



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

132399

**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, 1989 to September 30, 1990**

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
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**U.S. Department of Justice
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**JOINT ANNUAL REPORT OF THE CODE COMMITTEE
PURSUANT TO THE UNIFORM CODE OF MILITARY
JUSTICE**

October 1, 1989 to September 30, 1990

The Judges of the United States Court of Military Appeals; the Judge Advocates General of the Army, Navy, and Air Force; the Chief Counsel of the Coast Guard; the Director, Judge Advocate Division, Headquarters, United States Marine Corps; and Professors David A. Schlueter and Steven A. Saltzburg submit their annual report on the operation of the Uniform Code of Military Justice, pursuant to Article 67(g), Uniform Code of Military Justice, 10 USC § 867(g).

The Code Committee met on three separate occasions during fiscal year 1990 and all meetings were open to the public. A number of visitors attended each of these meetings and the Code Committee was pleased that the public demonstrated such an interest in the matters being considered. The first meeting of the Code Committee was held on January 30, 1990. Pursuant to an invitation of the Code Committee, the Chairman of the Joint-Service Committee on Military Justice was present to discuss the status of various proposals to amend the Uniform Code of Military Justice. Additionally, the Chairman discussed a proposed change to Rule 707, Rules for Courts-Martial (RCM), Manual for Courts-Martial, 1984, which would modify the standards relating to a speedy trial. After some discussion over the matter the Code Committee as a body declined to adopt any particular position to submit on the matter. The Chairman then discussed a proposed change to the Manual which would prohibit the admission into evidence of the results of polygraph testing of a military accused.

Pursuant to the invitation of the Chief Judge of the United States Court of Military Appeals the representatives of the Armed Services summarized the statistical data available relating to recent trends in court-martial activity and other disciplinary actions. In response to an inquiry by the Chief Judge, various members of the Code Committee noted that the recent Supreme Court case of *Solorio v. United States*, 483 U.S. 435 (1987), had thus far had very little impact throughout the military community. Additionally, the members discussed the 1989 amendments to the Uniform Code of Military Justice which expanded the Court of Military Appeals from three to five judges and the various proposals to

accommodate the increase in the number of judges. Finally, the Army representative noted the participation of military judge advocates in the Panama Combat Operations.

The second meeting of the Code Committee was conducted on June 18, 1990. As during the first meeting, the Chairman of the Joint-Service Committee on Military Justice was invited to discuss various proposed amendments to the Uniform Code of Military Justice and the Manual for Courts-Martial. Specifically, the Chairman discussed proposed amendments relating to Article 136 which would authorize civilian legal assistance attorneys to administer oaths; the elimination of the requirement for a verbatim transcript of a court-martial record in certain instances when it is clearly not required; an Article 32 amendment to authorize the investigating officer, when other unsworn charges are discovered, to proceed to inquire into them without the present burden of first going back to the convening authority for formal authorization to expand the scope of the Article 32 investigation; a change to Articles 39 and 41 to permit an additional peremptory challenge when additional members are added to a court-martial upon the exercise of peremptory challenges, and to permit a military judge, when the court-martial membership falls below a quorum, to go forward with Article 39(a) sessions; and a change to Article 3 to solve a problem with court-martial jurisdiction over a discharged servicemember who reenlists after having committed offenses prior to the first discharge.

Proposed amendments to the Manual for Courts-Martial were also discussed which related to a requirement that a military counsel be provided to a servicemember within 72 hours of communication of a request to military authorities for such counsel; the application of rape shield law provisions to Article 32 pretrial investigations; a change to RCM 701 to establish sanctions for willful violations of discovery rules; an addition to RCM 920 to adopt the federal civilian rule and allow a military judge to give instructions to court members before or after closing arguments by counsel; an amendment to RCM 704 to adopt the rule in federal civilian courts concerning immunity requests; changes to RCM 910 and 918 to provide a shorter and more simplified form of pleadings and findings in guilty plea cases; an addition to Military Rule of Evidence (MRE) 311 to adopt the rule in *Harris v. New York*, 401 U.S. 222 (1971), concerning the admissibility of a statement made by an accused after an unlawful apprehension; an amendment to MRE 505 to provide clearer guidance on handling court-martial proceedings involving classified information and the closed sessions of a court-martial relating thereto; and the addition in paragraph 96 of the Manual for Courts-Martial to provide for a specific offense under Article 134 for wrongful interference with an administrative action under the "obstruction of justice" category.

The Code Committee was also briefed on proposed changes relating to RCM 109 to provide for the handling of instances of alleged judicial misconduct and the investigation relating thereto. The members of the Code Committee then discussed the remedy available for the improper denial by the Government of a defense request for a grant of immunity for a defense witness. As during the first meeting, the second meeting involved discussions on the statistical trends of the Armed Services relating to court-martial activity and other disciplinary actions. Furthermore, questions were raised as to a potential concern over military personnel cuts in the legal community as they related to the administration of the Uniform Code of Military Justice. The Committee again noted that the impact of the *Solorio* decision was relatively slight in the military community.

The Clerk of the U.S. Court of Military Appeals gave a general overview of the work load goals of the Court and noted that the Court was endeavoring to bring its Master Docket of certified and granted petition cases as well as its Petition Docket case load as low as reasonably possible by the end of the 1989-1990 term. He further reported that every effort possible was being made to achieve another year in which the lowest number of pending cases would be carried over to the next term of Court. The Chief Judge then noted the pending death penalty case of *United States v. Curtis*, Dkt. No. 63044/MC, which would be argued during the current term of court with a large number of amicus curiae counsel participating in the oral argument. Concerning another matter before the Court, the Chief Judge noted that a Special Master had been appointed by the Court to inquire into the factual circumstances surrounding the extensive appellate processing delays in various cases which were being filed with the Court. Finally, the Chief Judge commended the Department of Defense for its excellent logistical and administrative support to the U.S. Court of Military Appeals during the year.

The members of the Code Committee next discussed a proposal relating to judge alone sentencing; a proposed amendment to Article 26 to provide for continuing jurisdiction of the military judge; and a proposal to transfer control of the military confinement facilities from the Department of Defense to the Federal Bureau of Prisons.

The final meeting of the Code Committee during fiscal year 1990 was held on September 28. The meeting began with a discussion of the docket of the United States Court of Military Appeals, during which the Clerk of Court noted that the carryover cases pending on the Court's Petition Docket were expected to be reduced even further than in the prior year and that, with the exception of the complex death-penalty case—*United States v. Curtis*—every case in

which the Court had heard oral argument during the current term would be decided prior to the end of the term. The Chief Judge then noted that the Court had heard argument in the first case in which the Chief Justice of the United States had designated an Article III Judge of the United States Court of Appeals for the District of Columbia Circuit to sit in place of a Judge of the United States Court of Military Appeals who had recused himself. The Chief Judge noted that the entire designation process went very smoothly and was much less cumbersome than anticipated. He then reported on the most recent experience of the United States Court of Military Appeals with cameras in the courtroom, noting that the hearing in *United States v. Curtis* had been televised live by C-SPAN. He observed that the entire pilot project went extremely well and that the cameras appeared to be very unobtrusive in the courtroom during the entire hearing. Another member of the Code Committee expressed his view that the quality of the advocacy on both sides in the *Curtis* hearing was very high.

The Chairman of the Joint-Service Committee on Military Justice was then asked to brief the Code Committee on the status of pending legislation to amend the Uniform Code of Military Justice. The Chairman noted that only three proposed amendments to the Uniform Code of Military Justice were reported out of committee in the fiscal year 1991 Department of Defense Authorization Act. These proposed amendments concerned (1) an amendment to Article 39(a) permitting military judges to conduct sessions that do not require the presence of court members when the membership of the court-martial has been temporarily reduced below a quorum; (2) an amendment to Article 41 requiring the parties to exercise or waive any challenges for cause as to remaining members after the exercise of challenges for cause has temporarily reduced the membership of the court-martial below a quorum; and (3) an addition to Article 136 authorizing civilian legal assistance attorneys employed by the Armed Services to have the general powers of a notary public in all notarial acts to be executed by active duty, retired and reserve military personnel, and all others eligible for legal assistance, both overseas and within the United States. The Chairman then observed that the Joint-Service Committee on Military Justice had considered additional proposals to amend the Uniform Code of Military Justice, including an amendment to Article 120 which would eliminate the spousal rape exemption and make the statute gender neutral; a change to Article 51 which would provide that sentencing in all courts-martial consisting of a military judge and members would be determined by the military judge unless the accused requested otherwise; an addition to Article 58 which would provide a means by which an accused whose conviction is reversed by a Court of Military Review and who has not yet completed serv-

ing an adjudged sentence to confinement may be released from confinement pending appeal by the Government to the United States Court of Military Appeals (discussion of this proposal was deferred until the next Joint-Service Committee meeting); and an amendment to Article 57 which would allow deferment of an accused's court-martial sentence to confinement when the military service is obligated by statute or treaty to return the accused to civilian confinement he was serving when the confining state had released him temporarily for the court-martial proceeding (this proposal was adopted by the Joint-Service Committee).

A discussion then ensued concerning a suggestion that the name of the Courts of Military Review be changed and it was decided that a subcommittee would be appointed to consider such a name change. Additionally, proposed changes to Article 26 continuing the jurisdiction of the military judge were referred to the Joint-Service Committee on Military Justice for further study. The Code Committee then discussed the impact of Operation Desert Shield on military justice and legal manpower requirements of the Armed Services.

Concerning earlier discussions on the possible transfer of military confinement facilities to the Bureau of Prisons, the consensus of the Code Committee was that the care of military prisoners should not be transferred to the Bureau of Prisons and that the Code Committee was opposed to any such action. The Code Committee also reviewed and discussed proposed changes in the handling of an investigation of alleged judicial misconduct within the Armed Services.

The Clerk of the United States Court of Military Appeals reported that the Court's Rules Advisory Committee had reviewed and that the Court had approved and implemented a rule for Senior Judges after it had been published for comment in the Federal Register and no comments were received. Additionally, he observed that various proposals were being discussed to modify the quorum rule for the Court in view of the expansion of the Court to five judges, and that consideration was being given to recommending a rule that the vote of two judges would be sufficient for the grant of a petition for review when the Court reaches full membership of five judges.

Finally, Judge Cox asked that the minutes of the meeting reflect the expression of himself and Judge Sullivan for their gratitude toward Chief Judge Everett for his fine leadership of the Court and the Code Committee over the past ten years. Chief Judge Everett expressed his gratitude to the members of the Code Committee for

the privilege of serving with them during his term as Chief Judge of the Court.

EUGENE R. SULLIVAN

Chief Judge

WALTER T. COX, III

Associate Judge

ROBINSON O. EVERETT

Senior Judge

Major General JOHN L. FUGH, USA

Acting The Judge Advocate General of the Army

Rear Admiral JOHN E. GORDON, USN

Judge Advocate General of the Navy

Major General KEITHE E. NELSON, USAF

Judge Advocate General of the Air Force

Rear Admiral PAUL E. VERSAW, USCG

Chief Counsel, United States Coast Guard

Brigadier General GERALD L. MILLER, USMC,

Director, Judge Advocate Division,

Headquarters, United States Marine Corps

Professor DAVID A. SCHLUETER

Professor STEPHEN A. SALTZBURG

REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS October 1, 1989 to September 30, 1990

The Judges of the United States Court of Military Appeals submit their fiscal year 1990 report on the administration of the Court and military justice to the Committees on Armed Services of the United States Senate and House of Representatives and to the Secretaries of Defense, Transportation, Army, Navy, and Air Force in accordance with Article 67(g), Uniform Code of Military Justice, 10 USC § 867(g).

THE BUSINESS OF THE COURT

The trend in the overall reduction of pending cases which was reflected in fiscal years 1986 through 1989 continued during fiscal year 1990. Specifically, the number of pending cases on its Petition Docket was reduced from 260 cases at the end of 1989 to 199 cases at the end of 1990. (See Appendix A.) While the Court experienced an increase in the number of pending cases on its Master Docket during the same period (48 to 72), every case filed on the Court's Miscellaneous Docket had been finally disposed of at the end of 1990. (See Appendix B.) Thus an overall total of only 271 cases was carried over to be decided in the following term of court. This represents a reduction of 13 percent in the number of pending cases carried over between the end of fiscal year 1989 and the end of the current fiscal year. During the course of 1990 the Court heard oral arguments in 100 cases, an increase of 13 percent over 1989 when the Court heard oral argument in only 89 cases. (See Appendix C.) Only one case that had been argued during 1990—a death penalty case—was remaining on the docket of the Court at the end of fiscal year 1990. The Court issued 105 opinions during 1990, with separate opinions (concurring or dissenting) being filed in 65 of these cases.¹ This represents a decrease of 12 percent over 1989 when the Court issued 120 opinions. (See Appendix D.) However, this decrease in the number of opinions released during 1990 is attributa-

¹ Although not part of the business of the Court, it is noted that during fiscal year 1990 the Court was notified that petitions for writ of certiorari were filed with the Supreme Court of the United States in 21 Master Docket cases in which the Court took final action.

ble to the steadily decreasing number of pending cases carried over by the Court at the end of each of the last several fiscal year terms.

The overall trend in the reduction of case processing time for cases filed with the Court continued during 1990. While there was a slight increase of 4 days between fiscal year 1989 and 1990 in the average number of days between the filing of a petition with the Court and the grant of such a petition (113 to 117), the average number of processing days between the grant of such petition and oral argument was reduced by 17 percent during fiscal year 1990 from 158 days to 131 days. (See Appendices E and F). Likewise, the average number of days between oral argument and the release of a final decision was reduced by 20 percent from 185 days to 148 days. (See Appendix G.) Thus, the total average processing time of cases which received plenary consideration by the Court between the filing of a petition on the Petition Docket and a final decision on the Master Docket was reduced by 30 percent from 387 days in 1989 to 269 days in 1990. (See Appendix H.) This major accomplishment equaled a similar reduction of 30 percent in the total average case processing time achieved by the Court's previous effort during fiscal year 1989.

Computation of these case processing times includes time periods allotted for counsel to file pleadings. Therefore, since a normal briefing cycle under the Court's Rules of Practice and Procedure requires 70 days for the filing of briefs in cases on the Master Docket, the average period for the actual consideration and disposition of a case by the Court after the filing of such pleadings is significantly less than the average times indicated in Appendices E, F, and H.

The above discussion of processing times concerns Master Docket cases in which petitions for grant of review have been granted by the Court for plenary consideration. Examination of the five-year trend for cases finally disposed of on the Court's Petition Docket involving denial or dismissal of petitions for grant of review reflects an average high of 80 days in fiscal year 1987 and an average low of 55 days in 1989. The processing time for fiscal 1990 reflects a slight increase of 2 days to an average of 57 days. (See Appendix H.)

In addition to the review work of the Court it is noted that, for the first time in the history of the Court, the Chief Justice of the United States, acting under authority of a recent change in the Uniform Code of Military Justice, designated a Judge of a United States Court of Appeals to sit in place of a Judge of the United States Court of Military Appeals, who had recused himself from hearing and deciding a particular case. The entire procedure was administratively accomplished without encountering any problem

and the Judge so designated authored the opinion of the Court in the case.

During fiscal year 1990 the Court admitted 574 attorneys to practice before its Bar, bringing the cumulative total of admissions before the Bar of the Court to 27,785

PUBLIC AWARENESS PROJECT (Project Outreach)

The Court continued its practice, established in 1988, of traveling outside its own courthouse to conduct special sessions and hear oral arguments in selected cases during fiscal year 1990. The Court has found that this public awareness project has provided members of the Armed Services as well as the civilian community an opportunity to gain a greater appreciation of the procedural safeguards Congress has established for the military justice system. Specifically, the Court conducted an actual appellate hearing at the United States Air Force Academy, Colorado Springs, Colorado; Saint Mary's University School of Law, San Antonio, Texas; The Association of the Bar of the City of New York, New York; and the United States Military Academy, West Point, New York. These hearings provided the judges an opportunity to meet with both members of the Armed Services and civilians who were interested in the military justice system. Such off-site hearings have promoted an increased public awareness of the role of the Court in the overall administration of military justice and have provided an opportunity for a greater public understanding of the military justice system and the manner in which it is administered throughout the world.

During fiscal year 1990 the Court also participated in the first live telecast of an oral argument conducted before a federal court.

On August 29, 1990, the case of *United States v. Curtis*, Dkt. No. 63044/MC, a case involving capital punishment, was televised live by C-SPAN. Thus, nationwide viewers were provided an opportunity to observe the presentations of oral argument by counsel representing the military accused and the United States as well as a number of other lawyers representing various associations interested in the issue of capital punishment. By providing viewers an opportunity to observe such an important hearing the Court believes that the public will be better informed of the procedures used in the military justice system to protect the rights of the military servicemember as well as the United States.

JUDICIAL VISITATIONS

During fiscal year 1990, the Judges of the Court, consistent with past practice and their ethical responsibility to improve the mili-

tary justice system, participated in professional training programs for military and civilian lawyers, spoke to professional groups of judges and lawyers, and visited staff judge advocates and commanders at various military installations throughout the world.

RETIREMENT OF CHIEF JUDGE ROBINSON O. EVERETT

On September 30, 1990, the judicial term of Chief Judge Robinson O. Everett as a judge of the United States Court of Military Appeals expired. His retirement marks the end of more than a decade of his service as chief judge of the Court. During his term he has led the Court by authoring numerous opinions which have significantly contributed to the substantive and procedural areas of military criminal law, as well as by his perceptive innovations in developing the Court's computerized management information system and in establishing such educational public outreach projects as off-site court hearings and televised court proceedings. His term expires concurrently with the effective date of a legislative amendment to the Uniform Code of Military Justice which expanded the Court from three to five judges. Consistent with his dedication to the Court and to the overall administration of military justice, and at the request of Chief Judge Sullivan, his successor, he has elected to continue to serve the Court as a senior judge in active service during this period of transition. The judges and staff of the Court wish to convey to Congress their gratitude to Chief Judge Everett for his outstanding leadership of the Court during his term of office.

HOMER FERGUSON CONFERENCE

The Fifteenth Annual Homer Ferguson Conference was held at the George Washington University Marvin Center on May 3-4, 1990 under the sponsorship of the United States Court of Military Appeals and with the cooperation of the Military Law Institute, the George Washington University National Law Center, the Judge Advocates Association and the Federal Bar Association. As in previous years, the conference was certified for credit to meet the continuing legal education requirements of various State Bars 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 Wayne E. Alley, Judge, United States District Court, Western District of Oklahoma; Timothy B. Dyk, Esquire; Leigh Bradley, Esquire, and Paul Koffsky, Esquire, Office of the General Counsel,

Department of Defense; the Honorable Kenneth W. Starr, Solicitor General of the United States; Colonel Francis A. Gilligan, JAGC, USA, Chief, Criminal Law Division, Office of the Judge Advocate General, United States Army; Dr. Jonathan Lurie, Historian to the United States Court of Military Appeals and Professor of History, Rutgers University; Colonel David T. Armitage, Medical Corps, USA, Associate Chairman (Forensic Sciences and Litigation Support), Senior Medico-Legal Consultant, Department of Legal Medicine, Armed Forces Institute of Pathology; Colonel Michael Wims, USAF, Chief, Military Justice Division, Office of the Judge Advocate General, United States Air Force; the Honorable Alexander M. Sanders, Jr., Chief Judge, South Carolina Court of Appeals; the Honorable William C. Bryson, Deputy Solicitor General of the United States; and Colonel Fred K. Green, JAGC, USA, Legal and Legislative Counsel to the Chairman of the Joint Chiefs of Staff.

In addition, the Honorable Walter T. Cox, III, Associate Judge, United States Court of Military Appeals, chaired a panel discussion on "Ethics and Military Practice" with panelists Gary L. Anderson, Assistant United States Attorney, Western District of Texas; Colonel Eileen Albertson, USMC, Judge, United States Navy-Marine Corps Court of Military Review; and Rear Admiral James L. Hoffman, Jr., JAGC, U.S. Navy (Ret.). The Honorable Eugene R. Sullivan, Associate Judge,² United States Court of Military Appeals, served as the moderator of a panel entitled "Evidence Update" with panelists Stephen A. Saltzburg, Professor of Law, University of Virginia School of Law; Lieutenant Colonel Lee D. Schinasi, JAGC, USA, and Professor David A. Schlueter, Saint Mary's University School of Law. The conference concluded with a series of seminars for military judges, for those interested in recent developments concerning child-victim confrontation issues, and for those interested in current death-penalty issues.

The invocation was offered by the Reverend Joseph S. Harvard and the conferees were welcomed by the Honorable Robinson O. Everett, Chief Judge, United States Court of Military Appeals, on behalf of the Court; Colonel Walter L. Lewis, USAF (Ret.), on behalf of the Military Law Institute; Dean John S. Jenkins, Associate Dean for Administrative Affairs of The National Law Center, George Washington University; and Captain Kevin J. Barry, USCG, President of the Judge Advocates Association.

The conferees included numerous military and civilian lawyers as well as Judges of the Courts of Military Review, legal scholars, and commentators in the field of military justice. As in prior years,

² Judge Sullivan was subsequently designated by the President of the United States to become the Chief Judge of the United States Court of Military Appeals on October 1, 1990.

the conference was videotaped to provide a medium of education for those interested in the administration of military justice.

SIGNIFICANT DECISIONS AFFECTING THE ADMINISTRATION OF MILITARY JUSTICE WITHIN THE ARMED FORCES ³

PROVIDENCY OF GUILTY PLEAS

The providency of an accused's pleas of guilty as they relate to the terms and conditions of plea agreements was again addressed by the United States Court of Military Appeals during the 1990 term of court. Specifically, in *United States v. Gibson*, 29 MJ 379 (CMA 1990), the Court examined the provisions of a plea agreement that related to the waiver of the accused's rights. Noting that the agreement originated with the defense and, as interpreted by the military judge, purported to waive the accused's confrontation and hearsay objections to pretrial statements of child sexual victims, the Court cited *United States v. Jones*, 23 MJ 305 (CMA 1987), in ruling that such an agreement did not require invalidation of the accused's pleas of guilty. The Court stressed that the agreement did not constitute any substantial prejudice to the rights of the accused, did not involve an act of overreaching by government officials, and did not involve an attempt by such officials to orchestrate a trial proceeding. Subsequently, in *United States v. Albert*, 30 MJ 331 (CMA 1990), the Court held that the inclusion of a provision in a plea agreement that the convening authority would suspend forfeitures in excess of a specified amount was not violated by the collateral consequence of an accused entering into a nonpay status upon the expiration of his obligated term of service. The Court observed that the accused's pleas of guilty were not induced by such a provision.

In *United States v. Wilkins*, 29 MJ 421 (CMA 1990), the Court was asked to resolve a question of whether an accused could plead guilty to the uncharged offense of receiving stolen property when such offense was not a lesser included offense of the charged crime of larceny. The Court held that by entering into a pretrial agreement with the accused, the convening authority's action was the functional equivalent of an order by this official that the questioned charge be referred to a court-martial for trial. The Court

³ 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.

noted in this regard that the accused, by pleading guilty in language he had prescribed, had waived any such irregularity.

Jurisdiction

Rejecting a petitioner's request for extraordinary relief in *Murphy v. Garrett*, 29 MJ 469 (CMA 1990), the Court held that the United States Marine Corps could exercise jurisdiction over a person in reserve status to require him to report for active duty for purposes of participating in an investigation under the provisions of Article 32, Uniform Code of Military Justice, for misconduct allegedly occurring while he was on active duty and prior to the termination of his regular service. The Court rejected the petitioner's argument that the term "active duty" as used in Article 2(d), UCMJ, was limited to a period of active duty while petitioner was a member of the reserve component.

In *United States v. Poole*, 30 MJ 149 (CMA 1990), the Court held that the jurisdiction to try a member of the armed services by court-martial continued to exist until he was discharged, despite a delay in effecting the discharge of the accused involved. However, the Court cautioned that unreasonable delays in discharging military personnel might constitute a defense to some military offenses relating to the performance of military duties.

Article 31 Rights

Concerning the applicability of Article 31, UCMJ, the Court held in *United States v. Loukas*, 29 MJ 385 (CMA 1990), that a crew chief of an aircraft in flight was not required to warn an accused of his Article 31 rights where he questioned the accused concerning his drug abuse after the accused was observed hallucinating in the aircraft. The Court stressed that the crew chief was concerned with his operational responsibilities for the safety of the plane and its crew rather than law enforcement or disciplinary actions. The Court also held in *Loukas* that although the accused was subsequently questioned by another individual in violation of Article 31, such error was harmless and that any interpretation of the earlier decision of the Court in *United States v. Reynolds*, 16 USCMA 403, 37 CMR 23 (1966), which would preclude a test or an examination for prejudice was erroneous.

In *United States v. Steward*, 31 MJ 259 (CMA 1990) the Court held that the doctrine of "presumptive taint" does not apply where only a technical violation of an accused's rights under Article 31 is involved. Rather, the Court held that the proper inquiry should be ascertain whether his subsequent confession was voluntary considering all the facts and circumstances of the case, including the earlier technical violation of Article 31(b).

Disease Prevention and Military Justice

During its 1990 term the United States Court of Military Appeals upheld several efforts by military authorities to control the spread of Acquired Immune Deficiency Syndrome (AIDS). Specifically, in *United States v. Johnson*, 30 MJ 53 (CMA 1990), the Court upheld the accused's conviction of assault with a means likely to produce death or grievous bodily harm where the accused engaged in sexually related conduct with knowledge that he was infected with Human Immunodeficiency Virus (HIV) and the evidence consisted of medical testimony relating to the likelihood of the transmission of such virus to his sexual partner with the ultimate potential for the development of AIDS. The Court held that the evidence was sufficient for a fact finder to find the requisite likelihood to produce death or grievous bodily harm in view of the medical testimony presented to the trier of fact. Relying on its earlier decision in *United States v. Womack*, 29 MJ 88 (CMA 1989), the Court in *United States v. Dumford*, 30 MJ 137 (CMA 1990), rejected a defense argument that an order directing the accused not to engage in sexual activity without informing his partner that he was infected with HIV and taking precautions against spreading the disease was overbroad. The Court held that such an order could be applied to consensual nondeviant sexual intercourse with a female civilian in view of the military interest in preventing the spread of such infection to the civilian population.

Rehabilitation Potential

As in previous fiscal years the Court addressed the question of when and in what manner an accused's superiors may testify as to his rehabilitative potential or desirability for continued service in the military. Citing *United States v. Ohrt*, 28 MJ 301 (CMA 1989), and *United States v. Horner*, 22 MJ 294 (CMA 1986), the Court held in *United States v. Cherry*, 31 MJ 1 (CMA 1990), that the accused's commanding officer should not have been allowed to testify at a sentencing hearing in a manner suggesting that the accused be separated from the service where such testimony was not predicated on an individual assessment of the accused's character and potential for rehabilitation. The Court reached a similar result in *United States v. Kirk*, 31 MJ 84 (CMA 1990). However, a contrary result was reached in *United States v. Wilson*, 31 MJ 91 (CMA 1990), where a witness testified that the accused would not be able to function as a senior NCO in the United States Army and such opinion was a reflection of the witness' actual knowledge of the appellant's work, personal life, and character for more than two years. The Court stressed that such testimony was not an expression of personal opinion concerning the severity of the offense or what punishment would be appropriate for such offense. Again in

United States v. Corraine, 31 MJ 102 (CMA 1990), the Court held that it was improper for a first sergeant to testify as to the accused's rehabilitative potential where such opinion was based solely on the seriousness of the offense.

Attorney-Client Privilege

In *United States v. Ankeny*, 30 MJ 10 (CMA 1990), the Court upheld the reversal by the Court of Military Review of a conviction for wrongful solicitation of an offense. The Court noted that the accused could not be convicted of such wrongful solicitation based on evidence derived from information communicated by the accused's civilian counsel to an assistant staff judge advocate as such disclosure violated the attorney-client privilege. The Court observed that the accused's incriminating statements to his civilian counsel were protected by the attorney-client privilege even if, prior to the disclosure, military authorities had not yet discovered the offense or preferred any charges in connection therewith.

Access to Witnesses

Citing Article 46, UCMJ, and Rule for Courts-Martial (RCM) 701(e), Manual for Courts-Martial, United States, 1984, the Court held in *United States v. Irwin*, 30 MJ 87 (CMA 1990), that the requirement of the convening authority that a third party must be present during the defense pretrial interviews of a child victim of sodomy and a child victim of assault and battery was improper. The Court stressed that such a condition—which did not apply to the interviews of the trial counsel—denied the defense an equal opportunity to obtain witnesses where the defense was given no notice or opportunity to respond to the prosecution request for such an observer and no legitimate basis was presented to the convening authority to justify the restriction in question. However, observing that such a restriction was lifted prior to trial; that defense counsel interviewed the child witnesses only once after the lifting of the restriction; and that the third party observer was ordered not to disclose statements made during the interviews except as required by the defense or by a competent court, the Court held that the defense had not been prejudiced in this case and that such error in these proceedings was harmless.

Confinement Pending Appellate Review

The Court addressed the question in *Moore v. Akins*, 30 MJ 249 (CMA 1990), under what circumstances, if any, a servicemember is entitled to be released from confinement where the Court of Military Review reverses his conviction and the case is certified to the United States Court of Military Appeals for further review under the provisions of Article 67(b)(2), UCMJ. After examining the legis-

lative history and the intent of Congress expressed in Article 57(d), UCMJ, that some means be made available to release service-members from confinement pending an appeal of meritorious cases, the Court held that either the various United States Courts of Military Review or the United States Court of Military Appeals, depending on which court had jurisdiction of the case, could enter an order deferring service of confinement under the provisions of the All Writs Act, 28 USC 1651. Thus, examining the facts and circumstances of the case at hand, the Court concluded that the accused should be released from confinement pending its resolution of the certified issues in that accused's case.

Urinalysis

In *United States v. Bickel*, 30 MJ 277 (CMA 1990), the Court upheld a commander's policy of requiring any person whose urine tested positive for marijuana during an inspection to submit another urine sample at the next inspection. The Court observed that the second test was a mere continuation of the original inspection and, thus, constituted a random test rather than a test required to be based on reasonable suspicion. Subsequently, in *United States v. Sutton*, 31 MJ 11 (CMA 1990), the Court held that the results of a urinalysis test for drugs which did not meet the Department of Defense minimum standards for a positive test result could not be used in a court-martial, even for purposes of cross-examination. In *United States v. McClain*, 31 MJ 130 (CMA 1990), the Court addressed the question of whether the results of a urinalysis were properly admitted into evidence where such urinalysis was conducted pursuant to a consent which was subsequently determined to be invalid. The Court rejected the prosecution argument that the existence of probable cause to obtain such authorization rendered the results admissible where the commander involved never authorized a search pursuant to probable cause but, rather, relied on consent. The Court observed that the Government must still prove voluntary consent to search when consent is used as a basis for such search. In addition, the Court specifically overruled any implication in its earlier decision in *United States v. Simmons*, 29 MJ 70 (CMA 1989), that the validity of the consent was irrelevant if probable cause existed to authorize a search.

Expert Witnesses

Observing that a properly qualified expert witness could testify as to the symptoms and manifestations that are common to children who have suffered sexual abuse and whether the victim exhibited any such symptoms and how they might affect her credibility, the Court held in *United States v. Harrison*, 31 MJ 330 (CMA 1990), that the expert witness exceeded the proper limits of such testimo-

ny when the testimony was tantamount to an opinion that the victim witness was credible and reliable and that she had been sexually abused. The Court observed that an expert witness may not testify about his or her belief that a witness was telling the truth regarding an alleged incident of sexual abuse.

EUGENE R. SULLIVAN

Chief Judge

WALTER T. COX, III

Associate Judge

ROBINSON O. EVERETT

Senior Judge

USCMA STATISTICAL REPORT

Fiscal Year 1990

CUMULATIVE SUMMARY

CUMULATIVE PENDING OCTOBER 1, 1989

Master Docket.....	48
Petition Docket.....	260
Miscellaneous Docket.....	<u>3</u>
Total.....	311

CUMULATIVE FILINGS

Master Docket.....	217
Petition Docket.....	2160
Miscellaneous Docket.....	<u>18</u>
Total.....	2395

CUMULATIVE TERMINATIONS

Master Docket.....	193
Petition Docket.....	2221
Miscellaneous Docket.....	<u>21</u>
Total.....	2435

CUMULATIVE PENDING OCTOBER 1, 1990

Master Docket.....	72
Petition Docket.....	199
Miscellaneous Docket.....	<u>0</u>
Total.....	271

OPINION SUMMARY

CATEGORY	SIGNED	PER CURIAM	MEM/ ORDER	TOTAL
Master Docket.....	96	5	92	193
Petition Docket.....	0	0	2221	2221
Miscellaneous Docket.....	4	0	17	21
Total.....	100	5	2330	2435

FILINGS (MASTER DOCKET)

Returned after remand.....	9
Mandatory appeals filed.....	1
Certificates filed.....	13
Reconsideration granted.....	3
Petitions granted (from Petition Docket).....	191
Total	217

TERMINATIONS (MASTER DOCKET)

Findings & sentence affirmed.....	140		
Reversed in whole or in part.....	35	Signed.....	96
Granted petitions vacated.....	0	Per curiam.....	5
Other disposition directed.....	18	Mem/order.....	92
Total	193	Total.....	193

PENDING (MASTER DOCKET)

Awaiting briefs.....	29
Awaiting oral argument.....	43
Awaiting final action.....	0
Total	72

FILINGS (PETITION DOCKET)

Petitions for grant of review filed.....	2151
Petitions for new trial filed.....	3
Cross-petitions for grant filed.....	4
Petition for reconsideration granted.....	1
Returned after remanded.....	1
Total	2160

TERMINATIONS (PETITION DOCKET)

Petitions for grant dismissed.....	0		
Petitions for grant denied.....	1992		
Petitions for grant granted.....	191		
Petitions for grant remanded.....	32	Signed.....	0
Petitions for grant withdrawn.....	6	Per curiam.....	0
Other.....	0	Mem/order.....	2221
Total	2221	Total.....	2221

PENDING (PETITION DOCKET)

Awaiting briefs.....	148
Awaiting Central Legal Staff review.....	51
Awaiting final action.....	0
Total	199

FILINGS (MISCELLANEOUS DOCKET)

Writs of error coram nobis sought.....	0
Writs of habeas corpus sought.....	6
Writs of mandamus/prohibition sought.....	6
Other extraordinary relief sought.....	2
Writ appeals sought.....	4
Total	18

TERMINATIONS (MISCELLANEOUS DOCKET)

Petitions withdrawn.....	0		
Petitions remanded.....	2		
Petitions granted.....	2	Signed.....	4
Petitions denied.....	14	Per curiam.....	0
Petitions dismissed.....	2	Mem/order.....	17
Other.....	1		
Total.....	21	Total.....	21

PENDING (MISCELLANEOUS DOCKET)

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

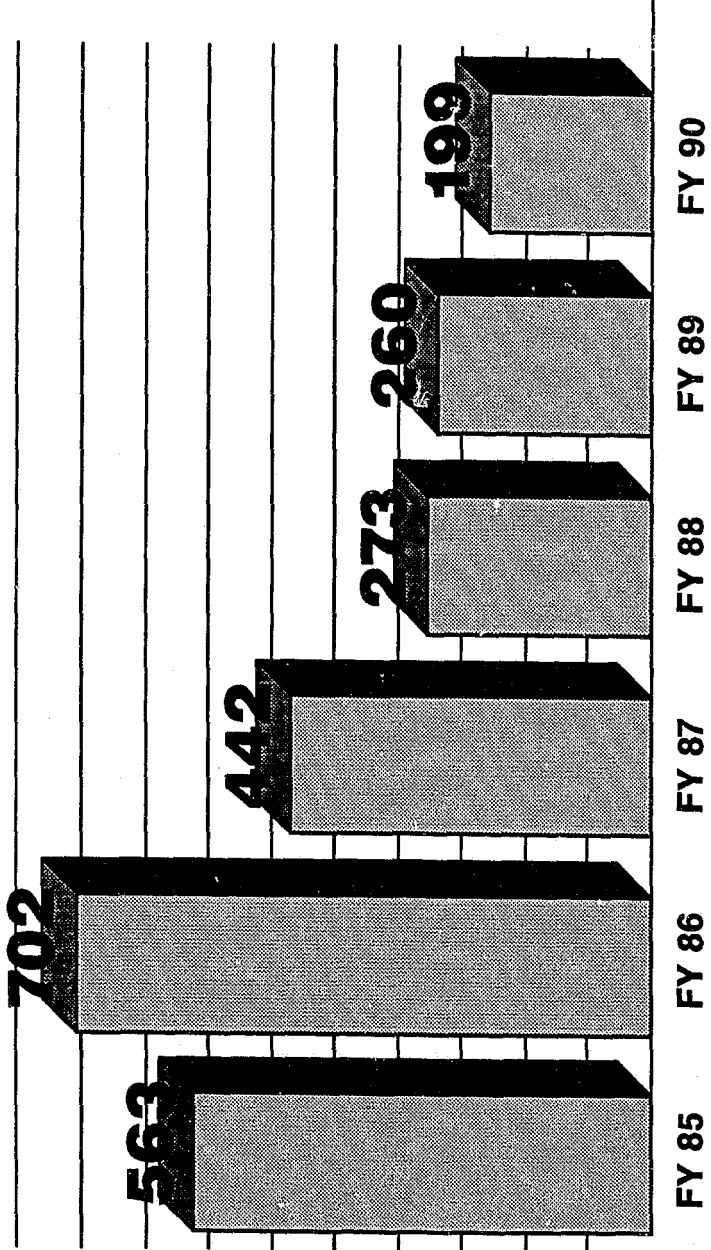
RECONSIDERATIONS & REHEARINGS

CATEGORY	BEGIN PEND- ING	FILINGS	END PEND- ING	DISPOSITIONS		
				Granted	Rejected	Total
Master Docket.....	0	10	0	1	9	10
Petition Docket.....	0	2	0	0	2	2
Misc. Docket.....	0	1	0	0	1	1
Total.....	0	13	0	1	12	13

MOTIONS ACTIVITY

CATEGORY	BEGIN PEND- ING	FILINGS	END PEND- ING	DISPOSITIONS			Total
				Granted	Rejected	Other	
All motions.....	2	571	12	504	37	8	561

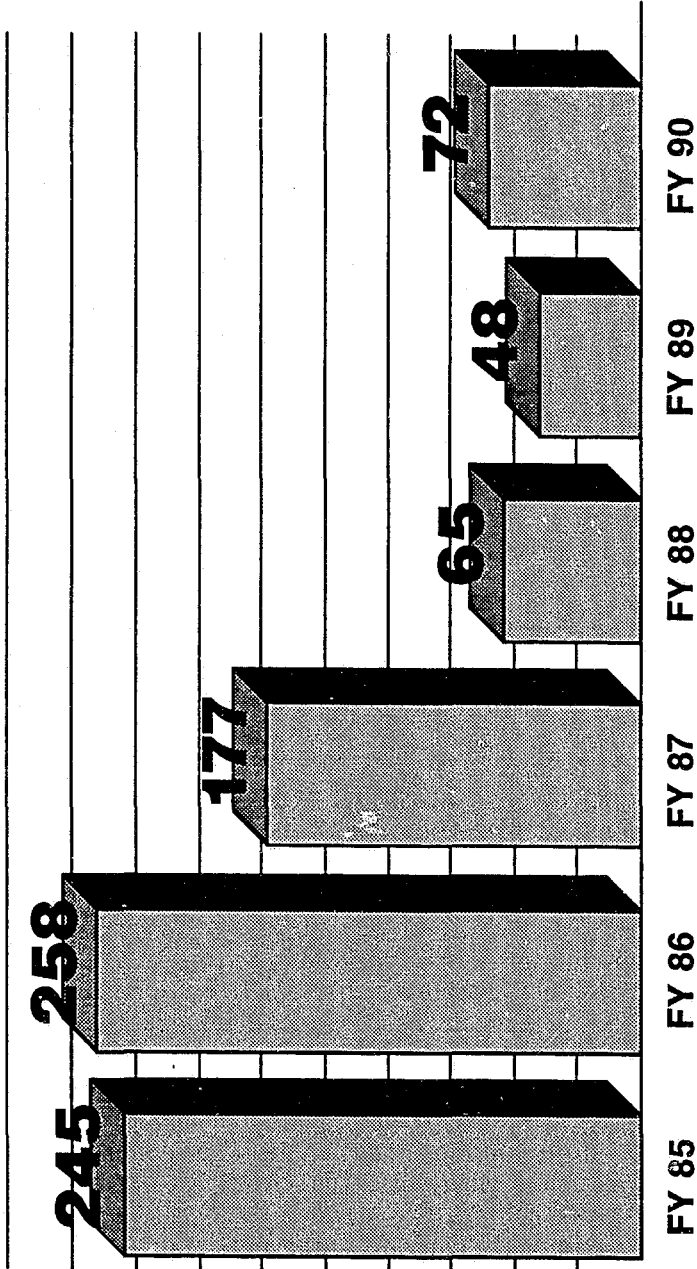
Petition Docket Year End Pending



APPENDIX A

LC-1-107-002

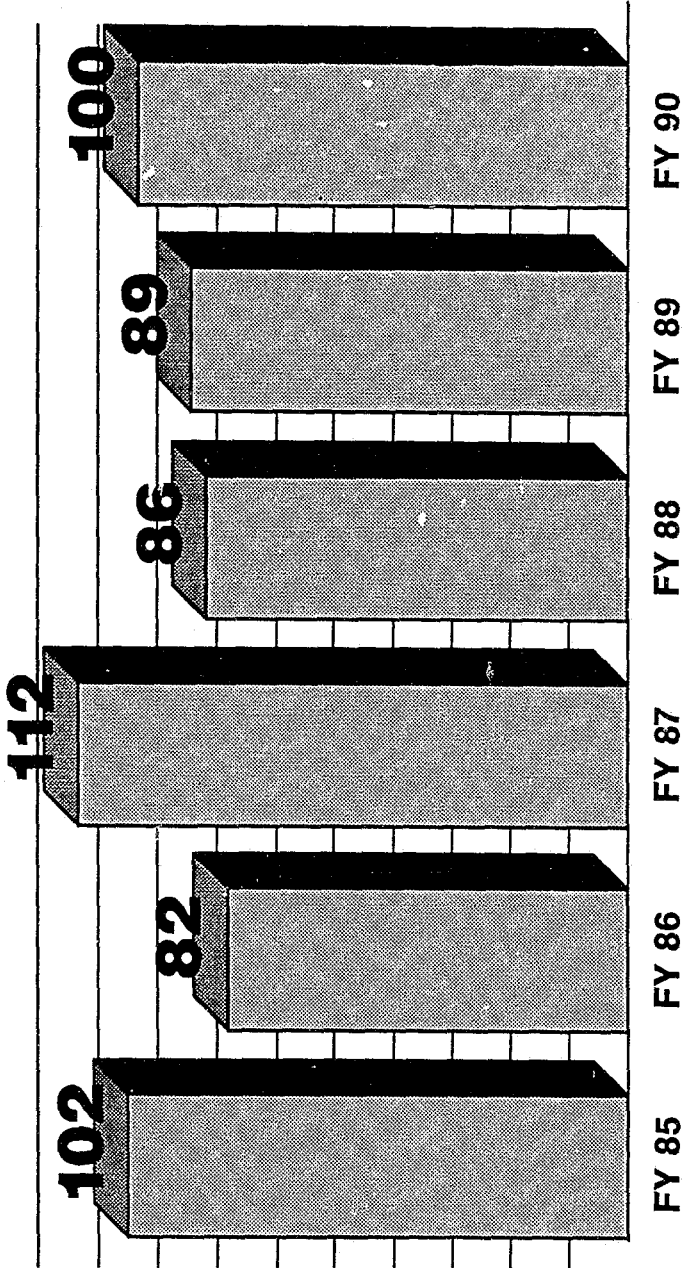
Master Docket Year End Pending



APPENDIX B

L/C-1-1107-003

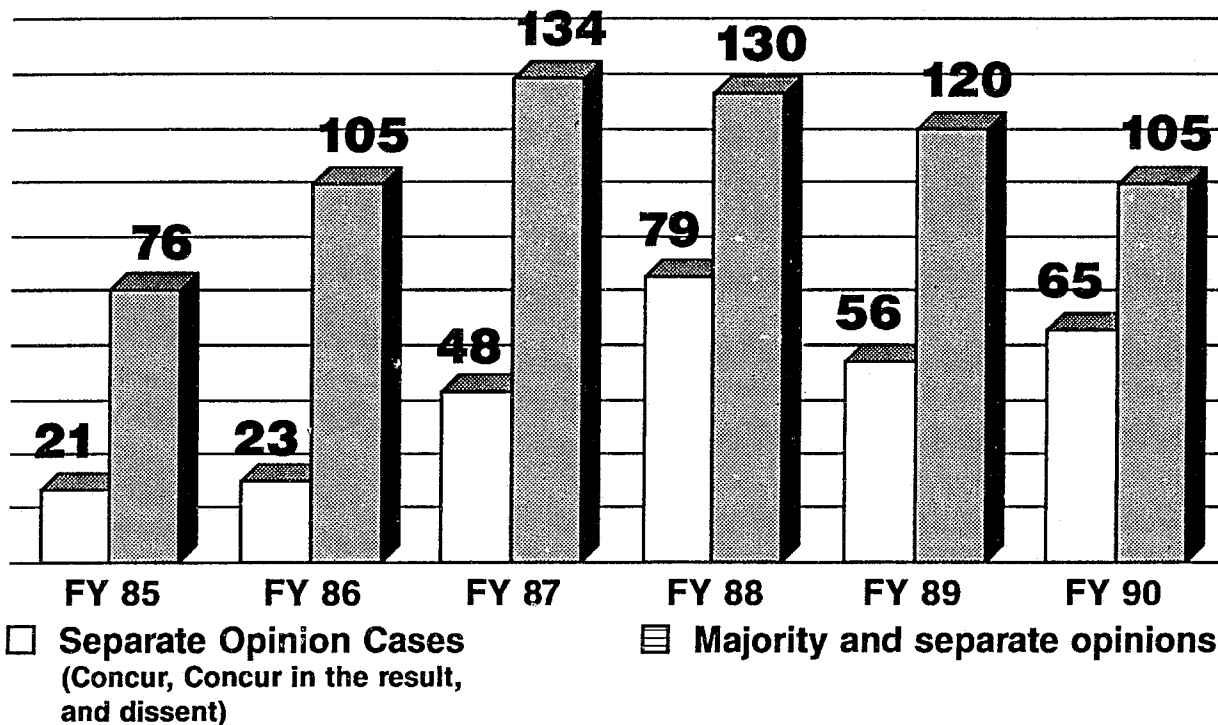
Oral Arguments Per Year



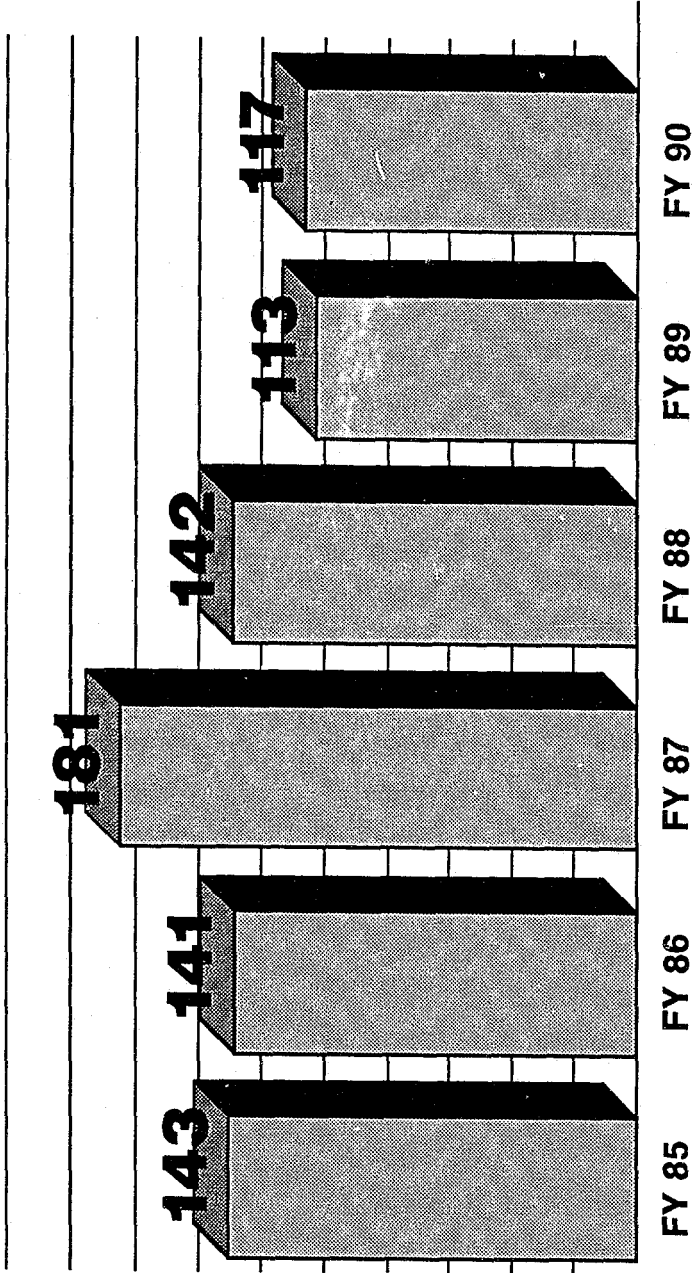
APPENDIX C

L/C-1-1107-001

Total Opinions Per Year



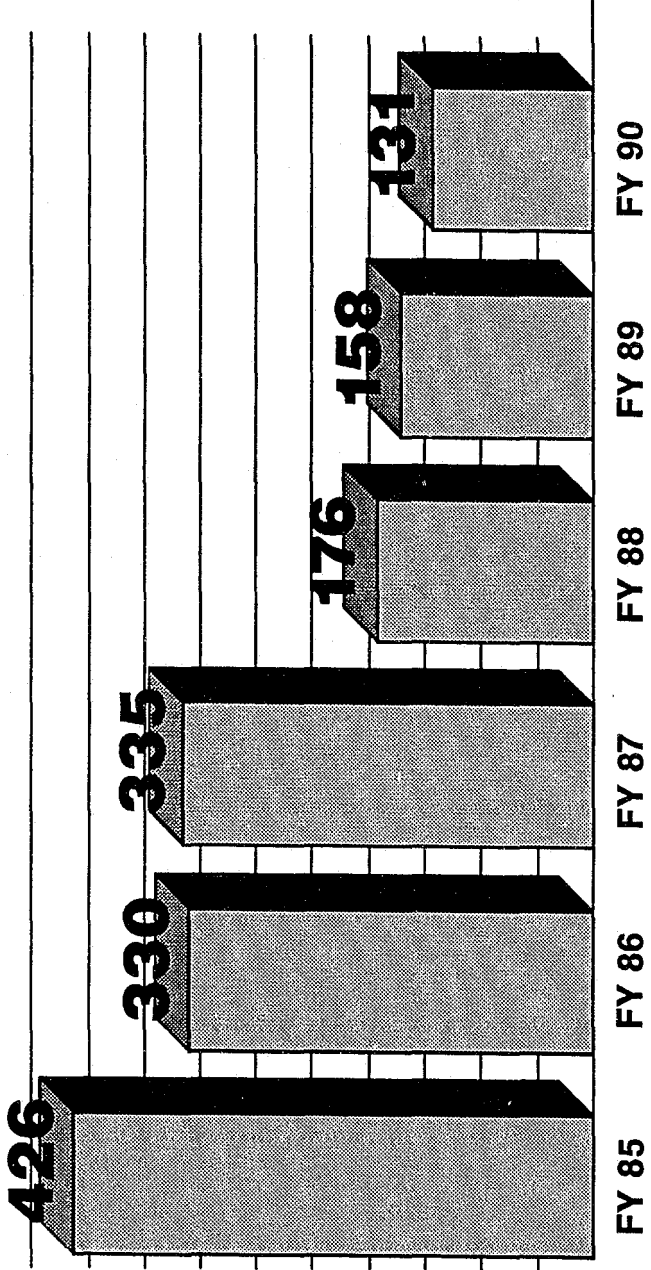
Days from Petition Filing to Grant



APPENDIX E

L/C-1-1107-004

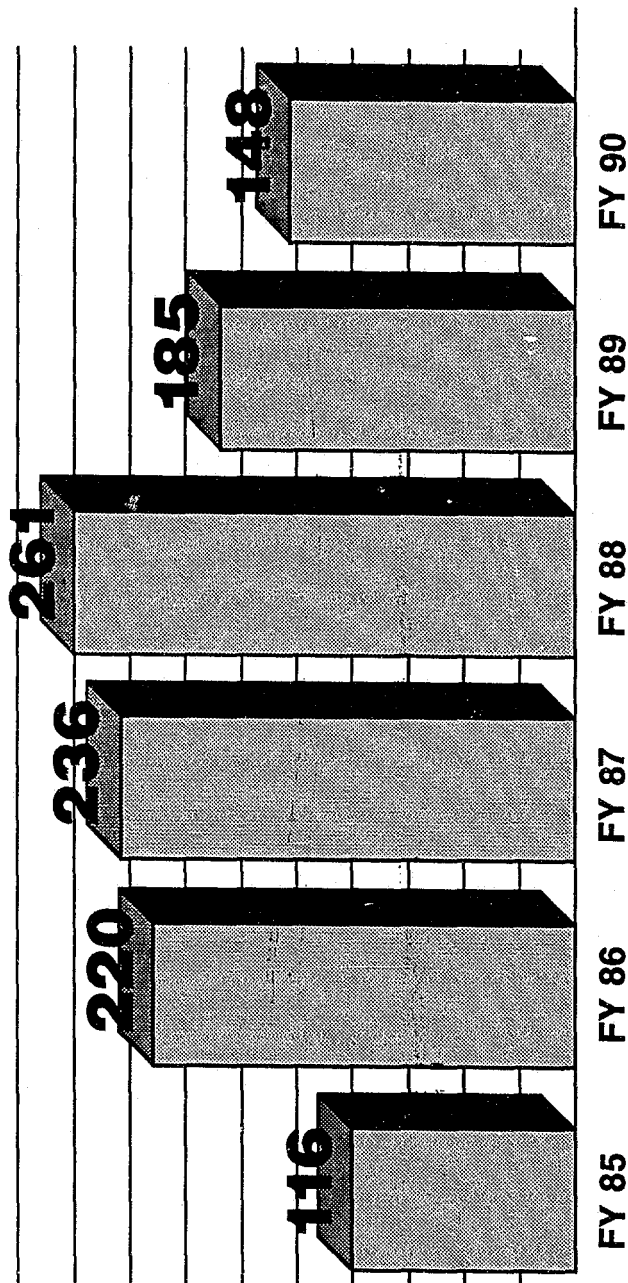
Days from Petition Granted to Oral Argument



APPENDIX F

L/C-1107-005

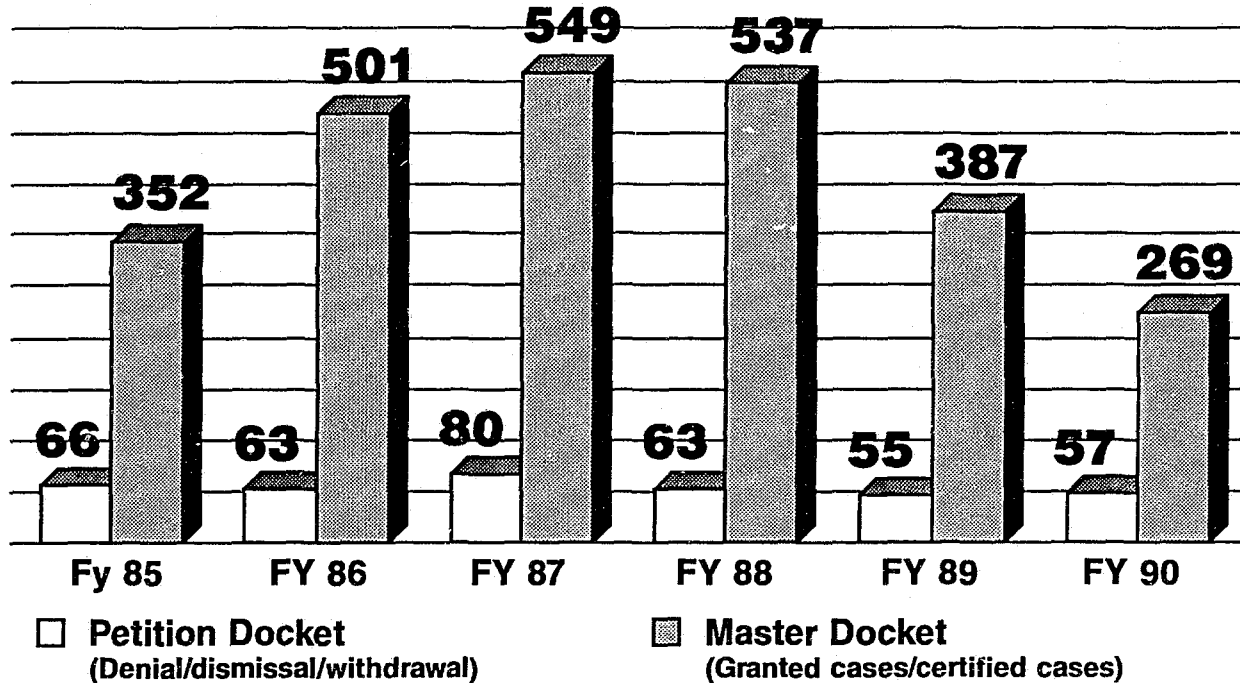
Days from Oral Argument to Final Decision



APPENDIX G

L/C-1-1107-006

Days from Petition Filing to Final Decision



**REPORT OF
THE JUDGE ADVOCATE GENERAL OF THE ARMY
October 1, 1989, to September 30, 1990**

During fiscal year 1990, the Office of The Judge Advocate General continued to monitor the proceedings of courts-martial, to review and to prepare military publications and regulations, and to develop and draft changes to the Manual for Courts-Martial and the Uniform Code of Military Justice.

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

During fiscal year 1990, the court-martial rates show an Army-wide decrease in the number of courts-martial. The total number of persons tried by all types of courts-martial in fiscal year 1990 was 12.3% lower than for 1989. This overall decrease reflects primarily a decrease of 18.5% in special courts-martial not empowered to adjudge a bad-conduct discharge, and a 17.9% decline in summary courts-martial. There was a 9.3% decrease in special courts-martial empowered to adjudge a bad-conduct discharge, and an 8.5% decrease in the number of general courts-martial. The overall conviction rate for fiscal year 1990 was 93.0%, which is equal to the conviction rate for the previous fiscal year. The U.S. Army Court of Military Review, despite having 26 more cases referred for its review than in fiscal year 1989, significantly reduced its working backlog, resulting in an 8.6% increase in the number of cases reviewed (from 1,752 to 1,903) during fiscal year 1990.

**STATISTICAL SUMMARY: FISCAL YEAR 1990
(See table insert, attached)
U.S. ARMY LEGAL SERVICES AGENCY**

The U.S. Army Legal Services Agency includes the U.S. Army Judiciary, the Government Appellate Division, the Defense Appellate Division, the Trial Defense Service, the Trial Counsel Assistance Program, the Contract Appeals Division, the Regulatory Law Office, the Intellectual Property Law Division, the Litigation Division, the Procurement Fraud Division, the Environmental Law Division, and the Professional Recruiting Office. The latter seven sec-

tions have no function related to the U.S. Army Judiciary and its court-martial mission. The Contract Appeals Division and the Regulatory Law Office represent the Army and the Department of Defense in certain contractual and regulatory disputes before commissions and boards. The Intellectual Property Law Division controls and coordinates the named subject area and related activities, including technology transfer, within the Department of the Army. The Litigation Division is responsible for representing Army interests in defensive and affirmative Federal civil litigation. The Procurement Fraud Division is responsible for asserting and monitoring the prosecution of government remedies against fraud and irregularities in the Army acquisition process. The Environmental Law Division is responsible for providing advice and guidance to the Army Staff on environmental legal issues, as well as serving as the agency counsel in environmental litigation in coordination with the Office of the General Counsel and Department of Justice. The Professional Recruiting Office coordinates the recruitment of lawyers in the Army. An Information Management Office facilitates automation of the U.S. Army Legal Services Agency.

U.S. ARMY JUDICIARY

The U.S. Army Judiciary consists of the U.S. Army Court of Military Review, the Clerk of Court, the Examination and New Trials Division, and the Trial Judiciary.

U.S. ARMY TRIAL DEFENSE SERVICE

During fiscal year 1990, the United States Army Trial Defense Service (USATDS) continued to provide high-quality, professional defense counsel services to soldier clients world-wide. USATDS counsel represented 2,092 clients at proceedings conducted under Article 32, UCMJ; 1,580 clients at general courts-martial; 1,118 clients at special courts-martial; and 1,336 clients at administrative boards. USATDS counsel advised 68,373 clients regarding nonjudicial punishment under Article 15, UCMJ, and 30,504 clients regarding a variety of administrative separation actions.

USATDS fully supported OPERATION DESERT SHIELD deployments. As U.S. Army units departed to the Kingdom of Saudi Arabia, USATDS counsel accompanied them. USATDS continued to send a defense counsel to the Sinai in support of the Multi-National Force, while other counsel participated in command training exercises and numerous deployments. Additionally, USATDS continued to operate cross-service agreements with judge advocates of other U.S. Armed Forces to provide mutual support at specified locations overseas.

TRIAL COUNSEL ASSISTANCE PROGRAM

During fiscal year 1990, the U.S. Army Trial Counsel Assistance Program (TCAP) continued to serve as a source of information, advice, and training for trial counsel world-wide. While this support is directed towards Army trial counsel, support has also been provided to trial counsel from the Air Force, Coast Guard, Marine Corps, and Navy. During the past year, TCAP attorneys responded to nearly 600 requests for assistance, participated in two major special prosecutions, and provided written guidance on practically every area of criminal law and trial advocacy. Additionally, TCAP attorneys conducted a total of thirteen two-day training seminars, eight in the United States, four in the Federal Republic of Germany, and one in Korea. TCAP also provided instructional support for trial counsel attending the U.S. Army Europe's Criminal Law Conferences and the Trial Advocacy Courses at the Army's Judge Advocate General's School. Throughout the year, TCAP provided training for approximately 350 counsel. Over 400 copies of the TCAP Training Memorandum are distributed each month. This publication combines information on recent criminal law developments with practical advice on how trial counsel can utilize these developments. Two new sections of the Memo have been developed. The first is a series of trial advocacy supplements. These are written in a "trial notebook" format and include "how-to" approaches to advocacy and evidentiary foundations. The second new section, entitled "We've Been Asked," includes questions of general applicability to prosecutors with short, concise answers. A more detailed examination of criminal law developments is provided through publication of articles in TCAP's Trial Counsel Forum portion of *The Army Lawyer*.

SIGNIFICANT MILITARY JUSTICE ACTIONS

Actions involving military justice handled by the Criminal Law Division, Office of The Judge Advocate General, included: evaluating and drafting legislation, executive orders, pamphlets, and regulations affecting the operation of the Army and the Department of Defense; monitoring the administration of military justice to include military corrections, the Army's drug testing program, professional responsibility of attorneys, and expanded UCMJ jurisdiction over reservists; rendering opinions for the Army Staff; reviewing various aspects of criminal cases for action by the Army Secretariat and Army Staff; and evaluation of ongoing major projects. During fiscal year 1990, the Criminal Law Division responded to 238 White House inquiries, 420 Congressional inquiries, 5 requests for legal opinions from the Army Board for the Correction of Mili-

tary Records, 567 letters relating to military justice matters written to the Secretary of Defense, Secretary of the Army, Chief of Staff of the Army, and The Judge Advocate General, and 52 other miscellaneous inquiries. The office also processed 22 clemency petitions under Article 74, Uniform Code of Military Justice (UCMJ), 26 officer dismissal cases for Secretary of the Army approval, 4 requests for Presidential pardon and 32 Freedom of Information Act/Privacy Act requests. In general, the number of inquiries from these various sources increased 66% over the workload of fiscal year 1989.

CHANGE OF MILITARY JUSTICE REGULATION

Army Regulation 27-10, Military Justice, was revised effective January 25, 1990. This regulation now authorizes the filing of a record of nonjudicial punishment (Article 15, UCMJ) in the performance fiche of the soldier's official military personnel file (OMPF) when another Article 15 is already filed in the restricted fiche; permits enlisted soldiers (E-5 and above) to petition the Department of the Army Suitability Evaluation Board to transfer a record of punishment under Article 15 from the performance fiche to the restricted fiche of the OMPF; contains provisions to involuntarily activate retired soldiers for court-martial processing; and changes Article 138, UCMJ, complaint procedures by clarifying that complaints follow command channels, not area jurisdiction, to reach the general court-martial convening authority for disposition.

JOINT-SERVICE COMMITTEE ON MILITARY JUSTICE

The Judge Advocates General and General Counsel of the Department of Transportation established the Joint-Service Committee on Military Justice on August 17, 1972. The Army, Navy, Air Force, Marine Corps, and Department of Transportation (Coast Guard) provide representatives, and the United States Court of Military Appeals provides a nonvoting representative. The Joint-Service Committee on Military Justice primarily prepares and evaluates proposed amendments and changes to the Uniform Code of Military Justice and the Manual for Courts-Martial. The committee also serves as a forum for the exchange of ideas relating to military justice matters.

Change 4 to the Manual for Courts-Martial was approved by President Bush on March 23, 1990. Change 4, published as Executive Order No. 12708, is a result of the Third Annual Review completed in 1987. Amendments included in Change 4 were effective on April 1, 1990. Significant amendments include: authorization for officers on inactive-duty training to apprehend; clarification of the

rule that motions not timely raised are waived; clarification of procedures to toll the statute of limitations; authorization, in mixed-plea cases, for the military judge to defer notifying the court members of an accused's guilty pleas; establishment of procedures for cases where the accused pleads not guilty only by reason of lack of mental responsibility; and clarification of the procedures for substitute service of post-trial recommendations on defense counsel.

The Fourth and Fifth Annual Reviews, completed in 1988 and 1989, respectively, were consolidated into a single proposed executive order. The amendments contained in this proposal constitute proposed Change 5 to the Manual for Courts-Martial. On November 26, 1990, this proposal was forwarded to the Office of Management and Budget for evaluation and interdepartmental coordination. Significant amendments include: a requirement for the defense to notify the prosecution of the names of all defense witnesses, other than the accused, whom the defense intends to call during the defense case-in-chief; a requirement for the defense to notify the prosecution of its intent to raise the defense of innocent ingestion; authorization for the military judge to call a pretrial conference, over objection of a party, when the conference is necessary to control the conduct of courts-martial; revisions to the speedy trial rule; the addition of Military Rule of Evidence 707, which excludes polygraph evidence at courts-martial; authorization for either party to initiate pre-trial agreement negotiations, or propose the inclusion of terms and conditions in pre-trial agreements; clarification that a ruling of a military judge is stayed pending appeal; clarification of the definition of "operating" necessary for the offense of drunk driving; an increase of the maximum punishment to confinement for attempted murder; and the elimination of false swearing as a lesser included offense of perjury.

The Sixth Annual Review, completed on May 15, 1990, was published for public comment on June 29, 1990. Based on public comments received, minor modifications were made, and a proposed executive order was forwarded to Office of the General Counsel, Department of Defense, on November 19, 1990. Changes made during the 1990 Annual Review constitute proposed Change 6 to the Manual for Courts-Martial. Significant amendments include: establishment of procedures to investigate complaints of judicial misconduct or unfitness; clarification of pre-trial confinement procedures; extension of the coverage of the rape shield rule to Article 32, UCMJ, investigations; clarification of the military judge's authority to impose sanctions for willful violation of discovery rules; amendment requiring the military judge to consider the government's interest in not granting immunity before ruling on a defense request for immunity; authorization for military judges to give instructions on findings before or after arguments or at both times; provisions

permitting the entry of pleas and findings with or without exceptions or substitutions; adoption of an exception to the exclusionary rule; clarification that the provisions governing the use of classified materials apply at all stages of a courts-martial; relaxation of the rules for impeachment by prior conviction; inclusion of the definitions of "use" and "deliberate ignorance" for application to courts-martial of drug offenses; inclusion of carnal knowledge as a lesser included offense of rape; and the inclusion of wrongful interference with an administrative action as an offense punishable under Article 134.

Changes to the Uniform Code of Military Justice included in the Defense Authorization Act for Fiscal Year 1990 were published with Change 4 on November 15, 1990. The Defense Authorization Act for Fiscal Year 1991 contained changes to Articles 39, 41, 136, and 142 of the UCMJ. Amendments to Article 39 permit the military judge to conduct sessions that do not require the presence of members when the membership of the court has temporarily dropped below quorum. Article 41 amendments change trial procedures to be followed when challenges reduce the membership of the court below quorum. Article 136 amendments authorize civilian legal assistance attorneys employed by the armed forces to have general powers of a notary public. Article 142 amendments clarify that U.S. Court of Military Appeals judges must be appointed from civilian life, and that "civilian life" does not include military retirees who have 20 or more years of active service.

FOREIGN CRIMINAL JURISDICTION

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

During the reporting period December 1, 1988, through November 30, 1989, a total of 105,280 United States personnel, military and civilian, were charged with offenses subject to the primary or exclusive jurisdiction of foreign tribunals. A total of 103,704 of these offenses were charged against military personnel. Of this number 89,695 of the charges against military personnel were subject to exclusive foreign jurisdiction. Nonetheless, foreign authorities released 498 of the exclusive foreign jurisdiction offenses to United States military authorities for appropriate disposition.

The rest of the military offenses subject to foreign jurisdiction, totaling 14,009 offenses, were concurrent jurisdiction offenses involving alleged violations of both United States military law and foreign law over which the foreign country had the primary right

to exercise jurisdiction. United States military authorities obtained a waiver of primary foreign jurisdiction in 12,959 of these incidents, for a world-wide waiver rate of 92.5 percent.

Foreign authorities reserved for their disposition a total of 90,247 offenses allegedly committed by military personnel. A total of 89,809 of these offenses were relatively minor (simple assault, disorderly conduct, and traffic offenses). Traffic violations comprised 98.8 percent, or 89,236 of these offenses.

A total of 1,576 civilian employees and dependents were charged with offenses subject to foreign jurisdiction. As civilians are not subject to trial by courts-martial in peacetime, the United States had no effective jurisdiction over these offenses. Nonetheless, foreign authorities released 240 of these offenses, or 15.2 percent of the total, to United States military authorities for administrative or other appropriate disposition.

There were 97,535 final results of trial, (i.e., final acquittals or final convictions for military, civilian and dependents). Of this number 139, or .04 percent of the final results, were acquittals, and 97,369, or 99.9 percent, were sentences to a fine or reprimand. The remainder of the final results of trial consisted of 46 sentences to confinement and 80 suspended sentences to confinement.

LITIGATION

Civil litigation against the Department of the Army and its employees continued to increase during fiscal year 1990. Suits requiring the civilian courts to interpret the Uniform Code of Military Justice, and the validity of actions taken pursuant to it, constitute a small but significant portion of the litigation. A majority of these cases seek collateral review of courts-martial proceedings. Most of the other cases present challenges to the general conditions of confinement, specific actions taken by confinement facility personnel, and parole and clemency proceedings.

EDUCATION AND TRAINING

During fiscal year 1990, The Judge Advocate General's School, located in Charlottesville, Virginia, provided legal education to lawyers of the military services and other federal agencies. Forty-six resident courses were conducted with 3,905 students in attendance. Courses were attended by: 1,251 Army, 96 Navy, 92 Marine, 284 Air Force, 63 Coast Guard, 516 Army Reserve, and 32 Army National Guard officers; 131 enlisted soldiers; and 1,153 civilian and 16 international military students. Three Basic Course Classes, the 120th, 121st, and 122d, graduated a total of 210 Judge Advocate General's Corps officers.

The Judge Advocate General's School continues to be the only government entity statutorily authorized (10 U.S.C. § 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 accepted its Accreditation Committee's site evaluation recommendation and concurred in the School's awarding of the LL.M. in Military Law.

On May 18, 1990, the 61 students of the 38th Graduate Class received The Judge Advocate General's School Master of Laws in Military Law. In addition to 44 Army judge advocates, the class consisted of eight Marine, two Navy, two Army Reserve, one Army National Guard, and four international military students. The 39th Graduate Class began on July 30, 1990. The class contains 36 Army, eight Marine, four Navy, one Air Force, one Army National Guard, one Army Reserve, and five international military students.

During fiscal year 1990, the School continued to provide senior officers with legal orientations prior to their assumption of command. Thirty-four general officers attended General Officer Legal Orientation Courses, and 186 battalion and brigade command designees attended one of four resident Senior Officers Legal Orientation Courses. Additionally, instructors from the School participated in twelve Pre-Command Courses conducted at Fort Leavenworth, Kansas, for approximately 900 battalion and brigade command designees. The School also provided orientations on Army legal issues to a member of the House of Representatives and two Senate staff members.

The Criminal Law Division sponsored five resident continuing legal education (CLE) courses in fiscal year 1990. 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. Outstanding guest speakers for these courses included Colonel Alfred F. Arquilla, Chief, Government Appellate Division, U.S. Army Legal Services Agency; Mr. John C. Lowe, noted civilian trial attorney; Chief Warrant Officer Three William D. Jungbluth, forensic fingerprint examiner, U.S. Army Criminal Investigation Laboratory; Major General John L. Fugh, then-Assistant Judge Advocate General for Civil Law (currently Acting The Judge Advocate General, U.S. Army); Colonel James C. Gleason, Chief, Procurement Fraud Division, Office of The Judge Advocate General, U.S. Army; Mr. Michael Hertz, Director, Commercial Litigation Branch, Civil Division, Department of Justice; Mr. John Ford, attorney and auditor, Office of the General Counsel, Defense Contract Audit Agency; Honorable John J. McNaught, Judge, U.S. District Court, District of Massachusetts; Honorable Walter T. Cox, III, Judge, U.S. Court of Military Appeals; Ms. Pa-

tricia Toth, Director, National Center for Prosecution of Child Abuse; Dr. Robert K. Simon, Toxicology International; Dr. Fredrick S. Berlin, Director, Sexual Disorders Clinic, The Johns Hopkins Hospital; and Honorable Robinson O. Everett, Chief Judge, U.S. Court of Military Appeals.

The International Law Division sponsored six resident CLE courses, each lasting one week, in fiscal year 1990. The Law of War Workshop, held three times, continued to provide practical law of war training to legal officers from all four armed forces and to several international military students. The 11th Legal Aspects of Terrorism Course, offered by the division, continued the tradition, established in prior courses, of augmenting the School's instruction with presentations by experts from the Department of Defense, the Department of State, the Department of Justice, and the Federal Bureau of Investigation. A representative of the Ministry of Defense of the Federal Republic of Germany attended the course and also gave a presentation on terrorism counteraction in the Federal Republic. All involved actively discussed the various legal issues confronted during terrorism counteraction operations, whether conducted domestically or overseas. The Operational Law Seminar and the second quarter International Law instruction to the 38th Graduate Course, stressed Operational Law (OPLAW) as a legal discipline focusing on those domestic and international legal issues associated with the preparation for, and deployment of, U.S. forces overseas, in both peacetime and combat environments. In responding to other instructional requirements, the division sent two instructors to Germany to assist in the presentation of the U.S. Army Europe Operational Law Course and one instructor to the U.S. Army Europe International Law Conference. All courses sponsored by the division continued to stress the practical application of international law, an approach designed to prepare judge advocates to serve as valuable members of a commander's operations team. One instructor participated in a forum on OPERATION DESERT SHIELD, held at Duke University. In May, the division hosted the Conference of American Armies Legal Symposium. This three-day conference, attended by representatives from 17 Latin and North American countries, dealt with issues such as terrorism and other international criminal activity. The Iraqi invasion of Kuwait, and the subsequent deployment of thousands of Active and Reserve Component personnel to Saudi Arabia, raised myriad legal issues. All international law instruction after August 2, 1990, included a discussion of legal issues relevant to the situation in the Middle East. Feedback to the School from the deployed units indicates that judge advocates are better able than ever before to identify and resolve international and operation law issues. The Center for Law and Military Operations (CLAMO), established in December 1989,

held two important meetings in 1990. An after-action seminar following OPERATION JUST CAUSE was conducted in February to discuss legal issues that arose during, and subsequent to, that operation. The Center then held its first annual symposium from April 18 to 20, 1990. Participants from the Army, Navy, Marine Corps, Air Force, Coast Guard, Department of Defense, and Department of State attended. A report of this symposium was published in the December 1990 issue of *The Army Lawyer*. The goal of CLAMO is to examine both current and potential legal issues attendant to military operations through the use of symposia, the publication of professional papers, and the creation of a joint service operational law library.

The Contract Law Division conducted 11 CLE courses in fiscal year 1990. The courses sponsored by the division provided basic and advanced instruction in government contract law and in fiscal law and policy. The courses were designed primarily to meet the needs of government lawyers, but they also benefited contracting officers, comptrollers, program managers, and others involved in the federal acquisition process, from novices to experienced professionals. A wide variety of classes was offered at these courses to ensure that instruction was available in government contract and fiscal law as practiced at military installations, at commands devoted to production of supplies and weapon systems, at commands dedicated to research and development, and at activities involved in contract disputes and litigation. The two-week Contract Attorneys Course was given three times to a total of 297 students. The annual Government Contract Law Symposium was attended by 177 senior military and civilian lawyers from throughout the Government. The Fiscal Law Course was offered twice to a total of 253 students. One Installation Contracting Course was conducted for 61 attorneys practicing at military posts worldwide. The Program Managers' Attorneys Course attracted 38 attorneys who advise managers of major weapon systems programs. The Contract Claims, Litigation, and Remedies Course featured matters involving contractual disputes and remedies for the 88 litigators who attended. The Government Material Acquisition Course offered in-depth instruction in specialized subject areas to 75 experienced government contract lawyers. In addition to the contract and fiscal law CLE courses, the division provided instruction to 198 members of three Judge Advocate Officer Basic Courses and to 61 members of the resident Judge Advocate Officer Graduate Course. The division's instructors also presented classes on contract and fiscal law and policy at five Reserve Component Technical Training sites within the U.S. Additionally, the division presented an overseas CLE course in fiscal law to the Corps of Engineers in Europe, and the annual CLE

course on new developments in contract law to military and civilian personnel stationed in Europe.

The Administrative and Civil Law Division conducted six CLE courses, including two presentations of the Legal Assistance Course, two presentations of the Federal Labor Relations Course, the Administrative Law for Military Installations Course, and the Federal Litigation Course. In addition, instructors presented classes at the Tax Course in Korea, and the Administrative Law, Tax, and Legal Assistance Courses in Europe. One instructor taught installation commanders during five separate Army Installation Management Courses at Fort Lee, Virginia. One instructor from the division taught classes at the Army Management Staff College. One instructor also taught environmental law courses at Maxwell Air Force Base as part of an Air Force course, and participated in an environmental law course sponsored by the Army's Office of The Judge Advocate General.

The Legal Assistance Branch of the Administrative and Civil Law Division revised and updated its publications, including the *Legal Assistance Wills Guide*, the *Legal Assistance Consumer Law Guide*, the *Legal Assistance Notarial Guide*, the *Legal Assistance Office Administration Guide*, the *Legal Assistance Deployment Guide*, the *Legal Assistance Real Property Guide*, the *Model Tax Assistance Program*, the *Tax Information Series*, and the *Legal Assistance Attorneys Federal Income Tax Supplement*. A new publication, the *Legal Assistance Living Wills Guide*, was prepared and distributed to the field. A member of the branch assisted in the development of new will and power of attorney programs in the Legal Automation Army-Wide System (LAAWS), which were distributed worldwide in the summer. The branch conducted a special mailing of publications and materials to help legal assistance offices respond to issues arising during OPERATION DESERT SHIELD. Members of the branch published over 70 monthly practice notes in *The Army Lawyer*. An article was also prepared for publication in the Virginia Bar Association magazine. A member of the branch also addressed four civilian CLE courses throughout the nation to train state agents and attorneys on methods for enforcing family support obligations against military personnel.

The Judge Advocate Guard and Reserve Affairs Department sponsored several resident courses for Reserve Component judge advocates in fiscal year 1990. Approximately 151 Army Reserve and National Guard judge advocates attended Triennial Training between June 18 and 29, 1990. This year, the Military Law Centers and Legal Service Teams were trained. Phase IV of the Judge Advocate Officer Advanced Course was attended by 155 students during this same period. The 2093d U.S. Army Reserve Forces School in Charleston, West Virginia, provided administrative sup-

port for both courses. The department hosted the Army National Guard State Area Command (STARC) Judge Advocate Course from May 7 to 11, 1990. This course was attended by judge advocates from 15 STARC headquarters. The last major training program hosted by the department was the 1990 Judge Advocate General's Reserve Component Workshop from April 24 to 27, 1990. One hundred and forty-one senior Active and Reserve Component judge advocates met to discuss the significant legal and military issues facing the Reserve Components. The department also sponsored the CLE (On-Site) Training Program. Between October 1989 and May 1990, the School provided CLE to 2447 officers in 20 regional population centers throughout the United States and Puerto Rico. Attendees represented all services and components. Interaction of Active and Reserve Component judge advocate officers in the on-site program continues to be invaluable. Additionally, the department processed 113 applications for the U.S. Army Reserves for accession into the Judge Advocate General's Corps, and 39 applications for federal recognition of National Guard judge advocates.

The Criminal Law Division produced the following publications during the fiscal year: JA 310, Trial and Defense Counsel Handbook (February 1, 1990) (replacing Dep't of Army Pam. 27-10, Military Justice Handbook For The Trial Counsel And The Defense Counsel (October 1982)); Dep't of Army Pam. 27-173, Trial Procedure Guide (April 20, 1990); and Dep't of Army Pam. 27-17, Article 32(b) Investigating Officer's Guide (September 16, 1990).

The Seventh Gilbert A. Cuneo Lecture in Government Contract Law was presented on January 8, 1990, by Professor Ralph C. Nash, George Washington University, Washington, D.C. The Cuneo Lecture was entitled "Improving the Acquisition Process."

The Second Major Frank B. Creekmore Lecture in Government Contract Law was presented on January 11, 1990, by Mr. Norman Augustine, Chairman and Chief Executive Officer, Martin Marietta Corporation. The Creekmore lecture was entitled "Defense Procurement Reform".

On February 22, 1990, the 19th Annual Kenneth J. Hodson Lecture in Criminal Law was presented by Dean John J. Douglass, a former School Commandant and currently the Dean of the National College of District Attorneys. Dean Douglass presented an outstanding lecture on personal and professional ethics. His remarks have been reprinted at 129 *Military Law Review* 11 (1990).

The Fourteenth Charles L. Decker Lecture was given on March 29, 1990, by Judge Robert R. Merhige, Jr. His lecture was entitled "Mass Tort Litigation—Making Mountains into Molehills." The School's Alumni Association financed the preservation and display of memorabilia pertaining to Major General Charles L. Decker, the first Commandant of the School in Charlottesville. Mrs. Decker do-

nated several certificates, letters, photographs, flags, a saber, and a class ring, which belonged to General Decker and chronicle his distinguished career. The eight-panel and one display case exhibition is located in a seminar room adjacent to the Criminal Law Division's office in the new addition.

On May 1, 1990, in conjunction with the celebration of Law Day, a dedication ceremony was held for the new 48,500 square foot addition to the School. The new addition houses an auditorium seating 320 people, ten seminar rooms, a large classroom, a secure conference room, video production facilities, offices, and support spaces including a branch post exchange, a fitness center, and shower/changing rooms. The new addition also includes a computer learning center with 30 student work stations and a video teaching system. The learning center makes the School one of the most well-equipped, automated legal training centers in the nation. Officer Basic and Graduate Course students receive instruction in computer basics, word processing, and LAAWS, better preparing them for assignments to judge advocate offices throughout the world.

Articles of interest to military attorneys continue to be distributed to the field through the DA Pam 27-100 series, *Military Law Review*, and the DA Pam 27-50 series, *The Army Lawyer*.

PERSONNEL, PLANS, AND POLICIES

Including law students participating in the Funded Legal Education Program, the strength of the Judge Advocate General's Corps at the end of the fiscal year 1990 was 1773. This total includes: 108 blacks, 29 Hispanics, 19 Asian and Native Americans, and 255 women. The fiscal year 1990 end strength compares with an end strength of 1756 in fiscal year 1989, 1759 in fiscal year 1988, and 1820 in fiscal year 1987. The grade distribution of the Corps at the end of the fiscal year was three general officers, 134 colonels, 215 lieutenant colonels, 319 majors, 976 captains, and 126 first lieutenants. Forty-six officers (25 captains and 21 first lieutenants) participated in the Funded Legal Education Program. There were also 64 warrant officers.

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

In December 1990, a selection board selected ten active duty commissioned officers to commence law school under the Funded Legal Education Program.

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

U.S. Army War College.....	2
National War College.....	1
Industrial College of the Armed Forces.....	2
U.S. Army Command—General Staff College.....	10
Armed Forces Staff College.....	1
The Judge Advocate Officer Graduate Course.....	44
Defense Project Manager's Course.....	2

During fiscal year 1990, eight officers completed fully funded study for LL.M. degrees in specialized fields of law. As a result of the Defense Officer Personnel Management Act (DOPMA), newly appointed judge advocates accessed for the fiscal year received commissions as first lieutenants. The Judge Advocate General's Corps is a separate competitive category, and selects and promotes its officers based on Judge Advocate General's Corps grade vacancies as they occur.

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

Period: FISCAL YEAR 1990

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED [A]	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	1,451	1,378	73	-8.5%
BCD SPECIAL [B]	771	714	57	-9.3%
NON-BCD SPECIAL	150	114	36	-18.5%
SUMMARY	1,121	1,065	56	-17.9%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-12.3%

PART 2 - DISCHARGES APPROVED [C] [D]

GENERAL COURTS-MARTIAL (CA LEVEL)			
NUMBER OF DISHONORABLE DISCHARGES		440	
NUMBER OF BAD CONDUCT DISCHARGES		805	
SPECIAL COURTS-MARTIAL (SA LEVEL)			
NUMBER OF BAD CONDUCT DISCHARGES		458	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	1,299	
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL [E]	460	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	178	

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

TOTAL ON HAND BEGINNING OF PERIOD		255 [F]
GENERAL COURTS-MARTIAL	[G]	
BCD SPECIAL COURTS-MARTIAL	[G]	
REFERRED FOR REVIEW		1,812
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
TOTAL CASES REVIEWED		1,903
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
TOTAL PENDING AT CLOSE OF PERIOD		171 [F]
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+8.6%

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

NUMBER	1,738	
PERCENTAGE	98.9%	

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	52.3%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD in %	+1.8%
PERCENTAGE OF TOTAL PETITIONS GRANTED	9.4%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD in %	+2.9%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	4.9%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD in %	+1.6%

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		21	
RECEIVED		74	
DISPOSED OF		48 [H]	
GRANTED	8		
DENIED	28		
NO JURISDICTION [I]	10		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		47	

PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		996 (68.6%)	
SPECIAL COURTS-MARTIAL		540 (70.0%)	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		455	
SPECIAL COURTS-MARTIAL		231	

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS			
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	747,537 [J]		
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		76,152	
RATE PER 1,000		101.87	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-7.57	

PAGE 2 OF 2

NOTES

- [A] Includes only original trials (i.e., not rehearings).
 [B] In the Army only, specifically empowered by GCM convening authorities to impose BCD.
 [C] Source: Records received for review (Part 3), not trials (Part 1).
 [D] Also approved were 31 dismissals of commissioned or warrant officers.
 [E] Does not include 2 cases in which appellate review was waived.
 [F] Includes only cases at issue in the court panels.
 [G] Appeals, writ petitions, and interlocutory appeals are not accounted for by type of court.
 [H] Two cases referred to CMR pursuant to amended Article 69(b).
 [I] Includes applications filed out of time.
 [J] Average of four quarterly reports.

**ANNUAL REPORT OF THE JUDGE ADVOCATE
GENERAL OF THE NAVY
PURSUANT TO THE UNIFORM CODE OF MILITARY
JUSTICE
Fiscal Year 1990
SUPERVISION OF THE ADMINISTRATION OF
MILITARY JUSTICE**

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

ARTICLE 69(a), UCMJ, EXAMINATIONS

One hundred and twelve general court-martial records of trial, not statutorily eligible for automatic review by the Navy-Marine Corps Court of Military Review, were examined in the Office of the Judge Advocate General in fiscal year 1990. This represents a 11% increase over fiscal year 1989. Eight cases required corrective action by the Judge Advocate General.

ARTICLE 69(b), UCMJ, APPLICATIONS

In fiscal year 1990, 53 applications under Article 69(b), Uniform Code of Military Justice, were received for review. Of these, 46 applications were denied on the merits, while relief was granted in whole or in part in 7 cases. Eight cases are pending review.

ARTICLE 73, UCMJ, PETITIONS

In fiscal year 1990, one petition for new trial was reviewed by the Office of the Judge Advocate General. That petition was denied.

ARTICLE 74(b), UCMJ, PETITIONS

Two petitions to substitute an administrative form of, discharge for a punitive discharge or dismissal executed in accordance with

the sentence of a court-martial were received for consideration by the Secretary of the Navy in fiscal year 1990. Both petitions were denied.

APPELLATE GOVERNMENT DIVISION

Appellate Representation. The 15 Navy and Marine Corps judge advocates assigned to the Appellate Government Division filed a total of 945 pleadings with the Navy-Marine Corps Court of Military Review and the U.S. Court of Military Appeals. This number excludes cases which were submitted to the courts without specific assignments of error. Additionally, the Division filed 2 briefs in opposition to petitions for writs of certiorari from the U. S. Supreme Court, 2 briefs in Government appeals, and 3 briefs in cases certified by the Judge Advocate General.

Assistance To The Field. The Trial Counsel Assistance Program (TCAP), established within the Appellate Government Division, provides a central coordinating point to assist trial counsel 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 in the field requesting advice or information about cases currently, or soon to be, in trial. Additional assistance is provided through presentations, the periodic publication of *Viewpoint*, a cumulative digest of significant unpublished decisions, and a computer bulletin board. Field calls—in which a team concept is used to provide professional advice and assistance—totalled 789 for the year, an average of 66 per month.

Presentations. Government counsel made presentations at the Army-Navy Reserve Military Justice Conference in Minneapolis, Minnesota, in October 1989, and the Second Annual Joint Service Appellate Advocacy Workshop at Andrews Air Force Base, Virginia, in January 1990, and participated in the Thirteenth Annual Homer Ferguson Conference in Washington, D.C. in May 1990.

Reserves. The Appellate Government Division continued to provide training and support to 17 Navy and 4 Marine Corps reservists assigned to the Division.

APPELLATE DEFENSE DIVISION

Appellate Defense Practices: The 20 judge advocates assigned to the Appellate Defense Division reviewed a total of 3703 cases in fiscal year 1989. Of that number, 717 cases were submitted to the U.S. Navy-Marine Corps Court of Military Review with specific assignments of error. The Division also raised specific assignments of error in 120 of the 692 cases submitted to the U.S. Court of Mili-

tary Appeals. Additionally, the Division submitted two writs of certiorari to the U.S. Supreme Court and argued 12 writs before the U.S. Court of Military Appeals and U.S. Navy-Marine Corps Court of Military Review.

Trial Defense Assistance: The Field Department within the Appellate Defense Division was established as the exclusive source of ad hoc, on-call, assistance to trial defense counsel in the field, in addition to other duties. By isolating the trial defense assistance function to the Field Department, the potential for conflicts of interest, arising during appellate review, are minimized for the Division. The Field Department handled an average of 15 significant telephonic requests for assistance each month. An average of 50 minutes judge advocate research time was required to address each significant request. Extraordinary writ practice within the Division is not included as a matter of trial defense assistance.

Presentations

a. May 1990—Director, Appellate Defense Division, and an experienced Department Head made presentations at the Mid-West Reserve Judge Advocate General's Conference in Chicago, Illinois.

b. June 1990—Director, Appellate Defense Division, and an experienced Department Head made presentations at the West Coast Reserve Judge Advocate General's Conference in San Francisco, California, and at the Naval Legal Service Office, San Francisco, California.

c. September 1990—Director, Appellate Defense Division, and an experienced Department Head made presentations at the East Coast Reserve Judge Advocate's Conference in Norfolk, Virginia, and at the Naval Legal Service Office, Norfolk, Virginia.

The Appellate Defense Division continued to provide extensive structured training throughout the fiscal year to the 25 Navy pay unit and voluntary training unit judge advocates and to the four Marine Corps judge advocates who support the Division. Reserve judge advocates are fully integrated into the Division and account for approximately 40 percent of the case reviews.

NAVY-MARINE CORPS TRIAL JUDICIARY

The Navy-Marine Corps Trial Judiciary (NMCTJ) provided military judges for 893 general courts-martial (GCM) during fiscal year 1990, a decrease of 81 GCMs from the fiscal year 1990 level of 974. In fiscal year 1990, 75.5% of these GCMs were tried by military judge alone. This represents a 4.5% increase from the fiscal year 1989 rate.

There were 5,106 special courts-martial (SPCM) conducted during fiscal year 1990, a decrease of 748 SPCMs from the 5,854 cases

during fiscal year 1990. In fiscal year 1990, 92.9% of these SPCMs were tried by military judge alone.

During fiscal year 1990, total in-court hours for all judges was 22,148 hours, which is 1,211 hours less than fiscal year 1989. Travel decreased 1398 hours in fiscal year 1990—from 6,294 for fiscal year 1989 to 4,896 for fiscal year 1990.

Military Judges Attending Continuing Legal Education/ Seminars/Lectures/Meetings/Conferences.

a. East Coast Military Judges' Meeting Naval Station, Charleston, SC

- 22 active-duty Navy and Marine Corps judges
- 4 reserve Navy and Marine Corps judges
- Chief Judge, Air Force
- 2 active-duty Air Force judges

b. West Coast Military Judges' Meeting Naval Amphibious Base, Coronado, CA

- 20 active-duty Navy and Marine Corps judges
- 11 reserve Navy and Marine Corps judges
- 2 active-duty Air Force judges

c. Fifteenth interservice Military Judges' Seminar Maxwell Air Force Base, Montgomery, AL

- 10 active-duty Navy and Marine Corps judges
- 2 reserve Navy judges

d. National Judicial College, Reno, NV

- Special Problems in Criminal Evidence
- 2 Navy and 1 active-duty Marine Corps judges
- Handling Capital Cases
- 1 active-duty Navy judge

e. Military Judges' Course U.S. Army JAG School, Charlottesville, VA

- 11 active-duty Navy and Marine Corps judges and 2 reserve judges

f. Military Judges' Course Naval Justice School, Newport, RI

- 10 active-duty Navy and Marine Corps judges and 4 reserve judges
- 10 Air Force judges
- 1 Army judge
- 2 Coast Guard judges
- 1 judge from Sri Lanka

g. U.S. Army JAG School, Charlottesville, VA Criminal Law New Development Course

- 2 active-duty judges

h. Senior Marine Judge Advocate Conference Camp Lejeune, NC

- 4 active-duty Marine Corps judges
- The Chief Judge

- i. Senior Officer Short Courses in Military Justice
 - Various times and places
 - Presented by 1 active-duty Navy or Marine Corps judge
- j. American Judge's Association Annual Meeting, Charleston, SC and Midyear Meeting at St. Louis, MO
 - Chief Judge participated with civilian judges at midyear
 - 26 Navy and Marine Corps judges participated at annual meeting
- k. Military Law Institute
 - 15th Annual Homer Ferguson Conference
 - 1 active-duty Navy judge
 - 13 reserve Navy judges
 - The Chief Judge
- l. National Institute of Trial Advocacy (NITA)
 - Various locations and times
 - 8 active-duty Navy and Marine Corps judges have participated in training trial advocates
- m. Trial Advocate and Judicial Training Evolutions for reserve military judges
 - 14 reserve Navy judges; the Chief Judge; met at Newport, RI
 - 14 reserve Navy judges; 1 reserve Army judge; 1 civilian judge; met at San Francisco, CA
- n. WESTPAC Judicial Training Okinawa, JA
 - 1 active-duty Marine Corps judge
 - 1 active-duty Army judge
 - 4 active-duty Air Force judges
 - 2 active-duty Navy judges
- o. Evidence University of San Diego
 - Sponsored by the San Diego Bar Association
 - A Look at the Expert Witness and the Testimony of Children
 - 1 active-duty Navy judge
 - 1 active-duty Marine Corps judge
- p. Virginia Bar Association's Annual Meeting Williamsburg
 - Chief Judge participated
- q. American Academy of Judicial Education Conference Cambridge, MA
 - 1 active-duty judge
- r. Tri-Service Judges Conference Garmish, Germany
 - the Chief Judge
- s. University of Minnesota/Military judge's Training Minneapolis, MN
 - 1 active-duty Navy judge
 - 1 Air Force judge
- t. Army Trial Judiciary West Coast Meeting Colorado Springs, CO
 - 3 active-duty Navy judges

- u. 15th Homer Ferguson Conference Washington, DC
 - 14 Navy reserve judges
 - 1 Marine reserve judge
 - The Chief Judge
- v. Army's East Coast Judges Meeting Fort Belvoir, VA
 - 2 active-duty Navy judges
- w. Trial Counsel Assistance Program Baltimore, MD
 - 1 active-duty Navy judge
- x. Trial Advocacy Training
 - 2 active-duty Marine Corps judges (Okinawa, JA)
 - 1 active-duty Navy judge (San Diego, CA)
- y. National Capitol Region Judicial Forum Fort Belvoir, VA
 - sponsored by Office of the Chief Judge, Navy-Marine Corps Trial Judiciary
 - 2 active-duty Navy judges
 - 1 Marine Corps judge
 - 1 Air Force judge
 - 1 Army judge
 - 1 Coast Guard judge
- z. 1st Annual Forensic Medicine and Law Seminar Walter Reed, Washington, DC
 - 2 active duty Navy judges

Visit by the Judiciary

The Chief Judge presented his annual administrative briefings to students at the military judges' courses at both Charlottesville and Newport.

The Circuit Military Judge, Piedmont Judicial Circuit, Jacksonville, NC, along with Navy judges of the Northeast Circuit, also visited and participated in the instruction of students at the military judges' course at Naval Justice School.

The Chief Judge, along with the Chief Judges of the Army and the Air Force, worked toward uniformity in judicial practice and frequently discussed matters of mutual concern.

The Chief Judge visited and inspected the following judicial circuits and branch offices: Northeast branch (Newport); Tidewater (Norfolk); Piedmont (Camp Lejeune); Sierra (Camp Pendleton); Southwest (San Diego); WESTPAC North (Yokosuka); WESTPAC South (Subic Bay); Keystone (Okinawa); and 6th Army Judicial Circuit (Korea).

Generally

The Chief Judge frequently makes courtesy calls on NLSOs, convening authorities and SJAs. Comments indicate that the overall quality of judicial services is excellent. There is a continuing emphasis on judicial and advocate training. Trial judges critique and

motivate young advocates in trial work. All judges provide post-trial critiques for counsel.

The Trial Judiciary continues to seek economical ways to deliver quality judicial services. Navy and Marine Corps reserve judges have provided exceptional professional and timely support this year.

Economy is still the watchword as the activity continues to lose judge billets as the services draw down on end strength.

Streamlined documentation, specialized computer programs for judicial reports and other software have increased productivity and field communications. The year was marked with improved delivery of judicial services and improved field data.

Operation "Desert Shield"

The Navy-Marine Corps Trial Judiciary was the first judicial component of the Department of Defense on the scene for the Gulf crisis. Commander Mark Dawson, JAGC, USN, WESTPAC South Judicial Circuit, tried cases aboard USS INDEPENDENCE enroute to "Desert Shield." In addition, the Judiciary coordinated efforts with other services and provided Lieutenant Colonel David Beck, USMC, as on-site judicial support as soon as authority to try cases in Saudi Arabia was granted. A full-time military judge continues to provide in-country judicial service to convening authorities.

NAVAL LEGAL SERVICE COMMAND

Naval Legal Service Command (NAVLEGSVCCOM) consists of 21 naval legal service offices and 22 detachments located in areas of concentration throughout the world. The command also includes the Naval Justice School at Newport, Rhode Island, and the Office of Legal Counsel at the Naval Academy, Annapolis, Maryland. NAVLEGSVCCOM is commanded by the Deputy Judge Advocate General of the Navy and includes 367 officers, 229 enlisted, and 224 civilian employees. The command constitutes about 40% of the Navy's total judge advocate strength.

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

To facilitate high quality and responsive legal services, NAVLEGSVCCOM activities rely upon the Judge Advocate General Management Information System (JAGMIS), a micro-computer based system which tracks each activity's case load from receipt to disposition. The Military Justice Management Information System

(MJMIS) will refine the existing JAGMIS system and integrate the consolidated tracking system for courts-martial through the appellate process. In addition, the continued expansion of electronic-mail capability to more than 350 activities has facilitated rapid communication among NAVLEGSVCCOM activities, staff judge advocates, Marine Corps legal centers, and client activities throughout the world.

Fiscal year 1990 saw the opening of new naval legal service office buildings in Pearl Harbor, Hawaii, and Mayport, Florida. An addition to the present structure in Norfolk, Virginia, was also completed, and work on a similar project at the Naval Justice School in Newport, Rhode Island, is underway.

NAVAL JUSTICE SCHOOL

During fiscal year 1990, the Naval Justice School provided instruction to 8,356 students worldwide (1,201 in resident courses ranging in length from four days to nine weeks). Additionally, the School prepared and submitted for publication volume 39 of the *Naval Law Review*. Other noteworthy developments included the continued work on the new classroom building, the School's first two video teletraining broadcasts, the establishment of Civil Law Support Activity 101, and modification of the School's mission to give it oversight responsibility for all judge advocate training Navy-wide. An update of School courses follows:

Law of Naval Operations Workshop. Offered twice a year, the purpose of this two-week course is to train judge advocates who are responsible for advising commanders on international law matters and their impact on plans and operations. The course consisted of 30 hours of classroom instruction and 32 hours of practical exercises and seminars. Attendees completing the two-week course in fiscal year 1990 included judge advocates from the Navy (60), Marine Corps (8), Air Force (1), Army (1), and Coast Guard (4) along with 1 civilian.

Staff Judge Advocate Course. Also offered twice a year, the purpose of this three-week course is to provide training in specific aspects of military and administrative law likely to be encountered by a command legal advisor. Included in fiscal year 1990, were 56 hours of classroom instruction and 7 hours of practical exercises and seminars. This past year, attendees included judge advocates from the Navy (60), Marine Corps (8), Army (1), and Coast Guard (1).

Senior Legalman Course. Offered annually, the purpose of this three-week course is to provide senior legalmen with specialized training in budget matters, civilian and military personnel management, and other management skills required of mid-level super-

visors at naval legal service offices. Included are 61 hours of classroom instruction and 13 hours of workshops and seminars. Twenty senior enlisted personnel (16 Navy, 1 Marine Corps, 1 Army, and 2 Air Force) attended this course in fiscal year 1990.

Lawyer Course. The Naval Justice School conducted five sessions of the nine-week lawyer course during fiscal year 1990. This course, which provides basic training in military justice and military administrative and civil law to incoming Navy and Marine Corps judge advocates and Coast Guard law specialists, consists of 166 hours of classroom instruction and 55 hours of practical exercises, including two moot courts and 14 seminars designed to enhance trial advocacy skills. In fiscal year 1990, the course was completed by 124 Navy, 65 Marine Corps, and 9 Coast Guard lawyers, along with 1 Navy LDO (Law) selectee.

Legal Officer Course. During fiscal year 1990, the School held seven sessions of the four-week legal officer course. The legal officer syllabus is designed for the nonlawyer junior officer or senior Navy and Coast Guard paralegal about to assume legal duties with a ship, aircraft squadron, small station, or other military unit with no judge advocate/law specialist. Included in the course are 126 hours of classroom instruction and 79 hours of practical exercises and seminars. Attendees in fiscal year 1990 consisted of 196 Navy officers, 23 Navy legalmen, 36 Marine Corps officers, and 1 Coast Guard officer.

Senior Officer Course. This one-week course, sponsored by the Chief of Naval Operations, prepares commanding officers, executive officers, and officers in charge to handle appropriate command legal responsibilities. Six sessions of the course were held at Newport, Rhode Island, with 196 students attending. An additional 26 offerings of the course were held at the following worldwide locations: Jacksonville and Mayport, Florida; Charleston (twice) and Parris Island, South Carolina; Norfolk, Virginia (twice); Bangor, Washington; San Francisco (twice), San Diego (twice), Long Beach, and Camp Pendleton, California; Naples, Italy; Pearl Harbor, Hawaii; Subic Bay, Philippines; Yokosuka and Okinawa, Japan; Camp Lejeune, North Carolina; New London, Connecticut (twice); Quantico, Virginia (twice); Annapolis, Maryland; and Memphis, Tennessee. The 1,267 students attending these classes included,

USN: 934 (73.7%).
USMC: 285 (22.4%).
USCG: 41 (3.2%).
USA: 2 (0.2%).
USAF: 4 (0.4%).
CIV: 1 (0.1%).

Military Judge Course. This three-week course, offered once a year, trains active-duty and reserve judge advocates to serve as spe-

cial and general court-martial military judges. The syllabus includes 74 hours of lecture and 30 hours of practical exercises and seminars, during which students preside as military judges in various stages of moot courts-martial. In fiscal year 1990, 7 Navy, 1 Marine Corps, 10 Air Force, 2 Coast Guard, and 1 Army judge advocates/law specialists completed this course.

Trial Advocacy Instructor Clinic. The Naval Justice School conducted two trial advocacy instructor clinics in June 1990. This four-day, instructor-intensive course prepares experienced court-martial practitioners to conduct trial advocacy training in the field. Eighteen instructors were trained at the two clinics using the National Institute of Trial Advocacy teaching methodology. Upon successful completion of the training, they became qualified to participate as instructors in the Navy's trial advocacy training program, teaching courtroom advocacy to Navy and Marine Corps judge advocates worldwide.

Legalman Course. This nine-week course, offered three times in fiscal year 1990, provides instruction in military law and electronic court reporting to Navy enlisted personnel selected for conversion to the legalman rating as well as certain Coast Guard yeomen (as the Coast Guard does not have a legalman rating). Included are 162 hours of lecture, 118 hours of practice transcription, and 52 hours of seminars and other practical exercises. As in past years, the Army continues to use the Naval Justice School's legalman course to train its court reporters. In fiscal year 1990, 80 Navy, 5 Coast Guard, and 14 Army students completed this course.

Legal Clerk Course. This two-week course, offered five times in fiscal year 1990, trains members of the Navy, Coast Guard, Marine Corps (equivalent) yeoman rating to process routine legal matters at small or isolated commands. Included in the legal clerk curriculum are 51 hours of lecture and 25 hours of practical exercises. In fiscal year 1990, 181 students completed this course—177 Navy, 3 Marine Corps, and 1 civilian.

Reserve Courses. In addition to training active-duty personnel, the Naval Justice School also presents a number of courses each year to train inactive duty reservists. The two-week Reserve Lawyer Course prepares inactive-duty judge advocates of the Naval and Marine Corps Reserve to perform the duties of their active-duty counterparts. Similarly, the two-week Reserve Legalman Course, offered in three phases, prepares enlisted personnel in the inactive-duty Reserve to serve as legalmen. During fiscal year 1990, 88 students completed an in-house course of instruction at the School. Naval Justice School instructors also taught at Reserve training courses in Norfolk, Virginia; Chicago, Illinois; and San Diego, California, with over 500 reservists in attendance.

Specialized Briefings and Presentations. In addition to the formal courses listed above, the Naval Justice School presented more than 103 hours of instruction on court-martial procedures, search and seizure, confessions and admissions, nonjudicial punishment, investigations, administrative separations, law of the sea, the law of armed conflict, and rules of engagement to 5,888 students at the Naval War College, Surface Warfare Officers School, Naval Chaplains School, Officer Indoctrination School, Officer Candidate School, and the Senior Enlisted Academy, all located in Newport, Rhode Island. Naval Justice School faculty members also provided instruction, principally in operational law, at key locations on both coasts.

MARINE CORPS ACTIVITIES

During fiscal year 1990, the Chief Defense Counsel of the Marine Corps continued to expand and enhance the trial advocacy training programs conducted at Quantico, VA; Camp Lejeune, NC; Parris Island, SC; Camp Pendleton, CA; Kaneohe Bay, HI; and Okinawa, Japan. Instructors are experienced active duty and reserve Marine Corps judge advocates; several have received formal instruction from the National Institute of Trial Advocacy (NITA). In-court defense counsel observation and evaluation has increased in the eastern and western regions in order to identify skill areas for training emphasis.

Sixteen Marine Corps judge advocates attended year-long service schools, including the Naval War College, the National Defense University, the Marine Corps Command and Staff College, the Amphibious Warfare School, and the U.S Army Judge Advocate General's School. Eight judge advocates received Master of Law degrees from the Judge Advocate General's School and from civilian law schools through the Special Education Program. Twelve Marine officers earned law degrees through the Funded Legal Education and Excess Leave (Law) Programs.

Continuing legal education at civilian and military schools was funded by Headquarters, U.S. Marine Corps for 25 judge advocates, with others attending training provided by the Department of Justice. Judge advocates throughout the Marine Corps also received continuing legal education through NITA, state bar continuing legal education programs, and training funded by their parent commands.

The Counsel for the Commandant Individual Mobilization Augmentee (IMA) Detachment was formed during fiscal year 1990 to assist active duty judge advocates in the areas of labor law, environmental law, contracts, and other specialty areas. Additionally, members of the 3d and 4th Civil Affairs Groups, many of whom are

selected Marine Corps Reserve judge advocates and practicing civilian attorneys, have been mobilized in support of Operation Desert Shield.

Presently, in the active forces, 26 Marine Corps judge advocates, 3 legal administrative officers, and 15 enlisted legal services specialists are deployed to the Middle East. Many more are preparing for imminent deployment with units augmenting Marine forces already in place. As of 1 December 1990, the following military justice proceedings have been conducted in the Persian Gulf area: 252 nonjudicial punishments; 8 summary courts-martial; 10 special courts-martial; and preliminary actions in 12 pending courts-martial.

John E. Gordon

Rear Admiral, USN

Judge Advocate General of the Navy

Period: FISCAL YEAR 1990

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	893	799	94	-6.6
BCD SPECIAL	2840	2840		-13.3
NON-BCD SPECIAL	2266	1808	458	-2.8
SUMMARY	2920	2789	131	+5.3
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-4.4

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)			
NUMBER OF DISHONORABLE DISCHARGES		345	
NUMBER OF BAD CONDUCT DISCHARGES		426	
SPECIAL COURTS-MARTIAL (SA LEVEL)			
NUMBER OF BAD CONDUCT DISCHARGES		2698	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	807	
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	2718	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	113	

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

TOTAL ON HAND BEGINNING OF PERIOD		909
GENERAL COURTS-MARTIAL	298	
BCD SPECIAL COURTS-MARTIAL	611	
REFERRED FOR REVIEW		3632
GENERAL COURTS-MARTIAL	888	
BCD SPECIAL COURTS-MARTIAL	2744	
TOTAL CASES REVIEWED		2996
GENERAL COURTS-MARTIAL	524	
BCD SPECIAL COURTS-MARTIAL	2472	
TOTAL PENDING AT CLOSE OF PERIOD		1545
GENERAL COURTS-MARTIAL	662	
BCD SPECIAL COURTS-MARTIAL	883	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-29%

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

NUMBER	3583	
PERCENTAGE	98.7%	

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	25%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+3%
PERCENTAGE OF TOTAL PETITIONS GRANTED	6%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+5%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	1%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-13%

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		4	
RECEIVED		165	
DISPOSED OF		161	
GRANTED	15		
DENIED	146		
NO JURISDICTION	-		
WITHDRAWN	-		
TOTAL PENDING AT END OF PERIOD		8	

PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		675	
SPECIAL COURTS-MARTIAL		4741	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		218	
SPECIAL COURTS-MARTIAL		365	

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	150	
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	801,027	
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	55,332	
RATE PER 1,000	69.08	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	+3.15	

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REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

October 1, 1989 to September 30, 1990

In compliance with the requirement of Article 6(a), Uniform Code of Military Justice (UCMJ), The Judge Advocate General, Major General Keith E. Nelson, and Deputy Judge Advocate General, Major General David C. Morehouse, made official staff inspections of field legal offices in the United States and overseas. They also attended and participated in various bar association meetings and addressed many civil, professional and military organizations.

AIR FORCE COURT OF MILITARY REVIEW

The Air Force Court of Military Review is undergoing many changes. During fiscal year 1990, we added a judge and a noncommissioned officer. The Court is now comprised of 10 Judges, 1 Commissioner, 1 Noncommissioned officer and 3 civilian employees. The Noncommissioned officer is responsible for much of the administration of the Court and some legal research and writing. The remainder of administrative work is being ably performed by the civilian employees. These changed assignments will allow the Commissioner to devote more time researching and writing. The Court also established a Rules Advisory Committee with a charter similar to the Court of Military Appeals' court committee. The committee's basic function is to refine the Court's internal rules and to facilitate the appellate process, by increasing communication between the Court, the appellate divisions and the military justice division. Finally, the Court and the Trial Judiciary combined their efforts to promulgate standards for judicial ethics. These standards will be published as an Air Force operating instruction.

MILITARY JUSTICE STATISTICS AND U.S AIR FORCE JUDICIARY ACTIVITIES

The Judiciary Directorate of the Office of The Judge Advocate General has the overall responsibility for supervising the administration of military justice throughout the United States Air Force, from nonjudicial proceedings to appellate review of courts-martial. Additionally, the Directorate has the staff responsibility of the Office of The Judge Advocate General in all military justice mat-

ters which arise in connection with programs, special projects, studies and inquiries generated by the Air Staff; Headquarters USAF; the Secretaries of the Department of Defense, Army, Navy, and Air Force; members of Congress; and other Federal, state and civil agencies. Several of the Directorate's activities are discussed below:

a. The Judiciary Directorate serves as the action agency for 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 191 applications.

b. The Directorate received 640 inquiries in specific cases requiring either formal written replies or telephonic replies to senior executive officials, including the President and members of Congress.

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

LEGAL DATA AUTOMATION AND INFORMATION PROGRAM

The Directorate of Legal Information Services (AF/JAS) plans, develops and manages automated management information systems in support of military justice, claims, office automation, computer assisted legal research and other Air Force and Department of Defense legal services programs. The Directorate has now acquired over 3,000 computers, 113 Local Area Networks (LANs), and placed orders from the Desktop III contract to help fill the remaining computer requirements. In response to Operation Desert Shield, the Directorate developed a software package called Reflex that contained the Manual for Courts-Martial, the U.S. Constitution, and pertinent Air Force Regulations. The program was designed for use on the laptop computers used in the deployment and allowed the legal personnel to perform full text searches and print copies of any required pages. The program was also made available to the other military services. The JAGMAIL worldwide electronic mail system was expanded to 277 offices and was moved to an AT&T 3B2 minicomputer at the AF/JAS offices in Denver. Bids were received for development of the second prototype of the Defense Emergency Authorities Retrieval and Analysis System (DEARAS), and fielding of the first units is expected in FY91. A comprehensive appellate case tracking and file management system was developed for the Military Justice Division to monitor the status of all active appellate cases and the disposition of all the inactive cases. The functional description for the new Air Force Justice Information Management System (AFJIMS) was developed

and work was begun on the data tables. Development on the micro-computer portion of the Air Force Claims Information Management System (AFCIMS) continued with dramatic improvements in processing speed. The decision was made to host the central AFCIMS data base repository on an AT&T 3B2 minicomputer at AF/JAS and the development was contracted with AT&T as a cost savings measure. The contractor and the development team are working on the version to be hosted on the 3B2. The Federal Legal Information Through Electronics (FLITE) online system expanded to nearly 260 registered users who, along with JAS research attorneys, conducted an average of more than 750 research sessions per month in FY 90. A new mainframe operating environment was developed for online FLITE which will allow registration of thousands of users throughout DoD and other federal agencies beginning in FY 91. The FLITE Service Center processed more than 400 research requests per month from legal, procurement and finance offices in various DoD, Coast Guard and other federal agencies.

TRIAL JUDICIARY

The Air Force Trial Judiciary had an average of 31 active duty and 6 reserve military trial judges, including one Chief Trial Judge and his Assistant, assigned to the USAF Trial Judiciary at 9 locations throughout the world. The duties of these military judges included presiding over all general and special courts-martial tried in the United States Air Force, but also included 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.

The Air Force Trial Judiciary implemented several projects which attempted to take advantage of the technology provided by available computer systems. The Trial Judiciary Docketing and Case Management System, which was initiated in 1986, matured and is now providing timely and accurate case data. This system helps in forecasting trends and in researching areas of interest in the military justice system. Our laptop computer program continues to mature. We have only 10 laptop computers assigned to military judges, but we have been able to develop and use programs to produce written instructions for court members in complex trials. This project is continuing but has been hampered by the lack of available computers to equip each trial judge with his or her own laptop computer. We have also made extensive use of the available electronic mail systems available to transmit case data and Trial Judiciary management information to our circuits and judges throughout the world.

The Trial Judiciary received a funded civilian manpower position so that we may hire the first court reporter to be assigned directly to the Trial Judiciary. This new position, which will be filled in FY 91, will provide an asset to accomplish several important purposes. First, this reporter will be required to obtain and maintain the highest levels of security clearance so that the Air Force will always have a court reporter available to report and transcribe important and highly classified courts-martial or other similar proceedings. Second, this reporter will be tasked with investigating and reporting on the latest in computer technology being used to record and transcribe records of trial with a view to obtaining and exploiting this technology within the Air Force. The potential savings in time and manpower available through this new technology must be explored and tested. Finally, this reporter will provide an important resource to train and assist court reporters in the field and to work on developing standardized procedures and techniques for records of trial.

CIRCUIT TRIAL COUNSEL PROGRAM

During FY 90 the number of assigned circuit trial counsel (CTC) remained at 22. Throughout the Air Force, circuit trial counsel tried 496 general courts-martial and 28 special courts-martial.

To update circuit trial counsel on the latest developments in the law and further enhance their trial skills, a workshop was conducted 20-21 November 1989 at Bolling AFB, DC, for all the stateside Chief Circuit Trial Counsel. The workshop featured presentations and discussions on urinalysis cases, designer drugs, confrontation problems in child abuse cases, prosecution of AIDS cases, and an update on topics of interest in the federal courts. The workshop also featured a presentation by The Judge Advocate General, Major General Nelson, and luncheon with Judge Robinson O. Everett, Chief Judge, United States Court of Military Appeals.

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

APPELLATE GOVERNMENT COUNSEL

In January 1990, JAJG and JAJD hosted the second annual Service Appellate Counsel Workshop at Andrews AFB, MD. The workshop was attended by nearly all the appellate counsel from

the Air Force, Army, Navy-Marine Corps, and Coast Guard. The workshop spanned two days and featured numerous presentations by both military and civilian speakers on topics of interest to appellate counsel. All three judges of the United States Court of Military Appeals spoke to the attendees.

On 28 September 1990, JAJG hosted a visit and luncheon for Mr. Paul Larkin, Assistant to the Solicitor General, Department of Justice. Mr. Larkin toured the offices and received orientation briefings from JAJ, JAJD, JAJM, as well as JAJG. Mr. Larkin addressed judge advocates and civilian attorneys at a luncheon held at the Bolling AFB Officers Club and described many of the issues that the United States Supreme Court would be considering during their term which started 1 October 1990. After the luncheon, Mr. Larkin spent several hours with the staff at JAJG and discussed preparation of briefs in Air Force cases before the Supreme Court as well as topics of concern to both of our offices.

Appellate practice before the Air Force Court of Review, United States Court of Military Appeals, and the United States Supreme Court continued at a brisk rate. Oral arguments before the Court of Military Appeals increased 27% in FY 90 over FY 89. A comparison of briefs and other petitions filed and oral arguments follows:

	FY 89	FY 90
AFCMR		
Replies to assignment of errors filed.....	380	559
Cases argued	37	25
COMA		
Supplementary Petitions Filed.....	434	371
Cases Argued	37	46
Supreme Court		
Petition waivers filed	0	4
Briefs filed	5	2

AREA DEFENSE COUNSEL PROGRAM

During the year, the Department continued its emphasis on Area Defense Counsel (ADC) training through the ADC Orientation Courses held at Bolling AFB and the circuit conferences held annually in each of the Air Force's seven judiciary circuits. The circuit conferences provide not only valuable training but an opportunity for all the Circuit Defense Counsel and ADCs to meet and share experiences and lessons learned. During FY 1990, a judge from the Court of Military Appeals attended each of the seven circuit conferences. Such outstanding support demonstrated to Air Force defense counsel just how vital their endeavors are to our military justice system.

Our program to reduce ADC travel and provide timely defense services has been very successful. ADCs were present at their assigned bases for nearly 90 percent of the workdays in FY 1990. Of further note, in FY 1990 Air Force defense counsel earned acquittals in approximately 7 percent of the cases tried.

APPELLATE DEFENSE COUNSEL

While appellate practice before the United States Supreme Court decreased slightly, the appellate workload with the Air Force Court of Military Review (AFCMR) and the United States Court of Military Appeals (COMA) remained at approximately the same level as last year. However, the general motion practice before AFCMR and COMA has noticeably increased. The breakdown of activity is as follows:

	FY 89	FY 90
AFCMR		
Errors filed.....	955	917
Oral arguments.....	37	25
Other motions.....	450	632
COMA		
Supplements to petitions.....	641	664
Briefs in support.....	199	210
Grant briefs.....	39	35
Oral arguments.....	37	46
Other motions/petitions.....	131	188
Supreme Court Petitions.....	20	18

CONFINEMENT FACILITIES

At the end of the fiscal year, a total of 749 Air Force prisoners were in confinement. That figure represents about a 13% decrease from the number in confinement at the end of FY 1989. A total of 454 of those prisoners were incarcerated in central confinement facilities at Lowry AFB (52), the return to duty rehabilitation (RTDR) program (14), Ft. Lewis IDF (164) and the United States Disciplinary Barracks (USDB) (224). The number of Air Force prisoners on parole increased from 265 at the end of FY 1989 to 284 at the end of FY 1990, a 7% increase. During the fiscal year, a total of 26 paroles were revoked.

During the fiscal year, the Enhanced Minimum Custody Program at Lowry (a transition program for selected prisoners who have achieved minimum custody and are nearing their minimum release dates from confinement) continued to operate successfully. A total of 75 prisoners participated in the program during the year. One of

the benefits of the program was that it facilitated the transfer of a greater number of short-term prisoners to Lowry than otherwise possible. At the end of the fiscal year there were five prisoners on a waiting list for transfer to the USDB caused primarily by a slower than normal turnover of prisoners at the facility. There was no waiting list at the other central confinement facilities.

During this period, a joint-service working group (JWG) tasked by SECDEF with developing a plan to operate a consolidated DoD correctional program, submitted its completed report to OSD. Although the JWG developed several options for consolidation, it recommended adoption of a compromise proposal. Such proposal not only consolidates corrections programs but also provides the Services discretion to either retain long-term prisoners at the USDB (at no cost to the other Services), or transfer them to the Federal Bureau of Prisons. At the end of the fiscal year the study was being evaluated by OSD.

The RTDR program at the 3320th CRS, Lowry AFB, had a banner year, judged at least by comparison to recent years. Thirteen rehabilitees were restored to productive Air Force duty following completion of the RTDR program in FY 1990, six more than during the preceding year. It is anticipated that the program may be restructured during FY 1990 as a result of an ATC DMR initiative.

CIVIL LITIGATION

Civil Litigation challenging actions taken under the Uniform Code of Military Justice involved petitions for *habeas corpus* filed by Air Force inmates in the United States Disciplinary Barracks seeking collateral review of their cases. Issues included appropriateness of sentence, insufficiency of the evidence, and various evidentiary rulings made at the trial. In addition, several inmates challenged the legality of courts-martial using sentencing standards different from those used in other federal criminal trials. There were no decisions issued by any Federal district court granting relief to any of these individuals.

ENVIRONMENTAL ACTIONS

During Fiscal Year 1990, subsequent to an investigation under Article 32, Article 15 punishment was imposed upon an officer for an offense directly related to environmental matters.

PREVENTIVE LAW AND LEGAL ASSISTANCE PROGRAM

The Preventive Law and Legal Aid Group (JACA) oversaw the provision of legal services to over 443,000 clients worldwide. Top categories continued to be wills and domestic relations. Over one-half million notarizations were performed worldwide. The Chief of JACA served as liaison to the American Bar Association's Standing Committee on Legal Assistance for Military Personnel and the Standing Committee on Lawyers in the Armed Forces.

The Air Force Judge Advocate General School continues to be responsible for the expansion of the Preventive Law Uniform Notebook System. JACA continues to be responsible for policy and procedures concerning the Preventive Law and Legal Assistance Programs worldwide.

The Chief of JACA also served as the Air Force representative to the DoD Armed Forces Income Tax Council. During January through April 1990, tax assistance programs were run by legal officers throughout the world. Over 161,288 members of the Air Force community were helped. Air Force attorneys and the tax advisors they trained and supervised, civilian overhires, and volunteers all helped Air Force members or their dependents complete 23,716 Form 1040EZs, 28,996 Form 1040As, 38,570 Form 1040s, and 38,219 state tax returns.

THE REPORTER

The Reporter strived to provide a quality review of timely legal issues important to our military lawyers. Lead articles included relevant information in the areas of: living wills, how to establish a winning law of armed conflict training program, environmental damage claims and government contractors, and how to plan for disability with the Durable Power of Attorney.

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 FY 1990.

During FY 1990, approximately 1400 Air Force attorneys (including 594 air reserve force judge advocates) attended courses held at the Air Force Judge Advocate General School, Maxwell AFB, Alabama, and in Denver, Colorado. Of these, about 400 active duty judge advocates, as well as all of the Air Force Reserve judge advocates, received military justice training.

The Department arranged legal training for 330 attorneys at the Army Judge Advocate General's School, Charlottesville, Virginia, and 9 at the Naval Military Justice School, Newport, Rhode Island. In cooperation with the Air Force Institute of Technology (AFIT), the Department sent 55 attorneys to procurement courses at the AFIT School of Systems and Logistics, Wright-Patterson AFB, Ohio. Six attorneys were sent to other AFIT training opportunities during FY 1990. The National Judicial College sponsored courses at the University of Nevada in Reno which were attended by eleven military judges. Five medical law attorneys attended seminars offered by various civilian organizations. The Department had seventeen judge advocates participate in the Master of Laws (LL.M.) Program in the fields of procurement law, environmental law, labor law, and international law. One judge advocate attended the Army Judge Advocate General's School to study for his LL.M. in military law.

THE AIR FORCE JUDGE ADVOCATE GENERAL SCHOOL

The Air Force Judge Advocate General (AFJAG) School is located within Air University's Ira C. Eaker Center for Professional Development at Maxwell AFB, Alabama.

Resident Courses

The AFJAG School conducted 16 different courses attended by approximately 1600 students in FY 1990.

The Judge Advocate Staff Officer Course is the AFJAG School's basic course of instruction for new judge advocates. The course is designed to provide essential, basic, comprehensive instruction in military legal practice. The course is divided into three curriculum areas: military justice, civil law, and the judge advocate as a member of the Air Force. The course develops competence in the military practice of law and enhances basic advocacy skills. This course is eight weeks long and is conducted three times during the year. In FY 1990 there were 161 students who graduated from the course.

The AFJAG School also offers a number of specialty courses to benefit the military lawyer, they include: claims and tort litigation, federal employee labor law, environmental law, international operations law, government contracting, law office management, and taxation. These courses were attended by approximately 500 military and civilian personnel during FY 1990.

The AFJAG School conducted numerous courses in FY 1990 which focused considerable attention in the area of military justice. The following courses were attended by over 700 judge advocates.

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

b. Trial and Defense Advocacy Course—This course lasts for one week and was offered three times in FY 1990. It is designed to provide basic advocacy training to judge advocates who will be serving as active trial advocates in courts-martial throughout the service. Instruction was provided to over 100 military advocates in the last fiscal year.

c. Advanced Trial and Defense Advocacy Course—This course is a one week course which was attended by 38 students in FY 1990. It was developed primarily to train those counsel who are currently serving, or have been selected to serve, as circuit trial or defense counsel. The course further develops and refines advocacy skills and stresses the use of forensic evidence in courts-martial.

d. Staff Judge Advocate Course—This course is used as an opportunity to refresh and update the law for those judge advocates who have been selected to serve as staff judge advocates. It is a two week course which was attended by 58 students in FY 1990. The military justice instruction centers on significant recent developments in both law and procedures relating to nonjudicial and judicial punishment, search and seizure, urinalysis, and substance abuse offenses.

e. Military Judges' Seminar—This is an interservice course which is primarily designed to ensure that military judges are kept up to date with recent developments, not only in military law, but also with the most effective techniques of judicial management. It is a one week course which was offered once in FY 1990 and was attended by 68 military judges from all the services.

f. Reserve Forces Judge Advocate Course—This course was developed with the goal of Providing our Air Force Reserve and Air National Guard judge advocates with up-to-date information on recent developments in military law to ensure their ability to Perform their required duties in the event of a mobilization. It is a one week course which was held in Denver, Colorado by the AFJAG School faculty and attended by approximately 243 students.

Nonresident Courses

The AFJAG School offered seven nonresident courses which have been approved for Continuing Legal Education (CLE) credit. The amount of CLE credit earned for completion of these courses was determined by the individual state bar or licensing authorities. The courses available in FY 1990 were Professional Responsibility for Air Force Lawyers, Estate Planning, Federal Income Tax Law,

Government Contract Law, International Law, Supreme Court Trends in Criminal Justice, and Environmental Law.

The AFJAG School also provided instructional videotapes for professional enrichment in 64 topics in various areas of military justice and civil law which were not approved for CLE credit. These areas included: trial advocacy, criminal law, income taxation, environmental law, labor law, claims and tort litigation, and acquisition law. These videotapes were very popular and requests for their use were heavy in FY 1990.

Publications

The AFJAG School published two editions of *The Air Force Law Review* in FY 1990. The FY 1990 editions included one traditional and one theme issue. The traditional issue was recognized as containing one of the best articles published in the area of law of armed conflict and air operations. The theme issue was exclusively dedicated to the area of claims and tort litigation

The AFJAG School also was responsible for editing and distributing the preventive law *Shortbursts* letter. This cover letter serves to introduce an informal collection of informative and relevant material to judge advocates providing legal assistance to military personnel and dependents. The School also catalogued materials prepared and collected by judge advocates throughout the service to help military members avoid personal legal problems. These materials were then listed on a Preventive Law Clearinghouse Index which was provided to all Air Force judge advocates for their use in acquiring these informative materials for their office.

PERSONNEL

As of 30 September 1990, there were 1398 judge advocates on active duty. This total included 2 major generals, 3 brigadier generals, 123 colonels, 218 lieutenant colonels, 324 majors, 687 captains and 41 first lieutenants.

Keith E. Nelson
Major General, USAF
The Judge Advocate General

Period: FISCAL YEAR 1990

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	844	789	55	-0.1%
BCD SPECIAL (A)	235	235		-37.8%
NON-BCD SPECIAL	401	351	50	-12.5%
SUMMARY	16	15	1	-33.3%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-10.9%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)	118
NUMBER OF DISHONORABLE DISCHARGES	
NUMBER OF BAD CONDUCT DISCHARGES	569
SPECIAL COURTS-MARTIAL (SA LEVEL)	
NUMBER OF BAD CONDUCT DISCHARGES	225

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	883
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	217
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	89

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

TOTAL ON HAND BEGINNING OF PERIOD	252
GENERAL COURTS-MARTIAL	196
BCD SPECIAL COURTS-MARTIAL	56
REFERRED FOR REVIEW	1042
GENERAL COURTS-MARTIAL	828
BCD SPECIAL COURTS-MARTIAL	214
TOTAL CASES REVIEWED	805
GENERAL COURTS-MARTIAL	621
BCD SPECIAL COURTS-MARTIAL	184
TOTAL PENDING AT CLOSE OF PERIOD	489
GENERAL COURTS-MARTIAL	403
BCD SPECIAL COURTS-MARTIAL	86
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-16.4%

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

NUMBER	881
PERCENTAGE	99.8%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	377/805	46.8%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-20.9%
PERCENTAGE OF TOTAL PETITIONS GRANTED	36/377	9.5%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-14.4%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	36/805	4.5%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		43.8%

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		1	
RECEIVED		22	
DISPOSED OF		21	
GRANTED	1		
DENIED	20		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		2	

PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		540	
SPECIAL COURTS-MARTIAL		227	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		340	
SPECIAL COURTS-MARTIAL		409	

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	20		
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	548,653		
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		13,629	
RATE PER 1,000		24.84	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD [B]		-5.6%	

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- [A] SPCMs in which BCD adjudged
 [B] Reflects change in Rate per 1,000

**REPORT OF THE CHIEF COUNSEL OF THE U. S.
COAST GUARD
October 1, 1989 to September 30, 1990**

The table below shows the number of court-martial records received and filed at Coast Guard Headquarters during FY-90 and the five preceding years.

Fiscal Year	90	89	88	87	86	85
General Courts-Martial	14	5	13	11	5	5
Special Courts-Martial	42	40	25	24	19	43
Summary Courts-Martial	47	48	35	63	50	77
Total	103	93	73	98	74	125

COURTS-MARTIAL

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

GENERAL COURTS-MARTIAL

Of the fourteen accused tried by general courts-martial this fiscal year, nine were tried by military judge alone. Of the nine accused tried by military judge alone, four received dishonorable discharges, one received a bad conduct discharge and two officers received dismissals. One of the five accused tried by courts with members received a sentence which included a dishonorable discharge, and the other four received bad conduct discharges. Six of the accused whose charges were referred to general courts-martial were nonrated (pay grades E-1 through E-3), four were petty officers (pay grades E-4 through E-6), and four were officers.

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

In none of these convictions did the accused plead guilty to all charges and specifications.

Sentence	Cases imposed
Dismissal	2
Dishonorable discharge	4
Bad conduct discharge	1
Confinement	8
Reduction in rate	4
Forfeiture of all pay and allowances	4
Partial forfeiture of pay (\$18,900 total)	2
Fine (\$25,323 total)	3
Reprimand	2
Loss of numbers on active duty promotion list	1

The following is a breakdown of sentences adjudged in general courts-martial tried by members (five convictions). In none of these convictions did the accused plead guilty to all charges and specifications.

Sentence	Cases imposed
Dishonorable discharge	1
Bad conduct discharge	4
Confinement	4
Reduction in rate	5
Forfeiture of all pay and allowances	2
Partial forfeiture of pay (\$43,740 total)	2

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

FY	Number of convictions	Forfeitures	Confinement	Reduction in grade	Punitive discharge/dismissal
90	14	10 (71%)	12 (86%)	9 (64%)	12 (86%)
89	5	3 (60%)	5 (100%)	3 (60%)	4 (80%)
88	12	8 (75%)	12 (100%)	9 (75%)	8 (75%)
87	11	5 (45%)	8 (73%)	8 (73%)	6 (55%)

The following table shows the distribution of the 212 specifications referred to general courts-martial.

Violation of the UCMJ, article	No. of specs.
80 (Attempts)	1
81 (Conspiracy)	1
86 (Unauthorized absence)	5
92 (Violation of order or regulation)	15
107 (False official statement)	3

Violation of the UCMJ, article	No. of specs.
108 (Sale, loss, damage, destruction, or wrongful disposition of military property of the U. S.).....	1
111 (Drunken or reckless driving).....	3
112(a) (Controlled drug offenses).....	105
119 (Manslaughter).....	1
120 (Rape).....	4
121 (Larceny and wrongful appropriation).....	11
125 (Sodomy).....	2
128 (Aggravated assault).....	3
130 (Housebreaking).....	1
132 (Frauds against the United States).....	8
133 (Conduct unbecoming an officer and a gentleman).....	8
134 (General).....	40

SPECIAL COURTS-MARTIAL

Twenty of the 42 accused tried by special courts-martial this fiscal year were tried by the military judge alone. Seventeen bad conduct discharges were awarded; fourteen to accused tried by military judge alone, and three to accused tried by a court with members. Seventeen of the accused whose charges were referred to special courts-martial were nonrated (pay grades E-1 through E-3), twenty-three were petty officers (pay grades E-4 through E-6), one was a chief petty officer (pay grade E-7), and one was a senior chief petty officer (pay grade E-8). Five special courts-martial resulted in acquittals and one resulted in a mistrial.

The following table shows the distribution of the 241 specifications referred to special courts-martial.

Violation of the UCMJ, article	No. of specs.
80 (Attempts).....	4
81 (Conspiracy).....	5
82 (Solicitation).....	4
85 and 86 (Desertion/UA).....	21
87 (Missing movement).....	4
90 (Willfully disobeying superior commissioned officer).....	1
91 (Insubordinate conduct toward a petty officer).....	2
92 (Violation of order or regulation).....	22
95 (Resistance, breach of arrest, escape).....	1
107 (False official statement).....	7
108 (Sale, loss, damage, destruction, or wrongful disposition of military property of the U. S.).....	9
111 (Drunken or reckless driving).....	1
112(a) (Controlled drug offenses).....	63
113 (Misbehavior of sentinel).....	1
121 (Larceny and wrongful appropriation).....	47
123 (Forgery).....	3

Violation of the UCMJ, article	No. of specs.
125 (Sodomy).....	2
132 (Frauds against the United States).....	12
134 (General).....	32

The following is a breakdown of sentences adjudged by special courts-martial tried by the military judge alone (20 convictions). In eight of these 20 convictions, the accused pled guilty to all charges and specifications.

Sentence	Cases imposed
Bad conduct discharge.....	14
Confinement.....	14
Hard labor without confinement.....	5
Reduction in rate.....	17
Forfeiture of pay (\$12,880 total).....	11
Fine (\$2,920 total).....	1
Restriction.....	1
Other (extra duty, reprimand, etc.).....	3

The following is a breakdown of sentences adjudged in special courts-martial tried by members (16 convictions). In three of these 16 convictions, the accused pled guilty to all charges and specifications.

Sentence	Cases imposed
Bad conduct discharge.....	3
Confinement.....	4
Hard labor without confinement.....	6
Reduction in rate.....	14
Restriction.....	5
Forfeiture of pay (\$8,976 total).....	5
Fine (\$1,000 total).....	1
Other (extra duty, reprimand, etc.).....	4

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

FY	Number of convictions	Forfeitures	Confinement	Reduction in grade	BCD
90 ..	36	16 (44%)	18 (50%)	31 (86%)	17 (47%)
89 ..	36	18 (50%)	14 (39%)	26 (73%)	11 (31%)
88 ..	25	9 (36%)	13 (52%)	18 (72%)	8 (32%)
87 ..	23	10 (43%)	13 (57%)	21 (91%)	3 (13%)

SPECIAL COURTS-MARTIAL SUMMARY

Fifty-six percent of the accused tried by special courts-martial were tried by military judge alone. Forty percent of these accused pled guilty to all charges and specifications. Nineteen percent of the accused tried by special courts-martial with members pled guilty to all charges and specifications. There was a five 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 152 officers designated as law specialists (judge advocates) serving on active duty—119 are serving in legal billets and 33 are serving in general duty billets. Twenty-three Coast Guard officers are currently undergoing postgraduate studies in law and will be certified as law specialists at the completion of their studies. Eight Coast Guard officers who recently graduated from law school completed the Navy Basic Lawyer Course in Newport, Rhode Island. All have been certified under Article 27(b), UCMJ. A total of 328 additional training quotas were filled by attorneys, paralegals, yeomen and secretaries assigned to Coast Guard legal offices. Approximately \$160,000 was spent on legal training during the fiscal year.

U.S. COAST GUARD COURT OF MILITARY REVIEW

During fiscal year 1990, the Court was composed of five appellate military judges assigned by the General Counsel, Department of Transportation, in his capacity as Judge Advocate General of the Coast Guard. The Chief Judge and one other Judge are civilian employees. The remaining three Judges are commissioned officers of the U. S. Coast Guard. The Court is presently constituted as follows:

Chief Judge Joseph H. Baum.
Judge Alfred F. Bridgman, Jr.
Judge Michael C. Grace.
Judge John E. Shkor.
Judge John A. Bastek.

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 November 1989, all five Judges attended the Fifth Annual All Services Appellate Military Judges Conference, and in December 1989, judges from the Court attended a one-day forensic psychiatry seminar at Walter Reed Hospital that featured, as key note speaker, Judge Walter Cox of the U.S. Court of Military Appeals. In May 1990, the Judges attended the 15th Annual Homer Ferguson Conference at George Washington University sponsored by the U.S. Court of Military Appeals and the Military Law Institute.

This past year, Chief Judge Baum served as Deputy Chair of the Federal Bar Association's Judiciary Section, which includes the Military Judges Committee among its various judicial committees. Judge Grace, who is a member of the Military Judges Committee and the Pentagon Chapter of the Federal Bar Association, served as the Chapter's liaison to the Judiciary Section. Judge Kevin J. Barry, who was a member of the Court until his retirement from the Coast Guard in August 1990, served as President of the Judge Advocates Association for fiscal year 1990.

ADDITIONAL MILITARY JUSTICE STATISTICS

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

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

APPENDIX A

Period: 1 October 1989 - 30 September 1990

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	14	14	0	+180%
BCD SPECIAL	42	36		+5%
NON-BCD SPECIAL	0	0	0	Unchanged
SUMMARY	47	47	0	12%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+11%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES	7 ^{1/}	
NUMBER OF BAD CONDUCT DISCHARGES	5	
SPECIAL COURTS-MARTIAL (SA LEVEL)		
NUMBER OF BAD CONDUCT DISCHARGES	17	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	13
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	19
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	3

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

TOTAL ON HAND BEGINNING OF PERIOD	10
GENERAL COURTS-MARTIAL	6
BCD SPECIAL COURTS-MARTIAL	4
REFERRED FOR REVIEW	33 ^{2/}
GENERAL COURTS-MARTIAL	13
BCD SPECIAL COURTS-MARTIAL	20
TOTAL CASES REVIEWED	26 ^{2/}
GENERAL COURTS-MARTIAL	10
BCD SPECIAL COURTS-MARTIAL	16
TOTAL PENDING AT CLOSE OF PERIOD	17
GENERAL COURTS-MARTIAL	9
BCD SPECIAL COURTS-MARTIAL	8
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+13%

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

NUMBER	26
PERCENTAGE	100%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	8/26	+31%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+70%
PERCENTAGE OF TOTAL PETITIONS GRANTED		0
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		Unchanged
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR		0
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		Unchanged

PAGE 1 OF 2

1/ Two of the seven dishonorable discharges are in fact dismissals.

2/ Included within this total are twenty-nine initial Article 66, UCMJ, referrals, two Article 66, UCMJ, remands by the U. S. Court of Military Appeals, one Article 66, UCMJ, reconsideration granted by the Coast Guard Court of Military Review on motion by the Government, and one Article 62, UCMJ, appeal by the Government.

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		0	
RECEIVED		0	
DISPOSED OF		0	
GRANTED	0		
DENIED	0		
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		9	
SPECIAL COURTS-MARTIAL		20	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		5	
SPECIAL COURTS-MARTIAL		22	

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	1	
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	37,087	
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	1,414	
RATE PER 1,000	38.12	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-.6%	

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3/ Included within this total are twenty-five reviews pursuant to Article 66, UCMJ, and one review of a Government appeal under Article 62, UCMJ. There were no extraordinary writ actions.