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, 1992 to September 30, 1993

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, 1992 to September 30, 1993

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JOINT ANNUAL REPORT OF THE CODE COMMITTEE PURSUANT TO THE UNIFORM CODE OF MILITARY JUSTICE October 1, 1992, to September 30, 1993

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; F. Lee Bailey, Esquire, and Terrence O'Donnell, Esquire, 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.

On May 14, 1993, the Code Committee met in the United States Senate Caucus Room, Senate Russell Office Building. This meeting was open to the public and numerous interested visitors attended and participated in the proceedings. The first order of business was the presentation of the United States Court of Military Appeals Judicial Public Service Award to the Honorable Strom Thurmond, United States Senator from South Carolina. Thereafter, Chief Judge Sullivan welcomed the two newly appointed public members of the Code Committee, F. Lee Bailey and Terrence O'Donnell.

Each of the Armed Services committee members then reported on the number and status of cases and trends concerning the administration of military justice within their respective Armed Services. These reports reflected that although there was some decrease in the number of court-martial cases within the past year, there was a definite rise in the level of complexity of military criminal prosecutions, as indicated by the increase in court-martial motion practice and the seriousness of legal issues within each of the Armed Services. Subsequently, Mr. Andrew Purdy, Deputy General Counsel of the United States Sentencing Commission, discussed recent experience in application of the sentencing guidelines within the overall context of the administration of criminal justice throughout the United States.

Thereafter, the Chairman of the Joint-Service Committee on Military Justice reported on the current status of various proposals to amend both the Uniform Code of Military Justice and the Manual for Courts-Martial. In addition, he reported that the Joint-Service Committee had

conducted its first open meeting, which was attended by several interested members of the public, and that such an initiative proved to be extremely successful.

The Code Committee also considered and approved a proposal to recommend that Article 66, Uniform Code of Military Justice, 10 USC § 866, be amended to change the name of the Court of Military Review in each Armed Service to the United States (Army/Navy-Marine Corps/Air Force/Coast Guard) Court of Criminal Appeals. Finally, Chief Judge Sullivan announced that Eugene R. Fidell, Esquire, had been appointed Chairman of the Rules Advisory Committee of the United States Court of Military Appeals and that this committee had begun to review a number of proposals to amend the Court's Rules of Practice and Procedure.

Separate reports of the United States Court of Military Appeals and the individual Armed Services address further items of special interest to the Committees on Armed Services of the United States Senate and House of Representatives, as well as 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 MICHAEL J. NARDOTTI, USA
The Judge Advocate General of the Army

Rear Admiral HAROLD E. GRANT, USN
The Acting Judge Advocate General of the Navy

Major General NOLAN SKLUTE, USAF
The Judge Advocate General of the Air Force

Rear Admiral JOHN E. SHKOR, USCG
Chief Counsel, U.S. Coast Guard

Brigadier General MICHAEL C. WHOLLEY, USMC
Director, Judge Advocate Division
Headquarters, United States Marine Corps

F. LEE BAILEY, Esquire, Public Member

TERRENCE O'DONNELL, Esquire, Public Member

REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS October 1, 1992 to September 30, 1993

The Judges of the United States Court of Military Appeals submit their fiscal year 1993 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 number of cases carried over on the Court's Petition Docket at the end of fiscal year 1993 showed a slight increase of 27 over the number of cases pending at the end of fiscal year 1992. (See Appendix A.) Although the number of cases on the Court's Master Docket also increased during the same period, a significant portion of that increase was attributable to the fact that 96 trailer cases related to two major systemic cases were carried over at the end of fiscal year 1993. (See Appendix B.) Additionally, the Court experienced a significant increase of 25% in the number of petitions for grant of review filed with the Court during this reporting period. (See Appendix J.) The number of oral arguments and final opinions released by the Court remained fairly constant during this fiscal year, but the number of separate opinions continued to increase over the number of separate opinions filed last year. (See Appendices C and D.) This increase in the number of separate opinions appears to be attributable to the transition of the Court from three to five judges during fiscal year 1992.

The average processing time from the date of filing a petition during the fiscal year to the date of a grant by the Court remained fairly constant as compared with the same processing time period for the previous fiscal year. (See Appendix E.) There was some increase during this fiscal year in the average processing time between the date of a grant and the date of oral argument by comparison with the same period during fiscal year 1992, and the average processing time from oral argument to final decision also increased slightly during this period over the comparative period last year. (See Appendices F and G.)

Notwithstanding these noted increases in average processing time periods for cases on the Court's Master Docket, there was a significant decrease in the overall average processing of cases which received plenary consideration by the Court, as reflected by a 28% decrease in the average time a case filed on the Petition Docket was finally disposed of on the Master Docket. (See Appendix H.) On the Petition Docket the average overall case processing time from filing to final decision increased by 21 days, and since the Court's work on the Petition Docket accounts for a far greater volume of final dispositions, this increase contributed to an increase in the average case processing time for all cases filed in the Court from 108 days to 145 days during this fiscal year.

The Chief Justice of the United States, acting pursuant to Article 142(f), Uniform Code of Military Justice, 10 USC § 942(f), designated judges of the United States Court of Appeals for the Sixth and Federal Circuits and a judge of the United States District Court for the District of Columbia to sit in place of judges of the United States Court of Military Appeals, who had recused themselves from hearing and deciding various cases during fiscal year 1993. In addition, Senior Judge Robinson O. Everett was recalled and participated in the review and decision of several cases during this same reporting period.

During fiscal year 1993 the Court admitted 547 attorneys to practice before its Bar, bringing the cumulative total of admissions before the Bar of the Court to 29,252.

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. This practice, known as "Project Outreach," has developed as part of a public awareness program to demonstrate 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. The Court conducted appellate hearings, without objection of the parties, at the United States Marine Corps Base, Camp Pendleton, California; the United States Merchant Marine Academy, Kings Point, New York; the United States Military Academy, West Point, New York; the United States Air Force Academy, Colorado Springs, Colorado; Fort Gordon, Georgia; and aboard the USS JOHN F. KENNEDY (CV-67) while underway during flight operations. This program has continued 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 those who attend these hearings

from both military and civilian communities 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, while affording all its members the full protection of the Constitution of the United States and federal law.

JUDICIAL VISITATIONS

During fiscal year 1993, the judges of the Court, consistent with past practice and their ethical responsibility to oversee and improve the entire military criminal justice system, participated in professional training programs for military and civilian lawyers, spoke to professional groups of judges and lawyers, and visited with staff judge advocates and commanders at various military installations throughout the world.

SUPREME COURT JUSTICE VISITATION PROGRAM

On October 27, 1992, Justice Anthony M. Kennedy visited the Court and on January 21, 1993, Justice Antonin Scalia visited the Court. On both occasions these Associate Justices of the Supreme Court of the United States 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 Chief Judges of the other Article I courts had an opportunity to visit with the Justices on these occasions.

THE JUDICIAL CONFERENCE

On May 13 and 14, 1993 the Court held its annual Judicial Conference in the United States Senate Caucus Room, Senate Russell Office Building, Washington, D.C. The Judicial Conference was certified for credit to meet the continuing legal education requirements of various State Bars throughout the United States in order to assist both military and civilian practitioners in maintaining those professional skills necessary to practice before trial and appellate courts.

The speakers for this year's conference included the Honorable William C. Bryson, Deputy Solicitor General of the United States; the Honorable H.F. "Sparky" Gierke and the Honorable Robert E. Wiss, Associate Judges of the United States Court of Military Appeals; and Dr. Jonathan Lurie, Historian to the United States Court of Military Appeals and Professor of History, Rutgers University.

In addition, the Honorable Walter T. Cox, III, Associate Judge of the United States Court of Military Appeals, chaired a seminar on "Professional Ethics and Responsibility" with panelists Vaughn Taylor,

Esquire; Captain Jane M.E. Peterson, USAF, Appellate Government Counsel; and Captain Dwight H. Sullivan, USMC, Appellate Defense Counsel. The Honorable Susan J. Crawford, Associate Judge of the United States Court of Military Appeals, chaired a seminar on "Expert Testimony in Child Sexual Abuse Cases" whose panelists included the Honorable Fred K. Morrison, Judge of the Superior Court of the State of California and Brigadier General, JAGC, California National Guard; Colonel David T. Armitage, United States Army, Associate Chairman, Forensic Sciences and Litigation Support, Department of Legal Medicine, Armed Forces Institute of Pathology; and Captain Robert L. Carey, United States Army Defense Appellate Counsel. Colonel Lee D. Schinasi, JAGC, United States Army, chaired a panel discussion on "Military Rules of Evidence Update" with panelists Colonel Malcolm H. Squires, Jr., JAGC, United States Army, Chief, Defense Appellate Division, United States Army Legal Services Agency, and Colonel Theodore G. Hess, United States Marine Corps, Director, Appellate Government Division, Navy-Marine Corps Appellate Review Activity. Major Eugene R. Milhizer, JAGC, United States Army, chaired a seminar on "Pending and Proposed Changes to the Manual for Courts-Martial" with panelists Major Ralph H. Kohlmann, United States Marine Corps; Lieutenant Commander Charles J. Bennardini, United States Coast Guard; Captain Walter S. King, United States Air Force; and Lieutenant Commander L. Lynn Jowers, JAGC, United States Navy, all of whom are members of the Working Group of the Joint-Service Committee on Military Justice.

The conference opened with welcoming remarks by the Honorable Eugene R. Sullivan, Chief Judge, United States Court of Military Appeals, who also delivered an address on the "State of the Court". During the conference the Robinson O. Everett Writing Award was presented to Major Holly M. Stone, United States Air Force.

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

JURISDICTION OF MILITARY JUDGES

In *United States v. Weiss,* 36 MJ 224 (CMA 1992), a case in which the Supreme Court of the United States later granted certiorari and affirmed the Court's decision in *Weiss v. United States,* 114 S.Ct. 752

* 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.

(1994), the Court resolved an issue which questioned whether military judges who presided at courts-martial and who served as appellate judges on the Courts of Military Review were subject to the Appointments Clause of the United States Constitution. The lead opinion of the Court concluded that such clause did apply to military judges but that commissioned officers of the Armed Forces were "officers of the United States". After tracing the history of the predecessors of the current military judges and noting that such military judges had acquired virtually all the duties previously performed by the president and members of a court-martial, the lead opinion held that a new office was not created by the Military Justice Act of 1968 and that, therefore, a second "judicial" appointment was not necessary for military judges at the trial level. Concerning the creation of the Courts of Military Review the lead opinion again traced the history of courts-martial within the armed forces and concluded that, while a new office was created when the former Boards of Review were established, the duties of such board members were germane to the legally trained officers existing prior to the creation of the Boards of Review and that, therefore, a second judicial appointment for appellate military judges serving on the Courts of Military Review was not necessary.

In a related case the Court was presented with an issue concerning the appointment and service of a civilian on a Court of Military Review in *United States v. Carpenter,* 37 MJ 291 (CMA 1993). The Court held therein that a retired military officer required a separate appointment to serve as a civilian appellate judge on the Coast Guard Court of Military Review, pursuant to the Appointments Clause of the U.S. Constitution, and that the appointment of this judge by the General Counsel of the Department of Transportation did not satisfy the constitutional requirements of the Appointments Clause. However, the Court further concluded that the judicial acts of the civilian appellate judge in question were entitled to *de facto* validity and that, therefore, the decision of the Court of Military Review was valid, notwithstanding the defective appointment of the civilian judge of the Court of Military Review in this case.

CHALLENGES

In *United States v. Greene,* 36 MJ 274 (CMA 1993), an issue was raised which questioned whether a peremptory challenge was properly granted under the standard of *Batson v. Kentucky,* 476 U.S. 79 (1986), where a trial counsel proffered an explanation for use of a peremptory challenge which included both a permissible and impermissible basis under *Batson.* After analyzing numerous cases the Court adopted the untainted analysis approach to the question involving the race neutrality of

the proffered explanation of trial counsel and further concluded that an explanation which partially included a reason, criterion, or basis that patently demonstrates an inherent discriminatory intent cannot reasonably be deemed to be race neutral. The Court thus held that the military judge committed clear legal error by allowing the peremptory challenge in question.

Concerning the exercise of challenges for cause the Court held in *United States v. White,* 36 MJ 284 (CMA 1993), that a military judge should grant challenges for cause liberally and that an appellate court should not reverse the trial judge's determination except for a clear abuse of discretion in applying the liberal grant mandate. Analyzing the facts in the case at hand the Court held the military judge did not abuse his discretion by denying the challenges in question.

POST-TRIAL EVIDENCE

Distinguishing between the scope of appellate review under Article 66 and a petition for new trial under Article 73 of the Uniform Code of Military Justice, the Court held in *United States v. Parker,* 36 MJ 269 (CMA 1993), that the Court of Military Review properly rejected an affidavit of an individual who purported to have spoken with the rape and sodomy victim approximately eleven months after trial and alleged that the victim had made statements inconsistent with her earlier sworn testimony at the accused's court-martial. The Court ruled that the existence of the post-trial affidavit did not establish an error in the trial proceedings and rejected the defense claim that the affidavit should be used to order a limited hearing under *United States v. DuBay,* 17 USCMA 147, 37 CMR 411 (1967), observing that the limited-hearing process had never been used to retry the merits of a case, but merely to clarify collateral or predicate matters.

RIGHT TO COUNSEL

The Court resolved several issues in *United States v. Kendig,* 36 MJ 291 (CMA 1993), which involved allegations that the accused's right to counsel under Article 31, Uniform Code of Military Justice, and the Fifth and Sixth Amendments to the United States Constitution was violated. The facts revealed that the military accused charged with making a false official statement had earlier made a complaint of police misconduct. The Court held that Article 31 did not apply when she was interviewed concerning her police-misconduct complaint since she was not a suspect at that time. The Court further held that the Fifth Amendment was not violated during a post-polygraph examination of the accused because this accused had never indicated a desire to deal with the police agents through counsel. In addition, the Court ruled that the

Sixth Amendment was not violated even if counsel had been earlier retained or appointed for the accused's Article 15 punishment proceeding since the offense giving rise to the Article 15 proceeding was unrelated to the offense involved in the court-martial, and that invoking the Sixth Amendment right to counsel under *McNeil v. Wisconsin,* 111 S.Ct. 2204 (1991), was offense specific. The Court also held that the notification of counsel provision of Military Rule of Evidence 305(e) was also offense specific.

In reference to its earlier ruling in *United States v. Applewhite,* 23 MJ 196 (CMA 1987), that when an accused has invoked his right to counsel during a custodial interrogation, questioning must cease, the Court held in *United States v. Davis,* 36 MJ 337 (CMA 1993), that an accused's statement "Maybe I should talk to a lawyer" did not make inadmissible his subsequent incriminating statement at his later court-martial because such quoted statement was an ambiguous reference to counsel which required clarification. As the investigator immediately stopped the questioning and obtained a clarification from the accused that he did not want a lawyer, and then allowed the accused to take a break to allow him to consider his situation, the Court affirmed the military judge's ruling that such accused did not invoke his right to counsel at the interrogation.

In *United States v. Pittman,* 36 MJ 404 (CMA 1993), an issue was raised concerning the admissibility of a statement made by an accused after he was interviewed by police agents and exercised his right to counsel by declining to make a statement and requesting a lawyer. The evidence reflected that the accused was immediately released to the custody of his company commander and his supervisor, Sergeant Davis, was detailed as his primary escort. Thereafter, this supervisor—who was also a close friend of the accused but did not know what offense the accused was suspected of committing—asked the accused what was going on or what happened. The Court held that the ensuing incriminating statement made by the accused to Sergeant Davis was not suppressible under *Edwards v. Arizona,* 451 U.S. 477 (1981), and *Minnick v. Mississippi,* 498 U.S. 146 (1990), because conversation in question did not constitute custodial interrogation. Additionally, the Court held that the supervisor's question and the accused's incriminating response did not violate Article 31(b), UCMJ, because the record supported the military judge's finding that the statement in question was neither a product of interrogation nor a request for a statement from an accused or suspect within the meaning of Article 31(b).

In *United States v. Smith,* 36 MJ 455 (CMA 1993), the Court held that it did not have sufficient facts to resolve an issue concerning a purported conflict of interest in trial defense counsel's representation of the accused on the basis that he had previously represented a prose-

cution witness. The Court held that to find a Sixth Amendment violation of an accused's right to effective assistance of counsel based on conflict of interest it was necessary to establish both an active representation of a conflicting interest and a proper finding that such conflict adversely affected counsel's performance. Since the record did not provide sufficient facts, the Court ordered additional inquiry into the matter.

In *United States v. Harvey,* 37 MJ 140 (CMA 1993), the Court was presented with an issue concerning the admissibility of a statement uttered after an accused had been properly advised of her rights and invoked her right to counsel. In this case the statement was produced as a result of a cooperative co-conspirator and the Court rejected the accused's initial claim that her Sixth Amendment right to counsel was violated since charges had not yet been preferred against her. The Court also rejected an argument that the accused's Fifth Amendment right to counsel had been violated by holding that the accused had initiated the conversations in question. Finally, the Court rejected an argument that Article 31(b), UCMJ, precluded the admission of the statements in question by ruling that the circumstances in this case would not have created a perception by the accused that the inquiry was by an individual acting in an official capacity or as a law enforcement official to obtain such statements.

A statement by a suspect that "I think I want a lawyer" after being questioned by police agents was addressed by the Court in *United States v. McLaren,* 38 MJ 112 (CMA 1993). Therein the Court ruled that such a statement required the police agents to either terminate the interview or conduct limited questioning to clarify the accused's comment if the statement was deemed to be equivocal. However, the agents took neither of these actions but rather, told the accused they could not force him to stay in the interviewing room and that he needed to decide what he wanted to do. Because the agents conducted no further questioning and, after a brief pause, the accused answered the question that had been asked before he had mentioned the lawyer, the Court upheld the military judge's ruling that the accused had voluntarily reinitiated the conversation and had therefore waived his previously invoked right to counsel.

WITNESSES

The application of Military Rule of Evidence 301(f)(2) concerning exercise by a witness on cross-examination of the privilege against self-incrimination was addressed by the Court in *United States v. Moore,* 36 MJ 329 (CMA 1993), where a defense witness invoked such privilege under the Fifth Amendment. Although the defense witness claimed her priv-

ilege on direct examination rather than during cross-examination, the Court held that such circumstance did not render the rule inapplicable since it would have been meaningless to require the trial counsel to ask the questions during cross-examination. In addition, the Court held that the provision of Rule 301(f)(2) permitting the military judge to strike all or part of the witness' testimony did not require the military judge to strike such testimony but merely empowered the judge to strike the testimony under appropriate circumstances. The Court further held that any error committed by striking the entire testimony rather than only the portion related to the invocation of the Fifth Amendment right was harmless since the other aspects of such testimony were well established apart from this witness' testimony. In *United States v. Thomas,* 37 MJ 302 (CMA 1993), the Court held that the trial judge erred by rejecting a defense request to immunize a defense witness based solely upon the judge's determination that such witness' testimony was not worthy of belief. The Court rather held that additional inquiry was required to determine whether such immunity would jeopardize a contemplated future prosecution of the witness in question and whether the testimony, if believed, would not have been ambiguous and would have been clearly exculpatory in the accused's case.

The Court rejected the Government's argument in *United States v. Armstrong,* 36 MJ 311 (CMA 1993), that the pretrial statements of a child victim of sexual offenses were admissible against the accused in this court-martial. The Court noted that such statements were made during an interview with both a psychologist and trial counsel in the former's office and were made by the victim to trial counsel in preparation for the accused's trial rather than to a doctor for medical treatment. Additionally, the Court held that the fact that such statements were repeated some days later to the psychologist alone did not change the character of the statements because the child did not make them in anticipation of being healed or cured of a disease or medical problem as required by Military Rule of Evidence 803(4).

The use of pretrial statements by a trial counsel to question a witness who subsequently recanted those statements was held by the Court to be reversible error in *United States v. Pollard,* 38 MJ 41 (CMA 1993). After noting that the military judge had earlier ruled that the pretrial statements in question were not admissible as residual hearsay, the Court held that it was improper for the trial counsel to call the witness and, after having her declared to be a hostile witness, to try to impeach her by repeatedly reading substantial portions of her pretrial statements under the guise of impeachment where the primary purpose was to place the statements before court members.

CONFESSIONS

The Court ruled in *United States v. Martinez,* 38 MJ 82 (CMA 1993), that a confession uttered during a polygraph examination could be found to be involuntary as a result of psychological coercion, even though the accused had been advised of his rights and was free to leave the site of the examination. The Court reversed the decision of the Court of Military Review and reinstated the trial judge's ruling which excluded the accused's confession on the basis that it was involuntary. Noting the military judge's expressed reliance on the accused's own testimony and his special vantage point in evaluating that testimony, the Court concluded that his ruling should be upheld and that the Government did not show by a preponderance of the evidence that the accused's statement was voluntary.

EXPERT TESTIMONY

The Court resolved an issue in *United States v. Houser,* 36 MJ 392 (CMA 1993), which questioned the admissibility of expert testimony about rape trauma syndrome. The Court held that the witness in question was properly qualified as an expert under Military Rule of Evidence 702 and that such testimony relating to rape trauma syndrome may be admissible to assist the trier of fact to understand the evidence. The Court also cited Military Rule of Evidence 703 in ruling that such expert's testimony may be based on personal knowledge, assumed facts, documents supplied by other experts, or even listening to the testimony at trial, and that there was no requirement that the witness interview the victim before testifying as to the symptoms of typical rape survivors. Noting that certain behavioral patterns, such as a failure to resist or delay in reporting rape, could be confusing to fact finders, the Court concluded that expert testimony relating to rape trauma syndrome was relevant and that the testimony in question was not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the members under Military Rule of Evidence 403. The Court noted that the testimony in question was offered in rebuttal, after the behavioral conduct of the victim was raised as an issue, and that the expert witness was careful not to confuse or mislead the court members and did not violate the prohibition against an expert witness testifying about the credibility of the victim.

Concerning the availability of a defense expert requested at the appellate level, the Court held in *United States v. Tharpe,* 38 MJ 8 (CMA 1993), that the Court of Military Review properly rejected a request from an appellate defense counsel for such an expert. The issue concerned a claim by the accused on appeal that an expert was needed to evaluate the performance of his trial defense counsel and the Court ruled

that such expert was not needed since it was clear from the record what the trial defense counsel did or did not do, and that an expert's opinion was not necessary to evaluate the effectiveness of counsel's performance.

INTOXICATION

In *United States v. Blye,* 37 MJ 92 (CMA 1993), the Court upheld the lawfulness of an order to the accused not to consume alcoholic beverages which was included as a condition to his being placed on pretrial restriction. The Court held, however, that such an order must be reasonably necessary to protect the morale, welfare, and safety of the unit or the accused; to protect victims or potential witnesses; or to ensure the accused's presence at the court-martial or pretrial hearing in a sober condition.

Another aspect of intoxication was addressed by the Court in *United States v. Morgan,* 37 MJ 407 (CMA 1993), wherein an issue was raised as to whether voluntary intoxication could be used by an accused to negate the specific intent required to convict such accused of unpremeditated murder. The Court determined that there was no reason to overrule its long-standing decisions which had consistently held that voluntary intoxication would not in military law negate the requisite criminal intent for the commission of unpremeditated murder.

MULTIPLICITY

Noting the virtual identity in language of Article 79, UCMJ, and Federal Rule of Criminal Procedure 31(c), the Court in *United States v. Teters,* 37 MJ 370 (CMA 1993), expressly rejected its earlier announced separate military-law doctrine which defined multiplicious specifications in *United States v. Baker,* 14 MJ 361 (CMA 1983), and adopted the rule set forth in *Schmuck v. United States,* 489 U.S. 705 (1989), which limited the analysis of multiplicity to consideration of the statutory elements of the involved crimes. Thus, in deciding that the accused herein could properly be convicted of both forgery and larceny the Court narrowed the question to one of double jeopardy and held that Congress intended such accused at a single court-martial to be subject to conviction of both of these crimes since there was no showing that Congress had specifically prohibited conviction of both larceny and forgery under Articles 121 and 123, respectively, of the Uniform Code of Military Justice.

PETITION FOR NEW TRIAL

The Court held in *United States v. Williams,* 37 MJ 352 (CMA 1993), that a military judge abused his discretion in denying a defense request

for rehearing on findings based on newly discovered evidence. The Court ruled that evidence discovered after trial reflecting that the alleged rape victim was involved in an extramarital sexual relationship was relevant to the victim's credibility since it provided a reason for false testimony against the accused for the purpose of protecting the extramarital relationship. The Court further held that the evidence was not excludable under Military Rule of Evidence 412 because it was constitutionally required to be admitted. Subsequently, in *United States v. Van Tassel,* 38 MJ 91 (CMA 1993), the Court held that a petition for new trial should have have been granted on the basis of post-trial evidence of the accused's insanity which raised a legitimate dispute on the question of the accused's mental responsibility at the time of the charged offenses. Noting that the post-trial evidence in question consisted of an affidavit signed by two of the three doctors who conducted the most recent sanity board in which they specifically criticized the methodology and conclusions of an earlier pretrial sanity board, the Court concluded that it was very probable that the accused suffered from a mental disease at the time of the alleged offenses and thus lacked mental responsibility. The Court also ruled that the appropriate standard for addressing such question on appeal is whether the appellate court is convinced beyond a reasonable doubt that reasonable factfinders would have no reasonable doubt that the accused did not suffer from a severe mental disease or defect such as to lack the substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law.

APPELLATE PROCEDURE

In *United States v. Schoof,* 37 MJ 96 (CMA 1993), the accused claimed that Article 67(a)(2), UCMJ, by which the Judge Advocate General may certify a question of law to the Court, was applied in violation of his equal protection and due process rights on the basis that the certification process is normally used only for an appeal by the Government and is not similarly available to the accused. The Court held that the accused's separately filed petition for grant review had been granted on an unrelated issue and, since he had not requested that any issues be certified on his behalf by the Judge Advocate General, he lacked standing to raise this equal protection and due process issue in this case. Addressing an issue which questioned the authorization of appellate defense counsel to examine an exhibit which was ordered sealed by the trial judge in the accused's court-martial, the Court held in *United States v. Branoff,* 38 MJ 98 (CMA 1993), that the Court of Military Review had improperly denied the request of appellate defense counsel for access to the sealed appellate exhibit which was attached to the record. The

Court held that trial defense counsel had been permitted to examine the exhibit for possible use at trial in the defense of his client, that the trial judge's order prohibiting additional disclosure did not expressly state that appellate defense counsel would be barred from inspecting the exhibit, and that the disclosure was necessary for appellate defense counsel's intelligent review of trial defense counsel's performance in the case.

MILITARY GATE INSPECTIONS

In *United States v. Stringer,* 37 MJ 120 (CMA 1993), the Court was presented with an issue concerning the admissibility of evidence obtained through an inspection and search of the accused and the seizure of such evidence by a military gate guard at the entry gate of a United States military installation in Korea. Concerning the accused's claim that the gate inspection process was not authorized by the commander of the military installation in question, the Court unanimously held that since there had not been a particularized defense objection at trial to this effect, the issue of command authorization had been waived under Military Rules of Evidence 311(d)(2) and 103(a)(1). In addition, a majority of the Court further held that the entry gate was the functional equivalent of a border for Fourth Amendment purposes; that the absence of a written command policy regarding searches conducted under this inspection system did not render such searches *per se* unreasonable; that Military Rule of Evidence 314 did not require written authorization for such gate inspections; and that the discretion accorded to gate guards to stop and search any person attempting to leave the installation with high value items had been considerably restrained by the commander's oral authorization to conduct such searches.

AWARDS AND DECORATIONS

Noting the traditional importance of awards and decorations to the integrity of the military sentencing process, the Court held in *United States v. Demerse,* 37 MJ 488 (CMA 1993), that the staff judge advocate's failure to note the accused's awards and decorations as a result of service in Vietnam constituted plain error and required the sentence to be set aside. Citing *United States v. Rowe,* 18 USCMA 54, 39 CMR 54 (1968), the Court reiterated in *Demerse* "that Vietnam service is not to be forgotten."

TRIAL IN ABSENTIA

In *United States v. Sharp,* 38 MJ 33 (CMA 1993), the Court reaffirmed its ruling long ago in *United States v. Houghtaling,* 2 USCMA 230, 8 CMR 30 (1953), that an accused who absented himself after arraign-

ment may be tried *in absentia* even though he was not notified of the exact date of trial and even though he was not advised of his right to be present or of the fact that trial might continue in his absence.

POLYGRAPH EVIDENCE

Addressing an issue which questioned whether the Government was properly allowed to introduce the negative results of a polygraph examination of the accused into evidence, the Court resolved that issue in *United States v. Rodriquez,* 37 MJ 448 (CMA 1993), against the Government. Noting that the case was tried before the President had approved Military Rule of Evidence 707, which prohibited the use of polygraph examinations, the Court decided the issue on the basis of the standard of admissibility set forth in *United States v. Gibson,* 24 MJ 246 (CMA 1987). Observing that the polygraph report did not differentiate between questions relating to criminal conduct and innocent conduct as to the indication of deception, that there was a departure from the normal examination procedures because no post-instrument interview with the accused examinee was held in this case, and that the report contained an error as to the accused's response to a critical question, the Court held the reliability of the examination and results to be seriously flawed.

SPEEDY TRIAL

In *United States v. Kossman,* 38 MJ 258 (CMA 1993), the Court was presented with an issue which questioned the continued validity of the presumption of a denial of a speedy trial right by an Article 10, UCMJ, violation when an accused is confined for more than 90 days prior to trial and the defense does not a request a continuance. Noting that this presumption was established by *United States v. Burton,* 21 USCMA 112, 44 CMR 166 (1971), and *United States v. Driver,* 23 USCMA 243, 49 CMR 376 (1974), in a "procedural vacuum," the Court held that, subsequent to these decisions, several key changes had been instituted in the military justice system, such as the military magistrate system, a requirement that an accused be given credit for pretrial confinement, and the adoption of the speedy trial requirements of RCM 707, Manual for Courts-Martial, 1984. Accordingly, the Court overruled the *Burton-Driver* presumption by ruling that it merely aggravated an already complicated subject and adopted a "reasonable diligence" standard for determining whether Article 10, UCMJ, had been violated.

PRETRIAL CONFINEMENT

In *United States v. Rexroat,* 38 MJ 292 (CMA 1993), the Court held that the 48-hour limit set forth in *County of Riverside v. McLaughlin,*

111 S. Ct. 1661 (1991), for a prompt determination of probable cause for continuing pretrial detention applied to the military services. The Court further held that a review by a military officer of a prior probable cause determination within 48 hours after an accused was confined was sufficient to comply with the *McLaughlin* standard provided such officer was neutral and detached.

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 1993

CUMULATIVE SUMMARY

CUMULATIVE PENDING OCTOBER 1, 1992
- Master Docket 119
- Petition Docket 326
- Miscellaneous Docket 1

TOTAL 446

CUMULATIVE FILINGS
- Master Docket 610
- Petition Docket 1610
- Miscellaneous Docket 36

TOTAL 2256

CUMULATIVE TERMINATIONS
- Master Docket 481
- Petition Docket 1583
- Miscellaneous Docket 34

TOTAL 2098

CUMULATIVE PENDING OCTOBER 1, 1993
- Master Docket 248
- Petition Docket 353
- Miscellaneous Docket 3

TOTAL 604

OPINION SUMMARY

CATEGORY	SIGNED	PER CURIAM	MEM/ ORDER	TOTAL
Master Docket	120	7	354	481
Petition Docket	0	0	1,583	1,583
Miscellaneous Docket	1	0	33	34
TOTAL	121	7	1970	2098

FILINGS (MASTER DOCKET)

Remanded from Supreme Court	0
Returned from Court of Military Review	1
Mandatory appeals filed	2
Certificates filed	27
Reconsideration granted	0
Petitions granted (from Petition Docket)	580
TOTAL	610

TERMINATIONS (MASTER DOCKET)

Findings & sentence affirmed	416		
Reversed in whole or in part	26	Signed	120
Granted petitions vacated	0	Per curiam	7
Other disposition directed	39	Mem/order	354
TOTAL	481	TOTAL	481

PENDING (MASTER DOCKET)

Awaiting briefs	61
Awaiting oral argument	102
Awaiting lead case decision (trailer cases)	84
Awaiting final action	1
TOTAL	248

FILINGS (PETITION DOCKET)

Petitions for grant of review filed	1601
Petitions for new trial filed	3
Cross-petitions for grant filed	4
Petitions for reconsideration granted	2
Returned from Court of Military Review	0
TOTAL	1610

TERMINATIONS (PETITION DOCKET)

Petitions for grant dismissed	10		
Petitions for grant denied	962		
Petitions for grant granted	580		
Petitions for grant remanded	15	Signed	0
Petitions for grant withdrawn	10	Per curiam	0
Other	6	Mem/order	1583
TOTAL	1583	TOTAL	1583

PENDING (PETITION DOCKET)

Awaiting briefs	183
Awaiting Central Legal Staff review	158
Awaiting final action	12
TOTAL	353

FILINGS (MISCELLANEOUS DOCKET)

Writs of error coram nobis sought	5
Writs of habeas corpus sought	1
Writs of mandamus/prohibition sought	12
Other extraordinary relief sought	5
Writ appeals sought	13
TOTAL	36

TERMINATIONS (MISCELLANEOUS DOCKET)

Petitions withdrawn	0		
Petitions remanded	0		
Petitions granted	1		
Petitions denied	31	Signed	1
Petitions dismissed	2	Per curiam	0
Other	0	Mem/order	33
TOTAL	34	TOTAL	34

PENDING (MISCELLANEOUS DOCKET)

Awaiting briefs	2
Awaiting Writs Counsel review	0
Awaiting final action	1
TOTAL	3

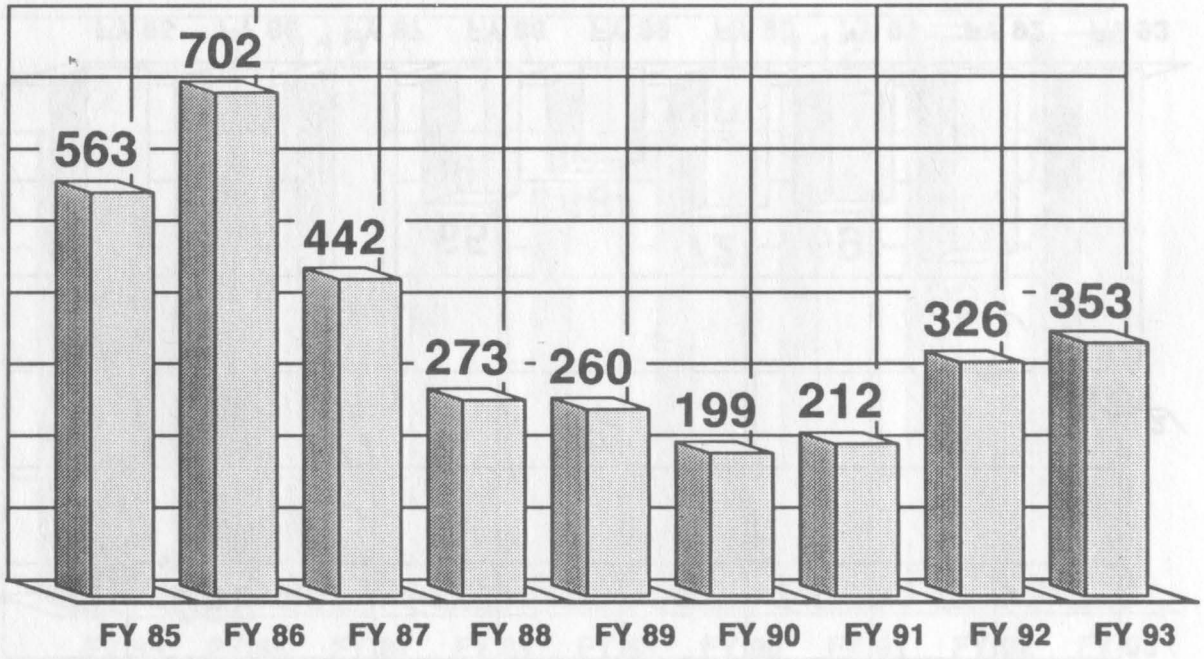
RECONSIDERATIONS & REHEARINGS

CATEGORY	BEGIN PENDING	FILINGS	END PENDING	DISPOSITIONS Granted	Denied	Total
Master Docket	0	6	0	0	6	6
Petition Docket	0	7	1	2	4	6
Misc. Docket	0	0	0	0	0	0
TOTAL	0	13	1	2	10	12

MOTIONS ACTIVITY

CATEGORY	BEGIN PENDING	FILINGS	END PENDING	DISPOSITIONS Granted	Denied	Other	Total
All motions	11	1031	8	949	77	9	1,034

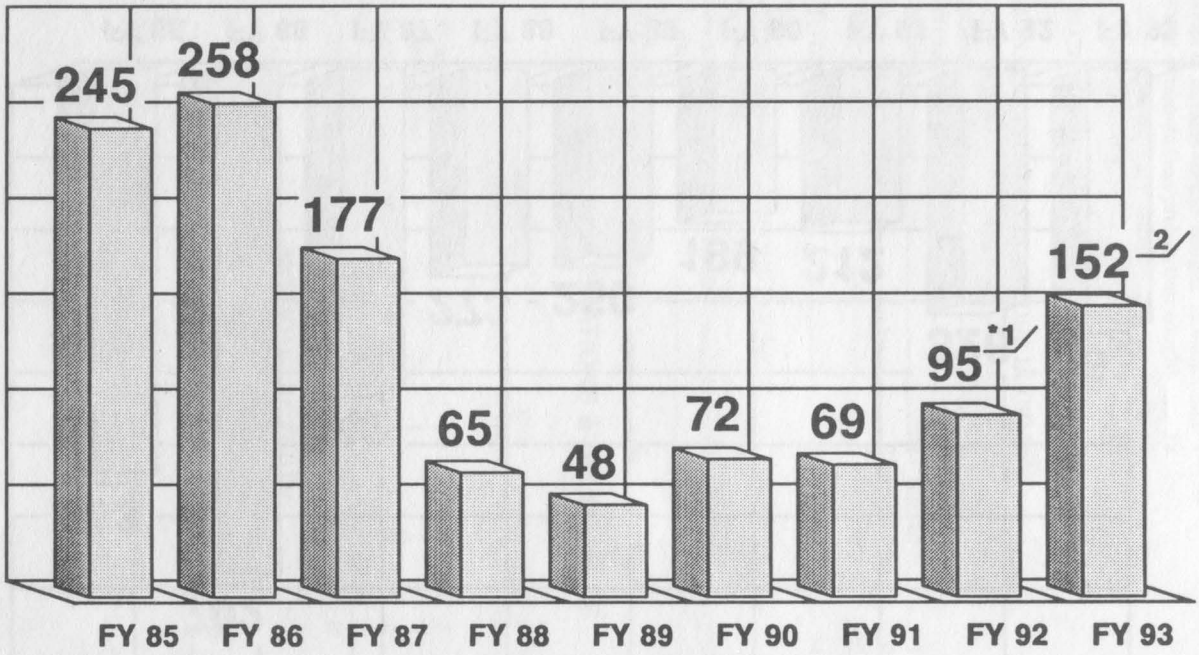
Petition Docket Year End Pending



APPENDIX A

L/C-0020-002

Master Docket Year End Pending



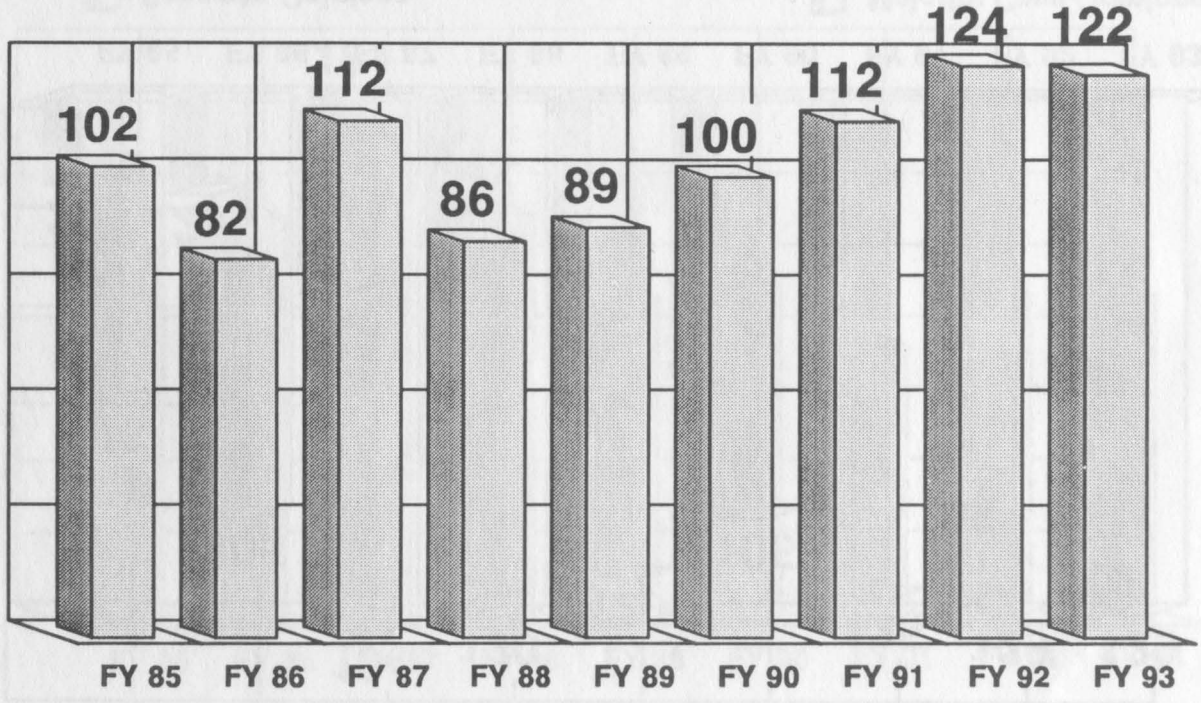
1/ * This figure does not include 16 trailer cases to United States v. Watson, No. 68206/MC, and 8 trailer cases to United States v. Weiss, No. 67869/MC.

2/ This figure does not include 87 trailer cases to United States v. Mitchell, No. 93-1044/NA, and 9 trailer cases to United States v. Rexroat, No. 93-5007/AR.

LJC-0020-004

APPENDIX B

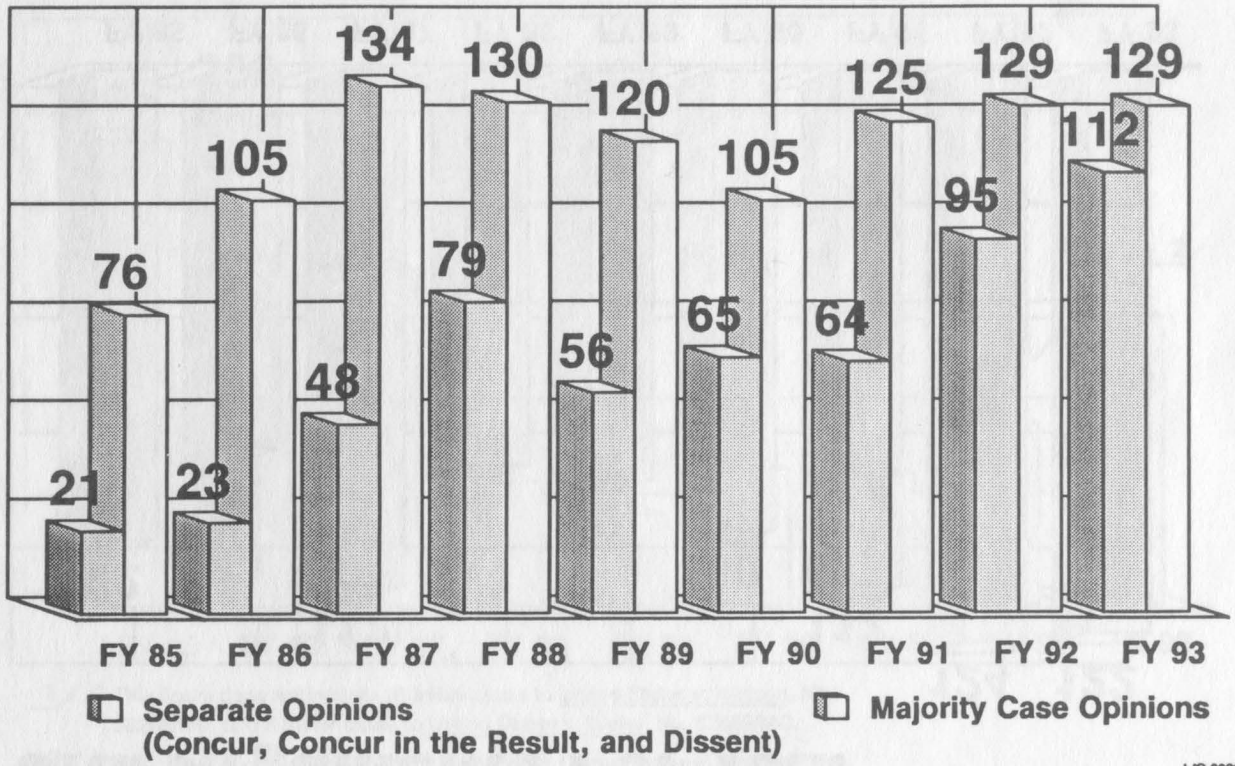
Oral Arguments Per Year



APPENDIX C

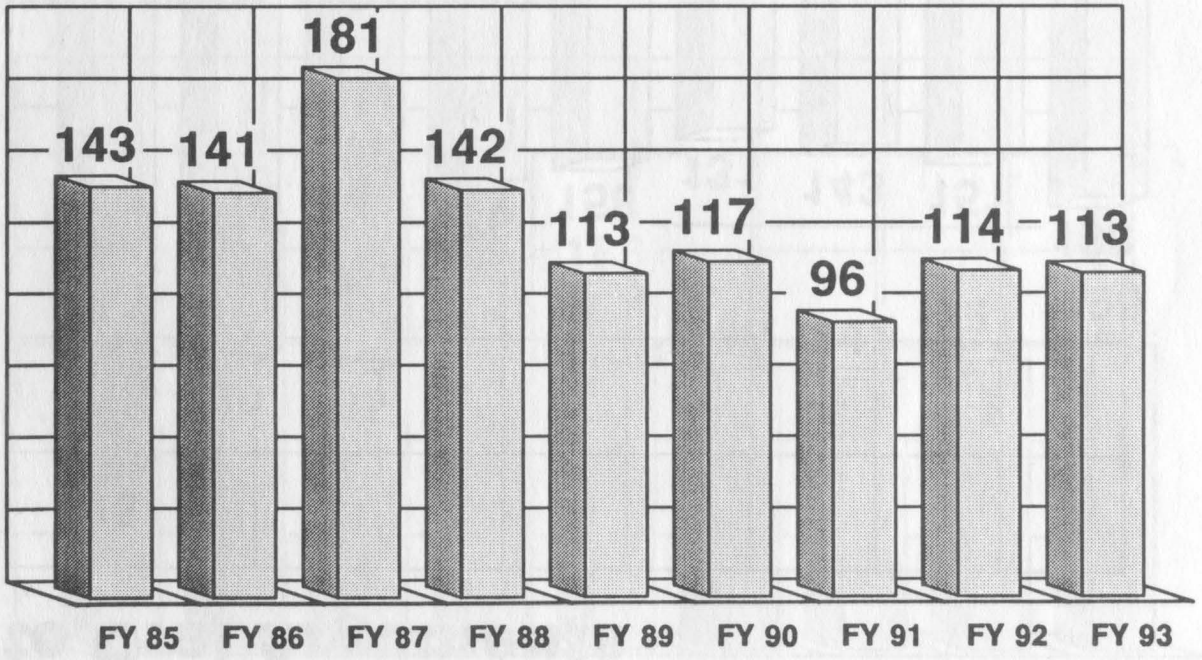
LIC-0020-003

Total Opinions Per Year



LIC-0020-007

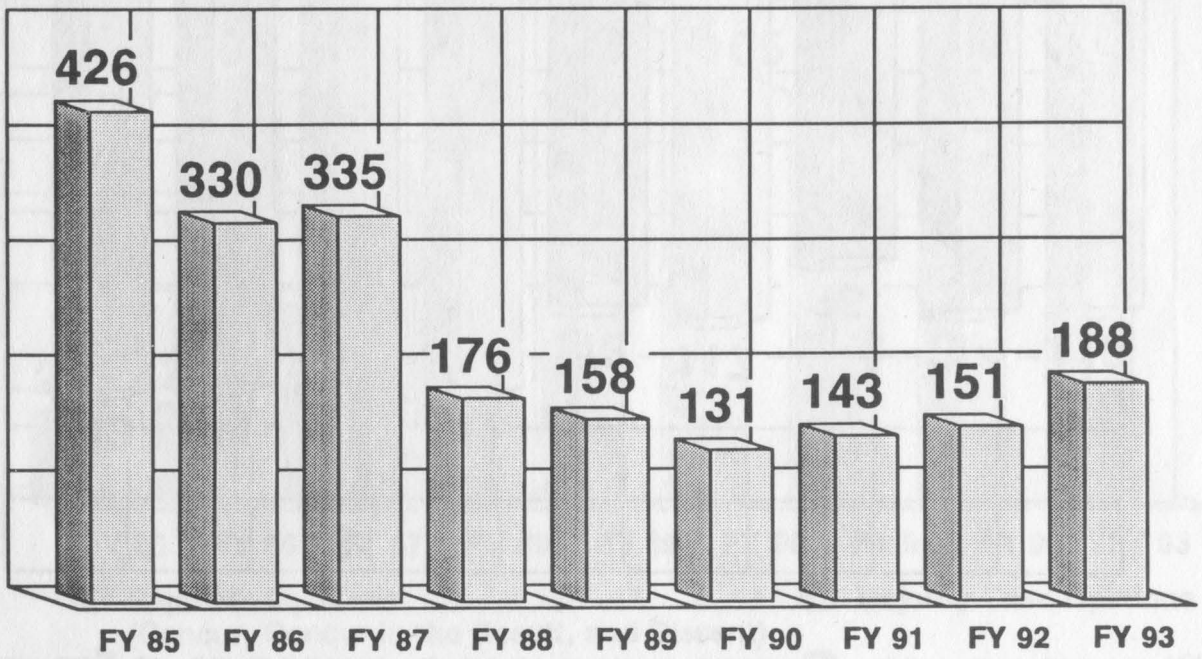
Days from Petition Filing to Grant



L/C-0020-006

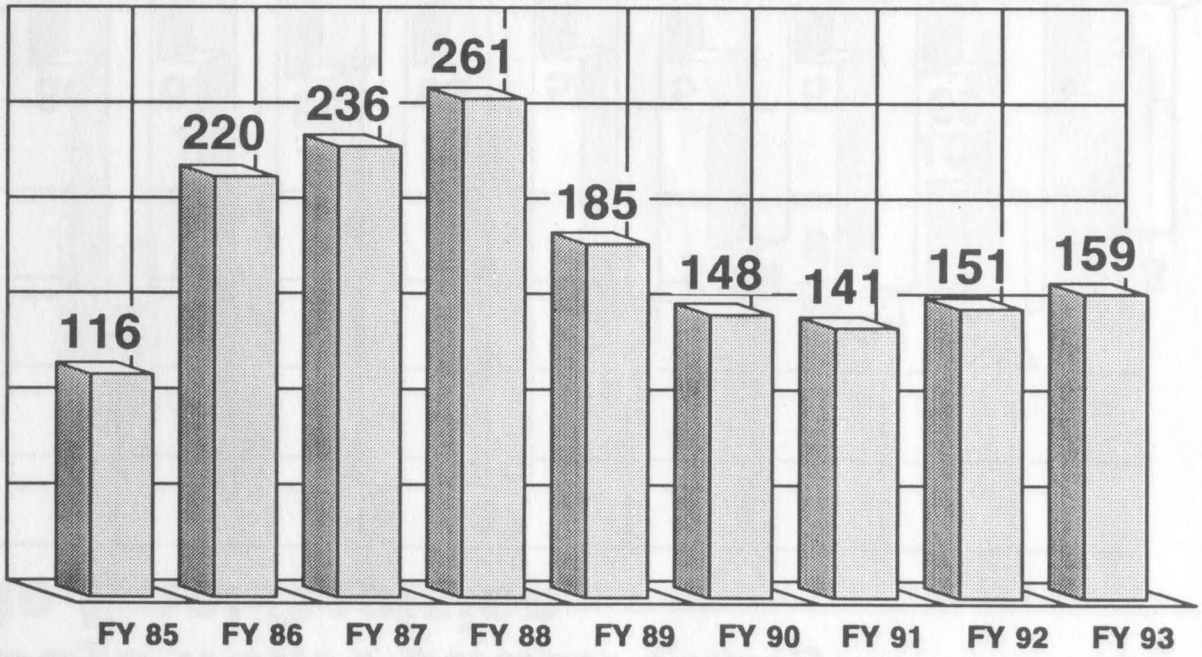
APPENDIX E

Days from Petition Granted to Oral Arguments



LIC-0020-005

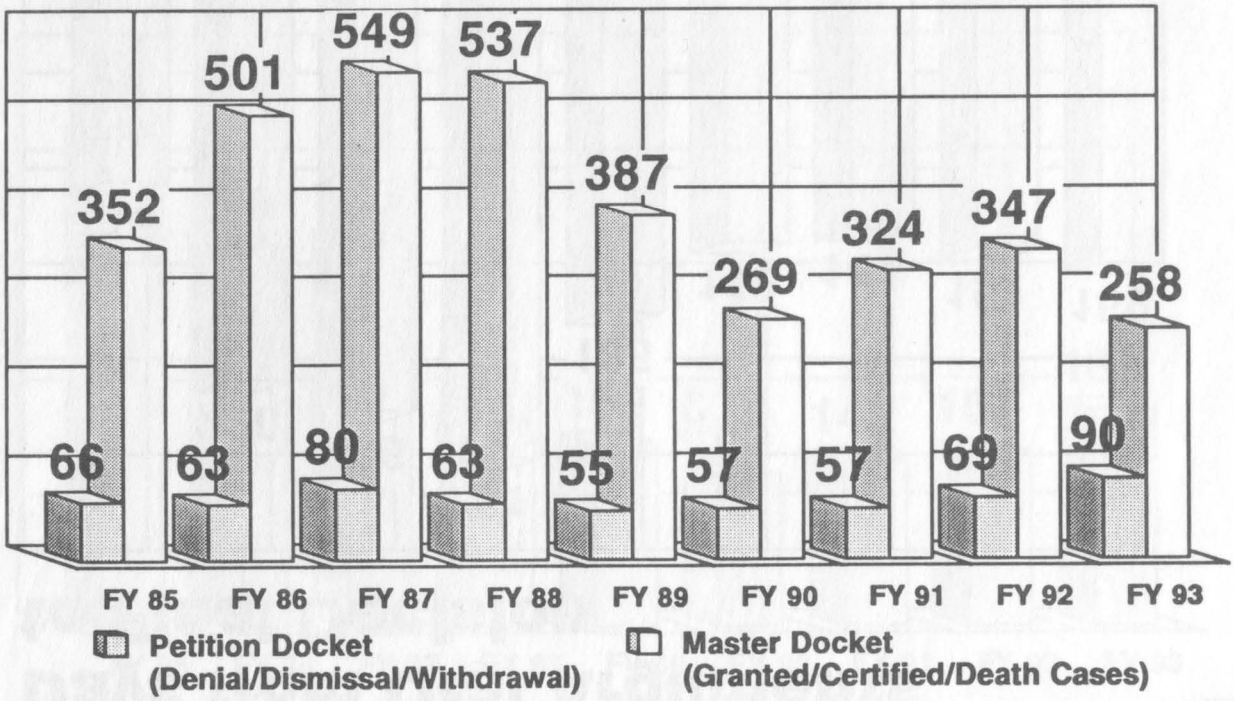
Days from Oral Arguments to Final Decision



APPENDIX G

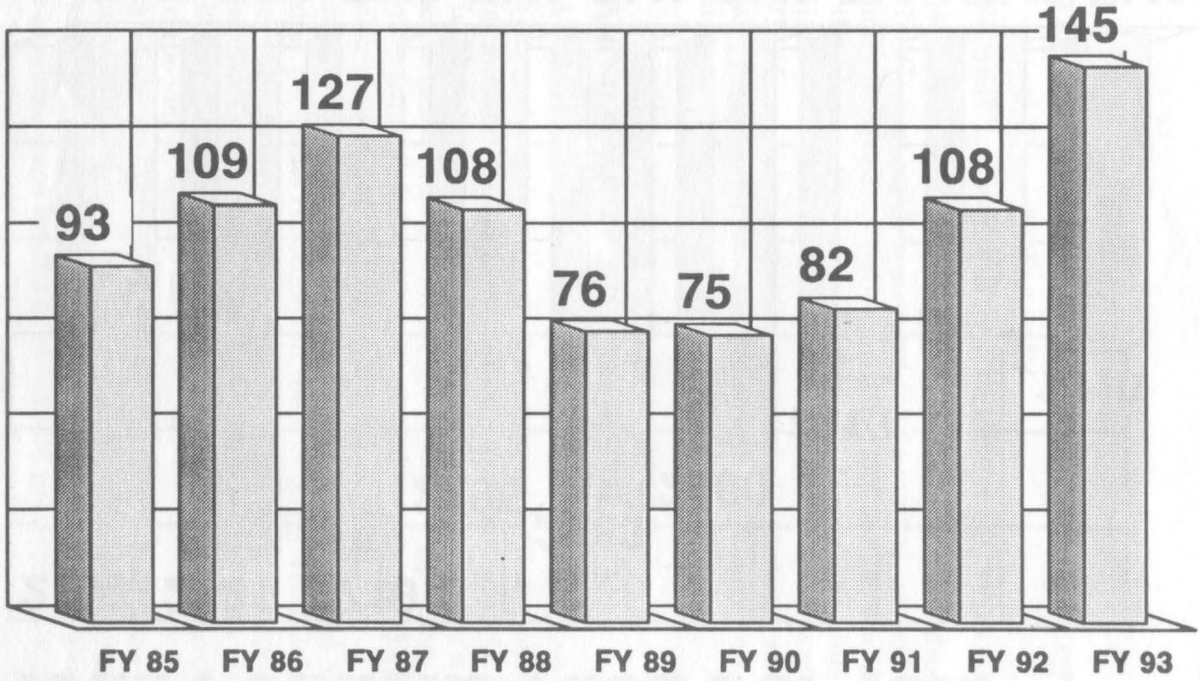
LIC-0020-008

Days from Petition Filing to Final Decision



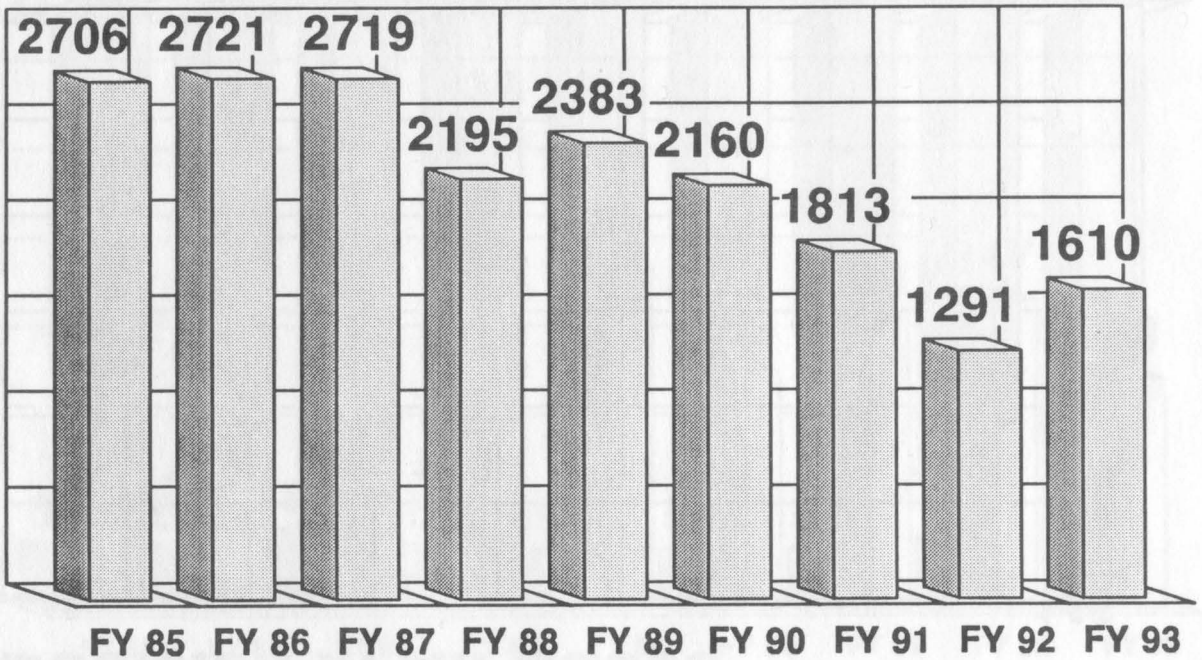
LIC-0020-009

Days from Filing to Final Decision in All Cases



LIC-0020-010

Total Petitions Filed Per Year



APPENDIX J

L/C-0020-001

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY OCTOBER 1, 1992, TO SEPTEMBER 30, 1993

During fiscal year 1993 (FY 93), the Office of The Judge Advocate General (OTJAG) continued to monitor courts-martial, review and prepare military publications and regulations, and develop and draft changes to the Manual for Courts-Martial (MCM) and the Uniform Code of Military Justice (UCMJ). Through its Field Operating Agencies, OTJAG provided judicial and appellate services, advice, assistance, and professional education to ensure the orderly and efficient administration of military justice.

MILITARY JUSTICE STATISTICS AND U.S. ARMY JUDICIAL ACTIVITIES

Average Army strength declined from 659,204 in FY 92, to 586,149 in FY 93. As Army strength declined 12 percent in FY 93, the number of nonjudicial punishments declined almost proportionately (11.7%). However, trials by court-martial dropped 33 percent, continuing a several-year decline in the rates of trial per 1,000 soldiers. Summary and special courts-martial declined an aggregate of 43 percent. General court-martial trials declined 21.5 percent.

Downsizing and the reduction in military justice caseload were accompanied by personnel reductions in the U.S. Army Trial Defense Service, the U.S. Army Trial Judiciary, the Defense Appellate Division, and the Government Appellate Division. The U.S. Army Court of Military Review (ACMR) was reduced from four panels to three, with three judges each.

The Clerk of Court received 20 percent fewer records of trial for review by the ACMR, although the number of cases received for examination pursuant to Article 69(a) declined only 3 percent. Because of cases in the pipeline, cases briefed to ACMR did not decrease significantly in FY 93.

ACMR heard more oral arguments and published a greater percentage of its decisions than in any recent year, without materially increasing its decision time.

Part 5 of the accompanying report depicts a 30 percent increase in decisions reviewed by the U.S. Court of Military Appeals (COMA). This resulted from challenges to the method of appointing military trial and appellate judges, and from challenges to their independence based on lack of tenure. These were the only issues in 198 of the 254 Army cases reviewed by COMA. Of the remainder, only 15.8 percent of Army petitions were granted, representing 4.5 percent of all cases reviewed by ACMR, a drop of 2.2 percent from FY 92. Overall, the number of Army decisions reviewed on issues other than the appointment or tenure of military judges declined by 36.4 percent.

STATISTICAL SUMMARY: FY 93

(See attached Appendix)

U.S. ARMY LEGAL SERVICES AGENCY

The U.S. Army Legal Services Agency, a field operating agency of 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 ACMR, the Clerk of Court, the Examination and New Trials Division, and the Trial Judiciary.

U.S. ARMY TRIAL DEFENSE SERVICE

During FY 93, The United States Army Trial Defense Service (USATDS) continued to provide professional defense services to soldiers throughout the Army. USATDS counsel represented 1,190 clients at proceedings conducted under Article 32, UCMJ; 982 clients at general courts-martial; 412 clients at special courts-martial; and 783 soldiers at administrative boards. USATDS counsel advised 36,273 clients regarding nonjudicial punishment, and 20,362 clients regarding a variety of adverse administrative actions.

USATDS supported the Multi-National Force in the Sinai, and troops in Southwest Asia, Macedonia, and Somalia. While affected by a drawdown of TDS counsel, USATDS continued to man over 70 offices world-wide. At specified locations, USATDS maintained interservice agreements to provide mutual support along with judge advocates of other services.

TRIAL COUNSEL ASSISTANCE PROGRAM

During FY 93, the U.S. Army Trial Counsel Assistance Program (TCAP) provided information, advice, training, and trial assistance to military prosecutors world-wide. TCAP expanded its constituency among prosecutors in the Air Force, Navy, Marine Corps, and Coast Guard. Attorneys from sister services were among the most enthusiastic users of TCAP services. Four basic categories of TCAP services were provided: (1) telephone inquiry assistance; (2) training seminars and conferences; (3) the TCAP Memo; and (4) trial assistance. TCAP attorneys responded to 1,147 telephonic requests, conducted 15 training seminars in the Continental United States, Korea/Hawaii, and Germany, held one video teleconference, published and distributed ten editions of the TCAP Memo, and participated as trial counsel in one court-martial. TCAP also provided instruction for trial counsel attending the U.S. Army Europe (USAREUR) Criminal Law Conferences, the Criminal Law New Developments Course and Criminal Trial Advocacy Courses at The Judge Advocate General's School, U.S. Army.

SIGNIFICANT MILITARY JUSTICE ACTIONS

Criminal Law Division, OTJAG, advised The Judge Advocate General (TJAG) on military justice policy, legislation, opinions and related criminal law actions. Specific responsibilities included: promulgating military justice regulations and reviewing Army regulations for legal sufficiency; military corrections; the Army's drug testing program; federal felony and magistrate court prosecutions; legal opinions for the Army Staff; statistical analysis and evaluation; and Congressional inquiries.

During FY 93, the Criminal Law Division responded to 77 White House inquiries; 92 Congressional inquiries; 11 requests for legal opinions from the Army Board for Correction of Military Records; 149 letters written to the Secretary of Defense, Secretary of the Army, Chief of Staff of the Army, and The Judge Advocate General; and 29 miscellaneous inquiries. The office also processed three clemency petitions under Article 74, UCMJ, 16 officer dismissal cases for Secretary of the Army approval, and 22 Freedom of Information Act/Privacy Act requests.

During FY 93, the Criminal Law Division participated with DoD and State Department counsel in drafting procedural and evidentiary rules for the United Nations' International Tribunal on war crimes in former Yugoslavia; represented TJAG on a DoD/DOJ task force revising the Federal Crime Victim and Witness Assistance Program; pro-

posed changes to the MCM and UCMJ based on suggestions of the Desert Storm Assessment Team; attended meetings of American Bar Association committees dealing with military law matters; and contributed to the 1993 Judicial Conference of the Court of Military Appeals and the annual meeting of the Code Committee.

JOINT-SERVICE COMMITTEE ON MILITARY JUSTICE

The Chief, Criminal Law Division, OTJAG, serves as the Army representative to the Joint-Service Committee on Military Justice (JSC) established by the Judge Advocates General and the Secretary of Transportation (Coast Guard) on August 17, 1972. The JSC conducts an annual review of the MCM, as required by Executive Order 12473 and DoD Directive 5500.17. The JSC proposes and evaluates amendments to the UCMJ and MCM, while serving as a forum for exchanging military justice information.

During FY 93, the JSC completed its ninth annual review of the MCM. This review was submitted for public comment. This year, it will be evaluated by the DoD General Counsel and submitted as Change 8 to the MCM, 1984. At the close of FY 93, Change 6 (the 1990 annual review) was in the Office of Executive Counsel, OMB, awaiting signature by the President following delays and revisions necessitated by the change of administrations in January 1993. Change 7 (the 1991 and 1992 annual reviews) was completed and readied for transmittal once Change 6 is signed. Reprinting of the MCM was held in abeyance pending Presidential action on Change 6. The Army serves as the executive agent of the JSC for printing the MCM and for tracking the progress of MCM changes and other legislative initiatives of the JSC.

Several MCM amendments were approved by the JSC and forwarded for adoption. These provided that: the sentencing authority, upon rehearing or new trial, may adjudge any lawful sentence, but convening authority action is limited to the sentence originally approved; members may not reconsider any finding announced in open court; confinement on bread and water or on diminished rations is no longer an authorized court-martial punishment; the SJA must inform the convening authority of a recommendation for clemency made by the sentencing authority; court-martial sentences may run consecutively with sentences adjudged by civilian or foreign jurisdictions; and that the convening authority may correct minor errors in actions detected before records are forwarded for appellate review.

Additional amendments will: establish criteria for determining the appropriateness of fines and provide a fine enforcement provision; clarify standards for review of search authorizations based on false

statements; amend procedures concerning handling and admissibility of privileged government information other than classified; clarify that the intent element of espionage is not satisfied merely because the accused acted without lawful authority; extend drunken or reckless driving to operation of aircraft and vessels and establish a 0.10 blood alcohol level as proof of intoxication; amend the definition of inherently dangerous acts to cover acts dangerous to "another" as opposed to "others;" and make rape gender neutral and add spousal rape as an offense.

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.

From December 1, 1991 to November 30, 1992, foreign authorities charged United States citizens with 10,766 offenses subject to primary or exclusive jurisdiction of foreign tribunals. Of these, 8, 611 offenses involved military personnel. Foreign authorities released 465 of the 828 exclusive jurisdiction cases to U.S. military authorities for disposition. The remaining 7,783 foreign jurisdiction cases were for concurrent jurisdiction offenses. Because they involved violations of both U.S. military law and foreign laws, the foreign countries had authority to assert primary jurisdiction. However, U.S. military authorities were able to obtain waivers of foreign jurisdiction in 7,137 of these incidents. Overall, waivers were obtained in 91.7 percent of exclusive or concurrent foreign jurisdiction cases.

Foreign authorities reserved jurisdiction over 1,009 offenses allegedly committed by military personnel. Of these, 789 were traffic or other minor offenses.

A total of 2,155 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 807 of these offenses, or 37.4 percent of the total, to U.S. military authorities for administrative or other disposition.

Foreign authorities tried a total of 1, 815 cases; 15 trials, or 0.8 percent, resulted in acquittals, and 1,656, or 91.2 percent, resulted in sentences to fines or reprimands. The remainder included 29 executed sentences to confinement and 115 suspended sentences to confinement.

PROFESSIONAL RESPONSIBILITY

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

In 1987 the Army published AR 27-26, *Rules of Professional Conduct for Lawyers (Army Rules).* These rules, which closely parallel the ABA's Rules of Professional Conduct for Lawyers, apply to all active and Reserve Component (RC) judge advocates, all Department of the Army civilian attorneys, and non-government attorneys who practice before Army courts-martial. The *Army Rules* were revised in 1992.

The Professional Conduct Branch maintains its records on a calendar year basis. During the past year, professional conduct inquiries initiated into alleged violations of the *Army Rules* decreased by 20 percent compared to the average for the previous five years. More than two-thirds of the inquiries resulted in findings of no violation, and two-thirds of the remainder were determined to be minor, technical violations. Half of all inquiries concerned the conduct of trial or defense counsel.

LITIGATION

Civil litigation against the Department of the Army and its employees continued to increase during FY 93. 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 court-martial proceedings. Most remaining cases present challenges to the general conditions of confinement, specific actions taken by confinement facility personnel, or parole and clemency proceedings.

EDUCATION AND TRAINING

During FY 93, The Judge Advocate General's School, US Army (TJAGSA), located in Charlottesville, Virginia, provided legal education to lawyers, commanders, and other officers, enlisted personnel, and civilians of the military services and other federal agencies.

A total of 3,648 students attended forty-five resident courses at TJAGSA. Students included 1,461 Active Army, 468 US Army Reserve, 189 Army National Guard, and 302 Army civilians. 962 students came from other segments of the DoD: 433 Air Force, 117 Marine, 252 Navy, and 160 DoD civilians. Also attending classes were

191 non-DoD civilian employees, 60 members of the Coast Guard, and 15 International Military Students.

Thirty more courses were conducted on-site at various locations around the world: 2,494 students attended the school's on-site instruction; 12 classes presented in Europe and the Far East were attended by 435 students; and 18 classes presented at RC training sessions throughout the United States provided instruction for 2,059 students.

TJAGSA remains 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 American Bar Association accredited the school's award of the LL.M. in Military Law.

On May 14, 1993, the 76 students of the 41st Graduate Class received TJAGSA's LL.M. in Military Law. In addition to 51 Army judge advocates, the class consisted of 10 Marine, 5 Navy, 5 Air Force, 2 Army National Guard, and 3 international military students. The 42d Graduate Class, which began on August 2, 1993, numbers 52 active Army, 10 Marine, 5 Navy, 5 Air Force, 1 Army Reserve, and 2 international military students.

Three Basic Course classes, the 129th, 130th, and 131st, graduated a total of 170 students: 161 Active Army, 1 US Army Reserve, 5 Army National Guard, and 3 International Military students.

A Methods of Instruction Course was offered during the second week of July 1993. The School's 25 new staff and faculty attended the three-day course.

During FY 93, TJAGSA continued to provide senior officers with legal orientations prior to their assumption of command: 20 general officers attended General Officer Legal Orientation Courses, and 221 battalion and brigade command designees attended 6 Senior Officer Legal Orientation Courses. A special version of the General Officer Legal Orientation was presented to 8 congressional staff members. TJAGSA also provided instructional materials for the Pre-Command courses attended, at Fort Leavenworth, Kansas, by all battalion and brigade command designees.

The Criminal Law Division presented five resident continuing legal education (CLE) courses during FY 93. The Criminal Trial Advocacy Course was presented twice, in November and February, the Procurement Fraud Course in November, the Military Judges' Course in May-June, and the Criminal Law New Developments Course in August. Additionally, the Division conducted an on-site criminal law CLE program for judge advocates assigned to USAREUR in October 1992. The Criminal Law Division also provided CLE instruction to RC judge advocates at eleven on-site training locations.

The Criminal Law Division provided substantive instruction and updates to two appellate judges' conferences and updated numerous TJAGSA publications and deskbooks. The division also participated in the Expanded International Military Education and Training (IMET) Program, sending an instructor to Madagascar and Rwanda.

The International Law Division sponsored six resident CLE courses in FY 93. 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. The three Operational Law (OPLAW) seminars focused on the legal issues that directly affect the judge advocate involved in military operations in peacetime or combat environments overseas. The OPLAW seminars provided multidisciplinary, practical, legal guidance for judge advocates participating in training exercises, combat operations, and other overseas deployments. The Division sent two instructors to Germany to present the USAREUR Operational Law Course and one instructor to the USAREUR Operational Law Conference.

Additional instruction was provided by the International Law faculty throughout the year to Army Reserve and National Guard attorneys at eight on-site training locations throughout the nation.

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 ensuring that they 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, TRADOC, and the Naval War College.

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 FY 93 Peru, with the assistance of TJAGSA, will begin this important training.

Established by the Secretary of the Army in 1988, The Center for Law and Military Operations (CLAMO) is administered by the International Law Division and conducts symposia, publishes articles, and provides resource material on operational law. Symposia have been held recently on the Gulf War, the disaster relief efforts after Hurricanes Andrew and Iniki, and the Somalia relief effort. In addition, CLAMO hosted the 10th Joint Chiefs of Staff Military Operations and Law Symposium. Sponsored by the Chairman, JCS,

this symposium provided a forum for operators and their legal advisors from the military services and Unified and Specified Commands to discuss current issues affecting military operations. The theme for this year's conference was humanitarian and peacekeeping operations.

Reserve Component judge advocates were the specific beneficiaries of several courses presented at TJAGSA during FY 93. In accordance with new Department of the Army policy, the Judge Advocate Officer Advanced Course (JAOAC) was completely revised. The course now consists of a 120-hour correspondence phase and a required 2-week resident phase. A total of 118 RC judge advocates attended the JAOAC resident phase in June, 1993. During the same period, 114 RC judge advocates attended the Triennial Training at TJAGSA. The 1034th U.S. Army Reserve Forces School, from New Hampshire, provided administrative support for both courses. Also during FY 93, The Judge Advocate Guard and Reserve Affairs Division hosted the Army National Guard State Area Command (STARC) Workshop at TJAGSA. This workshop was attended by judge advocates from 20 STARC headquarters.

The Judge Advocate General's Reserve Component CLE Training Program was hosted at TJAGSA in April 1993 by the Judge Advocate Guard and Reserve Affairs Department. This unique program once again brought together senior RC and Active JAs to discuss significant legal and military issues facing the Total Army.

On December 1, 1992, Dean Nancy L. Schultz, Assistant Dean and Director of Legal Writing, George Washington University National Law Center, presented the Twenty-first Colonel Edward H. Young Lecture in Legal Education.

On March 25, 1993, the Twenty-Second Kenneth J. Hodson Lecture in Criminal Law was presented by Professor Roger C. Park, Professor of Law, University of Minnesota Law School. Professor Park's lecture was entitled, "Evidence of Uncharged Misconduct in Sexual Assault Cases."

The School 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 1993, it published the legal materials of over thirty authors, including judge advocates, 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 could best be characterized as the bar journal of the Army JAG Corps. It principally publishes articles

and notes that assist military attorneys in their legal practice. In FY 93, *The Army Lawyer* published over 700 pages of materials with a distribution of over 80,000 copies.

PERSONNEL, PLANS, AND POLICIES

The strength of the Judge Advocate General's Corps at the end of FY 93 was 1,646. This total includes 34 officers (31 captains and 3 first lieutenants) participating in the Funded Legal Education Program. The composition of the Judge Advocate General's Corps included 90 blacks, 30 Hispanics, 27 Asian and Native Americans, and 285 women. The FY 93 end strength of 1,646 compares with an end strength of 1,710 in FY 92, 1,771 in FY 90, and 1,756 in FY 89. The grade distribution of the Corps was 5 general officers, 123 colonels, 188 lieutenant colonels, 331 majors, 957 captains, and 42 first lieutenants. Sixty-one warrant officers, 299 civilian attorneys, and 1,537 enlisted soldiers supported legal operations worldwide.

To ensure selection of the best qualified candidates for initial commission, career status, and service schools, TJAG convened advisory boards several times during the year. Newly accessed officers were commissioned as first lieutenants. In December 1992, a selection board recommended that TJAG select nine active duty commissioned officers to begin law school under the Funded Legal Education Program.

Two hundred and forty-three Judge Advocate officers completed the following service schools:

U.S. Army War College	2
National War College	2
Industrial College of the Armed Forces	1
Department of Justice Fellowship	1
U.S. Army Command and General Staff College	13
The Judge Advocate Officer Graduate Course	50
The Judge Advocate Officer Basic Course	174

During FY 93, four officers completed fully funded study for LL.M. degrees in specialized fields of law.

As a separate competitive category under the DoD Officer Personnel Management Act, officers of the Corps compete among themselves for promotion. During FY 93, the Secretary of the Army convened four selection boards to recommend Judge Advocate officers for promotion to higher grades.

Michael J. Nardotti, Jr.
Major General, USA
The Judge Advocate General

Period: FISCAL YEAR 1993

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED [A]	CONVICTED	ACQUITTALS [B]	RATE OF INCREASE (+)/ DECREASE (–) OVER LAST REPORT
GENERAL	915	857	58	-21.5%
BCD SPECIAL [C]	327	279	48	-39.8%
NON-BCD SPECIAL	45	23	22	-35.7%
SUMMARY	364	314	50	-46.8%
OVERALL RATE OF INCREASE (+)/DECREASE (–) OVER LAST REPORT				-32.9%

PART 2 - DISCHARGES APPROVED [D]

GENERAL COURTS-MARTIAL (CA LEVEL)	
NUMBER OF DISHONORABLE DISCHARGES	254
NUMBER OF BAD CONDUCT DISCHARGES	556
SPECIAL COURTS-MARTIAL (SA LEVEL)	
NUMBER OF BAD CONDUCT DISCHARGES	176

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

FOR REVIEW UNDER ARTICLE 65 - GENERAL COURTS-MARTIAL	854
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	176
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	125

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

TOTAL ON HAND BEGINNING OF PERIOD [F]		62
GENERAL COURTS-MARTIAL	[G]	
BCD SPECIAL COURTS-MARTIAL	[G]	
REFERRED FOR REVIEW		1,340
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
TOTAL CASES REVIEWED		1,250 [H]
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
TOTAL PENDING AT CLOSE OF PERIOD [F]		152
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	1030 [I]
PERCENTAGE	100%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	53.0%
PERCENTAGE OF INCREASE (+)/DECREASE (–) OVER PREVIOUS REPORTING PERIOD	+4.5%
PERCENTAGE OF TOTAL PETITIONS GRANTED [J]	40.2% [L]
PERCENTAGE OF INCREASE (+)/DECREASE (–) OVER PREVIOUS REPORTING PERIOD	+24.5% [L]
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	20.5%
RATE OF INCREASE (+)/DECREASE (–) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+289.0% [L]

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		6
RECEIVED		31
DISPOSED OF		31
GRANTED	2	
DENIED	25	
NO JURISDICTION	4	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		6

PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE	
GENERAL COURTS-MARTIAL	598
SPECIAL COURTS-MARTIAL	229
TRIALS BY MILITARY JUDGE WITH MEMBERS	
GENERAL COURTS-MARTIAL	317
SPECIAL COURTS-MARTIAL	143

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	

PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	586,149 [K]

PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	44,207
RATE PER 1,000	75.4
RATE OF INCREASE (+)/DECREASE (–) OVER PREVIOUS PERIOD	+.2/1000 [M]

EXPLANATORY NOTES

[A] Includes only original trials; not rehearings, new trials, other trials.
[B] Includes all cases terminated for any reason without conviction.
[C] Cases convened by GCM convening authority in which Army 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 DDs, 25 dismissals of officers were approved.
[E] Does not include cases in which appellate review was waived (1 Art. 69 case in FY 93).
[F] Includes only cases briefed and at issue before the Court. At year end, 282 additional cases were awaiting the filing of briefs.
[G] Cases pending before USACMR, which include government appeals and petitions for extraordinary relief, are not routinely accounted for by type of court-martial.
[H] Includes 10 cases withdrawn from appellate review before decision issued.
[I] Represents total appellants represented by counsel. Of that number, 27 were represented by civilian counsel in addition to, or in lieu of, assigned military 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] Includes 220 cases presenting issue as to constitutionality of method of designating military trial and appellate judges.
[M] Change in rate per 1,000 is based on corrected rate (75.2) for FY 92 (avg. strength 665,800).

ANNUAL REPORT
of
THE JUDGE ADVOCATE GENERAL OF THE NAVY
pursuant to the
Uniform Code of Military Justice
FISCAL YEAR 1993

SUPERVISION OF THE ADMINISTRATION OF MILITARY JUSTICE

In compliance with the requirement of Article 6(a), Uniform Code of Military Justice, the Acting Judge Advocate General made inspections of legal offices in supervision of the administration of military justice.

ARTICLE 69(a), UCMJ, EXAMINATIONS

Eighty-four general court-martial records of trial, not statutorily eligible for automatic review by the Navy-Marine Corps Court of Military Review, were forwarded for examination in the Office of the Judge Advocate General in fiscal year 1993. Five cases required corrective action by the Judge Advocate General. Eight cases are pending review.

ARTICLE 69(b), UCMJ, APPLICATIONS

In fiscal year 1993, 34 applications under Article 69(b), Uniform Code of Military Justice, were received for review. Of these, 21 applications were denied on the merits, while relief was granted in whole or in part in 6 cases. Seven cases are pending review.

ARTICLE 73, UCMJ, PETITIONS

In fiscal year 1993, two petitions for new trial were received by the Office of the Judge Advocate General, and both are pending review.

APPELLATE GOVERNMENT DIVISION

Appellate Representation. The 10 Navy and 5 Marine judge advocates assigned to the Appellate Government Division filed a total of 2435 pleadings last year; 2007 with the Navy-Marine Corps Court of Military Review and 428 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 38% over last year's workload. Additionally, the Division filed 7 briefs in opposition to petitions for writ of certiorari and 1 final brief for the United States Supreme Court and 8 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 and staff judge advocates in the effective prosecution of courts-martial. Four appellate counsel are detailed to implement this program. Prompt assistance (usually the same day) is provided in response to telephone calls from trial counsel and staff judge advocates 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 and effective methods, there has been a 19% increase in assistance calls over last year.

Presentations. Government counsel also participated in the 1993 Judicial Conference of the United States Court of Military Appeals in Washington, D.C., and made presentations at the Army Judge Advocate General's School's Graduate Course and the Army-Navy Reserve Conference in Minneapolis, Minnesota.

Reserves. The Appellate Government Division continued to provide training and support to 12 Navy Reservists and 3 Marine Corps Reservists assigned to the Division. The Reservists assigned made a substantial contribution to the successful completion of the Division's mission including the preparation of the Government's appellate brief in a very sensitive and high-visibility Government appeal.

APPELLATE DEFENSE DIVISION

Appellate Defense Practices. A total of 2451 cases were reviewed during fiscal year 1993 by the 20 judge advocates, Navy and Marine, and their reserve counterparts assigned to the Appellate Defense Division as appellate advocates. Of that number, 597 were fully briefed to the Navy-Marine Corps Court of Military Review and 1440 were summarily assigned. Five hundred and two cases were petitioned 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 10 writs of certiorari and one amicus brief to the U.S. Supreme Court. The Supreme Court granted certiorari in *two* cases during the year. They were the first

military grants from the Court in a decade. Two death penalty appeals continued to be litigated throughout the year.

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, and Marine Individual Military Augmentee's, totaling 17 reservists, 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 approximately 25% 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 NMCMR.

NAVY-MARINE CORPS TRIAL JUDICIARY

The Navy-Marine Corps Trial Judiciary (NMCTJ) provided military judges for 734 general courts-martial and 3051 special courts-martial during fiscal year 1993. These numbers represent a decrease of 156 general courts-martial (-17.5%) and a decrease of 798 special courts-martial (-20.7%) from fiscal year 1992. The number of active duty military judges declined from 42 to 39 by 30 September 1992, while the number of in-court hours in fiscal year 1992 was 16,573, a decrease of 14.4% from 1992. Total travel time was 4,378 hours for 1290 cases. Cases were tried worldwide, including such places as Somalia, Guantanamo, Bahrain, Panama, and Iceland, as well as at sea. 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, the Air Force-sponsored Interservice Military Judges Seminar, the National Judicial College, the American Academy of Judicial Education, and the Military Judges and Current Developments in Criminal Law courses at the Army JAG School. Military judges served as lecturers or seminar leaders at the Navy/Marine Corps Senior Officer Short Courses in Military Justice offered by the Naval Justice School at 21 locations worldwide as well as for various in-service courses.

The Chief Judge visited convening authorities, staff judge advocates and legal services offices in Newport, Philadelphia, Camp Lejeune, Norfolk, San Francisco, San Diego, Camp Pendleton, Seattle, and the USS John F. Kennedy. The Chief Judge also attended reserve judges weekend training drills.

Navy and Marine Corps reserve judges tried 92 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 helped bridge the gap in both the Island and Transatlantic Circuits during the summer rotation of active duty judges.

On 10 September 1993, Captain William F. Grant, Jr., JAGC, USN, relieved Colonel Michael C. Wholley, USMC, as Chief Judge of the Navy Marine Corps Trial Judiciary. Captain Grant became the seventh Chief Judge to serve in this office. Colonel Wholley was promoted to Brigadier General and now serves as Staff Judge Advocate to the Commandant of the Marine Corps.

NAVAL LEGAL SERVICE COMMAND

Naval Legal Service Command (NAVLEGSVCCOM) provides a wide range of legal services to afloat and ashore commands, active duty naval personnel, dependents, and retirees from 44 offices worldwide. 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. In addition, the command also includes the Naval Justice School at Newport, Rhode Island, charged with training sea service judge advocates, and paralegals/court reporters for all services, as well as foreign military and civilian defense personnel through the Expanded International Military Education and Training Program.

In fiscal year 1993, NAVLEGSVCCOM completed the first year of a three year reorganization plan. When completed, NAVLEGSVCCOM will consist of 12 naval legal service offices (down from 20 at the beginning of fiscal year 1993) and 28 detachments and branch offices. At the end of the fiscal year, NAVLEGSVCCOM stood at 16 naval legal service offices and 28 detachments and branch offices. NAVLEGSVCCOM is commanded by the Deputy Judge Advocate General of the Navy and includes 323 officers, 190 enlisted and 176 civilian personnel. The command constitutes about 40% of the Navy's total judge advocate strength.

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 was completed in the summer on the headquarters level Military Justice Management Information System (MJMIS), which refined the existing JAGMIS system for tracking cases through the appellate process, and initial planning begun on the field version of MJMIS which will expand that cradle to grave case tracking capability down to initial receipt of charges.

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, was completed in fiscal year 1992. Phase II, site preparation of Local Area Network (LAN) cable plant installation, was completed at 30 NAVLEGSVCCOM activities in fiscal year 1993; these activities are now operational in LAN and Wide Area Network (WAN) environments (each person assigned to each site can communicate from their work station directly to the work station of every other person at each of the 30 COMNAVLEGSVCCOM sites as well as the Office of the Judge Advocate General, Navy-Marine Corps Appellate Review Activity, and Navy-Marine Corps Court of Military Review. The remaining 14 NAVLEGSVCCOM activities are scheduled to be fully operational by the end of fiscal year 1994, completing the NAVLAWSS project.

Finally, NAVLEGSVCCOM continues to explore ways to make its personnel more productive through the use of innovative electronic technology. Seven new electronic infobases were distributed to the field in fiscal year 1993: Office of Government Ethics - Standards of Conduct Manual; Naval Operations Law Manual (NWP-9); Bureau of Naval Personnel Manual; Naval Justice School Civil Law Study Guide; Naval Justice School Criminal Law Study Guide; Naval Justice School Procedures Study Guide; and Naval Justice School Evidence Study Guide. When loaded on a notebook computer with the five earlier products, these infobases furnish the sea service judge advocate a compact and thorough research library, allowing him or her to practice effectively in even the most remote locations. Additional manuals are being considered for conversion to infobase formats, as well as the use of CD.ROM technology to increase further the amount of resource material which can be delivered instantly to the judge advocate's desktop, wherever that may be.

NAVAL JUSTICE SCHOOL

During fiscal year 1993, the Naval Justice School (NJS) provided instruction to 13,689 students worldwide (1,251 in resident courses ranging from four days to nine weeks. Additionally, our San Diego Detachment provided training for 385 officer and enlisted students at the schoolhouse and over 24,000 at waterfront locations, while our branch office at TJAGSA in Charlottesville, Virginia continued to provide a naval flavor to their International/Operational Law courses. Our International Training Department, in meeting its responsibilities as the Executive Agent for DOD for Expanded International Military Education and Training (EIMET), developed curricula for, and then taught, a program of human rights and civilian control of the military to developing democracies located throughout the world. This fiscal year the Joint Chiefs of Staff directed a thorough review of the feasibility and cost effectiveness of consolidating/collocating all armed service JAG/Legal training. They tasked the Interservice Training Review Organization (ITRO) with conducting this review. Following ITRO's direction, the JAG schools have thoroughly reviewed their officer and enlisted legal training programs and have found little, if any, duplication. This result was not surprising— the JAG Schools already had a standing committee in place to conduct similar reviews. ITRO established an Interservice Legal Education Review Committee (ISLERC) in 1977. This committee, which has the commanders of the JAG Schools as its members, meets annually to review curricula and training programs, thereby avoiding unnecessary duplication and maximizing information sharing. The ITRO process is still ongoing, and more briefings are expected in the near future.

New Developments: During fiscal year 1993, NJS bought 2 new courses on line: (1) Naval Legal Service Office (NLSO) Management Course; and (2) mid-career Legalman course. The NLSO management course was designed to prepare prospective and recently reported NLSO Commanding Officers and Executive Officers for duties at NLSOs. This course emphasizes leadership and management skills, fitness report and evaluation writing, the budget process, and handling civilian personnel matters. Twenty students attended this extremely successful first-time offering. The Mid-Career Legalman course was taught twice, once at NJS and once at our Detachment. Designed to prepare mid-career E-5s and E-6s for advanced legal duties at Naval Legal Service Offices and Staff Judge Advocates offices, this course included substantive legal lectures, small group seminars, practical exercises and hands-on computer training. Sixty students benefited from this training.

An update of school courses follows:

Law of Military Operations Workshop. This twice-a-year *joint* course trains judge advocates from all services in advising commanders on international law matters with a strong emphasis on operational plans and rules of engagement. The course consisted of a combination of classroom instruction and practical exercises/seminars. During fiscal year 1993, 37 Navy, 7 Marine Corps, 6 Army, 19 Air Force, and 10 Coast Guard judge advocates, along with 2 civilians, attended this course.

Staff Judge Advocate Course. Offered twice a year, this three-week course trains current and prospective judge advocates for staff judge advocate duties. The course focuses on military justice and civil law matters that a command legal advisor would most likely encounter during his/her tour. Our teaching methodology included both classroom instruction and practical exercises/small group seminars. Eighty Navy and 4 Marine Corps judge advocates attended this course.

Senior Legalman Course. The annual course focuses on law office and other management skills required of senior enlisted paralegal supervisors. Twenty senior enlisted personnel (22 Navy and 2 Army) attended this course in fiscal year 1993.

Basic Lawyer Course. Offered 4 times during fiscal 1993, this course trains newly-accessioned judge advocates to perform duties as Navy, Marine Corps and Coast Guard judge advocates. It provides basic training in military justice, legal assistance, and military administrative and civil law. The Naval Justice School has developed a practice-referenced curricula for this course. We provide 165 hours of lecture, and over 120 hours of practical exercises/small group seminars designed to enhance advocacy skills, including 4 mock trial evolutions and 1 mock administrative discharge board. During this fiscal year, we trained 96 Navy, 71 Marine and 13 Coast Guard lawyers.

Legal Officer Course. The Naval Justice School trains non-lawyer junior officers and senior independent duty paralegals to assume legal duties with ships, aircraft squadrons, small stations, or other military units with no judge advocates/law specialists. We provided 80 hours of classroom instruction and 41 hours of practical exercises/exams. Attendees at NJS this fiscal year included 194 Navy officers, 23 Navy enlisted, 15 Marine Corps officers, and 1 Coast Guard officer. Additionally, we trained 209 Navy officers, 36 Marine Corps officers, and 1 civilian at our San Diego Detachment.

Expanded International Military Education and Training. The Naval Justice School has had 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 mil-

itary 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. During fiscal year 1993, the School brought its extremely effective Human Rights/Democratization training program to Guatemala, Senegal, Madagascar, Rwanda, Republic of the Philippines, Thailand, Bolivia, Lithuania, Estonia, Mongolia, and Sierra Leone. It also trained international students here at Newport, Rhode Island, as well as at the Air War College in Maxwell Air Force Base Montgomery, Alabama, and the Navy Hydrographic School in Gulfport, Mississippi.

Environmental Law. Sponsored by Navy Office of General Counsel, NJS coordinated and helped teach 2 environmental law courses for lawyers and 2 for non-lawyers. Held once at NJS and once at Port Hueneme on West Coast, these courses trained over 200 students in advanced and basic environmental law.

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; Virginia Beach, Virginia; and San Diego, California, to approximately 650 Navy and Marine Corps reservists.

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 their command legal responsibilities. Two sessions were held at the Naval Justice School and 24 offerings were held at the following world-wide locations: Jacksonville and Pensacola, Florida; Charleston (twice) and Parris Island, South Carolina; Norfolk (twice), Oceana and Quantico (twice), Virginia; Groton (twice), Connecticut; Camp Lejeune, North Carolina; San Diego (twice), San Francisco, and Camp Pendleton, California; Bangor, Washington; Great Lakes, Illinois; Washington, D.C.; Rota, Spain; Pearl Harbor, Hawaii; Guam; Okinawa and Yokosuka, Japan.

The 1,266 students attending these classes included:

USN:	964
USMC:	269
USCG:	12
USA:	9
USAF:	6
CIV:	6

Trial Advocacy (TRIAD) Instructor Clinic. Naval Justice School held two TRIAD Clinics at the schoolhouse. This four-day instructor-intensive clinic prepares counsel with 1-2 years of court-martial experience to conduct trial advocacy training in the field. The instructors are trained in the critiquing method advocated by the National Institute of Trial Advocacy.

Legalman Course. NJS taught this nine-week course 3 times during fiscal year 1993. Approximately 4 1/2 weeks are devoted to paralegal training in military justice, claims, administrative and civil law. The remainder of the time is devoted to training prospective legalman and legal specialists to be court reporters. The Naval Justice School instructs Navy and Coast Guard enlisted students during the entire 9 weeks; the Army sends students to the court-reporting phase of the course. In fiscal year 1993, 79 Navy, 8 Coast Guard and 21 Army students took this course.

Legal Clerk Course. This two-week course was taught at NJS and 9 times at our San Diego Detachment. It trains non-legal enlisted students to perform basic legal support duties, particularly on board small ships, with aircraft squadrons, and at small isolated commands. In fiscal year 1993, 289 sailors, 3 Marines, and 2 civilians took the course in Newport and at our San Diego Detachment.

Reserve Courses. NJS teaches 2 resident courses for Reserve JAGC officers and a 3-phase conversion legalman course. The Reserve courses are designed to prepare inactive-duty reserves of the Navy and Marine Corps to perform the duties of their active duty counterparts. During fiscal year 1993, 106 reserve students completed our reserve courses held at NJS.

Specialized Briefings and Presentations. In addition to the formal courses listed above, NJS continued its extensive support of Naval Education and Training Center Schools (Naval War College, Surface Warfare Officers School, Naval Chaplains School, Officer Indoctrination School, Officer Candidate School, and the Senior Enlisted Academy), giving expert instruction on court-martial procedures, search and seizure, 5th Amendment issues, law of armed conflict, law of the sea, rules of engagement, sexual harassment, fraternization, standards of conduct, and other timely legal topics. This extension program trained over 3,500 service members.

MARINE CORPS ACTIVITIES

During fiscal year 1993, three Marine Corps judge advocates graduated from top level schools. There are currently two judge advocates studying at the Naval War College, one studying Japanese at the Navy Post Graduate School, Monterey, one judge advocate at the

Marine Corps Command and Staff College, and three judge advocates at the Marine Corps Amphibious Warfare School. Ten 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 fourteen FLEP and sixteen ELP students in law school.

Three judge advocates in the Special Education Program (SEP) graduated with LLMs in Environmental and International law. Four judge advocates are currently attending school in the Advanced Degree Completion program (ADP), at George Washington University and University of Washington.

Headquarters, U.S. Marine Corps, funded one hundred and four judge advocates for continuing legal education (CLE) at the following schools: TJAGSA; Naval Justice School, Newport, Rhode Island; and Air University, 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 1993, eighty-five 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 several three and four day intensive courses in trial advocacy at bases on the east and west coasts in Hawaii, and Okinawa. Continuing efforts are underway to provide 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.

Harold E. Grant
Rear Admiral, USN
The Acting Judge Advocate General of the Navy

Period: Fiscal Year 1993

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (–) OVER LAST REPORT
GENERAL	734	693	41	-17.5
BCD SPECIAL	1572	1572		-24.8
NON-BCD SPECIAL	1479	1363	116	-15.9
SUMMARY	2898	2849	49	+26.3
OVERALL RATE OF INCREASE (+)/DECREASE (–) OVER LAST REPORT			-5.0	

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)	
NUMBER OF DISHONORABLE DISCHARGES	218
NUMBER OF BAD CONDUCT DISCHARGES	352
SPECIAL COURTS-MARTIAL (SA LEVEL)	
NUMBER OF BAD CONDUCT DISCHARGES	1862

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	602
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	1803
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		2079
GENERAL COURTS-MARTIAL	597	
BCD SPECIAL COURTS-MARTIAL	1482	
REFERRED FOR REVIEW		2456
GENERAL COURTS-MARTIAL	608	
BCD SPECIAL COURTS-MARTIAL	1848	
TOTAL CASES REVIEWED		2654
GENERAL COURTS-MARTIAL	647	
BCD SPECIAL COURTS-MARTIAL	2007	
TOTAL PENDING AT CLOSE OF PERIOD		1861
GENERAL COURTS-MARTIAL	550	
BCD SPECIAL COURTS-MARTIAL	1311	
RATE OF INCREASE (+)/DECREASE (–) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE NAVY-MARINE CORPS 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	18.1%
PERCENTAGE OF INCREASE (+)/DECREASE (–) OVER PREVIOUS REPORTING PERIOD	+4.0%
PERCENTAGE OF TOTAL PETITIONS GRANTED	35.0%
PERCENTAGE OF INCREASE (+)/DECREASE (–) OVER PREVIOUS REPORTING PERIOD	+12.0%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	6.3%
RATE OF INCREASE (+)/DECREASE (–) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	217%

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		22
RECEIVED		96
DISPOSED OF		103
GRANTED	11	
DENIED	92	
NO JURISDICTION	0	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		15

PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE	
GENERAL COURTS-MARTIAL	555
SPECIAL COURTS-MARTIAL	2698
TRIALS BY MILITARY JUDGE WITH MEMBERS	
GENERAL COURTS-MARTIAL	184
SPECIAL COURTS-MARTIAL	348

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	203

PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	720,700

PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	30,186
RATE PER 1,000	41.93
RATE OF INCREASE (+)/DECREASE (–) OVER PREVIOUS PERIOD	–.27

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE OCTOBER 1, 1992 TO SEPTEMBER 30, 1993

In compliance with the requirements of Article 6(a), Uniform Code of Military Justice (UCMJ), The Judge Advocate General and Deputy Judge Advocate General 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.

THE AIR FORCE COURT OF MILITARY REVIEW

During fiscal year 1993, the Air Force Court of Military Review experienced a drop in the number of cases referred for review and an increase in the number and timeliness of cases reviewed. In keeping with the recent trends, the Court continues to see a rise in the complexity of cases being reviewed, as well as an increase in the average length of the records of trial.

The Court expanded its work space and separated the administrative staff from the judges' work areas to promote enhanced efficiency. Each judge was allotted additional working space, and a new deliberation room was constructed to facilitate private discussion by panel members. The addition of a third full-time law clerk means that each of the three primary working panels will have an assigned clerk. The Court is making every effort to reduce its current workload and the time it takes to complete the appellate process for Air Force cases. The Court expects significant progress toward this goal in the coming fiscal year.

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 nonjudicial proceedings to the 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 Department of Defense (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 applications.

b. The Directorate received approximately 657 inquiries in specific cases requiring either formal written replies or telephonic replies to senior officials, including the President and members of Congress.

c. The Directorate provided representatives to all interservice activities involving military justice and support for the Code Committee.

d. The information programs office continues the development of the Automated Military Justice Analysis and Management System (AMJAMS) II. Completion of an interim version to undergo field testing is expected in August 1994. Development of the final version of AMJAMS II continues.

LEGAL INFORMATION SERVICES

During FY 93, the Legal Information Services Directorate transferred all operations from Lowry AFB, Colorado to Maxwell AFB, Alabama.

Some 1,000 new personal computers and 166 laser printers were purchased for legal offices throughout the Air Force. Seven notebook computers were purchased to continue updating the mobile computing capabilities of Air Force Judiciary personnel, and 30 laptop computers were purchased for use in emergencies and rapid deployment situations. Some 170 additional high-speed modems were purchased for the field to enhance the communications between legal offices and to support fielding of the new AMJAMS II.

The Project Reflex portable law library software was updated and distributed to the major commands for deployment contingencies and exercises. The Armed Forces Claims Information Management System (AFCIMS) software was fielded to all Air Force claims offices in August and September, becoming operational on 1 Oct 93.

Effective 1 September 1993, the Federal Legal Information Through Electronics (FLITE) system was relocated from a mainframe computer in San Antonio, Texas to Maxwell AFB, Alabama, where it now resides on a Sun minicomputer owned and operated by the Legal Information Services Directorate. As of 30 Sep 93, there were nearly

1,000 registered FLITE users, including Air Force, Army, Navy, Air National Guard, and DoD personnel, with the numbers increasing daily. New FLITE provides more current data and constant additions of special interest items, such as the Joint Ethics Regulation and Executive Order 12871 (Labor-Management Partnerships). AFCMR decisions are loaded as they are received from the Court. Our research attorneys perform about 150 to 200 on-line searches per month in support of clients throughout the DoD and also provide Service Desk support to on-line FLITE users.

In addition to continuing to support the Defense Emergency Authorities Analysis and Retrieval System (DEARAS), the FLITE staff has begun producing additional CD-ROM products, using in-house CD mastering equipment. These disks may be produced as needed. They will contain specially tailored assortments of data and search software. They can be used on any PC with a CD-ROM reader.

TRIAL JUDICIARY

The Air Force Trial Judiciary had an average of 22 active duty trial judges, 6 reserve trial judges, 13 noncommissioned officers, and 4 secretaries assigned throughout 5 Trial Judiciary Circuits worldwide; the Chief Trial Judge, his military judge assistant, a court reporter, and a secretary are assigned to the Trial Judiciary headquarters. The military judges' duties include presiding over all general and special courts-martial tried in the United States Air Force, in addition to serving as investigating 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. During the year, military judges spent an average of 125 days on temporary duty at locations, other than their bases of assignment, to perform these functions.

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

The Trial Judiciary's court reporter has now completed eighteen months of a trial program converting her from closed microphone reporting to stenotype/computer-assisted transcription reporting (CAT). The training program was extended to twenty-four months to match the training given Navy/Marine Corps CAT reporters. This training was begun to determine baseline cost and feasibility of converting closed microphone reporters to CAT.

The Nineteenth Interservice Military Judges' Seminar was conducted by the Trial Judiciary at The Judge Advocate General's School,

Maxwell AFB, Alabama, from 24 to 28 May 1993. This seminar was attended by over 50 military judges from the trial judiciaries of the Army, Navy, Marine Corps, Coast Guard, and Air Force. Also attending was a Canadian Armed Forces military trial judge. The seminar focused on practical advice for trial judges. It included practical advice on continuances and delays, presented by Lieutenant Colonel Mary Boone, an Air Force military judge; a mini-update covering multiple problems facing a trial judge, by Mr. Francis A. Gilligan, Commissioner to Judge Susan J. Crawford of the U.S. Court of Military Appeals; an in-depth presentation on jury instructions by Colonel Herb Green, Chief Circuit Judge for the U.S. Army's Third Judicial Circuit; and a two-hour presentation on judicial ethics by Brigadier General Jerry Scott, U.S. Air Force Reserve, and Presiding Judge, Tennessee Criminal Court of Appeals. Brigadier General Kenneth Gray, Chief Judge, U.S. Army Court of Military Review, was the keynote speaker, and Mr. William Suter, Clerk, United States Supreme Court, was the graduation dinner speaker. Judge Robert Wiss of the U.S. Court of Military Appeals spoke to the Seminar concerning the Court. The Seminar also included some five seminar hours devoted to practical judging problems, and two more hours devoted to sentencing issues.

Three active duty judges and one reserve judge attended the three-week-long Military Judges' Course conducted by the Army Judge Advocate General's School at Charlottesville, Virginia, from 17 May through 4 June 1993. Also in May, three trial judges attended the one-week-long Special Problems in Criminal Evidence Course at the National Judicial College, Reno, Nevada. One trial judge attended the Forensic, Medical, and Scientific Evidence Course in July, 1993, while another attended the Managing Trials Effectively Course in September 1993, both at the National Judicial College. Two trial judges attended the Navy-Marine Corps West Coast Judges Seminar in November 1992.

In November 1992, the judges of the Pacific Circuit conducted a two-day-long workshop at Osan Air Base, Korea. In December, 1992, the judges of the Eastern Circuit, Northern Region, also conducted a two-day-long judicial workshop, this one at Bolling Air Force Base, District of Columbia. In January 1993, the judges of the Central Circuit conducted a two-day-long workshop at Randolph Air Force Base, Texas, and in February 1993, the judges of the Western Circuit conducted a workshop at Travis AFB, California. All workshops were held in conjunction with trial and defense counsel workshops for the respective circuits; the Chief Trial Judge attended and participated in all the judicial workshops, except for the Central Circuit's workshop.

In April 1993, the Chief Trial Judge attended the mid-year and Board of Governors meeting of the American Judges Association, in Asheville, North Carolina. In early August, the Chief Trial Judge attended the annual meeting of the American Bar Association, National Conference of Special Court Judges, in New York City. These interactions with civilian judges are most beneficial in promoting a greater, mutual understanding of the military and civilian justice systems and the roles of military and civilian judges.

CIRCUIT TRIAL COUNSEL PROGRAM

During fiscal year 1993, the number of assigned circuit trial counsel was reduced to 19, due to the consolidation of the circuits. Throughout the Air Force, circuit trial counsel tried 292 general courts-martial and 39 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 "Criminal Law New Developments Course" held at the Army JAG School in Charlottesville, Virginia. While there, the CCTCs also participated in a CCTC workshop. Workshops for base-level prosecutors were conducted by the circuit trial counsel in all the judicial circuits. The workshops were timed to coincide with defense counsel and included joint sessions involving The Judge Advocate General, the Director of the Judiciary, and military trial judges.

APPELLATE GOVERNMENT COUNSEL

In August 1993, several appellate defense and appellate government counsel 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. Additionally, in order to keep appellate government counsel current in trial practice, an initiative was undertaken to detail them as trial counsel in courts-martial whenever their schedules permitted. During fiscal year 1993, government appellate counsel prosecuted three general courts-martial.

Appellate practice before the Air Force Court of Military Review (AFCMR) dropped off slightly during the year. As noted below, the number of briefs filed with AFCMR, as well as the number of oral arguments before that court, decreased by approximately eight percent. However, in contrast, appellate practice before the United States Court Of Military Appeals (COMA) increased substantially. The number of briefs filed with COMA by government counsel increased by 40

percent, while the number of cases argued increased by almost 18 percent.

	FY 92	FY 93
AFCMR		
Briefs Filed	365	334
Cases Argued	37	33
COMA		
Briefs Filed	51	85
Cases Argued	23	28
SUPREME COURT		
Petition waivers Filed	1	1
Briefs Filed	4	4

DEFENSE SERVICES

The Defense Services Division was divided into the Trial Defense Division and the Appellate Defense Division, effective 1 October 1992, and this has been working well. Colonel Jeffrey R. Owens was the first division chief and was replaced in July 1993 by Colonel Richard L. Purdon. The Trial Defense Division is responsible for all defense services in the field worldwide with area defense counsel (ADC), circuit defense counsel (CDC), and chief circuit defense counsel (CCDC) reporting ultimately to the Chief of the Trial Defense Division.

The ADC program continues to earn high marks in the field. Renewed focus on the independence of the defense function from the local command structure was one of the primary themes for the year. The multimedia effort to inform military personnel about the ADC mission and role was accomplished through base newspaper articles, commanders' calls, briefings, and posters. Given the importance of the subject, the independence of the defense counsel function will continue to receive considerable emphasis.

As reported last year, 76 Desktop III computers and printers were ordered for the ADC offices. These have been received and are in full operation. In 1993, several state-of-the-art notebook computers were procured for the seven CCDCs.

Training trial defense counsel has always been one of our highest priorities and remained so in 1993. This included two ADC Orientation Courses for new ADCs and ADC-selectees; annual circuit-level workshops in each of the circuits; Trial Advocacy and Advanced Trial Advocacy Courses taught at Maxwell Air Force Base, Alabama; and on-the-job training conducted by CDCs and CCDCS.

APPELLATE DEFENSE COUNSEL

The breakdown of activity within the Appellate Defense Division follows:

(These figures vary from the AFCMR figures as the AFCMR tracks cases by calendar year)

	FY 92	FY 93
AFCMR		
Cases Reviewed	554	455
Oral Arguments	36	14
Other Motions	392	183
COMA		
Supplements to Petitions	440	323
Grant Briefs	18	48
Oral Arguments	27	18
Other Motions	167	154
SUPREME COURT PETITIONS	4	14

CONFINEMENT

At the end of the 1993 fiscal year, a total of 600 Air Force personnel were in confinement. That figure represents about a 12 percent decrease over the number in confinement at the end of fiscal year 1992, and it is well below the prisoner population totals over most of the past decade. A total of 578 of those prisoners were in post-trial confinement, including 275 in long-term confinement at the United States Disciplinary Barracks (USDB), Fort Leavenworth, Kansas. There were two prisoners in the Return-to-Duty Rehabilitation Program. The number of Air Force prisoners on parole at the end of fiscal year 1993 was 239, slightly more than at the end of fiscal year 1992 .

The Air Force corrections facility at Lowry Air Force Base, Colorado closed during 1993. To make up for the prisoner bed space lost as a result of the Lowry closure, the Air Force contracted with the Navy for space at its state-of-the-art, 400-prisoner consolidated brigs located at the Charleston and Miramar Naval Air Stations. Incident to the Lowry closure, day-to-day management of the Air Force Corrections Program was transferred from the 3320th Corrections and Rehabilitation Squadron to the Air Force Security Police Agency, Kirtland Air Force Base, New Mexico.

In accordance with the DoD Corrections Consolidation Program, the Army has continued to accept Air Force long-term prisoners, with costs being borne by the senior service. The service regional confine-

ment facilities mandated in the DoD plan are fully operational and are accepting prisoners from all services with no significant problems.

CIVIL LITIGATION

As of 30 September 1993, there were nine civil cases involving collateral attacks on courts-martial convictions. Seven of these cases were brought via petitions for habeas corpus. The other two cases base their jurisdiction on the Tucker Act, claiming back pay and reinstatement, since neither plaintiff is serving confinement. Issues include a due process lack of notice challenge to the Air Force fraternization policy, a challenge to the constitutionality of military judges without fixed terms, a Fifth Amendment challenge to the cross-examination into the accused's post-arrest, pretrial silence, and various evidentiary issues.

In last year's report, we noted the decision of the Kansas Federal District Court, granting a writ of habeas corpus in the case of *U.S. v. Lips,* 22 M.J. 679 (AFCMR 1986). The court ordered Lips' release or retrial within 120 days. The Tenth Circuit Court of Appeals granted a stay of the lower court's order and, on 1 July 1993, reversed the Kansas Federal District Court's finding of jurisdiction to review the issue of whether trial counsel's cross-examination into the accuser's post-arrest, pretrial silence violated his Fifth Amendment right to remain silent (*Doyle v. Ohio,* 426 U.S. 610 (1976)). *Lips v. Commandant,* 997 F.2d 808 (10th Cir. 1993). The Tenth Circuit affirmed the lower court's conclusion that there was no jurisdiction to review Lips' challenge to the admissibility of sexually explicit materials as this issue had been fully and fairly considered by the AFCMR.

The *Lips* decision reinvigorates the "full and fair" consideration test of *Burns v. Wilson,* 346 U.S. 137 (1953), and significantly pulls back from the four factor test set forth in *Dodson v. Zelez,* 917 F.2d 1250 (10th Cir. 1990). In *Lips,* the Tenth Circuit held that, if the military courts considered and decided the issue, even if that consideration were not specific to the issue later raised, that forecloses the possibility of collateral attack in the federal district courts. In a footnote, the Tenth Circuit noted that, even though the AFCMR did not specifically consider the improper cross-examination issue, it was enough that the AFCMR "did specifically state that it had 'examined the remaining assignments of error and resolved them against the appellant.' " *Lips,* 997 F.2d at 812, n.2, quoting *U.S. v. Lips,* 22 M.J. at 684. The import of this decision is that the district courts do not examine the other three Dodson factors, if they find that the military courts gave the issue full and fair consideration.

PREVENTIVE LAW AND LEGAL ASSISTANCE PROGRAM

The Legal Assistance Division continued to oversee the provision of preventive law and legal assistance services worldwide. During 1993, Air Force legal offices served 325,390 clients, provided 73,475 wills, and furnished notarial services in 472,076 cases. The number of client office visits totaled 940,744.

One of the Division's significant projects involved the conversion of its regulations—AFR 110-6 (notary regulation), AFR 110-22 (legal assistance regulation) and AFR 110-27 (preventive law regulation)—into a policy directive and implementing instruction. Policy regarding the Preventive Law, Notary and Legal Assistance Programs is now found in Air Force Policy Directive (AFPD) 51-5. This directive was published on 27 September 1993. The implementing instruction for the Preventive Law, Notary and Legal Assistance Programs is Air Force Instruction (AFI) 51-504. This AFI is currently undergoing editorial review; a publishing date is pending.

When published, AFI 51-504 will authorize paralegals in the grade of E-5 and above to serve as notaries worldwide. This change is permitted by Title 10, United States Code, Section 1044a. Current regulations only authorize paralegals serving overseas to act as notaries. Air Force power of attorney forms will be revised to include a jurat suitable for use by paralegal notaries.

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 fiscal year 1993 .

Approximately 1,270 Air Force attorneys attended courses held at the Air Force Judge Advocate General School, Maxwell Air Force Base, Alabama, and the Air Force Reserve and Air National Guard Annual Survey of the Law in Denver, Colorado.

THE AIR FORCE JUDGE ADVOCATE GENERAL SCHOOL

The Air Force Judge Advocate General (AFJAG) School is part of Air University's Ira C. Eaker Center for Professional Development at Maxwell Air Force Base, Alabama. The newly-constructed William L. Dickinson Law Center, home of the School and the Morehouse Center for Paralegal Studies, was dedicated on 21 May 1993. The Dickinson Center encloses more than 56,000 square feet and includes two auditoriums, a 40,000-volume capacity library, two moot courtrooms, thir-

teen seminar rooms, computer education training classrooms, a conference facility, faculty offices, lounges, a state-of-the-art audiovisual system, and the Air Force JAG Department heritage room, known as "JAG Traditions." The building was named for former United States Representative William L. Dickinson, who served Alabama in Congress from 1964 until 1993.

The Dickinson Center is complemented by Dougherty Hall, the dedicated residence facility for students attending AFJAG School classes. Dougherty Hall, which opened in April 1993, contains 48,000 square feet of floor space on five floors. There are 100 rooms, cooking and laundry facilities, and student lounges within the building. The facility is also equipped with a local area computer network and connectivity to the AFJAG School, thus affording each student the opportunity for out-of-class education and training, utilizing laptop computers. The Hall was named for General Russell E. Dougherty, USAF Retired, a former Commander-in-Chief of the Strategic Air Command who saw service both as a judge advocate and command pilot during his illustrious career.

Resident Courses

The AFJAG School conducted 21 different courses with 27 offerings attended by approximately 1,600 students in fiscal year 1993. The school conducts career entry-level courses for both paralegals and judge advocates, as well as continuing legal education (CLE) for attorneys and paralegals from all services.

Courses in which issues of military justice were a primary focus include the following:

a. The Judge Advocate Staff Officer Course—In addition to introducing new Air Force judge advocates to military legal practice, this course provided four weeks of intensive military justice lectures and seminars. In conjunction with the classroom work, the students participated as trial and defense counsel in two moot courts, one a guilty plea judge-alone trial and the other a fully-litigated trial with members.

b. Trial and Defense Advocacy Course—This course is designed to provide basic trial advocacy training to judge advocates. The course will be lengthened from one week to two weeks in fiscal year 1994, with the addition of a full week dedicated to the litigation of a general court-martial. Instruction was provided to 80 military advocates in the last fiscal year.

c. Advanced Trial and Defense Advocacy Course—This course is a one-week-long course which was attended by 40 students in fiscal year 1993. It was developed primarily to train those counsel who are cur-

rently 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-long course which was attended by 53 members in fiscal year 1993. The military justice instruction centers on significant recent developments in both law and procedures relating to nonjudicial punishment and courts-martial actions, 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 in the most effective techniques of judicial management. It is a one-week-long course which was offered once in fiscal year 1993 and was attended by 44 military judges from all the military services.

f. Paralegal Advanced Law Course—This course provides noncommissioned officers assigned to military justice and civil law sections at base level with an in-depth understanding of principles and concepts involved in handling adverse actions. It is a one-week-long course offered annually. It drew 39 paralegals in fiscal year 1993.

g. 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 mobilization. It is a one-week-long course taught by both AFJAG School faculty and Reserve and Air National Guard judge advocates. During fiscal year 1993, 76 students attended the Reserve Forces Judge Advocate Course. In addition to this course, the AFJAG School conducted the Reserve Forces Judge Advocate Annual Survey of the Law, which is held each year in Denver, Colorado, for three days. The purpose of the course is to update Reserve and Air National Guard attorneys between their required attendances at the Reserve Forces Judge Advocate Course. There were 142 Air National Guard and 180 Reserve attorneys in attendance during the last survey. The AFJAG School also conducted a similar course for paralegals which was attended by 100 Reserve and 75 Air National Guard paralegals.

Nonresident Courses

The AFJAG School continued to offer nonresident courses approved for CLE credit by various states. The amount of credit allowed for completion of these courses is determined by individual state bar associations. The courses available in fiscal year 1993 included Ethics for Air Force Lawyers, Ethics for Claims Officers, Estate Planning, Basic Income Tax, Current Income Tax Law, Government Contract Law, International Law, and Supreme Court Trends in Criminal Justice.

The AFJAG School also provided instructional video tapes for professional enrichment in 61 military justice and civil law areas. CLE credit was not offered for these courses. Topics included trial advocacy, criminal law, income taxation, environmental law, labor law, claims and tort litigation, and acquisition law. During fiscal year 1993, 11 video tapes were available to paralegals.

Publications

The AFJAG School published one edition of The Air Force Law Review in fiscal year 1993. That issue contained scholarly articles, notes and comments that addressed a variety of legal topics.

The Reporter, the Air Force's quarterly legal periodical, provided timely, practical information on various topics of interest to Air Force lawyers. Each issue provided information in 15 areas: 3 in the area of military justice, and at least one lead article. This year's lead article topics included articles on the Merit Systems Protection Board, government contractor bankruptcy, professional responsibility, water law, and the role of the Air Force JAG in the early development of outer space.

The AFJAG School continued to publish and distribute *The Military Commander and the Law,* an 800-page compendium of legal topics addressing the issues confronting today's Air Force commanders.

Finally, the School was responsible for editing and distributing a wide variety of preventive law materials to field judge advocates. These materials serve to introduce a collection of informative and relevant information to judge advocates providing legal assistance to military personnel and dependents worldwide.

PERSONNEL

As of 30 September 1993, there were 1,371 judge advocates on active duty. This number included one major general, three brigadier generals, 135 colonels, 199 lieutenant colonels, 307 majors, 663 captains, and 63 first lieutenants. In addition, there were 242 civilian

attorneys, 792 enlisted legal technicians, and 710 civilian support personnel assigned to the Department.

Nolan Sklute
Major General
The Judge Advocate General

Period: Fiscal Year 1993

PART 1 - BASIC COURTS-MARTIAL STATUS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	575	521	54	-9%
BCD SPECIAL [A]	125	124	0	-12%
NON-BCD SPECIAL	218	184	35	-18%
SUMMARY	6	4	2	-33%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-12.6%

PART 2 - DISCHARGE APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)	
NUMBER OF DISHONORABLE DISCHARGES	74
NUMBER OF BAD CONDUCT DISCHARGES	293
SPECIAL COURTS-MARTIAL (SA LEVEL)	
NUMBER OF BAD CONDUCT DISCHARGES	117

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	482
FOR REVIEW UNDER ARTICLE 66 -BCD SPECIAL COURTS-MARTIAL	144
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	86

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

TOTAL ON HAND BEGINNING OF PERIOD		667
GENERAL COURTS-MARTIAL	563	
BCD SPECIAL COURTS-MARTIAL	104	
REFERRED FOR REVIEW		674
GENERAL COURTS-MARTIAL	528	
BCD SPECIAL COURTS-MARTIAL	146	
TOTAL CASES REVIEWED		638
GENERAL COURTS-MARTIAL	526	
BCD SPECIAL COURTS-MARTIAL	112	
TOTAL PENDING AT CLOSE OF PERIOD		703
GENERAL COURTS-MARTIAL	565	
BCD SPECIAL COURTS-MARTIAL	138	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-.8%

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

NUMBER	696
PERCENTAGE	99.0%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	430/638	21.8%
PERCENTAGE OF INCREASE (+)/ DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-4.0%
PERCENTAGE OF TOTAL PETITIONS GRANTED	70/430	5.9%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+1.5%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	70/638	5.9%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	336/430	+5.6%

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		5
RECEIVED		13
DISPOSED OF		14
GRANTED	0	
DENIED	14	
NO JURISDICTION	0	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		4

PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE	
GENERAL COURTS-MARTIAL	257
SPECIAL COURTS-MARTIAL	151
TRIALS BY MILITARY JUDGE WITH MEMBERS	
GENERAL COURTS-MARTIAL	264
SPECIAL COURTS-MARTIAL	157

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	17

PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	434,226

PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	7891
RATE PER 1,000	18.95%
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	.9%

[A] SPCMs in which BCD adjudged.

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

October 1, 1992 to September 30, 1993

The table below shows the number of courts-martial records received and filed at Coast Guard Headquarters during FY-93 and the five preceding years.

Fiscal Year	93	92	91	90	89	88
General Courts-Martial	14	16	9	14	5	13
Special Courts-Martial	31	26	34	42	40	25
Summary Courts-Martial	11	25	18	47	48	35
Total	56	66	61	103	93	73

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 the Chief Trial Judge 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 14 accused tried by general courts-martial this fiscal year, seven were tried by military judge alone. One of the seven accused tried by military judge alone received a dishonorable discharge and two received bad conduct discharges. Five of the seven accused tried by courts with members received a sentence which included a bad conduct discharge. Three accused elected to be tried by a court which included enlisted members. All 14 general courts-martial resulted in convictions. Four of the accused whose charges were referred to general courts-martial were nonrated (pay grades E-l through E-3), five were petty officers (pay grades E-4 through E-6), two were chief petty officers (pay grade E-7) and three were junior officers (pay grades W-2 through 0-3).

The following is a breakdown of the sentences adjudged in general courts-martial tried by military judge alone (seven convictions).

Sentence	Cases Imposed
dishonorable discharge	1
bad conduct discharge	3
dismissal	2

confinement 7
reduction in rate 4
forfeiture of all pay and allowances 1
partial forfeiture of pay ($9,400 total) 3
fine ($1,000 total) 1
reprimand 1
confinement without hard labor 1

The following is a breakdown of sentences adjudged in general courts-martial tried by members (seven convictions).

Sentence	Cases Imposed
bad conduct discharge	4
confinement	6
reduction in rate	6
partial forfeiture of pay ($900 total)	3
fine ($4,500 total)	2

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

FY	Number of Convictions	Forfeitures	Confinement	Reduction in Grade	Punitive Discharge/ Dismissal
93	14	7 (50%)	13 (93%)	11 (78%)	9 (64%)
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 247 specifications referred to general courts-martial.

Violation of the UCMJ, Article		No. of Specs.
80	(attempts)	1
81	(conspiracy)	5
86	(unauthorized absence)	1
91	(insubordinate conduct toward warrant, noncommissioned, or petty officer)	1
92	(violation of order or regulation)	13
107	(false official statement)	26
108	(sale, loss, damage, destruction, or wrongful disposition of military property of the U.S.)	2
112	(drunk on duty)	1
112(a)	(controlled drug offenses)	19
120	(rape)	4
121	(larceny or wrongful appropriation)	28

123	(forgery)	23
123(a)	(making, drawing, or uttering check, draft, or order without sufficient funds)	30
125	(sodomy)	3
128	(aggravated assault)	1
132	(frauds against the United States)	19
134	(general)	59

SPECIAL COURTS-MARTIAL

Twenty of the 31 accused tried by special courts-martial this fiscal year were tried by military judge alone. Fourteen bad conduct discharges were adjudged, twelve to accused tried by military judge alone and two to accused tried by courts with members. Two accused elected to be tried by a court which included enlisted members. Three special courts-martial resulted in acquittals and another was declared a mistrial. Twelve of the accused whose charges were referred to special courts-martial were nonrated (pay grades E-1 through E-3), sixteen were petty officers (pay grades E-4 through E-6) and three were chief petty officers (pay grade E-7).

The following table shows the distribution of the 281 specifications referred to special courts-special.

Violation of the UCMJ, Article		**No. of Specs.**
78	(accessory after the fact)	1
80	(attempts)	2
81	(conspiracy)	7
83	(fraudulent enlistment)	1
85	(desertion)	2
86	(unauthorized absence)	12
87	(missing movement)	1
91	(insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer)	3
92	(failure to obey order or regulation)	41
93	(cruelty and maltreatment)	17
107	(false official statement)	16
108	(sale, loss, damage, destruction, or wrongful disposition of military property of the U.S.)	1
111	(drunken or reckless driving)	1
112	(drunk on duty)	1
112(a)	(controlled drug offenses)	7
117	(provoking speeches or gestures)	3
121	(larceny or wrongful appropriation)	43
123	(forgery)	1
123(a)	(making, drawing, or uttering check, draft, or order without sufficient funds)	90
125	(sodomy)	5
128	(aggravated assault)	9

130	(housebreaking)	2
131	(perjury)	1
132	(frauds against the United States)	1
134	(general)	52

The following is a breakdown of sentences adjudged in special courts-martial tried by military judge alone (17 convictions). In six of these 17 convictions, the accused pled guilty to all charges and specifications.

Sentence	Cases Imposed
bad conduct discharge	12
confinement	15
hard labor without confinement	2
reduction in rate	13
forfeiture of pay ($9,300 total)	5
fine ($5,100)	6
restriction	2
reprimand	1

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

Sentence	Cases Imposed
bad conduct discharge	2
confinement	5
reduction in rate	7
forfeiture of pay ($2,983 total)	3
fine ($6,030)	3
restriction	1
reprimand	1

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

FY	Number of Convictions	Forfeitures	Confinement	Reduction in Grade	BCD
93	27	8 (29%)	19 (70%)	20 (74%)	14 (52%)
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

Fifty-eight percent of the accused tried by special court-martial were tried by military judge alone. Twenty-five percent of these

accused pled guilty to all charges and specifications. Thirty percent of the accused tried by special courts-martial with members pled guilty to all charges and specifications. There was a sixteen percent increase 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 review was conducted under Article 69 of all courts-martial not requiring appellate review.

PERSONNEL, ORGANIZATION, AND TRAINING

The Coast Guard has 172 officers designated as law specialists (judge advocates) serving on active duty—122 are serving in legal billets and 45 are serving in general duty billets. Nineteen Coast Guard officers are currently undergoing postgraduate studies in law and will be certified as law specialists at the completion of their studies. Five 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 $130,000 was spent on legal training during the fiscal year.

U. S. COAST GUARD COURT OF MILITARY REVIEW

During fiscal year 1993, the Court was composed of five appellate military judges, all of whom are commissioned officers. Three of the judges are active duty Coast Guard captains and the other two are retired officers, who are also civilian employees of the Coast Guard. The Court is divided into six panels with the Chief Judge sitting on each panel as the only judge with primary duty as a judge. The six-panel organization of the Court has enabled each judge to routinely decide cases with every other judge on a panel of three. The Court consisted of the following judges at the close of fiscal 1993:

Chief Judge Joseph H. Baum
Judge Alfred F. Bridgman, Jr.
Judge Terrance M. Edwards
Judge John H. Fearnow
Judge Mark A. O'Hara

Issues challenging the status of the Court and its judges that were initially raised in fiscal 1992 continued to be asserted before this Court, the Court of Military Appeals and the U.S. Supreme Court over

the past year. In *U.S. v. Carpenter,* 37 M.J. 291 (C.M.A. 1993), the Court of Military Appeals held that the two Coast Guard officers who sat as members of the panel in that case were appointed in a manner consistent with the Appointments Clause of the Constitution, Art. II, § 2, cl.2, for the reasons set out in *U.S. v. Weiss,* 36 M.J. 224 (C.M.A. 1992), *cert. granted,* ___U.S. ___, 113 S.Ct. 2412, 124 L.Ed.2d 635 (1993). The appointment of the Chief Judge, the third member of the panel, who is both a retired Navy captain and a civilian employee of the Coast Guard, was found to be defective, however, but his judicial acts were held to be entitled to de facto validity.

That appointment, as well as those of all the judges on the Court, had been made by the General Counsel, Department of Transportation, in his capacity as Judge Advocate General of the Coast Guard. The Court of Military Appeals held that appointment by the General Counsel did not satisfy the Constitution's Appointments Clause since he is not a department head. The Court stated, however, that appointment by the Secretary of Transportation would comply with the Constitution, since he is head of a cabinet-level executive department and has been authorized by Congress to " 'appoint. . .officers and employees of the Department of Transportation,' of which the Coast Guard is a part (14 USC § 1), without Senate confirmation. 49 USC § 323." *U.S. v. Carpenter,* supra at 37 M.J. 294. The Court then noted that it had been advised that the Secretary of Transportation had appointed all members of the Court of Military Review on 15 January 1993, fully complying with the Appointments Clause of the Constitution as of that date.

A petition for certiorari to the Supreme Court has been filed in *U.S. v. Carpenter* and the Appointments Clause issue in *U.S. v. Weiss* was argued to that court on 3 November 1993. Final decision on the validity of this Court's judicial appointments awaits Supreme Court action in those cases. The status of four of the five judges of this Court was also challenged in *U.S. v. Carpenter* for another reason, based on the part-time nature of their duty on the Court. That issue had also been raised earlier, discussed at length, and found to be without merit in *U.S. v. Kovac,* 36 M.J. 521 (C.G.C.M.R. 1992). Subsequently, the Court of Military Appeals in *U.S. v. Carpenter,* supra, at 37 M.J. 295-296 held, as well, that there is no constitutional or statutory requirement that appellate military judges perform only judicial duties or that they serve as full-time judges. The petition for certiorari in Carpenter encompasses this issue and a challenge to the lack of fixed terms, as well as the Appointments Clause issue.

Appendix (A) includes a statistical report of Court action for fiscal year 1993. 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 May, 1993, two of the judges attended the Third Judicial Conference of the U.S. Court of Military Appeals at George Washington University. In June, 1993, Judge Edwards represented the Court on a panel of Court of Military Review judges as part of the instruction for the 36th Military Judges Course at the Army Judge Advocate General's School in Charlottesville, Virginia. For a week in August, 1993, two judges attended the Current Developments Course at the Army JAG School in Charlottesville and in September, 1993, the two most recently appointed judges to the Court attended the first Appellate Military Judges' Training Seminar, covering three days of presentations at Bolling Air Force Base in Washington, D.C.

That training seminar was an outgrowth of the 1992 Appellate Military Judges' Conference in Newport, Rhode Island. At the conclusion of that conference, it was decided that steps should be taken to devise and present a specially tailored training program for new appellate military judges. To that end, an ad hoc joint training committee was formed to explore alternatives and offer recommendations to the Chief Judges of the Courts of Military Review.

After initially considering several possible training approaches, including a course at the Army Judge Advocate General's School, the committee decided to recommend development of its own three-day seminar with the help of Chief Judge Frank Nebeker of the Court of Veterans Appeals, to be held locally under the auspices of the American Bar Association's Appellate Judges Conference. Upon approval of that recommendation by the Chief Judges of the four Courts of Military Review, that seminar was held in September at Bolling Air Force Base.

The seminar was such a success that the committee recommended holding it again in 1994 at a military installation in the local area. That recommendation was approved in October by the judges attending the two-day 1993 All Services Appellate Military Judges' Conference. This year's conference was hosted by the Army Court of Military Review at the Army Judge Advocate General's School, Charlottesville, Virginia and all of the judges from the Coast Guard Court attended. Chief Judge Baum, as chair of the joint training committee, reported the results of the committee's work to those assembled and volunteered to continue as chair upon the conferees voting to hold another training seminar in 1994.

This past year, Chief Judge Baum, in addition to his work on the training committee, continued to be active in the Judiciary Division of the Federal Bar Association and the Federal American Inn of Court. He was Membership Chairman for the Inn this past year and was

Chair of the Judiciary Division's Long Range Planning Committee. In October, Chief Judge Baum became the Judiciary Division's Chair-Elect and continues as Chair of the Long Range Planning Committee for fiscal 1994.

ADDITIONAL MILITARY JUSTICE STATISTICS

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

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

Period: 01 October 1992 - 30 September 1993

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	14	14	0	-13%
BCD SPECIAL	31	27		+16%
NON BCD SPECIAL	0	0	0	UNCHANGED
SUMMARY	11	11	0	-56%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-15%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)	
NUMBER OF DISHONORABLE DISCHARGES	1
NUMBER OF BAD CONDUCT DISCHARGES	6
SPECIAL COURTS MARTIAL (SA LEVEL)	
NUMBER OF BAD CONDUCT DISCHARGES	14

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	9
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	14
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	5

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

TOTAL ON HAND BEGINNING OF PERIOD		9
GENERAL COURTS-MARTIAL	6	
BCD SPECIAL COURTS-MARTIAL	3	
REFERRED FOR REVIEW		27
GENERAL COURTS-MARTIAL	12	
BCD SPECIAL COURTS-MARTIAL	15	
TOTAL CASES REVIEWED /acted upon		22
GENERAL COURTS-MARTIAL	12	
BCD SPECIAL COURTS-MARTIAL	10	
TOTAL PENDING AT CLOSE OF PERIOD		14
GENERAL COURTS-MARTIAL	6	
BCD SPECIAL COURTS-MARTIAL	8	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-3%

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

NUMBER	22
PERCENTAGE	100%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	18/22	81%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+45%
PERCENTAGE OF TOTAL PETITIONS GRANTED	10/18	55%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+34%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	10/22	45%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		122%

Appendix A

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		0
RECEIVED		1
DISPOSED OF		1
GRANTED	0	
DENIED	1	
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	7
SPECIAL COURTS-MARTIAL	20
TRIALS BY MILITARY JUDGE WITH MEMBERS	
GENERAL COURTS-MARTIAL	7
SPECIAL COURTS-MARTIAL	11

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	0

PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	36864

PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	1093
RATE PER 1,000	29.65
RATE OF INCREASE (+)/DECREASE (–) OVER PREVIOUS PERIOD	-2%