

**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, 1986 to September 30, 1987**

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

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

**PURSUANT TO THE
UNIFORM CODE OF MILITARY JUSTICE
For the Period
October 1, 1986–September 30, 1987**

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JOINT ANNUAL REPORT
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CODE COMMITTEE
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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).

The Code Committee meetings during fiscal year 1987 were all open to the public. During its initial meeting, the Code Committee was briefed by the Chairman of the Joint-Service Committee on Military Justice on the impact of recent amendments to the Uniform Code of Military Justice, including a modification to Article 2(a), to extend military jurisdiction over reservists; Article 6, permitting representation of the United States by judge advocates in some federal civil cases; Article 25(c)(1), permitting oral requests for enlisted members to serve on courts-martial; Article 43, extending the statute of limitations from three to five years in some cases; Article 50a, modifying the defense of lack of mental responsibility; and Article 60, providing for a uniform rule as to the time limit for an accused to present post-trial matters to a convening authority. The Code Committee also discussed potential changes to the Manual for Courts-Martial regarding the referral of an accused to civilian authorities if he were found not guilty by a court-martial by reason of lack of mental responsibility. Additionally, the question regarding the collection of common data from all Armed Services regarding military justice was discussed. Chief Judge Everett reported that an educational film concerning the operation of the United States Court of Military Appeals was under consideration. The possibility of inviting the United States Court of Military Appeals to sit at the Judge Advocate General's School of the United States Army was discussed and most members considered it an extremely educational program for the Court to sit and hear oral arguments in real appellate cases at

various service schools. Finally, the members of the Code Committee expressed their appreciation for the dedicated service of Rear Admiral Thomas E. Flynn, Judge Advocate General of the United States Navy, who was soon retiring from active military service.

At its next meeting the Code Committee discussed the impact of recent legislative changes to the Uniform Code of Military Justice; recent command influence cases in the Armed Services; problems involving mental responsibility and incompetency among servicepersons; problems involving the rehabilitation programs for military prisoners; the Army's war-time legislation study, and recent trends in courts-martial activity.

Additionally, the Code Committee discussed specific proposed changes to the Manual for Courts-Martial, including changes relating to usage of "rank" and "grade" in Rule for Courts-Martial (R.C.M.) 103; authority of officers serving on inactive duty for training to apprehend in R.C.M. 302(b)(2); speedy trial rules and the calculation of the relevant time periods involved in R.C.M. 707; incorporation of amendments concerning the statute of limitations in R.C.M. 907; informing court members of an accused's previously accepted pleas of guilty under R.C.M. 910 and 913; imposition of forfeitures as they relate to the pay of reservists under R.C.M. 1003; modification of the requirements for a verbatim record of trial for general court-martial cases involving officers under R.C.M. 1103; a provision allowing substituted service of the staff judge advocate's review on the defense counsel under some circumstances in R.C.M. 1105(c); clarification of a commanding officer's authority to suspend court-martial sentences under R.C.M. 1108(b); use of evidence obtained in violation of Mil.R.Evid. 305(c) and Article 31(b), Uniform Code of Military Justice, to impeach an accused; and proposed conditions on the suspension of nonjudicial punishment imposed under Article 15, Uniform Code of Military Justice.

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

ROBINSON O. EVERETT

Chief Judge

WALTER T. COX, III

Associate Judge

EUGENE R. SULLIVAN

Associate Judge

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

Rear Admiral HUGH D. CAMPBELL
The Judge Advocate General, U.S. Navy

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

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

Brigadier General DAVID M. BRAHMS
*Director, Judge Advocate Division,
Headquarters, U.S. Marine Corps*

MARY ELLEN HANLEY, *Esquire*

Professor A. KENNETH PYE

**REPORT OF THE
UNITED STATES COURT OF MILITARY APPEALS
October 1, 1986 to September 30, 1987**

The Judges of the United States Court of Military Appeals submit their fiscal year 1987 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 1987 term of the Court 2769 petitions for grant of review, certificates for review, petitions for new trial, petitions for extraordinary relief and writ appeal petitions were filed with the Court. The number of filings was almost unchanged from fiscal year 1986 and represents a stabilization of the number of cases filed with the Court.

The Court reviewed and acted on 2979 petitions for grant of review during fiscal year 1987, representing an increase in dispositions of 15% over fiscal year 1986. The Court granted petitions for review in 226 cases, or approximately 7% of the cases considered. As a result of the increase in the number of petitions for grant of review acted on, only 442 cases remained on the petition docket at the end of fiscal year 1987, as compared with 702 pending petition cases at the end of fiscal year 1986. This represents a dramatic reduction of 37% in the number of cases pending on the petition docket.

A significant reduction in the number of cases pending on the master docket was also accomplished during fiscal year 1987. The Court achieved a substantial 32% reduction in the number of cases on this docket by reducing the balance pending at the end of fiscal year 1986 of 258 cases to a year-end balance of 177 cases in this fiscal year. This reduction was accomplished by a 36% increase in the number of

signed opinions released by the Court during fiscal year 1987 (124) as compared with fiscal year 1986 (91).¹

Finally, the Court disposed of every case on its miscellaneous docket and left no pending extraordinary relief cases on this docket at the end of fiscal year 1987.

In addition to its case review workload, the Court admitted 500 attorneys to practice before its Bar during the fiscal year 1987 term, bringing the cumulative total of admissions before the Bar of the Court to 26,284.

CELEBRATION OF THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

On June 9, 1987, the Judges of the Court hosted a program in celebration of the Bicentennial of the United States Constitution. Judge Walter T. Cox, III, began the program by presenting a summary of a symposium paper earlier given by him at the United States Army Military History Institute, Carlisle Barracks, Pennsylvania, which consisted of remarks on the evolution of military justice under the United States Constitution from the early years of court-martial practice up through the enactment of the Uniform Code of Military Justice in 1950 and thereafter to the present day.

The honored guests participating in this program included F. Lee Bailey, Esquire; Major General Kenneth J. Hodson, JAGC, USA (Ret.); and Dean James Taylor, Jr., Wake Forest University School of Law, each of whom presented their observations on the significance of military justice in the history of the United States from the perspectives of the civilian practitioner, the military community, and the academic world, respectively. Their comments included prospective views of the development of military justice as well as the role of the United States Court of Military Appeals in that development.

JUDICIAL VISITATIONS

Consistent with the past practice of the Court, during fiscal year 1987 the Judges of the Court visited numerous military installations and delivered speeches to many professional organizations. Previous experience has demonstrated that such visits promote a better understanding of the Court's work and its effect on the overall administration of justice within the Armed Services.

¹ Although not a part of the business of the Court, it is noted that, during Fiscal Year 1987, the Court was notified that petitions for writ of certiorari were filed with the Supreme Court of the United States in 32 master docket cases in which the Court took final action.

In fulfillment of this responsibility, Chief Judge Robinson O. Everett addressed and visited with attendees at the Worldwide Army Judge Advocates Conference, Charlottesville, Virginia; the Strategic Air Command Staff Judge Advocates Conference, Offutt Air Force Base, Nebraska; the Sixth Annual Veterans Day Program, Raleigh, North Carolina; the Military Judges' Conference, Norfolk, Virginia; and the All Services Appellate Military Judges' Conference, National Lawyers Club, Washington, D.C. He also participated in the presentation of the portrait of Senator Sam J. Ervin, Jr., to the North Carolina Supreme Court, Raleigh, North Carolina, and addressed the Federal Administrative Law Judges, Washington, D.C.; the Judge Advocates Association, Washington Navy Yard Officers' Club, Washington, D.C.; Trial and Defense Counsel, Randolph Air Force Base, San Antonio, Texas; the Standing Committee on Military Law of the American Bar Association at its Mid-Year Meeting, New Orleans, Louisiana; and the Counsellors, University Club, Washington, D.C. He served as a Judge in the Moot Court Competition, Chapel Hill, North Carolina, and addressed the National Guard JAG Conference, Arlington, Virginia; the Eighth Annual JAG School and Continuing Legal Education Seminar, Columbia, South Carolina; the Interservice Military Judges' Seminar, Maxwell Air Force Base, Montgomery, Alabama; the Conference of Reserve Judge Advocates, Army JAG School, Charlottesville, Virginia; a Program Commemorating Law Day and the Bicentennial of the Constitution, Fort Bragg, North Carolina; a Law Day Program at Camp Lejeune, North Carolina; the Air Force Reserve JAG Conference, Atlanta, Georgia; the Rotary Club, Durham, North Carolina; and the Coast Guard Legal Officers Conference, Leesburg, Virginia. He further participated in a videotaped interview for the Air Force JAG School, Maxwell Air Force Base, Montgomery, Alabama, and attended the 96th Meeting of the National Conference of Commissioners on Uniform State Laws, Newport Beach, California, and the Annual American Bar Association Meeting, San Francisco, California; and addressed the 11th Criminal Law New Developments Course, Army JAG School, Charlottesville, Virginia. He visited with military lawyers in Berlin, Germany, and spoke at the Military Judges' Conference, Garmisch, Germany. He attended the Federal Bar Association Annual Meeting, Memphis, Tennessee, where he was awarded the Association's Earl Kintner Award for 1987.

Judge Walter T. Cox, III, attended and participated in the 1986 Army JAG Conference and Annual Continuing Legal Education Program, Charlottesville, Virginia, and the Army's 1st and 2nd Circuit Judicial Conference, Fort Benning, Georgia. He presented a Symposium Paper on the Evolution of Military Justice under the United States Constitution at the United States Military History Institute, Carlisle Barracks, Pennsylvania, and visited with military

judge advocates and command officials at the U.S. Coast Guard Base, Yorktown, Virginia, and the U.S. Air Force Strategic Air Command, Offutt Air Force Base, Nebraska. He also addressed the Texas Bar Association, the military lawyers at Randolph Air Force Base, Texas, and the Military Judges' Seminar at the U.S. Air Force JAG School, Maxwell Air Force Base, Alabama, and attended the 16th Annual Kenneth Hodson Lecture at the Army JAG School, Charlottesville, Virginia. He participated in Law Day programs at Ft. Huachuca, Arizona; Nellis Air Force Base, Nevada; and Charleston, South Carolina, and spoke at judicial conferences at Fort Ord, California; Fort Jackson, South Carolina; and Garmisch, Germany, and at regional military legal conferences at Ft. Monroe, Hampton Roads, Virginia; San Antonio, Texas; and Leesburg, Virginia.

Judge Eugene R. Sullivan participated in the Marine Corps Staff Judge Advocates Conference, San Diego, California; the Army JAG Conference, Charlottesville, Virginia; the U.S. Air Force Tactical Air Command JAG Conference, Langley Air Force Base, Virginia, and the Interservice Military Judges' Seminar, Maxwell Air Force Base, Alabama. He visited with military judges and lawyers at the 12th Air Force Command, Bergstrom Air Force Base, Germany; the United States Army 2nd Infantry Division, Camp Casey, Seoul, Korea; the 17th Air Force Command, Air Force Base, Ramstein, Germany; various military units at Ft. Rucker, Alabama; the Naval Training Base, Great Lakes, Illinois; the USS NIMITZ; the United States Disciplinary Barracks, Fort Leavenworth, Kansas; and various Marine Corps units at the Marine Corps Base, Quantico, Virginia. He also addressed a special session of the United States Court of Appeals (8th Circuit), St. Louis, Missouri; addressed students at Wake Forest University Law School, Winston-Salem, North Carolina; and participated as Keynote Speaker of the Law Day Program at the U.S. Naval Base, Norfolk, Virginia.

HOMER FERGUSON CONFERENCE

The Twelfth Annual Homer Ferguson Conference was held at the George Washington University Marvin Center on May 27-28, 1987. As in previous years, this conference was jointly sponsored by the Court and the Military Law Institute. This year's conference was certified for credit to meet the continuing legal education requirements of various State Bars and was designed to help both military and civilian practitioners maintain those professional skills necessary to practice before trial and appellate courts.

The speakers for this year's conference included The Honorable William W. Wilkins, Jr., U.S. Circuit Judge on the Fourth Circuit Court of Appeals; Mr. John A. Cutts, III, Deputy Clerk, U.S. Court of

Military Appeals; Colonel John E. Howell, USAF, Chief, Trial Judiciary Division, United States Air Force; Dean John S. Jenkins, Associate Dean for External Affairs, The National Law Center, George Washington University; Dr. Robert Friedlander, Minority Special Counsel to the Committee on Foreign Relations of the United States Senate and Professor of Law, Ohio Northern University Pettit College of Law; Admiral Paul Yost, Commandant of the United States Coast Guard; Professor Laurens Walker, University of Virginia School of Law; Mr. John L. Martin, Chief of Internal Security Section, Department of Justice; Professor Rhoda Billings, Wake Forest University School of Law and formerly Chief Justice, North Carolina Supreme Court; Dr. Elizabeth Loftus, Professor, University of Washington, Seattle, Washington; Mr. William C. Bryson, Deputy Solicitor General of the United States; Professor Walter E. Dellinger, Duke University School of Law; Professor Paul F. Rothstein, Georgetown University School of Law; and Allen J. Goldstein, Esquire.

In addition, The Honorable Eugene R. Sullivan, Associate Judge, U.S. Court of Military Appeals, served as moderator of a conference panel on Forensic Science in the Future, with panelists Major Robert Thibault, Air Force Office of Special Investigations; Commander Glenn Wagner, U.S. Armed Forces Institute of Pathology; and Mr. Clement Smetana, Chief Serologist, Army Criminal Investigations Laboratory. The Honorable Walter T. Cox, III, Associate Judge, U.S. Court of Military Appeals served as moderator of a panel on evidence with panelists Professor Stephen A. Saltzburg, University of Virginia School of Law; Lieutenant Colonel Lee D. Schinasi, JAGC, U.S. Army; and Professor David A. Schlueter, St. Mary's University School of Law.

The invocation was offered by Captain Richard A. Plishker, Chaplain of the United States Coast Guard. The conferees were welcomed by The Honorable Robinson O. Everett, Chief Judge, United States Court of Military Appeals, on behalf of the Court; Colonel Walter L. Lewis, United States Air Force (Ret.), on behalf of the Military Law Institute; and Dean John S. Jenkins on behalf of The National Law Center, George Washington University.

The conferees included numerous military and civilian lawyers as well as Judges of the Courts of Military Review, legal scholars, and commentators in the field of military justice. As in prior years, the conference was videotaped to provide a medium of education for those interested in the administration of military justice.

SIGNIFICANT DECISIONS AFFECTING THE ADMINISTRATION OF MILITARY JUSTICE WITHIN THE ARMED FORCES²

Military Rules of Evidence

As in previous fiscal years the interpretation and appropriate application of the Military Rules of Evidence (Mil.R.Evid.) occupied a significant portion of the Court's calendar. Examining the provisions of Mil.R.Evid. 304(d)(2), which only required that a suppression of evidence motion be made "prior to submission of a plea," the Court held in *United States v. Williams*, 23 M.J. 362 (C.M.A. 1987), that a local rule of court which required the defense counsel to serve suppression motions on government counsel at least five working days before trial was invalid as being inconsistent with the cited rule. In *United States v. Yates*, 24 M.J. 114 (C.M.A. 1987), where evidence independent of the accused's admissions established that injury to the named victim occurred and that some person was criminally culpable, the Court held that the corroboration requirement for the acceptance of the accused's confession under Mil.R.Evid. 304(g) was satisfied as that rule did not require that independent evidence establish the accused as the perpetrator of the alleged crimes. Examining the standards for gate inspections within the context of Mil.R.Evid. 313(b), the Court held in *United States v. Jones*, 24 M.J. 294 (C.M.A. 1987), that there had been proper compliance with the applicable standards set forth in the rule and that the law enforcement agents' discretionary authority to select cars to be searched did not invalidate such inspection. The Court specifically rejected the defense argument that *United States v. Harris*, 5 M.J. 44 (C.M.A. 1978), could be interpreted to be inconsistent with Rule 313(b).

Commenting on the accused's reasonable expectation of privacy in the context of a search of government property under Mil.R.Evid. 314(d), the Court held in *United States v. Battles*, 25 M.J. 58 (C.M.A. 1987), that the accused had no such reasonable expectation of privacy in the berthing area of the USS ENTERPRISE where he shared such area with approximately sixty other crewmembers. Additionally, the Court held that the accused had no reasonable expectation of privacy in a box containing drugs where he placed the box in a common area near a maintenance locker and left such box unsealed and open.

The admissibility of evidence under Mil.R.Evid. 404 generated a number of decisions by the Court during this fiscal year. The Court held in *United States v. Brooks*, 22 M.J. 441 (C.M.A. 1986), that evidence of an accused's prior participation in drug transactions was

² This section of the Court's Annual Report is prepared solely as an informational tool by the staff of the Court. It is included for the convenience of the reader to assist in easily locating cases of particular interest during the term. The case summaries are not of precedential value and should not be cited in briefs filed with the Court.

admissible to show that the accused aided and abetted a charged drug sale by rebutting his claim that he was an innocent bystander. The Court further observed in *Brooks* that this evidence was admissible even though the Government's original theory was that the accused sold the drugs directly, rather than merely aided and abetted the sale. However, in *United States v. Rappaport*, 22 M.J. 445 (C.M.A. 1986), the Court held that the trial judge erred by admitting evidence that the accused, a psychologist who was charged with sexual offenses relating to two of his female patients, was involved in a previous affair with a third patient where such evidence did not establish a plan but only propensity.

In *United States v. Elliott*, 23 M.J. 1 (C.M.A. 1986), the Court held that the military judge erred in a court-martial on charges of stealing two television sets by rejecting evidence pertaining to the accused's trusting nature as it was pertinent to show the reasonableness of the accused's story that the stolen sets were given to him by another party. Examining the same rule in *United States v. White*, 23 M.J. 84 (C.M.A. 1986), the Court rejected a defense claim and held that, in a court-martial on charges of voluntary manslaughter of the accused's infant son, evidence pertaining to the diagnosis of battered child syndrome and evidence of prior injuries to the child was inadmissible under Mil.R.Evid. 403 and 404(b), noting that the evidence was highly probative of the critical issue of the accused's intent and absence of accident. Citing *United States v. Timberlake*, 18 M.J. 371 (C.M.A. 1984), and *United States v. Rodriguez*, 18 M.J. 363 (C.M.A. 1984), the Court held in *United States v. Court*, 24 M.J. 11 (C.M.A. 1987), that the military judge erred by rejecting defense evidence of the accused's good military character under the provisions of Mil.R.Evid. 404(a) where the accused was charged with conduct unbecoming an officer and a gentleman.

Examining the provisions of Mil.R.Evid. 410 in *United States v. Barunas*, 23 M.J. 71 (C.M.A. 1986), the Court held that the military rule was unquestionably an expanded version of Federal Rule of Evidence 410. Thus, the Court held in *Barunas* that a letter which the accused wrote to his commanding officer requesting leniency with respect to his admitted use of cocaine was "an integral part of the administrative punishment or discharge process," and that the military judge committed reversible error in allowing the letter into evidence in a subsequent trial of the accused on the charge of use of cocaine.

In *United States v. Fox*, 24 M.J. 110 (C.M.A. 1987), the Court held that the limitations of Mil.R.Evid. 412 on the admissibility of evidence concerning the past sexual behavior of the victim of a nonconsensual sexual offense were applicable to both the findings and the sentencing portions of a court-martial. The Court observed that the defense contention that the rule should be limited to only the findings portion of a court-martial would be inconsistent with the purpose of the rule to protect victims of nonconsensual sexual offenses

against needless embarrassment and unwarranted invasions of their privacy. Thus, the Court held in *Fox* that evidence of the victim's unchasteness was not admissible to show, during the sentencing hearing, that she had not been traumatized by the sexual assault where the defense offered no basis for the assertion of the lack of trauma and trial counsel conceded that the victim had suffered no long term effects from the incident. Similarly, in *United States v Saipaia*, 24 M.J. 172 (C.M.A. 1987), the Court held that evidence pertaining to a rape and sodomy victim's past sexual activity was not relevant under Mil.R.Evid. 412 where the accused claimed that the victim was neither raped nor sodomized and that, if an offense had occurred, the accused was not the perpetrator.

However, in *United States v Welch*, 25 M.J. 23 (C.M.A. 1987), the Court held that evidence that a 12-year-old female victim of rape and sodomy offenses had had sexual intercourse with other men prior to the charged offenses was admissible under Mil.R.Evid. 412 where the prosecution raised an issue as to the condition of the victim's vagina. Although the military judge denied the defense request to present this evidence, the Court held that such error was harmless in light of the defense counsel's subsequent actions at trial.

Addressing the limits of the spousal privilege set forth in Mil.R.Evid. 504(b), the Court held in *United States v Tipton*, 23 M.J. 338 (C.M.A. 1987), that such privilege applies even if a husband and wife are separated, so long as they have not been legally separated, and that a communication from the accused to his wife was privileged even though he erroneously believed himself to be divorced from the wife. Thus, the Court held in *Tipton* that the sentence should be reassessed because the trial court had erroneously admitted a privileged communication.

In *United States v Varela*, 25 M.J. 29 (C.M.A. 1987), the Court held that the military judge erred by rejecting evidence of the accused's character for truthfulness under Mil.R.Evid. 608(a)(2) where the trial counsel's cross-examination of the accused as to whether he would lose his reenlistment bonus if convicted was sufficient to constitute an attack on his veracity. Citing Mil.R.Evid. 606(b), the Court held in *United States v Rice*, 25 M.J. 35 (C.M.A. 1987), that a trial judge's testimony during a post-trial hearing could not be used to impeach the sentence he had previously imposed upon the accused.

Noting that while a witness may have been generally qualified as an expert in child sexual abuse within the meaning of Mil.R.Evid. 702 and recognizing the previous reluctance of the Court to allow a witness to testify that he or she believed a victim's version of an incident, the Court held in *United States v Petersen*, 24 M.J. 283 (C.M.A. 1987), that the trial court erred by allowing a witness to testify that she believed the victim's version of the incident in question. The Court stressed that there was no evidence that the

witness was an expert on the issue of credibility. Concerning the basis of an expert's opinion, the Court held in *United States v. Croom*, 24 M.J. 373 (C.M.A. 1987), that the provisions of Mil.R.Evid. 703 were consistent with the trial judge's ruling allowing expert witnesses to remain in the courtroom during testimony of other witnesses, thereby gaining facts or data on which to base their own expert opinions. The Court noted that such rule was a necessary exception to the witness exclusion provisions of Mil.R.Evid. 615.

Taking note of the provisions of Mil.R.Evid. 803(6) and 803(8) as they relate to the admissibility of a handwriting analysis report, the Court held in *United States v. Broadnax*, 23 M.J. 389 (C.M.A. 1987), that the military judge erred in admitting a laboratory report into evidence in a prosecution for forgery which contained a documents examiner's conclusion that the accused authored a forged check while denying a defense request for the live testimony of the documents examiner in question. The Court distinguished the document examination process from a drug analysis process and laboratory report on the basis that document examination had a much higher degree of subjectivity than pure chemical analysis.

Concerning the admissibility of statements made by a child rape victim to a clinical psychologist and a psychotherapist for purposes of medical diagnosis or treatment under the provisions of Mil.R.Evid. 803(4), the Court held in *United States v. Welch*, 25 M.J. 23 (C.M.A. 1987), that the rule was not limited to statements made to licensed medical doctors and that since such statements were made for the purpose of medical treatment, they were properly admitted under such rule. *Accord United States v. White*, 25 M.J. 50 (C.M.A. 1987); *United States v. Nelson*, 25 M.J. 110 (C.M.A. 1987).

The residual hearsay exception provisions of Mil.R.Evid. 804(b)(5) were extensively examined in *United States v. Hines*, 23 M.J. 125 (C.M.A. 1986), wherein the Court held that the rule's requirement that the out-of-court statement have "equivalent circumstantial guarantees of trustworthiness" was equivalent to the constitutional requirement that such statement must bear indicia of reliability. Thus, the Court held in *Hines* that the statements of the declarant were admissible to the extent that they were consistent with the accused's confession but that the required reliability was not established as to those portions of the statements which concerned conduct to which the accused did not confess. Subsequently, the Court held in *United States v. Barror*, 23 M.J. 370 (C.M.A. 1987), that a statement which an alleged child sex abuse victim gave to law enforcement agents was inadmissible under Mil.R.Evid. 804(b)(5), where there was no adequate basis in the record for assessing the candor of the victim or the accuracy of such statement and there were no significant corroborating factors presented. The Court's analysis in *Hines* was applied in *United States v. Groves*, 23 M.J. 374 (C.M.A. 1987), and

resulted in reversal of the military judge's decision to admit into evidence, in the prosecution of larceny and false claim charges, a statement of personal or family history under Mil.R.Evid. 804(b)(4). Noting the lack of indicia of reliability in regard to such statement, the Court held that an adequate reliability basis for the admission into evidence of this statement had not been established. Likewise, the *Hines* analysis was utilized in *United States v. Dill*, 24 M.J. 386 (C.M.A. 1987), in rejecting a military judge's admission into evidence of a statement of a coactor as a statement against interest under Mil.R.Evid. 804(b)(3). Finally, the Court held in *United States v. Dunlap*, 25 M.J. 89 (C.M.A. 1987), that the statement of a child sex abuse victim to a law enforcement investigator was sufficiently reliable to be admissible where the statement was given five hours after the incident and was corroborated by evidence of the victim's appearance and demeanor and by content which was virtually identical with prior excited utterances made by the victim.

Jurisdiction

In *Duncan v. Usher*, 23 M.J. 29 (C.M.A. 1986), a case involving a petition for extraordinary relief, the Court held that all personal jurisdiction over the accused, an Air Force Reservist, ceased upon his release from active duty with respect to any crimes he committed during his active duty tour, although he was later ordered to active duty and was on active duty at the time of trial. The Court noted that the facts and circumstances did not fall within the special military jurisdiction provisions found in Article 3, Uniform Code of Military Justice, 10 U.S.C. §803, and that, therefore, a break in active service between the commission of the charged offenses and the date of trial precluded the exercise of court-martial jurisdiction against the accused in this case. The Court emphasized that the legislative history of Article 2(a), Uniform Code of Military Justice, 10 U.S.C. §802(a), did not authorize the exercise of court-martial jurisdiction, and that any deficiency in the jurisdictional provisions of the Uniform Code should be left to Congress to correct. Subsequently, in *United States v. Cole*, 24 M.J. 18 (C.M.A. 1987), the Court held that court-martial jurisdiction was properly exercised where an accused was charged with and found guilty of fraudulent separation in violation of Article 83(2), Uniform Code of Military Justice, 10 U.S.C. §883(2). The Court held in *Cole* that the application of Article 3(b), Uniform Code of Military Justice, 10 U.S.C. §803(b), to the accused was constitutional and was consistent with the parameters of military jurisdiction set forth in *Tbth v. Quarles*, 350 U.S. 11, 76 S.Ct. 1, 100 L.Ed. 8 (1955). The Court ruled that the obtaining of a fraudulent separation did not change the accused from the status of a military person subject to the Uniform Code to that of a civilian and that, accordingly, Article 3(b) authorized the adjudication of the accused's status in the forum of a court-martial.

Finally, in *United States v Overton*, 24 M.J. 309 (C.M.A. 1987), the Court held that the exercise of court-martial jurisdiction over a Fleet Marine Corps Reservist under Article 2(a)(6), Uniform Code of Military Justice, 10 U.S.C. §802(a)(6), was constitutional where the accused voluntarily joined the Fleet Marine Corps Reserve and received retainer pay during his reserve status.

Polygraph Examinations

After examining the scientific data available concerning polygraph examinations, the Court held in *United States v Gipson*, 24 M.J. 246 (C.M.A. 1987), that the results of a polygraph examination were not inadmissible as a matter of law in a court-martial proceeding. Rather, the Court held that the military judge should examine all the facts and circumstances concerning the issue of admissibility of the results of a polygraph examination and, after such analysis, should then exercise discretion within the context of the Military Rules of Evidence to determine if such results should be admitted. The Court further held that a rigorous or mechanical application of the standards set forth in *Frye v United States*, 293 F. 1013 (D.C. Cir. 1923), should not be applied in light of the provisions for expert testimony set forth in Mil.R.Evid. 702. However, the Court rejected a broad application of the use of polygraph examination results in *United States v Baldwin*, 25 M.J. 54 (C.M.A. 1987), and held that the trial judge erred by allowing trial counsel to question an accused concerning his "failure" of a polygraph examination at a critical point in the trial. Subsequently, in *United States v Abeyta*, 25 M.J. 97 (C.M.A. 1987), the Court held that a military judge's rejection of defense evidence concerning the results of a polygraph examination of the accused was not prejudicial error because, under *United States v Gipson*, *supra*, the use of such evidence was restricted to evaluating the truthfulness of the trial testimony of the examinee and in *Abeyta*, the accused did not testify.

Right to Counsel

The Court rejected a claim in *United States v Stubbs*, 23 M.J. 188 (C.M.A. 1987), that the entire prosecutor's staff should be disqualified because a counsel who had previously entered into an attorney-client relationship with the accused was thereafter transferred to such staff. However, the Court emphasized that, based on the record evidence, the counsel involved had not discussed the matter with other prosecutors on the staff and that the Government had therefore met its burden of demonstrating that there had been no violation of the accused's attorney-client relationship. In *United States v Payton*, 23 M.J. 379 (C.M.A. 1987), a case involving the disclosure to a government counsel of information allegedly provided by the accused to his

legal defense representative in a foreign criminal trial, the Court held that the record was inadequate to establish whether the accused was prejudiced by any such disclosure. The Court further observed in *Payton* that the issue had not been waived by the accused's pleas of guilty where the claimed irregularity was not revealed until after his court-martial ended.

In *United States v. Applewhite*, 23 M.J. 196 (C.M.A. 1987), the Court held that an accused's right to counsel was not scrupulously honored where he requested counsel concerning an alleged offense and was subsequently interviewed incident to a polygraph examination concerning another offense, which resulted in statements concerning both incidents. The Court ruled that the accused acquiesced in, rather than initiated, further interrogation after invoking his right to counsel and the tainted interrogation was not strictly limited to a separate unrelated incident. Therefore the Court held his right to counsel had been violated. In a related matter, the Court held in *United States v. Vidal*, 23 M.J. 319 (C.M.A. 1987), that an accused's request for counsel made to German police officials did not trigger the requirements of *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed. 2d 378 (1981), where the foreign investigation was not conducted on behalf of American investigators. The Court observed in *Vidal* that the accused's rights were adequately protected by the requirement that he be advised of his rights prior to any interrogation by American officials.

The competency of trial defense counsel was addressed by the Court in *United States v. Scott*, 24 M.J. 186 (C.M.A. 1987), wherein the Court reiterated that an accused is entitled to reasonably competent counsel and that reversal of a conviction required a showing of serious incompetency of counsel which affected the trial results. The Court further observed that a counsel has a duty to make reasonable investigations or to make a reasonable decision that particular investigations are unnecessary. Examining the facts and circumstances reflected in the *Scott* record, the Court concluded that reversal of the accused's conviction was required in light of civilian defense counsel's failure to promptly investigate and prepare the accused's sole defense of alibi. Another allegation of ineffective assistance of counsel was addressed in *United States v. Newak*, 24 M.J. 238 (C.M.A. 1987), wherein the Court concluded that effective assistance of counsel was not provided where the same attorney initially represented both the accused and the chief prosecution witness involving matters arising from the same incident.

Urinalysis Tests

Addressing the question of whether the results of a urinalysis alone were sufficient to sustain the findings of guilty to the charge of wrongful use of marijuana, the Court held in *United States v. Murphy*,

23 M.J. 310 (C.M.A. 1987), that such evidence by itself was insufficient. The Court distinguished *United States v. Harper*, 22 M.J. 157 (C.M.A. 1986), on the basis that an expert witness testified in *Harper* to explain the test results. The Court expressed concern in *Murphy* that the scientific evidence was too complex to submit to a trial court without expert testimony to assist the trier of fact in interpreting the scientific evidence. However, the Court later emphasized in *United States v. Ford*, 23 M.J. 331 (C.M.A. 1987), that the permissive inference of wrongful drug use based on test results of urinalysis and expert testimony explaining them was sufficient to support a finding of wrongful drug use beyond a reasonable doubt, even though the accused introduced evidence purportedly undermining or contradicting such inference of wrongfulness. In *United States v. Johnston*, 24 M.J. 271 (C.M.A. 1987), the Court upheld a program for the monthly drug testing of all naval brig and correctional custody unit staff members, noting that the term "randomly selected" as used in the program instruction meant that testing was to be done in a manner which could not be known or predicted with certainty by the person tested, even though the selection of the test date was left to the discretion of a law-enforcement officer.

Witnesses and Production of Evidence

The obligation of a trial counsel to make known to the defense favorable defense evidence was addressed by the Court in *United States v. Eshalomi*, 23 M.J. 12 (C.M.A. 1986). Therein, the Court observed that a general request for exculpatory evidence or information by the defense and the withholding of such information by the prosecutor would result in reversal only if the omitted evidence created a reasonable doubt that did not otherwise exist. Examining the facts in *Eshalomi* the Court noted that the victim of an alleged rape had executed a statement after her testimony during the progress of the trial that was inconsistent with such trial testimony and that the trial counsel deliberately withheld such evidence and information concerning the same victim's past medical and psychological history. On the basis of the foregoing, the Court concluded that the accused's conviction should be set aside. In *United States v. Zayas*, 24 M.J. 132 (C.M.A. 1987), the Court held that a military judge erred by summarily rejecting a defense requested witness upon the representation that such witness would assert his right against self-incrimination. Therein, the Court noted that the witness in question had executed a pretrial statement that he, rather than the accused, was the driver of the automobile giving rise to the court-martial charge of involuntary manslaughter as a result of its operation. Additionally, the Court observed that the Government did not assert that a grant of testimonial immunity would jeopardize the future prosecution of the witness in question. Thus, the Court concluded that

the trial judge should have fashioned an appropriate remedy and that a limited hearing before a trial judge was necessary to determine the substance and quality of the testimony which would have been given and the formulation of an appropriate remedy in the case.

Addressing a related matter in *United States v Fisher*, 24 M.J. 358 (C.M.A. 1987), the Court held that a trial judge erred by rejecting a defense request for two witnesses who, as proffered by the defense, would have given favorable relevant testimony in defense against drug charges. The trial judge's ruling was based upon the representation by trial counsel that such witnesses would assert their right against self-incrimination on relevant cross-examination. The Court concluded, after noting that the issues in this record were hotly contested at trial, that the trial judge had a duty to examine such witnesses to determine if they would in fact assert such rights, whether a remedy could be fashioned to avoid the denial of relevant defense evidence, and whether the ultimate striking of the testimony would be required.

Although concluding in *United States v Owen*, 24 M.J. 390 (C.M.A. 1987), that a military judge does not have the power to compel a victim-witness for the prosecution to undergo a non-consensual psychiatric or physical examination, the Court observed that a trial judge was not without power to exercise leverage in the matter. Rather, the Court noted that the trial judge could use the persuasive powers of his office and that of the trial counsel to secure the witness's consent; that cross-examination could be utilized in a manner so that a psychiatrist could observe such testimony and express an opinion concerning the sanity of the witness; and that, in extreme cases, the testimony of the witness could be stricken. However, after examining the facts and circumstances in *Owen*, the Court concluded that the trial judge properly held no further inquiry into the matter was warranted.

Finally, in *United States v Reece*, 25 M.J. 93 (C.M.A. 1987), the Court held that a trial judge erred by refusing to order the production of juvenile records of two victim witnesses who testified against the accused on several sex-related charges. The Court emphasized that it was the trial judge's obligation to inspect such records *in camera* to determine if they should be made available to the defense, rather than allowing the trial counsel to make such a determination *ex parte*.

Substantive Law

In *United States v Desha*, 23 M.J. 66 (C.M.A. 1986), the Court held that an accused could be convicted under Article 126(a) of the Uniform Code of Military Justice, 10 U.S.C. §926(a), for aggravated arson of his own residence. Addressing the sufficiency of the evidence to sustain a conviction for involuntary manslaughter by culpable negligence under Article 119(b)(1), Uniform Code of Military Justice, 10 U.S.C. §919(b)(1), in *United States v Henderson*, 23 M.J. 77 (C.M.A.

1986), the Court held that the accused's acts of making available a large quantity of cocaine to the victim knowing it would be injected, permitting his room to be utilized for the injection, encouraging the victim "to get fired up", and being present during the consumption of cocaine were sufficient to sustain the conviction. Overruling *United States v. Rowe*, 11 M.J. 11 (C.M.A. 1981), and *United States v. Thompson*, 21 U.S.C.M.A. 526, 45 C.M.R. 300 (1972), the Court held in *United States v. Kunkle*, 23 M.J. 213 (C.M.A. 1987), that an accused's conviction of wrongful possession of contraband under Article 112a, Uniform Code of Military Justice, 10 U.S.C. §912a, could be sustained where he intended to return the contraband to a prior possessor who had no legal right to such contraband.

Examining the elements of the offense of extortion set forth in Article 127, Uniform Code of Military Justice, 10 U.S.C. §927, the Court held in *United States v. Hicks*, 24 M.J. 3 (C.M.A. 1987), that a conviction under this punitive article could be sustained with respect to the requirement for showing that a threat was made with the intention thereby to obtain "anything of value" or "advantage" where the accused communicated a threat for the purpose of obtaining sexual favors from the named victim.

In *United States v. Johnson*, 24 M.J. 101 (C.M.A. 1987), the Court examined the provisions of 18 U.S.C. §2155(a) required to sustain a conviction for sabotage and concluded that the statute did not require an intent to injure the national defense as long as the accused knew that injury to the national defense would be an almost inevitable result of his action. Construing the word "damage" used in Article 108, Uniform Code of Military Justice, 10 U.S.C. §908, which concerns damage to military property, the Court held in *United States v. Peacock*, 24 M.J. 410 (C.M.A. 1987), that damage to military property meant any change in the condition of the property which impaired its operational readiness. Thus, the Court affirmed the conviction on the basis of an accused's acts of placing foreign objects in aircraft fuel tanks temporarily impairing their operational readiness.

Finally, in addressing the substantive offense of obstructing justice, the Court held in *United States v. Tedder*, 24 M.J. 176 (C.M.A. 1987), that an accused could be convicted of obstructing justice for acts which occurred before preferral of any court-martial charges giving rise to the obstruction of justice charge.

Robinson O. Everett
Chief Judge

Walter T. Cox, III
Associate Judge

Eugene R. Sullivan
Associate Judge

USCMA STATISTICAL REPORT

Fiscal Year 1987

CUMULATIVE SUMMARY

CUMULATIVE BEGINNING PENDING	
Master Docket.....	258
Petition Docket	702
Miscellaneous Docket.....	<u>3</u>
TOTAL	963
 CUMULATIVE FILINGS	
Master Docket	
Mandatory appeals filed	0
Certificates filed	9
Reconsiderations granted.....	5
Petition Docket	
Petitions for grant filed.....	2705
Cross-petitions for grant filed.....	6
Petitions for new trial filed.....	8
Miscellaneous Docket.....	<u>36</u>
TOTAL	2769
 CUMULATIVE TERMINATIONS	
Master Docket.....	318
Petition Docket	2979
Miscellaneous Docket.....	<u>39</u>
TOTAL	3336
 CUMULATIVE END PENDING	
Master Docket.....	177
Petition Docket	442
Miscellaneous Docket.....	<u>0</u>
TOTAL	619

OPINION SUMMARY

CATEGORY	SIGNED	PER CURIAM	MEM/ORDER	TOTAL
Master Docket.....	121	10	187	318
Petition Docket	0	0	2979	2979
Miscellaneous Docket.....	<u>3</u>	<u>0</u>	<u>36</u>	<u>39</u>
TOTAL	124	10	3202	3336

FILINGS (MASTER DOCKET)

Mandatory appeals filed.....	0
Certificates filed	9
Reconsideration granted.....	5
Petitions granted (from Petition Docket) ³	223
TOTAL	237

TERMINATIONS (MASTER DOCKET)

Findings & sentence affirmed	196		
Reversed in whole or in part.....	97	Signed	121
Granted petitions vacated	1	Per curiam	10
Other disposition directed.....	24	Mem/order	187
TOTAL	318	TOTAL	318

PENDING (MASTER DOCKET)

Assigned Opinions pending	56
Judges' conference pending	2
Oral argument pending.....	21
Prerargument conference pending	26
Calendar committee pending.....	37
Final briefs pending	35
TOTAL	177

FILINGS (PETITION DOCKET)

Petitions for grant of review filed.....	2705
Petitions for new trial filed.....	8
Cross-petitions for grant filed.....	6
TOTAL	2719

TERMINATIONS (PETITION DOCKET)

Petitions for grant dismissed	4		
Petitions for grant denied	2715		
Petitions for grant granted	226		
Petitions for grant remanded.....	18	Signed	0
Petitions for grant withdrawn	16	Per curiam	0
Other.....	0	Mem/order	2979
TOTAL	2979	TOTAL	2979

PENDING (PETITION DOCKET)

Petition briefs pending	215
Staff attorney action pending	144
Court action pending.....	83
TOTAL	442

³ In 20% of these cases, the Court specified issues which were not raised by the appellant. In addition, 3 cross-petitions were granted in cases already on the Master Docket as certificates for review.

FILINGS (MISCELLANEOUS DOCKET)

Writs of error coram nobis sought.....	1	
Writs of habeas corpus sought.....	12	
Writs of mandamus/prohibition sought	14	
Other extraordinary relief sought.....	8	
Writ appeals sought.....	1	
TOTAL	36	

TERMINATIONS (MISCELLANEOUS DOCKET)

Petitions withdrawn	0		
Petitions remanded.....	0		
Petitions granted	2	Signed.....	3
Petitions denied	36	Per curiam.....	0
Petitions dismissed	1	Mem/order	36
TOTAL	39	TOTAL	39

PENDING (MISCELLANEOUS DOCKET)

Briefs pending.....	0
Action by Writs Counsel pending.....	0
Show cause action by Court pending.....	0
Show cause response pending.....	0
Other final action pending.....	0
TOTAL	0

RECONSIDERATIONS & REHEARINGS

CATEGORY	FILINGS	PENDING	DISPOSITIONS		
			Granted	Rejected	TOTAL
Master Docket.....	7	2	1	7	8
Petition Docket	16	1	4	11	15
Miscellaneous Docket.....	0	0	0	0	0
TOTAL	23	3	5	18	23

MOTIONS ACTIVITY

CATEGORY	BEGIN PENDING	FILINGS	END PENDING	DISPOSITIONS		
				Granted	Rejected	TOTAL
All motions.....	20	788	21	695	92	787

**REPORT OF
THE JUDGE ADVOCATE GENERAL OF THE ARMY
OCTOBER 1, 1986 TO SEPTEMBER 30, 1987**

During fiscal year 1987, the Office of The Judge Advocate General continued to monitor the proceedings of courts-martial, to review and to prepare military publications and regulations, and to develop and draft changes to the Manual for Courts-Martial and the Uniform Code of Military Justice.

MILITARY JUSTICE STATISTICS AND U.S. ARMY JUDICIAL ACTIVITIES

During fiscal year 1987, 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 1987 was 2.4% lower than for 1986. This overall decrease reflects primarily a decrease in special courts-martial (i.e., a 15.7% decrease in special courts-martial empowered to adjudge a bad-conduct discharge (BCD) and a 21% decline in non-BCD special courts-martial). There was a 2.2% increase in the number of general courts-martial and a 8.7% increase in the number of summary courts-martial. The overall conviction rate for fiscal year 1987 was 94.5%, which represents a slight increase from the 93.4% conviction rate for the previous fiscal year. The decrease in the overall courts-martial rate for the last few years is consistent with the U.S. Army Court of Military Review having 178 fewer cases referred for its review and a 20% decrease in the number of cases reviewed (from 2631 to 2119) during fiscal year 1987.

STATISTICAL SUMMARY: FISCAL YEAR 1987

(See table insert, attached)

U.S. ARMY LEGAL SERVICES AGENCY

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

Patents, Copyrights and Trademarks Division, the Litigation Division, the Procurement Fraud Division, and the Professional Recruiting Office. The latter six sections have no function related to the U.S. Army Judiciary and its courts-martial mission. The Contract Appeals Division and the Regulatory Law Office represent the Army and the Department of Defense in certain contractual and regulatory disputes before commissions and boards. The Patents, Copyrights and Trademarks Division controls and coordinates the named subject area and related activities of the Department of the Army. The Litigation Division is responsible for representing Army interests in defensive and affirmative Federal civil litigation. The Procurement Fraud Division is responsible for asserting and monitoring the prosecution of government remedies against fraud and irregularities in the Army acquisition process. The Professional Recruiting Office coordinates the recruitment of lawyers for the Army. An Information Management Office facilitates 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 1987 the United States Army Trial Defense Service (USATDS) continued to provide effective defense counsel services for soldier clients. USATDS counsel represented approximately 1,980 clients at Article 32 proceedings, 1,513 clients at general courts-martial, and 1,387 clients at special courts-martial. In addition, USATDS counsel advised an estimated 76,135 clients regarding nonjudicial punishment, and 33,608 clients facing administrative separation.

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

TRIAL COUNSEL ASSISTANCE PROGRAM

During fiscal year 1987, the U.S. Army Trial Counsel Assistance Program (TCAP) served as a source of information, advice, and training for U.S. Army prosecutors world-wide. The program re-

sponded to nearly 600 requests for assistance, participated in three major special prosecutions, and provided written guidance on all areas of criminal trial advocacy. The program conducted training seminars at 11 locations in the United States, four in the Federal Republic of Germany, and one each in Korea, Okinawa and The Philippines. While the vast majority of the over 360 attendees were Army prosecutors, attendees included members of the Navy, Air Force and Coast Guard. The program continues to publish a monthly TCAP Training Memorandum informing all trial counsel of new criminal law developments and trial techniques. A more analytical review of new developments is provided through the Trial Counsel Forum portion of *The Army Lawyer*.

SIGNIFICANT MILITARY JUSTICE ACTIONS

Actions involving military justice handled by the Criminal Law Division, Office of The Judge Advocate General, included: evaluating and drafting legislation, Executive Orders, pamphlets and regulations affecting the operation of the Army and the Department of Defense; monitoring the administration of military justice to include military corrections, the Army's drug testing program, professional responsibility of attorneys and expanded UCMJ jurisdiction over reservists; rendering opinions for the Army Staff; reviewing various aspects of criminal cases for action by the Army Secretariat and Staff; and evaluation of ongoing major projects. During fiscal year 1987, Criminal Law Division responded to 108 White House inquiries, 239 Congressional inquiries, 41 requests for legal opinion from the Army Board for the Correction of Military Records, 455 letters relating to military justice matters written to the Secretary of Defense, Secretary of the Army, the Chief of Staff of the Army and The Judge Advocate General, and 36 other miscellaneous inquiries. The office also processed 57 clemency petitions under Article 74, UCMJ, 34 officer dismissal cases for Secretary of the Army approval, 12 requests for Presidential pardon and 23 Freedom of Information Act/Privacy Act requests.

CHANGE OF MILITARY JUSTICE REGULATION

Army Regulation (AR) 27-10, Military Justice, was revised effective August 10, 1987. The most significant revision was to the filing procedures for records of punishment administered under Article 15, UCMJ. No permanent record of punishment will be maintained on soldiers E-4 and below with less than three years in the Army. For all other soldiers the present system is continued where the commander

selects filing either on the restricted or performance fiche of the soldier's Official Military Personnel File.

Other revisions to AR 27-10 included: establishment of training requirements for Reserve Component commanders; authorization for Army officers commanding unified commands, specified commands, or subordinate commands of either to impose Article 15s on members of another armed force; clarification of the admissibility of DA Forms 2627 (Records of Proceedings Under Article 15, UCMJ) in courts-martial and administrative proceedings; provision for inactive duty training soldiers to receive training pursuant to Article 137, UCMJ, prior to the exercise of court-martial jurisdiction over them; provision for increasing the coverage of Article 138, UCMJ, complaints to include inactive duty training soldiers; and deletion from Article 138, UCMJ, procedures of the requirement for an AR 15-6 investigation to be conducted and that a specific recommendation regarding the appropriateness of the redress requested be made.

ARMY RULES OF PROFESSIONAL CONDUCT FOR LAWYERS

A study of separate rules of professional conduct for military attorneys began shortly after the American Bar Association (ABA) adopted the Model Rules of Professional Conduct in 1983. Culminating a four-year study, the Office of The Judge Advocate General developed rules patterned after those of the ABA. Effective October 1, 1987, Army judge advocates and attorneys over whom the The Judge Advocate General has disciplinary authority are subject to a new set of professional rules, the *Army Rules of Professional Conduct for Lawyers*. By adopting a version of the ABA Model Rules, the Army joins the growing number of states that have embraced the new rules.

While Army judge advocates have always been subject to the disciplinary rules of the ABA, the new Army rules have been specifically tailored for the world-wide practice of military law. For example, a separate rule clearly enunciates the relationship between the lawyer and the commander and states when the commander's lawyer may disclose to others conversations between them. The new rules also tailor professional standards for the defense counsel, recognizing that attorneys representing military clients might be informed of future crimes which are likely to result in significant impairment of national security or the readiness or capability of a military unit.

JOINT-SERVICE COMMITTEE ON MILITARY JUSTICE

The Judge Advocates General and General Counsel of the Department of Transportation established the Joint-Service Committee on

Military Justice on August 17, 1972. The Army, Navy, Air Force, Marine Corps, and Department of Transportation (Coast Guard) provide representatives and nonvoting representative is provided by the U.S. Court of Military Appeals. The Joint-Service Committee on Military Justice primarily prepares and evaluates proposed amendments and changes to the Uniform Code of Military Justice and the Manual for Courts-Martial. The Committee also serves as a forum for the exchange of ideas relating to military justice matters among the services.

On November 14, 1986, the President signed the National Defense Authorization Act for fiscal year 1987, which included the Military Justice Amendments of 1986. These amendments, which originated at the Joint-Service Committee, changed the military insanity test and shifted the burden of proof on insanity to the accused, extended jurisdiction over reservists to include periods of inactive-duty training, revised the statute of limitations for offenses to parallel that of federal civilian law, authorized oral requests for enlisted membership, and simplified post-trial case processing. The second annual review of the Manual, which had been completed in July 1986, was combined with changes to the Manual resulting from the Military Justice Amendments and resulted in Executive Order No.12586 on March 12, 1987. Change 3 to the Manual implemented the Executive Order on June 1, 1987.

The third annual review of the Manual was completed in July, 1987. Most of the proposed amendments made technical corrections resulting from the new finding of "Not Guilty only by reason of lack of mental responsibility" and the reserve component jurisdiction, but the amendments also included a significant revision of the speedy trial rule, a clarification of when verbatim records of trial are required in officer cases, a limitation on when a judge may inform the court members of guilty pleas in mixed plea cases, an authorization to impeach the accused with certain prior unwarned statements, and a clarification of who may claim the Inspector General records privilege. The public comment period expired on October 5, 1987 and comments that were received are being considered by the Working Group of the Joint-Service Committee. A proposal to amend Article 10 of the Code (speedy trial) has been approved by the Committee and has been forwarded to the General Counsel, Department of Defense.

FOREIGN CRIMINAL JURISDICTION

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

During the reporting period, December 1, 1985 through November 30, 1986, a total of 136,076 United States personnel, military and civilian, were charged with offenses subject to the primary or exclusive jurisdiction of foreign tribunals. A total of 124,945 of these offenses were charged against military personnel. Of this number, 106,002 of the charges against military personnel were subject to exclusive foreign jurisdiction. Nonetheless, foreign authorities released 865 of the exclusive foreign jurisdiction offenses to United States military authorities for appropriate disposition.

The rest of the military offenses subject to foreign jurisdiction, totaling 18,943 offenses, were concurrent jurisdiction offenses involving alleged violations of both United States military law and foreign law over which the foreign country had the primary right to exercise jurisdiction. United States military authorities obtained a waiver of primary foreign jurisdiction in 16,589 of these incidents, for a world-wide waiver rate of 87.6 percent.

Foreign authorities reserved for their disposition a total of 107,491 offenses allegedly committed by military personnel. A total of 106,201 of these offenses were relatively minor (simple assault, disorderly conduct, and traffic offenses). Traffic violations comprised 99.4 percent, or 105,524 of these offenses.

A total of 11,131 civilian employees and dependents were charged with offenses subject to foreign jurisdiction. As civilians are not subject to trial by courts-martial in peacetime, the United States had no effective jurisdiction over these offenses. Nonetheless, foreign authorities released 280 of these offenses, or 2.5 percent of the total, to United States military authorities for administrative or other appropriate disposition.

There were 115,434 final results of trial, i.e., final acquittals or final convictions for military, civilian and dependents. Of this number, 283 (.25 percent of the final results) were acquittals and 114,986 (97.3 percent) were sentences to a fine or reprimand. The remainder of the final results of trial consisted of 47 sentences to confinement and 118 suspended sentences to confinement.

LITIGATION

Although civil litigation against the Department of the Army and its officers and employees continued to increase during fiscal year 1987, these proceedings did not often concern actions pursuant to the Uniform Code of Military Justice. In *Cooper v Marsh* the plaintiff is seeking a declaration that the offense of fraternization as a violation of Article 134, UCMJ, is too indefinite and vague to comply with due process. In addition, there are several habeas corpus proceedings pending in which plaintiffs are seeking collateral review of courts-martial convictions.

EDUCATION AND TRAINING

During fiscal year 1987, The Judge Advocate General's School, located in Charlottesville, Virginia, provided legal education to lawyers of the military services and other Federal agencies. Forty-two resident courses were conducted with 3,597 students in attendance. Courses were attended by 1,662 Army, 97 Navy, 67 Marine, 171 Air Force, 24 Coast Guard, 542 Army Reserve, 62 Army National Guard officers, 191 enlisted soldiers, 760 civilian and 21 foreign students. Three Basic Course Classes, the 111th, 112th, and 113th, were conducted. A total of 179 Army JAGC officers graduated from Basic Courses.

The 35th Graduate Course, with an enrollment of 72 students, graduated on 22 May 1987. In addition to 62 Army judge advocates, the class consisted of five Marines, one Navy, and four foreign officers. The 36th Graduate Course began on 4 August 1986. This class contains 62 Army, five Marines, one Navy, and three foreign officers.

During fiscal year 1987, the School continued to provide senior officers with legal orientations prior to their assumption of command. Fifteen general officers attended General Officer Legal Orientation Courses, and 280 battalion and brigade command designees attended one of five resident Senior Officer Legal Orientation Courses. Additionally, instructors from the School participated in twelve Pre-Command Courses conducted at Fort Leavenworth, Kansas, for battalion and brigade command designees.

The Criminal Law Division sponsored four resident continuing legal education (CLE) courses in fiscal year 1987. The Criminal Trial Advocacy Course was presented twice, in November and February, the Military Judge Course in May—June, and the Criminal Law New Developments Course in August. Outstanding guest speakers for these courses included Judge Wayne E. Alley, United States District Court for the Western District of Oklahoma; Chief Judge Robinson O. Everett, Court of Military Appeals; Brigadier General Dulaney L. O'Roark, Jr., Commander, U.S. Army Legal Services Agency and Chief Judge of the U.S. Army Court of Military Review; Professor Stephen A. Saltzburg, University of Virginia School of Law; Professor James B. Haddad, Northwestern University School of Law; and Charlottesville attorney John C. Lowe. In addition to sponsoring these CLE courses, three nonresident courses were presented in Germany in October: two criminal law CLE conferences and a three day trial advocacy course.

The International Law Division sponsored eight resident CLE courses, each lasting one week, in fiscal year 1987. The Law of War Workshop, held five times, continued to provide practical law of war training to legal officers from all four armed forces and several allied nations. The two Legal Aspects of Terrorism courses offered by the

Division continued the tradition established in prior courses of augmenting the School's instruction with presentations by experts from the Department of Defense, the Department of State, and the Federal Bureau of Investigation. A representative of the Ministry of Defense of the Federal Republic of Germany attended each course and the Judge Advocate General of the Royal Netherlands Army attended the 9th Legal Aspects of Terrorism course. All involved actively discussed the various legal issues confronted during terrorism counter action operations, whether conducted domestically or overseas. The second Judge Advocate and Military Operations Seminar and the second quarter International Law instruction to the 35th Graduate Course presented the new concept of Operational Law (OPLAW) as a fully evolved legal discipline focusing on those legal issues, both domestic and international, associated with the preparation for and deployment of U.S. forces overseas, in both peacetime and combat environments. The interdisciplinary nature of OPLAW is illustrated by the fact that the courses incorporated instruction from each of the School's teaching divisions. All courses sponsored by the Division continued to stress the practical application of International Law with the goal being to help prepare judge advocates to be invaluable members of a commander's operations team.

The Contract Law Division sponsored eleven CLE courses in fiscal year 1987. These courses were designed to meet the needs of all attorneys involved in the Federal acquisition process, both the novice and the experienced professional. Courses address contract law as practiced at military installations and at commands devoted to research, development and acquisition of weapons and major end items. They included the two-week Contract Attorneys Course which was offered four times to a total of 304 students. The Division also presented two Fiscal Law Courses to 165 students and the annual week-long Government Contract Law Symposium, attended by 180 attorneys from throughout the Department of Defense. The Division also presented the Advanced Acquisition Course providing in-depth instruction to 120 students in acquisition of weapons and other supplies. Additionally, personnel of the Contract Law Division presented contract law instruction at eleven Reserve Component Technical Training sites and a CLE course in Europe to military and civilian personnel stationed there. Fiscal law courses were presented at sites other than Charlottesville for a number of Army commands and activities, including the Corps of Engineers, the U.S. Army Training Center at Fort Jackson, South Carolina, and U.S. Army, Europe. The Division, in conjunction with the Procurement Fraud Division of the Office of The Judge Advocate General (OTJAG), presented the 1st Procurement Fraud Advisors Course to 65 newly designated Procurement Fraud Advisors from Army Materiel Command, Corps of Engineers, Forces Command, Training and Doctrine Command, and other

major Army commands. The course taught students their role in the Army's fight against fraud, waste and abuse. Finally, instructors of the Division consulted extensively with lawyers and managers involved in production and acquisition of major weapon systems as the Division prepared to add two new courses to the curriculum in fiscal year 1988.

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

The Legal Assistance Branch of the Administrative and Civil Law Division updated and expanded the *Preventive Law Series*. Additionally, the *Legal Assistance Officer's Deskbook and Formbook* was substantially revised to enhance its value to practicing attorneys, and the *All-States Wills, Consumer Law, and State Notarial Law Guides* were extensively revised and published under the new title of *Legal Assistance Guides*. Finally, a new short course on alternative dispute resolution was developed and presented, and the Branch provided an instructor for the Pacific Command CLE trip, presenting legal assistance instruction at seven locations.

The Judge Advocate Guard and Reserve Affairs Department sponsored two resident courses for Reserve Component Judge Advocates in fiscal year 1987. Approximately 149 Army Reserve and National Guard judge advocates attended Triennial Training in Criminal Law between 15 and 26 June 1986. Phase IV of the Judge Advocate Officer Advanced Course was attended by 160 students during this same period. The attendance by Army National Guard at Triennial Training reflects the Guard's continued strong participation in School programs. The 2072nd U.S. Army Reserve Forces School in Philadelphia, Pennsylvania, provided administrative support for both courses. The Department also sponsored the CLE (On-Site) Training Program. Between October 1986 and May 1987, the School provided CLE to 1,976 officers in 23 regional population centers throughout the United States. Attendees represented all services and all components. On-site attendance was up four percent in 1986-87, highlighted by strong showings by Active Army and Army National Guard judge advocates. The Guard-hosted Sacramento, California 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

The School hosted the 1986 Judge Advocate General's Conference and Annual Continuing Legal Education Program during October 7-10, 1986. Over 170 senior judge advocates from posts throughout the world conferred on areas of interest and discussed recent developments in 11 areas of military law. Guest speakers included Honorable John O. Marsh, Secretary of the Army; Mr. Robert Turner, President, Institute of Peace; General John A. Wickam, Jr. Chief of Staff, U.S. Army; LTG Gerald T. Bartlett, Commander, U.S. Army Combined Arms Center and Fort Leavenworth; and LTG John H. Moellering, Assistant to the Chairman, Joint Chiefs of Staff.

The Fourth Gilbert A. Cuneo Lecture in Government Contract Law was presented on January 12, 1987, by Raphael Mur, Vice President, Secretary and General Counsel of Grumman Aerospace Corporation. Mr. Mur's presentation was entitled "Ethics in Government Contracting; Getting Our Houses in Order."

On January 15, 1987, the Fourth Waldemar A. Solf Lecture in International Law was presented by the Egyptian Ambassador to the United States, Honorable El Sayed Raouf El Reedy. His presentation, "An Egyptian Perspective on the Middle East Peace Process," was well received.

On April 13, 1987, the 16th Annual Kenneth J. Hodson Lecture in Criminal Law was presented by Professor Michael H. Graham of the University of Miami School of Law. Professor Graham gave an outstanding lecture entitled "The Confrontation Clause and the Hearsay Rule: The State of the Relationship."

The Eleventh Charles L. Decker Lecture was given on May 15, 1987, by Professor John C. Jeffries, Jr., Professor of Law, University of Virginia School of Law, Charlottesville, Virginia. Professor Jeffries' presentation was entitled "Freedom of Speech—Praise and Misgivings."

On September 24, 1987, Professor Donald N. Zillman, Professor of Law, University of Utah College of Law, presented the Sixteenth Annual Edward H. (Ham) Young Lecture. Professor Zillman gave a most interesting presentation on "A Bicentennial Look at Military-Civilian Relations."

New editions of DA Pamphlet (Pam) 27-22, *Legal Services—Military Criminal Law Evidence*; DA Pam 27-173, *Legal Services—Trial Procedure*; and Field Manual (FM) 27-1, *Legal Guide for Commanders*, for which the School is responsible, were published during fiscal year 1987. Revisions of Army Regulation (AR) 27-4, *Legal Services*,

Judge Advocate General Service Organizations; AR 27-5, *Legal Services—Army Law Library Service*; AR 10-73, *Organization and Functions—The Judge Advocate General's School, U.S. Army*; and AR 135-316, *Army National Guard and Army Reserve—Judge Advocate Officer Training*, will soon be issued. In addition, revisions of several other publications are ongoing. Twenty 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*.

Combat Developments accomplished board reviews of two JAGC Tables of Organization and Equipment (TOE's). The first, TOE 26602L, Legal Services Command, will convert Table of Distribution and Allowance requirements to TOE requirements. The second, TOE 27512L, Judge Advocate General's Service Organization (JAGSOs), restructured reserve component functional organizations to provide legal services under the AirLand Battle concept and in accordance with Army of Excellence force structure guidance. Manpower Requirements Criteria studies have been initiated for all legal military occupational specialties (MOSs) and officer areas of concentration. The studies have been completed for the enlisted military occupational specialties (MOS 71D and 71E). A standardized computer program was developed on the Tactical Army Combat Service Support Computer System that enhances the provision of legal support by the legal specialists and legal NCOs at battalion and brigade levels. The program offers the legal specialist a variety of frequently used legal formats and memorandums. This user-friendly program is currently being tested in TOE units at the battalion level in the 24th Infantry Division (Mechanized), Fort Stewart, Georgia. Standards of grade authorizations have been revamped to comport with Congressional grade "caps" and to meet the minimum requirements of AirLand Battle force structure criteria.

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 1987 was 1820. Representing minority groups were 104 blacks, 31 Hispanics, 17 Asian and Native Americans, and 203 women. The fiscal year 1987 end strength compares with an end strength of 1825 in fiscal year 1986, 1824 in fiscal year 1985, and 1816 in fiscal year 1984. The grade distribution of the Corps at the end of the fiscal year was six general officers, 121 colonels, 227 lieutenant colonels, 376 majors, 1042 captains, and 54

first lieutenants. There were 30 officers (26 captains and four first lieutenants) participating in the Funded Legal Education Program. There were also 74 warrant officers.

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

In November 1986 a selection board was convened to select eleven active duty commissioned officers to commence law school under the Funded Legal Education Program.

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

U.S. Army War College	2
National War College	1
Industrial College of the Armed Forces	1
U.S. Army Command — General Staff College	10
Armed Forces Staff College	13
The Judge Advocate Officer Graduate Course	61
Defense Language Institute	1

During fiscal year 1987, eight 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

APPENDIX A. U. S. ARMY COURT-MARTIAL/NJP STATISTICS

Period: Fiscal Year 1987

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	1,462	1,408	54	+ 2.2%
BCD SPECIAL [A]	1,051	1,000		-15.7%
NON-BCD SPECIAL	216	178	36	-21.0%
SUMMARY	1,492	1,404	88	+ 8.7%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				- 2.4%

PART 2 - DISCHARGES APPROVED [B]

GENERAL COURTS-MARTIAL (CA LEVEL)	507
NUMBER OF DISHONORABLE DISCHARGES	
NUMBER OF BAD CONDUCT DISCHARGES	705
SPECIAL COURTS-MARTIAL (SA LEVEL)	718
NUMBER OF BAD CONDUCT DISCHARGES	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	1,256
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	716 [C]
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	119

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

TOTAL ON HAND BEGINNING OF PERIOD	103 [D]
GENERAL COURTS-MARTIAL	[E]
BCD SPECIAL COURTS-MARTIAL	
REFERRED FOR REVIEW	2,143 [D, F]
GENERAL COURTS-MARTIAL	
BCD SPECIAL COURTS-MARTIAL	
TOTAL CASES REVIEWED	2,119 [G]
GENERAL COURTS-MARTIAL	
BCD SPECIAL COURTS-MARTIAL	
TOTAL PENDING AT CLOSE OF PERIOD	117 [D]
GENERAL COURTS-MARTIAL	
BCD SPECIAL COURTS-MARTIAL	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-20.0%

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

NUMBER	1,957
PERCENTAGE	99.3%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	48.6%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-2.4%
PERCENTAGE OF TOTAL PETITIONS GRANTED	8.7%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-1.5%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	5.3%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+0.001%

APPENDIX A—CONTINUED

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		18	
RECEIVED		81	
DISPOSED OF		92	
GRANTED	5		
DENIED	86		
NO JURISDICTION	1 [H]		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		7	

PART 8 - ORGANIZATION OF COURT [I]

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		1,042	
SPECIAL COURTS-MARTIAL		966	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		420	
SPECIAL COURTS-MARTIAL		299	

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS		41	
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH		783,244	
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		99,886	
RATE PER 1,000		127.53	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-10.6%	

PAGE 2 OF 2

NOTES

- [A] Empowered by GCMCA to adjudge BCD.
- [B] Compiled from records in Part 3.
- [C] Not including 2 cases in which review was waived.
- [D] Includes only cases at issue in panel.
- [E] Cases before ACMR are not tracked by type of court.
- [F] Includes 17 Miscellaneous Docket cases (13 Writ Petitions; 4 Article 62 Appeals).
- [G] In addition, 8 decisions on reconsideration were issued. Two cases were withdrawn from review after reaching panels; seven cases withdrawn earlier, during the briefing stage.
- [H] Application filed out of time; good cause not shown.
- [I] From cases in Part 1.

ANNUAL REPORT
of
THE JUDGE ADVOCATE GENERAL OF THE NAVY
pursuant to the
UNIFORM CODE OF MILITARY JUSTICE
for
FISCAL YEAR 1987

SUPERVISION OF THE ADMINISTRATION OF MILITARY JUSTICE

In compliance with the requirement of Article 6(a), Uniform Code of Military Justice, the Judge Advocate General and the Deputy Judge Advocate General continued to visit commands within the United States, Europe, and the Far East in furtherance of the supervision of the administration of military justice.

ABA OUTSTANDING YOUNG MILITARY LAWYER AWARDS

Lieutenant Anthony B. Getchell, JAGC, USNR, Administrative Law Division has been selected as the Navy recipient of the ABA Young Lawyers Division Military Service Lawyers Committee's "Outstanding Young Military Service Lawyer" award for 1986-87. This award recognizes the dedication and excellence of the nearly 6,000 attorneys who serve in the uniformed services throughout the world. The recipient is chosen based on demonstrated excellence in the delivery of legal services, qualities of leadership, military excellence, scholarly ability, and community service.

ADVANCED LEGAL PROGRAMS

Twenty-one Navy JAG Corps officers attended post graduate school in criminal law and other programs. There are now a total of 58 Navy JAG officers with identified specialties in criminal law.

The Naval Justice School (NJS) developed a trial advocacy course using methodology developed by National Institute for Trial Advocacy

(NITA) and trained four personnel from the east coast and four from the west coast to instruct other officers on the NITA trial advocacy techniques. The instructors, who were certified by NJS, in turn trained approximately 100 officers in the field. NJS monitored the training. The program was a financial success (training in the field was considerably less expensive than training at NJS); plans are to continue this type of training in fiscal year 1988.

Training at Military Judges Courses:

- seven Navy officers (including one Reserve) and six Marine officers (including two Reserves) were trained at NJS.
- one Navy officer was trained at Army JAG School.

ARTICLE 69(a), UCMJ, EXAMINATIONS

Seventy-one general courts-martial, which were not statutorily eligible for automatic review by the Navy-Marine Corps Court of Military Review, were examined in the Office of the Judge Advocate General in fiscal year 1987. Of those, three required corrective action by the Judge Advocate General.

ARTICLE 69(b), UCMJ, APPLICATIONS

Fifty-three applications were received in fiscal year 1987 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. Thirty-two applications were denied on the merits, while relief was granted, in whole or in part, in four cases.

ARTICLE 73, UCMJ, PETITIONS

In fiscal year 1987, 12 petitions for new trial were reviewed by the Office of the Judge Advocate General. Six petitions were denied and the rest were referred to the appropriate appellate court.

ARTICLE 74(b), UCMJ, PETITIONS

Ten petitions were considered in fiscal year 1987, requesting the Secretary of the Navy to substitute an administrative discharge for a

punitive discharge executed pursuant to the sentence of a court-martial. The Secretary granted relief on one petition.

APPELLATE GOVERNMENT DIVISION

The Appellate Government Division filed 941 pleadings (a decline of 22% from last year) with the Navy-Marine Corps Court of Military Review and the U.S. Court of Military Appeals. This figure excludes cases which were submitted to the courts without specific assignments of error. Two briefs in opposition to petitions for writs of certiorari were filed with the Supreme Court of the United States.

The Trial Counsel Assistance Program (TCAP) provided a central point of coordination and focus to assist trial counsel in the effective prosecution of courts-martial. Four appellate counsel implement this program which provides assistance through field calls, presentations, newsletters, a computer bulletin board, and a digest of major unpublished decisions. Field calls—in which a team concept is used to provide advice and assistance—totalled 507 for the year, an average of 42 per month (+ 50%).

Presentations:

Government attorneys participated in a seminar with Navy reserve judge advocates in the Washington, D.C., area as part of the Reserves' training, participated in a seminar for trial counsel at Norfolk, VA, along with the Army TCAP team, and the Assistant Director, Appellate Government Division, and one attorney gave a presentation on Supreme Court practice, government appeals, and recent developments in military justice at the Navy JAG conference. The entire Appellate Government Division provided training during the fiscal year to reservists tasked to support the Division.

APPELLATE DEFENSE DIVISION

The Appellate Defense Division, Navy-Marine Corps Appellate Review Activity, has markedly increased its Supreme Court practice during this fiscal year. It is anticipated that this trend will continue. An average of one petition per month has been filed since April 1987.

Brief Bank. The establishment of a computerized brief bank has provided appellate defense attorneys with instant access to the research product of Navy and Army appellate attorneys who have addressed similar issues of law. It has also enabled the Division to provide trial defense counsel in the field with a valuable resource for preparing trial briefs.

Professional Counseling. The Appellate Defense Division has instituted an aggressive counseling service to aid trial defense counsel. Should a trial defense counsel need advice on issues of law during the preparation of their case, the Division attorneys are prepared to provide constructive advice using expertise developed during appellate practice and to research issues through facilities that may be unavailable to field counsel.

Professional Growth. The Appellate Defense Division has compiled an up-to-date outline of the major decisions of both the Navy-Marine Corps Court of Military Review and the U.S. Court of Military Appeals which facilitates following military justice trends. It not only identifies those issues in which the courts are most interested, but provides a means to predict the way the courts will resolve such issues in the future. The Division has also initiated a training syllabus tailored to aid both trial and defense counsel in becoming more aggressive and effective advocates. This syllabus takes a very practical approach to issues, providing counsel with concrete examples on what to do and how to do it.

Off-Site Training. The Division presented training programs to the NR NAMARA (Defense) 111 unit from Oklahoma City, Oklahoma, and such training is scheduled with the Columbus, Ohio, and District of Columbia Reserve units in the near future. The Division made similar presentations at the 1987 JAG Conference, and the same service is now being offered to various NLSO's on the East Coast.

NAVY-MARINE CORPS TRIAL JUDICIARY

The Navy-Marine Corps Trial Judiciary provided military judges for 934 general courts-martial during fiscal year 1987, a decrease of 136 general courts-martial from the fiscal year 1986 level of 1,070. In fiscal year 1987, 80% of these general courts-martial were tried by military judge alone.

There were 6,552 special courts-martial conducted during fiscal year 1987, a decrease of 123 special courts-martial from the 6,675 cases of fiscal year 1986. In fiscal year 1987, 93% of these special courts-martial were tried by military judge alone.

Military Judges Attending Continuing Legal Education/Seminars/Lectures Meeting/Conferences

- a. East Coast Military Judges' Meeting of Those Assigned to The Navy-Marine Corps Trial Judiciary
 - Fleet Combat Training Center, Atlantic, Dam Neck, VA
 - twenty-one active-duty Navy and Marine Corps judges; eight Reserve Navy and Marine Corps judges.

- b. West Coast Military Judges' Meeting of Those Assigned to The Navy-Marine Corps Trial Judiciary
 - Naval Training Center, San Diego, CA
 - thirteen active-duty Navy and Marine Corps judges; eight Reserve Navy and Marine Corps judges.
- c. Thirteenth Interservice Military Judges' Seminar
 - Maxwell Air Force Base, Montgomery, Alabama
 - eight active-duty Navy and Marine Corps judges.
- d. Various Courses of Instruction at the National Judicial College
 - National Judicial College, Reno, Nevada
 - Criminal Evidence, Constitutional Criminal Procedures, Medical Scientific Evidence, and Search & Seizure
- e. Trial Advocacy
 - National College, Univ. of Houston
 - two active-duty Marine Corps judges.
- f. Military Judges' Course
 - U.S. Army JAG School, Charlottesville, VA
 - five active-duty Navy and Marine Corps judges.
- g. Military Judges Course
 - Naval Justice School, Newport, RI
 - twenty-seven July–14 August 1987
 - six active-duty Navy and Marine Corps judges.
- h. Judges' Training during JAG Conference Springfield, VA
 - eleven active-duty Navy and Marine Corps Judges; one inactive-duty Reserve Navy judge.
- i. Marine Corps SJA Conference
 - San Diego, CA
 - Deputy Chief Judge.

Visits by the Judiciary

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

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

The Chief Judge visited and inspected the following judicial circuits and branch offices: Northeast (Philadelphia); Tidewater (Norfolk); Piedmont (Camp Lejeune); Atlantic Branch (Great Lakes); Northeast (Philadelphia); Northeast Branch (Newport); Sierra (Camp Pendleton); Sierra Branch (El Toro); Southwest (San Diego); Southwest Branch (Long Beach); Midsouth (Charleston); and Southeast Branch (Jacksonville).

Generally

Chief Judge visits to Naval Legal Service Offices, convening

authorities and Staff Judge Advocates indicate that the overall quality of judicial services is excellent. A continuing emphasis is placed on judicial and advocate training. Judges are encouraged to motivate young advocates to become more experienced in trial tactics.

During fiscal year 1987, total in-court hours for all judges was 23,929 hours, 2,592 hours less than during fiscal year 1986 (26,521). An increase of 64 travel hours occurred in fiscal year 1987 (6,057) over fiscal year 1986 (5,993) hours.

NAVAL LEGAL SERVICE COMMAND

Naval Legal Service Command (NAVLEGSVCCOM) consists of 21 Naval Legal Service Offices and 20 Naval Legal Service Office Detachments, located in areas of naval concentration throughout the world. NAVLEGSVCCOM also includes the Naval Justice School, located in Newport, Rhode Island, and the Office of Legal Counsel, located at the Naval Academy, Annapolis, Maryland. NAVLEGSVCCOM manning strength included 417 officers, 204 enlisted, and 231 civilian employees in fiscal year 1987; Navy judge advocates assigned to NAVLEGSVCCOM comprise about 42% of the Navy's total judge advocate strength.

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

In support of the efforts to provide quality and timely legal services, NAVLEGSVCCOM activities continue to rely upon the Judge Advocate General Management Information System, which tracks each activity's caseload from receipt to disposition. This system is possible due to the growing number of personal computers available at each activity. In the future, the planned Navy Legal Affairs World-wide Support System will refine and expand the automation of the claims, legal assistance, budgeting, and office administration functions within NAVLEGSVCCOM, enhancing its ability to perform its mission. Additionally, 10 sites received state-of-the art computer assisted transcription equipment this year, which when fully implemented will serve to speed the post-trial processing of courts-martial. Finally, greater use is being made of available automated legal research programs, such as WESTLAW.

The NAVLEGSVCCOM Military Construction Program, which targets the need for major construction in support of more than 10

Naval Legal Service Offices, marked its first ground breaking in fiscal year 1987. The \$1.3 million facility in Memphis, Tennessee, sponsored by Chief of Naval Operation (OP-05), is the first new NAVLEGSVCCOM facility designed and built from the ground up as a dedicated legal service building.

NAVAL JUSTICE SCHOOL

During fiscal year 1987, Naval Justice School provided instruction to 10,977 students worldwide (1,314 in resident courses ranging in length from one to nine weeks). Additionally, the school published volume 36 of the *Naval Law Review* and prepared or edited the content of volume 37. Other noteworthy developments include the convening at the school of a long-range planning committee for judge advocate training. The work of this committee culminated in approval by the Judge Advocate General of a long-term program for enhanced training in naval orientation for judge advocates new to the Navy plus new or increased training in the areas of trial advocacy, legal assistance, civilian personnel law, contract law, and the law of naval operations. Additionally, during fiscal year 1987, Naval Justice School more than doubled the number of Navy and Marine Corps reservists training in military law subjects, both at Newport and at Reserve training sites in various parts of the country. Finally, during this past fiscal year, Naval Justice School became the locus of accession-level training for judge advocates from all the sea services. Pursuant to an arrangement between the Judge Advocate General of the Navy and the Chief Counsel of the Coast Guard, Naval Justice School began a resident program to train Coast Guard law specialists and court reporters. In furtherance of this arrangement, a Coast Guard lieutenant commander and a Coast Guard chief petty officer have been assigned to the Justice School staff.

An update of the school's courses follows:

Law of Naval Warfare Workshop. Offered once a year, this course, which will expand from 1 week to 2 weeks in 1988, trains judge advocates responsible for advising commanders on international law and its impact on plans and operations. The course will consist of 30 hours of classroom instruction and 32 hours of practical exercises and seminars. Attendees completing the one-week course in 1987 included 32 Navy, 4 Marine Corps, 2 Army, and 2 Air Force attorneys.

Staff Judge Advocate Course. Also offered once a year, this 2-week course (which will expand to 3 weeks in 1988) provides training in specific aspects of military and administrative law likely to be encountered by a command legal advisor. Included in 1987 were 56 hours of classroom instruction and 7 hours of practical exercises and seminars. This past year, attendees included judge advocates from the Navy (41), Marine Corps (5), and Army (2).

Senior Legalman Management Course. This 2-week course, offered annually, provides senior legalmen with the specialized training in budget matters and civilian and military personnel 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. Fourteen senior enlisted personnel (11 Navy, 2 Marine Corps, and 1 Air Force) attended this course in 1987.

Lawyer Course. The Naval Justice School conducted five sessions of the 9-week lawyer course during 1987. This course, which provides basic training in military justice and military administrative and civil law to incoming Navy and Marine Corps attorneys, consists of 166 hours of classroom instruction and 55 hours of practical exercises, including 2 moot courts and 14 seminars designed to enhance trial advocacy skills. In fiscal year 1987 the course was completed by 77 Navy, 68 Marine Corps, and 1 Coast Guard lawyer.

Legal Officer Course. During fiscal year 1987, the school held eight sessions of this course (five 5-week courses and three 4-week courses, including the first course convened specifically for independent-duty legalmen). The legal officer syllabus is designed for the nonlawyer junior officer or senior Navy legalman (paralegal) about to assume legal duties with a ship, aircraft squadron, small station, or other military unit with no military lawyer attached. Included in the course are 126 hours of classroom instruction and 79 hours of practical exercises and seminars. Attendees in fiscal year 1987 consisted of 229 Navy officers, 59 Navy legalmen, 48 Marine Corps officers, 2 Coast Guard officers, and 2 civilian employees of the Department of the Navy.

Senior Officer Course. This 1-week course, sponsored by the Chief of Naval Operations, prepares commanding officers, executive officers, and officers in charge to handle appropriate command legal responsibilities. Six sessions of the course were held at Newport, Rhode Island, with 205 students attending. An additional 25 offerings of the course were held at the following worldwide locations: Pensacola, Jacksonville and Mayport, Florida; Charleston and Parris Island, South Carolina; Norfolk, Virginia; Bangor, Washington; San Francisco, San Diego, and Camp Pendleton, California; Rota, Spain; Pearl Harbor, Hawaii; Guam; Subic Bay, Philippines; Yokosuka, Japan; Camp Lejeune, North Carolina; New London, Connecticut; Corpus Christi, Texas; and Quantico, Virginia. The 1,347 Students attending these classes included:

USN:	902
USMC:	412
USCG:	15
USA:	16
USAF:	2

Military Judge Course. This 3-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 1987, seven Navy, six Marine Corps, one Coast Guard, and seven Air Force judge advocates completed this course.

Legalman Course. This 9-week course, offered four times in fiscal year 1987, provides instruction in military law electronic court reporting to Navy enlisted personnel selected for conversion to the legalman rating. Included are 162 hours of lecture, 118 hours of practice transcription, and 52 hours of seminars and other practical exercises. As in past years, the Army continues to use the Naval Justice School's legalman course to train its court reporters. In fiscal year 1987, 131 Navy and 22 Army students completed this course.

Legal Clerk Course. This 2-week course is designed to train members of the Navy's yeoman rating to process routine legal matters at small or isolated commands. During fiscal year 1987, the school offered five sessions of this course. Included in the legal clerk curriculum are 51 hours of lecture and 25 hours of practical exercises. In fiscal year 1987, 223 students completed this course.

Reserve Courses. In addition to training active-duty personnel, the Naval Justice School also presents a number of courses each year to train inactive-duty reservists. The 2-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 2-week Reserve Legalman Course, offered in three phases, prepares enlisted personnel in the inactive-duty Reserve as legalmen. During fiscal year 1987, 124 students completed a course of Reserve instruction at the school.

Specialized Briefings and Presentations. In addition to the formal courses listed above, the Naval Justice School presented more than 600 hours of instruction on court-martial procedures, search and seizure, confessions and admissions, nonjudicial punishment, investigations, administrative separations, and the law of armed conflict to 8,316 members of selected Reserve units (at Newport, New Orleans, and Alameda, California) and students at the Surface Warfare Officers School, Chaplains School, Officer Indoctrination School, Officer Candidate School, Senior Enlisted Academy, Naval War College, Naval Science Institute, and Naval Academy Preparatory School at Newport, Rhode Island.

MARINE CORPS ACTIVITIES

During fiscal year 1987, Reserve legal support for the active forces

expanded. The law Mobilization Training Units (MTU) continued to provide invaluable support consistent with their assigned missions to specified commands and Headquarters, U.S. Marine Corps staff agencies. In addition, the San Francisco MTU was assigned to provide support to the Naval Legal Service Office, Treasure Island.

The Chief Defense Counsel of the Marine Corps and Regional Defense Counsel conducted frequent command visitations and inspections at all locations where defense counsel were assigned.

The Marine Corps, through the auspices of the Chief Defense Counsel of the Marine Corps, continued to sponsor trial advocacy training programs at Camp Lejeune, Camp Pendleton, Parris Island, Kaneohe Bay, and Okinawa using NITA methods and experienced active duty and Reserve judge advocates as instructors. Other Marine judge advocates, as well as Army, Navy, and Air Force lawyers, also participated. A sufficient number of Marine judge advocates have received NITA-instructor training so that now trial advocacy programs may be conducted using only Marine Corps assets.

Eleven Marine judge advocates attended year-long service schools, including the Naval War College, the Industrial College of the Armed Forces, the Marine Corps Command and Staff College, the College of Naval Command and Staff, the Amphibious Warfare School, and the U.S. Army Judge Advocate General's School. Four judge advocates received Master of Laws degrees from civilian law schools through the Special Education Program. Two hundred thirty-nine judge advocates received continuing legal education at civilian and military schools through courses funded by Headquarters, U.S. Marine Corps, and their parent commands. Ten Marine officers earned law degrees through the Funded Legal Education Program. Fifty-seven of the four hundred and eighty-four judge advocates served in command or staff (nonlawyer) assignments.

The Judge Advocate Division again sponsored a mock court-martial in observance of Law Day and presented it to a local middle school.

HUGH D. CAMPBELL

Rear Admiral, USN

Judge Advocate General of the Navy

APPENDIX A

Period: Fiscal Year 1987

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	833	793	40	-203 (-20%)
BCD SPECIAL	2855	2855		+97 (+4%)
NON-BCD SPECIAL	2568	2331	237	-110 (-4%)
SUMMARY	3111	3054	57	+94 (+2%)
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES		216
NUMBER OF BAD CONDUCT DISCHARGES		316
SPECIAL COURTS-MARTIAL (SA LEVEL)		
NUMBER OF BAD CONDUCT DISCHARGES		2286

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	805
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	3341
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	73

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

TOTAL ON HAND BEGINNING OF PERIOD		703
GENERAL COURTS-MARTIAL	201	
BCD SPECIAL COURTS-MARTIAL	502	
REFERRED FOR REVIEW		4248
GENERAL COURTS-MARTIAL	805	
BCD SPECIAL COURTS-MARTIAL	3443	
TOTAL CASES REVIEWED		4420
GENERAL COURTS-MARTIAL	763	
BCD SPECIAL COURTS-MARTIAL	3657	
TOTAL PENDING AT CLOSE OF PERIOD		514
GENERAL COURTS-MARTIAL	147	
BCD SPECIAL COURTS-MARTIAL	367	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+ 307 (+ 7%)

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

NUMBER	3173
PERCENTAGE	74.69

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USGMA	23%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	43%
PERCENTAGE OF TOTAL PETITIONS GRANTED	3%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	86%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	35%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	43%

APPENDIX A—CONTINUED

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		64
RECEIVED		123
DISPOSED OF		114
GRANTED	7	
DENIED	107	
NO JURISDICTION	0	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		33
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL		666
SPECIAL COURTS-MARTIAL		2781
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		167
SPECIAL COURTS-MARTIAL		74
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	116	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	803.151	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	68193	
RATE PER 1,000	84.91	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-5%	

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**REPORT OF
THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE
OCTOBER 1, 1986 TO SEPTEMBER 30, 1987**

In compliance with the requirement of Article 6(a), Uniform Code of Military Justice (UCMJ), 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**

The Judiciary Directorate of the Office of The Judge Advocate General 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 of the 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 203 applications.

b. The Directorate received 894 inquiries in specific cases requiring either formal written replies or telephonic replies to senior executive officials, including the President and members of Congress.

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

DATA AUTOMATION UPGRADES

The Directorate of Legal Information Services (AF/JAS) plans, develops and manages automated management information systems

in support of claims, military justice, office automation, computer assisted legal research and other legal services programs. During FY 87, AF/JAS fielded programs that accomplish electronic data entry at the base level for the Automated Military Justice and Management System (AMJAMS) and the Claims Analysis Management System (CAMP) to replace outdated punch card and paper forms systems. A comprehensive law office management program was developed and testing begun. Replacement systems for AMJAMS and CAMP were conceptualized and development of the latter (Air Force Claims Information Management System—AFCIMS) was initiated. AF/JAS also operated the Federal Legal Information Through Electronics (FLITE) system and the Defense Emergency Authorities Retrieval and Analysis System (DEARAS) as DOD's executive agent for computer assisted legal research. Extensive effort was expended toward converting FLITE from a batch to an interactive system in FY 88.

TRIAL JUDICIARY

The Air Force Trial Judiciary had an average of 31 military active duty and 7 reserve military judges, including one Chief Trial Judge and his assistant, assigned to 11 locations worldwide. In addition to presiding over courts-martial and administrative discharge boards, military judges are actively involved as hearing officers in public hearings held to consider draft Environmental Impact Statements.

The Trial Judiciary completed installation of the computerized docket management program and training of the court administrators in 1986 and is now upgrading the programs to take advantage of new equipment and software.

All Trial Judiciary circuit and district offices are now linked by electronic mail which simplifies and expedites the flow of data and the exchange of information. Further refinements in this area are also planned for 1988.

CIRCUIT TRIAL COUNSEL PROGRAM

The number of assigned circuit trial counsel (CTC) remained at 22 during FY 1987. The average number of days TDY per case in FY 87 was six. For the fourth year in a row, the percentage of all courts prosecuted by CTC increased from 26% in FY 1983; 29% in FY 1984; 31% in FY 1985; 36% in FY 1986; to 38% in FY 1987. The total number of general courts-martial tried by CTC increased markedly from 455 to 505, but the percentage of general courts-martial tried by circuit trial counsel fell for the ninth straight year, this time from 74% in FY 1986 to 66% in FY 1987. This was due to the continuing

increase in general courts-martial worldwide from 476 in FY 1985 and 618 in FY 1986 to 767 in FY 1987.

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

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
General	345 (92%)	323 (90%)	378 (88%)	385 (84%)	348 (82%)	374 (79%)	455 (74%)	505 (66%)
Special	229 (17%)	219 (16%)	119 (9%)	55 (5%)	73 (7%)	72 (7%)	81 (9%)	97 (12%)
Total	574 (33%)	542 (31%)	497 (28%)	440 (26%)	421 (29%)	446 (31%)	536 (36%)	602 (38%)

In support of the urinalysis program, a familiarization workshop was conducted to bring circuit trial and defense counsel up to speed with recent developments at the Brooks AFB urinalysis testing laboratory. Urinalysis continues to support the important fight against drug abuse in the Air Force and a working knowledge of the Brooks urinalysis laboratory procedures by both the prosecution and defense is essential to a just result in all urinalysis courts-martial and administrative proceedings.

APPELLATE GOVERNMENT COUNSEL

Direct U.S. Supreme Court review of the decisions of the U.S. Court of Military Appeals (COMA) markedly increased appellate government counsel (JAJG) workload in FY 1987 over FY 1986. Draft briefs in opposition filed by appellate government counsel were up 33% over FY 1986 and Air Force briefs in opposition for FY 1987 accounted for 30% of the briefs filed by all services. In addition, pleadings and positions in 23 sister service Supreme Court cases were reviewed by JAJG during FY 1987, the same number as in FY 1986. Under Article 62, UCMJ, three different cases were evaluated for the filing of government appeals of adverse rulings by military trial judges. All three cases were formally filed with the appellate courts on behalf of the government. Finally, nine cases which had been certified to COMA by The Judge Advocate General in accordance with Article 67(b)(2), UCMJ, were decided by COMA in FY 1987; all nine were decided favorably toward the government.

AREA DEFENSE COUNSEL PROGRAM

Area defense counsel training concentrated on providing effective representation to members accused of child molestation and child

abuse offenses. Increased attention will be given to offering meaningful and effective assistance to the families of the victims in the upcoming year. With the United States Court of Military Appeals (COMA) relaxing rules regarding polygraph evidence in courts-martial, special attention was given to that aspect of area defense counsel training as well. Finally, because drug abuse detection remains a primary concern of command authorities, defense counsel received timely updates on developments in urinalysis litigation.

APPELLATE DEFENSE COUNSEL

Due to the significant increase in the number of punitive discharges adjudged at trial, appellate defense experienced substantial increases in almost all aspects of appellate workload before the United States Air Force Court of Military Review (AFCMR) and COMA. The breakdown follows:

AFCMR

ERRORS FILED	1012
ORAL ARGUMENTS	15
OTHER MOTIONS	321

COMA

SUPPLEMENTS TO PETITIONS	556
BRIEFS IN SUPPORT	164
GRANT BRIEFS	13
ORAL ARGUMENTS	29
OTHER MOTIONS/PETITIONS	215

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

Air Force Reserve judge advocates provided significant contributions to the appellate defense mission. In addition to assisting in the preparation of briefs, reserve attorneys argued cases before AFCMR and COMA. They also served effectively as instructors in area defense counsel training programs.

CONFINEMENT FACILITIES

Last available figures during the fiscal year showed 1011 Air Force personnel were in confinement; 70 pretrial and 941 posttrial. The figure 1011 represents a nearly 20% increase over last year. More officers and women were being confined than ever before. In addition, the latest data revealed that 192 Air Force prisoners were on parole.

Considerable pressure continued to be placed on our central confinement facilities. Since the end of the last fiscal year, the Air Force secured an additional 10 firm bed spaces at the Fort Lewis IDF, bringing our total there to 175. There was a small backlog of prisoners awaiting transfer to each of the central confinement facilities (USDB, Fort Lewis, Lowry) at the end of the fiscal year. Plans to acquire 80 additional minimum bed spaces at Lowry were nearing approval. These bed spaces would relieve the shorter term bed space problem and offer an option to transfer selected prisoners who had achieved minimum custody status from the USDB to free up USDB bed spaces for other long-term prisoners.

The return to duty rehabilitation (RTDR) program at the 3320th CRS, Lowry Air Force Base, continued to operate successfully. Twelve Air Force members were projected to be restored to duty following completion of the RTDR program in CY 1987.

PREVENTIVE LAW AND LEGAL ASSISTANCE PROGRAM

The Preventive Law and Legal Aid Group (JACA) continued development and expansion of the Preventive Law Uniform Notebook System. During FY 1987, the notebook system was expanded from 14 notebooks to a complete set of 21 notebooks. Of the eight subject categories in the system, seven categories now have indexed, hard-copy information available. Seven Shortbursts Newsletters were mailed to all base and command legal offices. Two of the newsletters were devoted entirely to income tax matters; the remaining newsletters contained general information. On 1 July 1987, responsibility for maintaining the Uniform Notebook System and publishing future preventive law material for the system was transferred to the Air Force Judge Advocate General School, Maxwell AFB, Alabama.

The staff of the Preventive Law and Legal Aid Group organized and taught income tax training courses for overseas bases. A representative from JACA assisted in teaching attorneys and unit tax advisors at courses at Athens, Greece; Panama; and at three locations throughout the Pacific: Hickam AFB, Hawaii; Yokota AB, Japan; and Seoul, Korea.

During January through April 1987, tax assistance programs were run by legal offices throughout the world. Over 82,000 members of the Air Force community were helped. Air Force attorneys and the tax advisors they trained and supervised helped Air Force members complete 9,641 Form 1040EZs, 13,021 Form 1040As, 17,314 Form 1040s, and 18,855 state tax returns.

Legal assistance services were provided to over 400,000 clients worldwide. Top categories continued to be wills, domestic relations, and consumer matters. The Chief, Preventive Law and Legal Aid

Group served as liaison to the American Bar Association's Standing Committee on Legal Assistance for Military Personnel (LAMP) and visited numerous legal offices of all the military services during the year.

THE REPORTER, AFRP 110-2

The Reporter continued to provide timely information on a wide variety of legal issues including significant court decisions affecting military justice. Military justice topics addressed in FY 1987 included the U.S. Supreme Court's decision in *Solorio v. United States*, limitations in using the twin residual hearsay exceptions, and the Defense Procurement Fraud Unit.

EDUCATION AND TRAINING

The Judge Advocate General's Department provided numerous continuing legal education (CLE) opportunities to its personnel, as well as its sister services, during FY 1987.

THE AIR FORCE JUDGE ADVOCATE GENERAL SCHOOL

The Air Force Judge Advocate General School assumed responsibility for the Preventive Law Uniform Notebook System and Clearinghouse Index in July 1987. The School published its first issue of Shortbursts, the Preventive Law and Legal Assistance newsletter, in September 1987. That issue added material to three categories (Consumer Protection, Family Law, and Legal Problems of Command) within the Uniform Notebook System. Future issues of Shortbursts will be published on a quarterly basis.

Resident Courses

The Air Force Judge Advocate General School, Center for Professional Development, Maxwell AFB, Alabama, conducted the following courses affecting military justice in FY 1987.

a. Advanced Trial Advocacy Course—This 1-week course provides training in advanced advocacy skills to judge advocates currently serving as or selected for circuit trial or defense counsel. Thirty-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 attended by 136 judge advocates.

c. Reserve Forces Judge Advocate Course—A 2-week course which provides Air Force Reserve personnel and National Guardsmen with up-to-date information on recent developments in military law. This course was offered twice in FY 1987 and was attended by 182 Reservists and Air National Guard personnel.

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 69 judge advocates attended this course.

e. Trial and Defense Advocacy Course—This 1-week course, offered three times during FY 1987, provides basic advocacy training to judge advocates actively engaged in trial practice and was attended by 97 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 1987 and was attended by 56 military judges from all services.

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

Professional Military Education

Ten area defense counsel were selected to attend Squadron Officer School in residence.

Short Courses at Civilian Institutions

Sixteen military judges attended courses at the National Judicial College at the University of Nevada at Reno during FY 1987.

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

Five military judges attended the basic military judges course at the Army Judge Advocate General (Army JAG) School, Charlottesville, Virginia, and five military judges attended the basic military judges course at the Naval Military Justice School, Newport, Rhode Island. Air Force judge advocates also attended the Criminal Trial Advocacy Course, Advanced Federal Litigation Course, Judge Advocate and Military Operations Seminar, Law of War Workshop, Legal Aspects of Terrorism Course, and Alternative Disputes Resolution Course at the Army JAG School.

PERSONNEL

As of 1 October 1987, there were 1346 judge advocates on active duty. This total included 5 generals, 120 colonels, 204 lieutenant colonels, 336 majors, 627 captains and 54 first lieutenants. .

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

APPENDIX A

Period: _____

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	687	657	30	+ 35.2%
BCD SPECIAL	379	379		+ 3.0%
NON-BCD SPECIAL	473	405	69	+ 2.2%
SUMMARY	27	23	4	- 28.9%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+ 13.7%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES	150	
NUMBER OF BAD CONDUCT DISCHARGES	432	
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 86 - GENERAL COURTS-MARTIAL	621
FOR REVIEW UNDER ARTICLE 86 - BCD SPECIAL COURTS-MARTIAL	348
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	62

PART 4 - WORKLOAD OF THE Air Force COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD	193	
GENERAL COURTS-MARTIAL	115	
BCD SPECIAL COURTS-MARTIAL	78	
REFERRED FOR REVIEW	949	
GENERAL COURTS-MARTIAL	595	
BCD SPECIAL COURTS-MARTIAL	354	
TOTAL CASES REVIEWED	991	
GENERAL COURTS-MARTIAL	630	
BCD SPECIAL COURTS-MARTIAL	361	
TOTAL PENDING AT CLOSE OF PERIOD	151	
GENERAL COURTS-MARTIAL	101	
BCD SPECIAL COURTS-MARTIAL	50	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		12.7%

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE Air Force COURT OF MILITARY REVIEW

NUMBER	938
PERCENTAGE	96.8%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	568/969	58.6%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+ 25.9%
PERCENTAGE OF TOTAL PETITIONS GRANTED	43/568	7.6%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		- 10.4%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	43/969	4.4%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		- 1.0%

APPENDIX A—CONTINUED

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		6
RECEIVED		31
DISPOSED OF		37
GRANTED	4	
DENIED	32	
NO JURISDICTION	1	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		0
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL		50
SPECIAL COURTS-MARTIAL		406
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		637
SPECIAL COURTS-MARTIAL		446
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	12	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	593,833	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		19,216
RATE PER 1,000		32.36
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		- 10%

PAGE 2 OF 2

**REPORT OF THE CHIEF COUNSEL OF THE
U. S. COAST GUARD
October 1, 1986 to September 30, 1987**

The table below shows the number of court-martial records received and filed at Coast Guard Headquarters during FY-87 and the 5 preceding years.

Fiscal Year	87	86	85	84	83	82
General Courts-Martial.....	11	5	5	6	10	9
Special Courts-Martial.....	24	19	43	33	68	79
Summary Courts-Martial.....	63	50	77	105	128	151
Total.....	98	74	125	144	206	239

COURTS-MARTIAL

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

GENERAL COURTS-MARTIAL

Of the eleven accused tried by general courts-martial this fiscal year, six were tried by military judge alone. Four received bad conduct discharges. Of the five accused tried by courts with members, two received sentences which included a bad conduct discharge. Six of the accused whose charges were referred to general courts-martial were nonrated (pay grades E-1 through E-3), two were petty officers (pay grade E-6), one was a chief warrant officer (W-3), one was a chief warrant officer (W-4), and one was a lieutenant junior grade (O-2).

The following table shows the distribution of the 103 specifications referred to general courts-martial.

Violation of the UCMJ, Article	No. of Specs.
85 and 86 (desertion and UA)	1
92 (violation of order or regulation).....	5
108 (sale, loss, damage, destruction, or wrongful disposition of military property of the U. S.).....	2
112(a) (controlled drug offenses).....	6
121 (larceny and wrongful appropriation).....	24
128 (assault).....	8
134 (general).....	22
Other offenses.....	35

SPECIAL COURTS-MARTIAL

Fifteen of the 24 accused tried by special courts-martial this fiscal year were tried by the military judge alone. One of the nine accused tried by members was acquitted of all charges and specifications. Three bad conduct discharges were awarded; two to accused tried by military judge alone, and one to an accused tried by a court with members. Seven of the accused whose charges were referred to special courts-martial were nonrated (pay grades E-1 through E-3), twelve were petty officers (pay grades E-4 through E-6), four were chief petty officers (pay grades E-7 and E-8), and one was a chief warrant officer (W-4).

The following table shows the distribution of the 105 specifications referred to special courts-martial.

Violation of the UCMJ, Article	No. of Specs.
85 and 86 (desertion and UA)	4
89 (disrespect toward a superior commissioned officer).....	1
92 (violation of order or regulation).....	22
107 (false official statement).....	3
108 (sale, loss, damage, destruction, or wrongful disposition of military property of the U. S.).....	2
112(a) (controlled drug offenses).....	6
121 (larceny and wrongful appropriation).....	35
128 (assault).....	4
134 (general).....	5
Other offenses.....	23

The following is a breakdown of sentences awarded by the military judge alone in special courts-martial (15 convictions). In 10 of these 15 convictions, the accused pled guilty to all charges and specifications.

Sentence	Cases Imposed
bad conduct discharge.....	2
confinement	10
hard labor without confinement	2
reduction in rate	15
forfeiture of pay (\$9,836 total).....	8
other sentences.....	1

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

Sentence	Cases Imposed
bad conduct discharge.....	1
confinement	3
hard labor without confinement	2
reduction in rate	6
restriction	2
forfeiture of pay (\$1,152 total).....	2
other sentences.....	2

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

FY	Number of Convictions	Forfeitures	Confinement	Reduction in grade	BCD
87	23	10 (43%)	13 (57%)	21 (91%)	3 (13%)
86	16	10 (63%)	7 (44%)	9 (56%)	3 (19%)
85	36	24 (67%)	18 (50%)	28 (78%)	7 (19%)

SUMMARY

Sixty-three percent of the accused tried by special court-martial were tried by military judge alone. Sixty-six percent of them pled guilty to all charges and specifications. Four percent of the accused tried by special court-martial with members pled guilty to all charges and specifications. There was a 32 percent increase in total courts-martial from last fiscal year.

CHIEF COUNSEL ACTION UNDER ARTICLE 69, UCMJ

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

PERSONNEL, ORGANIZATION, AND TRAINING

The Coast Guard has 162 officers designated as law specialists (judge advocates) serving on active duty. 116 are serving in legal billets and 46 are serving in general duty billets. Eighteen Coast Guard officers are currently undergoing postgraduate studies in law, and will be certified as law specialists at the completion of their studies.

The Coast Guard has one full-time general court-martial trial judge. Senior law specialists, most serving as district legal officers, are used as military judges in special courts-martial, when required.

In June 1987, as part of a major reorganization of the Coast Guard's regional command structure, the organization of field legal offices was significantly altered. Two Districts were eliminated, two regional support commands established, and the remaining ten District staffs reduced in size. The reorganization was centered around the concept of centralizing functions into two regional "Maintenance and Logistics Commands" (MLC's) in the San Francisco area and in New York. In general, these commands provide personnel, contracting, supply, certain specified legal functions, and other administrative support to their regions. The Districts are thus free to focus on Coast Guard operational matters. The legal office reorganization resulted in two large legal staffs at the MLC's and a reduction in the remaining 10 District Legal Offices. As currently organized, the remaining District Legal Offices will provide the necessary local, primarily "operational" legal support to the District Commander while the regional legal offices in the MLC's will handle matters such as claims, procurement, real property, and other general administrative legal matters. One of the functions of the MLC's is trial defense advocacy. With this approach, government counsel will be provided by the District Office in which the accused's unit is located and the defense counsel will be provided by the MLC. The MLC's also act as "clearing houses" for such matters as pretrial confinement and provide legal advice to the two Area Commanders.

The effect of this organizational change is expected to be a more efficient military justice program. Proficiency of counsel should increase, but some minor changes may have to occur to account for the increased travel needs resulting from this organization, and the potential for reduced opportunity for some attorneys to serve as trial counsel.

PROFESSIONAL ACTIVITIES

On February 24, 1987, the Coast Guard case *U.S. v. Solorio*, which was pending last year, was argued before the Supreme Court. Lieutenant Commander Bruce, USCG argued for the defense and the Solicitor General, Mr. Charles Fried, represented the U. S. Government. Mr. Fried was assisted in case preparation by LCDR Donlon, USCG. In a six to three decision authored by Chief Justice Rehnquist, the Court expressly overruled *O'Callahan v. Parker*, 395 U.S. 258, 89 S.Ct. 1683, 23 L.Ed.2d 291 (1969) and held that the "service-connection" test was not valid and returned to the earlier rule that any crime committed by a member of the Armed Forces was triable by Court-Martial without regard to the location or nature of the offense. This was the first UCMJ case heard by the Supreme Court under the 1984 changes to the UCMJ.

The case focused widespread attention on the Coast Guard's military justice program and resulted in significant participation by Coast Guard attorneys in professional programs. This included panels on military justice, with an emphasis on the SOLORIO case. LCDR Bruce was widely recognized for his work. As the first military attorney to argue a case before the Supreme Court under the Uniform Code of Military Justice, he received the ABA's Outstanding Coast Guard Lawyer Award and participated in a panel discussion on the Solorio decision at the ABA Convention in San Francisco. Both he and LCDR Donlon received Coast Guard awards for their work. Our General Court-Martial Trial Judge participated in a moot court at Yale Law School on the Solorio case in late 1986. The Coast Guard acted as the host for this year's Homer Ferguson Conference which included discussions on the case and the Coast Guard's role in it. Included as a speaker at the conference was Admiral Paul A. Yost, Jr., the Commandant of the Coast Guard. The Coast Guard has played an increasingly active role in the process of improving the military justice system through participation in the Code Committee, the Joint Services Committee and other professional organizations. Indeed, many, including Chief Judge Everett, have referred to this as the "Year of the Coast Guard."

U. S. COAST GUARD COURT OF MILITARY REVIEW

During fiscal year 1987, the Court was composed of five appellate military judges assigned by the General Counsel, Department of Transportation in his capacity as Judge Advocate General. The Chief Judge and one other Judge are civilians. The remaining three Judges are Coast Guard commissioned officers. On 26 August 1987, a public installation ceremony was held at U.S. Coast Guard Headquarters to swear in the most recently appointed judge. Captain Kevin J. Barry,

USCG, replaced Captain Michael C. Grace, USCG, who was reassigned on 8 September 1987 to other duty. The Court is presently constituted as follows:

Chief Judge Joseph H. Baum
Judge Alfred F. Bridgman, Jr.
Judge Frederick F. Burgess, Jr.
Judge Carl Josephson
Judge Kevin J. Barry

In addition to the decisional work reflected in Appendix A, the judges on the Court have participated in a number of professional seminars and conferences during the past fiscal year. In November 1986, all the judges from the Court participated in the second Annual All Services Appellate Military Judges Conference sponsored by the Military Judges Committee of the Federal Bar Association's Judiciary Section, in cooperation with the U.S. Court of Military Appeals, and hosted by the Air Force Court of Military Review at the National Lawyers Club. In February 1987, Chief Judge Baum from the Court, along with other state and federal appellate judges from across the nation, participated in an Appellate Judges Seminar sponsored by the American Bar Association's Appellate Judges Conference at San Diego, California. Along with representative Judges from the other Courts of Military Review, the Chief Judge participated in a panel presentation in March 1987 at the Thirteenth Interservice Military Judges Seminar at the Air Force Judge Advocate General School, Maxwell Air Force Base, Alabama. In May 1987, all of the judges from the Court attended the Twelfth Annual Homer Ferguson Conference in Washington, D.C.. In September, the Chief Judge attended the Federal Bar Association's Annual Convention in Memphis, Tennessee where he was presented an award for outstanding leadership during 1986-87 as the Chairman of the FBA Military Judges Committee. He has been reappointed Chairman of that Committee and, as fiscal year 1987 ended, was actively involved in seminar and conference plans to be sponsored by the committee, including the third Annual All Services Appellate Military Judges' Conference which will be hosted in fiscal 1988 by the Coast Guard Court of Military Review.

ADDITIONAL MILITARY JUSTICE STATISTICS

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

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

APPENDIX A

Period: 1 October 86 - 30 September 87

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	11	11	0	+120%
BCD SPECIAL	24 ¹	23		+ 26%
NON-BCD SPECIAL	0	0	0	Unchanged
SUMMARY	63	62	1	+ 26%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+ 32%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES		0
NUMBER OF BAD CONDUCT DISCHARGES		6
SPECIAL COURTS-MARTIAL (SA LEVEL)		
NUMBER OF BAD CONDUCT DISCHARGES		3

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	6
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	3
FOR EXAMINATION UNDER ARTICLE 89 - GENERAL COURTS-MARTIAL	2

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

TOTAL ON HAND BEGINNING OF PERIOD		7
GENERAL COURTS-MARTIAL	4	
BCD SPECIAL COURTS-MARTIAL	3	
REFERRED FOR REVIEW		16 ²
GENERAL COURTS-MARTIAL	9	
BCD SPECIAL COURTS-MARTIAL	7	
TOTAL CASES REVIEWED/ACTED UPON		11
GENERAL COURTS-MARTIAL	4	
BCD SPECIAL COURTS-MARTIAL	7	
TOTAL PENDING AT CLOSE OF PERIOD		12 ²
GENERAL COURTS-MARTIAL	9	
BCD SPECIAL COURTS-MARTIAL	3	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-15.3%

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

NUMBER	15
PERCENTAGE	93.75%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	4/10	40%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-33%
PERCENTAGE OF TOTAL PETITIONS GRANTED		0
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-100%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	0/10	0
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-100%

¹ Military judges are assigned to all cases referred to special courts-martial. The Coast Guard, therefore, considers all special courts-martial potential BCD cases.

² Included within this total are 14 cases referred to the Court for Article 66, UCMJ review, one for Article 69, UCMJ review, and one extraordinary writ received for action. No Article 62, UCMJ Government Appeals were received.

³ Included within this total are ten Article 66, UCMJ, one Article 69, UCMJ, and one extraordinary writ for review

APPENDIX A—CONTINUED

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		4
RECEIVED		5
DISPOSED OF		8
GRANTED	4	
DENIED	4 ⁴	
NO JURISDICTION	0	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		1
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL		5
SPECIAL COURTS-MARTIAL		15
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		6
SPECIAL COURTS-MARTIAL		9
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	1	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	37,871	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	1,698	
RATE PER 1,000	44.8	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-2.4%	

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⁴ One of the denials was for failure to show cause for not filing within the 2-year time limit.