

**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, 1991 to September 30, 1992**

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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, 1991 to September 30, 1992

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JOINT ANNUAL REPORT OF THE CODE COMMITTEE PURSUANT TO THE UNIFORM CODE OF MILITARY JUSTICE

October 1, 1991 to September 30, 1992

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; and Professors David A. Schlueter and Stephen A. Saltzburg, Public Members appointed by the Secretary of Defense, submit their annual report on the operation of the Uniform Code of Military Justice, pursuant to Article 146, Uniform Code of Military Justice, 10 USC § 946.

The Code Committee met on two separate occasions during fiscal year 1992 and both meetings were open to the public. The first meeting was held on December 6, 1991. During the meeting the Chairman of the Joint-Service Committee on Military Justice briefed the Code Committee on proposed amendments to the Uniform Code of Military Justice. These proposals included an amendment to Article 3 to close a gap in court-martial jurisdiction created by decisional law; an amendment to Article 32 to allow an investigating officer to investigate uncharged offenses which may be revealed during the course of the investigation; an amendment to Article 47 to remove the punishment limitations for refusal of a witness to appear during a military proceeding; an amendment to Article 54 to require a verbatim record of trial only for cases reviewed pursuant to Article 66; an amendment to Article 57(a) to make forfeitures and reductions effective when adjudged; an amendment to Article 57(e) to permit deferment of an accused's sentence when such accused is in civilian confinement; an amendment to Article 63 to modify the maximum sentence imposable during a rehearing; an amendment to Article 111(1) to add a specific provision concerning the drunken operation of a vehicle or aircraft; an amendment to Article 111(2) to provide a standard for a blood alcohol test to constitute the offense of driving while intoxicated; and an amendment to Article 120 to remove the spousal exemption and gender terminology for the offenses of rape and carnal knowledge. This briefing also covered legislative proposals that had been finalized by the Joint-Service Committee but had not as yet been forwarded to Congress. These included an amendment to Article 1 to add definitions for classified information and national security; an amendment to Article 62 to permit interlocutory appeals by the United States from

adverse rulings relating to classified information; an amendment to Article 57(a) to provide for deferment of a sentence to confinement when an accused obtains a reversal at the Court of Military Review level and the accused's case is certified by the Judge Advocate General for review by the Court of Military Appeals; and an amendment to Article 95 to define a new offense of "flight from apprehension."

Members of the Code Committee also discussed a proposal that its recommendations be submitted directly to Congress without preliminary review by the Armed Services and the Department of Defense. Discussion was also conducted as to the desirability of changing the names of the United States Courts of Military Review and the United States Court of Military Appeals. The individual Services also reported on the trends in the number of courts-martial in their respective services. Additionally, the Code Committee adopted a proposal to develop a mailing list for persons and organizations having an interest in attending future meetings of the Code Committee.

The second meeting of the Code Committee was conducted on May 1, 1992, in the Marvin Center of the George Washington University Law Center, Washington, D.C. The Chief Judge of the Court of Military Appeals noted that this was an historic event as it was the first Code Committee meeting held outside the Courthouse of the United States Court of Military Appeals and that the scheduling of the meeting immediately following the Judicial Conference of the United States Court of Military Appeals was to provide a better opportunity for interested members of the public to attend. The Chief Judge also noted that the Court's caseload appeared to be in better shape than that of any other Federal court. The Code Committee then discussed trends in disciplinary proceedings in the various Armed Services and the desirability of uniformity of sentencing. In addition, the Chairman of the Joint-Service Committee again briefed the Code Committee on the pendency of four proposals to amend the Uniform Code of Military Justice which had been discussed during the Code Committee's earlier meeting relating to amendments to Articles 1, 62, 57(a), and 95. This briefing also included a discussion of various proposals to the Manual for Courts-Martial relating to provisions concerning the reinstatement of a charge which had earlier been withdrawn pursuant to a pretrial agreement; a limitation on opinion testimony concerning an accused's rehabilitation potential; the evidentiary use of drug transactions as an aggravating factor in a premeditated murder case; and a provision clarifying the relationship between flight from apprehension and resisting apprehension as crimes under the Uniform Code of Military Justice. Additionally, during this meeting various members of the public accepted an invitation to address the Code Committee and gave their views concerning matters relating to the administration of military justice.

Separate reports of the United States Court of Military Appeals and the individual Armed Services address further items of special in-

terest to the Committees on Armed Services of the United States Senate and House of Representatives, as well as the Secretaries of Defense, Transportation, Army, Navy, and Air Force.

EUGENE R. SULLIVAN

Chief Judge

WALTER T. COX, III

Associate Judge

SUSAN J. CRAWFORD

Associate Judge

H. F. "SPARKY" GIERKE

Associate Judge

ROBERT E. WISS

Associate Judge

Major General JOHN L. FUGH, USA

The Judge Advocate General of the Army

Rear Admiral WILLIAM L. SCHACHTE, Jr., USN

The Acting Judge Advocate General of the Navy

Major General DAVID C. MOREHOUSE, USAF

The Judge Advocate General of the Air Force

Rear Admiral PAUL E. VERSAW, USCG

Chief Counsel, U.S. Coast Guard

Brigadier General GERALD L. MILLER, USMC

Director, Judge Advocate Division,

Headquarters, U.S. Marine Corps

Professor DAVID A. SCHLUETER, Public Member

Professor STEPHEN A. SALTZBURG, Public Member

REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS October 1, 1991 to September 30, 1992

The Judges of the United States Court of Military Appeals submit their fiscal year 1992 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 146, Uniform Code of Military Justice, 10 USC § 946.

THE BUSINESS OF THE COURT

The United States Court of Military Appeals ended fiscal year 1992 with a full complement of five judges as authorized by the Defense Authorization Act of 1990, Public Law Number 101-189, 103 Stat. 1570 (1989). Associate Judge Susan J. Crawford was sworn in on November 19, 1991, to succeed Senior Judge Robinson O. Everett. Associate Judge H.F. "Sparky" Gierke was sworn in on November 20, 1991, and Associate Judge Robert E. Wiss was sworn in on January 2, 1992. Despite this significant expansion in the membership of the Court, a concerted effort was made by both the judges and staff of the Court to maintain a steady workflow of cases within the Court throughout this fiscal year. As a result, the number of cases carried over on the Court's Petition Docket at the end of fiscal year 1992 increased by only 114 cases over the number of cases pending at the end of fiscal year 1991. (See Appendix A.) Furthermore, the number of cases carried over for plenary consideration on the Master Docket at the end of fiscal year 1992 increased by only 26 cases. (See Appendix B.) By comparison with the prior year's work, the Court heard 12 more oral arguments and issued 4 more opinions during fiscal year 1992. (See Appendices C and D.)¹

Although it was expected that the case processing times would increase significantly as a result of adding two more judges to the Court, the average number of days between the filing of a petition with the Court and the grant of such petition increased by only 18 days over the same average time period for fiscal year 1991. (See Appendix E.)

¹ Although not part of the business of the Court, it is noted that during fiscal year 1992 the Court was notified that petitions for writ of certiorari were filed with the Supreme Court of the United States in 14 Master Docket cases in which the Court took final action.

By comparison with the prior year's processing time, the average period from the grant of a petition to oral argument increased by only 8 days and the average period from oral argument to final decision increased by only 10 days. (See Appendices F and G.) The overall average processing time between the filing of a petition and the final decision on the Master Docket increased by only 23 days to 347 days and the overall average processing time for cases finally disposed of on the Petition Docket increased by only 12 days to an average of 69 days. (See Appendix H.) In addition, the average processing period from filing to final decision in all cases filed with the Court — including certified cases and extraordinary relief matters — increased by only 26 days to an overall average case processing time of 108 days during this fiscal year. (See Appendix I.) Finally, the Court experienced a dramatic decrease of 29% in the number of petitions for grant of review filed with the Court during fiscal year 1992. (See Appendix J.)

Pursuant to Article 142(f), Uniform Code of Military Justice, 10 USC § 942(f), the Chief Justice of the United States designated Judge Stanley Sporkin of the United States District Court for the District of Columbia and Circuit Judge David B. Sentelle of the United States Court of Appeals for the District of Columbia Circuit to sit in place of judges of the United States Court of Military Appeals during fiscal year 1992. In addition, pursuant to Article 142(e)(2), UCMJ, 10 USC § 942 (e) (2), Senior Judge Robinson O. Everett was recalled by the Chief Judge to sit on several cases during this same period.

During fiscal year 1992 the Court admitted 448 attorneys to practice before its Bar, bringing the cumulative total of admissions before the Bar of the Court to 28,705 attorneys.

PUBLIC AWARENESS PROJECT (Project Outreach)

Consistent with its practice established in 1988, the Court scheduled several special sessions and heard oral arguments in selected cases outside its permanent courthouse in Washington, D.C., as part of its "Project Outreach", a public awareness project which demonstrates not only the operation of a Federal appellate court but also the effectiveness and quality of the criminal justice system of the Armed Services of the United States. Appellate hearings were conducted, without objection of the parties, at the United States Naval Academy, Annapolis, Maryland; the United States Military Academy, West Point, New York; the United States District Court Courthouse, Dayton, Ohio; and the United States Air Force Academy, Colorado Springs, Colorado. These hearings continue to promote an increased public awareness of the fundamental fairness of the military justice system and the role of the Court in the overall administration of military justice throughout the world. The Court hopes that the thousands of students, servicepersons, military and civilian attorneys, and

other members of the American public who attend these hearings will realize that the United States is a democracy that can maintain an armed force instilled with the appropriate discipline to make it a world power and yet afford each member of that armed force a fair and impartial justice system which provides the full protection of the Constitution of the United States and federal law to all its members.

JUDICIAL VISITATIONS

During fiscal year 1992, the judges of the Court, consistent with past practice and their ethical responsibility to improve the military justice system, participated in professional training programs for military and civilian lawyers, spoke to professional groups of judges and lawyers, and visited staff judge advocates and commanders at various military installations throughout the world.

VISIT OF JUSTICE SANDRA DAY O'CONNOR

On February 18, 1992, the Honorable Sandra Day O'Connor, Associate Justice of the Supreme Court of the United States, visited the Court and met with the judges and staff of the Court concerning matters relating to the judicial administration of the military justice system under the Uniform Code of Military Justice.

THE JUDICIAL CONFERENCE

On April 30 and May 1, 1992, the Court held its annual Judicial Conference at the George Washington University Marvin Center, with the cooperation of the Federal Bar Association, George Washington University, the Military Law Institute, and the Judge Advocates Association. The Judicial Conference was certified for credit to meet the continuing legal education requirements of various state bars throughout the United States and was designed to assist both military and civilian practitioners in maintaining those professional skills necessary to practice before trial and appellate courts. This year's speakers included the Honorable William C. Bryson, Deputy Solicitor General of the United States; the Honorable Charles E. Moylan, Associate Judge of the Maryland Court of Special Appeals; the Honorable Jean H. Toal, Associate Justice of the Supreme Court of South Carolina; Professor Jill J. Ramsfield, Georgetown University Law School; Colonel Richard E. Ouellette, USMC, Military Judge; Doctor Jonathan Lurie, Historian to the United States Court of Military Appeals and Professor of History at Rutgers University; and the Honorable Royce C. Lamberth, District Judge, United States District Court, District of Columbia. In addition, Captain James A. Freyer, USN, Judge, United States Navy-Marine Corps Court of Military Review, moderated a panel discussion on "The [Un]civil Practice of Military Justice" with panelists Kevin J. Barry, Esq., Retired Judge, United States Coast

Guard Court of Military Review; Lieutenant Colonel Margaret N. Guerrero, USMC, Deputy Chief Trial Judge; Joseph W. Kastl, Esq., Retired Judge, United States Air Force Court of Military Review; and Colonel Steven M. Werner, USA, Judge, United States Army Court of Military Review. The Honorable Joseph H. Baum, Chief Judge, United States Coast Guard Court of Military Review, chaired a seminar on "Appellate Court Watch — Issues, Trends, and Interaction among the United States Court of Military Appeals and the Courts of Military Review" with participation by Lieutenant Colonel Thomas J. LeClair, USA, Chief, Criminal Law Division, The Army Judge Advocate General's School; Major Deborah A. Baker, USAF, Instructor, Military Justice Division, United States Air Force Judge Advocate General's School; and Lieutenant Commander Raul Pedrozo, USN, Head, Criminal Law Division, Naval Justice School.

A panel discussion moderated by Colonel Dayton M. Cramer, USA, Chief, United States Army Government Appellate Division, addressed "Common (and Not-So-Common) Ethical Problems Facing Appellate Advocates" with panelists Captain Carlos L. McDade, USAF, Appellate Government Counsel; Captain David D. Jividen, USAF, Appellate Defense Counsel; Lieutenant Commander Charles J. Bennardini, USCG, Senior Government Appellate Counsel; Lieutenant Commander G. Arthur Robbins, USCG, Appellate Defense Counsel; Captain Robin N. Swope, USA, Defense Appellate Counsel; Captain Samuel J. Smith, Jr., USA, Government Appellate Counsel; Major Richard T. McNeil, USMC, Appellate Defense Counsel; and Lieutenant Commander Lawrence W. Muschamp, USN, Appellate Government Counsel. Another panel discussion dealt with an "Update on the Military Rules of Evidence" with panelists Professor Stephen A. Saltzburg, National Law Center, George Washington University; Colonel Lee D. Schinasi, USA, Judge Advocate General's Corps, and Professor David A. Schlueter, Saint Mary's University Law School.

The Judicial Conference opened with welcoming remarks by the Honorable Eugene R. Sullivan, Chief Judge, United States Court of Military Appeals, on behalf of the Court; Colonel Walter L. Lewis, USAF (Ret.), on behalf of the Military Law Institute; Dean John Jenkins, Associate Dean for External Affairs, on behalf of the National Law Center, George Washington University; Alfred B. Belcuore, Esquire, on behalf of the Federal Bar Association; and Captain Walter J. McLeod, III, USNR, on behalf of the Judge Advocates Association. In addition, a reception was held which included a number of distinguished guests, including the Honorable Edwin D. Williamson, The Legal Advisor, Department of State, and the Honorable Richard S. Arnold, Chief Judge, United States Court of Appeals for the Eighth Circuit.

The Judicial Conference was attended by 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.

SIGNIFICANT DECISIONS AFFECTING THE ADMINISTRATION OF MILITARY JUSTICE WITHIN THE ARMED FORCES ²

Challenges

In *United States v. Berry*, 34 MJ 83 (CMA 1992), the Court held under RCM 912(f)(1)(N), Manual for Courts-Martial, United States, 1984, that a military judge erred by failing to sustain a challenge for cause against a court member in a larceny court-martial case. The Court observed that the court member in question was a former Naval Investigative Service undercover agent who had been recently involved in activities to combat drug use, which was one of the crimes charged in the court-martial. Additionally, the court member was assigned as a command duty investigator at the sites of the accused's alleged larcenies and knew one of the Government's critical witnesses. The Court held that while such circumstances would not individually be disqualifying, the combination of such circumstances raised a substantial question as to the impartiality of the court member. Subsequently, in *United States v. Brown*, 34 MJ 105 (CMA 1992), the Court held that an accused being prosecuted for sodomy was not entitled to exclusion for cause of a court member whose young son had been the victim of a homosexual assault. The Court noted that the court member forthrightly acknowledged his son's status as a sexual assault victim; that he discussed the pertinent circumstances of his son's tragic incident; and that he affirmed his ability to be impartial in the accused's case. The Court further emphasized that the military judge weighed and accepted the court member's affirmation of neutrality after a careful evaluation of the member's demeanor.

Military Judges' Tenure

Rejecting an argument that military judges must be appointed for a fixed term of office, the Court held in *United States v. Graf*, 35 MJ 450 (CMA 1992), that the Due Process Clause of the Fifth Amendment applies to servicemembers at courts-martial; that a fixed term of office is one component of judicial independence; but that it was merely one of several components and that, within the military justice system, it was not a constitutionally mandated component. After discussing the numerous provisions established by Congress to ensure judicial independence of military trial and appellate judges under the Uniform Code of Military Justice, the Court further held that the

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.

military justice system does not require fixed terms of office for trial or appellate military judges and that existing protections were adequate to comport with constitutional due process of law.

Search and Seizure

The question whether evidence was obtained during a legal search and seizure was addressed in several cases during the 1992 Term of Court. In *United States v. Alexander*, 34 MJ 121 (CMA 1992), the Court held that the use of a drug detection dog in a common area outside a servicemember's room was not a search for Fourth Amendment purposes since the detection dog alert occurred in a public place outside the accused's dormitory room. Additionally, the Court in *Alexander* held that the commander had probable cause to order a search of the accused's entire dormitory room after the dog alerted since the commander had previously been provided information to reflect that the drug detection dog was reliable and the commander had previously received a tip from local civilian police agents concerning the purchase of drugs by members of his command. Relying on the doctrine of inevitable discovery the Court held in *United States v. Allen*, 34 MJ 228 (CMA 1992), that the Government had shown by a preponderance of the evidence that, even if the accused had been illegally seized, the challenged evidence which consisted of the accused's fingerprints and palm print would have been inevitably discovered. Relying on the good faith exception to the exclusionary rule the Court held in *United States v. Lopez*, 35 MJ 35 (CMA 1992), that the exclusionary rule should not be invoked to exclude evidence of ration cards discovered during a search authorization issued by the accused's commanding officer since the latter was an impartial authorizing official; there was a substantial basis for finding probable cause; and the authorization was reasonably relied upon by the executing officials.

Supervisory Power

The Court rejected a defense argument in *United States v. Smith*, 34 MJ 247 (CMA 1992), that it should exercise its supervisory power and mandate the appointment of appellate defense counsel in every case reviewed by a Court of Military Review. The Court held that such a rule would constitute an enlargement of Article 70, Uniform Code of Military Justice, 10 USC § 870, and would involve the exercise of a legislative power which the Court did not purport to have.

Expert Witnesses

Relying on Military Rule of Evidence 702, the Court held in *United States v. Meeks*, 35 MJ 64 (CMA 1992), that a military judge did not abuse his discretion in allowing an FBI agent to testify as an expert witness on homicide crime-scene analysis. The Court observed that under the circumstances the testimony related to matters that were

not likely to be within the knowledge of an average court member and held that while the agent's testimony supported the prosecution's case, the witness did not directly state an opinion concerning the accused's guilt but only offered his opinion concerning the general characteristics of the perpetrator of the crime which were derived from the evidence at the crime scene. However, in *United States v. King*, 35 MJ 337 (CMA 1992), the Court held in reviewing a child sex abuse case that expert testimony was improperly allowed where the witness testified that a five-year-old child victim was not capable of fabricating testimony about various sexual matters since such testimony effectively constituted an opinion as to the truthfulness of the alleged victim.

Punishment

Noting that the vessel to which a Navy accused was assigned was undergoing a long-term overhaul, the Court held in *United States v. Yatchak*, 35 MJ 379 (CMA 1992), that the imposed punishment of three days in confinement on bread and water was not authorized as the accused was not attached to or embarked on a vessel, the accused's pretrial confinement was in a shore facility, and the court-martial took place ashore.

Confessions and Admissions

Holding that the accused's incriminating statements to his First Sergeant were spontaneous, the Court ruled in *United States v. Vitale*, 34 MJ 210 (CMA 1992), that such statements were not protected by the provisions of Article 31, UCMJ, 10 USC § 831. Concerning the degree of corroboration required to establish the admissibility of a confession under Military Rule of Evidence 304, the Court held in *United States v. Maio*, 34 MJ 215 (CMA 1992), that such corroboration must raise only an inference of the truth as to the essential facts admitted.

In *United States v. Kelliher*, 35 MJ 320 (CMA 1992), the Court held that a regulation which required servicemembers to report contacts with citizens of communist controlled or hostile countries did not violate the Fifth Amendment or Article 31, UCMJ, 10 USC § 831, as the regulation was neutral and it did not require the report of any criminal activities.

In *United States v. Lonetree*, 35 MJ 396 (CMA 1992), the Court addressed several issues relating to the accused's pretrial statement. Therein the Court held that a confession by the accused to United States intelligence agents was voluntary and admissible at his court-martial where the agents had displayed none of the indicia of law enforcement officials and were not portrayed as superiors of the accused, although such agents allegedly induced the confession by a false promise of confidentiality. Additionally, the Court held that since

the agents were involved in damage assessments concerning the accused's involvement with Soviet agents, these inquiries did not merge with a separate investigation by the Naval Investigative Service and, therefore, the civilian agents were not required to give the accused warnings under the provisions of Article 31, UCMJ, 10 USC § 831. Furthermore, stressing the safety of a witness involved, the Court held in *Lonetree* that the accused's Sixth Amendment right was not violated by refusing to grant discovery to the accused of the identity of the testifying agent where the accused did have sufficient information to place the witness in his proper setting.

Appellate Review

In *United States v. Gunter*, 34 MJ 181 (CMA 1992), the Court held that *United States v. Grostefon*, 12 MJ 431 (CMA 1982), required the Court of Military Review to consider handwritten correspondence submitted by an accused for consideration by that court. However, the Court further held that the Court of Military Review properly ordered the accused's appellate defense counsel to provide the court with a detailed summary of the matters raised in the handwritten submission.

In *United States v. Quigley*, 35 MJ 345 (CMA 1992), the Court examined whether the minimum standards set forth in *United States v. Grostefon*, *supra*, to provide for appellate consideration of post-trial issues specified by servicemembers convicted by court-martial adequately safeguarded their right to appellate counsel. In that case the Court held that the choice as to whether to call the attention of an appellate court to an issue through a *Grostefon* footnote or to affirmatively advocate an issue by briefing it rests with counsel. However, the Court further held that such choice is subject to scrutiny under the circumstances of each individual case.

In *United States v. Stinson*, 34 MJ 303 (CMA 1992), the Court held that the accused had not been prejudiced by the failure of his appellate defense counsel to present oral argument before the United States Army Court of Military Review.

Regarding the obligation of the Court of Military Review to consider all issues presented to it the Court held in *United States v. Clifton*, 35 MJ 79 (CMA 1992), that the Court of Military Review was not specifically required to address in writing all of the assignments of error where its opinion noted that the judges had considered the assignments of error and had found them to be without merit.

Concerning the standard of appellate review for a claim for new trial on the basis of lack of mental responsibility, the Court held in *United States v. Cosner*, 35 MJ 278 (CMA 1992), that the Court of Military Review properly rejected such claim where the appellate court was convinced beyond a reasonable doubt that a reasonable trier of fact, if presented with all available evidence, old and new, would not find by clear and convincing evidence that appellant lacked mental

responsibility at the times of his offenses. The Court distinguished an earlier case concerning this matter on the basis that the adoption of Article 50a, UCMJ, 10 USC § 850a, had made the lack of mental responsibility an affirmative defense that must be raised by an accused and proven by him by clear and convincing evidence.

Uncharged Misconduct

Citing Military Rules of Evidence 403 and 404(b), the Court held in *United States v. Metz*, 34 MJ 349 (CMA 1992), that evidence indicating the accused had lifted his wife up by her nose was properly admitted in a case involving his prosecution for the premeditated murder of his wife since it was relevant to show the identity of the murderer and to show the requisite intent and premeditation where the wife's body was found with noticeable nasal trauma. The Court observed that such evidence was directly related to the matter of intent and premeditation. Subsequently, in *United States v. Cousins*, 35 MJ 70 (CMA 1992), the Court held that evidence of an accused's prior uncharged drug use was improperly admitted into evidence where he was being charged with using cocaine and the uncharged misconduct was not offered for any legitimate purpose but tended to show that the accused was an habitual drug user likely to use cocaine.

Unavailability of Witnesses

In *United States v. Clark*, 35 MJ 98 (CMA 1992), the Court held that prior to the accused's court-martial on charges of committing indecent acts with his minor stepdaughter, the accused's own affirmative refusal to cooperate with the effort to locate his wife and stepdaughter constructively waived any objection to the military judge's ruling that the stepdaughter was unavailable for purposes of the hearsay rule. Therefore, the Court held that the military judge properly admitted into evidence the stepdaughter's taped pretrial statement to her babysitter as such statement reflected particularized guarantees of trustworthiness and was admissible under the residual exception to the hearsay rule set forth in Military Rule of Evidence 804(b)(5). Citing Military Rule of Evidence 804(b), the Court held in *United States v. Ortiz*, 35 MJ 391 (CMA 1992), that the unavailability of a witness had not been properly demonstrated where she failed to appear at trial despite the service of a subpoena but the military judge issued no warrant of attachment and did not grant a reasonable continuance to locate and compel her attendance. Thus, the Court held the admission of her former testimony violated the accused's right to the attendance of the witness in question.

Other Cases of Interest

In *United States v. Frazier*, 34 MJ 194 (CMA 1992), the Court held that a commissioned officer was properly convicted of conduct unbe-

coming an officer under Article 133, UCMJ, 10 USC § 933, where he was involved in a open and intimate relationship with the wife of an enlisted man. The Court emphasized in *Frazier* that the critical and important responsibility of a military officer is to inspire the trust and respect of enlisted soldiers and that the military family plays a valuable role in supporting servicemembers in the performance of their duties.

Commenting on the objective test set forth in Rule for Courts-Martial 916(g) for the inducement element of entrapment, the Court held in *United States v. Whittle*, 34 MJ 206 (CMA 1992), that the objective test set forth therein should not be taken too literally since the mere existence of a government contact was not sufficient to establish persuasion in the mind of an innocent individual. The Court further held in *Whittle* that the prosecution had established beyond a reasonable doubt that the accused was predisposed to commit the offense in question and that, therefore, he was not entrapped.

Addressing the accused's right to a speedy trial the Court held in *United States v. Vogan*, 35 MJ 32 (CMA 1992), that the accused's right under the Sixth Amendment did not apply where he was already in prison when he committed the offenses at issue. The Court further held that Rule for Courts-Martial 707(a)(2) did not apply to the administrative segregation of a person already in confinement.

Interpreting the increased maximum punishment provisions of paragraph 47e of the Manual for Courts-Martial as they relate to use of a "firearm" in a robbery prosecution, the Court held in *United States v. Henry*, 35 MJ 136 (CMA 1992), that the punishment enhancement provision based on use of a firearm in a robbery was applicable where the weapon used by the accused was capable of being made operable simply by replacing a missing locking lug.

In *United States v. Smith*, 35 MJ 138 (CMA 1992), the Court held that a military judge did not err when he forced the trial defense counsel to testify against her client and that he properly granted counsel's request to withdraw from representing the accused. The Court observed that counsel's testimony reflected that the accused gave a false document to his detailed defense counsel, which the accused represented as a genuine document, with the intent that the document and its genuineness would be disclosed to trial counsel and presented as evidence in his court-martial. The Court held such actions fell within the exception to the attorney-client privilege and that it was proper to direct the testimony of the defense counsel since the accused duped his counsel into aiding him in an attempt to deceive the court-martial. Finally, in *United States v. McGuinness*, 35 MJ 149 (CMA 1992), the Court held that the preemption doctrine of paragraph 60c(5)(a), Part IV, Manual for Courts-Martial, did not prohibit the Government from prosecuting the accused for violation of the Federal Espionage Act, 18 USC § 793(e), under Clause 3 of Article 134, UCMJ, 10 USC § 934. The Court ruled that the Manual provi-

sion did not create a new preemption doctrine but merely codified existing law and, therefore, the fact that the accused's conduct could also be charged as a violation of Article 92 did not preclude the prosecution under Article 134. The Court noted that it could find nothing in the legislative or history of Article 92 or of Article 134 indicating that Congress intended that general orders would preempt offenses applicable to the military by Clause 3 of Article 134.

EUGENE R. SULLIVAN

Chief Judge

WALTER T. COX, III

Associate Judge

SUSAN J. CRAWFORD

Associate Judge

H. F. "SPARKY" GIERKE

Associate Judge

ROBERT E. WISS

Associate Judge

**USCMA STATISTICAL REPORT
Fiscal Year 1992**

CUMULATIVE SUMMARY

CUMULATIVE PENDING OCTOBER 1, 1991	
Master Docket	69
Petition Docket	212
Miscellaneous Docket	<u>3</u>
Total	284
 CUMULATIVE FILINGS	
Master Docket	212
Petition Docket	1291
Miscellaneous Docket	<u>39</u>
Total	1542
 CUMULATIVE TERMINATIONS	
Master Docket	162
Petition Docket	1177
Miscellaneous Docket	<u>41</u>
Total	1380
 CUMULATIVE PENDING OCTOBER 1, 1992	
Master Docket	119
Petition Docket	326
Miscellaneous Docket	<u>1</u>
Total	446

OPINION SUMMARY

CATEGORY	SIGNED	PER CURIAM	MEM/ ORDER	TOTAL
Master Docket	120	5	37	162
Petition Docket	0	1	1176	1177
Miscellaneous Docket	1	2	38	<u>41</u>
Total	121	8	1251	1380

FILINGS (MASTER DOCKET)

Remanded from Supreme Court	0
Returned from Court of Military Review ...	2
Mandatory appeals filed	1
Certificates filed	25
Reconsideration granted	2
Petitions granted (from Petition Docket) ...	<u>182</u>
Total	212

TERMINATIONS (MASTER DOCKET)

Findings & sentence affirmed	113		
Reversed in whole or in part	46	Signed	120
Granted petitions vacated	0	Per curiam	5
Other disposition directed	<u>3</u>	Mem/order	<u>37</u>
Total	162	Total	162

PENDING (MASTER DOCKET)

Awaiting briefs	78
Awaiting oral argument	41
Awaiting final action	<u>0</u>
Total	119

FILINGS (PETITION DOCKET)

Petitions for grant of review filed	1283
Petitions for new trial filed	3
Cross-petitions for grant filed	2
Petitions for reconsideration granted	2
Returned from Court of Military Review ...	<u>1</u>
Total	1291

TERMINATIONS (PETITION DOCKET)

Petitions for grant dismissed	5		
Petitions for grant denied	965	Signed	0
Petitions for grant granted	182	Per curiam	1
Petitions for grant remanded	16	Mem/order	<u>1176</u>
Petitions for grant withdrawn	6	Total	1177
Other	<u>3</u>		
Total	1177	Total	1177

PENDING (PETITION DOCKET)

Awaiting briefs	259
Awaiting Central Legal Staff review	67
Awaiting final action	<u>0</u>
Total	326

FILINGS (MISCELLANEOUS DOCKET)

Writs of error coram nobis sought	2
Writs of habeas corpus sought	4
Writs of mandamus/prohibition sought	14
Other extraordinary relief sought	4
Writ appeals sought	<u>15</u>
Total	39

TERMINATIONS (MISCELLANEOUS DOCKET)

Petitions withdrawn	3		
Petitions remanded	0		
Petitions granted	5		
Petitions denied	33	Signed	1
Petitions dismissed	0	Per curiam	2
Other	0	Mem/order	38
Total	41	Total	41

PENDING (MISCELLANEOUS DOCKET)

Awaiting briefs	1
Awaiting Writs Counsel review	0
Awaiting final action	0
Total	1

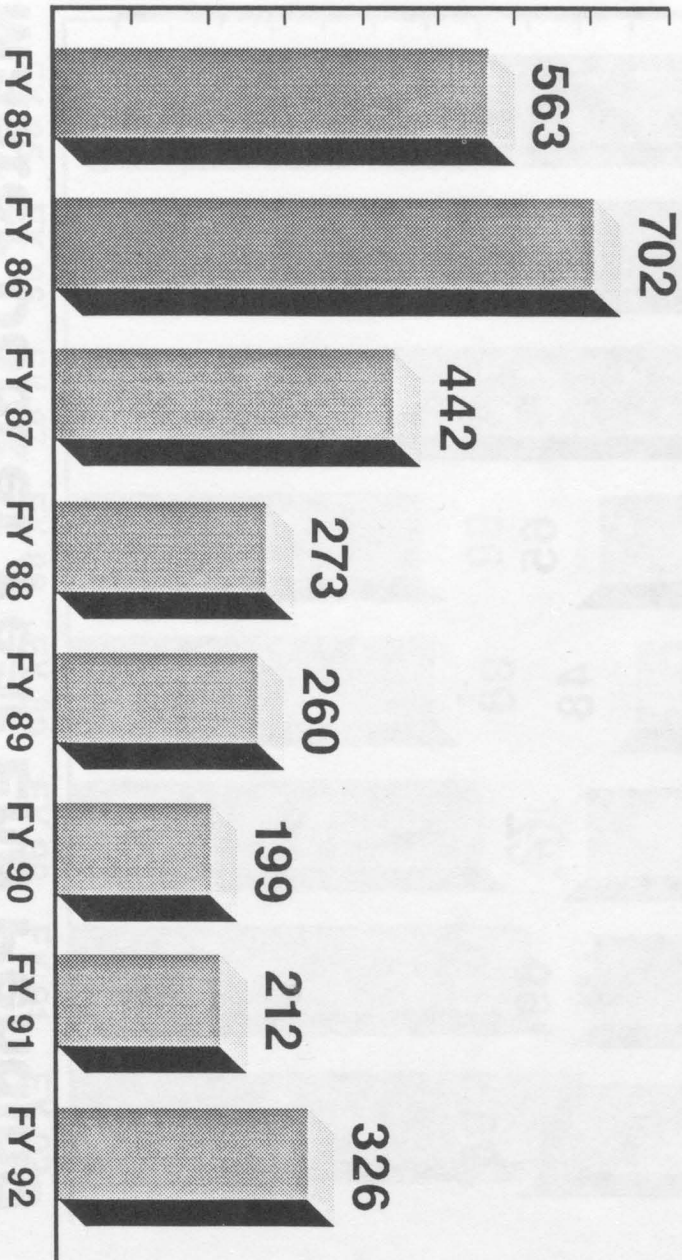
RECONSIDERATIONS & REHEARINGS

CATEGORY	BEGIN PEND- ING	FILINGS	END PEND- ING	DISPOSITIONS		
				Granted	Denied	Total
Master Docket	0	6	0	2	4	6
Petition Docket	0	9	0	2	7	9
Misc. Docket	0	1	0	0	1	1
Total	0	16	0	4	12	16

MOTIONS ACTIVITY

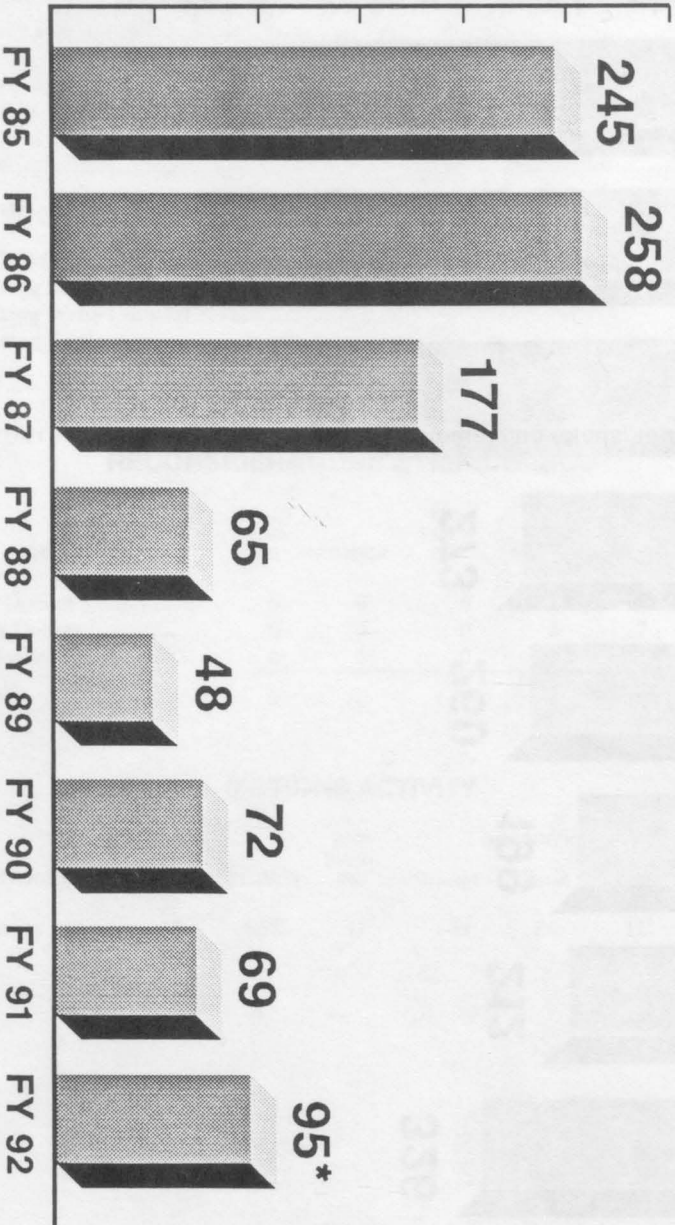
CATEGORY	BEGIN PEND- ING	FILINGS	END PEND- ING	DISPOSITIONS			
				Granted	Denied	Other	Total
All motions	15	657	11	564	86	11	661

Petition Docket Year End Pending



APPENDIX A

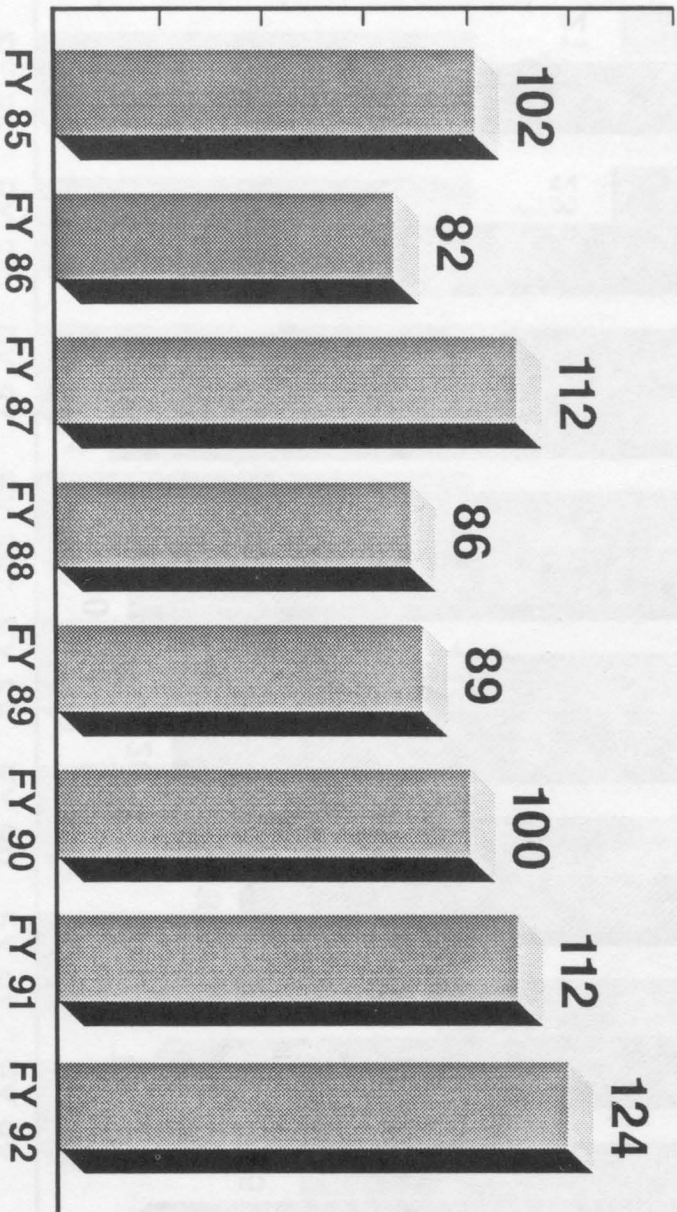
Master Docket Year End Pending



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

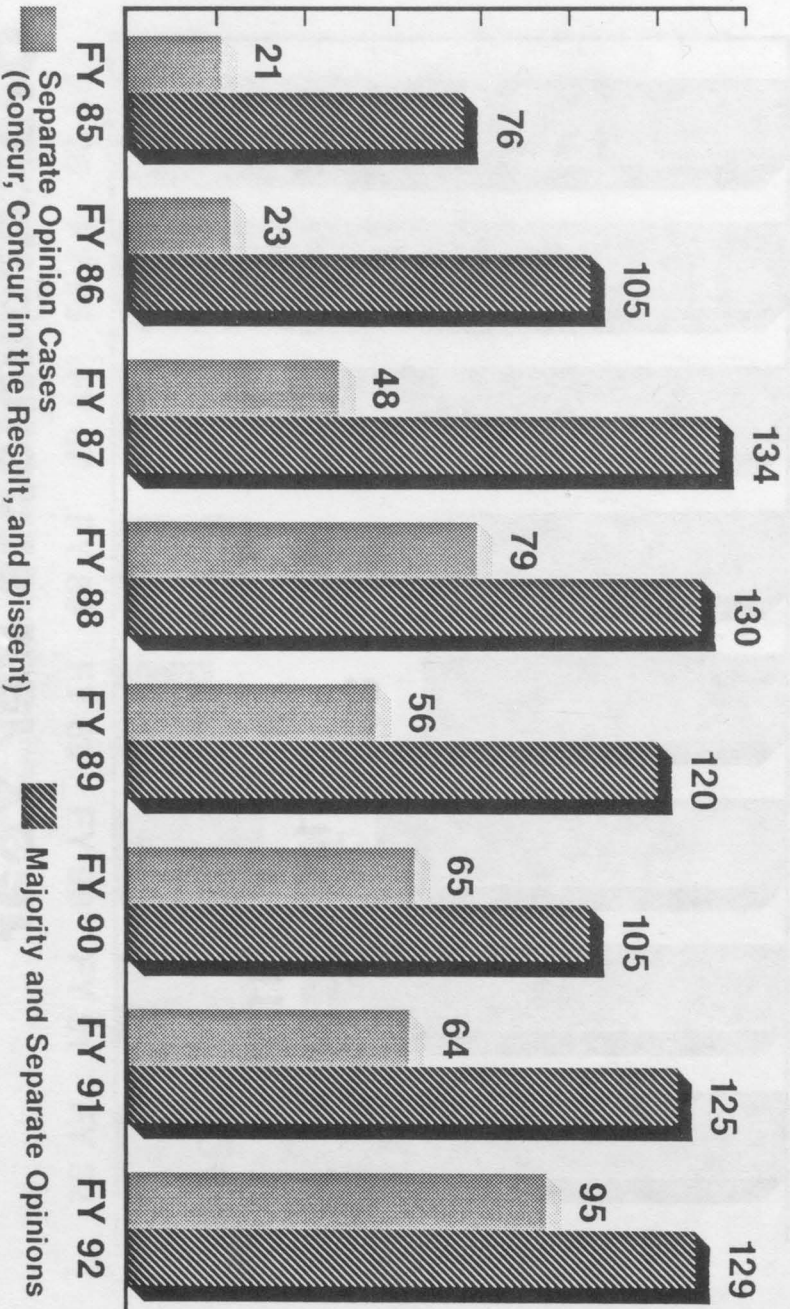
APPENDIX B

Oral Arguments Per Year



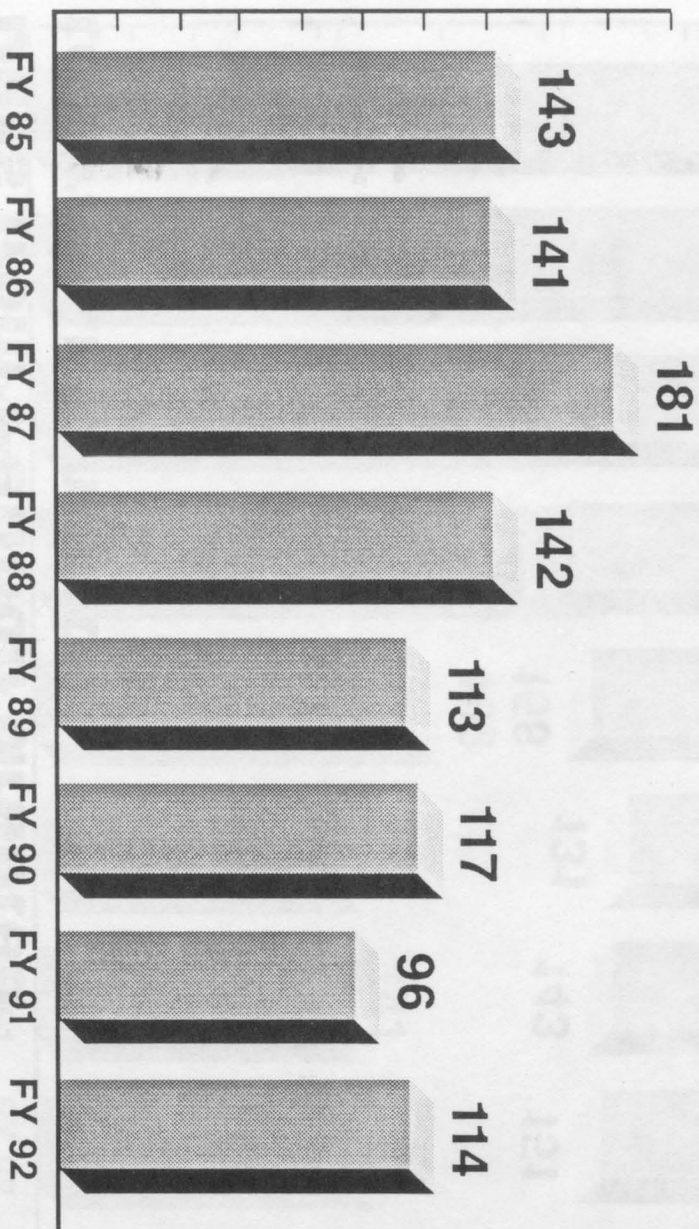
APPENDIX C

Total Opinions Per Year



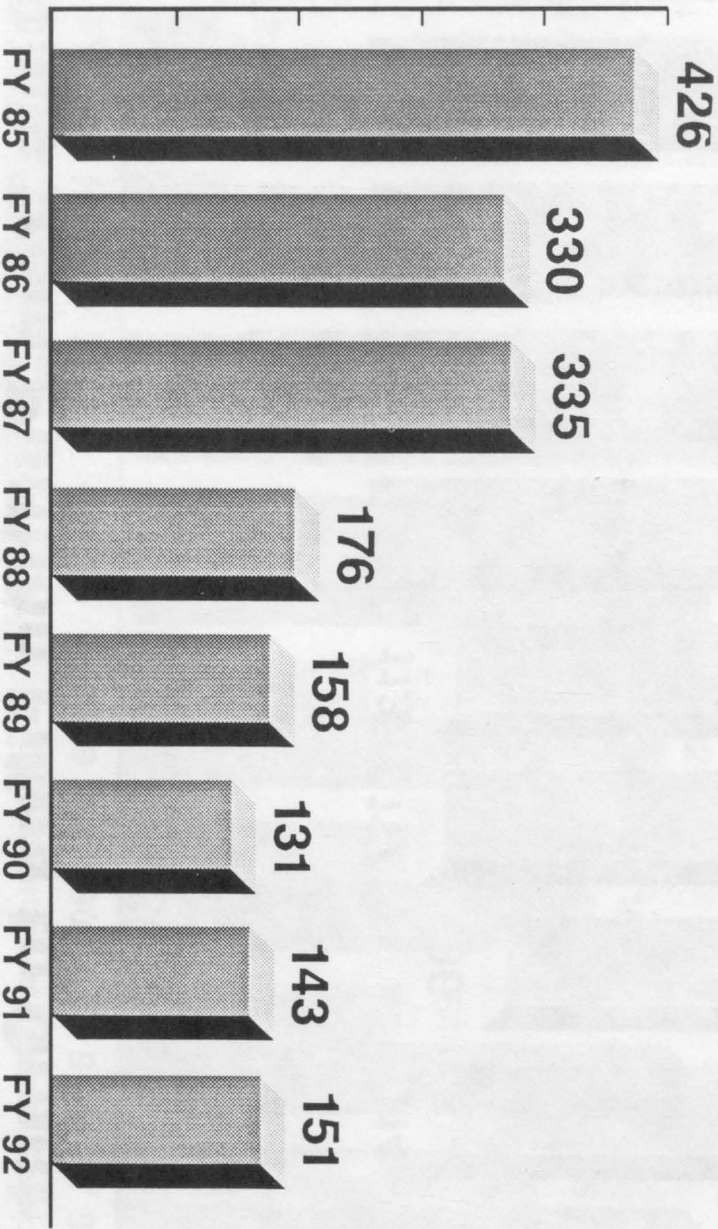
APPENDIX D

Days from Petition Filing to Grant



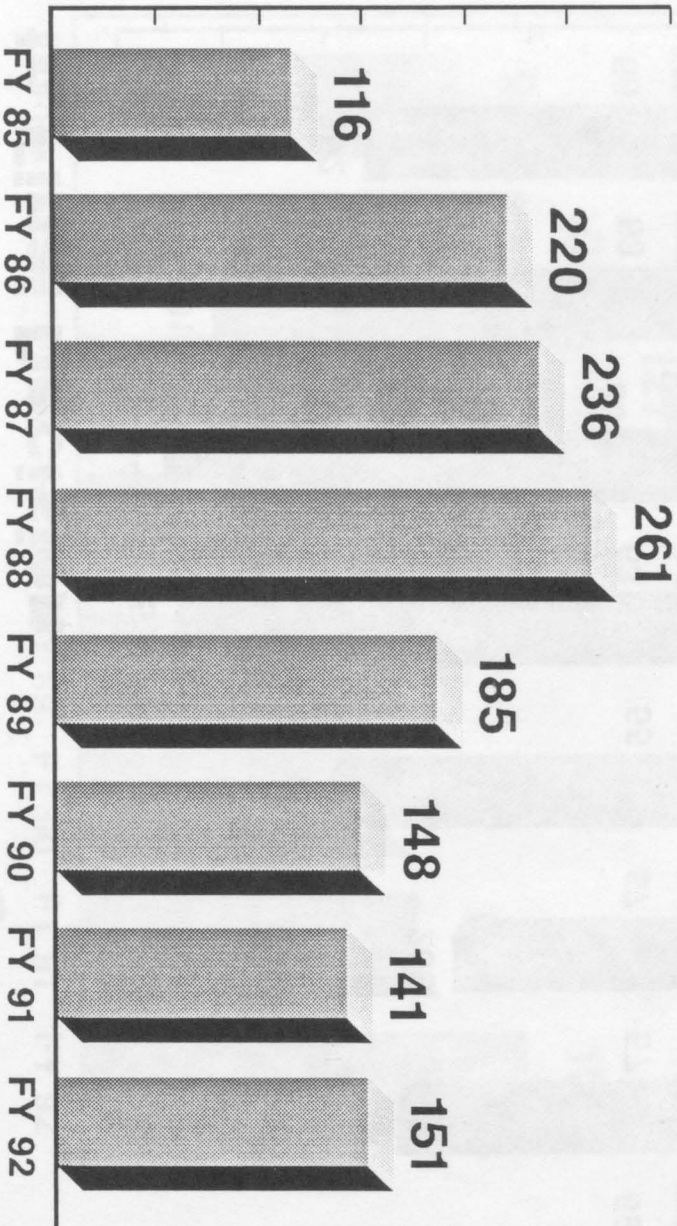
APPENDIX E

Days from Petition Granted to Oral Argument



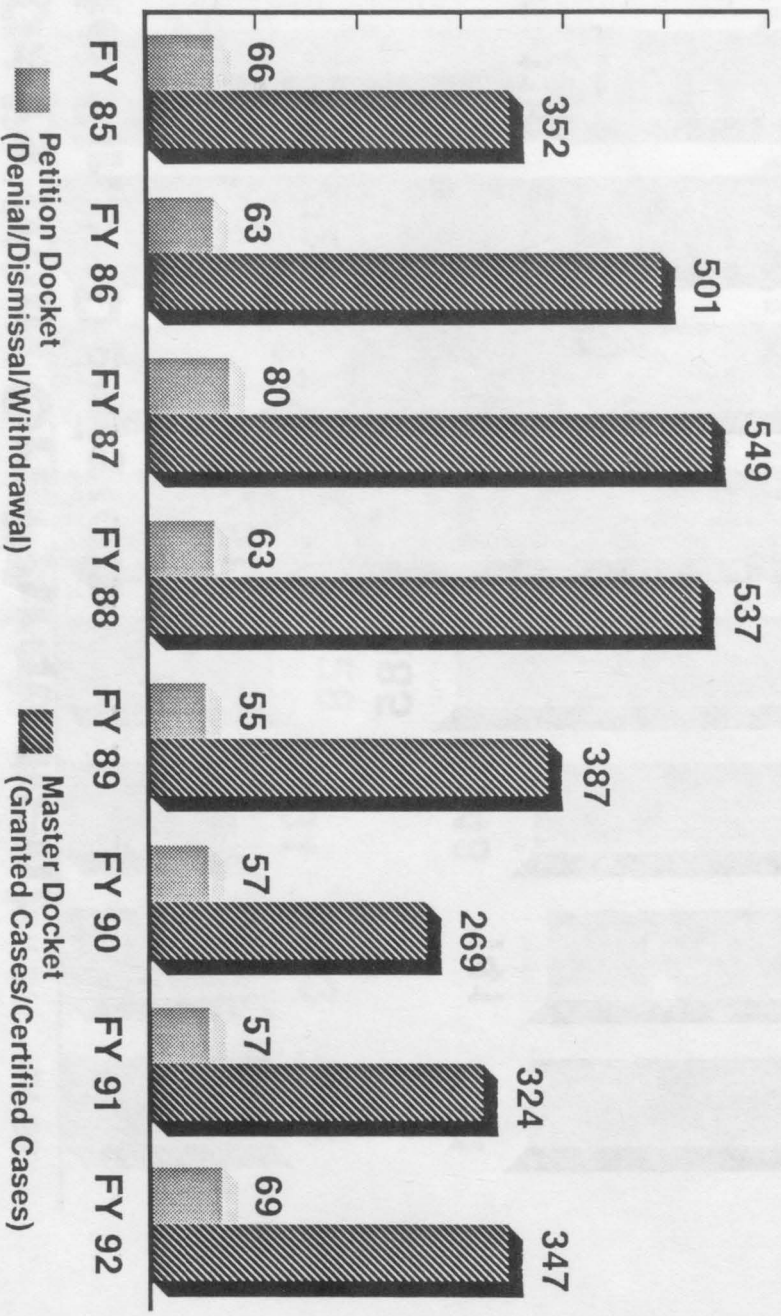
APPENDIX F

Days from Oral Argument to Final Decision



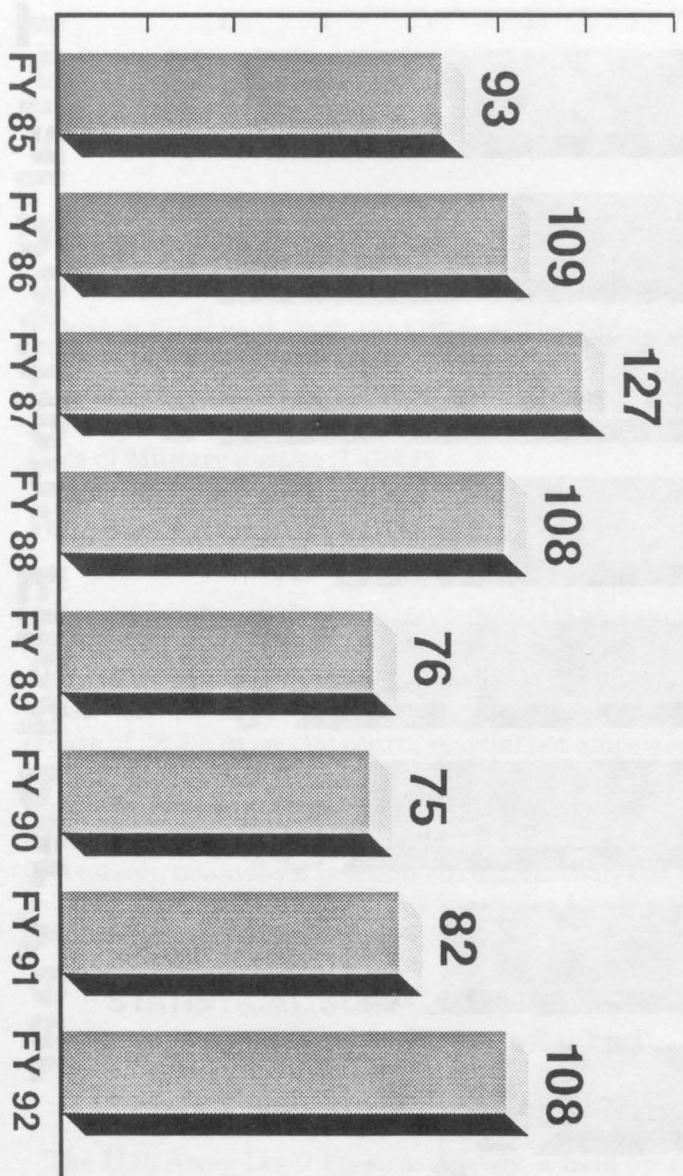
APPENDIX G

Days from Petition Filing to Final Decision



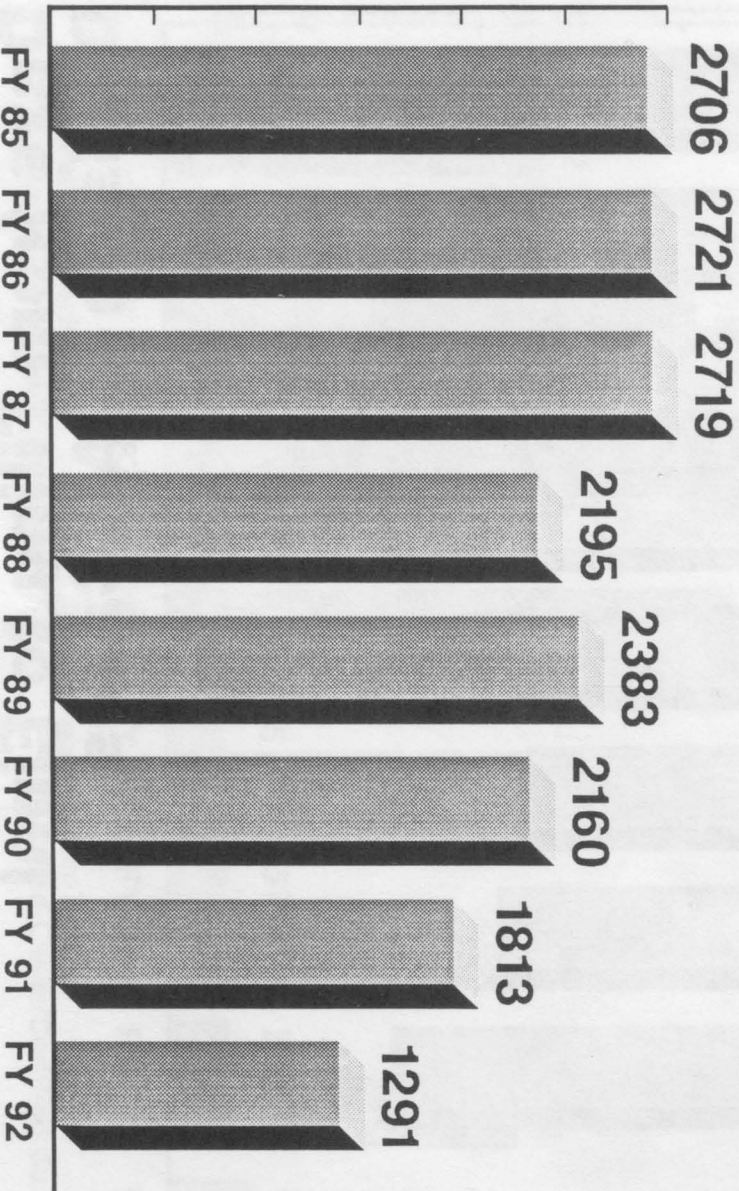
APPENDIX H

Days from Filing to Final Decision in All Cases



APPENDIX I

Total Petitions Filed Per Year



APPENDIX J

**REPORT OF
THE JUDGE ADVOCATE GENERAL OF THE ARMY
October 1, 1991 to September 30, 1992**

During fiscal year 1992, the Office of The Judge Advocate General (OTJAG) continued to monitor the proceedings of courts-martial, review and prepare military publications and regulations, and develop and draft changes to the Manual for Courts-Martial and the Uniform Code of Military Justice (UCMJ).

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

During fiscal year 1992, 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 1992 was 11.5% lower than for 1991. This overall decrease reflects primarily a decrease of 23.9% in special courts-martial not empowered to adjudge a bad-conduct discharge, and a 26.5% decline in summary courts-martial. There was a 0.7% decrease in general courts-martial and a 7.5% decline in the number of bad-conduct discharge special courts-martial. Conversely, nonjudicial punishment increased by 6.6/1,000 during fiscal year 1992. The number of cases reviewed by the U.S. Army Court of Military Review decreased by 9.5%.

**STATISTICAL SUMMARY: FISCAL YEAR 1992
(See table insert, attached)**

U.S. ARMY LEGAL SERVICES AGENCY

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

U.S. ARMY JUDICIARY

The U.S. Army Judiciary consists of the U.S. Army Court of 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 1992, the United States Army Trial Defense Service (USATDS) continued to provide high-quality, professional defense counsel services to soldiers throughout the Army. USATDS counsel represented 1,570 clients at proceedings conducted under Article 32, Uniform Code of Military Justice (UCMJ); 1,192 clients at general courts-martial; 681 clients at special courts-martial; and 992 soldiers at administrative boards. USATDS counsel advised 44,950 clients regarding nonjudicial punishment under Article 15, UCMJ, and 24,473 clients regarding a variety of administrative separation actions.

USATDS continued to provide support to troops in Southwest Asia following Operation Desert Storm, and to the Multi-National Force in the Sinai. USATDS manned over 70 offices world-wide to place defense counsel in proximity to the units they served. This close unit support included defense counsel deployment on command training exercises. At specified locations, USATDS maintained inter-service agreements to provide mutual support with judge advocates of other services.

TRIAL COUNSEL ASSISTANCE PROGRAM

During fiscal year 1992, the U.S. Army Trial Counsel Assistance Program (TCAP) performed its mission by providing information, advice, training, and trial assistance to military prosecutors world-wide. In addition to services provided to Army attorneys, TCAP had an expanded constituency among prosecutors in the Air Force, Navy, Marine Corps, and Coast Guard. Attorneys from our sister services were among the most enthusiastic users of TCAP services. Four basic categories of TCAP services were provided during fiscal year 1992: (1) telephone inquiry assistance; (2) training seminars and conferences; (3) the TCAP Memo; and (4) trial assistance. During fiscal year 1992, TCAP attorneys responded to 1,038 telephonic requests for advice and assistance; conducted 20 advocacy training seminars in the Continental United States (CONUS), Korea/Hawaii, and Germany; held three video teleconferences; published and distributed, to approximately 475 subscribers, ten editions of the TCAP Memo; and participated as trial counsel in three courts-martial. TCAP also provided instructional assistance for trial counsel attending the U.S. Army Europe (USAREUR) Criminal Law Conferences and the Criminal Law New Developments Course and Criminal Trial Advocacy Courses at The Judge Advocate General's School, U.S. Army (TJAGSA).

In September 1991, TCAP initiated the Regional Trial Counsel Assistance Program as a test program. The program was tested at installations within Trial Defense Region I to evaluate whether the quality of prosecution advocacy can be improved by using experienced military attorneys from outside the staff judge advocate office to assist trial counsel in preparing and trying cases. Regional trial counsel

assistance officers visited 14 installations, where they observed the in-court performance of counsel and conducted post-trial critiques for the trial counsel and their supervisors. The program will not be continued.

SIGNIFICANT MILITARY JUSTICE ACTIONS

Actions involving military justice handled by the Criminal Law Division, OTJAG, included: evaluating and drafting legislation and regulations affecting the operation of the Army; monitoring the administration of military justice to include military corrections, the Army's drug testing program, and federal court prosecution program; rendering opinions for the Army Staff; and evaluating ongoing major projects. During fiscal year 1992, the Criminal Law Division responded to 118 White House inquiries; 221 Congressional inquiries; nine requests for legal opinions from the Army Board for the Correction of Military Records; 218 letters relating to military justice matters written to the Secretary of Defense, Secretary of the Army, Chief of Staff of the Army, and The Judge Advocate General; and eight other miscellaneous inquiries. The office also processed seven clemency petitions under Article 74, UCMJ; 31 officer dismissal cases for Secretary of the Army approval; and 19 Freedom of Information Act/Privacy Act requests.

CHANGE OF MILITARY JUSTICE REGULATION

A draft change to Army Regulation 27-10, *Military Justice*, was completed during fiscal year 1992. It incorporates a previous interim change, as well as including several other substantive modifications. Significant new provisions: clearly establish a "beyond a reasonable doubt" standard of guilt for nonjudicial punishment proceedings; improve the readability of records of trial; provide a mechanism for reviewing a military magistrate's decision to release a soldier from pre-trial confinement, under an abuse of discretion standard; enhance the Victim/Witness Assistance Program; and incorporate the program for prosecuting criminal offenses in federal court. The change will be published in fiscal year 1993.

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 (JSC) on August 17, 1972. The Army, Navy, Air Force, Marine Corps, and Department of Transportation (Coast Guard) provide representatives, and the United States Court of Military Appeals provides a nonvoting representative. The JSC primarily prepares and evaluates proposed amendments and changes to the UCMJ and the Manual for Courts-Martial (MCM). The JSC also serves as a forum for exchanging information and ideas relating to military justice mat-

ters.

The JSC completed its Sixth Annual Review of the MCM on May 15, 1990, which constitutes proposed Change 6 to the MCM. During fiscal year 1992, the JSC participated in the executive coordination of proposed Change 6, which has not yet been signed by the President. Significant amendments: establish procedures to investigate complaints of judicial misconduct or unfitness; clarify pretrial confinement procedures; extend the coverage of the rape shield rule to Article 32, UCMJ, investigations; clarify the military judge's authority to impose sanctions for willful violation of discovery rules; require military judges to consider the government's interest in not granting immunity before ruling on a defense request for immunity; authorize military judges to give instructions on findings before or after arguments or at both times; permit the entry of pleas and findings with or without exceptions or substitutions; adopt an exception to the exclusionary rule; clarify that the provisions governing the use of classified materials apply at all stages of a court-martial; relax the rules for impeachment by prior conviction; include the definitions of "use" and "deliberate ignorance" for the courts-martial of drug offenses; include carnal knowledge as a lesser-included offense of rape; and include wrongful interference with an administrative action as an offense punishable under Article 134, UCMJ.

The JSC also assisted in the executive coordination of the Seventh Annual Review (proposed Change 7), completed on April 19, 1991. Significant amendments: require the Article 32, UCMJ, investigating officer to notify the convening authority of requests for classified or similar information; authorize the convening authority to issue protective orders for classified and similar information; allow the military judge to call post-trial sessions for reconsideration; permit post-trial reconsideration by the military judge of prior rulings; permit courts-martial sentences to include forfeiture of retired and retainer pay; establish that endangering the life of a single person is an aggravating factor for the death penalty; allow the accused ten days to respond to the staff judge advocate's addendum containing new matters, and allow the staff judge advocate to grant ten-day extensions to the defense to respond; require the accused to be served with a copy of addenda containing new matters; incorporate recent Supreme Court guidance concerning Sixth Amendment rights to counsel; clarify the scope of protective sweeps; and increase the maximum punishment for involuntary manslaughter, negligent homicide, carnal knowledge, forcible sodomy, and sodomy with a child.

The JSC also completed a preliminary Eighth Annual review of the MCM (proposed Change 8). The JSC is studying public comments it has received pertaining to proposed Change 8.

Several amendments to the UCMJ proposed by the JSC were included in the 1992 Department of Defense Authorization Act. Significant amendments: close a "gap" in court-martial jurisdiction for of-

fenses committed by reservists between drills; allow the deferment of an accused's court-martial sentence while the accused is in civil confinement; permit the maximum sentence to be adjudged at a rehearing; add drunken operation of a vessel and aircraft, and establish a *per se* blood-alcohol level, for drunken driving; clarify the scope of depraved-heart murder; and remove the spousal exemption for rape and make rape gender neutral.

FOREIGN CRIMINAL JURISDICTION

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

During the reporting period December 1, 1990 through November 30, 1991, a total of 12,409 United States personnel, military and civilian, were charged with offenses subject to the primary or exclusive jurisdiction of foreign tribunals. Of these offenses, 10,099 were charged against military personnel; 1,835 of which were subject to exclusive foreign jurisdiction. Foreign authorities nonetheless released 104 of the exclusive foreign jurisdiction offenses to U.S. military authorities for appropriate disposition.

The remainder of the military offenses subject to foreign jurisdiction, totaling 8,264 offenses, were concurrent jurisdiction offenses. They involved alleged violations of both U.S. military law and foreign law, over which the foreign country had the primary right to exercise jurisdiction. U.S. military authorities obtained a waiver of foreign jurisdiction in 7,672 of these incidents, for a world-wide waiver rate of 92.8%.

Foreign authorities reserved for their disposition a total of 2,323 offenses allegedly committed by military personnel. Of these offenses, 2,052 were relatively minor (simple assault, disorderly conduct, and traffic offenses). Traffic violations comprised 1,929, or 83%, of these offenses.

A total of 2,310 civilian employees and dependents were charged with offenses subject to foreign jurisdiction. As civilians are not subject to trial by courts-martial in peacetime, the U.S. has no effective jurisdiction over these offenses. Nonetheless, foreign authorities released 163 of these offenses, or 7% of the total, to U.S. military authorities for administrative or other disposition.

There were 3,295 final results of trial (i.e., final acquittals or final convictions for military, civilian and dependents). Of this number, 21 or 0.6% were acquittals and 3,174 or 96.3% were sentences to a fine or reprimand. The remainder of the final results of trial consisted of 28 sentences to confinement and 72 suspended sentences to confinement.

PROFESSIONAL RESPONSIBILITY

The Professional Conduct Branch, Standards of Conduct Office, OTJAG, was created in August 1991. It is charged with managing TJAG's professional responsibility program, previously a responsibility of the Criminal Law Division, OTJAG.

During the past year, the Professional Conduct Branch assisted in the publication of AR 27-26, *Rules of Professional Conduct for Lawyers*. These rules, which closely parallel the American Bar Association's (ABA) Rules of Professional Conduct for Lawyers, apply to all active and Reserve Component judge advocates, all Department of the Army civilian attorneys, and non-government attorneys who practice before Army courts-martial.

The Professional Conduct Branch has also proposed revised procedures for professional conduct inquiries, which are being staffed as part of the revision of AR 27-1, *Judge Advocate Legal Services*. Under both the current and revised procedures, allegations are reviewed by supervisors in the field and, if warranted, are examined by The Judge Advocate General's Professional Responsibility Committee, which advises The Judge Advocate General on suspected violations of ethical standards. Summaries of ethical inquiries resolved after preliminary screening, as well as opinions of the Professional Responsibility Committee, are published in *The Army Lawyer* on a monthly basis.

LITIGATION

Civil litigation against the Department of the Army and its employees continued to increase during fiscal year 1992. Suits requiring the civilian courts to interpret the UCMJ, and the validity of actions taken pursuant to it, constitute a small but significant portion of the litigation. A majority of these cases seek collateral review of courts-martial proceedings. Most of the other cases present challenges to the general conditions of confinement, specific actions taken by confinement facility personnel, and parole and clemency proceedings.

EDUCATION AND TRAINING

During fiscal year 1992, The Judge Advocate General's School (TJAGSA), located in Charlottesville, Virginia, provided legal education to lawyers of the military services and other federal agencies. Forty-three resident courses were conducted with 3,688 students in attendance. Courses were attended by: 1,403 active Army, 141 Navy, 92 Marine, 266 Air Force, 517 Army Reserve, and 140 Army National Guard officers; 130 warrant officers and enlisted soldiers; and 745 Department of Defense civilians; 239 non-Department of Defense civilians and Coast Guard officers; and 15 international military students.

In addition to the 43 resident courses offered during fiscal year 1992, 35 courses were conducted at on-site locations for a total of 2,635 stu-

dents — 2,059 of these were at 22 Reserve Component (RC) on-site training sessions. Eleven courses were conducted in Europe and the Far East with 433 students in attendance: 287 Army, 48 Navy, 7 Marine, 26 Air Force; 64 Department of Defense civilians, and 1 international military student. Two courses were conducted at Wright-Patterson Air Force Base, Ohio, for 143 students.

TJAGSA continues to be the only government entity statutorily authorized (10 U.S.C. sec. 4315) to confer the degree of Master of Laws (LL.M.) in Military Law. Recognizing the demanding scholastic standards of the Graduate Program, in August 1988, the ABA accepted its Accreditation Committee's site evaluation recommendation and concurred in TJAGSA's awarding of the LL.M. in Military Law.

On May 15, 1992, the 64 students of the 40th Graduate Class received from TJAGSA a Master of Laws in Military Law. In addition to 44 Army judge advocates, the class consisted of 9 Marine, 4 Navy, 2 Air Force, 1 Army Reserve, 1 Army National Guard, and 4 international military students. The 41st Graduate Class began on August 3, 1992. The class is comprised of 51 active Army, 10 Marine, 5 Navy, 5 Air Force, 2 Army National Guard, and 3 international military students.

Three Basic Course classes, the 126th, 127th, and 128th, graduated a total of 213 Judge Advocate General's Corps officers.

A Methods of Instruction Course was offered during the second week of July 1992. TJAGSA's 15 new staff and faculty members attended the three-day course.

During fiscal year 1992, TJAGSA continued to provide senior officers with legal orientations prior to their assumption of command. Twenty-one general officers attended General Officer Legal Orientation Courses, and 243 battalion and brigade command designees attended 6 Senior Officers Legal Orientation Courses. Additionally, TJAGSA provided instructional materials for the Pre-Command Courses conducted at Fort Leavenworth, Kansas, for battalion and brigade command designees.

The Criminal Law Division sponsored five resident continuing legal education (CLE) courses in fiscal year 1992. The Criminal Trial Advocacy Course was presented twice, in November 1991 and February 1992, the Procurement Fraud Course in November 1991, the Military Judges Course in May-June 1992, and the Criminal Law New Developments Course in August 1992. Additionally, the Division conducted two criminal law CLE programs and one trial advocacy program for judge advocates assigned to U.S. Army Europe (USAREUR).

In addition, the Criminal Law Division provided CLE instruction to Reserve Component (RC) judge advocates at 11 on-site training locations. It also taught the resident phase of the Judge Advocate Officer Advanced Course and Judge Advocate Triennial Training for RC judge advocate officers.

The International Law Division sponsored six resident CLE courses,

each lasting one week, during fiscal year 1992. The Law of War Workshop, held three times, continued to focus on practical law of war training to all branches of the U.S. military as well as international military students. Three Operational Law (OPLAW) seminars focused on the legal issues that directly affect the judge advocate involved in military operations in both peacetime and in combat environments overseas. The OPLAW seminars provide multi-disciplinary, practical, legal guidance for judge advocates participating in training exercises, combat operations, and other overseas deployments. In addition, the OPLAW seminars were expanded to encompass the legal issues associated with the illegal distribution of drugs. The Division also sent two instructors to Germany to present the USAREUR Operational Law Course and one instructor to the USAREUR Operational Law Conference.

All instruction provided by the International Law Division supported the goal of ensuring that military lawyers are knowledgeable in all aspects of OPLAW, a body of law which includes the law of war, and are able to participate effectively as members of the commander's operations team. Lessons learned from Operation Just Cause in Panama, Operation Urgent Fury in Grenada, Operations Desert Shield and Desert Storm, and from training exercises in Latin America, Europe, and the Middle East have been incorporated into CLE instruction. Instruction was also provided at the Army War College, the Command and General Staff College, Training and Doctrine Command (TRADOC), and the Naval War College. Additional instruction was provided throughout the year to Army Reserve and National Guard attorneys at 11 weekend on-site training locations throughout the U.S.

The International Law Division also helped design a program to be used in training the Peruvian Military on the law applicable in wartime and on the general international law of human rights. This program will serve as a model for similar programs for other countries. In fiscal year 1993, Peru, with the assistance of TJAGSA, will begin this important training.

The Center for Law and Military Operations (CLAMO) was established in December 1989. The purpose of CLAMO is to examine both current and potential legal issues attendant to military operations through the use of symposia, the publication of professional papers, and the use of a joint service operational law library. The director of CLAMO (also Chief, International Law Division), participated in several conferences on operational law and presented a paper on that subject to an ABA conference. In April 1992, CLAMO hosted the meeting of the Board of Executives of the International Society for Military Law and the Law of War. In September 1992, a representative from CLAMO participated with representatives from European Command and nine Central and Eastern European countries in a conference on the "Role of the Military in a Democratic Society."

The Contract Law Division conducted ten CLE courses in fiscal year

1992. These courses provided basic and advanced instruction in government contract law and in fiscal law and policy. The courses were designed to meet the needs of government lawyers, but they also benefited contracting officers, comptrollers, program managers, and others involved in the federal acquisition process. A wide variety of classes were offered at these courses to ensure that instruction was available in government contract and fiscal law as practiced at military installations, at commands devoted to production of supplies and weapon systems, at commands dedicated to research and development, and at activities involved in contract disputes and litigation. The two-week Contract Attorneys Course was given three times to a total of 360 students. Other contract law CLE programs included the annual Government Contract Law Symposium, two Fiscal Law Courses, USAREUR Contract Law Course, an on-site Fiscal Law Course which was presented to the Air Force at Wright-Patterson Air Force Base, and a Contract Litigation Course.

In addition to the contract and fiscal law CLE courses, the division provided instruction to three Judge Advocate Officer Basic Courses and to the resident Judge Advocate Officer Graduate Course. The division's instructors also presented classes on contract and fiscal law and policy at six Reserve Component (RC) on-site training locations within the U.S.

The Administrative and Civil Law Division conducted eleven CLE courses during fiscal year 1992 — six at TJAGSA and four overseas. The CLEs at TJAGSA included two Legal Assistance Courses, two Federal Labor Relations Courses, the Administrative Law for Military Installations Course, and the Federal Litigation Course. The overseas CLEs included the USAREUR Tax CLE, the Far East Tax CLE, the Pacific Command (PACOM) CLE, and two USAREUR Administrative Law CLEs. Additionally, instructors taught legal aspects of installation management at six Army Installation Management Courses at Fort Lee, Virginia; standards of conduct, adverse administrative actions, and separations classes to three sessions of the Army Management Staff College; and environmental law and tax classes at the Air Force JAG School's Environmental Law Course and its Tax Seminar at Maxwell Air Force Base, Alabama. The division updated over 45 TJAGSA publications and developed standards of conduct materials for use at all RC on-site instruction in fiscal year 1993. In addition, the division presented classes on administrative law and legal assistance at 12 RC on-site training locations. The Computer Learning Center (CLC) was added to the Administrative and Civil Law Division responsibilities and CLC instruction was presented to the Graduate Class, three Basic Courses, and two Legal Assistance CLEs.

The Legal Assistance Branch of the Administrative and Civil Law Division revised and updated its publications, including the *Legal Assistance Wills Guide*, the *Legal Assistance Consumer Law Guide*,

the *Soldiers' and Sailors' Civil Relief Act Consumer Law Guide*, the *Legal Assistance Office Administration Guide*, the *Notarial Guide*, the *Real Property Guide*, the *Tax Information Series*, and the *Deployment Guide*. Four mailouts occurred in fiscal year 1992 distributing these and other publications (e.g., National Consumer Law Center Reports, Consumer Information Catalogs, etc.) to more than 170 field legal assistance offices worldwide. The branch also handled numerous telephonic inquiries from attorneys in the field. Members of the branch published over 60 monthly practice notes in *The Army Lawyer*. Members of the branch attended the quarterly meeting of the ABA Legal Assistance for Military Personnel Committee.

The Judge Advocate Guard and Reserve Affairs Department sponsored several resident courses for RC judge advocates during fiscal year 1992. One hundred and ninety-nine Army Reserve and National Guard judge advocates attended Triennial Training between June 15 and 26, 1992. Military Judge Teams, Court-Martial Trial Teams, and Court-Martial Defense Teams were trained. One hundred and thirty-one students attended Phase IV of the Judge Advocate Officer Advanced Course during this same period. The 2093d U.S. Army Reserve Forces School in Charleston, West Virginia, provided administrative support for both courses. The department hosted the Army National Guard State Area Command (STARC) Judge Advocate Course from July 13 to 18, 1992. This workshop was attended by judge advocates from 15 STARC headquarters. An additional major training program co-hosted by the department was The Judge Advocate General Regimental Workshop, from April 20 to 24, 1992. This unique program brought together senior RC judge advocates to discuss significant legal and military issues facing the Total Army. The department also sponsored the CLE (On-Site) Training Program. Between October 1991 and May 1992, instructors from TJAGSA provided CLE to 2,059 judge advocates in 22 on-site training locations throughout the U.S. and Puerto Rico. Attendees represented all services and components. Interaction of Active and RC judge advocate officers in the on-site program was invaluable. Additionally, the department processed 89 applications for the U.S. Army Reserves for accession into the Judge Advocate General's Corps, and 32 applications for federal recognition of National Guard judge advocates.

On December 6, 1991, Dean Nathaniel Hansford, Dean of the University of Alabama School of Law, presented the Twentieth Colonel Edward H. Young Lecture in Legal Education. Dean Hansford gave an informative discussion of the value of a legal education, and he highlighted the issues and challenges facing legal educators in today's society.

The Ninth Gilbert A. Cuneo Lecture in Government Contract Law was presented on January 13, 1992, by Mr. Stuart M. Gerson, Assistant Attorney General, Civil Division, U.S. Department of Justice. Mr. Gerson addressed recent initiatives in civil justice reform and on

contract disputes litigation and their impact on government contract litigation.

The Fourth Major Frank B. Creekmore Lecture in Government Contract Law was presented on January 16, 1992, by Judge Susan B. Crawford, U.S. Court of Military Appeals. Judge Crawford reflected on her previous three years as the Inspector General for the Department of Defense and her experiences in combating fraud, waste, and abuse in that organization.

The Sixteenth Charles L. Decker Lecture was given on February 20, 1992, by Associate Justice Antonin Scalia. His lecture was entitled "The Use of Legislative History — Judicial Abdication to Fictitious Legislative Intent."

On March 26, 1992, the Twenty-First Kenneth J. Hodson Lecture in Criminal Law was presented by Paul C. Giannelli, Professor of Law, Case Western Reserve University, Cleveland, Ohio. Professor Giannelli presented a lecture on "Scientific Evidence in Criminal Prosecutions," in which he examined both the advantages and disadvantages of increased use of scientific evidence in the courtroom.

TJAGSA continues to edit and publish articles related to military law and legal practice in the *Military Law Review* and *The Army Lawyer*. The *Military Law Review*, the quarterly legal journal of TJAGSA, concentrates on scholarly articles that contribute to the development of the body of military law. In 1992, it published the legal materials of over thirty authors, including JAGC officers, civilian practitioners, foreign attorneys, law school professors, and law students. The *Military Law Review* publishes over 1,000 pages of manuscript annually, with a distribution of over 30,000 copies. *The Army Lawyer* is a monthly periodical that best could be characterized as the bar journal of the JAG Corps. It principally publishes articles and notes that assist military attorneys in their legal practices. In 1992, *The Army Lawyer* published over 7,000 pages of materials with a distribution of over 80,000 copies.

PERSONNEL, PLANS, AND POLICIES

Including law students participating in the Funded Legal Education Program, the strength of the Judge Advocate General's Corps at the end of the fiscal year 1992 was 1710. This total includes 96 blacks, 30 Hispanics, 27 Asian and Native Americans, and 284 women. The fiscal year 1992 end strength compares with an end strength of 1752 in fiscal year 1991, 1771 in fiscal year 1990, 1756 in fiscal year 1989, and 1759 in fiscal year 1988. The grade distribution of the Corps was 6 general officers, 130 colonels, 200 lieutenant colonels, 322 majors, 939 captains, and 84 first lieutenants. Thirty-five officers (23 captains and 12 first lieutenants) participated in the Funded Legal Education Program. Sixty-two warrant officers, including 18 minority and 7 female, supported legal operations world-wide.

To ensure selection of the best qualified candidates for initial com-

mission, career status, and The Judge Advocate General's Officer Graduate Course, advisory boards convened under The Judge Advocate General's written instructions several times during the year.

In December 1991, a selection board selected 10 active duty commissioned officers to commence law school under the Funded Legal Education Program.

Sixty-five judge advocate officers completed the following service schools:

DOJ Fellow	1
U.S. Army War College.....	2
National War College	2
Industrial College of the Armed Forces	2
U.S. Army Command - General Staff College	13
The Judge Advocate Officer Graduate Course.....	45

During fiscal year 1992, six officers completed fully funded study for LL.M. degrees in specialized fields of law.

Two hundred four new judge advocates were accessed as first lieutenants during fiscal year 1992, and they were promoted to captain during their first year on active duty. The Judge Advocate General's Corps is a separate competitive category, and selects and promotes its officers based on Judge Advocate General's Corps vacancies as they occur.

John L. Fugh,
Major General, USA
The Judge Advocate General

Period: FISCAL YEAR 1992

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED [A]	CONVICTED	ACQUITTALS [B]	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	1,165	1,094	71	- .7%
BCD SPECIAL [C]	543	490	53	- 7.5%
NON-BCD SPECIAL	70	44	26	-23.9%
SUMMARY	684	616	68	-26.5%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-11.5%

PART 2 - DISCHARGES APPROVED [D]

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES		301
NUMBER OF BAD CONDUCT DISCHARGES		609
SPECIAL COURTS-MARTIAL (SA LEVEL)		
NUMBER OF BAD CONDUCT DISCHARGES		317

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	962
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	329
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	129

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

TOTAL ON HAND BEGINNING OF PERIOD [F]		99
GENERAL COURTS-MARTIAL [G]		
BCD SPECIAL COURTS-MARTIAL [G]		
REFERRED FOR REVIEW		1344
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
TOTAL CASES REVIEWED		1381 [H]
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
TOTAL PENDING AT CLOSE OF PERIOD [F]		62
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-9.5%

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

NUMBER	1261 [I]
PERCENTAGE	99.6%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	48.5%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	- 6.3%
PERCENTAGE OF TOTAL PETITIONS GRANTED	15.7%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+ 5.5%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	6.7%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+ 1.3%

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		15	
RECEIVED		63	
DISPOSED OF		72	
GRANTED	6		
DENIED	62		
NO JURISDICTION	3		
WITHDRAWN	1		
TOTAL PENDING AT END OF PERIOD		6	

PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		777	
SPECIAL COURTS-MARTIAL		404	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		388	
SPECIAL COURTS-MARTIAL		209	

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	47	
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	659,204 [K]	
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	50,066	
RATE PER 1,000	75.9	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	+6.6/1000 [L]	

PAGE 2 OF 2

EXPLANATORY NOTES

- [A] Includes only original trials, not rehearings, etc.
- [B] Includes all cases terminated for any reason without conviction.
- [C] Cases convened by GCM convening authority in which SPCM specifically empowered to impose a BCD.
- [D] Based on records of trial received during report period (Part 3), not cases tried (Part 1). In addition to Ds and BCDs, 21 dismissals of officers were approved.
- [E] Does not include cases in which appellate review was waived (none in FY 92).
- [F] Includes only cases briefed and at issue before the Court. At year end, 477 cases were awaiting briefs.
- [G] Cases pending before USAACMR, which include government appeals and petitions for extraordinary relief, are not routinely accounted for by type of court-martial.
- [H] Includes 17 cases withdrawn from appellate review before decision issued.
- [I] In 37 of the cases, the accused was represented by civilian counsel, as well as by military appellate counsel.
- [J] Based on petitions acted upon, not those filed, during the report period.
- [K] Average of monthly strengths shown in report DCSPER-46.
- [L] Change in rate per 1,000 is based on corrected rate (82.5) for FY 91.

ANNUAL REPORT
of
THE JUDGE ADVOCATE GENERAL OF THE NAVY
pursuant to the
Uniform Code of Military Justice
FISCAL YEAR 1992

**SUPERVISION OF THE ADMINISTRATION OF
MILITARY JUSTICE**

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

ARTICLE 69(a), UCMJ, EXAMINATIONS

Eighty-five general court-martial records of trial, 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 1992. Ten cases required corrective action by the Judge Advocate General. Thirteen cases are pending review.

ARTICLE 69(b), UCMJ, APPLICATIONS

In fiscal year 1992, 44 applications under Article 69(b), Uniform Code of Military Justice, were received for review. Of these, 32 applications were denied on the merits, while relief was granted in whole or in part in 3 cases. Nine cases are pending review.

ARTICLE 73, UCMJ, PETITIONS

In fiscal year 1992, one petition for new trial was reviewed by the Office of the Judge Advocate General, and it was denied.

APPELLATE GOVERNMENT DIVISION

Appellate Representation. The 10 Navy and 5 Marine judge advocates assigned to the Appellate Government Division filed a total of 1766 pleadings last year; 1545 with the Navy-Marine Corps Court of Military Review and 221 with the U.S. Court of Military Appeals. These numbers exclude cases which were submitted to the courts without

specific assignments of error, but represent an overall increase of 18% over last year's workload. Additionally, the Division filed 10 briefs in opposition to petitions for writs of certiorari from the U.S. Supreme Court and 6 briefs in Government appeals.

Field Assistance. The Trial Counsel Assistance Program (TCAP), is a function within the Appellate Government Division which provides a central coordinating point to assist field trial counsel in the effective prosecution of courts-martial. Three appellate counsel are detailed to implement this program. Prompt assistance (usually the same day) is provided in response to telephone calls from trial counsel in the field requesting advice or information about cases pending or being tried. Additional assistance is provided through training presentations, the periodic publication of *Electronic Viewpoint*, and a computer bulletin board. Through these proactive endeavors, there has been approximately a 40% increase in assistance calls over last year.

Presentations. Government counsel also participated in the 1992 Judicial Conference of the United States Court of Military Appeals (formerly Homer Ferguson Conference) in Washington, D.C. and made presentations at the Army-Navy Reserve Military Justice Conference in Minneapolis, Minnesota.

Reserves. The Appellate Government Division continued to provide training and support to 12 Navy Reservists and 1 Marine Corps Reservist assigned to the Division.

APPELLATE DEFENSE DIVISION

Appellate Defense Practices. A total of 2926 cases were reviewed during fiscal year 1992 by the 18 judge advocates, Navy and Marine, and their reserve counterparts assigned to the Appellate Defense Division as appellate advocates. Of that number, 269 cases were submitted to the Navy-Marine Corps Court of Military Review (NMCMR) with specific assignments of error while another 1070 were fully briefed. Two hundred thirty-seven briefed cases were submitted to the U.S. Court of Military Appeals (CMA). While the number of cases forwarded to Appellate Defense continued to decrease slightly from previous years, the cases received continued to contain increasingly complex common law offenses and more sophisticated issues. In addition, the division submitted seven writs of certiorari to the U.S. Supreme Court. One extraordinary writ involving two clients was argued before CMA and two government appeals were argued before NMCMR, one of which involved two clients.

Trial Defense Assistance. The Field Department continues to provide on-call advice to trial defense counsel on trends and developments in appellate litigation which should be addressed at the trial level, through, for example, pretrial motions thereby "making a record" upon which appellate counsel can act more effectively. There were an average of 15 phone call/FAX requests for assistance per month requiring 20-30 minutes per request to answer.

Reserves. The two Navy reserve units, one voluntary training unit module, independent Navy reservists, and Marine IMA's gave superb mutual support throughout the year. The Reserve Department, led by a senior active duty appellate attorney, provides centralized training, equipping, and use of reserve appellate advocates shoulder to shoulder with their active counterparts in the Division. The reserves reviewed 23% of the Division's cases, identified issues, and submitted pleadings and briefs on those issues. The Division continued to use reservists to not only review and brief cases, but to actually argue those cases before NCMCMR.

NAVY-MARINE CORPS TRIAL JUDICIARY

The Navy-Marine Corps Trial Judiciary (NMCTJ) provided military judges for 890 general courts-martial and 3849 special courts-martial during fiscal year 1992. These numbers represent an increase of 93 general courts and a decrease of 507 special courts from fiscal year 1991. The number of active duty military judges declined from 45 to 40 by 30 September 1992, while the number of in-court hours in fiscal year 1992 was 19,382, an increase of 517 hours from 1991. Total travel time was 4,716 hours for 1772 cases. This includes cases tried in such places as Australia, Diego Garcia, Guantanamo, Bahrain and Iceland. The NMCTJ is composed of 14 circuits with a total of 7 branch offices.

Military judges received continuing legal education at the East and West Coast NMCTJ Military Judges' Meetings, the Army Judges Meetings, Maxwell Interservice Military Judges Seminar, the National Judicial College, the American Academy of Judicial Education, the Military Judges and Current Developments courses at the Army JAG School and the Navy JAG Conference. Military judges provided lecturers or seminar leaders at the Senior Officer Short Courses in Military Justice, the COMA Judicial Conference, the American Judges Association meetings, the Walter Reed Forensic Psychiatry class and various in-service courses. Our judges attended meetings of the American Judges Association and the National Association of Women Judges.

The Chief Judge visited convening authorities, staff judge advocates and legal services offices in Iceland, Groton, Newport, Philadelphia, Memphis, Camp Lejeune, Norfolk, Charleston, New Orleans, San Francisco, San Diego and North Island. The Chief Judge also attended reserve judges weekend training drills.

Navy and Marine Corps reserve judges tried 132 cases (included in the totals above) and were uniformly complimented on their currency in military justice and preparedness. These judges also attended East and West Coast Military Judges' meetings and other educational opportunities with their active brethren. Reserve judges completely staffed one circuit for a week while the judges of that circuit received annual training. Two reserve trial judges moved to the Navy-Marine Corps Court of Military Review in Fiscal Year 1992.

On 7 August 1992, Colonel Michael C. Wholley, USMC, relieved

Captain Ron Garvin, JAGC, USN, as Chief Judge of the trial judiciary. Colonel Wholley became the sixth Chief Judge and the first Marine to serve in this office. Captain Garvin retired on 1 September 1992, after five years as Chief Judge. He now serves as the Court Administrator for the District of Columbia Court of Appeals.

NAVAL LEGAL SERVICE COMMAND

Naval Legal Service Command (NAVLEGSVCCOM) consists of 20 naval legal service offices (there were 21 until closure of U.S. Naval Legal Service Office, Subic Bay, on 30 September 1992) and 22 detachments and branch offices located in areas of U.S. Navy concentration throughout the world. The command also includes the Naval Justice School at Newport, Rhode Island, and the Office of Legal Counsel at the Naval Academy, Annapolis, Maryland. NAVLEGSVCCOM is commanded by the Deputy Judge Advocate General of the Navy and includes 332 officers, 207 enlisted, and 197 civilian personnel. The command constitutes about 40% of the Navy's total judge advocate strength.

NAVLEGSVCCOM provides a wide range of legal services to afloat and ashore commands, active duty naval personnel, dependents, and retirees. Specific functions include the provision of counsel for courts-martial and administrative boards, counsel to commands, claims processing and adjudication, counsel at physical evaluation boards, and legal assistance.

NAVLEGSVCCOM activities rely upon the Judge Advocate General Management Information System (JAGMIS) to facilitate high quality and responsive legal services. JAGMIS is a personal computer based system which tracks each activity's work load from receipt to disposition. Work is nearing completion on development of the Military Justice Management Information System (MJMIS), which will refine the existing JAGMIS system and integrate a consolidated tracking system for courts-martial through the appellate process.

The Naval Legal Affairs World Wide Support Strategy (NAVLAWSS) is an ongoing program to provide business tools to foster the efficient delivery of services throughout NAVLEGSVCCOM. Phase I of this program, delivery of a personal computer for each member of the command, has been completed, and Phase II, implementation of local area networks at each NAVLEGSVCCOM site, is well underway with most site surveys completed and many site preparation projects either completed or ready to start. Complete implementation of NAVLAWSS is expected within the year, including tying all NAVLEGSVCCOM activity LANs together into a wide area network (WAN). In addition, NAVLEGSVCCOM participation in an electronic mail system has continued to expand.

Finally, NAVLEGSVCCOM continues to explore ways to make its personnel more productive through use of innovative electronic technology. NAVLEGSVCCOM activities have already been provided with

electronic infobase versions of five of their most frequently used references: U.S. Navy Regulations, 1990, Manual of the Judge Advocate General (JAGMAN), Manual for Courts-Martial, 1984 (MCM), Environmental Law Deskbook, and Deskbook for Staff Judge Advocates. Additional manuals are being considered for conversion to infobase formats.

NAVAL JUSTICE SCHOOL

During fiscal year 1992, the Naval Justice School provided instruction to 6,529 students worldwide (1,088 in resident courses ranging in length from four days to nine weeks). Other noteworthy developments included the 1 November 1991 establishment of the Naval Justice School Detachment at San Diego, California, and of the Branch Office of the School at the Judge Advocate General School of the Army in Charlottesville, Virginia. Another major accomplishment was the school's creation of an international training initiative in human rights, civilian control of the military, and the law of armed conflict, under the sponsorship of the U.S. State Department, as a part of the Expanded International Military Education and Training (EIMET) program. An update of School courses follows:

Law of Naval Operations Workshop. Offered twice a year, the purpose of this two-week "joint" course is to train judge advocates from all the armed services in advising commanders on international law matters and their impact on plans and operations. The course consisted of 60 hours of classroom instruction and 13 hours of practical exercises and seminars. Attendees completing the two-week course in fiscal year 1992 included judge advocates from the Navy (53), Marine Corps (4), Army (11), Air Force (11), and Coast Guard (7), along with 3 civilians.

Staff Judge Advocate Course. Also offered twice a year, the purpose of this three-week course is to provide training in specific aspects of military and administrative law likely to be encountered by a command legal advisor. Included in fiscal year 1992 were 87 hours of classroom instruction and 14 hours of practical exercises and seminars. This past year, attendees included judge advocates from the Navy (75), Marine Corps (5), Army (1), and Coast Guard (2).

Senior Legalman Course. Offered annually, the purpose of this three-week course is to provide senior legalmen with specialized training in budget matters, civilian and military personnel management, and other management skills required of mid-level supervisors at naval legal service offices. Included are 61 hours of classroom instruction and 13 hours of workshops and seminars. Twenty-nine senior enlisted personnel (27 Navy and 2 Army) attended this course in fiscal year 1992.

Lawyer Course. The Naval Justice School conducted four sessions of the nine-week lawyer course during fiscal year 1992. This course, which provides basic training in military justice, legal assistance, and

military administrative and civil law to incoming Navy and Marine Corps judge advocates and Coast Guard law specialists, consists of 152 hours of classroom instruction and 56 hours of practical exercises, including three moot courts and 11 seminars designed to enhance trial advocacy skills. In fiscal year 1992, the course was completed by 100 Navy, 50 Marine Corps, and 15 Coast Guard lawyers.

Legal Officer Course. During fiscal year 1992, the school held six sessions of the four-week legal officer course. The legal officer syllabus is designed for the nonlawyer junior officer or senior Navy and Coast Guard independent-duty paralegal about to assume legal duties with a ship, aircraft squadron, small station, or other military unit with no judge advocate/law specialist. Included in the course are 89 hours of classroom instruction and 37 hours of practical exercises and seminars. Attendees in fiscal year 1992 consisted of 198 Navy officers, 14 Navy enlisted, and 24 Marine Corps officers. In addition there were 209 Navy and 28 Marine Corps officers trained at the Naval Justice School Detachment in San Diego, California.

Expanded International Military Education and Training (EIMET). In 1992, the U.S. State Department assigned the Naval Justice School the lead in developing and teaching this highly publicized, highly visible international training program worldwide to foreign military and civilian defense personnel. This three-phase program tailors the instruction in (among other topics) human rights, civilian control of the military in a democracy, and military justice systems to the specific needs and requests of the respective nations. The course is coordinated by the school and the 3-to-4-person instructor teams are comprised of instructors from all branches of the U.S. armed services.

Senior Officer Course. This one-week course, sponsored by the Chief of Naval Operations, prepares commanding officers, executive officers, and officers in charge to handle appropriate command legal responsibilities. Two sessions of the course were held at Newport, Rhode Island, with 81 students attending. An additional 24 offerings of the course were held at the following worldwide locations: Jacksonville, Pensacola, and Key West, Florida; Charleston, South Carolina (twice); Norfolk (twice), Oceana, and Quantico (twice), Virginia; Groton, Connecticut (twice); Parris Island, South Carolina; Camp Lejeune, North Carolina; San Diego (twice), San Francisco, and Camp Pendleton, California; Rota, Spain; Pearl Harbor, Hawaii; Guam; Okinawa and Yokosuka, Japan; and Bangor, Washington. The 1,329 students attending these classes included:

USN:	963	(72.5%)
USMC:	307	(23.1%)
USCG:	44	(3.3%)
USA:	7	(0.5%)
USAF:	3	(0.2%)
CIV:	5	(0.4%)

Trial Advocacy Instructor Clinic. The Naval Justice School conducted 2 trial advocacy instructor clinics — both in Newport, Rhode Island. This four-day instructor-intensive course prepares experienced court-martial practitioners to conduct trial advocacy training in the field. Twenty instructors were trained at the 2 clinics using the National Institute of Trial Advocacy teaching methodology. Upon successful completion of the training, they became qualified to participate as instructors in the Navy's trial advocacy training program, teaching courtroom advocacy to Navy and Marine Corps Judge advocates worldwide. Also, there were 12 trial advocacy student clinics conducted with one being held at Naval Justice School, Newport, Rhode Island. There were a total of 125 students trained in the 12 clinics.

Legalman Course. This nine-week course offered three times in fiscal year 1992, provides instruction in military law and electronic court reporting to Navy enlisted personnel selected for conversion to the legalman rating as well as certain Coast Guard yeoman (the Coast Guard does not have a legalman rating). Included are 183 hours of lecture and 146 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 court reporters. In fiscal year 1992, 58 Navy, 6 Coast Guard, and 17 Army students completed this course.

Legal Clerk Course. This two-week course, offered five times in fiscal year 1992, trains members of the Navy and Marine Corps to process routine legal matters at small or isolated commands. Included in the legal clerk curriculum are 39 hours of lecture and 30 hours of practical exercises. In fiscal year 1992, 148 Navy, 3 Marine Corps enlisted, and 1 civilian student completed this course. In addition there were 203 Navy and 19 Marine Corps students trained at the Naval Justice School Detachment in San Diego, California.

Reserve Courses. In addition to training active-duty personnel, the Naval Justice School also presents a number of courses each year to train inactive-duty reservists. The two-week Reserve Lawyer Refresher Course, offered twice a year, prepares inactive-duty judge advocates of the Naval and Marine Corps Reserve to perform the duties of their active-duty counterparts. Similarly, the two-week Reserve Legalman Course, offered in three phases, prepares enlisted personnel in the inactive-duty reserve to serve as legalmen. During fiscal year 1992, 115 students completed an in-house course of instruction at the School.

Military Law Update Workshops. These workshops are intensive two-day courses taught by the school to inactive-duty reservists throughout the country to complement drill weekends and to fulfill reserve annual training requirements. Topics include recent developments in military justice, administrative law, and international/operational law. In 1992, Naval Justice School taught these courses in New Orleans, Louisiana; Charleston, South Carolina; and Seattle, Washington to approximately 700 reservists.

Specialized Briefings and Presentations. In addition to the formal courses listed above, the Naval Justice School presented more than 390 hours of instruction on court-martial procedures, search and seizure, confessions and admissions, nonjudicial punishment, investigations, administrative separations, law of the sea, the law of armed conflict, and rules of engagement to 4,127 students at the Naval War College, Surface Warfare Officers school, Naval Chaplains School, Officer Indoctrination School, Officer Candidate School, and the Senior Enlisted Academy, all located in Newport, Rhode Island. Naval Justice School faculty members also provided instruction, principally in operational law, at key locations on both coasts and in Washington, D.C.

Naval Justice School Detachment, San Diego, California. On 1 November 1991, the Chief of Naval Operations authorized the school to open a detachment at Naval Station San Diego. One goal of the Naval Justice School Detachment was to standardize the legal training offered in San Diego with that presented at the Naval Justice School. In fiscal year 92 the detachment provided instruction to 465 students in resident courses and 35,286 students throughout California. The detachment held 6 Legal Officer Courses and 18 Clerical Procedure Courses. The one-week Clerical Procedure Course trained enlisted personnel to process routine legal matters for their commands.

MARINE CORPS ACTIVITIES

During fiscal year 1992, three Marine Corps judge advocates graduated from top level schools. There are currently two judge advocates studying at the Naval War College, one judge advocate at the National War College, one judge advocate at the School of Advanced Warfighting, two judge advocates at the Marine Corps Command and Staff College and one judge advocate at the Navy Command and Staff College. Nine judge advocates graduated from The Judge Advocate General's School of the Army (TJAGSA) in Charlottesville, Virginia. There are currently ten judge advocates at TJAGSA studying for an LLM in military law.

Ten judge advocates in the Funded Legal Education Program (FLEP) graduated from a law school with their JD, and three judge advocates in the Excess Leave Program (ELP) graduated with JDs. There are currently twenty FLEP and thirteen ELP students in law school.

Three judge advocates in the Special Education Program (SEP) graduated with LLMs in Environmental and International law. Three judge advocates are currently attending school in this program, at George Washington University, Tulane University, and University of San Diego.

Headquarters, U.S. Marine Corps, funded twenty-five judge advocates for continuing legal education (CLE) at the following schools: TJAGSA; Naval Justice School, Newport, Rhode Island; and Air Uni-

versity, Maxwell Air Force, Alabama. Areas of training were federal litigation, law of war, trial advocacy, procurement and contract law, federal labor law, criminal law and evidence, and legal assistance.

During fiscal year 1992, ninety-four Marine Corps Reserve judge advocates were staffed in individual mobilization augmented detachment billets Marine Corps wide.

In conjunction with the Reserve augmentation unit, the Chief Defense Counsel of the Marine Corps organized and supported a five-day intensive course in trial advocacy in Hawaii and Okinawa. Through the Regional Defense Counsel, this training was made available at both Camp Lejeune and Camp Pendleton. Anticipating continued reductions in funds and manpower, plans are being made to accomplish more professional legal education through cooperation between the reserve establishment and the Naval Justice School, bringing the training to the judge advocates in the field.

William L. Schachte, Jr.

Rear Admiral, USN

Acting Judge Advocate General of the Navy

Period: FISCAL YEAR 1992

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	890	816	74	+11.7
BCD SPECIAL	2091	2091		- 8.6
NON-BCD SPECIAL	1758	1643	115	-15.0
SUMMARY	2294	2161	33	- 5.2
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-10.0%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)			
NUMBER OF DISHONORABLE DISCHARGES		211	
NUMBER OF BAD CONDUCT DISCHARGES		283	
SPECIAL COURTS-MARTIAL (SA LEVEL)			
NUMBER OF BAD CONDUCT DISCHARGES		1973	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	652
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	2029
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	84

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

TOTAL ON HAND BEGINNING OF PERIOD		1631
GENERAL COURTS-MARTIAL	690	
BCD SPECIAL COURTS-MARTIAL	941	
REFERRED FOR REVIEW		2694
GENERAL COURTS-MARTIAL	653	
BCD SPECIAL COURTS-MARTIAL	2041	
TOTAL CASES REVIEWED		2242
GENERAL COURTS-MARTIAL	513	
BCD SPECIAL COURTS-MARTIAL	1729	
TOTAL PENDING AT CLOSE OF PERIOD		2083
GENERAL COURTS-MARTIAL	506	
BCD SPECIAL COURTS-MARTIAL	1089	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-25.5

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE NAVY-MARINE COURT OF MILITARY REVIEW

NUMBER	N/A
PERCENTAGE	N/A

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	14.1%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	- 2.6%
PERCENTAGE OF TOTAL PETITIONS GRANTED	23%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	16.2%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	3.3%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	115%

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		10	
RECEIVED		129	
DISPOSED OF		117	
GRANTED	13		
DENIED	104		
NO JURISDICTION	---		
WITHDRAWN	---		
TOTAL PENDING AT END OF PERIOD		22	

PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		662	
SPECIAL COURTS-MARTIAL		3457	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		228	
SPECIAL COURTS-MARTIAL		393	

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	125	
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	765,810	
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	41,222	
RATE PER 1,000	53.83	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	+ 1.94	

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

October 1, 1991 to September 30, 1992

In compliance with the requirement of Article 6(a), Uniform Code of Military Justice (UCMJ), The Judge Advocate General, Major General David C. Morehouse, and Deputy Judge Advocate General, Brigadier General Nolan Sklute, 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.

AIR FORCE COURT OF MILITARY PREVIEW

During fiscal year 1992, the Air Force Court of Military Review experienced a number of changes. On 1 March 1992, Colonel Richard D.S. Dixon III was sworn in as the new Chief Judge. In addition, The Judge Advocate General increased the number of active duty judges from eight to nine in recognition of the rising appellate workload. One of the reserve judges was reassigned during the year, leaving the Court with three reserve judges.

For administrative efficiency, the Chief Judge reorganized the Court into five panels, in the process eliminating a number of panels. The active duty judges are assigned to panels 1, 2, or 3, and these panels review the vast majority of the cases which the Court receives. The Chief Judge presides over panel 1, Senior Judge Richard O'Hair presides over panel 2, and Senior Judge Robert Leonard presides over panel 3. Senior Judge Leonard also presides over panel 4, which was created to review sensitive cases involving security classification. The reserve judges are assigned to panel 5, along with Senior Judge Scott McLauthlin, who presides over the panel.

By moving some of the Chief Commissioner's administrative responsibilities to the Chief Court Administrator, the Chief Commissioner is able to devote more of his time to law clerk functions. Practically speaking, the Court now has two full-time law clerks.

On 22 September 1992, a revision of the Internal Rules of the Air Force Court of Military Review was published. A major innovation was accomplished during this fiscal year when the Court's docket was computerized. The automated docket not only improves the Court's ability to manage its docket, but also enables the Court to track its productivity accurately.

The Court's overall workload remains high. The average length of records of trial has increased by approximately 20 percent over last year. A total of 34 oral arguments was heard by the Court during this fiscal year, which is also a significant increase. Similar increases are being seen in the numbers of motions filed, as well as in petitions for extraordinary relief.

MILITARY JUSTICE STATISTICS AND USAF JUDICIARY ACTIVITIES

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

a. The Judiciary Directorate serves as the action agency for the review of military justice issues 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 108 applications.

b. The Directorate received approximately 600 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 on Military Justice and support for the Code Committee.

LEGAL INFORMATION SERVICES

Over 600 new personal computers were purchased for legal offices throughout the Air Force. New notebook computers were purchased for the military judges to use while traveling the circuit. To improve communications between legal offices, the electronic mail system, JAGMAIL, was updated and high speed modems were purchased for most offices. Computer equipment was purchased for the new Judge Advocate General School at Maxwell AFB to use in training Air Force attorneys.

The Project REFLEX portable law library software was updated and distributed to the Major Commands for deployment contingencies and exercises. New computer security, anti-virus, menu, and Professional Development software was also distributed to the bases. The

Air Force Claims Information Management System (AFCIMS) software underwent further refinements through the Beta testing process. A software program for tracking appellate court cases (ARTS II) was revised and expanded to improve its capabilities.

The Federal Legal Information Through Electronics (FLITE) database expanded the number of users and the service center attorneys performed an average of 204 searches per month for clients. Attorneys outside the service center performed an average of 415 online searches per month. Unpublished AFCMR decisions were included in FLITE. AFCMR decisions were distributed electronically on JAGMAIL by the Court.

The first CD-ROM disk for the Defense Emergency Authorities Analysis and Retrieval System (DEARAS) was produced and delivered by the contractor. It contains the entire U.S. code and current Executive Orders as well as selected Public Laws, DoD regulatory materials, international law materials, and a variety of other material related to national emergencies. The full text of these materials is searchable on a portable microcomputer.

TRIAL JUDICIARY

The Air Force Trial Judiciary had an average of 24 active duty trial judges, 6 reserve trial judges, 14 noncommissioned officers and 5 secretaries stationed in seven (being reorganized into five) Trial Judiciary Circuits worldwide. The Chief Trial Judge, his assistant, one court reporter and a secretary are located at the judiciary headquarters. The duties of these military judges included presiding over all general and special courts-martial tried in the United States Air Force, as well as serving as investigation officers under Article 32, UCMJ, legal advisors at selected administrative discharge boards, and hearing officers at public hearings held to consider draft environmental impact statements. Military Judges were on temporary duty at locations other than their base of assignment more than 3000 work days of the year.

The Air Force Trial Judiciary made significant strides towards computerization with the acquisition of 22 notebook computers for judges. The notebooks are being configured to use the Army Judges' Instruction Program (using Enable 4.0 software), the Manual for Courts-Martial, pertinent Air Force regulations, and the Air Force Trial Procedure Guide (AFP 111-6). Upon final distribution, all trial judges will be issued either a notebook or a laptop computer. Among other uses, the computers will enable trial judges to issue written instructions (in addition to the oral instructions) for court members to take into their deliberations.

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

Training

The Eighteenth Interservice Military Judges' Seminar was conducted by the Trial Judiciary at the Judge Advocate General's School, Maxwell AFB, Alabama, from 11 to 15 May 1992. This seminar was attended by over 50 military judges from the trial judiciaries of the Army, Navy, Marine Corps, Coast Guard and the Air Force. Also attending were the Canadian Armed Forces chief trial judge and his assistant. The seminar focused on child sexual abuse this year and included a four-hour presentation by Dr. (Major) Nancy Slicner, Chief of Psychological Services, AFSC Regional Hospital, Eglin AFB, FL. In addition, a panel of experienced judges discussed the trial of child sexual abuse cases, and a video on "The Child Witness" was shown. Mr. William A. Peck, Head, Corrections Branch, Bureau of Naval Personnel, spoke on clemency and rehabilitation. Colonel Earl Hodgson, Jr, Senior Appellate Judge, Air Force Court of Military Review, presented an appellate judge's perspective for trial court judges. Other outside speakers included: Judge William M. Bowen, Jr., Alabama Court of Criminal Appeals; Judge Richard Lee Price, New York Supreme Court, Bronx Division, and President, American Judges Association; Professor Dave Schlueter, St. Mary's School of Law. Judge Susan Crawford and Judge Robert Wiss of the U.S. Court of Military Appeals spoke to the Seminar, and, along with Judge "Sparky" Gierke, met with the judges in an afternoon collegium.

Three active duty judges and two reserve judges attended the three week Military Judges' Course conducted by The Army Judge Advocate General's School at Charlottesville, Virginia, from 18 May through 5 June 1992. In September 1992, six judges attended the one week "Special Problems in Criminal Evidence" Course at the National Judicial College, Reno, Nevada. Two judges attended the Navy-Marine Corps West Coast Judges Seminar in November 1992.

In November, the judges of the Pacific Circuit conducted a two day judicial workshop at Osan Air Base, Korea. In December, the judges of the Eastern Circuit, Northern Region, conducted a two day judicial workshop at Bolling Air Force Base, District of Columbia. Both workshops were held in conjunction with trial and defense counsel workshops for the respective circuits; the Chief Trial Judge participated in both judicial workshops.

Professionalism

In early August, the Chief Trial Judge attended the annual meeting of the American Bar Association, National Conference of Special Court Judges, in San Francisco. He also attended the American Judges Association annual educational meeting in Miami, FL, in October. These interactions with civilian judges have been most beneficial in promoting a greater understanding of the military justice system and the role of the military judge.

CIRCUIT TRIAL COUNSEL PROGRAM

During FY 92, the number of assigned circuit trial counsel remained at 22. Throughout the Air Force, circuit trial counsel tried 368 general courts-martial and 26 special courts-martial.

To update circuit trial counsel on the latest developments in the law and further enhance their trial skills, Chief Circuit Trial Counsel (CCTC) from all five circuits also attended the annual New Developments in Criminal Law course held at the Army JAG School in Charlottesville, Virginia. While there, the CCTCs also participated in a CCTC conference, during which information, procedures and strategies were discussed.

Workshops for base level prosecutors were conducted by the Circuit Trial Counsel in all the judicial circuits, except the Pacific circuit. The workshops were held in conjunction with Area Defense Counsel in that circuit and included joint sessions to hear presentations by The Judge Advocate General, the Director of the Judiciary, and a presentation by a judge from the United States Court of Military Appeals.

APPELLATE GOVERNMENT COUNSEL

In August 1992, Appellate Defense and Appellate Government personnel attended the annual New Developments in Criminal Law course held at the Army JAG School in Charlottesville, Virginia. The course covered the latest military cases in all significant areas of criminal law.

Appellate practice before the Air Force Court of Military Review (AFCMR) and the United States Court of Military Appeals (COMA) dropped off during the year. However, while the number of Replies to Assignments of Error to AFCMR filed by Appellate Government Counsel was down approximately 16 percent, the number of cases argued before that court was up by one-third. Similarly, although the number of Supplementary Petitions filed with COMA was down by approximately 27 percent, the number of oral arguments before this court was down by only 13 percent.

	FY 91	FY 92
AFCMR		
Replies to Assignment of Errors Filed	436	365
Cases Argued	28	36
COMA		
Supplements to Petitions Filed	134	98
Cases Argued	31	27
Supreme Court		
Petition Waivers Filed.....	2	1
Briefs Filed	3	4

DEFENSE SERVICES

Groundwork was laid for the 1 October 1992 split of the Defense Services Division into two divisions. Colonel Jeffrey R. Owens became

the Division Chief of the Trial Defense Division (JAJD). This Division will be responsible for all defense services in the field worldwide with Area Defense Counsel, Circuit Defense Counsel, and Chief Circuit Defense Counsel reporting ultimately to the Chief of the Trial Defense Division. A new Appellate Defense Division (JAJA) is headed by Lt Col Terry J. Woodhouse. All active duty and reserve appellate defense counsel will work directly for the Chief of the Appellate Defense Division. This split along functional lines of defense services was designed among other reasons, to ensure, that appellate counsel are not chilled in their zealous representation of appellants who allege ineffective assistance of trial defense counsel. Since all appellate and trial defense counsel have previously reported ultimately to the Defense Services Division Chief, it was thought that this situation could give rise to appellant concerns as to whether their claims of ineffective representation were truly being advocated by their appellate counsel.

AREA DEFENSE COUNSEL

The Area Defense Counsel (ADC) program continued to draw high marks from the field. In response to concerns that the ADC function may not be viewed by some military members as truly independent, the Trial Defense Division (JAJD) began a multimedia campaign to educate military personnel about the ADC mission and role.

ADC offices continued to improve. In 1992, 76 more Desktop III computers and printers were ordered for ADC offices; upon their receipt, all ADC offices will have this state-of-the-art equipment. The goal of ensuring that ADC offices match legal offices, in terms of equipment and facilities, is being achieved.

Trial defense counsel training remained our highest priority, taking several forms: an ADC Orientation Course for brand new ADCs and ADC-selectees; annual circuit-level workshops; Trial Defense Advocacy and Advanced Trial Advocacy courses administered at Maxwell Air Force Base, Alabama; and on-the-job training conducted by Circuit Defense Counsel and Chief Circuit Defense Counsel. Having Circuit Defense Counsel share counsel table with younger ADCs, particularly during litigated and more complex courts-martial, has paid tremendous dividends.

APPELLATE DEFENSE COUNSEL

The breakdown of activity within the Appellate Division follows:

	FY 91	FY92
AFCMR		
Cases Reviewed	687	554
Oral Arguments	28	36
Other Motions	885	392

	FY 91	FY92
COMA		
Supplements to Petitions	471	440
Grant Briefs	28	18
Oral Arguments	31	27
Other Motions	192	167
SUPREME COURT PETITIONS	10	4

CONFINEMENT FACILITIES

At the end of the fiscal year, a total of 678 Air Force personnel were in confinement. That figure represents about a 10% increase over the number in confinement at the end of FY 91, but is still well below the totals over most of the past decade. A total of 441 of those prisoners were incarcerated in central confinement facilities: 190 at Lowry AFB; 2 at the Return-to-Duty Rehabilitation (RTDR) Program; and 249 at the United States Disciplinary Barracks (USDB). The number of Air Force prisoners on parole at the end of FY 92 was 229, about the same number as at the end of FY 91.

The Air Force corrections facility at Lowry Air Force Base is scheduled to close during CY 93. The Air Force is exploring avenues to compensate for the prisoner bed space it will lose as a result of the base closure. Incident to the Lowry closure, day-to-day management of the Air Force Corrections Program will be transferred from the 3320th Correction and Rehabilitation Squadron (CRS) to the Air Force Security Police Agency at Kirtland AFB, New Mexico.

Although the DoD Order for the Services to consolidate corrections has not yet been implemented fully, most Air Force staff has been removed from the USDB, and the Army has been accepting Air Force long-term prisoners, with costs borne by the Army. Regional Corrections Facilities (RCF) mandated in the DoD plan are manned to accept prisoners from all services. Some RCFs of the other services have begun to accept Air Force prisoners, and our RCFs stand ready to accept their prisoners.

CIVIL LITIGATION

Several petitions for *habeas corpus*, filed by Air Force inmates in the United States Disciplinary Barracks seeking collateral review of their cases, remained open. Issues include appropriateness of sentence, insufficiency of evidence, and various evidentiary issues. One such petition was granted on 31 July 1992 by the Kansas Federal District Court in the case of *U.S. v. Lips*, 22 M.J. 680 (AFCMR 1986). Two issues were raised in the challenge: 1) appropriateness of admitting sexually explicit magazines and a sexually explicit video tape to establish motive, intent, plan and design; and, 2) whether trial counsel's cross-examination into the accused's post-arrest, pre-trial

silence violated his Fifth Amendment right to remain silent, *Doyle v. Ohio*, 426 U.S. 610 (1976). The judge ruled that there was no jurisdiction to review the first issue; however, he granted petitioner's requested writ based on findings that the second issue was reviewable in accordance with the jurisdictional analysis set out in *Dodson v. Zelez*, 917 F.2d 1250 (10th Cir. 1990), and that petitioner's Fifth Amendment rights had been violated. Both parties have appealed to the 10th Circuit Court of Appeals. A stay of the release order has been issued pending the outcome of the appeal.

PREVENTIVE LAW AND LEGAL ASSISTANCE PROGRAM

The Legal Assistance Division (JACA) continued to oversee provision of legal services worldwide. The last annual report indicated Air Force legal offices served 414,159 clients, providing 111,801 wills. Additionally, notaries provided 575,338 notarial acts. The number of office visits totaled 1,182,805.

To assist base legal offices in the production of timely, quality legal assistance documents, JACA procured a standard will drafting program for use throughout the Air Force. This will program produces, not only state specific wills, but also various ancillary documents, such as powers of attorney and living wills. As these documents comprise a major portion of the legal assistance workload, the will program should improve the quality of the base level legal assistance practice and increase office efficiency.

House Bill 4763 introduced by Representative Montgomery proposed revision of the Soldiers' and Sailors' Civil Relief Act (SSCRA). JACA was an active member of the Department of Defense working group tasked to address changes to the SSCRA. A subcommittee of the Veterans Affairs Committee held a hearing in April on the proposed changes to the SSCRA with the Honorable Christopher Jehn, Assistant Secretary of Defense for Force Management and Personnel, testifying for the Department of Defense. JACA helped draft Mr. Jehn's statement before the subcommittee. The bill was not reported out of Committee; however, bills to amend the SSCRA are expected to be introduced in the next Congress, and the work accomplished this year will serve as a basis for future legislative proposals.

THE REPORTER

The Reporter periodical provided timely, practical information on important legal issues to Air Force lawyers. Each issue provided information in 15 legal areas, three in the area of military justice, and at least one lead article. This year's lead article topics included how procurement policy enhances air safety, American Inns of Court, and criminal liability under the UCMJ for sexual harassment.

EDUCATION AND TRAINING

The Judge Advocate General's Department provided numerous continuing legal education (CLE) opportunities to its personnel, and those of its sister services, during FY92.

Approximately 1256 Air Force attorneys attended courses held at the Air Force Judge Advocate General (AFJAG) School, Maxwell AFB, Alabama, and in Denver, Colorado.

The Department arranged legal training for 286 attorneys at the Army Judge Advocate General's School, Charlottesville, Virginia, and eleven at the Naval Justice School, Newport, Rhode Island. The Department also arranged fiscal law training for 147 attorneys using faculty from the Army Judge Advocate General's School and conducted at Wright-Patterson AFB, Ohio. In cooperation with the Air Force Institute of Technology (AFIT), the Department sent 56 attorneys to courses in procurement law at the AFIT School of Systems and Logistics, Wright-Patterson AFB, Ohio. Six attorneys attended criminal law courses sponsored by The National Judicial College at the University of Nevada in Reno, Nevada. Five judge advocates attended the six-week medical law course at the Malcolm Grow Regional Medical Center at Andrews AFB, Maryland, and thirty judge advocates attended the one-week medical law course at Travis AFB, California. Both courses were sponsored by AFLSA/JACT. The Department had nineteen judge advocates participate in the Legal Masters Program in the fields of procurement law, labor law, environmental law, and military law (including one Judge advocate from the USAF Academy faculty); seventeen attended civilian institutions and two attended The Army Judge Advocate General School.

THE AIR FORCE JUDGE ADVOCATE GENERAL SCHOOL

The Air Force Judge Advocate General (AFJAG) School is located within Air University's Ira C. Eaker Center for Professional Development at Maxwell AFB, Alabama. Construction of a new AFJAG School and dormitory facility, which commenced in FY91, neared completion in FY92. Dedication and ribbon cutting ceremonies for both buildings are planned for FY93.

Resident Courses

The AFJAG School conducted 18 different courses with 25 offerings attended by approximately 1600 students in FY92.

The Judge Advocate Staff Officer Course is the AFJAG School's basic course of instruction for new judge advocates. The course is designed to provide essential, basic, comprehensive instruction in military legal practice. The course is divided into three curriculum areas: military justice, civil law, and the judge advocate as a member of the Air Force. The course develops competence in the military practice of

law and enhances basic advocacy skills. This course is eight weeks long and is conducted three times during the year. In FY92, there were 118 students who graduated from the course.

The AFJAG School also offered a number of specialty courses to benefit military lawyers and paralegals. They include: claims and tort litigation, federal employee labor law, environmental and advanced environmental law, international law, operations law, government contracting, law office management, advanced paralegal training and taxation. These courses were attended by approximately 553 military and civilian personnel, including 121 paralegals, during FY92.

The AFJAG School conducted numerous courses in FY92 which focused considerable attention in the area of military justice. The following courses were attended by over 876 judge advocates and 139 paralegals.

a. Judge Advocate Staff Officer Course—This course provided four weeks of intensive military justice instruction. The students participated as trial or defense counsel in two moot court exercises. The first was a judge alone court-martial with a plea of guilty. The second was a fully litigated trial with members.

b. Trial and Defense Advocacy Course—This course lasts for one week and was offered twice in FY92. It is designed to provide basic advocacy training to judge advocates who will be serving as active trial advocates in courts-martial throughout the service. Instruction was provided to 66 military advocates in the last fiscal year. Future plans call for expanding the course to two weeks.

c. Advanced Trial and Defense Advocacy Course—This course is a one week course which was attended by 31 students in FY92. It was developed primarily to train those counsel who are currently serving, or have been selected to serve, as circuit trial or defense counsel. The course further develops and refines advocacy skills and stresses the use of forensic evidence in courts-martial.

d. Staff Judge Advocate Course—This course is used as an opportunity to refresh and update the law for those judge advocates who have been selected to serve as staff judge advocates. It is a two-week course which was attended by 56 members in FY92. The military justice instruction centers on significant recent developments in both law and procedures relating to nonjudicial and judicial punishment, search and seizure, urinalysis, and substance abuse offenses. Emphasis is placed on the supervisory responsibility of Staff Judge Advocates over the military justice process.

e. Military Judges' Seminar—This is an interservice course which is primarily designed to ensure that military judges are kept up-to-date with recent developments, not only in Military law, but also with the most effective techniques of judicial management. It is a one-week course which was offered once in FY92 and was attended by 50 military judges from all the services.

f. Reserve Forces Judge Advocate Course—This course was developed with the goal of providing our Air Force Reserve and Air National Guard judge advocates with up-to-date information on recent developments in military law to ensure their ability to perform their required duties in the event of a mobilization. It is a one-week course conducted twice annually and taught by both AFJAG School faculty and Reserve and Guard judge advocates. During FY92, 159 students attended this course. In addition to RFJAG, the AFJAG School conducted the Air National Guard and Reserve Forces Judge Advocate Annual Survey of the Law which is conducted each year in Denver, Colorado, for three days. The purpose is to update Reserve and Guard attorneys between their required attendance at RFJAG. There were 161 ANG and 235 Reserve attorneys in attendance during the last survey. The AFJAG School also conducted its first ever Reserve and Guard Paralegal Survey during FY92. The course was attended by 97 Reserve and 42 Guard paralegals, and covered military justice and claims topics of interest to enlisted members.

Nonresident Courses

The AFJAG School offered nonresident courses which have been approved for Continuing Legal Education (CLE) credit. The amount of CLE credit earned for completion of these courses was determined by individual state bars. The courses available in FY92 were Ethics for Air Force Lawyers, Ethics for Claims officers, Estate Planning, Basic Income Tax Law, Current Income Tax Law, Government Contract Law, International Law, Supreme Court Trends in Criminal Justice, and Environmental Law.

The AFJAG School also provided instructional videotapes for professional enrichment in 44 topics in various areas of military justice and civil law. CLE credit was not offered for these enrichment courses. These areas included: trial advocacy, criminal law, income taxation, environmental law, labor law, claims and tort litigation, and acquisition law. During FY92, ten videotapes were provided in the general area of paralegal enrichment. Demand for enrichment tapes was consistently heavy.

Publications

The AFJAG School published one edition of The Air Force Law Review in FY92. That issue was exclusively dedicated to the area of labor law, providing extensive coverage to this important topic.

The AFJAG School also was responsible for editing and distributing preventive law materials. These materials serve to introduce an informal collection of informative and relevant information to judge advocates providing legal assistance to military personnel and dependents.

PERSONNEL

As of 30 September 1992, there were 1375 judge advocates on active duty. This total included one major general, three brigadier generals, 128 colonels, 199 lieutenant colonels, 295 majors, 723 captains, and twenty-six first lieutenants. In addition, there were 244 civilian attorneys, 822 enlisted legal technicians, and 713 civilian support personnel assigned to the Department.

David C. Morehouse
Major General, USAF
The Judge Advocate General

Period: Fiscal Year 1992

PART 1 - BASIC COURTS-MARTIAL STATUS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+) OR DECREASE (-) OVER LAST REPORT
GENERAL	636	584	52	+ .8%
BCD SPECIAL (A)	143	143	0	-18%
NON-BCD SPECIAL	269	243	26	-8.5%
SUMMARY	9	9	0	-40%
OVERALL RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT				-5.1%

PART 2 - DISCHARGE APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES	114
NUMBER OF BAD CONDUCT DISCHARGES	373
SPECIAL COURTS-MARTIAL (BA LEVEL) NUMBER OF BAD CONDUCT DISCHARGES	135

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	555
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	139
FOR EXAMINATION UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	93

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

TOTAL ON HAND BEGINNING OF PERIOD		567
GENERAL COURTS-MARTIAL	450	
BCD SPECIAL COURTS-MARTIAL	117	
REFERRED FOR REVIEW		717
GENERAL COURTS-MARTIAL	578	
BCD SPECIAL COURTS-MARTIAL	139	
TOTAL CASES REVIEWED		617
GENERAL COURTS-MARTIAL	465	
BCD SPECIAL COURTS-MARTIAL	152	
TOTAL PENDING AT CLOSE OF PERIOD		667
GENERAL COURTS-MARTIAL	563	
BCD SPECIAL COURTS-MARTIAL	104	
RATE OF INCREASE (+) / DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		- .6%

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

NUMBER	662
PERCENTAGE	99.8%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCA	336/617	54.5%
PERCENTAGE OF INCREASE (+) / DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+6.8%
PERCENTAGE OF TOTAL PETITIONS GRANTED	24/336	7.1%
PERCENTAGE OF INCREASE (+) / DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-22%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	24/617	3.9%
RATE OF INCREASE (+) / DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	317/336	+ .6%

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		1	
RECEIVED		10	
DISPOSED OF			
GRANTED	0		
DENIED	6		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		5	

PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		321	
SPECIAL COURTS-MARTIAL		195	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		315	
SPECIAL COURTS-MARTIAL		217	

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	25	
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	485,689	
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	9,323	
RATE PER 1,000	19.20	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-12.7	

[A] SPCMs in which BCD adjudged

**REPORT OF THE CHIEF COUNSEL OF THE
U. S. COAST GUARD
October 1, 1991 to September 30, 1992**

The table below shows the number of court-martial records received and filed at Coast Guard Headquarters during FY-92 and the five preceding years.

Fiscal Year	92	91	90	89	88	87
General Courts-Martial	16	9	14	5	13	11
Special Courts-Martial	26	34	42	40	25	24
Summary Courts-Martial	25	18	47	48	35	63
Total.....	67	61	103	93	73	98

COURTS-MARTIAL

Attorney counsel were detailed to all special courts-martial. Military judges were detailed to all special courts-martial. For most cases, the presiding judge was the Chief Trial Judge and 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 16 accused tried by general courts-martial this fiscal year, eight were tried by military judge alone. Three of the eight accused tried by military judge alone received dishonorable discharges and three received bad conduct discharges. Six of the eight accused tried by courts with members received a sentence which included a bad conduct discharge. One accused elected to be tried by a court which included enlisted members. All 16 general courts-martial resulted in convictions. Six of the accused whose charges were referred to general courts-martial were nonrated (pay grades E-1 through E-3), seven were petty officers (pay grades E-4 through E-6), and three were chief petty officers (pay grade E-7).

The following is a breakdown of the sentences adjudged in general courts-martial tried by military judge alone (eight convictions). The accused in three of these cases pled guilty to all charges and specifications.

Sentence	Cases Imposed
Dishonorable discharge	3
Bad conduct discharge	3
Confinement	7
Reduction in rate	7
Forfeiture of all pay and allowances	4
Partial forfeiture of pay (\$4,400 total)	2
Fine (\$2,000 total)	1
Reprimand.....	2
Hard labor without confinement	1
Restriction	1

The following is a breakdown of sentences adjudged in general courts-martial tried by members (eight convictions). The accused in one of these cases pled guilty to all charges and specifications.

Sentence	Cases Imposed
Bad conduct discharge	6
Confinement	7
Reduction in rate	7
Restriction	1
Forfeiture of all pay and allowances	2
Partial forfeiture of pay (\$20,850 total)	3
Fine (\$5,000 total)	2

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

FY	Number of Convictions	Forfeitures	Confinement	Reduction in Grade	Punitive Discharge/Dismissal
92	16	11 (69%)	14 (88%)	14 (88%)	12 (75%)
91	8	4 (50%)	7 (88%)	5 (63%)	5 (63%)
90	14	10 (71%)	12 (86%)	9 (64%)	12 (86%)
89	5	3 (60%)	5 (100%)	3 (60%)	4 (80%)

The following table shows the distribution of the 271 specifications referred to general court-martial.

Violation of the UCMJ, Article	No. of specs.
78 (Accessory after the fact)	2
80 (Attempts)	2
81 (Conspiracy)	5
86 (Unauthorized absence)	4
91 (Insubordinate conduct toward warrant, noncommissioned, or petty officer).....	1
92 (Violation of order or regulation)	4
93 (Cruelty and maltreatment).....	5
95 (Resistance, breach of arrest, or escape).....	1
107 (False official statement)	6
108 (Sale, loss, damage, destruction, or wrongful disposition of military property of the U.S.)	1

Violation of the UCMJ, Article	No. of specs.
112 (a) (Controlled drug offenses)	9
120 (Rape)	6
121 (Larceny or wrongful appropriation)	54
123 (Forgery)	30
123(a) (Making, drawing, or uttering check, draft, or order without sufficient funds)	71
124 (Maiming)	1
125 (Sodomy)	5
128 (Aggravated assault)	5
132 (Frauds against the United States)	18
134 (General)	41

SPECIAL COURTS-MARTIAL

Eighteen of the 26 accused tried by special courts-martial this fiscal year were tried by military judge alone. Nine bad conduct discharges were adjudged, seven to accused tried by military judge alone and two to accused tried by courts with members. One accused elected to be tried by a court which included enlisted members. Two special courts-martial resulted in acquittals and charges in another were withdrawn prior to pleas. Nine of the accused whose charges were referred to special courts-martial were nonrated (pay grades E-1 through E-3) and seventeen were petty officers (pay grades E-4 through E-6).

The following table shows the distribution of the 292 specifications referred to special courts-special.

Violation of the UCMJ, Article	No. of specs.
81 (Conspiracy)	7
83 (Fraudulent enlistment)	2
85 (Desertion)	3
86 (Unauthorized absence)	6
87 (Missing movement)	3
89 (Disrespect toward superior commissioned officer)	1
92 (Failure to obey order or regulation)	15
93 (Cruelty and maltreatment)	1
107 (False official statement)	13
108 (Sale, loss, damage, destruction, or wrongful disposition of military property of the U.S.)	7
112(a) (Controlled drug offenses)	19
120 (Rape)	1
121 (Larceny or wrongful appropriation)	23
123 (Forgery)	2
123a (Making, drawing, or uttering check, draft, or order without sufficient funds)	150
125 (Sodomy)	2
128 (Aggravated assault)	1
130 (Housebreaking)	3
132 (Frauds against the United States)	2
134 (General)	31

The following is a breakdown of sentences adjudged in special courts-martial tried by military judge alone (18 convictions). In two of these 18 convictions, the accused pled guilty to all charges and specifications.

Sentence	Cases imposed
Bad conduct discharge	7
Confinement	14
Hard labor without confinement	2
Reduction in rate	14
Forfeiture of pay (\$13,360 total)	8
Fine (\$4,750)	2
Restriction	2
Reprimand	1

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

Sentence	Cases imposed
Bad conduct discharge	2
Confinement	4
Reduction in rate	5
Forfeiture of pay (\$4,506 total)	3
Restriction	1
Reprimand	1

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

FY	Number of Convictions	Forfeitures	Confinement	Reduction in Grade	BCD
92	23	11 (48%)	18 (78%)	19 (83%)	9 (39%)
91	26	16 (62%)	22 (85%)	21 (81%)	15 (58%)
90	36	16 (44%)	18 (50%)	31 (86%)	17 (47%)
89	36	18 (50%)	14 (39%)	26 (73%)	11 (31%)

SPECIAL COURTS-MARTIAL SUMMARY

Sixty-nine percent of the accused tried by special court-martial were tried by military judge alone. Eleven percent of these accused pled guilty to all charges and specifications. Thirteen percent of the accused tried by special courts-martial with members pled guilty to all charges and specifications. There was a twenty-four percent decrease in special courts-martial from last fiscal year.

CHIEF COUNSEL ACTION UNDER ARTICLE 69, UCMJ

In addition to the required reviews of courts-martial conducted as a result of petitions filed under Article 69, UCMJ, a discretionary re-

view was conducted under Article 69 of all courts-martial not requiring appellate review.

PERSONNEL, ORGANIZATION, AND TRAINING

The Coast Guard has 165 officers designated as law specialists (judge advocates) serving on active duty - 121 are serving in legal billets and 44 are serving in general duty billets. Twenty Coast Guard officers are currently undergoing postgraduate studies in law and will be certified as law specialists at the completion of their studies. Eight Coast Guard officers who recently graduated from law school completed the Navy Basic Lawyer Course in Newport, Rhode Island. All have been certified under Article 27(b), UCMJ. A total of 162 additional training quotas were filled by attorneys, paralegals, yeomen and secretaries assigned to Coast Guard legal offices. Approximately \$132,000 was spent on legal training during the fiscal year.

U.S. COAST GUARD COURT OF MILITARY REVIEW

During fiscal year 1992, the Court was composed of five appellate military judges assigned by the General Counsel, Department of Transportation, in his capacity as Judge Advocate General of the Coast Guard. The Court is presently constituted as follows:

Chief Judge Joseph H. Baum
Judge Alfred F. Bridgman, Jr.
Judge Michael C. Grace
Judge John A. Bastek
Judge Terrance M. Edwards

Under Article 66, Uniform Code of Military Justice, "Appellate military judges who are assigned to a Court of Military Review may be commissioned officers or civilians, each of whom must be a member of a bar of a Federal court or the highest court of a State." All judges on the Court meet these qualifications. In prior years, it was considered that Judge Bridgman and the Chief Judge were civilians and the remaining judges were Coast Guard commissioned officers. Issues raised in cases this past year challenging the appointment of judges on this Court and the nature of their assignment as judges have caused a new look at previously held assumptions. As a result, it is important to note that, in addition to their status as "civilian" employees of the Coast Guard, the Chief Judge is a retired Navy captain and Judge Bridgman is a retired Coast Guard captain. The remaining three judges are all Coast Guard captains on active duty. In light of a 1990 amendment to the Uniform Code of Military Justice, excluding from "civilian life" certain categories of retired military personnel, the Court determined in *U.S. v. Kovac*, ___ MJ ___ (C.G.C.M.R. Docket No. 989 November 6, 1992) that all the judges on the Coast Guard Court of

Military Review are assigned in their capacity as commissioned officers rather than as civilians.

In *U.S. v. Kovac*, a challenge was also raised with respect to four of the Court's five judges serving in collateral duty capacities. Each of the Coast Guard captains on the Court has a primary duty assignment other than as judges on the Court of Military Review. In the Office of Chief Counsel of the Coast Guard, Captain Bridgman is Chief of the Regulations and Administrative Law Division and Captain Bastek is Chief of the Legislation Division. In the Office of the Coast Guard's Chief of Personnel and Training, Captain Edwards is Chief of the Physical Disability Evaluation Division and at the National Defense University, Captain Grace is a member of the teaching faculty of the Industrial College of the Armed Forces. Upon assignment to the Court by the General Counsel, judicial functions become a collateral duty for these four judges, with each judge devoting the necessary time to meet his judicial responsibilities under Article 66, Uniform Code of Military Justice. *U.S. v. Kovac* determined that assignment of judges for duty in this manner was not prohibited by the Uniform Code of Military Justice and was not inconsistent with civilian and other military court practices. Moreover, it was concluded that judicial independence was still maintained under this Court arrangement.

In prior years, the Court was divided into two panels of three judges with the Chief Judge sitting on both panels. In October 1991, the two panels were expanded to six in order to afford the opportunity for each judge to sit at various times with every other judge on a panel of three, thereby, incorporating the practice of the United States Court of Appeals for the Seventh Circuit, as expressed in a speech by Judge Joel M. Flaum of that Circuit at the All Services Appellate Military Judges Training Seminar in September 1991.

Another idea advanced at the September 1991 Appellate Military Judges Training Seminar was "Project Outreach," a program instituted by the U.S. Court of Military Appeals to take appellate hearings to locations outside the Washington, D.C. area and, thus, make the public more aware of the military justice appellate process. In March 1992, the Coast Guard Court joined in that project by holding oral argument *en banc* in *U.S. v. Lynch*, 35 MJ 579 (C.G.C.M.R. 1992), at the United States Coast Guard Academy, New London, Connecticut. Oral argument in *Lynch* was held before approximately 200 people, the majority of whom were third-year Coast Guard Academy cadets with course obligations covering military justice. Others in attendance included some of the members of the prosecution and defense teams from the trial of this case; Academy faculty and staff and their guests; Coast Guard law specialists from Governors Island, New York, Boston, Massachusetts and Newport, Rhode Island; Navy judge advocates from the Submarine Base, Groton, Connecticut; and retired Coast Guard personnel and their families. After the hearing adjourned, in

furtherance of "Project Outreach" objectives, the judges entertained questions from the audience not pertaining to the case.

Appendix A includes a statistical report of Court action for fiscal year 1992. In addition to the decisional work reflected in Appendix A, the judges on the Court have participated in various professional conferences, committees and seminars during the past fiscal year.

In April 1992, two of the judges attended the Second Judicial Conference of the U.S. Court of Military Appeals at George Washington University. In June 1992, Judge Bastek represented the Court on a panel of Court of Military Review judges as part of the instruction for the 35th Military Judges Course at the Army Judge Advocate General's (JAG) School in Charlottesville, Virginia. For a week in August 1992, one judge attended the New Developments Course at the Army JAG School in Charlottesville, and three of the judges attended the two-day 1992 All Services Appellate Military Judges Training Seminar hosted by the Navy Marine Corps Court of Military Review at the Naval Justice School in Newport, Rhode Island.

This past year, Chief Judge Baum served again as a Vice Chair of the Federal Bar Association's Judiciary Section. He also continued to serve as a Master of the Bench in the Federal American Inn of Court and Membership Chairman for the Inn during the latter part of the fiscal year. Additionally, as a member of the Judge Advocates Association, Chief Judge Baum served as Chairman of the Association's 1992 Nominating Committee for new officers. He also continued as a member of the U.S. Court of Military Appeals Rules Advisory Committee during the year. At the end of fiscal year 1992, on recommendation of the appellate military judges attending the seminar in Newport, Rhode Island, an ad hoc committee was formed and met to develop a training program for appellate military judges. Chief Judge Baum serves as an active member of that committee.

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.

Paul E. Versaw
Rear Admiral, USCG
Chief Counsel, U.S. Coast Guard

Period: 1 October 1991 - 30 September 1992

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	16 ¹	16	0	+78%
BCD SPECIAL	26 ²	23		-24%
NON-BCD SPECIAL	0	0	0	UNCHANGED
SUMMARY	25	24	1	+39%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+10%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)			
NUMBER OF DISHONORABLE DISCHARGES		3	
NUMBER OF BAD CONDUCT DISCHARGES		9	
SPECIAL COURTS-MARTIAL (SA LEVEL)			
NUMBER OF BAD CONDUCT DISCHARGES		9	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	11
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	8
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	4

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

TOTAL ON HAND BEGINNING OF PERIOD		11
GENERAL COURTS-MARTIAL	6	
BCD SPECIAL COURTS-MARTIAL	5	
REFERRED FOR REVIEW		23 ²
GENERAL COURTS-MARTIAL	14	
BCD SPECIAL COURTS-MARTIAL	9	
TOTAL CASES REVIEWED		25 ³
GENERAL COURTS-MARTIAL	14	
BCD SPECIAL COURTS-MARTIAL	11	
TOTAL PENDING AT CLOSE OF PERIOD		9
GENERAL COURTS-MARTIAL	6	
BCD SPECIAL COURTS-MARTIAL	3	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-10%

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

NUMBER	25
PERCENTAGE	100%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	11 / 25	44%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+22%
PERCENTAGE OF TOTAL PETITIONS GRANTED	4/11	36%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+100%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	4/25	16%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+129%

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¹Included within this total is a case where charges were withdrawn prior to pleas.

²Included within this total are 21 Article 66, UCMJ, referrals and 2 extraordinary writs.

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

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

PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		8	
SPECIAL COURTS-MARTIAL		18	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		8	
SPECIAL COURTS-MARTIAL		8	

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	2	
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	39,111	
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	1,186	
RATE PER 1,000	30.32	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-2%	

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³Included within this total are 21 reviews/action on cases referred pursuant to Article 66, UCMJ, 2 Article 69, UCMJ, reviews/action and 2 actions in response to extraordinary writs.

⁴Included within this total are five CGCMR reviewed cases forwarded to USCMA which were awaiting disposition at the end of FY-92.