

138987



# ANNUAL REPORT on MILITARY JUSTICE



INCLUDING SEPARATE REPORTS  
of the  
U.S. COURT OF MILITARY APPEALS,  
THE JUDGE ADVOCATES GENERAL  
OF THE U.S. ARMED FORCES,  
AND THE CHIEF COUNSEL  
OF THE U.S. COAST GUARD

For the Period  
October 1, 1990 to September 30, 1991

138987

**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  
National Institute of Justice**

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U.S. Court of Military Appeals

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## **REPORT OF THE UNITED STATES COURT OF MILITARY APPEALS October 1, 1990 to September 30, 1991**

The Judges of the United States Court of Military Appeals submit their fiscal year 1991 report on the administration of the Court and military justice to the Committees on Armed Services of the United States Senate and House of Representatives and to the Secretaries of Defense, Transportation, Army, Navy, and Air Force in accordance with Article 146, Uniform Code of Military Justice, 10 USC § 946.

### **THE BUSINESS OF THE COURT**

The Defense Authorization Act of 1990, Public Law Number 101-189, 103 Statutes 1570 (1989), increased the membership of the United States Court of Military Appeals from three to five judges effective October 1, 1990. However, as a result of existing vacancies the Court functioned during the entire fiscal year 1991 with only three judges (Chief Judge Sullivan, Judge Cox, and Senior Judge Everett). Notwithstanding the fact that there were three vacancies on the Court, the Court was able to conduct business and to maintain a steady flow of cases throughout the current fiscal year. This workflow is reflected by the fact that the number of cases on the Court's Petition Docket at the end of fiscal year 1991, increased by only 13 cases over the number of cases pending at the end of fiscal year 1990. (See Appendix A.) The number of cases pending on the Master Docket decreased by 3 cases during the same period. (See Appendix B.) This slight decrease resulted from an increase in the number of oral arguments from 100 to 112 and an increase from 105 to 125 opinions issued by the Court during fiscal year 1991 as compared with fiscal year 1990. (See Appendices C and D.)<sup>1</sup>

The overall case processing times remained fairly constant from fiscal year 1990 to fiscal year 1991. While the average number of days between the filing of a petition with the Court and the grant of such petition was reduced from 117 days to 96 days, the average

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<sup>1</sup> Although not part of the business of the Court, it is noted that during fiscal year 1991 the Court was notified that petitions for writ of certiorari were filed with the Supreme Court of the United States in 24 Master Docket cases in which the Court took final action.

period from the grant to oral argument increased from 131 days to 143 days. (See Appendices E and F.) This latter processing time increase reflects the complicated nature of cases which received full consideration by the Court during this fiscal year. The average number of days between oral argument and issuance of a final decision was reduced from 148 days to 141 days; but the total average processing time of cases which received plenary consideration from the initial filing of a petition on the Petition Docket and a final decision on the Master Docket increased from 269 days to 324 days. (See Appendices G and H.) This increase is attributed to the final resolution of a number of older cases during the 1991 term of Court which were filed during the early part of the preceding fiscal year. In addition, these processing times include a 70-day period allocated for counsel to file pleadings. Thus, as the normal briefing cycle on the Master Docket for a granted petition includes an additional 70 days, the overall average processing periods noted above are significantly lower than the total periods indicated in the respective appendices. For cases involving a denial or a dismissal of a petition for grant of review on the Petition Docket, the average processing period of 57 days remained constant from fiscal year 1990 to fiscal year 1991. (See Appendix H.) The overall combined average processing time from filing to final decision for the Petition and Master Dockets taken together was 82 days for fiscal year 1991. (See Appendix I.) The total number of petitions filed with the Court in fiscal year 1991 was 1813. (See Appendix J.)

Again during this fiscal year, the Chief Justice of the United States, acting under authority of an amendment to the Uniform Code of Military Justice, designated a Judge of the United States Court of Appeals for the Fourth Circuit 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.

During fiscal year 1991 the Court admitted 672 attorneys to practice before its Bar, bringing the cumulative total of admissions before the Bar of the Court to 28,257.

## **PUBLIC AWARENESS PROJECT (Project Outreach)**

Consistent with its practice established in 1988, the Court scheduled several special sessions and heard oral arguments in selected cases outside its permanent courthouse in Washington, D.C., as part of its "Project Outreach," a public awareness project which demonstrates not only the operation of a Federal appellate court but also the effectiveness and quality of the criminal justice system of the Armed Services of the United States. Appellate hearings were conducted, without objection of the parties, at the United

States Military Academy, West Point, New York; the United States Coast Guard Academy, New London, Connecticut; the Washington and Lee University School of Law, Lexington, Virginia; and the United States Air Force Academy, Colorado Springs, Colorado. Such off-site hearings are similar to the well-established practice of the United Court of Appeals for the Eighth Circuit which holds hearings at various law schools within its circuit. They have promoted an increased public awareness of the fundamental fairness of the military justice system and the role of the Court in the overall administration of military justice throughout the world. The Court hopes that the thousands of students, servicepersons, military and civilian attorneys, and members of the American public who attend these hearings will realize that America is a democracy that can maintain an Armed Force instilled with the appropriate discipline to make it a world power and yet afford that Armed Force a fair and impartial justice system which provides the full protection of the Constitution of the United States and Federal law to its members.

## **JUDICIAL VISITATIONS**

During fiscal year 1991, the Judges of the Court, consistent with past practice and their ethical responsibility to improve the military justice system, participated in professional training programs for military and civilian lawyers, spoke to professional groups of judges and lawyers, and visited staff judge advocates and commanders at various military installations throughout the world.

### **VISIT OF CHIEF JUSTICE OF THE UNITED STATES**

On December 18, 1990, the Chief Justice of the United States, the Honorable William H. Rehnquist, visited the Court for the first time in its history and met with the Judges and Staff of the Court concerning matters relating to the judicial administration of the military justice system under the Uniform Code of Military Justice. (See Appendices K and L.)

### **THE JUDICIAL CONFERENCE**

On May 2-3 1991, the Court held its annual Judicial Conference at the George Washington University Marvin Center, with the cooperation of the Military Law Institute, George Washington University, the Judge Advocates Association, and the Federal Bar Association. This annual professional event, named this year as the Judicial Conference of the United States Court of Military Appeals, was formerly entitled the Homer Ferguson Conference and has

been sponsored by the Court for the past 15 years. It was this year redesignated to formally reflect its evolution into a judicial conference. The Court has continued to recognize the enormous contribution of Judge Homer Ferguson to military justice by holding this annual professional educational program in memory of his service on the Court. As with its predecessor, the Judicial Conference was certified for credit to meet the continuing legal education requirements of various State Bars throughout the United States in order to assist both military and civilian practitioners in maintaining those professional skills necessary to practice before trial and appellate courts.

The speakers for this year's Judicial Conference included the Honorable C. Boyden Gray, Counsel to the President of the United States; the Honorable William C. Bryson, Deputy Solicitor General of the United States; Professor Sara Sun Beale, Duke Law School; the Honorable Julie Carnes, United States Sentencing Commission; Dr. Jonathan Lurie, Historian to the United States Court of Military Appeals and Professor of History, Rutgers University; the Honorable Frank Q. Nebeker, Chief Judge, United States Court of Veterans Appeals; Thomas S. Markiewicz, Chief, Clemency, Corrections and Officer Review Division, Office of the Judge Advocate General, United States Air Force; James E. Coleman, Jr., Esquire; Joseph W. (Wayne) Kastl, Esquire, Retired Senior Judge, United States Air Force Court of Military Review; Colonel Fred K. Green, Legal and Legislative Counsel to the Chairman, Joint Chiefs of Staff; and the Honorable Eugene R. Sullivan, Chief Judge, United States Court of Military Appeals.

In addition, Major General William Berkman, Military Executive of the Reserve Forces Policy Board, Office of the Secretary of Defense, chaired a panel discussion on "Judge Advocates and Operation Desert Storm" with panelists Rear Admiral John E. Gordon, The Judge Advocate General, United States Navy; Major General David C. Morehouse, The Judge Advocate General, United States Air Force; Major General John L. Fugh, The Acting Judge Advocate General, United States Army, and Brigadier General Gerald L. Miller, Director, Judge Advocate Division, United States Marine Corps. The Honorable Walter T. Cox, III, Judge, United States Court of Military Appeals, moderated a panel discussion on "Ethics and the Law—Is There a Difference?" with panelists Colonel Eileen Albertson, Judge, United States Navy-Marine Corps Court of Military Review; the Honorable Royce C. Lamberth, Judge, United States District Court, District of Columbia; Rear Admiral James L. Hoffman, Jr., JAGC, United States Navy (Ret.); and Captain Robert Jay Reining, United States Coast Guard, Chief, Legal Division, Maintenance and Logistics Command, Atlantic. Another panel discussion on "Evidence Update Under the Military Rules of Evi-

dence" was moderated by the Honorable Robinson O. Everett, Senior Judge, United States Court of Military Appeals, with panelists Professor Stephen A. Saltzburg, Professor of Law, National Law Center, George Washington University; Colonel Lee D. Schinasi, Judge Advocate General's Corps, United States Army; and Professor David A. Schlueter, Professor of Law, St. Mary's University Law School. A series of seminars was also conducted under the overall direction of Captain Kent Willever, Chief Judge, United States Navy-Marine Corps Court of Military Review, assisted by Colonel Patrick B. O'Brien, Chief Judge, United States Air Force Court of Military Review; the Honorable Joseph H. Baum, Chief Judge, United States Coast Guard Court of Military Review; Captain Robert H. McLeran, Military Justice Project Manager, Office of the Judge Advocate General, United States Navy; and Colonel William S. Fulton, Jr. (Ret.), Clerk of Court, United States Army Court of Military Review.

Another seminar was moderated by Colonel Charles H. Mitchell, Judge, United States Navy-Marine Corps Court of Military Review, with participation by Colonel Leroy F. Foreman, Senior Judge, United States Army Court of Military Review; Captain James A. Freyer, Judge, United States Navy-Marine Corps Court of Military Review; Colonel Howard C. Eggers, Chief Judge, United States Army Trial Judiciary; Lieutenant Colonel John Murdock, Judge, United States Air Force Court of Military Review; and the Honorable Alfred F. Bridgeman, Jr., Judge, United States Coast Guard Court of Military Review.

The invocation was offered by Rear Admiral Donald Muchow, Chief of Chaplains of the United States Navy, and the conference opened with welcoming remarks by the Honorable Eugene R. Sullivan, Chief Judge, United States Court of Military Appeals, on behalf of the Court; Colonel Walter L. Lewis, USAF (Ret.), on behalf of the Military Law Institute; Dean John Jenkins, Associate Dean for External Affairs, on behalf of the National Law Center, George Washington University; and Lieutenant Colonel Thomas J. Fiscus, USAF, on behalf of the Judge Advocates Association.

The Judicial Conference was attended by numerous military and civilian lawyers as well as judges of the Courts of Military Review, legal scholars and commentators in the field of military justice. It was also videotaped and made available for educational viewing by many others interested in the administration of military justice throughout the world.

# SIGNIFICANT DECISIONS AFFECTING THE ADMINISTRATION OF MILITARY JUSTICE WITHIN THE ARMED FORCES <sup>2</sup>

## Capital Punishment

In *United States v. Curtis*, 32 MJ 252 (CMA 1991), the Court upheld the standards for imposing capital punishment as set forth in Rule 1004, Rules for Courts-Martial (RCM), Manual for Courts-Martial, United States, 1984. The Court rejected a defense argument that the promulgation of these standards by the President of the United States constituted an impermissible extension of presidential power and that such standards were unconstitutional on their face. The Court observed that the aggravating factors were not elements of the offense; that the history of the Uniform Code of Military Justice reflected that Congress had been willing to allow the President to play a major role in determining permissible punishment; and that Congress had by implication delegated the authority to the President, as Congress had recently specifically authorized the President to prescribe aggravating factors to determine whether capital punishment should be imposed for the offense of espionage under Article 106(a), UCMJ, 10 USC § 906(a). The Court also rejected a defense argument that a panel of 12 court members was required, observing that such members were chosen under the criteria set forth in Article 25, UCMJ, 10 USC § 825; that the decision on imposition of the death penalty must be unanimous; that the military judge could recommend commutation; that the convening authority could commute the punishment; and that a Court of Military Review, which is composed of trained appellate military judges, must thoroughly review the law and facts of the case and the appropriateness of the sentence. Indeed, the Court observed that RCM 1004 went further than most state statutes in providing safeguards in a capital punishment case.

Additional issues raised in this same capital case were addressed by the Court in a subsequent opinion after hearing oral argument on these issues. *United States v. Curtis*, 33 MJ 101 (CMA 1991). Therein the Court rejected the defense argument that the trial counsel's challenge of a black court member violated the requirements of *Batson v. Kentucky*, 476 U.S. 79 (1986), and applied the standard of review set forth in *Hernandez v. New York*, 111 S. Ct. 1859 (1991). The Court observed that the trial counsel's asserted

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<sup>2</sup> 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.

reason that he challenged the court member because the member responded that the trial would be "a learning experience" did not violate *Batson* as the stated reason, and did not appear to be a pretext for some concealed racial motive. Additionally, the Court held that the challenge of another court member who stated that his religious belief would make "it extremely difficult" to vote for a death sentence was in accord with Supreme Court precedents. The Court did hold, however, that the potential double counting of aggravating factors should be considered by the United States Navy-Marine Corps Court of Military Review to determine whether the double counting had any effect on the sentence. Additionally, in remanding the case the Court indicated that the Court of Military Review should also undertake a proportionality review of death sentences imposed in other cases.

### **Article 31 Rights**

The Court ruled in *United States v. Moore*, 32 MJ 56 (CMA 1991), that an accused's pretrial statement to a nurse when he complained of depression, immediately after observing the video deposition of his stepdaughter upon whom he had been accused of committing indecent acts, was clearly given for medical purposes and that the nurse's questions to him about suspected sexual abuse of his stepdaughter were clearly outside the scope of Article 31 protections. In *United States v. Phillips*, 32 MJ 76 (CMA 1991), the Court held that the standard in determining the voluntariness of a subsequent confession that had been preceded by an involuntary confession, where such involuntariness resulted only from a failure to properly warn the accused of his panoply of rights to silence and counsel, should be a determination of voluntariness in light of the totality of the circumstances. The Court distinguished this case from one where an earlier confession was involuntary because it was obtained through actual coercion, duress or inducement, thereby rendering a subsequent confession presumptively tainted as a product of the first confession. The Court ruled that the Supreme Court standard in *Oregon v. Elstad*, 470 U.S. 298 (1985), was applicable to the provisions of Article 31, UCMJ, 10 USC § 831, and that the Government must prove the voluntariness of the confession by a preponderance of the evidence, as required by Mil.R.Evid. 304(e)(1).

### **Classified Information**

In *United States v. Pruner*, 33 MJ 272 (CMA 1991), the Court rejected a defense argument that an appellate court should order certain classified information in the Government's possession to be declassified and held that a defense request for such an order was premature on the basis that, under Mil.R.Evid. 505 (f) and (g), such

request should first be presented to the trial judge for resolution. In addition, the Court rejected a defense argument that an obligation imposed on the accused's civilian defense counsel to provide minimal information to process the latter's security clearance violated the counsel's right to privacy. Thus, the Court held that a defense request for an order allowing the accused to reveal classified information to his civilian defense counsel who had not yet been granted the proper security clearance was properly denied. The Court observed that the regulatory requirements for processing a security clearance for civilian counsel were streamlined and were minimal in nature. Additionally, the Court rejected the defense argument that *United States v. Nichols*, 8 USCMA 119, 23 CMR 343 (1957), required a contrary conclusion and ruled that the holding in *Nichols* was not as broad as urged by the defense and that in *Nichols*, unlike *Pruner*, the convening authority had refused to initiate a security clearance for the defense counsel.

### **Right to Counsel**

Concerning the obligation of military police investigators to notify a military suspect's Dutch counsel of an investigation and interview of this suspect, the Court held in *United States v. Hinojosa*, 33 MJ 353 (CMA 1991), that such investigators did not violate the military suspect's rights by questioning him without first notifying the Dutch counsel. The Court held that since the accused's earlier request to Dutch police for a Dutch lawyer in connection with an on-going local drug investigation may well have indicated only his discomfort in dealing with a foreign law enforcement system, the subsequent interview of the accused by an Army investigator who was aware of the earlier contact between the accused and his Dutch lawyer did not violate the accused's rights since this second interview was preceded by full rights advisement. The Court rejected the accused's claim that *Minnick v. Mississippi*, 111 S.Ct. 486 (1990), required a contrary holding, and ruled that nothing in *Minnick* was inconsistent with the Court's earlier decision in *United States v. Coleman*, 26 MJ 451 (CMA 1988), on which the instant case was based.

A question concerning defense counsel's ethical obligation to voluntarily disclose the existence of evidence potentially damaging to his client was resolved in *United States v. Rhea*, 33 MJ 413 (CMA 1991). The Court ruled in this case that where the client gave tangible items to his defense counsel which counsel later realized constituted evidence potentially damaging to the client, such counsel acted properly and within his ethical obligations by voluntarily disclosing the existence of such evidence to the trial judge and later, pursuant to a court order after an *ex parte* hearing on the matter, delivering such evidence to the prosecution. Indeed, the Court ob-

served that the defense counsel and the military judge acted with laudable sensitivity and responsibility to ensure that all lawful means of protecting the accused's interests were followed. This holding was predicated on the fact that the delivery of tangible evidence to a defense lawyer did not constitute a confidential communication between client and lawyer under Mil.R.Evid. 502(a).

### **Jurisdiction**

In *United States v. Ernest*, 32 MJ 135 (CMA 1991), the Court addressed an issue concerning court-martial jurisdiction to try a member of the Reserves, and held that the accused's argument that he could not be tried by court-martial because he was not called to active duty in accord with Air Force directives was without merit. The Court noted that the accused—an Air Force Reserve officer—was apprehended while on active duty and, thus, jurisdiction continued even if his orders to active duty had expired. Additionally, the Court observed that the accused waived any irregularities in his call to active duty in light of his repeated failures to protest such irregularities and his voluntary acceptance of active duty.

### **Mental Competency**

In *Short v. Chambers*, 33 MJ 49 (CMA 1991), the Court resolved a question concerning the requirements for the transfer of a military accused to a federal civilian facility for mental evaluation. The Court held that the convening authority did not abuse his discretion by transferring the accused, who had been ruled mentally incompetent to stand trial, to a federal correctional institution for treatment and consultation, noting that the accused had been afforded a hearing under the provisions of Article 39(a), UCMJ, 10 USC § 839(a), with a presiding military judge, an opportunity to be heard, legal representation, and notice that he would be transferred to a mental health facility if he were found to be incompetent to stand trial. Thus, the Court held that the pretrial procedures afforded a military accused complied fully with the constitutional safeguards of due process enunciated in *Vitek v. Jones*, 445 U.S. 480 (1980).

### **Uncharged Misconduct Evidence**

The issue of whether uncharged misconduct could be admitted under Mil.R.Evid. 404(b) against a military accused was addressed by the Court in *United States v. Jones*, 32 MJ 155 (CMA 1991). Therein the Court ruled that where the identity of the accused became an issue, evidence of prior drug sales at a particular location under similar circumstances was properly admitted under the rule.

## Increasing Adjudged Sentence

Addressing the question of whether court members may, after adjournment, be reconvened to reconsider a sentence under the provisions of Rule for Courts-Martial (RCM) 1107(b), the Court held in *United States v. Baker*, 32 MJ 290 (CMA 1991), that the members under such circumstances could not increase the severity of a previously announced sentence which was lawful on its face. The Court rejected a broader interpretation urged by the Government on the basis of Congressional concern for the appearance of command influence. Citing Article 37(a), UCMJ, 10 USC § 837(a), the Court held that such concern would be best served by a more limited construction of such provisions. The Court further held that Article 60(e), UCMJ, 10 USC § 860(e), should be interpreted to preclude a reconsideration with a view toward increasing the sentence except where such sentence is required by law.

## Military Rules of Evidence

Answering a question concerning the standard of admissibility of business records under Mil.R.Evid. 803(6), the Court held in *United States v. Garces*, 32 MJ 345 (CMA 1991), that a witness called to establish the foundation for admitting documents generated in connection with credit card purchases provided a sufficient foundation for their admission as business records since the witness was generally familiar with the record-keeping system so as to be able to explain the system to the military judge and to establish reliability of the documents. The Court distinguished *United States v. Wilson*, 1 MJ 325 (CMA 1976), in which the Court earlier applied a more stringent rule that the foundation for admitting business records must be established by a person "intimately familiar" with the business operations of firms for which such entries were made, by holding that *Wilson* was decided prior to the adoption of the Military Rules of Evidence and that the Federal Circuit Courts of Appeals had generally accepted the test applied in *Garces*. The Court also applied this less stringent rule in *United States v. Tebsherany*, 32 MJ 351 (CMA 1991).

Concerning the admissibility of a pretrial deposition of a child sexual abuse victim the Court held in *United States v. Gans* 32 MJ 412 (CMR 1991), that the deposition was admissible as a past recollection recorded under Mil.R.Evid. 803(5), where the child witness had full knowledge of the incident at the time she gave her deposition but had insufficient recollection to enable her full and accurate testimony at the time of the trial. The Court rejected the argument that the rule required that the witness be shown to lack all recollection of the event "or condition described in the prior statement for such to qualify as past recollection recorded.

Answering the question presented in *United States v. Smith*, 33 MJ 114 (CMA 1991), whether the accused waived the marital privilege of Mil.R.Evid. 504, under the waiver provisions of Mil.R.Evid. 510, the Court held that an accused who testified about matters discussed in a privileged communication waived such privilege with respect to portions of a post-trial letter addressed to her husband concerning the charged offenses. The Court ruled that it was sufficient to constitute waiver if the accused's wife testified about the same matters contained in the privileged communication even though no disclosure of an actual portion of the privileged communication was involved.

### **Command Influence**

Citing Article 37, UCMJ, 10 USC § 837, the Court held in *United States v. Hilow*, 32 MJ 439 (CMA 1991), that the deliberate stacking of the pool of potential court members for the accused's court-martial by a subordinate of the convening authority constituted a violation of the article. The Court further held that the unknowing selection by the convening authority from the pool of stacked members was not sufficient to purge this reversible error. Thus, the Court held that a rehearing on the sentence was required, but that the findings were unaffected by the error as the accused had entered pleas of guilty to the charged offenses in this case. Another issue of command influence was addressed by the Court in *United States v. Mabe*, 33 MJ 200 (CMA 1991), where the Court held that a letter from the Chief Judge of the Navy-Marine Corps Trial Judiciary to a Chief Judge of a subordinate judicial circuit wherein the superior expressed concern about lenient sentences for unauthorized absence offenses was improper and constituted command influence. However, the Court ruled that the disclosure of this letter by the trial judge in this accused's case as well as subsequent related events including action taken by the Judge Advocate General of the Navy and the Chief Judge of the local judicial circuit removed any prejudice from the case.

Finally, the Court held in *United States v. Allen*, 33 MJ 209 (CMA 1991), that even assuming the action of senior officers in the service involved attempted to influence the selection of the military judge and, therefore, to unlawfully manipulate the accused's trial, such an attempt—even if it actually occurred—had failed because the originally assigned military judge eventually served as the judge in the accused's court-martial.

### **Unsworn Statements of Accused**

In *United States v. Rosato*, 32 MJ 93 (CMA 1991), the Court held that a military judge erred by limiting the contents of an accused's unsworn statement pertaining to his understanding of a rehabilita-

tion program and his willingness to work his way back to productive military service. The Court noted that a service member's right to make an unsworn statement is a valuable right, long recognized by military custom. The Court held that the trial judge should not have limited the unsworn statement in question and that the rule prohibiting consideration by members of evidence of collateral administrative consequences of a court-martial sentence did not apply to the unsworn statement in this manner. Interpreting RCM 1001(c)(2) in *United States v. Provost*, 32 MJ 98 (CMA 1991), the Court held that the accused was entitled to make a second unsworn statement after the Government had introduced evidence of uncharged misconduct to rebut his first unsworn statement. Again, the Court ruled that the right of allocution by a military member convicted of a criminal offense is a fundamental precept of military justice and that although the Government is permitted to rebut the accused's unsworn statement, this circumstance does not change the character of the accused's right to speak.

### **Other Cases of Interest**

In an opinion authored by Circuit Judge Wilkins of the United States Court of Appeals for the Fourth Circuit, sitting by designation pursuant to Article 142(f), UCMJ, 10 USC § 942(f), the Court held in *United States v. Donley*, 33 MJ 44 (CMA 1991), that the military judge did not abuse his discretion in failing to declare a mistrial over the objection of the defense counsel after one of the court members inadvertently heard an inadmissible statement of one of the trial witnesses. The Court noted that reported cases almost always involve the contrary situation—that is, the trial judge did grant a mistrial over the objection of the accused, or least without his consent. Thus, the Court reversed the decision of the Court of Military Review which had earlier set aside the findings and sentence in the case.

Concerning the requirements of RCM 1105(b) and the provisions of Article 60, UCMJ, 10 USC § 860, the Court held in *United States v. Davis*, 33 MJ 13 (CMA 1991), that it was erroneous for the staff judge advocate to advise the convening authority that he was not required to view a videotape of the accused discussing his molestation as a child which was submitted as part of the post-trial defense clemency materials submitted by the defense prior to the convening authority's action on his case. The Court held in this regard that, although the provisions of RCM 1105(b) expressly limit an accused's post-trial submission of clemency materials to "written matters," the terms of Article 60 of the Code are broader in scope and Congressional intent and, therefore, the staff judge advocate's advice in this case was erroneous.

In *United States v. Hernandez*, 33 MJ 145 (CMA 1991), the Court held that, under the clear terms of Article 61, UCMJ, 10 USC § 861, a waiver by an accused of appellate review of his court-martial conviction and sentence which is executed by such accused prior to the time the convening authority has taken action on his record has no legal effect. The Court thus held as invalid a waiver document signed by the accused on the day his court-martial ended, and returned the record to the Court of Military Review for further review with the accused being represented by appellate defense counsel.

Relying on *Cooke v. Orser*, 12 MJ 335 (CMA 1982), the Court held in *United States v. Kimble*, 33 MJ 284 (CMA 1991), that immunity from court-martial prosecution had been effectively granted to an accused when the latter had been advised by officials within his command that the special court-martial convening authority would not subject him to a court-martial if he successfully completed a civilian treatment program. The Court ruled that under such circumstances there had been a *de facto* grant of immunity and the accused had been improperly tried by court-martial.

Finally, in *United States v. Choate*, 32 MJ 423 (CMA 1991), the Court held that "mooning" constituted indecent exposure and could be properly prosecuted as an offense under Article 134, UCMJ, 10 USC § 934, as contrary to good order and discipline where such conduct was part of a continuing course of sexually degrading conduct toward the wife of a fellow soldier.

Eugene R. Sullivan  
*Chief Judge*

Walter T. Cox, III  
*Associate Judge*

Robinson O. Everett  
*Senior Judge*

# USCMA STATISTICAL REPORT

Fiscal Year 1991

## CUMULATIVE SUMMARY

CUMULATIVE PENDING OCTOBER 1, 1990	
Master Docket.....	72
Petition Docket.....	199
Miscellaneous Docket.....	<u>0</u>
TOTAL.....	271
CUMULATIVE FILINGS	
Master Docket.....	165
Petition Docket.....	1813
Miscellaneous Docket.....	<u>36</u>
TOTAL.....	2014
CUMULATIVE TERMINATIONS	
Master Docket.....	168
Petition Docket.....	1800
Miscellaneous Docket.....	<u>33</u>
TOTAL.....	2001
CUMULATIVE PENDING OCTOBER 1, 1991	
Master Docket.....	69
Petition Docket.....	212
Miscellaneous Docket.....	<u>3</u>
TOTAL.....	284

## OPINION SUMMARY

CATEGORY	SIGNED	PER CURIAM	MEM/ ORDER	TOTAL
Master Docket.....	122	1	45	168
Petition Docket.....	0	0	1800	1800
Miscellaneous Docket.....	<u>2</u>	<u>0</u>	<u>31</u>	<u>33</u>
TOTAL.....	124	1	1876	2001

### FILINGS (MASTER DOCKET)

Remanded from Supreme Court.....	1
Returned from Court of Military Review.....	2
Mandatory appeals filed.....	0
Certificates filed.....	6
Reconsideration granted.....	5
Petitions granted (from Petition Docket).....	<u>151</u>
TOTAL.....	165

**TERMINATIONS (MASTER DOCKET)**

Findings & sentence affirmed .....	112		
Reversed in whole or in part .....	39	Signed .....	122
Granted petitions vacated .....	1	Per curiam .....	1
Other disposition directed .....	16	Mem/order .....	45
<b>TOTAL .....</b>	<b>168</b>	<b>TOTAL .....</b>	<b>168</b>

**PENDING (MASTER DOCKET)**

Awaiting briefs .....	45
Awaiting oral argument .....	24
Awaiting final action .....	0
<b>TOTAL .....</b>	<b>69</b>

**FILINGS (PETITION DOCKET)**

Petitions for grant of review filed .....	1811
Petitions for new trial filed .....	1
Cross-petitions for grant filed .....	1
Petition for reconsideration granted .....	0
Returned from Court of Military Review .....	0
<b>TOTAL .....</b>	<b>1813</b>

**TERMINATIONS (PETITION DOCKET)**

Petitions for grant dismissed .....	4		
Petitions for grant denied .....	1626		
Petitions for grant granted .....	151		
Petitions for grant remanded .....	11	Signed .....	0
Petitions for grant withdrawn .....	8	Per curiam .....	0
Other .....	0	Mem/order .....	1800
<b>TOTAL .....</b>	<b>1800</b>	<b>TOTAL .....</b>	<b>1800</b>

**PENDING (PETITION DOCKET)**

Awaiting briefs .....	133
Awaiting Central Legal Staff review .....	79
Awaiting final action .....	0
<b>TOTAL .....</b>	<b>212</b>

**FILINGS (MISCELLANEOUS DOCKET)**

Writs of error coram nobis sought .....	1
Writs of habeas corpus sought .....	5
Writs of mandamus/prohibition sought .....	11
Other extraordinary relief sought .....	4
Writ appeals sought .....	15
<b>TOTAL .....</b>	<b>36</b>

**TERMINATIONS (MISCELLANEOUS DOCKET)**

Petitions withdrawn .....	1		
Petitions remanded .....	1		
Petitions granted .....	1		
Petitions denied .....	30	Signed .....	2
Petitions dismissed .....	0	Per curiam .....	0
Other .....	0	Mem/order .....	31
<b>TOTAL .....</b>	<b>33</b>	<b>TOTAL .....</b>	<b>33</b>

**PENDING (MISCELLANEOUS DOCKET)**

Awaiting briefs.....	3
Awaiting Writs Counsel review .....	0
Awaiting final action .....	0
<b>TOTAL .....</b>	<b>3</b>

**RECONSIDERATIONS & REHEARINGS**

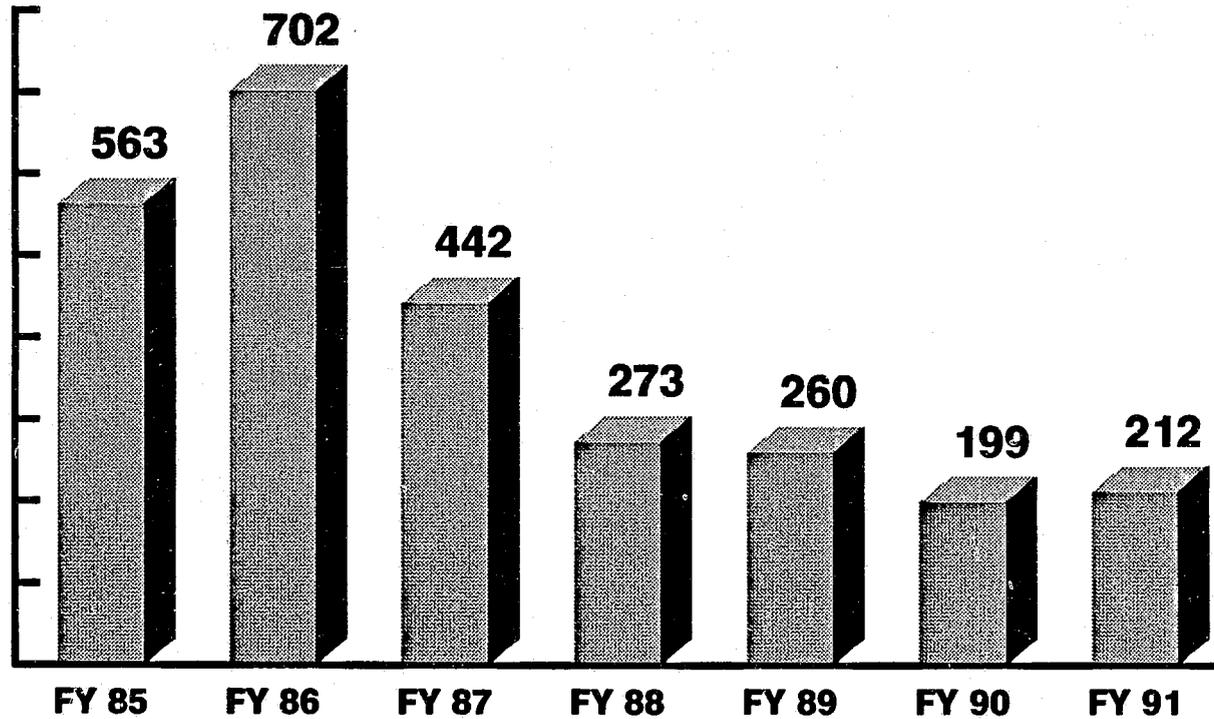
CATEGORY	BEGIN PEND- ING	FIL- INGS	END PEND- ING	DISPOSITIONS		
				Granted	Denied	Total
Master Docket.....	0	4	0	4	0	4
Petition Docket.....	0	3	0	3	0	3
Misc. Docket.....	0	0	0	0	0	0
<b>TOTAL.....</b>	<b>0</b>	<b>7</b>	<b>0</b>	<b>7</b>	<b>0</b>	<b>7</b>

**MOTIONS ACTIVITY**

CATEGORY	BEGIN PEND- ING	FIL- INGS	END PEND- ING	DISPOSITIONS			Total
				Grant- ed	Denied	Other	
All motions .....	12	584	15	455	96	30	581

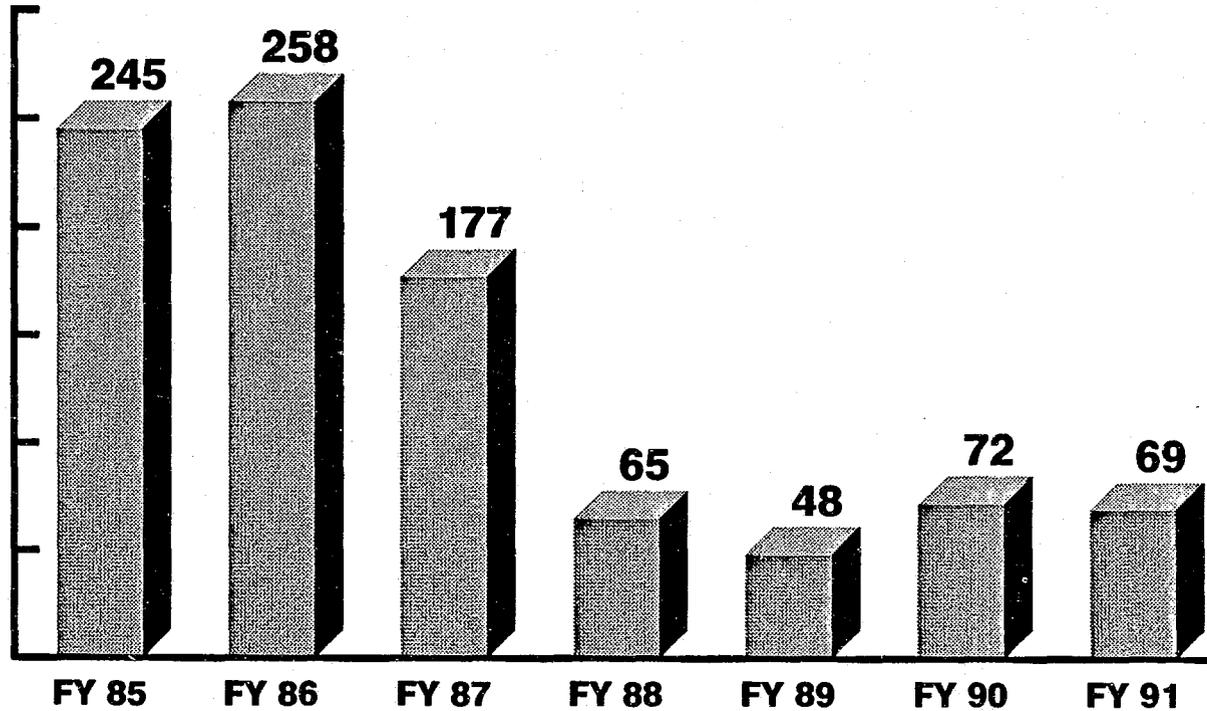
43

# Petition Docket Year End Pending



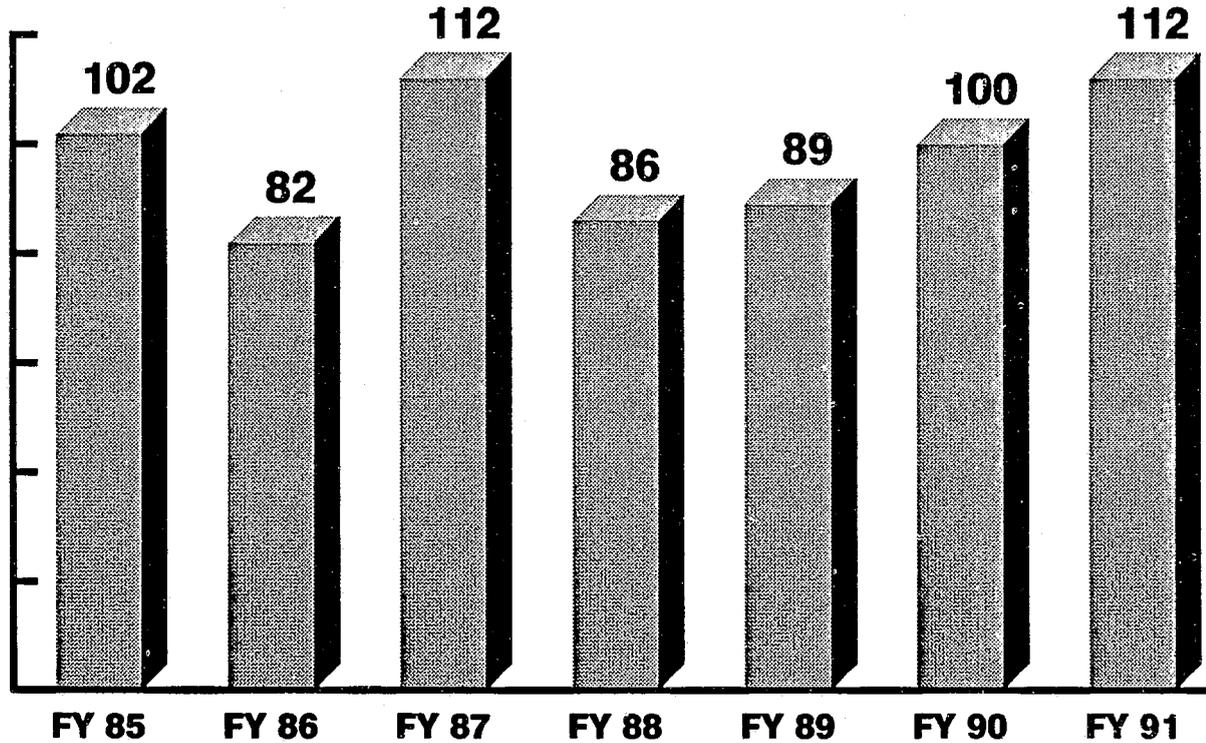
APPENDIX A

# Master Docket Year End Pending



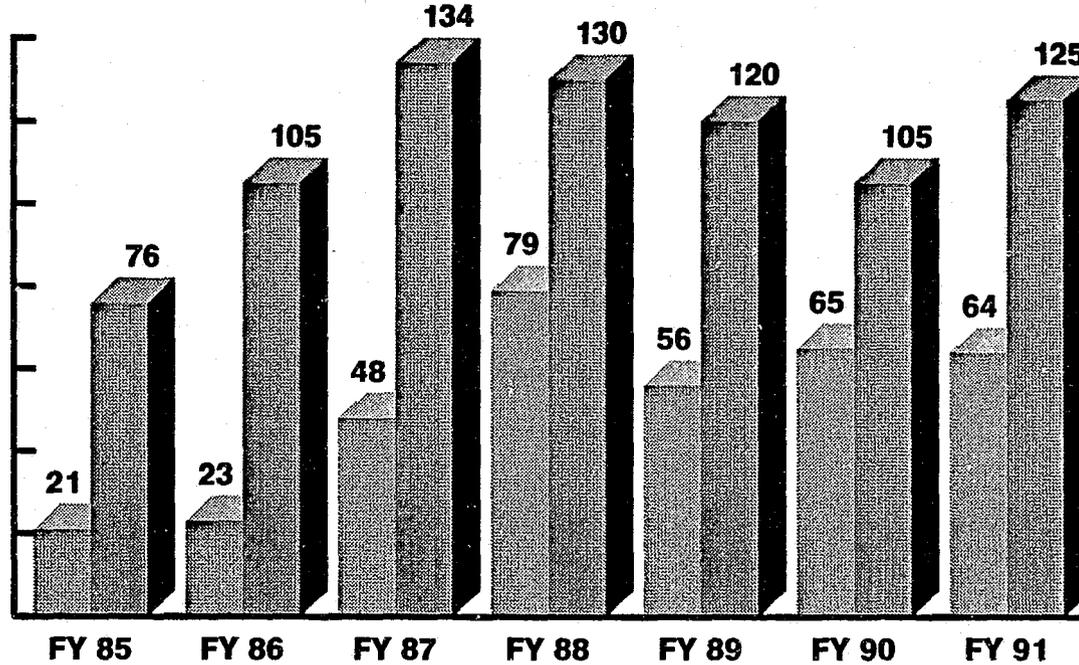
APPENDIX B

# Oral Arguments Per Year



APPENDIX C

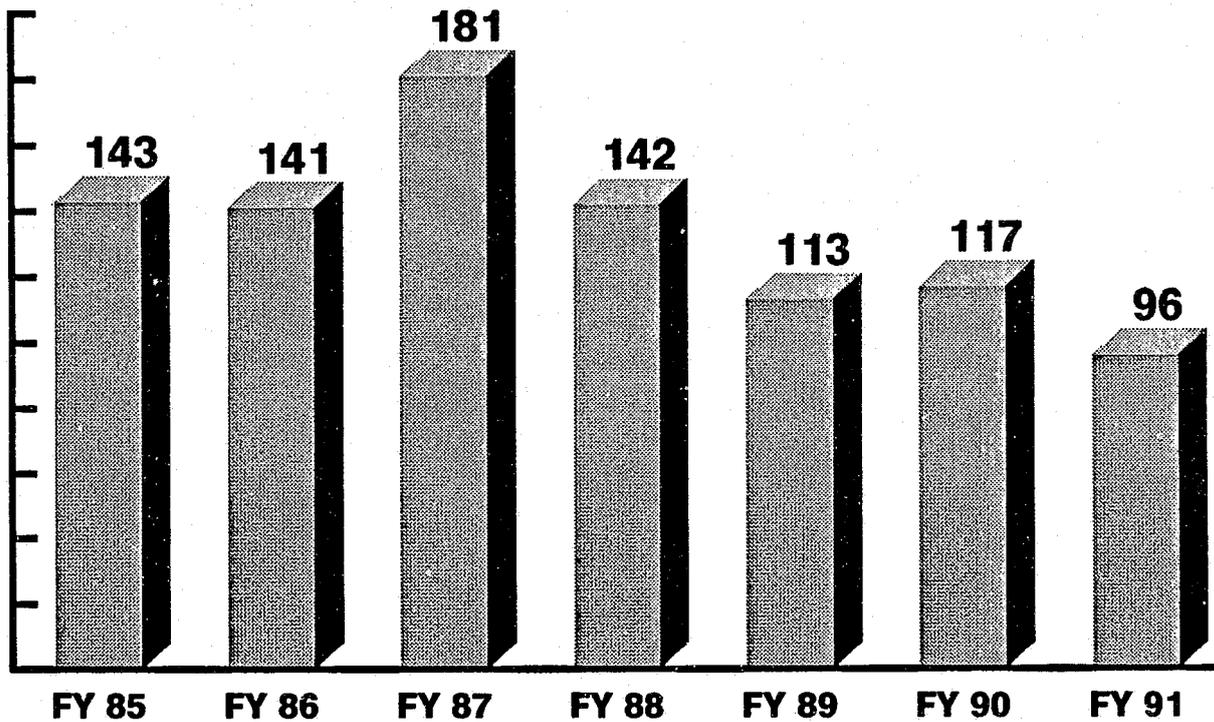
# Total Opinions Per Year



■ **Separate Opinion Cases**  
(Concur, Concur in the result,  
and dissent)

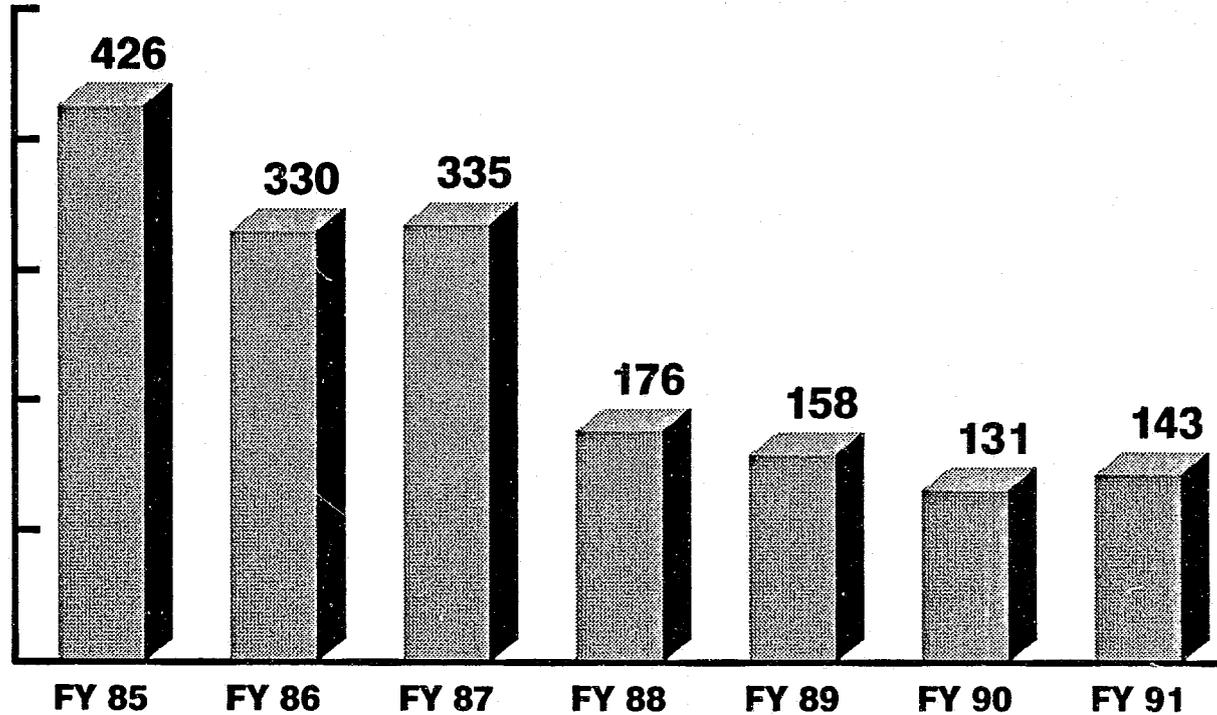
■ **Majority and Separate Opinions**

# Days from Petition Filing to Grant



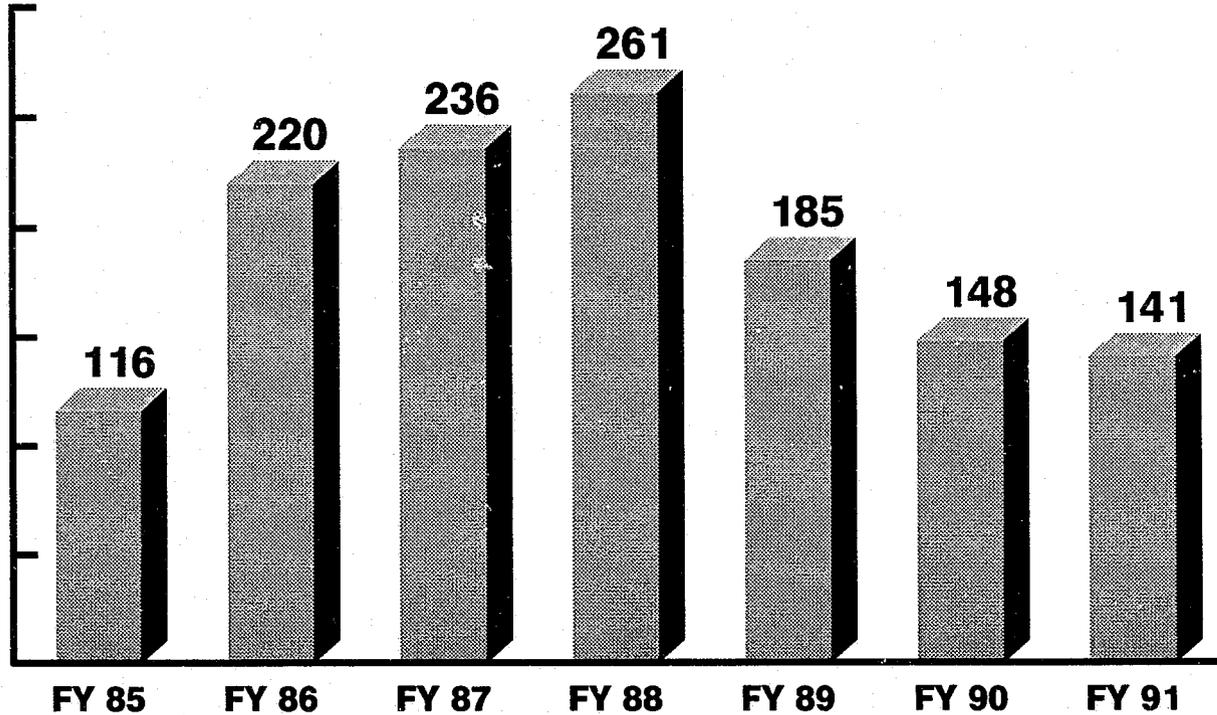
APPENDIX E

# Days from Petition Granted to Oral Argument



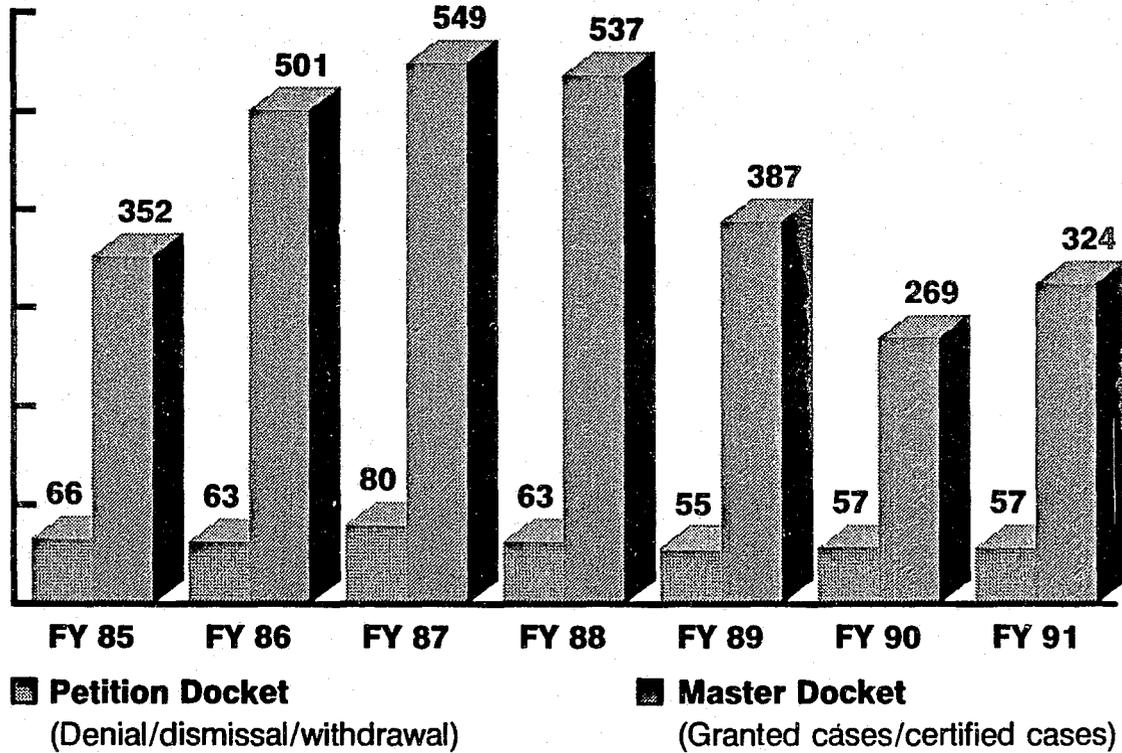
APPENDIX F

# Days from Oral Argument to Final Decision



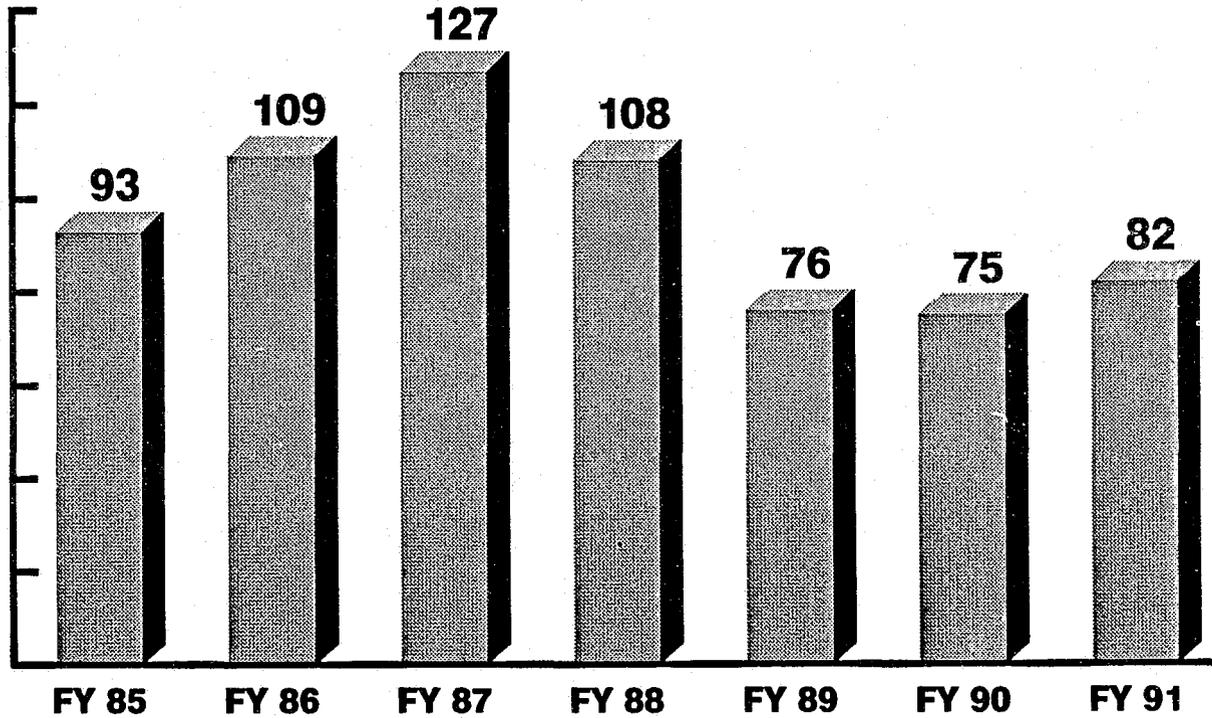
APPENDIX G

# Days from Petition Filing to Final Decision



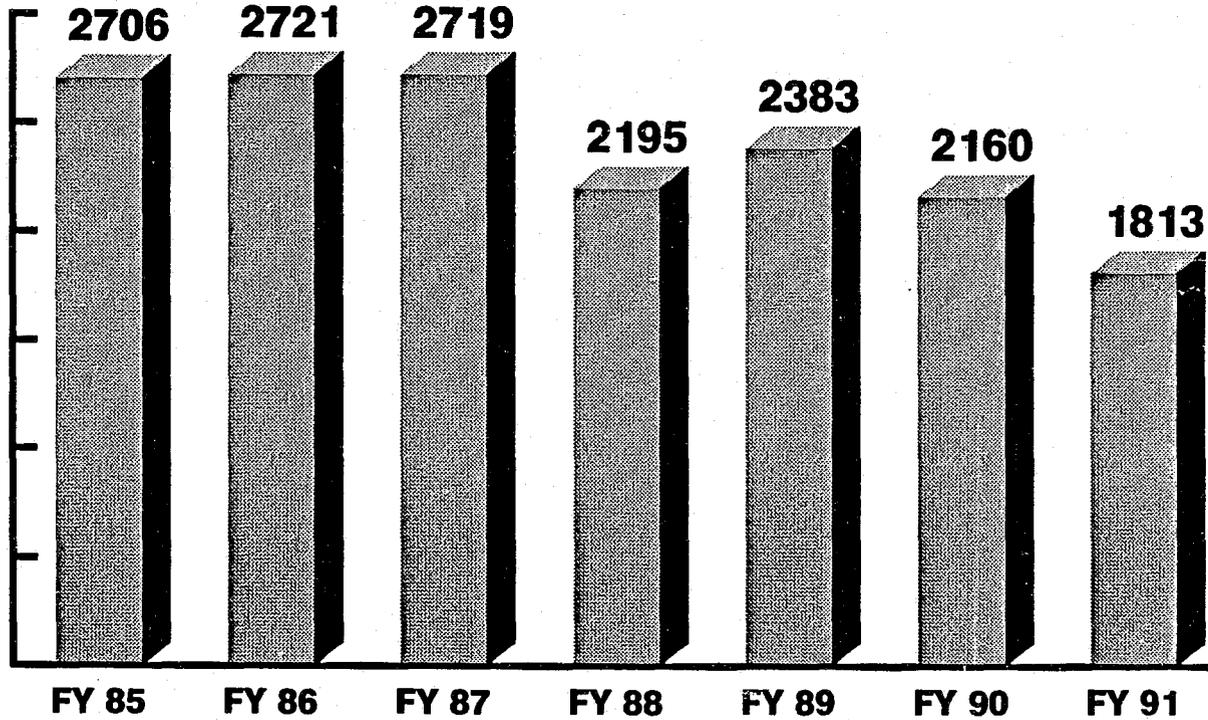
APPENDIX H

# Days from Filing to Final Decision in All Cases



APPENDIX I

# Total Petitions Filed Per Year

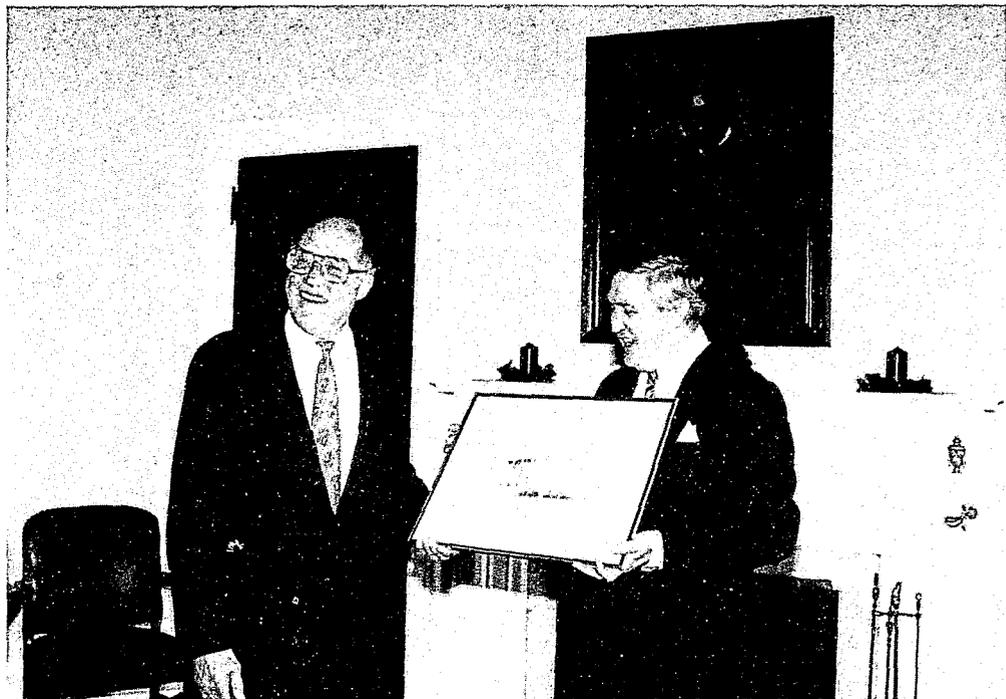


APPENDIX J



APPENDIX K

Shown from left to right are: Associate Judge Walter T. Cox, III; Chief Judge Eugene R. Sullivan; Chief Justice William H. Rehnquist; and Senior Judge Robinson O. Everett.



APPENDIX L

Chief Judge Sullivan (r.) presenting a charcoal sketch of the Courthouse of the U.S. Court of Military Appeals to Chief Justice William H. Rehnquist.

**REPORT OF  
THE JUDGE ADVOCATE GENERAL OF THE ARMY  
OCTOBER 1, 1990, TO SEPTEMBER 30, 1991**

During fiscal year 1991, the Office of The Judge Advocate General continued to monitor the proceedings of courts-martial, review and prepare military publications and regulations, and develop and draft changes to the Manual for Courts-Martial and the Uniform Code of Military Justice (UCMJ).

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

As the annexed tables reveal, the number of courts-martial and the incidence of nonjudicial punishment declined some 20% in FY 1991. The decrease mainly was due to Operations Desert Shield and Desert Storm. The accompanying chart of courts-martial reflects a reduction in general and special courts-martial as Desert Shield deployment began in the fourth quarter of FY 1990. Further, major deployments occurred in the first quarter of FY 1991, the Desert Storm battle was fought in the second quarter, and redeployment to home stations occurred in the third and fourth quarters.

The reduced number of trials, plus increased post-trial processing times caused by military operations, resulted in receipt of 27% fewer cases during the fiscal year for appellate review pursuant to Article 66, UCMJ and a 33% reduction in cases received for examination pursuant to Article 69(a), UCMJ.

The result was a reduced caseload for the U.S. Army Court of Military Review. While issuing 20% fewer decisions in FY 1991, the Court of Review reduced the number of cases pending in chambers by 40%, shortened average decision times by one-third, and also lowered the average age of its pending caseload. Meanwhile, in the Examination and New Trials Division, the number of general court-martial cases pending examination under Article 69(a), UCMJ and applications for relief in inferior courts-martial pending under Article 66(b), UCMJ was decreased by more than 80%.

# **STATISTICAL SUMMARY: FISCAL YEAR 1991**

**(See table insert, attached)**

## **U.S. ARMY LEGAL SERVICES AGENCY**

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

## **U.S. ARMY JUDICIARY**

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

## **U.S. ARMY TRIAL DEFENSE SERVICE**

During FY 1991, 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 1,633 clients at proceedings conducted under Article 32, UCMJ; 1,224 clients at general courts-martial; 809 clients at special courts-martial; and 1,130 clients at administrative boards. USATDS counsel advised 54,098 clients regarding nonjudicial punishment under Article 15, UCMJ, and 23,524 clients regarding a variety of administrative separation actions.

USATDS fully supported Operation Desert Shield, Operation Desert Storm, Operation Provide Comfort, and the Multi-National Force in the Sinai. This support was provided while continuing to furnish defense counsel legal services to all other Army locations. In addition, USATDS counsel regularly deployed on command training exercises with the units they supported. USATDS also maintained the cross-service agreements with judge advocates of other U.S. Armed Forces providing mutual support at specified overseas locations.

## **TRIAL COUNSEL ASSISTANCE PROGRAM**

During FY 1991, the U.S. Army Trial Counsel Assistance Program (TCAP) performed its mission by providing information, advice, training, and trial assistance to military prosecutors world-wide. In addition to services provided to Army attorneys, TCAP had an expanded constituency among prosecutors in the Air Force,

Navy, Marine Corps, and Coast Guard. Attorneys from our sister services were among the most enthusiastic users of TCAP services. There were four basic categories for the TCAP services during FY 1991: (1) telephone inquiry assistance; (2) training seminars and conferences; (3) the TCAP Memo; and (4) trial assistance. During the fiscal year TCAP attorneys responded to 834 telephonic requests for advice and assistance; conducted nine advocacy training seminars (Continental United States (CONUS), Korea/Hawaii, and Germany); held six video teleconferences with prosecutors at Forces Command (FORSCOM) and Training and Doctrine Command (TRADOC) installations; published and distributed to approximately 475 subscribers, twelve editions of the TCAP Memo; and directly participated as trial counsel in three courts-martial. TCAP also provided instructional assistance for trial counsel attending the U.S. Army Europe (USAREUR) Criminal Law Conferences and the Criminal Law New Developments Course and Criminal Trial Advocacy Courses at the Army Judge Advocate General's School. In September 1991, TCAP initiated the Regional Trial Counsel Assistance Program as a test program. The program will be tested at installations within Trial Defense Region I to evaluate whether the quality of prosecution advocacy can be improved by using experienced military attorneys from outside the staff judge advocate office to assist trial counsel in preparing and trying cases. The regional trial counsel assistance officers will also observe the in-court performance of counsel and conduct post-trial critiques for the trial counsel and their supervisors.

## **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 and regulations affecting the operation of the Army; monitoring the administration of military justice to include military corrections, the Army's drug testing program, and professional responsibility of attorneys; rendering opinions for the Army Staff; and evaluating ongoing major projects. During FY 1991, the Criminal Law Division responded to 269 White House inquiries; 354 Congressional inquiries; 11 requests for legal opinions from the Army Board for the Correction of Military Records; 426 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 71 other miscellaneous inquiries. The office also processed 22 clemency petitions under Article 74, UCMJ; 30 officer dismissal cases for Secretary of the Army approval; and 22 Freedom of Information Act/Privacy Act requests. In

general, the number of inquiries from these various sources remained approximately equal to the workload of FY 1990.

## **CHANGE OF MILITARY JUSTICE REGULATION**

Army Regulation 27-10, Military Justice, was revised effective September 27, 1991. This regulation now authorizes the application of forfeitures imposed under Article 15, UCMJ, against a soldier's retired pay; provides procedures for filing a petition for new trial under Article 73, UCMJ; allows the mailing of records of trial by commercial means with return receipt requested; and authorizes the reduction of soldiers in the Army Reserve from the rank of Staff Sergeant, pursuant to punishment imposed under Article 15, UCMJ.

## **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 5 to the Manual for Courts-Martial was approved by President Bush on June 27, 1991. It was published as Executive Order 12767, and is the result of the consolidated Fourth and Fifth Annual Reviews completed in 1988 and 1989, respectively. The amendments included in Change 5 became effective on July 6, 1991. 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 pre-trial 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 in the maximum punishment 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; a requirement that the military judge 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 court-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 inclusion of wrongful interference with an administrative action as an offense punishable under Article 134, UCMJ.

The Seventh Annual Review, completed on April 19, 1991, was published for public comment on July 23, 1991. The public comment period extended into FY 1992. Significant amendments include: a requirement that the Article 32, UCMJ, investigating officer notify the convening authority of requests for classified or similar information; a provision authorizing the convening authority to issue protective orders for classified and similar information; a provision allowing the military judge to call post-trial sessions for reconsideration; a provision permitting post-trial reconsideration by the military judge of prior rulings; a provision permitting courts-martial sentences to include forfeiture of retired and retainer pay; a provision establishing that endangering the life of a single person is an aggravating factor for the death penalty; a provision allowing the accused ten days to respond to the staff judge advocate's addendum containing new matters, and allowing the staff judge advocate to grant ten-day extensions to the defense to respond; a require-

ment that the accused be served with a copy of addenda containing new matters; several changes incorporating recent Supreme Court guidance concerning Sixth Amendment rights to counsel; clarification of the scope of protective sweeps; an increase in the maximum punishment for involuntary manslaughter, negligent homicide, carnal knowledge, forcible sodomy, and sodomy with a child.

Several amendments to the Uniform Code of Military Justice have been proposed for inclusion in the Military Justice Act of 1991. They were forwarded for Executive staffing on July 8, 1991. None of the proposed amendments were included in the 1992 DoD Authorization Act.

## FOREIGN CRIMINAL JURISDICTION

As executive agent for the Department of Defense, the Department of the Army, through the International and Operational Law 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, 1989 through November 30, 1990, a total of 18,344 United States personnel, military and civilian, were charged with offenses subject to the primary or exclusive jurisdiction of foreign tribunals. 15,657 of these offenses were charged against military personnel. Of this number, 2,529 of the charges against military personnel were subject to exclusive foreign jurisdiction. Nonetheless, foreign authorities released 47 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 13,128 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 foreign jurisdiction in 11,751 of these incidents, for a world-wide waiver rate of 89%.

Foreign authorities reserved for their disposition a total of 3,859 offenses allegedly committed by military personnel. 3,429 of these offenses were relatively minor (simple assault, disorderly conduct, and traffic offenses). Traffic violations comprised 3,014, or 78.1%, of these offenses.

A total of 2,687 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 has no effective jurisdiction over these offenses. Nonetheless, foreign authorities released 402 of these offenses, or 15% of the total,

to United States military authorities for administrative or other disposition.

There were 4,368 final results of trial, (i.e., final acquittals or final convictions for military, civilian and dependents). Of this number, 145 or 3.3% were acquittals and 4,113 or 94.2% were sentences to a fine or reprimand. The remainder of the final results of trial consisted of 33 sentences to confinement and 77 suspended sentences to confinement.

## LITIGATION

Civil litigation against the Department of the Army and its employees continued to increase during FY 1991. 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, although some involved Operations Desert Shield and Desert Storm. 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 FY 1991, The Judge Advocate General's School, located in Charlottesville, Virginia, provided legal education to lawyers of the military services and other federal agencies. Forty-three resident courses were conducted with 3,567 students in attendance. Courses were attended by: 1,351 active Army, 103 Navy, 111 Marine, 278 Air Force, 443 Army Reserve, and 196 Army National Guard officers; 73 warrant officers; 134 enlisted soldiers; and 599 DoD civilians; 250 non-DoD civilians and Coast Guard officers; and 29 international military students. Three Basic Course classes, the 123d, 124th, and 125th, graduated a total of 181 judge advocates.

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 17, 1991, the 56 students of the 39th Graduate Class received The Judge Advocate General's School Master of Laws in Military Law. In addition to 36 Army judge advocates, the class consisted of eight Marine, four Navy, one Air Force, one Army Reserve, one Army National Guard, and five international military

students. The 40th Graduate Class began on July 29, 1991. The class contains 43 active Army, nine Marine, four Navy, two Air Force, one Army National Guard, one Army Reserve, and four international military students.

During FY 1991, the School continued to provide senior officers with legal orientations prior to their assumption of command. Twenty-four general officers attended General Officer Legal Orientation Courses, and 184 battalion and brigade command designees attended Senior Officers Legal Orientation Courses. Additionally, instructors from the School participated in seven Pre-Command Courses conducted at Fort Leavenworth, Kansas, for approximately 450 battalion and brigade command designees. The School also provided orientations on Army legal issues to five Congressional staff members.

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

The International Law Division sponsored six resident CLE courses, each lasting one week, in FY 1991. The three Operational Law (OPLAW) seminars focused on the legal issues that directly affect the judge advocate involved in military operations in both peacetime and in combat environments overseas. The OPLAW seminars provide multi-disciplinary, practical, legal guidance for judge advocates participating in training exercises, combat operations, and other overseas deployments. In addition, the OPLAW seminars were expanded to encompass the legal issues associated with counter-drug operations. The Division also sent two instructors to Germany to present the USAREUR Operational Law Course and one instructor to the USAREUR Operational Law Conference.

All instruction provided by the International Law Division supported the goal of ensuring that military lawyers are knowledgeable in all aspects of OPLAW, a body of law which includes the law of war, and are able to participate effectively as members of the commander's operations team. Lessons learned from Operation Just Cause in Panama, Operation Urgent Fury in Grenada, Operations Desert Shield and Desert Storm, and from training exercises in Latin America, Europe, and the Middle East have been incorporated into CLE instruction. Instruction was also provided at the Army War College, the Command and General Staff College, TRADOC, the Marshall-Wythe School of Law at the College of William and Mary in Williamsburg, Virginia, and the Naval War Col-

lege. Additional instruction was provided throughout the year to Army Reserve and National Guard attorneys at weekend on-site training throughout the nation.

The Center for Law and Military Operations (CLAMO), established in December 1989, held its 3rd symposium from July 15-19, 1991. The symposium concentrated on the legal lessons learned from the Gulf Campaign. Attendees included representatives from every level of JAGC participation in the war. The results have been forwarded to The Judge Advocate General and are also available in the CLAMO library. The purpose of CLAMO is to examine both current and potential legal issues attendant to military operations through the use of symposia, the publication of professional papers, and the use of a joint service operational law library.

The Contract Law Division conducted ten CLE courses in FY 1991. These courses provided basic and advanced instruction in government contract law and in fiscal law and policy. The courses were designed to meet the needs of government lawyers, but they also benefited contracting officers, comptrollers, program managers, and others involved in the federal acquisition process. A wide variety of classes were offered at these courses to ensure that instruction was available in government contract and fiscal law as practiced at military installations, at commands devoted to production of supplies and weapon systems, at commands dedicated to research and development, and at activities involved in contract disputes and litigation. The two-week Contract Attorneys Course was given three times to a total of 300 students. Other contract law CLE programs included the annual Government Contract Law Symposium, the Fiscal Law Course, an abbreviated Fiscal Law Course presented in Panama and Europe, and one Installation Contracting Course.

In addition to the contract and fiscal law CLE courses, the division provided instruction to three Judge Advocate Officer Basic Courses and to the resident Judge Advocate Officer Graduate Course. The division's instructors also presented classes on contract and fiscal law and policy at five Reserve Component Technical Training sites within the U.S. They also taught contract and fiscal law classes to members of the Reserve Components during the Judge Advocate Officer Advanced Course and Judge Advocate Triennial Training at Charlottesville. During Desert Shield, the division provided extensive research activities, and demonstrated why the Judge Advocate General's School is the premier academic institution for education in government contract law.

The Administrative and Civil Law Division conducted ten CLE courses during FY 1991—six at the School and four overseas. The CLEs at the School included two Legal Assistance Courses, two Federal Labor Relations Courses, the Administrative Law for Mili-

tary Installations Course, and the Federal Litigation Course. The overseas CLEs included the USAREUR Legal Assistance CLE, the USAREUR Tax CLE, the Far East Tax CLE, and the USAREUR Administrative Law CLE. Additionally, instructors taught legal aspects of installation management at six Army Installation Management Courses at Fort Lee, Virginia; standards of conduct, adverse administrative actions, and separations classes to three sessions of the Army Management Staff College; environmental law and tax classes at the Air Force JAG School's Environmental Law Course and its Tax Seminar at Maxwell Air Force Base, Alabama; and an instructor participated in the Environmental Law Workshop sponsored by the 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 *Soldiers' and Sailors' Civil Relief Act Consumer Law Guide*, the *Legal Assistance Office Administration Guide*, the *Legal Assistance Living Wills Guide*, the *Family Law Guide*, the *Model Tax Assistance Program Guide*, and the *Federal Income Tax Information Series*. In addition, two new publications, the *Uniformed Services Former Spouses' Protection Act Outline and Reference Materials* and the *Veteran's Reemployment Rights Law Guide* were prepared and distributed to the field. Four mailouts occurred in 1991 distributing these publications and others (e.g., National Consumer Law Center Reports, Consumer Information Catalogs, Legal Aspects of Savings Bonds, etc.) to more than 170 field legal assistance offices around the world. The branch also handled numerous telephonic inquiries from attorneys in the field during Operations Desert Shield and Desert Storm. It also conducted special mailings of publications and materials to help legal assistance offices respond to issues arising during Operation Desert Shield. The branch prepared a special Legal Assistance Update Outline for use at all Reserve Component On-Site instruction in FY 1992. Members of the branch published over 60 monthly practice notes in *The Army Lawyer*. The Branch solicited, edited, and wrote articles for the Third Legal Assistance Symposium issue of the *Military Law Review*, which was published in Spring 1991. 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. Another member of the branch presented classes on the Soldiers' and Sailors' Civil Relief Act to attendees at a Connecticut Bar Association CLE program and to the Credit Union Subsection of the American Bar Association's Business Section.

The Judge Advocate Guard and Reserve Affairs Department sponsored several resident courses for Reserve Component judge

advocates in FY 1991. One hundred and fourteen Army Reserve and National Guard judge advocates attended Triennial Training between June 17 and 28, 1991. The International Law/Claims Teams and Contract Law Teams were trained. Phase IV of the Judge Advocate Officer Advanced Course was attended by 165 students during this same period. The 2093d U.S. Army Reserve Forces School in Charleston, West Virginia, provided administrative support for both courses. The department hosted the Army National Guard State Area Command (STARC) Judge Advocate Course from July 15 to 19, 1991. This course was attended by judge advocates from 14 STARC headquarters. An additional major training program co-hosted by the department was The Judge Advocate General's Regimental Workshop from April 22 to 26, 1991. This unique program brought together approximately 200 senior active and reserve component judge advocates to discuss significant legal and military issues facing the Total Army. The department also sponsored the Continuing Legal Education (On-Site) Training Program. Between October 1990 and May 1991, instructors from the School provided CLE to 2009 officers in 22 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 was invaluable. Additionally, the department processed 97 applications for the U.S. Army Reserves for accession into the Judge Advocate General's Corps, and 24 applications for federal recognition of National Guard judge advocates.

On November 29, 1990, Dean James P. White, University of Indiana School of Law, and Consultant on Legal Education to the American Bar Association, presented the Nineteenth Colonel Edward H. Young Lecture in Legal Education. Dean White discussed the issues and challenges facing legal educators in today's society.

The Eighth Gilbert A. Cuneo Lecture in Government Contract Law was presented on January 7, 1991, by Ms. Colleen Preston, General Counsel, House Armed Services Committee. Ms. Preston discussed current issues in government acquisition.

The Third Major Frank B. Creekmore Lecture in Government Contract Law was presented on January 10, 1991, by Mr. Allan V. Burman, Office of Federal Procurement Policy. Mr. Burman's presentation dealt with government initiatives to improve defense acquisition.

The Fifteenth Charles L. Decker Lecture was given on March 21, 1991, by Judge Laurence H. Silberman. His lecture was entitled "The Effect of Judicial Review on Agency Decision-Making Processes."

On March 28, 1991, the Twentieth Kenneth J. Hodson Lecture in Criminal Law was presented by David A. Schlueter, Professor of Law, St. Mary's University School of Law, San Antonio, Texas. Professor Schlueter presented a lecture on "Military Justice in the 1990s: A Legal System Looking for Respect" in which he proposed changes to the military justice system to enhance the respect and prestige of courts-martial.

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 FY 1991 was 1752. This total includes: 100 blacks, 34 Hispanics, 21 Asian and Native Americans, and 268 women. The FY 1991 end strength compares with an end strength of 1773 in FY 1990, 1756 in FY 1989, and 1759 in FY 1988. The grade distribution of the Corps was five general officers, 135 colonels, 212 lieutenant colonels, 342 majors, 911 captains, and 105 first lieutenants. Forty-two officers (17 captains and 25 first lieutenants) participated in the Funded Legal Education Program. Sixty-five warrant officers, including six minority and four female, supported legal operations world-wide.

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.

Fifty-three judge advocate officers completed the following service schools:

U.S. Army War College .....	2
National War College .....	1
Industrial College of the Armed Forces .....	1
U.S. Army Command—General Staff College.....	13
The Judge Advocate Officer Graduate Course.....	36

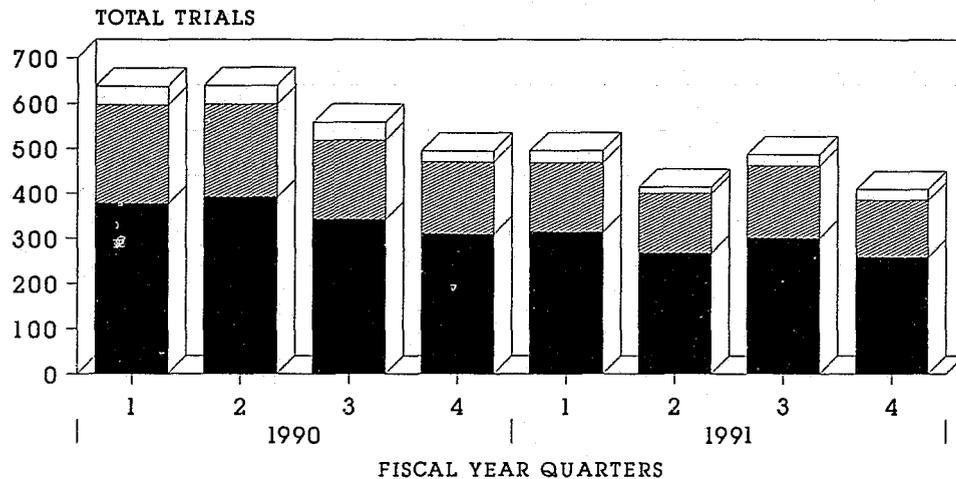
During FY 1991, five officers completed fully funded study for LL.M. degrees in specialized fields of law.

One hundred seventy-nine new judge advocates were accessed as first lieutenants during FY 1991, and were promoted as first lieutenants.

tenants during their first year on active duty. The Judge Advocate General's Corps is a separate competitive category, and selects and promotes its officers based on Judge Advocate General's Corps grade vacancies as they occur.

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

# QUARTERLY ARMY COURTS-MARTIAL FISCAL YEARS 1990 AND 1991



GCM
  BCD SPCM
  NONBCD SPCM

OFFICE OF THE CLERK OF COURT  
U.S. ARMY JUDICIARY

# APPENDIX (CONT'D)

## U.S. ARMY MILITARY JUSTICE STATISTICS

Period: FISCAL YEAR 1991

### PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED [A]	CONVICTED	ACQUITTALS [B]	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	1,173	1,109	64	-19.2%
BCD SPECIAL [C]	587	546	41	-23.9%
NON-BCD SPECIAL	92	75	17	-38.7%
SUMMARY	931	858	73	-16.9%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-20.3%

### PART 2 - DISCHARGES APPROVED [D]

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES		303
NUMBER OF BAD CONDUCT DISCHARGES		932
SPECIAL COURTS-MARTIAL (SA LEVEL)		
NUMBER OF BAD CONDUCT DISCHARGES		349

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	931
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	349
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	120

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

TOTAL ON HAND BEGINNING OF PERIOD [F]		171
GENERAL COURTS-MARTIAL	[G]	
BCD SPECIAL COURTS-MARTIAL	[G]	
REFERRED FOR REVIEW [F]		1,455
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
TOTAL CASES REVIEWED		1,526
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
TOTAL PENDING AT CLOSE OF PERIOD [F]		100
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-19.8%

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

NUMBER	1,278 [H]
PERCENTAGE	99.8%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	54.8%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+ 2.5%
PERCENTAGE OF TOTAL PETITIONS GRANTED	10.2%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+ .8%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	5.4%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+ .5%

## APPENDIX (CONT'D)

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		47
RECEIVED		71
DISPOSED OF		103
GRANTED	18 [J]	
DENIED	71	
NO JURISDICTION	13	
WITHDRAWN		
TOTAL PENDING AT END OF PERIOD		15
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL		792
SPECIAL COURTS-MARTIAL		463
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		381
SPECIAL COURTS-MARTIAL		216
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	39	
PART 10 - STRENGTH [K]		
AVERAGE ACTIVE DUTY STRENGTH	737,424	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	60,269	
RATE PER 1,000	81.7	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-20.1 [L]	

PAGE 2 OF 2

### EXPLANATORY NOTES

- [A] Includes only original trials, not further proceedings.
- [B] Includes all cases not resulting in a conviction.
- [C] Cases convened by GCM convening authority in which SPCM specifically empowered to impose a BCD.
- [D] Based on records of trial received (Part 3), not cases tried (Part 1), during report period. In addition, to DDs and BCDe, 43 dismissals of officers were approved.
- [E] Does not include cases (2) in which appellate review was waived.
- [F] Includes only cases briefed and at issue before the Court.
- [G] Cases pending before USACMR, which include government appeals and petitions for extraordinary relief, are not routinely accounted for by type of court-martial.
- [H] In 27 of the cases, the accused was represented by civilian, as well as military, appellate counsel.
- [I] Based on petitions acted upon, not those filed, during the report period.
- [J] In addition, one case was referred to USACMR pursuant to Article 69(d)(1), UCMJ.
- [K] Average of monthly strengths shown in report DCSPER-46.
- [L] Reflects change in rate per 1,000. Decrease in number of cases was 20.9 percent.

**ANNUAL REPORT**  
**of**  
**THE JUDGE ADVOCATE GENERAL OF THE NAVY**  
**pursuant to the**  
**Uniform Code of Military Justice**  
**FISCAL YEAR 1991**

**SUPERVISION OF THE ADMINISTRATION OF**  
**MILITARY JUSTICE**

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

**ARTICLE 69(a), UCMJ, EXAMINATIONS**

Eighty-nine 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 1991. One case required corrective action by the Judge Advocate General.

**ARTICLE 69(b), UCMJ, APPLICATIONS**

In fiscal year 1991, 46 applications under Article 69(b), Uniform Code of Military Justice, were received for review. Of these, 34 applications were denied on the merits, while relief was granted in whole or in part in 2 cases. Ten cases are pending review.

**ARTICLE 73, UCMJ, PETITIONS**

In fiscal year 1991, six petitions for new trials were reviewed by the Office of the Judge Advocate General, and all six petitions were 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 1991. Both petitions were denied.

## APPELLATE GOVERNMENT DIVISION

*Appellate Representation.* The 11 Navy and 3 Marine judge advocates assigned to the Appellate Government Division filed a total of 1496 pleadings; 1349 with the Navy-Marine Corps Court of Military Review and 147 with the U.S. Court of Military Appeals. Additionally, the Division filed 7 briefs in opposition to petitions for writs of certiorari from the U.S. Supreme Court and 6 briefs in Government appeals.

*Field Assistance.* The Trial Counsel Assistance Program (TCAP), is a function within the Appellate Government Division which provides a central coordinating point to assist field trial counsel in the effective prosecution of courts-martial. Three appellate counsel are detailed to implement this program. Prompt assistance (usually the same day) is provided in response to telephone calls from trial counsel in the field requesting advice or information about cases pending or being tried. Additional assistance is provided through training presentations, the periodic publication of *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 851 for the year, an average of 71 cases per month, which is an 8% increase over last year.

*Presentations.* The Navy hosted the Third Annual Joint Service Appellate Advocacy Workshop at the Washington Navy Yard in February 1991. Government counsel also participated in the Fourteenth Annual Judicial Conference (formerly Homer Ferguson Conference) in Washington, DC in May 1991, and made presentations at the Army-Navy Reserve Military Justice Conference in Minneapolis, Minnesota in October 1991.

*Reserves.* The Appellate Government Division continued to provide training and support to 11 Navy and 3 Marine Corps Reservists assigned to the Division.

## APPELLATE DEFENSE DIVISION

*Appellate Defense Practices.* The 21 judge advocates, Navy and Marine, assigned to the Appellate Defense Division reviewed a

total of 2763 new cases during fiscal year 1991. Of that number, 885 cases were submitted to the Navy-Marine Corps Court of Military Review (NMCMR) with specific assignments of error. Specific assignments of error were raised in 159 of 550 cases submitted to the U.S. Court of Military Appeals (CMA). While the number of cases forwarded to Appellate Defense continued to decrease from previous years, the cases received contain an increasing complexity of common law offenses and more sophisticated issues. In addition, the Division submitted six writs of certiorari to the U.S. Supreme Court and argued 10 extraordinary writs before CMA or NMCMR.

*Trial Defense Assistance.* The Field Department continues to provide on-call advice to trial defense counsel in the field on trends and developments in appellate litigation which should be addressed at the trial level, through, for example, pretrial motions thereby "making a record" upon which appellate counsel can act more effectively. There were an average of 20 phone call/FAX requests for assistance per month requiring 30-45 minutes per request to answer. Extraordinary writs were handled by a separate team and reflected numerous unusual issues such as government treatment of a prisoner against his will with anti-psychotic drugs in order to mentally qualify the prisoner for trial.

*Reserves.* The two Navy reserve units and Marine IMAs gave superb mutual support through the year. Through creation of a Reserve Department led by a senior active duty appellate attorney, training, equipping, and utilization of reserve appellate advocates has been centralized. The reserves reviewed 37% of the cases and submitted pleadings and briefs on issues they had identified. One notable "first" came when one of our reserve officers reviewed a case and identified several issues during one drill period, then briefed the issues to NMCMR over several more drill periods, and then orally argued the case to NMCMR during a two week period of active duty for training—result, case reversed.

## NAVY-MARINE CORPS TRIAL JUDICIARY

The Navy-Marine Corps Trial Judiciary (NMCTJ) provided military judges for 797 general courts-martial (GCM) during fiscal year 1991, a decrease of 96 GCMs from the fiscal year 1990 level of 893. In fiscal year 1991, 76.9% of these GCMs were tried by military judge alone. This represents a 1.4% increase from the fiscal year 1990 rate.

There were 4,357 special courts-martial (SPCM) conducted during fiscal year 1991, a decrease of 749 SPCMs from the 5,106 cases during fiscal year 1990. In fiscal year 1991, 92.7% of these SPCMs were tried by military judge alone.

During fiscal year 1991, total in-court hours for all judges was 18,865 hours, which is 3,283 hours less than fiscal year 1990. Judge travel increased by 493 hours in fiscal year 1991—from 4,896 in fiscal year 1990 to 5,389 hours of travel time for fiscal year 1991.

## **1. Military Judges Attending Continuing Legal**

### **Education / Seminars / Lectures / Meetings / Conferences.**

a. East Coast Military Judges' Meeting Marine Corps Base, Camp Lejeune, NC

—24 active-duty Navy and Marine Corps judges

—1 reserve Marine Corps judge

—2 active-duty Air Force judges

—1 Court of Military Appeals Judge

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

—23 active-duty Navy and Marine Corps judges

—13 reserve Navy judges

—2 reserve Marine Corps judges

c. Sixteenth Interservice Military Judges' Seminar Maxwell Air Force Base, Montgomery, AL

—9 active-duty Navy and Marine Corps judges

—2 reserve Navy judges

d. National Judicial College, Reno, NV

—Special Problems in Criminal Evidence

—1 Navy active-duty judge

—2 Marine Corps active-duty judges

—Alcohol and Drugs in the Court

—1 active-duty Navy judge

—1 active-duty Marine Corps judge

—Advanced Evidence

—1 active-duty Navy judge

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

—7 active-duty Navy and Marine Corps judges

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

—3 active-duty Navy and Marine Corps judges and 5 reserve judges

—4 Air Force judges

—1 Army judge

—1 Coast Guard judge

g. Senior Officer Short Courses in Military Justice

—various times and places

—presented by active-duty Navy or Marine Corps judges at each circuit

h. American Judge's Association Annual Meeting, Seattle, WA

- The Chief Judge and 1 active-duty Marine Corps judge participated
- i. American Judge's Association Mid-Year Meeting, San Antonio, TX
  - The Chief Judge and 1 active-duty Marine Corps judge participated
- j. Military Law Institute
  - 15th Annual Homer Ferguson Conference
  - 1 active-duty Marine Corps judge
- k. National Institute of Trial Advocacy (NITA)
  - various locations and times
  - active-duty and reserve Navy and Marine Corps judges have regularly participated in training trial advocates
- l. Trial Advocate and Judicial Training Evolutions for reserve military judges
  - 13 reserve Navy judges; 3 active-duty judges; the Chief Judge; met at Austin, TX
  - 13 reserve Navy judges; Chief Judge; and Washington and Oregon reservist; met at Seattle, WA
- m. WESTPAC Judicial Training Okinawa, JA
  - 3 active-duty Marine Corps judges
  - 2 active-duty Navy judges
  - 1 active-duty Army judge
  - 2 active-duty Air Force judges
- n. American Bar Association's Annual Meeting Atlanta, GA
  - Chief Judge participated as Chairman of Military Courts committee
- o. American Academy of Judicial Education Conference Harvard University, Cambridge, MA
  - A Judges Philosophy of Law/Judging
  - 1 active-duty Navy judge
- p. 15th Criminal Law Development Course, Charlottesville, VA
  - 1 active-duty Navy judge
- q. Marvin Center, George Washington University, Washington, DC Judicial Conference of US Court of Military Appeals
  - 1 active-duty Marine Corps judge

### **Visit by the Judiciary.**

The Chief Judge presented his annual procedural and 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 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 including a uniform or standard trial guide.

The Chief Judge visited and inspected the following judicial circuits and branch offices: Northeast (Philadelphia); Northeast Branch (Newport); Midwest Branch (Great Lakes); Tidewater (Norfolk); Piedmont (Camp Lejeune); Sierra (Camp Pendleton); Southwest (San Diego); Northwest Branch (Seattle); and Northwest (San Francisco).

### **Generally.**

The Chief Judge continued to make courtesy calls on NLSOs, convening authorities and SJAs. Comments continue to indicate that the quality of judicial services remains excellent. There is a continued emphasis on judge and trial advocate training. Trial judges critique and motivate inexperienced advocates in trial work. All judges provide post-trial critiques.

The Trial Judiciary continues to seek economical ways to deliver quality judicial services. Navy and Marine Corps reserve judges continue to provide outstanding professional judicial support.

Economy continues to be the watchword as the activity consolidates as the sea services draw down on end strength.

Productivity, field communications, and streamlined documentation improved with the implementation of upgraded computer hardware and software. The year was marked with efficient delivery of judicial services and timely input of field data.

### **Operation "Desert Shield" and "Desert Storm".**

The Navy-Marine Corps Trial Judiciary was the first judicial component of the Department of Defense on the scene for the Gulf crisis. The judiciary coordinated efforts with other services and provided on-site judicial support. The judiciary received outstanding support from all Commands in and around Saudi Arabia until the Judiciary withdrew from in-country operations in May of 1991. After the last Marine judge left Saudi Arabia, judicial services were provided by the Transatlantic (Naples, It) and WESTPAC South (Subic Bay, PI) judicial circuits.

The following contains a wrap-up on Desert Shield/Storm:

**OPERATION DESERT SHIELD/STORM**  
**SUMMARY OF STATISTICS ON CASES TRIED**  
**FROM 2 AUG 90 TO 16 APR 91**

TOTAL CASES TRIED.....	96
Trial Locations:	
Saudi Arabia.....	62
Shipboard.....	11
Subic Bay.....	11
Shipboard—Persian Gulf.....	7
Shipboard—Haifa, Israel.....	3
Diego Garcia.....	1
Bahrain.....	1
Accused's Branch of Service:	
Marine Corps.....	58
Navy.....	35
Navy Reserve.....	3
Number of SPCMs.....	76
Number of GCMs.....	20

**NAVAL LEGAL SERVICE COMMAND**

Naval Legal Service Command (NAVLEGSVCCOM) consists of 21 naval legal service offices and 22 detachments located in areas of U.S. Navy concentration throughout the world. The command also includes the Naval Justice School at Newport, Rhode Island, and the Office of Legal Counsel at the Naval Academy, Annapolis, Maryland. NAVLEGSVCCOM is commanded by the Deputy Judge Advocate General of the Navy and includes 358 officer, 210 enlisted, and 226 civilian personnel. The command constitutes about 40% of the Navy's total judge advocate strength.

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

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

The Naval Legal Affairs World Wide Support Strategy (NAV-LAWSS) is an ongoing program to provide business tools to foster the efficient delivery of services throughout NAVLEGSVCCOM. Phase I of this program has been completed with the delivery of a personal computer for each member of the command. Phase II is implementation of local area networks at each NAVLEGSVCCOM site. Site surveys for accomplishment of this phase of the strategy are underway, and installation is to be completed within two years. In addition, NAVLEGSVCCOM participation in an electronic mail system has continued to expand. The electronic mail system proved to be an invaluable communication tool for coordination of legal support during Operations Desert Shield and Desert Storm.

## NAVAL JUSTICE SCHOOL

During fiscal year 1991, the Naval Justice School provided instruction to 8,369 students worldwide (1,161 in resident courses ranging in length from four days to nine weeks). Other noteworthy developments included the dedication of Helton-Morrison Hall and the Senior Leadership Training Conference. 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 1991 included judge advocates from the Navy (49), Marine Corps (7), Army (5), and Coast Guard (12), along with 4 civilians.

*Staff Judge Advocate Course.* Also offered twice a year, the purpose of this three-week course is to provide training in specific aspects of military and administrative law likely to be encountered by a command legal advisor. Included in fiscal year 1991 were 87 hours of classroom instruction and 14 hours of practical exercises and seminars. This past year, attendees included judge advocates from the Navy (65), Marine Corps (6), Army (5), and Coast Guard (1), along with 1 civilian.

*Senior Legalman Course.* Offered annually, the purpose of this three-week course is to provide senior legalmen with specialized training in budget matters, civilian and military personnel management, and other management skills required of mid-level supervisors at naval legal service offices. Included are 61 hours of classroom instruction and 13 hours of workshops and seminars. Thirty-two senior enlisted personnel (31 Navy and 1 Army) attended this course in fiscal year 1991.

*Lawyer Course.* The Naval Justice School conducted four sessions of the nine-week lawyer course during fiscal year 1991. 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 1991, the course was completed by 132 Navy, 56 Marine Corps, and 15 Coast Guard lawyers.

*Legal Officer Course.* During fiscal year 1991, the School held six sessions of the four-week legal officer course. The legal officer syllabus is designed for the nonlawyer junior officer or senior Navy and Coast Guard 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 1991 consisted of 181 Navy officers, 30 Navy enlisted, 36 Marine Corps officers, 1 Marine Corps enlisted, 1 Coast Guard officer, and 1 civilian.

*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. Four sessions of the course were held at Newport, Rhode Island, with 154 students attending. An additional 28 offerings of the course were held at the following worldwide locations: Jacksonville, Pensacola, 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; Rota, Spain; Pearl Harbor, Hawaii; Guam; Yokosuka and Okinawa, Japan; Camp Lejeune, North Carolina; New London, Connecticut (twice); Quantico, Virginia (twice); Philadelphia, Pennsylvania; Great Lakes, Illinois; and Corpus Christi, Texas. The 1,255 students attending these classes included:

USN:	1055	(80.4%)
USMC:	220	(17.4%)
USCG:	16	(1.2%)
USA:	6	(0.4%)
USAF:	5	(0.4%)
CIV:	1	(0.1%)
FOREIGN:	1	(0.1%)

*Military Judge Course.* This three-week course, offered once a year, trains active-duty and reserve judge advocates to serve as special and general court-martial military judges. The syllabus includes 74 hours of lecture and 30 hours of practical exercises and

seminars, during which students preside as military judges in various stages of moot courts-martial. In fiscal year 1991, 5 Navy, 6 Marine Corps, 4 Air Force, 1 Coast Guard, and 1 Army judge advocates/law specialists completed this course.

*Trial Advocacy Instructor Clinic.* The Naval Justice School conducted three trial advocacy instructor clinics—one in November 1991 and two in April 1991. This four-day, instructor-intensive, course prepares experienced court-martial practitioners to conduct trial advocacy training in the field. Twenty-seven instructors were trained at the three 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 1991, 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 1991, 79 Navy, 4 Coast Guard, and 12 Army students completed this course.

*Legal Clerk Course.* This two-week course, offered four times in fiscal year 1991, 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 1991, 114 Navy enlisted students completed this course.

*Reserve Courses.* In addition to training active-duty personnel, the Naval Justice School also presents a number of courses each year to train inactive-duty reservists. The two-week Reserve Lawyer Course, offered twice a year, prepares inactive-duty judge advocates of the Naval and Marine Corps Reserve to perform the duties of their active-duty counterparts. Similarly, the two-week Reserve Legalman Course, offered in three phases, prepares enlisted personnel in the inactive-duty reserve to serve as legalmen. During fiscal year 1991, 119 students completed an in-house course of instruction at the School. Naval Justice School instructors also taught 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 420 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 5,953 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 1991, three Marine Corps judge advocates graduated from top level schools. There are currently three judge advocates studying at the Naval War College. Eight judge advocates graduated from The Judge Advocate General's School of the Army (TJAGSA) in Charlottesville, Virginia. There are currently nine judge advocates at TJAGSA studying for an LLM in military law.

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

Three judge advocates in the Special Education Program (SEP) graduated with LLMS in Environmental, International, and Labor Law respectively. There are currently three judge advocates in school in this program, two at George Washington University and one at the University of San Diego.

The Chief Defense Counsel of the Marine Corps conducted five days of "NITA" style trial advocacy training at Camp Lejeune, North Carolina; Camp Pendleton, California; Okinawa; and Hawaii. One day classes were held every month at each region (west, east, and pacific). A monthly newsletter was published and sent to all defense counsels in the Marine Corps.

Headquarters, U.S. Marine Corps, funded seventy-three judge advocates for continuing legal education (CLE) at the following schools: TJAGSA; NJS; National Judicial College, Reno, Nevada, Hastings Law School, San Francisco, California; National College of Districts Attorneys, Houston, Texas. Areas of training were federal litigation, law of war, trial advocacy, procurement and contract law, federal labor law, criminal law and evidence, and legal assistance.

During fiscal year 1991, ninety-one Marine Corps Reserve judge advocates were staffed in individual mobilization augmentee detachment billets Marine Corps wide. Thirty-four Marine Corps Re-

serve judge advocates were activated for Desert Shield/Storm, and they primarily filled billets at Camp Pendleton, California, and Camp Lejeune, North Carolina.

During Desert Shield/Storm, 152 Marines applied for conscientious objector (CO) status. As of December 1, 1991, 123 cases have been finally disposed of by either administrative or disciplinary procedures. Thirty-one CO cases remain to be processed. Marine Corps judge advocates have been involved in all stages of the processing of these CO cases, to include administrative proceedings, courts-martial, appellate review, and Federal litigation.

Both active-duty and reserve Marine Corps judge advocates deployed to the Middle East during Operation Desert Shield/Storm. During the Operation, sixty-seven courts-martial were conducted by Marine judge advocates in the theater of operations.

John E. Gordon  
*Rear Admiral, USN*  
*Judge Advocate General of the Navy*

# APPENDIX

Period: FISCAL YEAR 1991

## PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	797	748	48	-10.7
BCD SPECIAL	2289	2289		-19.4
NON-BCD SPECIAL	2068	1963	105	-8.7
SUMMARY	2420	2391	29	-17.1
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-15.1

## PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)			
NUMBER OF DISHONORABLE DISCHARGES		208	
NUMBER OF BAD CONDUCT DISCHARGES		355	
SPECIAL COURTS-MARTIAL (SA LEVEL)			
NUMBER OF BAD CONDUCT DISCHARGES		2640	

## PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	624	
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	2282	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	76	

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

TOTAL ON HAND BEGINNING OF PERIOD		1545
GENERAL COURTS-MARTIAL	662	
BCD SPECIAL COURTS-MARTIAL	883	
REFERRED FOR REVIEW		3094
GENERAL COURTS-MARTIAL	714	
BCD SPECIAL COURTS-MARTIAL	2380	
TOTAL CASES REVIEWED		3008
GENERAL COURTS-MARTIAL	686	
BCD SPECIAL COURTS-MARTIAL	2322	
TOTAL PENDING AT CLOSE OF PERIOD		1633
GENERAL COURTS-MARTIAL	690	
BCD SPECIAL COURTS-MARTIAL	941	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+5.7

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

NUMBER	2821
PERCENTAGE	91.2%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	16.7%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-33.2%
PERCENTAGE OF TOTAL PETITIONS GRANTED	6.8%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+ 1.2%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	1.1%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+10%

## APPENDIX (CONT'D)

### PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		3	
RECEIVED		125	
DISPOSED OF		118	
GRANTED	3		
DENIED	115		
NO JURISDICTION	-		
WITHDRAWN	-		
TOTAL PENDING AT END OF PERIOD		10	

### PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE		613	
GENERAL COURTS-MARTIAL			
SPECIAL COURTS-MARTIAL		4039	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		184	
SPECIAL COURTS-MARTIAL		318	

### PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	170	
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### PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	802,826	
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### PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	41,660	
RATE PER 1,000	51.89	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-24.71	

PAGE 2 OF 2

**REPORT OF  
THE JUDGE ADVOCATE GENERAL OF THE  
AIR FORCE  
OCTOBER 1, 1990 TO SEPTEMBER 30, 1991**

In compliance with the requirement of Article 6(a), Uniform Code of Military Justice (UCMJ), The Judge Advocate General (until his retirement in April 1991), Major General Keith E. Nelson, his successor, Major General David C. Morehouse, and Deputy Judge Advocate General, Brigadier General Nolan Sklute, made official staff inspections of field legal offices in the United States and overseas. They also attended and participated in various bar association meetings and addressed many civil, professional and military organizations.

**AIR FORCE COURT OF MILITARY REVIEW**

During fiscal year 1991, the Office of the Judge Advocate General was realigned in accordance with revised Air Staff organizational principles. The Air Force Court of Military Review and the Judiciary were placed, for administrative purposes, within the Air Force Legal Services Agency. However, the Air Force Court of Military Review remains directly supervised by the Judge Advocate General. The Court added four reserve judges to its ranks. Two additional panels were created with an active duty senior judge and two reserve judges on each panel.

The Secretary of the Air Force recalled former chief Judge Earl E. Hodgson to active duty from retirement primarily to participate in the further appellate review of a complex murder case. Judge Hodgson had written the original opinion in that case.

Toward the end of this fiscal year, an honors clerk was assigned to the court. This clerk, along with the Commissioner, has been able to assist the Court not only with important research problems, but also with an ever increasing motion practice. Motions received by this court have increased 60% over the last two years.

The Court now transmits its opinions electronically to both the West Publishing Company and LEXIS, making them available in not only the electronic data bases but also printed advance sheets weeks sooner than previously. The Courts opinions are also made instantly available to the field through the Department's E-Mail system.

The opinions of the Courts of Military Review and the Court of Military Appeals will now be searchable in the same data bases as the other Federal Courts in both WESTLAW and LEXIS. The West Publishing Company and Meade Data Central agreed to this change as a result of an initiative by the chief judge of the Court of Military Appeals. Chief Judge O'Brien and Senior Judge Murdock participated with Chief Judge Sullivan and Judge Cox in this successful effort.

## **MILITARY JUSTICE STATISTICS AND USAF JUDICIARY ACTIVITIES**

The Judiciary directorate of the Air Force Legal Services Agency has the overall responsibility for supervising the administration of military justice throughout the United States Air Force, from non-judicial proceedings to appellate review of courts-martial. Additionally, the directorate has the staff responsibility of the Air Force Legal Services Agency in all military justice matters which arise in connection with programs, special projects, studies and inquiries generated by the 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 the review of military justice issues in applications submitted to the Air Force Board for Correction of Military Records. Formal opinions were provided to the Secretary of the Air Force concerning 206 applications.

b. The Directorate received 850 inquiries in specific cases requiring either formal written replies or telephonic replies to senior executive officials, including the President and members of Congress.

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

## **LEGAL DATA AUTOMATION AND INFORMATION PROGRAM**

Fiscal year 1991 saw many initiatives in the information management field. The DoD Corporate Information Management (CIM) program is directed towards the standardization of information systems across service lines within each functional area. The Defense Management Review Decision (DMRD) 924 provides a framework to consolidate many computer operations and software development activities. Air Force Legal Information Services (AF/JAS)

continued to evaluate potential commercial products that could save the time and expense of full scale development. After talking to many states, a decision was made to review the Florida state criminal justice program which was one of the most comprehensive. For a variety of reasons, the program did not meet the needs of the military. Another initiative during FY91 was the Electronic Data Interchange/Electronic Commerce (EDI/EC) program which has a goal of reducing/eliminating paper copies in transactions. It was proposed that the Air Force Claims Information Management System (AFCIMS) be considered as a candidate for exchange of data with the carrier industry. AFCIMS program development continued to make good progress and numerous demonstrations were given to the other services who are looking at adopting it. The Federal Legal Information Through Electronics (FLITE) on-line system continued to expand both in the number of users and database volume, although it was not yet opened to all DoD offices. The revision to DoD Directive 5160.64, governing FLITE and DEARAS, now permits the Air Force to offer on-line FLITE to the other federal agencies on a fee for service basis. The FLITE Service Center processed an average of more than 332 research requests per month from legal, procurement, and finance offices throughout DoD and other federal agencies during the first ten months. Other actions and programs included PROJECT REFLEX, the portable database on 3½" diskettes containing Air Force Regulations, the Constitution and the Manual for Courts-Martial, which was updated several times and proved invaluable to judge advocates deployed in Desert Storm; and the Defense Emergency Authorities Retrieval and Analysis System (DEARAS) contract, which moved closer to fielding the CD-ROM system containing federal laws, regulations, and executive orders needed in the event of an emergency. A very limited amount of equipment was purchased due to severe funding limitations. Laptop computers were obtained for the trial judiciary to replace those diverted for use in Desert Storm.

## **TRIAL JUDICIARY**

The Air Force Trial Judiciary had an average of 28 active duty trial judges, 6 reserve trial judges, 6 noncommissioned officers and 5 secretaries stationed in seven Trial Judiciary Circuits worldwide, plus the Chief Trial Judge, his assistant, one court reporter and a secretary at the division headquarters. 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 Investigation Officers under Article 32, UCMJ, legal advisors at selected administrative discharge boards and hearing officers at public hearings held to consider draft environmental impact state-

ments. Military Judges were on temporary duty at locations other than their base of assignment more than 3000 days to preside over these hearings.

The Air Force Trial Judiciary pushed forward with its laptop computer program. Thirteen military judges now have laptop computers available to produce written instructions for court members to take into their deliberations.

The Chief Judge made supervisory visits to the First, Second and Third Circuits to review workload and facilities. The DICTA, the Trial Judiciary newsletter, was published quarterly.

The Trial Judiciary hired the first court reporter to be assigned directly to the Trial Judiciary. This reporter has obtained the highest levels of security clearance so the Air Force will always have a court reporter available to report and transcribe important and highly classified proceedings. The reporter has also investigated and reported 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.

## **Training**

The Seventeenth Interservice Military Judges' Seminar was conducted by the Trial Judiciary at the Judge Advocate General's School, Maxwell AFB, AL, from 22 April to 26 April 1991. This seminar was attended by military judges from the Trial Judiciaries of the Army, Navy, Marine Corps, Coast Guard and the Air Force. Also attending was one Canadian Armed Forces military judge. The seminar focused on sentencing issues this year and included a presentation by Mr. Thomas Markiewicz on clemency and rehabilitation, as well as a video presentation on the U.S. Disciplinary Barracks. Colonel Robert Ouilette, USMC, and Lt Colonel James Young, USAF, spoke about their experiences trying cases during Operation Desert Shield/Storm. Colonel Robert Leonard, AFCMR, and Colonel Frank Holder, NMCCMR, presented appellate judge's perspectives for trial court judges consideration. Other outside speakers included: U.S. Court of Appeals Judge Karen Henderson; U.S. District Court Judge William Dwyer; Chief Judge Eugene Sullivan and Judge Walter T. Cox of the U.S. Court of Military Appeals; Mr. John Howell Director, Article III Judges Division, Administrative Offices of The U.S. Courts; and, Judge Leslie Johnson, Director, Administrative Office of Courts for Alabama.

Four active duty judges and one reserve judge attended the three week Military Judges' Course conducted by The Army Judge Advocate General's School at Charlottesville, VA, from 20 May through 7 June 1991. Four active duty judges attended the companion Military Judges Course conducted at the Navy Justice School, Newport, RI, from 22 July through 9 August 1991. Two judges attended in

July, 1991, the one week "Special Problems in Criminal Evidence" Course at the National Judicial College, Reno, NV.

The Chief Trial Judge attended the American Bar Association, National Conference of Special Court Judges, annual meeting in Atlanta in early August. He participated as a panel member in the formal presentation of "Juror Note Taking and Questioning", jointly sponsored by the National Conference and the American Judicature Society. The Chief Trial Judge and one other Air Force military judge attended the American Judges Association annual educational meeting at Seattle, WA, in late August. These interactions with civilian judges have been beneficial in promoting greater understanding of the military justice system and the role of the military judge.

## **CIRCUIT TRIAL COUNSEL PROGRAM**

During FY91 the number of assigned circuit trial counsel (CTC) remained at 22. Throughout the Air Force, circuit trial counsel tried 348 general courts-martial and 31 special courts-martial.

To update circuit trial counsel on the latest developments in the law and further enhance their trial skills, CCTCs from the 1st, 2nd and 4th circuits attended the annual New Developments in Criminal law course held at the Army JAG School in Charlottesville, Virginia. The New Developments course covered the latest military cases in all significant areas of criminal law. While there, the CCTCs also participated in a CCTC conference, during which information, procedures and strategies were discussed.

Workshops for base level prosecutors were conducted by the circuit trial counsel in all the judicial circuits, except the 7th 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 1991, JAJG and JAJD attended the third annual Service Appellate Counsel Workshop at the Navy Yard. The workshop was attended by nearly all the appellate counsel from the Air Force, Army, Navy-Marine Corps, and Coast Guard. The one day workshop 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.

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 decreased 33% in FY91 over FY90. A comparison of briefs and other petitions filed and oral arguments follows:

AFCMR	FY90	FY91
Replies to Assignment of Errors Filed .....	559	436
Cases Argued.....	25	28
COMA		
Supplements to Petitions Filed.....	371	134
Cases Argued.....	46	31
SUPREME COURT		
Petition Waivers Filed.....	4	2
Briefs Filed .....	2	3

## AREA DEFENSE COUNSEL PROGRAM

The Area Defense Counsel Program continues to provide quality defense representation to Air Force personnel worldwide who face disciplinary action under the Uniform Code of Military Justice. Currently there are area defense counsel stationed at 98 Air Force installations. Although the majority of the area defense counsel have been in military service less than four years, a vigorous training program ensures that they are well prepared to fulfill their duties and responsibilities. Training for defense counsel consists of attendance at an ADC Orientation Course when they first enter the position and participation in circuit level conferences which are held on an annual basis. In the more serious cases which are tried by general court-martial, circuit defense counsel are available to provide greater experience to the defense team.

During the year, area defense counsel were deployed to the Persian Gulf area during Desert Shield/Storm. Although disciplinary action rates throughout the entire deployment were incredibly low, the highly motivated and dedicated area defense counsel were available to ensure that basic constitutional and due process rights of Air Force personnel were protected throughout the entire mission. Air Force defense counsel were among the first lawyers deployed during Desert Shield and were among the last to leave at the end of the conflict.

## APPELLATE DEFENSE COUNSEL

Appellate practice before the United States Supreme Court decreased slightly. The cases reviewed for submission to the Air Force Court of Military Review (AFCMR) noticeably decreased

during the past year, as did the work load with the United States Court of Military Appeals (COMA). However, the general motion practice before AFCMR has significantly increased. The breakdown of activity is as follows:

AFCMR	FY90	FY91
Cases Reviewed.....	917	687
Oral Arguments.....	25	28
Other Motions.....	632	885
COMA		
Supplements to Petitions.....	664	471
Briefs in Support.....	210	180
Grant Briefs.....	35	29
Oral Arguments.....	46	31
Other Motions/Petitions.....	188	192
SUPREME COURT PETITIONS.....	18	14

### CONFINEMENT FACILITIES

At the end of the fiscal year, a total of 601 Air Force prisoners were in confinement. That figure represents about a 20% decrease from the number in confinement at the end of FY90. A total of 358 of those prisoners were incarcerated in central confinement facilities: 144 at Lowry AFB; 3 at the return-to-duty rehabilitation (RTDR) program; and, 211 at the United States Disciplinary Barracks (USDB). The number of Air Force prisoners on parole decreased from 284 at the end of FY90 to 240 at the end of FY91, an 8% decrease.

During the fiscal year, the Air Force closed its detachment at the Fort Lewis Installation Detention Facility in Washington and moved its prisoners and staff to a newly refurbished corrections facility at Lowry AFB. The "new" facility when combined with the existing facility has given the base the ability to incarcerate 250 male and female Air Force prisoners. There were no waiting lists of prisoners awaiting transfer to central confinement facilities.

During this period, a joint-service working group was tasked by SECDEF to implement a DoD order for the Services to consolidate corrections facilities. The order names the Army as the Executive Agent for long-term corrections, and it will house, at no cost to the other Services, their long-term prisoners who have not been transferred to the Federal Bureau of Prisons. Preliminary meetings with the BOP were conducted to develop a working relationship with the BOP for some such transfers beginning later in this decade. The Services will house each other's short-term prisoners in Regional Corrections Facilities. A Memorandum of Understanding Among the Services and a Draft Interservice Support Agreement

were developed by the working group and were undergoing Service review at the end of the fiscal year. Full implementation of the DoD Consolidated Corrections Program is anticipated by the end of FY92.

The RTDR program at the 3320th CRS, Lowry AFB, had another productive year, returning fourteen rehabilitees to Air Force service, one more than last year. The program was streamlined in FY91 with candidates facing evaluation in what has been called START while in confinement at Lowry. Those who make it past START enter a formal phase of retraining that continues to be conducted in a dormitory setting but that has been shortened to 10-12 weeks on average, vice six to nine months.

## **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. There were no decisions issued by any Federal district court granting relief to any of these individuals. A collateral review was also brought in the Claims Court seeking to have a court-martial conviction overturned. This individual was also denied relief.

## **PREVENTIVE LAW AND LEGAL ASSISTANCE PROGRAM**

The Legal Assistance Division (JACA) continues to oversee provision of legal services worldwide. The last annual report indicates the base legal offices served 432,338 clients, providing 126,470 wills. Additionally, notaries provided 615,864 notarial acts. The number of office visits totalled 1,167,383.

Desert Shield/Storm presented the most important issues addressed. The designation of the Persian Gulf area as a combat zone on 17 January 1991 created a variety of issues related to combat pay exclusions and filing extensions with respect to state and federal income taxation. The All States Tax Guide has been updated to provide the field information on the states' varying treatment of the taxation issues raised by the conflict.

Additionally, the mobilization generated by the war raised the issue of entitlement of reserve personnel to legal assistance. Under current policy, legal assistance will continue for reserve and national guard personnel for one year after their deactivation. These personnel continue to face issues controlled by the Soldiers' and

Sailors' Civil Relief Act and the Veterans' Reemployment Rights Law.

The Assistant Secretary of Defense for Force Management and Personnel sponsored a working group on the Soldiers' and Sailors' Civil Relief Act. The group was invited to provide the Congressional Veterans' Affairs Committee a comprehensive stylistic update (with no substantive changes) to the Act, which would be the starting point for any substantive legislative proposals.

## THE REPORTER

*The Reporter* strived to provide timely practical information on important legal issues to our military lawyers. Each issue provided information in 15 legal areas, 3 in the area of military justice, and at least one lead article. This year's lead article topics included soldiers' and sailors' civil relief act, search authorization, and dealing with adult victims of sex crimes.

## 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 FY91.

Approximately 1275 Air Force attorneys (including air reserve force judge advocates) attended courses held at the Air Force Judge Advocate General School, Maxwell AFB, Alabama, and in Denver, Colorado.

The Department arranged legal training for 280 attorneys at the Army Judge Advocate General's School, Charlottesville, Virginia, and four at the Naval Military Justice School, Newport, Rhode Island. In cooperation with the Air Force Institute of Technology (AFIT), the Department sent 56 attorneys to courses in procurement law at the AFIT School of Systems and Logistics, Wright-Patterson AFB, Ohio. Eleven attorneys were sent to other AFIT training opportunities during FY91. Two attorneys attended criminal law courses sponsored by The National Judicial College at the University of Nevada in Reno. Five judge advocates attended the six-week medical law course and 11 attorneys attended the two-week medical law seminar. Both courses were sponsored by AFLSA/JACC and the Malcolm Grow Regional Medical Center at Andrews AFB. The Department had eighteen judge advocate participate in the Legal Masters Program in the fields of procurement law, labor law, environmental law, and military law; 16 attended civilian institutions and 2 attended the Army Judge Advocate General's School.

# THE AIR FORCE JUDGE ADVOCATE GENERAL SCHOOL

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

## Resident Courses

The AFJAG School conducted 17 different courses with 21 offerings attended by approximately 1600 students in FY91.

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 FY91 there were 149 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 624 military and civilian personnel during FY91.

The AFJAG School conducted numerous courses in FY91 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 twice in FY91. 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 64 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 FY90. 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. Because

of funding costs this course was cancelled for FY91, however, a desk book was developed and distributed to prospective students.

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 72 students in FY91. 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 FY91 and was attended by 65 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 at Maxwell AFB and taught by both AFJAG School faculty and Reserve and Guard Judge Advocates. During FY91, 218 students attended this course. In addition to RFJAC, the AFJAG School conducted the Air National Guard and Reserve Forces Judge Advocate Annual Survey of the Law which is conducted each year in Denver, Colorado for three days beginning on Friday concluding on Sunday afternoon. The purpose is to update those Reserve and Guard Attorneys between their required attendances at RFJAC. There were 100 ANG and 225 Reserve Attorneys in attendance during the last survey.

### **Nonresident Courses**

The AFJAG School offered nonresident courses which have been approved for Continuing Legal Education (CLE) credit. The amount of CLE credit earned for completion of these courses was determined by individual state bars. The courses available in FY91 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. Additional offerings on Current Income Tax Issues and Professional Responsibility for Claims Officers were added in FY91.

The AFJAG School also provided instructional videotapes for professional enrichment in 64 topics in various areas of military justice and civil law. CLE credit was not offered for these enrichment courses. These areas included: trial advocacy, criminal law,

income taxation, environmental law, labor law, claims and tort litigation, and acquisition law. During FY91 six videotapes were provided in the general area of paralegal enrichment. Demand for enrichment tapes was consistently heavy.

### **Publications**

The AFJAG School published two editions of *The Air Force Law Review* in FY91. The FY91 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 1991, there were 1399 judge advocates on active duty. This total included 1 major general, 3 brigadier generals, 132 colonels, 202 lieutenant colonels, 300 majors, 727 captains and 34 first lieutenants. In addition, there were 250 civilian attorneys, 800 enlisted legal technicians, and 745 civilian support personnel assigned to the department.

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

# APPENDIX

Period: Fiscal Year 1991

## PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	631	600	31	-25.2%
BCD SPECIAL [A]	174	174		-25.9%
NON-BCD SPECIAL	294	255	39	-26.6%
SUMMARY	15	14	1	- 6.2%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-25.5%

## PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		83	
NUMBER OF DISHONORABLE DISCHARGES			
NUMBER OF BAD CONDUCT DISCHARGES		349	
SPECIAL COURTS-MARTIAL (SA LEVEL)			
NUMBER OF BAD CONDUCT DISCHARGES		154	

## PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	394
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	151
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	116

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

TOTAL ON HAND BEGINNING OF PERIOD		489
GENERAL COURTS-MARTIAL	403	
BCD SPECIAL COURTS-MARTIAL	86	
REFERRED FOR REVIEW		699
GENERAL COURTS-MARTIAL	520	
BCD SPECIAL COURTS-MARTIAL	179	
TOTAL CASES REVIEWED		621
GENERAL COURTS-MARTIAL	473	
BCD SPECIAL COURTS-MARTIAL	148	
TOTAL PENDING AT CLOSE OF PERIOD		567
GENERAL COURTS-MARTIAL	450	
BCD SPECIAL COURTS-MARTIAL	117	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-22.8%

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

NUMBER	[B]
PERCENTAGE	

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	317/621	51.0%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+8.9%
PERCENTAGE OF TOTAL PETITIONS GRANTED	29/317	9.1%
PERCENTAGE OF INCREASE (+) DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-4.2%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	29/621	4.6%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+0.1/4.5 +2.2%

## APPENDIX (CONT'D)

<b>PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69</b>		
PENDING AT BEGINNING OF PERIOD		2
RECEIVED		14
DISPOSED OF		12
GRANTED	2	
DENIED	10	
NO JURISDICTION	0	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		2
<b>PART 8 - ORGANIZATION OF COURT</b>		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL		333
SPECIAL COURTS-MARTIAL		239
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		298
SPECIAL COURTS-MARTIAL		233
<b>PART 9 - COMPLAINTS UNDER ARTICLE 138</b>		
NUMBER OF COMPLAINTS	38	
<b>PART 10 - STRENGTH</b>		
AVERAGE ACTIVE DUTY STRENGTH	516,997	
<b>PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)</b>		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		10,683
RATE PER 1,000		20.66
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-16.8

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- [A] SPCMs in which BCD adjudged
- [B] # of Appellate requests before AFCMR not tracked.

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

**October 1, 1990 to September 30, 1991**

The table below shows the number of court-martial records received and filed at Coast Guard Headquarters during FY-91 and the five preceding years.

Fiscal Year	91	90	89	88	87	86
General Courts-Martial .....	9	14	5	13	11	5
Special Courts-Martial .....	34	42	40	25	24	19
Summary Courts-Martial .....	18	47	48	35	63	50
Total .....	61	103	93	73	98	74

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

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

The accused in one of these cases pled guilty to all charges and specifications.

Sentence	Cases Imposed
Dishonorable discharge .....	3
Bad conduct discharge .....	1
Confinement .....	4
Reduction in rate .....	3
Forfeiture of all pay and allowances .....	2

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

Sentence	Cases Imposed
Bad conduct discharge .....	1
Confinement .....	3
Hard labor without confinement .....	1
Reduction in rate .....	3
Restriction .....	1
Forfeiture of all pay and allowances .....	1
Partial forfeiture of pay (\$9,000 total) .....	1
Reprimand .....	1
Loss of numbers on active duty promotion list .....	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
91	8	4 (50%)	7 (88%)	5 (63%)	5 (63%)
90	14	10 (71%)	12 (86%)	9 (64%)	12 (86%)
89	5	3 (60%)	5 (100%)	3 (60%)	4 (80%)
88	12	8 (75%)	12 (100%)	9 (75%)	8 (75%)

The following table shows the distribution of the 79 specifications referred to general court-martial.

Violation of the UCMJ, Article	No. of Specs.
86 (Unauthorized absence) .....	3
92 (Violation of order or regulation) .....	6
93 (Cruelty and maltreatment) .....	1

107	(False official statement).....	2
108	(Sale, loss, damage, destruction, or wrongful disposition of military property of the U.S.).....	12
109	(Waste, spoilage, or destruction of property other than military property of the U.S.).....	1
110	(Improper hazarding of vessel).....	1
112(a)	(Controlled drug offenses).....	2
120	(Rape).....	3
121	(Larceny or wrongful appropriation).....	14
128	(Aggravated assault).....	11
132	(Frauds against the United States).....	2
133	(Conduct unbecoming an officer and a gentleman).....	1
134	(General).....	20

## SPECIAL COURTS-MARTIAL

Twenty-one of the 34 accused tried by special courts-martial this fiscal year were tried by military judge alone. Fifteen bad conduct discharges were awarded, 12 to accused tried by military judge alone and three to accused tried by courts with members. Six special courts-martial resulted in acquittals, and charges in two others were withdrawn prior to pleas. Sixteen of the accused whose charges were referred to special courts-martial were nonrated (pay grades E-1 through E-3), fourteen were petty officers (pay grades E-4 through E-6), three were chief petty officers (pay grade E-7), and one was an officer.

The following table shows the distribution of the 240 specifications referred to special courts-special.

Violation of the UCMJ, Article		No. of Specs.
78	(Accessory after the fact).....	3
80	(Attempts).....	2
81	(Conspiracy).....	8
85	(Desertion).....	1
86	(Unauthorized absence).....	10
87	(Missing movement).....	1
89	(Disrespect toward superior commissioned officer).....	7
90	(Assaulting or willfully disobeying superior commissioned officer).....	3
91	(Insubordinate conduct toward warrant, noncommissioned, or petty officer).....	3
92	(Failure to obey order or regulation).....	34
93	(Cruelty and maltreatment).....	1
107	(False official statement).....	14
108	(Sale, loss, damage, destruction, or wrongful disposition of military property of the U.S.).....	4
110	(Improper hazarding of vessel).....	1
112	(Drunk on duty).....	1
112(a)	(Controlled drug offenses).....	31
113	(Misbehavior of sentinel).....	2
120	(Rape).....	3

121	(Larceny or wrongful appropriation) .....	47
123	(Forgery) .....	5
125	(Sodomy) .....	4
128	(Aggravated assault).....	1
130	(Housebreaking) .....	2
132	(Frauds against the United States).....	2
133	(Conduct unbecoming an officer and a gentleman).....	1
134	(General).....	49

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

Sentence	Cases Imposed
Bad conduct discharge .....	12
Confinement .....	15
Hard labor without confinement.....	1
Reduction in rate.....	14
Forfeiture of pay (\$14,876 total).....	12
Fine (\$9,500 total).....	3
Restriction.....	1
Other (extra duty, reprimand, etc.).....	2

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

Sentence	Cases Imposed
Bad conduct discharge .....	3
Confinement .....	7
Hard labor without confinement.....	2
Reduction in rate.....	7
Forfeiture of pay (\$7,124 total).....	4
Restriction.....	1
Other (extra duty, reprimand, etc.).....	2

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
91	26	16 (62%)	22 (85%)	21 (81%)	15 (58%)
90	36	16 (44%)	18 (50%)	31 (86%)	17 (47%)
89	36	18 (50%)	14 (39%)	26 (73%)	11 (31%)
88	25	9 (36%)	13 (52%)	18 (72%)	8 (32%)

## **SPECIAL COURTS-MARTIAL SUMMARY**

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

## **CHIEF COUNSEL ACTION UNDER ARTICLE 69, UCMJ**

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

## **PERSONNEL, ORGANIZATION, AND TRAINING**

The Coast Guard has 162 officers designated as law specialists (judge advocates) serving on active duty—122 are serving in legal billets and 40 are serving in general duty billets. Twenty Coast Guard officers are currently undergoing postgraduate studies in law and will be certified as law specialists at the completion of their studies. Eight Coast Guard officers who recently graduated from law school completed the Navy Basic Lawyer Course in Newport, Rhode Island. All have been certified under Article 27(b), UCMJ. A total of 222 additional training quotas were filled by attorneys, paralegals, yeomen and secretaries assigned to Coast Guard legal offices. Approximately \$165,000 was spent on legal training during the fiscal year.

## **U.S. COAST GUARD COURT OF MILITARY REVIEW**

During fiscal year 1991, 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. For the period of this report, the Court was divided

into two panels of three judges with the Chief Judge sitting on both panels. The Chief Judge and one other Judge are civilians. The remaining three Judges are Coast Guard commissioned officers. 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 1990, all of the judges participated in the 6th Annual All Services Appellate Military Judges Conference, a one day seminar hosted by the Air Force Court of Military Review at Andrews Air Force Base. In May 1991, the Judges attended the First Judicial Conference of the U.S. Court of Military Appeals at George Washington University.

In September 1991, the U.S. Coast Guard Court of Military Review hosted the Seventh Annual All Services Appellate Military Judges Training Seminar at Governors Island, New York. This was the first year for the seminar to be held outside of Washington, D.C. and the first year for it to be expanded to two days. Scheduled speakers included Judge Charles E. Moylan, Jr. of the Maryland Court of Special Appeals, Judge Joel M. Flaum of the U.S. Court of Appeals for the Seventh Circuit and Homer E. Moyer, Jr., author of *Justice and the Military*. Representatives from the Army and Air Force Judge Advocate General Schools and the U.S. Naval Justice School presented analyses of opinions from the various courts of military review and the U.S. Court of Military Appeals. An Appellate Judges Training Plan was presented by the Chief Judge of the U.S. Navy-Marine Corps Court of Military Review and a panel of judges and court clerks spoke on judicial utilization of electronic technology.

Special events during the two days included an operational familiarization tour of New York Harbor aboard a U.S. Coast Guard Cutter, a surprise address at the seminar banquet by Dr. Joyce Brothers, and a special admissions ceremony on the last day of the seminar for applicants to the bar of the U.S. Court of Military Appeals. Included among those sworn in by Chief Judge Eugene R. Sullivan of that Court was Vice Admiral Paul Welling, USCG, the Coast Guard's Commander, Atlantic Area.

Several ideas developed at the seminar are being implemented by the Coast Guard Court of Military Review for the coming fiscal year: expansion of the Court panels from two to six to enable every

judge to participate with every other judge on a panel of three; traveling as a Court to the U.S. Coast Guard Academy to hold oral argument; development of a formal training plan for the Court.

This past year, Chief Judge Baum served as a Vice Chair of the Federal Bar Association's Judiciary Section, which includes the Military Judges Committee among its various judicial committees. Chief Judge Baum is also a charter member of the newly formed Federal American Inn of Court which met this past year at the U.S. Court of Military Appeals and whose President is Judge Walter T. Cox of that Court. Chief Judge Baum also continued to serve this past year as a member of the U.S. Court of Military Appeals Rules Advisory Committee.

## **ADDITIONAL MILITARY JUSTICE STATISTICS**

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

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

## APPENDIX

Period: 1 October 1990 - 30 September 1991

### PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	9	8	1	-36%
BCD SPECIAL	34	26		-19%
NON-BCD SPECIAL	0	0	0	Unchanged
SUMMARY	18	18	0	-161%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-41%

### PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)			
NUMBER OF DISHONORABLE DISCHARGES		3	
NUMBER OF BAD CONDUCT DISCHARGES		2	
SPECIAL COURTS-MARTIAL (SA LEVEL)			
NUMBER OF BAD CONDUCT DISCHARGES		15	

### PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	5	
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	13	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	4	

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

TOTAL ON HAND BEGINNING OF PERIOD		18
GENERAL COURTS-MARTIAL		
	10	
BCD SPECIAL COURTS-MARTIAL		
	8	
REFERRED FOR REVIEW		
		21 <sup>1</sup>
GENERAL COURTS-MARTIAL		
	8	
BCD SPECIAL COURTS-MARTIAL		
	13	
TOTAL CASES REVIEWED		
		28 <sup>2</sup>
GENERAL COURTS-MARTIAL		
	11	
BCD SPECIAL COURTS-MARTIAL		
	17	
TOTAL PENDING AT CLOSE OF PERIOD		
		11
GENERAL COURTS-MARTIAL		
	6	
BCD SPECIAL COURTS-MARTIAL		
	5	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+7%

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

NUMBER	28	
PERCENTAGE	100%	

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	93/28	32%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+13%
PERCENTAGE OF TOTAL PETITIONS GRANTED	2/9	22%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+200%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	2/28	7%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+200%

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- Included within this total are eighteen Article 66, UCMJ, referrals, one Article 69, UCMJ, referral, and two extraordinary writs.
- Included within this total are twenty-six reviews pursuant to Article 66, UCMJ, and two actions in response to extraordinary writs.
- Included within this total are two COMR cases forwarded to USCMA which were awaiting disposition at the end of FY-91.

## APPENDIX (CONT'D)

### PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		0	
RECEIVED		2	
DISPOSED OF		0	
GRANTED	0		
DENIED	0		
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		4	
SPECIAL COURTS-MARTIAL		21	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		5	
SPECIAL COURTS-MARTIAL		13	

### PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	4	
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### PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	37,715	
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### PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	1,169	
RATE PER 1,000	31.00	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-19%	

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