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



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

**For the Period  
October 1, 1984 to September 30, 1985**

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

**PURSUANT TO THE**  
**UNIFORM CODE OF MILITARY JUSTICE**  
For the Period

October 1, 1984–September 30, 1985

**NOV 15 1985**  
**OCT 15 1987**

**ACQUISITIONS**

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U.S. Courts of Military Appeals

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**JOINT ANNUAL REPORT  
OF THE  
CODE COMMITTEE  
PURSUANT TO THE  
UNIFORM CODE OF MILITARY JUSTICE  
October 1, 1984 to September 30, 1985**

The Judges of the 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 1985, the Code Committee met on several occasions to review the administration of military justice within the Armed Services. Consistent with an expression of Congress that such meetings should be open to the public, members of the public were invited to attend two of the meetings during fiscal year 1985. These public meetings were attended by both civilian and military attorneys who, on several occasions, were invited to express their views on various aspects of military justice which were being considered by the Code Committee. The members of the Code Committee were pleased that members of the general legal community expressed an interest in the administration of military justice.

During its initial meeting in fiscal year 1985, held on November 27, 1984 the Code Committee solicited views from its members as to the effects and impact of the Military Justice Act of 1983 on the administration of military justice at both the trial and appellate levels. During this meeting the members of the Code Committee discussed preparing a response to the report of a commission established under the Military Justice Act of 1983 to make recommendations on several proposed changes to the Uniform Code of Military Justice, which was scheduled for release in December 1984.

The Code Committee subsequently met on January 24, 1985, to consider a response to the report filed by the commission under the Military Justice Act of 1983, and as Chairman of the Code Committee, Chief Judge Robinson O. Everett later submitted a letter \*setting forth the Code Committee's comments to the Honorable Barry M. Goldwater, Chairman of the Committee on Armed Services, U.S. Senate, and the Honorable Les Aspin, Chairman of the Committee on Armed Services, U.S. House of Representatives. The language of this letter had been coordinated with all the members and presents the views of the Code Committee members with respect to each of the Commission's recommendations.

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\* A copy of this letter is set forth as an Appendix to this Joint Report.

During its final meeting in fiscal year 1985, the Code Committee examined various proposals to amend the Uniform Code of Military Justice and the Manual for Courts-Martial. The issues which were considered included proposals affecting military jurisdiction over reserve forces, the requirement for written requests for enlisted personnel to serve as court members, the desirability of increasing the number of peremptory challenges of court members, the defense of insanity, and the expedited review procedures for handling government appeals under the 1983 amendment to Article 62, Uniform Code of Military Justice, 10 U.S.C. §862. As additional study of such matters was deemed desirable, no specific proposals were adopted by the Code Committee on any of these matters.

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*

Major General HUGH R. OVERHOLT  
*The Judge Advocate General, U.S. Army*

Rear Admiral THOMAS E. FLYNN  
*The Judge Advocate General, U.S. NAVY*

Major General ROBERT W. NORRIS  
*The Judge Advocate General, U.S. Air Force*

Rear Admiral, EDWIN H. DANIELS  
*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

## APPENDIX

UNITED STATES COURT OF MILITARY APPEALS  
WASHINGTON, D.C. 20442



ROBINSON O. EVERETT  
CHIEF JUDGE

February 28, 1985

The Honorable Barry M. Goldwater,  
Chairman  
Committee on Armed Services  
U.S. Senate  
222 Senate Russell Office Building  
Washington, D.C. 20510

Re: Comments of Article  
67(g) Code Committee on  
Commission's Report under  
Military Justice Act of  
1983.

Dear Mr. Chairman:

The Military Justice Act of 1983 directed the Secretary of Defense to appoint a nine-member Commission to make recommendations on several proposed changes in the Uniform Code of Military Justice. The report of this Commission was to be submitted to each Armed Services Committee, and to the Code Committee established by Article 67(g) of the Uniform Code. In turn, the Code Committee -- which consists of the judges of the U.S. Court of Military Appeals, the senior military lawyer of each Armed Force, and two public members -- was to comment on the Report.

The Commission appointed by Secretary Weinberger completed its report in December, 1984. This report has been studied and discussed by the members of the Code Committee. In accordance with the provisions of section (9) (b) (4) of the Military Justice Act of 1983, the Code Committee now presents these comments:

1. Whether the sentencing authority in court-martial cases should be exercised by a military judge in all noncapital cases to which a military judge has been detailed.

Comment: The Commission rejected the proposal that sentences be imposed by military judges in all non-capital cases tried by court-martial. Most of the members of the Code Committee agree with this position. Unlike the civilian community, where sentencing usually is done by judges, court-martial members adjudged all sentences until 1969. Since then an accused has been allowed to waive trial by members and to be tried and sentenced by a military judge; but, absent this waiver, he still is both tried and sentenced by court members.

Many accused servicemembers -- especially in the Army and Air Force -- choose to be tried by court members. To have all sentencing done by judges would eliminate a right considered important by many. Under current law line officers continue to have some opportunities to participate in sentencing; and it is felt that this participation provides them helpful experience and training. To require judge-alone sentencing would eliminate these opportunities;

and some commanders are disturbed by the prospect of abolishing this practice.

The information it compiled failed to convince the Commission -- and fails to convince most members of the Code Committee -- that any great need exists to eliminate sentencing by court-martial members. On the other hand, the Judge Advocate General of the Navy favors a requirement for sentencing by military judge in all cases, because he believes the sentences imposed by judges are more consistent and uniform than those adjudged by court members.

In 1974, the American Bar Association recommended that an accused servicemember be granted the option to be tried by court members and, if convicted, to be sentenced by the military judge. Under this proposal only a minor amendment would be needed in the Uniform Code, so that an accused -- with the trial judge's consent -- could elect sentencing by judge alone after findings of guilty had been returned by a court composed of members. In this way, military justice for the first time would permit the same allocation of responsibilities typically found in the civilian community -- namely, trial by a group of lay persons and sentencing by judge alone. The Code Committee suggests that the American Bar Association proposal be further examined by Congress in reviewing the Commission's report.

## 2. Whether military judges and the Courts of Military Review should have the power to suspend sentences.

Comment: The Commission concluded that the authority to suspend court-martial sentences should not be granted to military judges at either the trial or appellate level. A majority of the Code Committee concurs in this view. The Code Committee recognizes that suspension of sentence is a useful tool for rehabilitation and that its use by commanders should be encouraged. To this end several Committee members have suggested procedural changes that could be made by the President through amendment of the Manual for Courts-Martial. To assure that, in trials by military judge alone, the recommendations of military judges for suspension of an adjudged sentence would have a better chance for acceptance by the commanding officers who are already empowered to suspend sentences, such trial judges should be urged to express in some detail in records of trial why they believe suspension of sentence is appropriate. In a court-martial before members, the military judge in his instructions on sentencing might similarly advise the court members that they may make a nonbinding recommendation to the convening authority that a sentence be suspended and that, if they do so, they should explain the basis for their recommendation. Convening authorities, in turn, might be required to express their reasons for rejecting the suspension recommendations of a military judge or of court members. As to suspension of sentences at the appellate level, a possible solution under existing law has been suggested in a judicial opinion. See United States v. Clark, 16 M.J. 239, 242 (C.M.A. 1983) (Everett, C.J., concurring).

## 3. Whether the jurisdiction of the special court-martial should be expanded to permit adjudgment of sentences including confinement of up to one year, and what, if any, changes should be made to current appellate jurisdiction.

Comment: The Commission recommended expanding the jurisdiction of the special court-martial to permit adjudging confinement at hard labor for a maximum of one year instead of the current limitation of six months. A clear majority of the Code Committee also favors this

expansion. There is a positive benefit to both the accused and the command in those cases in which the commander considers that the case warrants confinement in the six to twelve month range. The accused benefits by having a one-year confinement ceiling rather than risking exposure to the maximum permissible punishment authorized at a general court-martial. Furthermore, if found guilty, he would carry a conviction of the lower level court-martial. Both the accused and the commander may benefit from more expeditious processing of the case and greater opportunity for post-trial rehabilitation. The command could benefit from reduced costs.

The delineation of the one-year level also parallels the civilian punishment limits which typically separate a misdemeanor court from a felony court. With expanded jurisdiction, those cases which are more than simple misdemeanors but yet are not serious felonies could quite properly be referred to the expanded special court-martial.

On the other hand, some Code Committee members anticipate that some serious cases might be diverted from the general court-martial level where they properly belong. At least one Committee member believes that the present jurisdictional limitation on the special court-martial is more consistent with its historical role.

In many cases that are now sent to special courts-martial, the suggested expansion in confinement jurisdiction would establish a higher maximum punishment that could be imposed by the court-martial for the offenses being tried. This increase in the maximum punishment may exert a greater pressure upon the accused to plea bargain; and, in that event, the percentage of contested cases would likely be reduced. To the extent that sentencing authorities -- whether the judge or court members -- take the maximum punishment into account in deciding what sentence to impose, the doubling from six months to twelve months of the maximum punishment imposable by a special court-martial may tend to increase the sentence which is actually adjudged by special courts. On the other hand, cases referred to special courts that otherwise would be referred to general courts would tend to have lesser sentences.

4. Whether military judges, including those presiding at special and general courts-martial and those sitting on the Courts of Military Review, should have tenure.

Comment: The Commission rejected a proposal that military judges at the trial and appellate level be granted fixed terms of office. There is no evidence to suggest that judges are removed after a short time in office in order to punish them for unpopular rulings. Adequate administrative procedures presently exist to remove a military judge for misconduct or disability.

Unlike most civilian judges, military judges currently enjoy many of the practical benefits of tenure because, as senior military officers, they usually are entitled to serve on active military duty for 20 years, after which they may retire and draw retirement pay. To impose a formal system of tenure at this time would be an overkill.

The Commission's consideration of tenure for military judges appears to have heightened the attention being given to the position of a military judge. Certainly, it is important that this position be viewed as career-enhancing. However, the grant of formalized tenure to military judges with a consequent reduction in the present flexibility of

military personnel assignments is not considered necessary to achieve this objective.

5. What should be the elements of a fair and equitable retirement system for the judges of the United States Court of Military Appeals.

Comment: All the Code Committee members believe that the retirement benefits for judges of the United States Court of Military Appeals should be improved. Too often in its history the Court has been plagued by the departure of talented judges, who felt compelled to seek positions which provided them better retirement benefits. The judicial retirement plan for Article III judges and the retirement plan for the United States Tax Court provide models for use in enhancing the retirement benefits for judges of the Court of Military Appeals.

Granting Article III status, as discussed in the following paragraphs, would solve the retirement problem for the Court of Military Appeals, since presumably the judges would then be participants in the judicial retirement program for Article III judges. However, a decision on Article III status for the Court has major implications and should not be embraced solely as a retirement remedy.

6. Whether the United States Court of Military Appeals should be an Article III court under the United States Constitution.

Comment: In connection with evaluating the need for an improved retirement plan, the Commission was asked to consider whether the Court of Military Appeals should have Article III status. A majority of the members answered in the affirmative -- on the explicit condition that the Court's present jurisdiction not be increased.

However, a clear majority of the Code Committee members -- which includes every uniformed service representative -- is opposed to Article III status for the Court. It is felt by that majority that the Court of Military Appeals is assigned a limited role within the overall military justice system and that it should remain responsible to the Commander in Chief. In opposing Article III status, the uniformed members of the Code Committee suggest that, because the military society itself is unique, the Court of Military Appeals is and must be differentiated from the Article III courts. In their view, the fact that Article III judges are given life tenure, which the judges of the Court of Military Appeals do not have, would not be in consonance with the Commander in Chief's exercise of his responsibilities.

Those members of the Code Committee who consider that a grant of Article III status is desirable believe that such a change would be responsive to the Court's role in the military justice system -- especially now that the Supreme Court exercises certiorari jurisdiction over the Court of Military Appeals. In their view, the absence of Article III status for the Court reflects a failure to recognize fully the significance of its duties; and, grouping judges of the Court of Military Appeals with other Article I judges -- such as bankruptcy judges and judges of the Tax Court and Claims Court -- seems unrelated to the uniqueness of the military society.

7. Whether the membership of the United States Court of Military Appeals should be increased to five judges.

Comment: Although the question was not specifically included in its charter, the Commission unanimously

recommended that the number of judges on the Court of Military Appeals be increased from three to five, irrespective of a change in status. The members of the Code Committee have a diversity of views. Some favor increasing court membership and consider that it would promote continuity of precedents and make the Court more effective. Others believe that, absent an expansion of the Court's jurisdiction, the cost of adding judges exceeds any benefit in judicial administration. They believe that problems of stability and continuity of decisions and temporary vacancy in judgeships on the Court should be handled in other ways.

The Code Committee appreciates this opportunity to submit its comments on the Report of the Commission appointed under the Military Justice Act of 1983 and shall be pleased to respond to any specific questions which members of the Committee on Armed Services may have.

Sincerely,



Robinson O. Everett  
Chief Judge  
U.S. Court of Military Appeals  
Chairman



**REPORT OF THE  
UNITED STATES COURT OF MILITARY APPEALS**

**October 1, 1984 to September 30, 1985**

The Judges of the United States Court of Military Appeals submit their fiscal year 1985 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 1985 term of the Court, 2753 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 a decrease of 16 percent from the fiscal year 1984 term and is the first term in the last four fiscal year terms of the Court that a record number of cases were not filed. Among the petitions for grant of review filed with the Court, only 10 involved cases in which the United States had taken an appeal from a military judge's adverse ruling under the newly enacted provision of Article 62, UCMJ, 10 U.S.C. §862.

The Court reviewed and acted on 2767 petitions for grant of review during fiscal year 1985. Further review was granted in 264 of these cases, or about 9 percent of the cases considered. On the master docket of mandatory appeals, certificates for review, and granted petitions, the Court took final action in 264 cases<sup>1</sup>. Approximately 59 percent of the Court's actions on the master docket cases resulted in 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 virtually all of this fiscal year term, the total number of cases pending at the end of this period was reduced by about 5 percent to a year-end balance of 811 cases, as compared with a year-end balance of 862 cases in fiscal 1984.

The number of petitions for extraordinary relief and writ appeal petitions filed with the Court during fiscal year 1985 was slightly less than during fiscal year 1984, as 38 such petitions were filed during the current fiscal year as compared with 44 such petitions during fiscal year 1984. However, the Court experienced an increase of approximately 10 percent in the number of motions filed during fiscal year 1985 over fiscal year 1984, as 1138 motions were filed in fiscal year 1985 as compared with 1036 motion filings in fiscal year 1984.

In addition to its case review workload, the Court admitted 408 attorneys to practice before its Bar during the fiscal year 1985 term, bringing the cumulative total of admissions before the Bar of the Court to 25,280.

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<sup>1</sup> Although not a part of the business of the Court, it is noted that, during Fiscal Year 1985, the Court was notified that petitions for writ of certiorari were filed with the Supreme Court of the United States in 5 master docket cases in which the Court took final action.

## JUDICIAL VISITATIONS

During fiscal year 1985, the Judges of the Court, consistent with past practices, visited military installations and delivered speeches to numerous professional organizations and seminars to inform both the military and civilian communities of the Court's work concerning the administration of the military justice system.

In fulfillment of this responsibility, Chief Judge Robinson O. Everett attended and participated in the U.S. Army Judge Advocates Conference, Charlottesville, Virginia; the Judiciary Committee meeting of the Federal Bar Association, Washington, D.C., on which he serves as Chairman; the Military Law Committee meeting of the Bar of the City of New York; the meeting of the Pentagon Chapter of the Federal Bar Association, Washington, D.C.; meetings of the Army Trial Defense Service, Walter Reed Medical Center, Washington, D.C., the American Bar Association, Detroit, Michigan, and the Army Reserve Conference, Washington, D.C.; the National Guard Judge Advocates Conference, Leesburg, Virginia; the Staff Judge Advocates Conference, Scott Air Force Base, Illinois; the Chicago Bar Association Conference, Chicago, Illinois; an orientation on how the Army "Puts Soldiers in Boots", Fort Sheridan, Illinois; a Law Day program of the Air Force Office of Special Investigations, Bolling Air Force Base; a meeting of the Military Law Committee of the Bar Association of the District of Columbia; the Air Force Reserve Judge Advocates Conference in Atlanta, Georgia; a briefing at Treasure Island, California; the 28th Military Judges Course, Charlottesville, Virginia; a Memorial Service for Senator Sam J. Ervin, Jr., at the National Presbyterian Church, Washington, D.C.; a meeting of the General Counsels Committee, Federal Bar Association, Washington, D.C.; the 4th U.S. Circuit Judicial Conference, Hot Springs, Virginia; a meeting of the Military Lawyers Committee, General Practice Section, American Bar Association, Washington, D.C.; the Judge Advocates Association Annual Meeting, Washington, D.C.; a Panel on Educating Judges at the American Bar Association's Annual Meeting, London, England; the annual meeting of the National Conference of Commissioners on Uniform State Laws, Minneapolis, Minnesota; the New Developments Course, U.S. Army Judge Advocate General's School, Charlottesville, Virginia; a meeting of the Federal Bar Association in Detroit, Michigan; and the Trial and Defense Counsel meeting at Lowry Air Force Base, Denver, Colorado

Additionally, Chief Judge Everett served as a Judge of the Advocates' Prize Moot Court Competition at the University of Tennessee Law School, Knoxville, Tennessee, and the final round of the Sutherland Cup Moot Court Competition at the Catholic University of America Law School, Washington, D.C.

Judge Walter T. Cox, III, visited the Naval Legal Service Trial Defense Activity, Naval Base, Charleston, South Carolina; attended a working lunch with Admiral James D. Watkins, Chief of Naval Operations; addressed a conference of Coast Guard Judge Advocates; hosted a dinner for the Judge Advocates General of the Armed Services; delivered an address at the worldwide U.S. Army Judge Advocate General's Conference at the Judge Advocate

General's School in Charlottesville, Virginia; participated in the U.S. Pacific Commander's Legal Conference in Tokyo, Japan, where he visited with senior military commanders in the area; attended the 6th Annual U.S. Army Judge Advocate General's School Continuing Legal Education Seminar; visited with the Commanding General, Marine Corps Development and Education Command, Quantico, Virginia; attended a meeting of the Standing Committee on Military Law, American Bar Association, Parris Island, South Carolina; participated in several meetings of the American Bar Association; visited various U.S. Armed Forces military facilities in Europe; addressed the 1985 Tri-Service Military Judges' Conference, Frankfurt, Germany; and met with senior officials of the United States Military Academy, West Point, New York.

Additionally, Judge Cox addressed the members of Detachment 770 of the Cadet Wing, Clemson University, South Carolina; students of the Trial Advocacy Course, U.S. Army Judge Advocate General's School, Charlottesville, Virginia; Army Reservists attending the Reserve Training Program, Fitzsimmons Army Medical Center, Denver, Colorado; members of the Court-Martial Defense Team, 110th Judge Advocate General's Detachment, Fort Carson, Colorado; the 11th Interservice Military Judges Seminar, Maxwell Air Force Base, Alabama; and the 1985 Marine Staff Judge Advocates Conference, Arlington, Virginia. He also participated in Law Day ceremonies at Naval Bases in Norfolk, Virginia, and Charleston, South Carolina, and addressed the Air Force 5th Circuit Judges and Prosecutors Conference, Bolling Air Force Base, and the U.S. Navy Judge Advocate General's Conference, Washington, D.C.

### HOMER FERGUSON CONFERENCE

The Tenth Annual Homer Ferguson Conference was held at the George Washington University on May 13-14, 1985, under the joint sponsorship of the Court and the Military Law Institute. This year's Conference as in previous years, was certified for credit to meet the continuing legal education requirements of various State Bars, and was designed to give both military and civilian practitioners an opportunity to develop and maintain those professional skills necessary to practice before trial and appellate courts. The participants for this year's conference included:

The Honorable Strom Thurmond, Chairman, United States Senate Judiciary Committee.

The Honorable Tim Murphy, U.S. Department of Justice.

Professor Paul F. Rothstein, Georgetown University Law Center.

Professor Henry B. Rothblatt, Trial and Appellate Lawyer.

Professor Kenneth F. Ripple, Notre Dame Law School.

The Honorable Francis J. Larkin, Associate Justice, Massachusetts Trial Court.

Professor Stephen A. Saltzburg, University of Virginia Law School.

Lieutenant Colonel Lee Schinasi, JAGC, U.S. Army.

Associate Dean David Schlueter, St. Mary's University School of Law.

Mr. Joseph E. diGenova, U.S. Attorney, District of Columbia.

Mr. Andrew S. Effron, General Counsel's Office, Dept. of Defense.

Mr. Thomas W. Hutchinson, Chief Counsel, Subcommittee on Criminal Justice, Committee on Judiciary, U.S. House of Representatives.

Mr. Paul C. Summit, Counsel for Legislative Affairs, Administrative Office of the U.S. Courts.

Dr. Elizabeth L. Finch, Child Psychiatrist, Family Counseling Center, Psychiatric Institute of Washington, D.C.

Commander Jerry D. Spencer, USN, Chairman, Department of Forensic Sciences, Armed Forces Institute of Pathology.

Major James B. Thwing, JAGC, U.S. Army.

The Honorable Michael J. Valentine, Chief Judge, Juvenile and Domestic Relations, Fairfax District Court, Virginia.

General Paul X. Kelley, Commandant of the Marine Corps.

Lieutenant Colonel Owen D. Basham, JAGC, U.S. Army.

Colonel Harold L. Miller, JAGC, U.S. Army.

Colonel William G. Eckhardt, JAGC, U.S. Army.

Brigadier General William K. Suter, Chief Judge, U.S. Army Court of Military Review.

The Honorable Robinson O. Everett, Chief Judge, U.S. Court of Military Appeals.

The Honorable Walter T. Cox, III, Associate Judge, U.S. Court of Military Appeals.

The invocation for this year's conference was offered by Major General Patrick J. Hessian, Chief of Chaplains, U.S. Army.

As in previous years this year's conference was attended by numerous uniformed and civilian lawyers as well as Judges of the Courts of Military Review, legal scholars, and commentators in the field of military justice. For educational purposes, the conference was videotaped and such tapes were made available to anyone interested in examining the latest developments in the field of military justice.

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

### MILITARY RULES OF EVIDENCE

As in the fiscal year 1984 term, a large portion of the docket of the Court in fiscal year 1985 was taken up by cases requiring the interpretation of the Military Rules of Evidence (Mil. R. Evid.). In United States v. Hill, 18 M.J. 459 (C.M.A. 1984), the Court was required to interpret Mil. R. Evid. 301(f) (2). Therein, the accused argued that the military judge erred by striking the testimony of a defense witness when such witness refused to answer questions on cross-examination. The Court in upholding the military judge observed that the questions asked on cross-examination related to an incident concerning the accused and, therefore, the military judge's ruling was consistent with the Sixth Amendment, U.S. Constitution, and with Article 46, Uniform Code of Military Justice, 10 U.S.C. §846.

The question of whether photographs of a lineup in which the accused participated could be admitted into evidence to bolster a pretrial identification of such an accused was addressed by the Court in United States v. Gordon, 18 M.J. 463 (C.M.A. 1984). The Court observed that photographs could assist the factfinder in determining whether such a lineup was suggestive and, therefore such photographs were admissible even under circumstances where the defense did not raise an issue of suggestiveness. Thus, the Court upheld the trial judge's ruling under Mil. R. Evid. 321 in accepting photographs of a lineup over objections by the defense counsel.

The parameters of Mil. R. Evid. 305(e), which requires an investigator to notify counsel of an intended interview of his or her client under some circumstances, were addressed by the Court in United States v. Spencer, 19 M.J. 184 (C.M.A. 1985). The Court therein specifically rejected a defense argument that the investigator was required to notify counsel where the interview concerned an offense that was unrelated to another offense which gave rise to the attorney-client relationship. The Court also rejected a defense suggestion that an investigator should be required to ask an accused if he is presently represented by counsel, observing that the rule contemplated that the responsibility for informing an investigator that the suspect is already represented by counsel should be placed on the suspect.

In United States v. Everage, 19 M.J. 189 (C.M.A. 1985), the Court was called upon to address the question of when the defense may offer favorable evidence concerning the credibility of an accused. The Court noted that Mil. R. Evid. 608(a) (2) precluded the admissibility of evidence of truthful character except when the character of the witness for truthfulness "has been attacked by opinion or reputation evidence or otherwise." The specific issue addressed in Everage was whether cross-examination of the accused would constitute such an attack on her credibility as to permit favorable defense evidence of the accused's

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<sup>2</sup> This section of the Court's Annual Report is prepared solely as an informational tool by the staff of the Court. It is included for the convenience of the reader to assist in easily locating cases of particular interest during the term. The case summaries are of no precedential value and should not be cited in briefs filed with the Court.

truthful character. The Court observed that cross-examination could trigger the provisions of Mil. R. Evid. 608(a) (2) and that the facts and circumstances presented to the Court in Everage established an adequate predicate for the admissibility of defense evidence as to the credibility of the accused. Finding that the military judge's ruling to the contrary was prejudicial, the Court reversed. Accord United States v. Woods, 19 M.J. 349 (C.M.A. 1985); United States v. Allard, 19 M.J. 346 (C.M.A. 1985).

During the fiscal year 1985 term, the Court, as in the previous year, was required to resolve numerous cases concerning the admissibility of evidence of the accused's good military character. In United States v. Kahakauwila, 19 M.J. 60 (C.M.A. 1984), the Court held that the military judge erred by rejecting such evidence where the accused was charged with a violation of a service regulation because such evidence should have been admitted under Mil. R. Evid. 404. Subsequently, in United States v. Weeks, 20 M.J. 22 (C.M.A. 1985), the Court adopted a four-pronged analysis to test whether an accused was prejudiced by an erroneous exclusion of evidence of good military character by requiring the military judge to determine (1) the strength of the Government's case; (2) the plausibility or implausibility of the defense theory of the case; (3) the materiality of the proffered testimony; and (4) the quality of the proffered defense evidence in resolving the issue of prejudice. This test was subsequently applied in United States v. Vanderlinder, 20 M.J. 41 (C.M.A. 1985); United States v. Traveler, 20 M.J. 35 (C.M.A. 1985); United States v. Belz, 20 M.J. 33 (C.M.A. 1985); United States v. Wilson, 20 M.J. 31 (C.M.A. 1985); and United States v. Klein, 20 M.J. 26 (C.M.A. 1985).

## CHALLENGES AND MISTRIALS

Relying on paragraph 62f(13), Manual for Courts-Martial, United States, 1969 (Revised edition), which required sustaining challenges "in the interest of having the trial and subsequent proceedings free from substantial doubt as to legality, fairness, and impartiality," the Court held in United States v. Miller, 19 M.J. 159 (C.M.A. 1985), that the military judge erred by denying challenges against two court members. The Court observed that the Army captain who had signed the charge sheet and whose office was damaged by the accused had previously spoken with the two challenged court members "to make sure that the appropriate disciplinary action was taken" and that a disclaimer of predisposition by each of the court members was perfunctory in nature and unaccompanied by any explanation from the members as to why they should be believed.

In United States v. Brice, 19 M.J. 170 (C.M.A. 1985), the Court held that the military judge erred by rejecting a defense motion for a mistrial in a drug charge case where the court members attended a lecture by a Commandant of the Marine Corps during a continuance in the court-martial and such lecture concerned drug use. As the accused was charged with various drug offenses, the Court held that a mistrial should have been granted in view of the peculiar timing of the lecture in question, *i.e.*, during the course of the trial.

## STANDARD OF REVIEW

Addressing the question of whether a violation of an accused's Fifth Amendment right to remain silent required automatic reversal, the Court held in United States v. Remai, 19 M.J. 229 (C.M.A. 1985), a case certified to the Court by the Judge Advocate General of the Army, that such an error did not require automatic reversal but, rather, should be examined to determine if it was harmless beyond a reasonable doubt. Accordingly, the Court returned the case to the United States Army Court of Military Review for an examination of the error under the proper standard.

## JURISDICTION

The authority of the Court to review cases under the provisions of Article 62, Uniform Code of Military Justice, 10 U.S.C. §862, as modified by the Military Justice Act of 1983, P.L. No. 98-209, 5(c)(1), 97 Stat. 1393, 1398, was addressed in United States v. Tucker, 20 M.J. 52 (C.M.A. 1985). In that case the military judge granted a defense motion to dismiss the charges on the basis that the accused had been denied a speedy trial. His ruling was in turn appealed to the United States Navy-Marine Corps Court of Military Review by the Government under Article 62, UCMJ, which reversed the trial judge. Thereafter, the accused filed a petition for grant of review with the United States Court of Military Appeals and the appellate government counsel moved to dismiss the petition, asserting that the Court was without jurisdiction to review the case under the provisions of Article 62. The Government's argument was predicated on the basis that Article 62 did not specifically address the issue of whether the Court could entertain such cases. In rejecting the Government's argument, the Court observed that Article 67(b)(3) authorized it to review all cases reviewed by the Courts of Military Review. The Court also observed that the legislative history of Article 62 reflected that Congress contemplated further review of decisions of Courts of Military Review by the Court of Military Appeals because an earlier version of the amendment to Article 62, which specifically excluded review by the Court of Military Appeals, was omitted when Article 62 was finally amended by Congress. Furthermore, the Court observed that Article 62 was modeled after 18 U.S.C. §3731, which authorized certain appeals by the Government in trials in Federal District Court, and that this statute authorized petitions for review by the Supreme Court of the United States on writ of certiorari. Finally, the Court observed that the Manual for Courts-Martial, United States, 1984, issued by Executive Order of the President of the United States, also interpreted Article 62 as authorizing review by the Court of Military Appeals because R.C.M. 908 (c) (3) of the Manual specifically authorized submission of a petition for review by the Court of Military Appeals.

In United States v. Brandt, 20 M.J. 74 (C.M.A. 1985), the Court held that a court-martial was without jurisdiction to try an accused where the written request for enlisted members was signed by counsel rather than accused. The Court rejected a government argument that the Court's earlier decision in United States v. White, 21 U.S.C.M.A. 583, 45 C.M.R. 357 (1972), which held that the requirement of Article 25 (c) (1), UCMJ, 10 U.S.C. §825 (c) (1) that such a request should be signed by an accused was a jurisdictional

prerequisite, should be overruled. The Court noted that although various provisions of the Uniform Code of Military Justice had been examined by Congress and various amendments had been made thereto, the provision in question had not been modified by Congress. Thus, the Court held that the question of whether Article 25(c) (1) should be amended to allow a written request for enlisted members to be signed by an accused's counsel should be decided by Congress rather than the Court.

## CRIMES AND OFFENSES

The issue of what manner of conduct constitutes a breach of the peace was addressed by the Court in United States v. Stevens, 19 M.J. 284 (C.M.A. 1985). Therein, the Court held that the accused's conduct of painting a bulls eye on his torso, proceeding to a flight deck of an aircraft carrier and boarding an aircraft during flight operations was so disruptive of the area that his conduct constituted a breach of the peace within the meaning of Article 116, Uniform Code of Military Justice, 10 U.S.C. §916. The offense of obstruction of justice was examined in United States v. Jones, 20 M.J. 38 (C.M.A. 1985), wherein the Court held that the accused's act of flushing heroin down a latrine toilet after he had been apprehended for the suspected possession of heroin was an act constituting obstruction of justice. The Court specifically rejected a defense claim that such act could not constitute the charged offense because a judicial proceeding had not yet begun. Rather, the Court held that while the defense argument may be valid as to the offense set forth in 18 U.S.C. §1503, the military offense was separate and distinct and did not depend upon the existence of a pending judicial proceeding.

## MILITARY PROCEDURE

The issue of whether an accused could be retried on a second charge sheet where the charge on the original charge sheet had been dismissed by a military judge because it was not timely within the statute of limitations provisions of Article 43, Uniform Code Military Justice, 10 U.S.C. §843, was addressed by the Court in United States v. Jackson, 20 M.J. 83 (C.M.A. 1985). Therein, the Court noted that a trial judge granted a defense motion to dismiss a charge of unauthorized absence because the charge sheet reflected that it was received by the officer exercising summary court-martial jurisdiction more than two years after the date of the offense. Thereafter, the accused was again brought to trial for the same period of unauthorized absence but on a different charge sheet which reflected that such charge sheet was received by the officer exercising summary court-martial jurisdiction before the expiration of the two-year statute of limitations period. The military judge rejected a defense motion to dismiss the charge and the accused was ultimately convicted. On appeal the defense argued that the refusal to dismiss the charge in the second court-martial constituted a violation of the double jeopardy clause and that the second trial was barred by the doctrine of res judicata. However, the Court rejected the defense arguments, noting that jeopardy had not attached during the first proceeding because evidence had not been received and that the doctrine of res judicata did not apply because the original ruling of the trial judge did not involve the litigation of the accused's guilt or innocence. In the subsequent

case of United States v. Salter, 20 M.J. 116 (C.M.A. 1985), the Court held that the application of the statute of limitations for an unauthorized absence charge was not waived by a plea of not guilty and a failure to raise the issue at trial. The Court noted in Salter that the military judge had an obligation to inform the accused that the statute of limitations had run against the offense.

The circumstances under which affidavits of court members could be considered to impeach a court verdict on the basis of command influence were addressed by the Court in United States v. Accordino, 20 M.J. 102 (C.M.A. 1985). The defense asserted in Accordino that the post-trial affidavits should have been considered since they constituted an allegation that the president of the court-martial cut short discussion on findings and precipitated a vote. Examining the provisions of Mil. R. Evid. 606(b), the Court held that within the context of the military society, the affidavits constituted an allegation of command influence and were therefore admissible within one of the three exceptions recognized under that rule.

The propriety of a military judge making statements to the news media was addressed by the Court in United States v. Garwood, 20 M.J. 148 (C.M.A. 1985). Although concluding that the military judge's conduct may have been improper, the Court held that the accused was not prejudiced. The Court also held in Garwood that the accused was not subjected to impermissible selective prosecution as he offered no evidence that such prosecution was predicated on "bad faith" or constituted "invidious" prosecution. Additionally, the Court rejected a defense claim in Garwood that the court members could have been subconsciously influenced by some of the news reports, noting that the court-martial process was dependent upon the honesty and integrity of the members and that a mere allegation of potential subliminal perception was inadequate to raise an issue as to the members' qualifications and impartiality.

The issue of whether a lay witness could testify as to the identity of heroin and hashish was answered by the Court in United States v. Day, 20 M.J. 213 (C.M.A. 1985). Noting its prior decision that a user of a drug could express an opinion on its identity, the Court held in Day that a lay witness could so testify where she had previously used the substances in question. Additionally, the Court observed in Day that the evidence was sufficient to sustain a conviction where the accused's own statements indicated that the substances in question were the alleged contraband.

The question of whether United States v. Breese, 11 M.J. 17 (C.M.A. 1982), established a rebuttable or a conclusive presumption that a conflict of interest exists where two co-accused are represented by the same counsel was addressed by the Court in United States v. Devitt, 20 M.J. 240 (C.M.A. 1985). Therein, the military judge did not inquire into the matter and the two co-accused, who were husband and wife, were represented by the same counsel. Observing that circumstances could exist which do not constitute a conflict or that, if a conflict did exist, the accused involved could knowingly and voluntarily choose to be represented by the same counsel, the Court held that the Government should be allowed to demonstrate such matters on the record if they existed. Accordingly, the Court held that Breese established only a rebuttable presumption and remanded the case to determine if a conflict existed

and, if it did exist, whether the accused knowingly and voluntarily chose to be represented by the same counsel.

The resolution of an ambiguity in a pretrial agreement was addressed by the Court in United States v. Cabral, 20 M.J. 269 (C.M.A. 1985). In that case the question arose as to whether the convening authority, who had agreed to approve a reduction "as adjudged" by the court-martial, was required under the terms of the pretrial agreement to preclude an administrative reduction to E-1 under the provisions of Article 58(a), Uniform Code of Military Justice, 10 U.S.C. §858(a), where the court-martial reduced him to the grade of E-3. Observing that the regulation of the Navy, the Service involved in this case, which permitted an administrative reduction to E-1 was a recent phenomenon, the Court was unwilling to construe the provision against the accused and held that the convening authority was obligated to limit any reduction based on the adjudged sentence to pay grade E-3. Finally, in United States v. Simonds, 20 M.J. 279 (C.M.A. 1985), the Court addressed the question which was unanswered in United States v. Schelin, 15 M.J. 218 (C.M.A. 1983), as to whether items in a Navy ship's store constitute military property. After examining the purposes for and the organizational structure of ships' stores, the Court held that property stocked by a ship's store was military property within the meaning of Article 108, UCMJ, 10 U.S.C. §908.

ROBINSON O. EVERETT

*Chief Judge*

WALTER T. COX, III

*Associate Judge*

USCMA STATISTICAL REPORT

FISCAL YEAR 1985

CUMULATIVE SUMMARY

CUMULATIVE BEGINNING PENDING	
Master Docket	236
Petition Docket	624
Miscellaneous Docket	<u>2</u>
TOTAL	862

CUMULATIVE FILINGS	
Master Docket	
Mandatory appeals filed	0
Certificates filed	7
Reconsiderations granted	2
Petition Docket	
Petitions for grant filed	2696
Cross-petitions for grant filed	2
Petitions for new trial filed	8
Miscellaneous Docket	<u>38</u>
TOTAL	2753

CUMULATIVE TERMINATIONS	
Master Docket	264
Petition Docket	2767
Miscellaneous Docket	<u>37</u>
TOTAL	3068

CUMULATIVE END PENDING	
Master Docket	245
Petition Docket	563
Miscellaneous Docket	<u>3</u>
TOTAL	811

OPINION SUMMARY

CATEGORY	SIGNED	PERCURIAM	MEM/ORDER	TOTAL
Master Docket	58	15	191	264
Petition Docket	2	0	2765	2767
Miscellaneous Docket	<u>1</u>	<u>0</u>	<u>36</u>	<u>37</u>
TOTAL	61	15	2992	3068

FILINGS (MASTER DOCKET)

Mandatory appeals filed	0
Certificates filed	7
Reconsideration granted	2
Petitions granted (from Petition Docket) <sup>3</sup>	<u>264</u>
TOTAL	273

<sup>3</sup> In 26 percent of these cases, the Court specified issues which were not raised by the appellant.

TERMINATIONS (MASTER DOCKET)

Findings & sentence affirmed	79		
Reversed in whole or in part	157	Signed	58
Granted petitions vacated	6	Per Curiam	15
Other disposition directed	22	Mem/Order	191
TOTAL	<u>264</u>	TOTAL	<u>264</u>

PENDING (MASTER DOCKET)

Assigned Opinions pending	76
Judges' conference pending	0
Oral argument pending	39
Preargument conference pending	9
Calendar committee pending	91
Final briefs pending	30
TOTAL	<u>245</u>

FILINGS (PETITION DOCKET)

Petitions for grant of review filed	2696
Petitions for new trial filed	8
Cross-petitions for grant filed	2
TOTAL	<u>2706</u>

TERMINATIONS (PETITION DOCKET)

Petitions for grant dismissed	10		
Petitions for grant denied	2428		
Petitions for grant granted	264		
Petitions for grants remanded	37	Signed	2
Petitions for grant withdrawn	21	Per curiam	0
Other	7	Mem/Order	2765
TOTAL	<u>2767</u>	TOTAL	<u>2767</u>

PENDING (PETITION DOCKET)

Petition briefs pending	270
Staff attorney action pending	95
Court action pending	198
TOTAL	<u>563</u>

FILINGS (MISCELLANEOUS DOCKET)

Writs of error coram nobis sought	3
Writs of habeas corpus sought	5
Writs of mandamus/prohibition sought	16
Other extraordinary relief sought	8
Writ appeals sought	6
TOTAL	<u>38</u>

TERMINATIONS (MISCELLANEOUS DOCKET)

Petitions withdrawn	0		
Petitions remanded	1		
Petitions granted	2	Signed	1
Petitions denied	33	Per curiam	0
Petitions dismissed	1	Mem/order	36
TOTAL	<u>37</u>	TOTAL	<u>37</u>

PENDING (MISCELLANEOUS DOCKET)

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

RECONSIDERATIONS & REHEARINGS

CATEGORY	FILINGS	PENDING	DISPOSITIONS		TOTAL
			Granted	Rejected	
Master Docket	7	4	1	3	4
Petition Docket	7	2	1	5	6
Miscellaneous Docket	<u>1</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>1</u>
TOTAL	<u>15</u>	<u>7</u>	<u>2</u>	<u>9</u>	<u>11</u>

MOTIONS ACTIVITY

CATEGORY	BEGIN	FILINGS	END	DISPOSITIONS		TOTAL
	PENDING		PENDING	Granted	Rejected	
All motions	48	1138	31	1022	133	1155



**REPORT OF  
THE JUDGE ADVOCATE GENERAL OF THE ARMY  
October 1, 1984 to September 30, 1985**

During fiscal year 1985 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 JUDICIARY ACTIVITIES**

During fiscal year 1985, 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 1985 is 11% lower than for 1984. This overall decrease reflects primarily a decrease in special and summary courts-martial (i.e., a 7% decrease in special courts-martial empowered to adjudge a bad-conduct discharge, a 21% decline in non-BCD special courts-martial and a 20% decrease in summary courts-martial). There was a 1% decrease in the number of general courts-martial, which has remained relatively constant in recent years. The overall conviction rate for fiscal year 1985 was 91.9%, which represents a slight decline from the 93% conviction rate for the previous fiscal year.

**STATISTICAL SUMMARY: FISCAL YEAR 1985  
(See Appendix A)**

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

The U.S. Army Legal Services 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 court-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 1985 the United States Army Trial Defense Service (USATDS) continued to provide effective defense counsel services for soldier-clients. USATDS counsel represented 1,783 clients at Article 32 proceedings, 1,496 clients at general courts-martial, and 2,935 clients at special courts-martial. In addition, USATDS counsel advised 66,141 Article 15 clients and 40,095 clients facing administrative action.

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

### TRIAL COUNSEL ASSISTANCE PROGRAM

During fiscal year 1985 the Trial Counsel Assistance Program, U.S. Army Legal Services Agency, provided advice and training for trial counsel. The program responded to almost 1400 requests for assistance by providing trial counsel with verbal advice and written authorities. The program conducted training seminars at 13 locations in the United States and overseas. The program's monthly publication, designed to keep trial counsel current in criminal law, has now been incorporated into a newly created "Advocacy Section" of The Army Lawyer. This change in format will result in cost efficiencies and increased circulation.

### 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; rendering opinions for the Army Staff; reviewing various aspects of criminal cases for action by the Army Secretariat and Staff; 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 March 15, 1985. The revision made minor administrative and procedural changes. Revisions are also programmed for December 1985 and June 1986 to keep the regulation current with changing Army policies, changes to the Manual for Courts-Martial, 1984, and evolving case law.

## 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 a 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.

In accordance with the requirement established by Executive Order 12484, July 13, 1984, the Committee forwarded the first annual review of the Manual for Courts-Martial, 1984, to the General Counsel, Department of Defense, on April 2, 1985. The review recommended that numerous amendments be made to the Manual. Most noteworthy were proposed amendments to the Military Rules of Evidence to adopt the "good faith" and "inevitable discovery" exceptions to the exclusionary rule. Other proposals were designed to correct drafting deficiencies in the 1984 Manual and to revise inefficient provisions first introduced into the military justice system in the 1984 Manual.

During the year the Committee drafted and forwarded to Congress three legislative proposals to amend the Uniform Code of Military Justice. The first proposal would incorporate many of the insanity provisions of the Comprehensive Crime Control Act of 1984 into the Code as Article 50a. Another proposal would clarify the military's ability to discipline reserve component personnel in response to the holding in United States v. Caputo, 18 M.J. 259 (C.M.A. 1984). The last proposal would have created the military offense of espionage as Article 106a. A similar bill was later enacted as part of the DOD Authorization Act of 1986.

## MILITARY JUSTICE ACT OF 1983 ADVISORY COMMISSION

As part of the Military Justice Act of 1983, Congress directed that the Department of Defense form a commission to study six issues:

1. Whether the military judge should exercise the sentencing authority in all non-capital courts-martial.
2. Whether there should be power for suspension of sentences for military trial judges and Courts of Military Review.
3. Whether trial and appellate military judges should be given tenure.
4. Whether special courts-martial should be allowed to impose up to one year confinement at hard labor.

5. Whether there should be reconstitution of the United States Court of Military Appeals to a court organized under Article III of the Constitution of the United States.

6. How to establish a fair and equitable retirement system for judges of the United States Court of Military Appeals.

The Commission was composed of a senior judge advocate from each service, a staff attorney from the United States Court of Military Appeals, and three civilian attorneys. The Commission heard testimony from numerous persons and circulated detailed questionnaires to several thousand military officers directly involved in the military justice system.

The Commission submitted an extensive report to Congress in December 1984. The Commission recommended that special courts-martial be allowed to impose up to one year confinement; that the United States Court of Military Appeals be organized under article III of the Constitution; and that significant improvements be made in the retirement system for judges of the United States Court of Military Appeals. In addition, the Commission recommended that the membership of the Court be increased to five judges. The Commission recommended against adoption of the remaining proposals specified for study.

## FOREIGN CRIMINAL JURISDICTION

As executive agent for the Department of Defense, the Department of the 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, 1983, through November 30, 1984, a total of 123,508 U.S. personnel, military and civilian, were charged with offenses subject to the primary or exclusive jurisdiction of foreign tribunals. A total of 112,905 of these offenses were charged against military personnel. Of this number, 90,976 of the charges against military personnel were subject to exclusive foreign jurisdiction. Nonetheless, foreign authorities released 604 of the exclusive foreign jurisdiction offenses to U.S. military authorities for appropriate disposition.

The remainder of the military offenses subject to foreign jurisdiction, totaling 21,929 offenses, were concurrent jurisdiction offenses involving alleged violations of both U.S. military law and foreign law, over which the foreign country had the primary right to exercise jurisdiction. U.S. military authorities obtained a waiver of primary foreign jurisdiction in 19,333 of these incidents, for a worldwide waiver rate of 88.1%.

Foreign authorities reserved for their disposition a total of 92,968 offenses allegedly committed by military personnel. A total of 91,741 of these offenses were relatively minor. 90,924, or 97.8%, involved traffic violations.

A total of 10,603 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 U.S. had no effective jurisdiction over these offenses. Nonetheless, foreign authorities released 404 of these offenses, or

3.8% of the total, to U.S. military authorities for administrative or other appropriate disposition.

There were 75,088 final results of trial (i.e., final acquittals and final convictions). Of this number, 513, or .7% of the final results, were acquittals. Of the vast majority of the U.S. personnel who were convicted, 74,331 (99.0%) received only a sentence to fine or reprimand. The remainder of the final results of trial consisted of 179 suspended sentences to confinement and 65 unsuspended sentences to confinement.

## LITIGATION

The jurisdiction of U.S. Magistrates to hear on post soldier cases is being challenged in federal courts. In United States v. Smith, 614 F. Supp. 454 (D. Marine, 1985), the court held the state DWI laws are not enforceable against persons subject to the UCMJ. The court reasoned that the Assimilative Crimes Act was not operative where there was federal statute proscribing the same conduct that state law controls. In this case, Article 111, UCMJ, was the specific federal statute which precludes the operation of the Assimilative Crimes Act.

The case is being appealed. Navy litigation is coordination with the other services and the Department of Justices. A soldier at Fort Shafter is raising a similar argument in the Magistrate Court in Hawaii. Cases in other jurisdictions can be expected.

If the Maine cases are adopted throughout the federal court system, the result may be an increase in soldier DWI cases processed as nonjudicial punishments or courts-martial.

## EDUCATION AND TRAINING

During fiscal year 1985, The Judge Advocate General's School, located in Charlottesville, Virginia, provided legal education to lawyers of the military service and other federal agencies. Forty-five resident courses were conducted with 3,253 students in attendance. Courses were attended by 2,210 Army, 103 Navy, 105 Marine, 164 Air Force, 27 Coast Guard, 72 Army National Guard, 556 civilian, and 16 foreign students. Three Basic Classes, the 105th 106th, and 107th were conducted. A total of 210 Army JAGC officers graduated from Basic Classes.

The 33d Graduate Course, with an enrollment of 69 students, graduated on May 17, 1985. In addition to 60 Army judge advocates, the class consisted of five Marine, one Navy, and three foreign officers. The 34th Graduate Course began on August 1, 1985. This class contains 57 Army, five Marine, one Navy, and three foreign officers.

During fiscal year 1985, the School continued to provide senior officers with legal orientations prior to their assumption of command. Thirty-six general officers attended General Officer Legal Orientation Courses and 290 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 five resident continuing legal education courses in fiscal year 1985. The New Developments in Criminal Law Course was taught once, the three week Military Judge Course was presented once, and the Criminal Trial Advocacy Course was presented three times. The advocacy courses combine instruction on new developments in criminal trial practice, seminars, and videotape workshops to improve and polish experienced trial attorneys' advocacy skills before courts-martial. The major portion of these offerings is devoted to student participation workshop and exercise to refine the attorney's courtroom skills and techniques of persuasion. Outstanding guest speakers such as Ms. Rikkie Klieman and Richard "Racehorse" Haynes enhanced the advocacy training. Additionally, the Division presented instruction in three nonresident courses--a criminal law course in Germany, one in the Pacific to bring the latest legal developments to Army, Navy, Air Force and Marine Corps lawyers serving there, and the Advanced Noncommissioned Office Course at Fort Benjamin Harrison, Indiana.

The International Law Division sponsored four one week courses on the Law of War, a one week Advanced Law of War Seminar which concentrated on operational law, a one week Judge Advocate Operations Overseas Course which dealt with status of forces agreements, and two one week courses on the Legal Aspects of Terrorism. Additionally, the Division provided instructor support for a one week course in the Federal Republic of Germany on the 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 international 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 advice on military operations.

Instruction provided by the Contract Law Division, including planned new courses on the acquisition of major end items and weapon systems, is designed to meet the training needs of all attorneys involved in the federal acquisition process. Courses are available for the novice and the experienced professional. In fiscal year 1985 the Contract Law Division sponsored ten continuing legal education courses, including the two-week Contract Attorneys Course which was offered five times, with eighty-four students; in the other resident continuing legal education courses were two Fiscal Law Courses, a Commercial Activities Course, a Claims, Litigation, and Remedies Course, and the Annual Government Contract Course, a Law Symposium attended by 180 attorneys from throughout the Department of Defense. 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. Fiscal law courses were presented at sites other than Charlottesville for a number of Army commands and activities, including the Corps of Engineers and U.S. Army Finance and Accounting Center. Personnel of the Division also participated jointly with the Army Audit Agency and the Criminal Investigation Command in week long conferences designed to provide students with ways to improve cooperation and

coordination between auditors, investigators, and prosecutors in connection with contract fraud cases. The depth and breadth of each course of instruction is 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 procurement contemplated.

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

The Legal Assistance Branch of the Administrative and Civil Law Division produced two new publications. The first is a two-volume, 1,500-page reference entitled The Legal Assistance Officer's Deskbook and Formbook. This publication contains a discussion of the law followed by sample letters and forms in the substantive areas of law most frequently practiced by legal assistance officers. Secondly, the Branch produced The All States Guide To State Notarial Laws. In addition, the Branch with the assistance of the reserve component attorneys throughout the United States, updated and published The All States Will Guide, The Legal Assistance Officer's Federal Income Tax Supplement, and the Army Legal Assistance Information Directory. The Branch also produced a Model Tax Assistance Program for adoption and use by staff judge advocates throughout the Army. The Branch maintained close liaison with the Chiefs of Legal Assistance of the other services, and in a cooperative effort with the Air Force, produced a two-volume, hard-bound set of the Air Force's All States Law Summaries. Two additional videotape series covering consumer law matters were scripted and are awaiting production.

The Judge Advocate Guard and Reserve Affairs Department sponsored two resident courses for Reserve Component Judge Advocates in fiscal year 1985. Approximately 140 Army Reserve and National Guard judge advocates attended Triennial Training in International Law, Claims, and Contract Law between 17 and 28 June 1985. Phase VI of the Judge Advocate Officer Advanced Course (Contract and International Law) was attended by 139 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 School in Farrell, Pennsylvania, provided administrative support for both courses. The Department also sponsored the Reserve Component Technical (On-Site) Training Program. Between October 1984 and May 1985, the School provided continuing legal education to over 2,000 persons in 23 regional population centers throughout the United States. Attendees represented all services and all components. On-site attendance was up 8% in 1984-85, highlighted by strong showings by Active Army and Army National Guard judge advocates. The Guard-hosted New Orleans 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 12, 1985, the 14th Kenneth J. Hodson Lecture in Criminal Law was presented by Professor Charles H. Whitebread, George T. Pfleger Professor of Law at the University of Southern California Law Center.

On November 7, 1984, the second Waldemar A. Solf Lecture in International Law was presented by Dr. Ray S. Cline of the Center for Strategic and International Studies, Georgetown University. His presentation, "International Responsibility and Accountability for Terrorism," was well received.

The ninth Charles L. Decker Lecture was given on April 19, 1985 by Professor Eugene V. Rostow. Professor Rostow, former Dean of the Yale Law School and former Director of the Arms Control and Disarmament Agency, spoke of the legal relationship between the President and Congress.

The Second Gilbert A. Cuneo Lecture in Contract Law, "The Challenges of Contracting with the Federal Government," was presented by Robert A. Trimble, Vice-President for Contracting, Martin Marietta Aerospace, on January 7, 1985. The School hosted the 1985 Worldwide Judge Advocate General's Conference during October 2-5, 1985. Over 150 senior judge advocates from posts throughout the world conferred on areas of interest and discussed recent developments in all areas of military law.

New editions of DA Pam 27-7, Military Justice Handbook: Guide for Summary Court-Martial Procedure; DA Pam 27-7, Military Justice Handbook: Military Administrative Law Handbook; DA Pam 27-162, Claims: FM 27-2, Your Conduct in Combat Under the Law of War; TC 27-3, Military Justice: Officer Training; TC 27-10-3, Instructor's Guide -- The Law of War; and GTA 27-1-3, Army Rules for Imposing Nonjudicial Punishment, for which the School is responsible, were published during fiscal year 1985. The revision of TC 27-2, Military Justice -- Enlisted Personnel Training, was also completed and will soon be issued. Revision of several other publications is ongoing. Ten 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. A revised AR 27-5, Army Law Library Service, will be published in 1986.

The Combat Developments Office has redesigned all Staff Judge Advocate (SJA) offices from Corps down to the Heavy Separate Brigades. Trial Defense and Trial Judiciary assets have been placed in Tables of Organization and Equipment (TOE) documents as separate from the SJA office. A new TOE entitled "Legal Services Command" is being developed to "capture" certain SJA, defense and judiciary personnel presently in Tables of Distribution and Allowance (TDA) documents that are actually dedicated to the TOE force. Other TOE units being designed are 32d AADCOM, 2d Infantry Division, and Alaska Theater Defense Division. For the first time, Combat Developments will engage in doctrine and personnel utilization assessments during REFORGER and Team Spirit.

The Judge Advocate Guard and Reserve Affairs Department initiated a program to establish a professional data base for Reserve Component judge advocates to allow for automated use of specific professional qualifications. The purpose of the program is to facilitate the identification and exploration of Reserve Component judge advocate expertise by the Active Component.

### 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 1985 was 1824. Representing minority groups were 90 blacks, 25 Hispanics, 17 Asian and Native Americans, and 193 women. The fiscal year 1985 end strength compares with an end strength of 1816 in fiscal year 1984, 1821 in fiscal year 1983 and 1815 in fiscal year 1982. The grade distribution of the Corps at the end of the fiscal year was 6 general officers, 118 colonels, 214 lieutenant colonels, 387 majors, 1022 captains, and 83 first lieutenants. There were 45 officers (41 captains and 4 first lieutenants) participating in the Funded Legal Education Program. There were also 72 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 1984 a selection board was convened to select ten active duty commissioned officers to commence law school under the Funded Legal Education Program.

Seventy-eight 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 . . . . .	10
Armed Forces Staff College . . . . .	5
The Judge Advocate Officer Graduate Course . . . . .	59

During fiscal year 1985 five 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**  
**AND NJP STATISTICS FOR FY 1985**

Period: FISCAL YEAR 1985

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	1420	1358	62	-1%
BCD SPECIAL	1304	1234	70	-7%
NON-BCD SPECIAL	363	291	72	-21%
SUMMARY	1308	1202	106	-20%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-11%

**PART 2 - DISCHARGES APPROVED [From records shown in Part 3]**

GENERAL COURTS-MARTIAL (CA LEVEL)	449
NUMBER OF DISHONORABLE DISCHARGES	
NUMBER OF BAD CONDUCT DISCHARGES	742
SPECIAL COURTS-MARTIAL (SA LEVEL)	892
NUMBER OF BAD CONDUCT DISCHARGES	

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	1228
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	886[A]
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	152[B]

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

TOTAL ON HAND BEGINNING OF PERIOD	1041(Adjusted)
GENERAL COURTS-MARTIAL	NA
BCD SPECIAL COURTS-MARTIAL	NA
REFERRED FOR REVIEW	2283[C]
GENERAL COURTS-MARTIAL	NA
BCD SPECIAL COURTS-MARTIAL	NA
TOTAL CASES REVIEWED	2401[D]
GENERAL COURTS-MARTIAL	NA
BCD SPECIAL COURTS-MARTIAL	NA
TOTAL PENDING AT CLOSE OF PERIOD	918
GENERAL COURTS-MARTIAL	NA
BCD SPECIAL COURTS-MARTIAL	NA
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+20%

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

NUMBER	2089[E]
PERCENTAGE	99%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USGMA	48%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+ 3%
PERCENTAGE OF TOTAL PETITIONS GRANTED	12%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	- 3%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	6%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	- 1%

PAGE 1 OF 2

- NOTE A. Does not include 7 cases in which review was waived.  
 B. Does not include 1 case in which review was waived.  
 C. Includes 19 Miscellaneous Docket cases of which 6 were Government appeals under Article 62.  
 D. Does not include 5 cases in which review was withdrawn.  
 E. The Court ordered appointment of counsel in 12 additional cases.

APPENDIX A - CONTINUED

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		26
RECEIVED		108
DISPOSED OF		125
GRANTED	11	
DENIED	109	
Other	4 [F]	
WITHDRAWN	1	
TOTAL PENDING AT END OF PERIOD		9
PART 8 - ORGANIZATION OF COURT [From cases in Part 1]		
TRIALS BY MILITARY JUDGE ALONE		979
GENERAL COURTS-MARTIAL		
SPECIAL COURTS-MARTIAL		1205
TRIALS BY MILITARY JUDGE WITH MEMBERS		441
GENERAL COURTS-MARTIAL		
SPECIAL COURTS-MARTIAL		462
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	40	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	786,719	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		121,154
RATE PER 1,000		154
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		+9

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Note F. Includes 2 applications returned for curative action by field authorities and 2 applications filed out of time with good cause not shown.



ANNUAL REPORT  
of  
THE JUDGE ADVOCATE GENERAL OF THE NAVY  
pursuant to the  
UNIFORM CODE OF MILITARY JUSTICE  
for  
FISCAL YEAR 1985

*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 the supervision of the administration of military justice.

*COURT-MARTIAL WORKLOAD*

There has been a small decrease in a total number of courts-martial during fiscal year 1985. (See Appendix A, attached to this report.) During fiscal year 1985, the Navy-Marine Corps Court of Military Review received for review 4,518 new courts-martial cases, consisting of 774 general courts-martial and 3,744 special courts-martial, as compared with 4,676 courts-martial consisting of 749 general courts-martial, and 3,927 special courts-martial during fiscal year 1984. Of the 4,518 new cases received by the Navy-Marine Corps Court of Military Review in fiscal year 1985, 4,109 accused requested appellate counsel (91%).

*ARTICLE 69(a), UCMJ, EXAMINATIONS*

Seventy-six general courts-martial cases 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 under Article 69(a), Uniform Code of Military Justice, in fiscal year 1985.

*ARTICLE 69(b), UCMJ, APPLICATIONS*

The number of applications filed 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, increased slightly during fiscal year 1985. Applications were received in 76 cases; 32 applications were pending from prior years. Of these 108 cases, 49 were reviewed during the fiscal year. Of those applications reviewed, 46 were denied on the merits, while relief was granted, in whole or in part, in three cases. Three cases received were beyond the statute of limitations and returned to the applicant for resubmission upon a showing of good cause for untimely initial submission. Six cases were returned for compliance with the Manual of the Judge Advocate General. Fifty cases were pending review at the close of fiscal year 1985.

### *ARTICLE 73, UCMJ, PETITIONS*

In fiscal year 1985, 11 petitions for new trial were submitted for review pursuant to Article 73, Uniform Code of Military Justice. Two petitions were denied, two petitions were forwarded to the Court of Military Appeals, and four petitions were forwarded to the Navy-Marine Corps Court of Military Review. Three petitions were pending review at the close of fiscal year 1985.

### *ARTICLE 74(b), UCMJ, PETITIONS*

Six new petitions were submitted in fiscal year 1985, requesting the Secretary of the Navy to substitute an administrative discharge for a punitive discharge executed pursuant to the sentence of a court-martial. Five cases were pending from the prior fiscal year. The Secretary denied one petition. Ten petitions are pending review.

### *NAVY-MARINE CORPS TRIAL JUDICIARY*

The Navy-Marine Corps Trial Judiciary provided military judges for 1,016 general courts-martial (GCM) during fiscal year 1985, an increase of 245 GCMs from the prior fiscal year level of 771. In fiscal year 1985, approximately 80% (800 of 1,016) of these GCMs were tried by military judge alone. This is an increase over previous years (70% in fiscal 1984 and 66% in fiscal year 1983).

There were 6,642 special courts-martial (SPCM) tried during fiscal year 1985, a decline of 796 cases from the 7,438 SPCMs conducted during fiscal year 1984. In fiscal year 1985, approximately 90% (6,030 of 6,642) of the SPCMs were tried before military judge alone. In fiscal year 1984, 90% of the SPCMs (6,663 of 7,438 cases) were tried before military judge alone, and in fiscal year 1983, 90% of the SPCMs (8,265 of 9,197) were tried before military judge alone.

Military judges attending continuing legal education seminars/lectures/meetings/conferences:

East Coast Military Judges Meeting of the Navy-Marine Corps Trial Judiciary:  
Navy Air Station, Norfolk, Virginia (3-4 December 1984) 32 active-duty military judges and 9 reserve military judges

West Coast Military Judges Meeting of the Navy-Marine Corps Trial Judiciary:  
Marine Corps Recruit Depot, San Diego, California (10-11 December 1984)  
24 active-duty military judges and 8 reserve military judges

Eleventh Interservice Military Judges' Seminar:  
Maxwell Air Force Base, Montgomery, Alabama (10-11 March 1985) 11 active-duty military judges (2 active-duty military judges also attended as guest speakers)

Criminal Evidence Course:  
National Judicial College, Reno, Nevada (14-20 April 1985) 1 active-duty Marine Corps judge

USMC Staff Judge Advocate Conference:

Quality Inn, Arlington, Virginia (14-18 April 1985) 3 active-duty Marine Corps judges

Navy Micro 1985 Small Computer Conference:

Convention Center, Virginia Beach, Virginia (20-23 May 1985) 1 active-duty Navy judge

Military Judges' Course

U.S. Army JAG School, Charlottesville, Virginia (28 May-14 June 1985) 6 active-duty military judges

U.S. Army Trial Judiciary (European Division) Conference:

Garmish, Germany (8-14 September 1985) 9 active-duty Navy judges and 1 reserve Navy judge

1985 Navy JAG Corps Conference:

Springfield Hilton Hotel, Springfield, Virginia (22-27 September 1985)  
9 active-duty Navy judges and 1 reserve Navy judge

Medical-Scientific Evidence Course

National Judicial College, Reno, Nevada (29 September - 4 October 1985)  
1 active-duty Marine Corps judge

Captain Byrne, Chief Judge, Navy-Marine Corps Trial Judiciary, presented administrative briefings for students at the Military Judges' Courses at both the U.S. Army JAG School, Charlottesville, Virginia (12-14 June 1985) and the Naval Justice School, Newport, Rhode Island (13-16 August 1985). He also conducted a working visit to the Office of the Circuit Military Judge, Tidewater Judicial Circuit, Norfolk, Virginia (28-29 June 1985) and participated in the retirement ceremony for Captain M. Freed, outgoing Circuit Military Judge, Tidewater Judicial Circuit, and at the assumption of duties by Captain Ziemniak, who relieved Captain Freed. Captain Byrne also participated in a Reserve weekend training drill for Reserve Navy judges at the National Judicial College, Reno, Nevada (13-24 February 1985). The Chief Judge also spoke at the USMC Staff Judge Advocate's conference held 14-18 April 1985 at the Quality Inn, Arlington, Virginia.

On behalf of the Chief Judge, Lieutenant Colonel Atkins, Deputy Chief Judge, Navy-Marine Corps Trial Judiciary, participated in a Reserve weekend training drill at the Naval Justice School, Newport, Rhode Island, between 6 and 11 September 1985.

Also on behalf of the Chief Judge, Colonel Blum, Circuit Military Judge, Piedmont Judicial Circuit, Camp Lejeune, North Carolina, paid a working visit to and participated in the instruction of students at the Military Judges' Course at the Naval Justice School, Newport, Rhode Island, between 13 and 16 August 1985.

As has been the case in previous fiscal years, the judge's billet in Guam has been gapped due to a projected reduction in caseload, and upon the transfer of

the incumbent, the judge's billet at Memphis will also be gapped. Additionally, a review is in progress which may result in a decision in the near future to leave certain other trial judiciary billets unfilled.

During fiscal year 1985, total in-court time for all military judges, active and Reserve, was 26,555 hours, 489 hours less than in fiscal year 1984 (27,044). A decrease of 418 hours in travel time during fiscal year 1985 from fiscal year 1984 was also experienced (5,134 versus 5,552 hours).

No events are anticipated during fiscal year 1986 which would adversely affect the mission accomplishment of the Navy-Marine Corps Trial Judiciary.

#### *NAVAL LEGAL SERVICE COMMAND*

During fiscal year 1985, the Naval Legal Service Command (NAVLEGSVCCOM) consisted of 21 naval legal service offices and 20 naval legal service office detachments, located in areas of naval concentration throughout the world; the Naval Justice School, located in Newport, Rhode Island; and the Office of Legal Counsel at the Naval Academy, Annapolis, Maryland. The pilot Trial Defense Activity and its two detachments were disestablished on 1 July 1985. The total manpower authorization for the NAVLEGSVCCOM includes 427 officers, 231 enlisted legalmen and 245 civilian employees. Navy judge advocates in the NAVLEGSVCCOM comprise approximately 40% of the Navy's total judge advocate strength.

The NAVLEGSVCCOM, under the command of the Judge Advocate General in his capacity as Commander, NAVLEGSVCCOM, continues to provide a broad range of legal service to afloat and ashore commands and to individual servicemembers. These services include court-martial trial and defense counsel, administrative discharge board counsel for respondents, recording and preparation of records of trial, advice to commands on military justice and other legal aspects of the functioning of command, claims processing and adjudication, counsel for the party at physical evaluation boards, and legal assistance to servicemembers and their dependents.

Phase I of the Judge Advocate General Management Information System (JAGMIS), the field office case tracking system, was implemented in the Naval Legal Service Command and many staff judge advocate offices beginning in May 1985. Efforts are underway to enhance the software for Phase I and to increase training levels at all sites. Phase II of JAGMIS includes all headquarters information systems for military justice data collection and appellate case tracking. Phase II is in the concept development/detailed design stage of development, and approval of equipment acquisition plans is expected during December 1985. With allowance for software development, it is anticipated that Phase II will be implemented in June or July 1986.

#### *NAVAL JUSTICE SCHOOL*

During fiscal year 1985, the Naval Justice School continued to expand both the tempo and range of its operations. In addition to providing instruction to 5,925 students worldwide, an increase of 8% over last year, the school added three new courses to the curriculum and broadened its involvement in JAG Corps publications. These additional courses were developed to enrich training

opportunities within the Corps for both legalmen and officers in billets requiring special knowledge and preparation. The new fiscal year 1985 courses focused on international law, the duties of a staff judge advocate, and management training for senior legalmen.

*Law of Naval Warfare Workshop.* Offered once a year, this one-week course trains judge advocates responsible for advising commanders on maritime law and its impact on plans and operations. The course consists of 26 hours of classroom instruction and 5 hours of practical exercises and seminars. Attendees at the first offering of this course included 24 Navy, 2 Marine Corps, and 2 Coast Guard attorneys.

*Staff Judge Advocate Course.* Also offered once a year, this new two-week course provides training in specific aspects of administrative, criminal, and labor 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, 33 Navy and 5 Marine Corps attorneys completed the course.

*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. Twenty E-7 through E-9 legalmen attended the first offering of this course.

*Lawyer Course.* The Naval Justice School completed five sessions of the nine-week lawyer course during fiscal year 1985. 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 more than a dozen seminars designed to enhance trial advocacy skills. The course was completed by 149 Navy and 72 Marine Corps lawyers in fiscal year 1985.

*Legal Officer Course.* During fiscal year 1985, the school held seven sessions of this five-week course. The legal officer syllabus is designed for the nonlawyer, such as a junior officer about to assume duties as legal officer of 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 233 Navy officers, 39 Marine Corps officers, two Coast Guard officers, and three members of the Navy's legalman rating. These three enlisted graduates of the course are the first increment of a program which sends seasoned legalmen to independent duty as legal advisors in lieu of legal officers.

*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 command legal responsibilities. Six sessions of the course were held at Newport, Rhode Island, with 172 students attending. An additional 25 offerings of the course were held at the following worldwide locations: Pensacola, Jacksonville and Mayport, Florida; Charleston, South Carolina (2); Norfolk, Virginia (2); Puget Sound, Washington; San Francisco, California (2); San Diego, California (2); Camp Pendleton, California; Rota, Spain; Pearl Harbor, Hawaii (2); Subic Bay, Philippines; Yokosuka, Japan;

Parris Island, South Carolina; Camp Lejeune, North Carolina; New London, Connecticut (2); Corpus Christi, Texas; and Quantico, Virginia. The 1,676 students attending these classes included:

USN:	1004	(60%)
USMC:	495	(30%)
USCG:	154	(9%)
Other:	23	(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 1985, 8 Navy, 1 Marine Corps and 7 Air Force judge advocates completed this course.

*Legalman Course.* This nine-week course, offered twice in fiscal year 1985, 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. In fiscal year 1985, 47 Navy and 14 Army students completed this course. As in past years, the Army continues to use the Naval Justice School's legalman course to train its court reporters.

*Legal Clerk Course.* This two-week course, designed to train members of the Navy's yeoman rating to process routine legal matters at small or isolated commands, was originally scheduled for three sessions in fiscal year 1985. Due to the large demand for quotas, however, the school provided an additional four offerings of this course. Included in the legal clerk curriculum are 51 hours of lecture and 25 hours of practical exercises. In fiscal year 1985, 327 students completed the course.

*Reserve Courses.* In addition to training active-duty personnel, the Naval Justice School also presents a number of courses each year to train 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 one-week Reserve Legalman Course, offered in three phases, prepares enlisted personnel in the inactive-duty Reserve to serve as legalmen. During fiscal year 1985, 60 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 500 hours of instruction on search and seizure, confessions and admissions, nonjudicial punishment, investigations, administrative separations, and the law of armed conflict to 3,174 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.* Besides expanding its curriculum of formal courses, the Naval Justice School also became more involved in JAG Corps publications. At the end of fiscal year 1985, the school assumed responsibility for publishing the JAG Corps' major scholarly periodical, the Naval Law Review. In addition, the school published four issues of its Update Series, a compilation of

commentaries by faculty members on pertinent issues of military law. Finally, in support of the JAG Corps' Professional Development Program, the school prepared and distributed a dozen teaching modules to augment the international training programs at local Navy and Marine Corps legal offices. These teaching packages, which contain instructor notes, a student notetaking guide, and appropriate visual aids, have been granted CLE accreditation by a number of states and are designed to update judge advocates on current issues such as character evidence, claims, standards of conduct, officer separations, investigations, ethics, freedom of expression, forensic psychiatry, and the sensitive handling of rape victims.

### *MARINE CORPS ACTIVITIES*

During fiscal year 1985, the increased emphasis on Reserve Mobilization Training Units (MTUs) continued. In addition to providing thousands of hours of legal assistance services to active-duty and Reserve Marines and dependents, the twelve Law MTUs have begun assuming missions directly supporting active-duty commands and HQMC staff agencies. Also, some 80 Reserve lawyers (including six military judges) train for mobilization by performing drills and annual active duty with the commands to which they would be assigned if mobilized.

On 1 October 1984, the chairmanship of the Joint-Service Committee on Military Justice (JSC) was relinquished at end of term by the incumbent Air Force representative. The Marine Corps was next in turn to assume this position and accepted the chair for the first time in JSC history. The chairmanship term is two years.

The new procedures for furnishing Marine Corps defense counsel services have been in place now for over a year. They continue to be well received by commanders and judge advocates alike. The Chief Defense Counsel of the Marine Corps and the three Regional Counsel exercise overall supervision of defense counsel performance and prepare defense counsel fitness reports.

Also during fiscal year 1985, nine 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 at Charlottesville, Virginia. Three Marines received their Master of Law degrees from civilian law schools in the Special Education Program. One hundred and sixty-four Marines received continuing legal education at civilian and military schools through courses funded by Headquarters, U.S. Marine Corps; a substantial number of judge advocates received continuing legal education funded by their parent commands. Twenty-seven of the 419 Marine Corps judge advocates are serving in command or staff (nonlawyer) assignments.

The Marine Corps hosted the Spring Meeting of the American Bar Association Standing Committee on Military Law, held at the Marine Corps Recruit Depot, Parris Island, South Carolina, on 17-18 May 1985. In addition to a tour of Marine Corps facilities at Parris Island, the program included a panel discussion on the changing role of the military lawyer.

The Director, Judge Advocate Division, visited commands at Camp Pendleton and San Diego, California; Parris Island, South Carolina; Camp Lejeune, North Carolina; the Naval Justice School; and the Army JAG School.

T.E. FLYNN

*Rear Admiral, JAGC, USN*

*Judge Advocate General of the Navy*

**APPENDIX A**  
**U.S. NAVY-MARINE CORPS COURTS-**  
**MARTIAL/NJP STATISTICS FOR FY 1985**

**Period:** FISCAL YEAR 1985

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	936	890	56	+171 (+23%)
BCD SPECIAL	3174	3174		-638 (-17%)
NON-BCD SPECIAL	2653	2390	263	-663 (-20%)
SUMMARY	3972	3893	79	-727 (-16%)
<b>OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT</b>				<b>-1857 (-15%)</b>

**PART 2 - DISCHARGES APPROVED**

GENERAL COURTS-MARTIAL (GA LEVEL)			
NUMBER OF DISHONORABLE DISCHARGES		283	
NUMBER OF BAD CONDUCT DISCHARGES		472	
SPECIAL COURTS-MARTIAL (SA LEVEL)			
NUMBER OF BAD CONDUCT DISCHARGES		3174	

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	774
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	3744
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	49

**PART 4 - WORKLOAD OF THE NAVY/MARINE COURT OF MILITARY REVIEW**

<b>TOTAL ON HAND BEGINNING OF PERIOD</b>		403
GENERAL COURTS-MARTIAL	97	
BCD SPECIAL COURTS-MARTIAL	306	
<b>REFERRED FOR REVIEW</b>		4608
GENERAL COURTS-MARTIAL	812	
BCD SPECIAL COURTS-MARTIAL	3796	
<b>TOTAL CASES REVIEWED</b>		4330
GENERAL COURTS-MARTIAL	696	
BCD SPECIAL COURTS-MARTIAL	3634	
<b>TOTAL PENDING AT CLOSE OF PERIOD</b>		681
GENERAL COURTS-MARTIAL	213	
BCD SPECIAL COURTS-MARTIAL	468	
<b>RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD</b>		937 (-18%)

**PART 5 - APPELLATE COUNSEL REQUESTS BEFORE COURT OF MILITARY REVIEW**

NUMBER	4109
PERCENTAGE	91%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	26%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-17%
PERCENTAGE OF TOTAL PETITIONS GRANTED	6%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-63%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	7%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-37%

**APPENDIX A- CONTINUED**

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

PENDING AT BEGINNING OF PERIOD		32	
RECEIVED		76	
DISPOSED OF			
GRANTED	3		
DENIED	49		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		27	

**PART 8 - ORGANIZATION OF COURT**

TRIALS BY MILITARY JUDGE ALONE		698	
GENERAL COURTS-MARTIAL			
SPECIAL COURTS-MARTIAL		5299	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		238	
SPECIAL COURTS-MARTIAL		528	

**PART 9 - COMPLAINTS UNDER ARTICLE 138**

NUMBER OF COMPLAINTS	123		
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**PART 10 - STRENGTH**

AVERAGE ACTIVE DUTY STRENGTH	759,931		
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**PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)**

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	82,888		
RATE PER 1,000	109.08		
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-12%	

**REPORT OF  
THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE  
OCTOBER 1, 1984 TO SEPTEMBER 30, 1985**

In compliance with the requirements 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 Keith 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) 1985, 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 219 applications.
- b. The Directorate received 856 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 representatives 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 1985 the system produced approximately 30 standard reports on 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.

### **Legal Information Services**

During FY 1985 the Directorate of Legal Information Services was organized to manage the Judge Advocate General's Office Automation Project. What was formerly the Federal Legal Information Through Electronics (FLITE) Division of the Executive Office became the new directorate, adding in the process a new division for program development (AF/JASX). Planning was initiated to upgrade the FLITE system into an interactive system to be hosted on mainframe computers at the 2nd Information System Group in San Antonio. It was determined that the 2nd ISG would also host successor information management systems to AMJAMS and CAMP, to be known as the Air Force Justice Information Management System (AFJIMS) and the Air Force Claims Information Management System (AFCIMS).

Plans were generated to begin an extensive, structured requirements analysis of the justice and claims systems, as well as other office management systems in order to draft adequate blueprints for the design of the new IMSs. The study is part of an ongoing (FY 1985-87) Air Force wide study of all functional support areas. The JA study was to begin October 1st.

Over 900 microcomputers were fielded by JAS to some 300 Air Force JAG offices worldwide through FY 1985 purchases. Additionally, an interim word processing program was fielded to be used until selection of a comprehensive office automation software suite. Extensive prototyping and testing of available spreadsheet and database management systems were accomplished.

Initial operational testing was accomplished on the Defense Emergency Authorities Retrieval and Analysis System (DEARAS) and continued investigation into laser disk technology for application to that system and other possible distributed database systems was accomplished.

### **Trial Judiciary**

The Air Force Trial Judiciary had an average of 31 military active duty and five reserve military trial judges, including the Chief Trial Judge and his assistant, assigned to 12 locations worldwide.

The Trial Judiciary had begun to automate the management system and the budgeting function with the acquisition of microcomputers for each of the seven Circuit Offices. The programs have been written and the court administrators trained in their use. Further improvements in the programs and computer communications capability are planned for 1986.

### **Circuit Trial Counsel Program**

The number of assigned circuit trial counsel (CTC) remained at 21 during FY 1985. The average number of days TDY per case made a jump of 22% from 46

6.65 days in FY 1983 to 8.1 days in FY 1984, but in FY 1985 the increase slowed dramatically. The average number of days TDY per case in FY 1985 was 8.46, an increase of only 4.4%. For the second year in a row the percentage of all courts prosecuted by CTC increased slightly, from 26.4% in FY 1983 TO 29.2% in FY 1984 to 31.4% in FY 1985. The total number of general courts-martial tried by CTC increased from 348 to 374, but the percentage of general courts-martial tried by circuit trial counsel fell from 82% in FY 1984 to 78.5% in FY 1985.

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

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
General	229 (96%)	345 (92%)	323 (90%)	378 (88%)	385 (84%)	348 (82%)	374 (79%)
Special	292 (27%)	229 (17%)	219 (16%)	119 (9%)	55 (5%)	73 (7%)	68 (7%)
Total	521 (46%)	574 (38%)	542 (31%)	497 (25%)	440 (26%)	421 (29%)	442 (31%)

In support of the urinalysis program a training workshop was conducted to continue to insure that at least one circuit trial counsel from each circuit was specially trained to prosecute these complex, scientific evidence cases. In addition to circuit trial counsel, 21 judge advocates nominated by their commands attended. The successful prosecution of urinalysis cases continues to support the important fight against drug abuse in the Air Force.

#### Appellate Government Counsel

In recognition of the substantial increase in workload generated by increased court-martial activity starting in 1979 and 1980 and the added responsibilities legislated by the 1984 Military Justice Act, two additional judge advocates were authorized and assigned to the division. A petition for Certiorari in the case of United States v. Johanns, was filed with the United States Supreme Court in August 1985. The Supreme Court denied the Petition for Writ of Certiorari on 7 October 1985. No other Air Force cases reached the Supreme Court. Sister services did have certiorari activity, and this division expended a significant number of man-hours on such cases. Appeals under Article 62, UCMJ, have not been numerous, but significantly more cases were considered and researched than were actually filed.

#### Defense Counsel Program

The Area Defense Counsel Program continued to provide Air Force members facing adverse administrative actions and judicial and nonjudicial proceedings with excellent representation by extremely well qualified lawyers. Authorizations for area defense counsel increased from 120 to 126, with additional positions being authorized for George AFB, California; Holloman

AFB, New Mexico; Minot AFB, North Dakota; Florennes AB, Belgium; and Comiso AFB, Italy. There were 18 circuit defense counsel located in the seven Judiciary circuits, and seven chief circuit defense counsel.

The Reserve Area Defense Counsel Augmentation Test Program finished its one year test in 1985, and The Judge Advocate General appointed a committee to evaluate its effectiveness. The committee finished its evaluation and forwarded its report to The Judge Advocate General with its findings and recommendations.

### Appellate Defense Counsel

The appellate defense counsel concluded a busy year representing numerous clients who had 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	767
ORAL ARGUMENTS	12
OTHER MOTIONS	316

#### USCMA

SUPPLEMENTS TO PETITIONS	396
BRIEFS IN SUPPORT	122
GRANT BRIEFS	16
ORAL ARGUMENTS	23
OTHER MOTIONS/PETITIONS	155

### Confinement Facilities

At the end of the fiscal year, 776 Air Force personnel were in confinement, 45 pretrial and 731 post-trial. The figure 776 represents the second highest number in confinement in over 12 years. The Air Force prison population peaked at 824 during FY 1985. In addition, 92 Air Force prisoners were on parole and 93 in excess leave status on 30 September, 1985.

The average approved sentence to confinement resulting from general court-martial during FY 1985 was 35 months, up significantly over the prior year. This placed considerable pressure on our long-term confinement resources. During the early part of FY 1985, the Fort Lewis Installation Detention Facility, which began accepting Air Force prisoners in the latter part of FY 1983 and now accepts those with sentences of up to two years, increased its allocation of Air Force prisoners from 125 to 150. In addition, a backlog of prisoners awaiting transfer to the United States Disciplinary Barracks (USDB), with sentences in excess of two years, was alleviated in early FY 85 with the acquisition of 30 additional spaces at that facility. At the close of FY 1985, the Air Force was fully utilizing its 200 spaces there, but about 20 prisoners still

were being delayed an average of 60 days before transfer to the USDB. The Air Force was negotiating at that time with the Army for additional spaces at both Fort Lewis and the USDB. Reacquisition from the State of New Jersey by DOD of a 500 bed joint services facility at Fort Dix in early FY 1987 was seen as a partial long term solution.

The return to duty rehabilitation program (RTDR) at the 3320th CRS, Lowry Air Force Base, continued to operate successfully. Ten Air Force members were restored to duty following completion of the RTDR in FY 1985.

### **Preventive Law and Legal Assistance Program**

The Preventive Law and Legal Aid Group (AF/JACA) initiated a major program involving standardized organization of preventive law information resources within all Air Force legal offices, essentially indexing and integrating these resources within base-level libraries. Objectives are to facilitate rapid retrieval of available information, to ensure informational resources are maintained and kept current, and to save valuable time and manpower resources in the field by providing more and better products via the Preventive Law Clearinghouse.

For the first time, the staff helped organize and implement a joint-service income tax training course for overseas bases. In Europe it was limited to legal assistance providers, but in the Pacific the program also included training of unit tax advisors. With respect to tax forms distribution, MAC airlift (priority one) was used to ensure arrival of forms prior to client receipt of W-2 forms from employers. Moreover, HQ USAF/ JAES centrally ordered, for all Air Force legal assistance offices worldwide, reproducible facsimiles of all state and federal tax forms and instructions. AF/DAPD authorized local reproduction of the forms when no other local sources were available.

An entirely new system for recording legal assistance services was developed, including a revised legal assistance card (AF Form 1175). The new system recognizes the important role of trained paralegals in the delivery of legal services, facilitates recordation of more detailed information about the type assistance provided, and records actual time spent on each matter. From both preventive law and manpower standpoints, the new system should generate more meaningful information for better resource management.

Legal assistance service were provided to over 450,000 clients on 1.1 million different matters during calendar year 1985. In liaison with the American Bar Association Standing Committee on Legal Assistance for Military Personnel, the Chief of the Preventive Law and Legal Aid Group visited over 30 military legal assistance offices and crossed many useful ideas throughout the Air Force and our sister services.

### **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 1985 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 results in 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 85.

### 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 1985.

a. Advanced Trial Advocacy Course - This 1-week course provides training in advance advocacy skills to judge advocates currently serving as or selected for circuit trial or defense counsel. Thirty-four 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 offered three times in FY 1985 and was attended by 107 judge advocates and one foreign officer.

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 1985 and was attended by 128 Reservists and 16 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 68 judge advocates attended this course, including six Reservists and five Air National Guardsmen.

e. Trial and Defense Advocacy Course - This 1-week course, offered three times during FY 1985, provides basic advocacy training to judge advocates actively engaged in trial practice and was attended by 96 Air Force and 2 Navy 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 1985 and was attended by 57 military judges from all services.

g. Basic Legal Services Specialist Course. This 6-week course is conducted at the Legal Services Specialist Course at Keesler AFB, Mississippi. It was offered 10 times during FY 1985 to 126 airmen and NCO's. Legal Services refresher training is also conducted at Keesler AFB, Mississippi. This 2-week refresher course was offered four times, and 27 attended.

### *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

### *Short Courses at Civilian Universities*

Ten judge advocates attended courses at the National Judicial College at the University of Nevada during FY 1985

### *Masters in Law Program*

During FY 1985, one judge advocate received a Master of Law degree in criminal law.

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

Six 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. Six judge advocates attended the military judge's course at the Naval Justice School, Newport, Rhode Island.

### *Personnel*

As of 1 October 1985, there were 1346 judge advocates on active duty. This total included 5 generals, 108 colonels, 221 lieutenant colonels, 318 majors, 656 captains, and 38 first lieutenants.

ROBERT W. NORRIS  
*Major General, USAF*  
*The Judge Advocate General*

**APPENDIX A**  
**U.S. AIR FORCE COURTS-MARTIAL/MJP**  
**STATISTICS FOR FY 1985**

Period: October 1, 1984 - September 30, 1985

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	472	443	29	+ 19.7 %
BCD SPECIAL	381	381		+ 1.6 %
NON-BCD SPECIAL	591	502	89	- 13.7 %
SUMMARY	67	58	9	+ 55.2 %
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+ 2.9 %

**PART 2 - DISCHARGES APPROVED**

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES		161
NUMBER OF BAD CONDUCT DISCHARGES		235
SPECIAL COURTS-MARTIAL (SA LEVEL)		
NUMBER OF BAD CONDUCT DISCHARGES		368

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	422
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	329
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	45

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

TOTAL ON HAND BEGINNING OF PERIOD		149
GENERAL COURTS-MARTIAL	88	
BCD SPECIAL COURTS-MARTIAL	61	
REFERRED FOR REVIEW		785
GENERAL COURTS-MARTIAL	445	
BCD SPECIAL COURTS-MARTIAL	340	
TOTAL CASES REVIEWED		751
GENERAL COURTS-MARTIAL	409	
BCD SPECIAL COURTS-MARTIAL	343	
TOTAL PENDING AT CLOSE OF PERIOD		177
GENERAL COURTS-MARTIAL	112	
BCD SPECIAL COURTS-MARTIAL	65	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-3.0 %

**PART 5 - APPELLATE COUNSEL REQUESTS BEFORE COURT OF MILITARY REVIEW**

NUMBER	743
PERCENTAGE	95%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	420/751	55.9 %
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		- 20.5 %
PERCENTAGE OF TOTAL PETITIONS GRANTED	33/420	7.8 %
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		- 35.0 %
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	33/751	4.4 %
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		- 3.4 %

**APPENDIX A - CONTINUED**

<b>PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69</b>		
PENDING AT BEGINNING OF PERIOD		10
RECEIVED		43
DISPOSED OF		46
GRANTED	6	
DENIED	39	
NO JURISDICTION	1	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		7
<b>PART 8 - ORGANIZATION OF COURT</b>		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL		224
SPECIAL COURTS-MARTIAL		539
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		248
SPECIAL COURTS-MARTIAL		433
<b>PART 9 - COMPLAINTS UNDER ARTICLE 138</b>		
NUMBER OF COMPLAINTS	29	
<b>PART 10 - STRENGTH</b>		
AVERAGE ACTIVE DUTY STRENGTH	583,760	
<b>PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)</b>		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	23,788	
RATE PER 1,000	40.73	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	- 7.4 %	

PAGE 2 OF 2



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

October 1, 1984 to September 30, 1985

The table below shows the number of court-martial records received and filed at Coast Guard Headquarters during FY 85 and the five preceding years.

Fiscal Year	85	84	83	82	81	80
General Courts-Martial	5	6	10	9	2	3
Special Courts-Martial	43	33	68	79	58	67
Summary Courts-Martial	77	105	128	151	192	169
Total	125	144	206	239	252	239

## COURTS-MARTIAL

Attorney counsel are detailed to all special courts-martial. Normally, military judges are detailed to all special courts-martial; however, one case this year was tried with members only. For most cases, the presiding judge was the full-time general courts-martial judge. When he was unavailable, military judges with other primary duties were utilized for special courts-martial. Control of the detail of judges is centrally exercised by the Chief Trial Judge, and all requirements have been met in a timely fashion.

## GENERAL COURTS-MARTIAL

Charges referred to the five general courts-martial received this year included twenty-four specifications alleging violations of Articles 91, 92, 121, and 134. One accused was tried by a court comprised of enlisted members. Of the five accused tried by courts with members, one received a sentence which included a bad conduct discharge and another, an 0-5, was sentenced to dismissal from the U.S. Coast Guard.

## SPECIAL COURTS-MARTIAL

Seventeen of the forty-three accused tried by special courts-martial this fiscal year were tried by the military judge alone. Six of the twenty-six accused tried by members were acquitted of all charges and specifications. Only one special court-martial was tried without a military judge being detailed; however, the president of the court was Article 27(b), UCMJ, certified. Seven bad conduct discharges were awarded, three to accused tried by military judge alone and four to accused tried by courts with members. One of the punitive discharges was changed to confinement by the convening authority. Fourteen of the accused whose charges were referred to special courts-martial were nonrated (pay grades E-1 thru E-3), sixteen were petty officers (pay grades E-4 thru E-6), five were chief petty officers (pay grades E-7 thru E-8), and one was an officer (pay grade 0-3).

The following table shows the distribution of the 169 specifications referred to special courts-martial.

Violation of the UCMJ, Article	No. of Specs.
85 and 86 (desertion and UA)	14
87 (missing movement)	4
91 (willful disobedience or disrespect)	13
92 (violation of order or regulation)	4
107 (false official statement)	12
121 (larceny and wrongful appropriation)	32
128 (assault)	28
134 (General)	18
112(a) (marijuana offenses)	18
112(a) (other controlled drug offenses)	18
Other offenses	8

The following is a breakdown of sentences awarded by the military judge alone in special courts-martial (16 convictions).

Sentence	Cases Imposed
bad conduct discharge	3
confinement	8
reduction in rate	12
forfeiture of pay (\$8,825 total)	9
finer (\$2,500 total)	2
other sentences	4

In four of these sixteen convictions, the accused pled guilty to all charges and specifications.

The following is a breakdown of sentences awarded in special courts-martial with members (20 convictions).

Sentence	Cases Imposed
bad conduct discharge.....	4
confinement.....	10
hard labor without confinement.....	2
reduction in rate.....	16
restriction.....	5
forfeiture of pay (\$20,072 total).....	15
fine (\$1,250 total).....	1
other sentences.....	4

In five of these twenty convictions the accused pled guilty to all charges and specifications.

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

FY	Number of Convictions	Forfeitures	Confinement	Reduction in grade	BCD
85	36	24 (67%)	18 (50%)	28 (78%)	7 (19%)
84	32	21 (66%)	18 (56%)	26 (81%)	3 (9%)
83	62	35 (56%)	35 (56%)	49 (79%)	16 (26%)

(average % for 3 years)

### SUMMARY

One of the five general courts-martial, with members, adjudged a sentence which included a bad conduct discharge. One officer, O-5, convicted by a general court-martial received a sentence of dismissal from the Coast Guard. Thirty-seven percent of the accused tried by special court-martial were tried by military judge alone, and twenty-five percent of them pled guilty to all charges and specifications. Twenty-five percent of the accused tried by special court-martial with members pled guilty to all charges and specifications. There was a fifteen percent decrease in total courts-martial this fiscal year from last 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 accused under Article 69, UCMJ, a discretionary review is conducted under Article 69 of *all* courts-martial not requiring appellate review.

## PERSONNEL AND TRAINING

The Coast Guard has 164 law specialists serving on active duty. 123 are serving in a legal capacity and 41 are serving in general duty billets. The junior law specialists 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.

The 10th Coast Guard Basic Law Specialists' Course was held at the Coast Guard Reserve Training Center, Yorktown, Virginia, from 9 September to 30 October 1985. The seven week course normally introduces both the direct commissioned lawyers and the regular officers, just completing law school, to the many duties they would perform as Coast Guard law specialists. There were no direct commissioned attorneys in this year's class. All nine students were eligible for Article 27(b), UCMJ, certification upon graduation. 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. 18 Coast Guard officers are currently undergoing post-graduate studies in law and will be certified as law specialists at the completion of their studies.

### ADDITIONAL MILITARY JUSTICE STATISTICS

Appendix A contains additional basic military judge statistics for the reporting period and reflects the increase/decrease of the workload in various categories.

EDWIN H. DANIELS  
*Rear Admiral, USCG*  
*Chief Counsel, U.S. Coast Guard*

**APPENDIX A**  
**U.S. COAST GUARD COURTS-MARTIAL**  
**AND NJP STATISTICS FOR FY 1985**

Period: 1 October 1984 to 30 September 1985

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	05	05	00	-17%
BCD SPECIAL	43	36		+33%
NON-BCD SPECIAL	01	01	00	+100%
SUMMARY	77	74	03	-27%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-15%

**PART 2 - DISCHARGES APPROVED**

GENERAL COURTS-MARTIAL (CA LEVEL)			
NUMBER OF DISHONORABLE DISCHARGES			00
NUMBER OF BAD CONDUCT DISCHARGES			01
SPECIAL COURTS-MARTIAL (SA LEVEL)			
NUMBER OF BAD CONDUCT DISCHARGES			06

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL		03
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL		05
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL		02

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

TOTAL ON HAND BEGINNING OF PERIOD		09
GENERAL COURTS-MARTIAL	04	
BCD SPECIAL COURTS-MARTIAL	05	
REFERRED FOR REVIEW		08
GENERAL COURTS-MARTIAL	03	
BCD SPECIAL COURTS-MARTIAL	05	
TOTAL CASES REVIEWED		06
GENERAL COURTS-MARTIAL	03	
BCD SPECIAL COURTS-MARTIAL	03	
TOTAL PENDING AT CLOSE OF PERIOD		11
GENERAL COURTS-MARTIAL	03	
BCD SPECIAL COURTS-MARTIAL	08	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-57%

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

NUMBER	08
PERCENTAGE	100

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	4/8	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		+100%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	1/8	13%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+100%

APPENDIX A - CONTINUED

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		01
RECEIVED		03
DISPOSED OF		01
GRANTED		
DENIED	01	
NO JURISDICTION		
WITHDRAWN		
TOTAL PENDING AT END OF PERIOD		03
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL		00
SPECIAL COURTS-MARTIAL		17
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		04
SPECIAL COURTS-MARTIAL		26
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	06	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	38,280	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	2503	
RATE PER 1,000	65.4	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-28%	

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- <sup>1</sup> Military judges are normally assigned to all cases referred to special The Coast Guard, therefore, considers all special courts-martial potential BCD cases. In a rare exception, one special court-martial was tried without a military judge. However, the President of the court was certified under Article 27(b), UCMJ.
- <sup>2</sup> One accused tried by special court-martial received a sentence which included a BCD. He waived his rights to appellate review under R.C.M. 1110, MCM 1984.
- <sup>3</sup> There were three Extraordinary Writs filed with the CMR this fiscal year.
- <sup>3</sup> An appeal under R.C.M. 908, MCM 1984, was filed with the CMR and subsequently decided in favor of the government. Appellate Defense Counsel appealed this decision to the Court of Military Appeals.