAMS), which became operational in July 1974, is a fully automated data system which allows The Judge Advocate General's Department to collect and collate data concerning courts-martial and nonjudicial punishment. This information is used to provide current statistical reports as a management tool for use by this headquarters, major commands, general court-martial jurisdictions and individual bases. It enables the Department to answer specific inquiries on cases in progress and to prepare studies on various aspects of military justice administration, as required by Congress and other governmental agencies.

During FY 1986 the system produced approximately 30 standard reports on a monthly and quarterly basis. The system was also used to answer many individual requests for particular statistical information. These special requests were received from such activities as the Senate Armed Services Committee, Air Force Security Police and the Air Force Military Personnel Center.

### **TRIAL JUDICIARY**

The Air Force Trial Judiciary had an average of 31 military active duty and five reserve military trial judges, including one Chief Trial Judge and his assistant, assigned to 11 locations worldwide.

The Trial Judiciary has continued its program of automating the docket management and budgeting functions by upgrading the current programs and initiating electronic mail between the seven Circuit offices and the headquarters. Further improvements in the programs and completion of the data communications capability are planned for 1987.

### **CIRCUIT TRIAL COUNSEL PROGRAM**

The number of assigned circuit trial counsel (CTC) increased to 22 during FY 1986. The average number of days TDY per case in FY 86 was 7. For the third year in a row, the percentage of all courts prosecuted by CTC increased from 26% in FY 1983; 29% in FY 1984; 31% in FY 1985; to 36% in FY 1986. The total number of general courts-martial tried by CTC increased markedly from 374 to 455, but the percentage of general courts-martial tried by circuit trial counsel fell from 79% in FY 1985 to 74% in FY 1986. This was due to the increase

in general courts-martial worldwide from 476 in FY 1985 to 618 in FY 1986.

No. and (%) cases prosecuted by Circuit Trial Counsel:

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
General	345 (92%)	323 (92%)	378 (88%)	385 (84%)	348 (82%)	374 (79%)	455 (74%)
Special	229 (17%)	219 (16%)	119 (9%)	55 (5%)	73 (7%)	68 (7%)	81 (9%)
Total	574 (38%)	542 (31%)	497 (25%)	440 (26%)	421 (29%)	442 (31%)	536 (36%)

In support of the urinalysis program, a training workshop was conducted to continue to insure that circuit trial counsel from each circuit are specially trained to prosecute these complex, scientific evidence cases. The successful prosecution of urinalysis cases continues to support the important fight against drug abuse in the Air Force.

### APPELLATE GOVERNMENT COUNSEL

Direct U.S. Supreme Court review of the decisions of the U.S. Court of Military Appeals dramatically impacted the Air Force in FY 1986. During the year, ten petitions were filed on behalf of Air Force members. By way of comparison, during FY 1985, only one Air Force petition was filed. In addition, pleadings and positions in twenty-three sister service Supreme Court cases were reviewed by JAJG during the year, up from five sister service petitions reviewed the year before. One 1986 sister service petition, *United States v. Solorio* (Coast Guard), was granted review by the Court; JAJG furnished active support in developing the government's final brief before the Supreme Court in that case. Under Article 62, U.C.M.J., three different cases were evaluated for filing appeals from adverse rulings of military trial judges. One of those cases was formally filed with the appellate courts on behalf of the government.

### AREA DEFENSE COUNSEL PROGRAM

Additional area defense counsel arrived at George AFB, California; Holloman AFB, New Mexico; Florennes AB, Belgium; and Comiso AFB, Italy, with personnel scheduled next fiscal year to fill the additional authorized position at Minot AFB, North Dakota, and Maxwell

AFB, Alabama. These 126 area defense counsel, 18 circuit defense counsel, and 7 chief circuit defense counsel have provided outstanding legal representation to Air Force members facing adverse disciplinary or separation actions.

The report of the committee appointed to evaluate the Reserve Area Defense Counsel Augmentation Test Program was received by The Judge Advocate General. It was decided that the program be discontinued.

## APPELLATE DEFENSE COUNSEL

The appellate defense counsel concluded a busy year representing numerous clients who have been convicted by courts-martial and whose sentences authorized review by the United States Air Force Court of Military Review (AFCMR) and the United States Court of Military Appeals (USCMA). The workload was as follows:

### AFCMR

ERRORS FILED . . . . .	815
ORAL ARGUMENTS . . . . .	16
OTHER MOTIONS . . . . .	251

### USCMA

SUPPLEMENTS TO PETITIONS . . . . .	442
BRIEFS IN SUPPORT . . . . .	111
GRANT BRIEFS . . . . .	53
ORAL ARGUMENTS . . . . .	16
OTHER MOTIONS/PETITIONS . . . . .	166

Counsel also filed 7 Petitions for Certiorari at the U.S. Supreme Court. None were granted.

## CONFINEMENT FACILITIES

Last available figures during the fiscal year showed 835 Air Force personnel were in confinement, 46 pretrial and 789 post-trial. The figure 835 represents the highest number in confinement since at least as far back as the Vietnam War. In addition, the latest data revealed that 147 were on parole and another 93 in excess leave status.

Considerable pressure was being placed on our central confinement facilities. Since the end of the last fiscal year, the Air Force secured an additional 20 firm bed spaces at the United States Disciplinary Barracks, bringing our total there to 220, with access to another ten

beds when not used by the other services. Still, there was a small backlog of prisoners awaiting transfer to the USDB at the end of the fiscal year. The other central confinement facilities, at Lowry Air Force Base and Fort Lewis, were operating at full capacity, and transfers were being delayed 30-45 days following the convening authority's action because of existing bed space limitations. Plans to acquire additional bed space at Fort Lewis and to secure a new facility at Lowry were being considered. Hopes of acquiring about 100 beds at the Fort Dix facility were fading as pressure by the State of New Jersey and other executive agencies for the facility increased.

The return to duty rehabilitation (RTDR) program at the 3320th CRS, Lowry Air Force Base, continued to operate successfully. Eight Air Force members were restored to duty following completion of the RTDR program in FY 1986.

### **PREVENTATIVE LAW AND LEGAL ASSISTANCE PROGRAM**

The Preventative Law and Legal Aid Group (JACA) made significant improvements in the organization and standardization of preventative law resources within all Air Force legal offices through creation of the Uniform Notebook System. The notebook system will store material in eight categories and will be indexed so that information can be retrieved easily. Within the eight categories, there will be two notebooks, one with individual articles and the second designed to hold self-contained guides. Notebooks have been established in five of the eight categories.

Eight Shortbursts Newsletters were mailed to all base and command legal offices. Five were general information letters and three focused entirely on one subject. The October/November Shortbursts Newsletter was devoted entirely to income taxes with special emphasis on the Tax Reform Act of 1986.

The staff of the Preventative Law and Legal Aid Group organized and taught a joint service income tax training course for overseas bases. A representative from JACA taught attorneys and unit tax advisors at Yokota, Japan and Seoul, Korea. In addition to teaching tax courses, JACA ordered federal income tax forms for all overseas bases and distributed them worldwide. Again in 1986, JACA prepared and distributed to all the military services the All States Income Tax Guide, a summary of the income tax laws of each of the states. A comprehensive guide was prepared and distributed to all Air Force legal offices on how to plan and conduct a comprehensive tax assistance program.

Legal assistance services were provided to over 450,000 clients worldwide on 1.1 million matters during the calendar year 1986. The top categories continued to be wills and estates, domestic relations,

and taxation. The Chief of the Preventative Law and Legal Aid Group served as liaison to the American Bar Association's Standing Committee on Legal Assistance for Military Personnel and visited numerous legal offices of all the military services during the year.

## THE REPORTER, AFRP 110-2

*The Reporter* continues to provide timely information on a wide variety of legal issues. Topics given in-depth analysis in FY 1986 included: impact aid and military dependent children, personal injury valuation, medical malpractice, the Judge Advocate General's annual awards, geosynchronous satellites, and a review of recent U.S. Supreme Court decisions. The reporter is praised by government lawyers, both military and civilian, as an extremely valuable communications forum that promotes crossfeed and a better prepared Department.

## EDUCATION AND TRAINING

The Judge Advocate General's Department provided numerous and continuing legal education (CLE) opportunities to its personnel, as well as its sister services, during FY 86.

### THE AIR FORCE JUDGE ADVOCATE GENERAL SCHOOL

#### Resident Courses

The Air Force Judge Advocate General School, Leadership and Management Development Center, Maxwell AFB, Alabama, conducted the following courses affecting military justice in FY 1986.

a. Advance Trial Advocacy Course - This 1-week course provides training in advanced advocacy skills to judge advocates currently serving as or selected for circuit trial or defense counsel. Thirty-six judge advocates attended this course.

b. Judge Advocate Staff Officer Course - A course providing seven weeks of instruction on the basics of military law. This course was attended by 129 judge advocates.

c. Reserve Forces Judge Advocate Course - A 2-week course which provides Air Force Reserve personnel and National Guardsmen with up-to-date information on recent developments in military law. This course was offered twice in FY 1986 and was attended by 136 Reservists and Air National Guardsmen.

d. Staff Judge Advocate Course - This 2-week course provides recently assigned staff judge advocates with both a refresher course

in military law and an update on recent developments. A total of 51 judge advocates attended this course.

e. Trial and Defense Advocacy Course – This 1-week course, offered three times during FY 1986, provides basic advocacy training to judge advocates actively engaged in trial practice and was attended by 130 judge advocates.

f. Military Judges' Seminar – This 1-week seminar provides military judges a forum in which to present and discuss new developments in military justice. This course was offered once in FY 1986 and was attended by 48 military judges from all services.

#### **VIDEOTAPE AND SEMINAR PROGRAMS**

The following videotape and seminar programs affecting military justice were offered:

Trial Techniques .....	9 Hours
International Law–Conduct of Armed Conflict .....	3.5 Hours
Supreme Court Trends in Criminal Law .....	4 Hours
Appellate Commentary .....	6 Hours
Expert Witnesses .....	3 Hours
Impeachment under the Military Rules of Evidence .....	3 Hours
Character evidence .....	4 Hours
Advanced Advocacy .....	5 Hours
Advanced Trial Techniques .....	6 Hours
Sentencing .....	2.5 Hours
Search and Seizure .....	3.5 Hours
Government Lawyer and Professional Responsibility .....	3 Hours

g. Aerospace Operational Law. This course provided judge advocates with training in the domestic and internal legal issues associated with planning and execution of peacetime and combat military operations. 51 judge advocates attended.

#### **Short Courses at Civilian Universities**

Fifteen judge advocates attended courses at the National Judicial College at the University of Nevada during FY 1986.

#### **Masters in Law Program**

During FY 1986, one judge advocate received a Master of Law degree in criminal law.

#### **U.S. Army JAG School and Naval Justice School Courses**

Four judge advocates attended the military judge's course at the U.S. Army JAG School, Charlottesville, Virginia. Judge advocates also attended the Law of War Workshop, Advanced Law of War Seminar, and Criminal Trial Advocacy Course, and the Fiscal Law Course at the U.S. Army JAG School. Five judge advocates attended the military judge's course at the Naval Justice School, Newport, Rhode Island.

## PERSONNEL

As of 1 October 1986, there were 1371 judge advocates on active duty. This total included 5 generals, 120 colonels, 210 lieutenant colonels, 327 majors, 672 captains and 38 first lieutenants.

Robert W. Norris  
*Major General, USAF*  
*The Judge Advocate General*

# APPENDIX A: U.S. AIR FORCE COURTS-MARTIAL/NJP STATISTICS FOR FISCAL YEAR 1986

Period: October 1, 1985 - September 30, 1986

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	508	478	30	+ 7.1%
BCD SPECIAL	368	368		- 3.4%
NON-BCD SPECIAL	463	415	48	- 21.6%
SUMMARY	38	34	4	- 43.9%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				- 8.9%

## PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES		148
NUMBER OF BAD CONDUCT DISCHARGES		267
SPECIAL COURTS-MARTIAL (SA LEVEL)		
NUMBER OF BAD CONDUCT DISCHARGES		334

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	476
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	376
FOR EXAMINATION UNDER ARTICLE 89 - GENERAL COURTS-MARTIAL	55

## PART 4 - WORKLOAD OF THE AIR FORCE COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD		177
GENERAL COURTS-MARTIAL	112	
BCD SPECIAL COURTS-MARTIAL	65	
REFERRED FOR REVIEW		855
GENERAL COURTS-MARTIAL	527	
BCD SPECIAL COURTS-MARTIAL	328	
TOTAL CASES REVIEWED		879
GENERAL COURTS-MARTIAL	509	
BCD SPECIAL COURTS-MARTIAL	370	
TOTAL PENDING AT CLOSE OF PERIOD		193
GENERAL COURTS-MARTIAL	115	
BCD SPECIAL COURTS-MARTIAL	78	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+ 14.6%

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

NUMBER	822
PERCENTAGE	96.4%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	451/879	51.3%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+ 6.9%
PERCENTAGE OF TOTAL PETITIONS GRANTED	48/451	10.6%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+ 68.7%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	48/879	5.4%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+ 1.0%

## APPENDIX A—CONTINUED

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

PENDING AT BEGINNING OF PERIOD		6	
RECEIVED		36	
DISPOSED OF		36	
GRANTED	3		
DENIED	33		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		6	

### PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		216	
SPECIAL COURTS-MARTIAL		385	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		292	
SPECIAL COURTS-MARTIAL		446	

### PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	25		
----------------------	----	--	--

### PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	590470		
------------------------------	--------	--	--

### PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	21362		
RATE PER 1,000	30.10		
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	- 10.2%		

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

**October 1, 1985 to September 30, 1986**

The table below shows the number of court-martial records received and filed at Coast Guard Headquarters during FY-86 and the 5 preceding years.

Fiscal Year	86	85	84	83	82	81
General Courts-Martial . . . .	5	5	6	10	9	2
Special Courts-Martial . . . .	19	43	33	68	79	58
Summary Courts-Martial . . .	50	77	105	128	151	192
Total . . . . .	74	125	144	206	239	252

**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 full time general courts-martial judge. When he 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**

Of the five accuseds tried by general courts-martial this fiscal year, one was tried by military judge alone. He received a bad conduct discharge. Of the four accuseds tried by courts with members, two received sentences which included a bad conduct discharge, one received a dishonorable discharge, and one was sentenced to dismissal from the U.S. Coast Guard. Two of the accuseds whose charges were referred to general courts-martial were nonrated (pay grades E-1 through E-3), one was a petty officer (pay grade E-6), one was a chief petty officer (pay grade E-7), and one was a chief warrant officer W-2.

The following table shows the distribution of the 387 specifications referred to general courts-martial.

Violation of the UCMJ, Article	No. of Specs.
92 (violation of order or regulation) . . . . .	8
107 (false official statement) . . . . .	72
108 (sale, loss, damage, destruction, or wrongful disposition of military property of the U.S.) . . . . .	1
121 (larceny and wrongful appropriation) . . . . .	72
134 (general) . . . . .	100
Other offenses . . . . .	134

### SPECIAL COURTS-MARTIAL

Eight of the 19 accuseds tried by special courts-martial this fiscal year were tried by the military judge alone. Three of the 11 accuseds tried by members were acquitted of all charges and specifications. Three bad conduct discharges were awarded; two to accuseds tried by military judge alone, and one to an accused tried by a court with members. Five of the accuseds whose charges were referred to special courts-martial were nonrated (pay grades E-1 through E-3), nine were petty officers (pay grades E-4 through E-6), two were chief petty officers (pay grades E-7 and E-8), two were chief warrant officers, and one was a lieutenant (O-3).

The following table shows the distribution of the 107 specifications referred to special courts-martial.

Violation of the UCMJ, Article	No. of Specs.
85 and 86 (desertion and UA) . . . . .	10
89 (disrespect toward a superior commissioned officer) . . . . .	1
91 (willful disobedience or disrespect) . . . . .	2
92 (violation of order or regulation) . . . . .	11
107 (false official statement) . . . . .	2
108 (sale, loss, damage, destruction, or wrongful disposition of military property of the U.S.) . . . . .	3
121 (larceny and wrongful appropriation) . . . . .	23
128 (assault) . . . . .	1
134 (general) . . . . .	19
112(a) (marijuana offenses) . . . . .	1
112(a) (other controlled drug offenses) . . . . .	5
Other offenses . . . . .	29

The following is a breakdown of sentences awarded by the military judge alone in special courts-martial (eight convictions). In three of these eight convictions, the accuseds pled guilty to all charges and specifications.

Sentence	Cases Imposed
bad conduct discharge .....	2
confinement .....	4
hard labor without confinement .....	1
reduction in rate .....	4
forfeiture of pay (\$5,250 total) .....	5
other sentences .....	5

The following is a breakdown of sentences awarded in special courts-martial with members (eight convictions). In two of these eight convictions, the accuseds pled guilty to all charges and specifications.

Sentence	Cases Imposed
bad conduct discharge .....	1
confinement .....	3
hard labor without confinement .....	1
reduction in rate .....	5
restriction .....	1
forfeiture of pay (\$8,552 total) .....	5
other sentences .....	1

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

FY	Number of Convictions	Forfeitures	Confinement	Reduction in grade	BCD
86	16	10 (63%)	7 (44%)	9 (56%)	3 (19%)
85	36	24 (67%)	18 (50%)	28 (78%)	7 (19%)
84	32	21 (66%)	18 (56%)	26 (81%)	3 ( 9%)

## SUMMARY

Forty-two percent of the accuseds tried by special court-martial were tried by military judge alone. Thirty-eight percent of them pled guilty to all charges and specifications. Eighteen percent of the accuseds tried by special court-martial with members pled guilty to

all charges and specifications. There was a 41 percent decrease in total 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 by accuseds under Article 69, UCMJ, a discretionary review was conducted under Article 69 of *all* courts-martial not requiring appellate review.

## PERSONNEL AND TRAINING

The Coast Guard has 160 officers designated as law specialists (judge advocates) serving on active duty. One-hundred eighteen are serving in legal billets and 42 are serving in general duty billets. Law specialists, other than the district legal officer and most principal assistants, serving at district offices, perform most trial and defense counsel services. Senior law specialists, most serving as district legal officers, are used as military judges in special courts-martial, when required. Seventeen Coast Guard officers are currently undergoing postgraduate studies in law and will be certified as law specialists at the completion of their studies.

The 11th Coast Guard Basic Law Specialists' Course, composed of nine regular officers who had just completed law school, was held at the Coast Guard Reserve Training Center, Yorktown, Virginia, from 8 September to 31 October 1986. There were no direct commissioned attorneys in this year's class. The 8-week course introduced these officers to the many duties they will perform as Coast Guard law specialists. One-half of the course was devoted to military justice. Nonjudicial punishment, jurisdiction, professional responsibility and ethics, court procedures, trial/defense counsel duties, and the Articles of the Code most frequently litigated were some of the areas covered. Each student was given an opportunity to demonstrate recently acquired knowledge and skills in moot courts. All nine students were eligible for Article 27(b), UCMJ, certification upon completion of the course.

## CASE PENDING BEFORE THE U.S. SUPREME COURT

A Coast Guard case, *U.S. v. Solorio* [Sup. Ct. No. 85-1581], was granted certiorari by the U.S. Supreme Court on 16 June 1986 under a 1984 amendment to Article 67, Uniform Code of Military Justice, authorizing direct appeal to the Supreme Court from U.S. Court of Military Appeals decisions. *Solorio*, the first such grant of review to

be fully briefed for decision by the Supreme Court, presents for resolution the question whether earlier decisions by that Court, *O'Callahan v. Parker*, 395 U.S. 258, 89 S.Ct. 1683, 23 L.Ed. 2d 291 (1969), *Relford v. Commandant*, 401 U.S. 355, 91 S.Ct. 649, 28 L.Ed. 2d 102 (1971), and *Schlesinger v. Councilman*, 420 U.S. 738, 95 S.Ct. 1300, 43 L.Ed. 2d 591 (1975), allow for court-martial jurisdiction over sex abuse offenses against dependent children of active duty service members occurring off-base in the civilian community. Both the U.S. Coast Guard Court of Military Review and the U.S. Court of Military Appeals found the requisite service connection for trial of these offenses. *U.S. v. Solorio*, 21 M.J. 512 (CGCMR 1985) and *U.S. v. Solorio*, 21 M.J. 251 (CMA 1986). As of 30 September 1986, a date for oral argument had not been set but is anticipated in February or March 1987.

### U.S. COAST GUARD COURT OF MILITARY REVIEW

During fiscal year 1986, the Court was composed of five appellate military judges assigned by the General Counsel, Department of Transportation, in his capacity as Judge Advocate General. The Chief Judge and one other judge are civilians. The remaining three judges are Coast Guard commissioned officers. On 11 September 1986, a public installation ceremony was held at U.S. Coast Guard Headquarters to swear in the most recent addition to the Court. Captain Carl Josephson, USCG, replaced Captain John B. Lynn, USCG, who retired on 30 June 1986. The Court is presently constituted as follows:

Chief Judge Joseph H. Baum  
Judge Alfred F. Bridgman, Jr.  
Judge Frederick F. Burgess, Jr.  
Judge Michael C. Grace  
Judge Carl Josephson

In addition to the decisional work reflected in Appendix A, the judges on the Court participated in a number of professional seminars and conferences during the past year. In October 1985, the Court hosted a meeting at Coast Guard Headquarters of the Chief Judges from all the other Courts of Military Review to discuss proposals with respect to the Rules of Practice and Procedure for the Courts. Then, in November 1985, all the judges from the Court participated in the first Annual All Services Appellate Military Judges Conference sponsored by the U.S. Court of Military Appeals and the Military Judges Committee of the Federal Bar Association. In May 1986, the Eleventh Annual Homer Ferguson Conference was held with the Coast Guard Court judges in attendance. During that conference, the Chief Judge of the Court, along with representatives from the other service courts,

participated in a panel discussion of current military justice issues. The Chief Judge also made a presentation with the other service Chief Judges in April 1986 to the Twelfth Interservice Military Judges Seminar at the Air Force Judge Advocate General School, Maxwell Air Force Base, Alabama. In August 1986, Judge Bridgman from the Court, along with other state and federal appellate judges from across the nation, participated in an appellate judges seminar sponsored by the American Bar Association's Appellate Judges Conferences at Lake Tahoe, California. Finally, as the fiscal year ended, the Chief Judge, as incoming Chairman of the Federal Bar Association's Military Judges Committee, commenced planning seminars and continuing legal education events to be sponsored by that committee.

### ADDITIONAL MILITARY JUSTICE STATISTICS

Appendix A (pp. 69-70) contains additional basic military judge statistics for the reporting period and reflects the increase/decrease of the workload in various categories.

J.E. VORBACH  
*Rear Admiral, U.S. Coast Guard*  
*Chief Counsel*

# APPENDIX A: U.S. COAST GUARD COURTS-MARTIAL/NJP STATISTICS FOR FISCAL YEAR 1986

Period: 1 October 1985 - 30 September 1986

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	5	5	0	Unchanged
BCD SPECIAL	19	16		- 57%
NON-BCD SPECIAL	0	0	0	-100%
SUMMARY	50	47	3	- 35%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				- 41%

## PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)			
NUMBER OF DISHONORABLE DISCHARGES			1
NUMBER OF BAD CONDUCT DISCHARGES			3
SPECIAL COURTS-MARTIAL (SA LEVEL)			
NUMBER OF BAD CONDUCT DISCHARGES			3

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

FOR REVIEW UNDER ARTICLE 36 - GENERAL COURTS-MARTIAL	4
FOR REVIEW UNDER ARTICLE 36 - BCD SPECIAL COURTS-MARTIAL	4
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	1

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

TOTAL ON HAND BEGINNING OF PERIOD		11
GENERAL COURTS-MARTIAL	3	
BCD SPECIAL COURTS-MARTIAL	8	
REFERRED FOR REVIEW		9
GENERAL COURTS-MARTIAL	5	
BCD SPECIAL COURTS-MARTIAL	4	
TOTAL CASES REVIEWED /ACTED UPON		13
GENERAL COURTS-MARTIAL	4	
BCD SPECIAL COURTS-MARTIAL	9	
TOTAL PENDING AT CLOSE OF PERIOD		7
GENERAL COURTS-MARTIAL	4	
BCD SPECIAL COURTS-MARTIAL	3	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+83% <sup>4</sup>

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

NUMBER	8
PERCENTAGE	100%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	6/12	50%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+50%
PERCENTAGE OF TOTAL PETITIONS GRANTED	1/4	25%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		Unchanged
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	1/12	8%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		Unchanged

## APPENDIX A—CONTINUED

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

PENDING AT BEGINNING OF PERIOD		3	
RECEIVED		4	
DISPOSED OF		3	
GRANTED	2		
DENIED	1		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		4	

### PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		1	
SPECIAL COURTS-MARTIAL		8	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		4	
SPECIAL COURTS-MARTIAL		11	

### PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	4	
----------------------	---	--

### PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	36,924	
------------------------------	--------	--

### PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	1,693	
RATE PER 1,000	45.9	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-30%	

PAGE 2 OF 2

- 1 Military judges are assigned to all cases referred to special courts-martial. The Coast Guard, therefore, considers all special courts-martial potential BCD cases.
- 2 Included within this total are eight cases referred to the Court for Article 66, UCMJ review, and one extraordinary writ received for action. No Article 62, UCMJ Government Appeals were received this fiscal year, as opposed to one that was received and acted upon in FY 85. That action reversing the trial judge, U.S. v. Solorio, 21 M.J. 512 (CGCMR 1985), was affirmed by the U. S. Court of Military Appeals on January 27, 1986, and appears at 21 M.J. 251.
- 3 Included within this total are eleven Article 66, UCMJ reviews, one extraordinary writ acted upon with finality, and one court-martial record remanded for a new convening authority's action.
- 4 The 83% rate of increase over the number of cases reviewed during the last reporting period has been computed based on the Article 66, UCMJ reviews completed - six in 1985 and eleven in 1986. If the total cases reviewed/acted upon are used as a basis, there would be a 30% increase over last year, since there were 10 cases in 1985 (three extraordinary writs and one Government Appeal under Article 62, UCMJ, in addition to the six Article 66, UCMJ reviews) as opposed to 13 cases in 1986.