

Foreword

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Welcome to the Eighth Annual *Military Justice Symposium*. In this year's *Symposium*, published as a single volume, members of the Criminal Law Department provide practitioners with an overview of significant Court of Appeals for the Armed Forces (CAAF) cases, as well as other important criminal cases from the past year. More importantly, the articles provide a critical analysis of case law in addition to identifying trends in particular areas. New to this year's *Symposium* is a welcome addition by Lieutenant Colonel Mike Hargis, currently a member of the trial judiciary and a distinguished alumnus of the Department, discussing new developments in instructions. We are also pleased to include the remarks of Colonel Denise Vowell, Chief Trial Judge of the U.S. Army Trial Judiciary, who recently spoke at the graduation ceremony for the Ninth Court Reporters' Course.

Last year saw the publication of the 2002 edition of the *Manual for Courts-Martial (MCM)* and the revision of *Army Regulation (AR) 27-10*. Each brought significant changes to the practice of military justice. Major Brad Huestis explores the 2002 Amendments to the *MCM* and the *AR 27-10* changes. He highlights major changes, such as the expansion of special court-martial (SPCM) jurisdiction, to include punishments of confinement for up to one year, the increased value threshold for certain property offenses, the authority of SPCM convening authorities to convene SPCMs empowered to adjudge bad-conduct discharges, and the limitation of Article 58a (automatic reduction) to sentences of enlisted soldiers that involve punitive discharges or confinement for more than six months.

In addition to the review of *MCM* and regulatory changes, this year's *Symposium* contains a survey of new developments

in crimes and defenses, evidence, and the ever-present issue of jurisdiction. This year's *Symposium* will also include reviews of significant events in the areas of search and seizure, confrontation, post-trial, and self-incrimination, as well as the article on instructions from Lieutenant Colonel Hargis.

We have included a chart that the CAAF compiles and provides annually. This chart lists the number of majority, concurring, and dissenting opinions each judge wrote or joined. It provides an insightful snapshot into the individual judges and their proclivity to join fellow judges in consensus opinions, as well as their proclivity to separate from the majority in dissent.

As the Criminal Law Department strives to serve military justice practitioners in the field, we continually look for your input. Accordingly, we welcome your thoughts and suggestions. Finally, a word about the Criminal Law Department team is appropriate here. This year marks the final *Symposium* issue for several of the Department's professors. In fact, next year's *Symposium* reader will find almost a complete change in the Department's membership. Six of the Department's nine members are leaving. To that end, I know *The Army Lawyer* readers will join me in thanking these officers for their hard work in completing this Herculean task. They read hundreds of opinions, and synthesized the important issues into what we hope is a quality product that is both interesting and helpful to the field. Thank you: Lieutenant Colonel Mike Stahlman, Major Tyler Harder, Major Charlie Rose, Major Chrissy Ekman, Major Brad Huestis, and Major Dave Velloney.

Opinion Statistics for the 2002 Term of Court¹

	SJC	HFG	ASE	JEB	ERS	WTC	PC	TOTAL
TOTAL OPINIONS	42	20	25	24	51	1	5	168
Majority Opinions	16	17	15	13	8	1	5	75
Separate Opinions	26	3	10	11	43	0	N/A	93

1. E-mail from Colonel (Ret.) Fran Gilligan, Commissioner, Court of Appeals of the Armed Forces (Mar. 2003). The 2002 term began on 1 October 2001 and ended 30 September 2002. An opinion that is joined by one or more judges or authored by one or more judges is counted for the judge listed first. *Id.*

Breakdown of Separate Opinions

	SJC	HFG	ASE	JEB	JES	WTC	TOTAL
Concur	1	0	0	1	6	0	8
Concur in Result	3	0	0	5	15	0	23
Concur in Part & in Result	5	1	3	3	7	0	19
Concur in Part & in Result & Dissent in Part	0	0	0	0	1	0	1
Concur in Part & Dissent in Part	4	1	2	0	5	0	12
Dissent in Part & Concur in Result	0	0	0	0	1	0	1
Dissent	13	1	5	2	8	0	29

Abbreviations Key:

SJC = Chief Judge Crawford
HFG = Associate Judge Gierke
ASE = Associate Judge Effron
JEB = Associate Judge Baker

JES = Senior Judge Sullivan
WTC = Senior Judge Cox
PC = Per Curiam