

ANNUAL REPORT
of the
U.S. COURT OF MILITARY APPEALS



and the
JUDGE ADVOCATES GENERAL
of the
ARMED FORCES
and the
GENERAL COUNSEL
of the
DEPARTMENT OF TRANSPORTATION

PURSUANT TO THE
UNIFORM CODE OF MILITARY JUSTICE
For the Period

October 1, 1981-September 30, 1982

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ANNUAL REPORT
SUBMITTED TO THE
COMMITTEES ON ARMED SERVICES
of the
SENATE AND OF THE
HOUSE OF REPRESENTATIVES
and to the
SECRETARY OF DEFENSE
AND SECRETARY OF TRANSPORTATION
and the
SECRETARIES OF THE DEPARTMENTS OF THE
ARMY, NAVY, AND AIR FORCE

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of the
U.S. COURT OF MILITARY APPEALS
and the
JUDGE ADVOCATES GENERAL
OF THE ARMED FORCES
and the
GENERAL COUNSEL
DEPARTMENT OF TRANSPORTATION

October 1, 1981 to September 30, 1982

The Judges of the United States Court of Military Appeals, the Judge Advocates General of the Armed Forces, and the General Counsel of the Department of Transportation submit their Annual Report on the operation of the Uniform Code of Military Justice, pursuant to 10 U.S.C. §867(g).

The Code Committee, composed of the Judges of the United States Court of Military Appeals, the Judge Advocates General and the Chief Counsel of the Coast Guard representing the General Counsel of the Department of Transportation, met on several occasions during fiscal year 1982 to consider various proposals for the improvement of the military justice system. The Code Committee approved a recommendation submitted by the Joint-Service Committee on Military Justice that 10 U.S.C. §866(a) be amended to authorize *en banc* reconsideration of a previous decision by a panel of the Court of Military Review concerned. A proposal was also extensively discussed and approved which was submitted by the Joint-Service Committee suggesting that 10 U.S.C. §862 be amended to permit appeals by the Government. Additionally, the Code Committee recommended that the Manual for Courts-Martial

be amended to permit an accused to file a petition for grant of review either directly with the United States Court of Military Appeals or with the appropriate military authorities who would, in turn, promptly forward it to the Court. Other proposals to amend the Uniform Code of Military Justice were considered by the Code Committee, but the Committee did not make specific recommendations concerning these proposals. Included in the matters considered were items now contained in the legislative proposal prepared by the Department of Defense. The views of the members of the Code Committee on this proposal were expressed in testimony before the Subcommittee on Manpower and Personnel of the Senate Armed Services Committee in September 1982.

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

ROBINSON O. EVERETT

Chief Judge

WILLIAM H. COOK

Associate Judge

ALBERT B. FLETCHER, JR.

Associate Judge

HUGH J. CLAUSEN

The Judge Advocate General, U.S. Army

JAMES J. MCHUGH

The Judge Advocate General, U.S. Navy

THOMAS B. BRUTON

The Judge Advocate General, U.S. Air Force

JOHN M. FOWLER

General Counsel, Department of Transportation

**REPORT OF THE
UNITED STATES COURT OF MILITARY APPEALS**

October 1, 1981 to September 30, 1982

The Judges of the United States Court of Military Appeals submit their fiscal year 1982 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 the Secretaries of Defense, Transportation, Army, Navy, and Air Force in accordance with Article 67(g), Uniform Code of Military Justice, 10 U.S.C. §867(g).

THE BUSINESS OF THE COURT

The rapid increase in the number of cases which were filed with and disposed of by the Court during the previous fiscal year has continued into the fiscal year 1982 term. During the fiscal year 1982 term 2730 petitions for grant of review, mandatory appeals, certificates, cross-petitions, and petitions for new trial were filed with the Court. This was the highest number of such filings since the creation of the Court by Congress and represents an increase of 24 percent over fiscal year 1981 and an increase of 55 percent over fiscal year 1980. In addition, the Court reviewed and acted on 2568 petitions for grant of review during fiscal year 1982, reflecting an increase in such review actions of 24 percent over fiscal year 1981 and 52 percent over fiscal year 1980. The Court granted further review in 180 of these cases (7 percent of the cases considered) and, in 34 percent of these granted cases, the Court specified issues which were not raised by the appellant. On the master docket of mandatory appeals, certificates, and granted petitions, the Court disposed of 250 cases, a decrease of 30 percent over fiscal year 1981. Approximately 67 percent of the Court's actions on master docket cases affirmed the decisions of the Courts of Military Review. These cases were decided in 100 signed opinions, 11 per curiam opinions, and 139 summary disposition orders. The comparative decrease in the number of final dispositions on the master docket was directly attributed to the reduction in the cases pending on the

master docket. Thus, the Court has been successful in its endeavor to reduce its backlog of cases over the past two fiscal years, as is evidenced by the fact that only 145 cases were pending on the master docket at the end of fiscal year 1982 as compared with 387 cases pending at the end of fiscal year 1980. This significant reduction reflects a concerted effort by the Court to reduce the previously existing backlog of cases.

In contrast to the recent trend of increasing numbers of appellate filings, the number of petitions for extraordinary relief and writ appeal petitions filed with the Court during fiscal year 1982 declined slightly, as only 52 such petitions were filed during fiscal year 1982 compared with 59 such petitions in fiscal year 1981. The Court disposed of 49 extraordinary relief cases during this fiscal year, issuing signed opinions in 5 cases and granting extraordinary relief in 2 cases.

Reports from the Courts of Military Review indicate that the increase in the number of filings with the Court will continue into the fiscal year 1983 term since the intermediate appellate courts have experienced an increase in their respective caseloads which inevitably results in an increase in the number of filings with this Court.

In addition to its case review workload, the Court admitted 543 attorneys to practice before its Bar during the fiscal year 1982 term, bringing the cumulative total of admissions before the Bar of the Court to 23,845.

JUDICIAL VISITATIONS

The visits of the Judges to military installations has contributed to a better understanding of the Court's role in the military justice system. In addition, the Court has attempted to maintain communications with civilian organizations concerned with the military justice system.

Chief Judge Everett participated in a number of military and civilian conferences relating to the military justice system, including the United States Air Force Conference, Homestead Air Force Base, Florida; a meeting of the Military Law Committee of the General Practice Section, American Bar Association, in Chicago, Illinois; the Third Annual JAGC Training School and CLE Seminar, University of South Carolina Law School, Columbia, South Carolina; a conference of Military Judges at Maxwell Air Force Base, Alabama; a meeting of the Kiwanis Club in Durham, North Carolina; a meeting of the Courts of Military Review Judges at Bolling Air Force Base, Washington, D.C.; the National Guard Judge Advocates Conference, Reston, Virginia; and a meeting of the Judge Advocates Association in San Francisco, California. In addition, Chief Judge Everett accepted invitations to visit several

military installations in Germany, Greece, Turkey, Spain, and England.

Judge Cook participated in the mid-year meeting of the American Bar Association in Chicago, Illinois, and its Annual Meeting in San Francisco, California; visited the Coast Guard Academy, New London, Connecticut, and Fort George G. Meade, Maryland; and delivered a speech to the U.S. Army Reserve Mid-Atlantic Regional On-Site Conference.

Judge Fletcher attended the convention of the American Trial Lawyers Association in Toronto, Canada, and the Appellate Judges' Seminar in Colorado Springs, Colorado. In addition, he visited the Coast Guard Academy, New London, Connecticut.

The visits and speeches of the Judges have provided an interchange of ideas which have benefited both the Court and the military community in general.

TRIBUTE TO SENIOR JUDGE HOMER FERGUSON

The Court regrets to inform the Congress that Senior Judge Homer Ferguson passed away on December 17, 1982.¹ Prior to his appointment to the Court, Judge Ferguson served in the United States Senate and was the United States Ambassador to the Republic of the Philippines. The loss of Judge Ferguson will leave an emptiness in the Court's history which will be felt for years to come. His legacy to the Court includes his numerous opinions, which gave a breath of life to the military justice system during its formative years, and his ability to comprehend the nature and spirit of that system. This legacy will continue to aid the Court in its resolution of issues which it will confront in future cases.

APPELLATE ADVOCACY CONFERENCE

The Court, in conjunction with the Military Law Institute, has sponsored the Homer Ferguson Conference on Appellate Advocacy each year since 1976. This conference is named in honor of the late Senior Judge Ferguson and is a tribute to the legacy which Judge Ferguson left to the Court. On May 25-26, 1982, the Seventh Annual Conference was held at George Washington University. As in prior years, this year's conference was designed to give military and civilian practitioners an opportunity to develop and maintain the skills necessary for practice before military courts and was certified for credit to meet the continuing legal education requirements of various State Bars. This year's speakers included Honorable Tim Murphy, Judge, Superior Court of the District of

¹Although Senior Judge Ferguson passed away after the expiration of the fiscal year 1982 term, the Court felt that the Congress should be informed at the earliest opportunity.

Columbia; Mr. Edwin Meese, Counsellor to the President; Honorable Erwin Griswold, former Solicitor General and Dean of the Harvard Law School; Honorable Daniel M. Friedman,² Chief Judge, United States Court of Claims; Honorable William H. Taft, IV, General Counsel of the Department of Defense; Honorable Frank Q. Nebeker, Associate Judge, District of Columbia Court of Appeals; Colonel William Fulton, Senior Appellate Military Judge, United States Army; Mr. A. Kenneth Pye, Chancellor of Duke University; Major General Thomas B. Bruton, Judge Advocate General, United States Air Force; Brigadier General W.H.J. Tiernan, Director, Judge Advocate Division, United States Marine Corps; Mr. Andrew S. Effron, Assistant General Counsel, Department of Defense; Mr. William H. Hogan, Jr., General Counsel, House Armed Services Committee; Mr. Anthony J. Principi, Counsel, Senate Armed Services Committee; Professor Harry Groves, University of North Carolina School of Law; Rear Admiral John S. Jenkins, Judge Advocate General, United States Navy; Rear Admiral Edwin H. Daniels, Chief Counsel, United States Coast Guard; Professor Paul F. Rothstein, Georgetown University Law Center; General Lew Allen, Jr., Chief of Staff of the United States Air Force; Colonel Walter L. Lewis, United States Air Force (Ret.); and the Judges and staff of the Court. Numerous uniformed and civilian lawyers involved in practicing before military courts, as well as the Judges of the Courts of Military Review and other scholars and commentators in the field of military justice were in attendance at the conference.

USCMA MANAGEMENT INFORMATION SYSTEM

The project to convert the Court's docketing system to a totally electronic computerized system which was begun in fiscal year 1981 was completed in fiscal year 1982. As a result of the completion of this project, the Court has been able to maintain a current docket without the addition of authorized personnel, even though the number of case filings has been increasing dramatically during the past two years. In addition, the Judges and staff personnel now have instantaneous access to all of the Court's docketing records and are experiencing a significant reduction of the time needed to acquire case docketing data during each workday.

² Judge Friedman is now a Circuit Judge of the United States Court of Appeals, Federal Circuit.

SIGNIFICANT DECISIONS AFFECTING THE ADMINISTRATION OF MILITARY JUSTICE WITHIN THE ARMED FORCES³

Court-Martial Jurisdiction Over Persons and Offenses

During the fiscal year 1982 term the Court reexamined the issue of whether a service member may be tried by court-martial for an offense committed during a prior enlistment when he was discharged for the purpose of immediate reenlistment. Noting the intent that had been manifested by Congress, the Court observed that such a discharge did not interrupt military status. Thus, the Court prospectively overruled a contrary holding in *United States v. Ginyard*, U.S.C.M.A. 512, 37 C.M.R. 132 (1967), and held in *United States v. Clardy*, 13 M.J. 308 (C.M.A. 1982), that military jurisdiction was not terminated by the discharge.

Addressing the question of jurisdiction to try a member of the Army National Guard, the Court observed in *United States v. Self*, 13 M.J. 132 (C.M.A. 1982), that the retention of a national guardsman was not authorized unless the state authorities consented to such retention. However, the Court further noted that if the state authorities consented to the member's initial call to active duty, they must be deemed to have consented to his extension pursuant to statutes and regulations then in effect. Thus, the Court held that where the United States Army had taken sufficient action so that court-martial jurisdiction attached prior to the expiration of the accused's term of active duty, his retention beyond that date was consistent with the consent of the state authorities.

Article 31 and the Right to Remain Silent

The Court refused to extend the protection of Article 31, Uniform Code of Military Justice, to shield an accused from disrespectful conduct resulting from the manner in which he answered questions that were asked by a commissioned officer. By such action, the Court held in *United States v. Lewis*, 12 M.J. 205 (C.M.A. 1982), that while a statement was inadmissible as evidence to prove a preexisting offense where the accused was a suspect and was not advised of his Article 31 rights prior to responding to various questions, Article 31 did not bar such responses from being admitted into evidence at a court-martial for the purpose of establishing the offense of disrespect to a superior commissioned officer, since the disrespectful conduct was a distinct and separate offense. In

³This section of the Court's Annual Report is prepared solely as an instrumental 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 no precedential value and should not be cited in briefs filed with the Court.

United States v. Leiffer, 13 M.J. 337 (C.M.A. 1982), the Court ruled that a statement pertaining to an accused's identity was not regarding any offense and, therefore, the statement was admissible even though the accused was not advised of his Article 31 rights prior to questioning concerning the matter. The Court held in *United States v. Wynn*, 13 M.J. 446 (C.M.A. 1982), that a second confession was adequately attenuated from an initial confession which was predicated on an illegal arrest. The Court noted that the accused was released for 19 days prior to the second confession; that he was advised and given an opportunity to see a lawyer; that he was not intimidated during the period in question; and that he was advised of his rights and formally waived them prior to the second confession.

Noting that a plea of guilty waived only the right against self-incrimination as to the offense for which the accused was tried, the Court held in *United States v. Nichols*, 13 M.J. 154 (C.M.A. 1982), that the military judge erred to the prejudice of the accused by implying that the accused should explain the offenses noted in records pertaining to punishment imposed pursuant to Article 15, UCMJ.

Arrest and Apprehension

Distinguishing *Payton v. New York*, 445 U.S. 573 (1980), the Court held in *United States v. Phinizy*, 12 M.J. 40 (C.M.A. 1981), that the arrest of the accused in a military barracks was justified without a formal warrant. The Court emphasized in so holding that the police official's action was reasonable because he had ample cause to believe that the accused had distributed drugs and had marked money in his possession. As the record also demonstrated that the official had reason to believe that the accused was involved in an on-going drug operation, the Court further observed that the immediate arrest of the accused was necessary to preserve the marked money as evidence. Thus, the Court held that *Payton* was inapplicable to the exigent circumstances which confronted the police officer involved in *Phinizy*.

The question of whether mere obedience to military orders constitutes an arrest or custodial interrogation was addressed by the Court in *United States v. Sanford*, 12 M.J. 170 (C.M.A. 1981). Noting that a service member was not free to ignore the lawful commands of his superior, the Court held that an order to report to the battery commander's office could not be objectively construed, by itself, as a seizure for law enforcement purposes in view of the realities of military life. Thus, the Court held that certain evidence seized shortly after this order was not tainted as there had been no seizure of the accused when he complied with the order to report.

Search and Seizure

Fiscal year 1982 proved to be another prolific year for the litigation of issues concerning searches and seizure. In *United States v. Murray*, 12 M.J. 139 (C.M.A. 1981), the Court held that a company commander who authorized a search was disqualified from so acting on the grounds that he had recruited the informant who was involved in the case; that he had made the decision to continue an investigation of the accused and to expand the scope of the search when a search of the accused's person proved unproductive; and that he had retained custody of the fruits of the search after participating in the search itself. However, the Court upheld the trial judge's ruling that the evidence derived from this search was nonetheless admissible because exigent circumstances required the immediate search of the accused's wall locker since the objects of the search—a matchbox, its contents, and certain marked money—could easily be concealed or destroyed in view of the presence of the accused's roommate. In *United States v. Sanford*, 12 M.J. 170 (C.M.A. 1981), the Court held that the contents of a leather pouch seized from a third party were admissible where the accused had transferred the leather pouch to the third party under suspicious circumstances constituting a precipitous bailment which could not realistically provide any expectation that the property would remain private and secure. The Court further observed that the accused assumed the risk that the third party would inspect the contents of the pouch or give it to government officials for inspection. In *United States v. Miller*, 13 M.J. 75 (C.M.A. 1982), the Court held that the accused had abandoned any legitimate expectation of privacy in the contents of his jacket by leaving it in another person's unattended, unsecured automobile. No violation of the Fourth Amendment occurred when command officials searched the jacket pursuant to the permission of the owner of the automobile.

After examining civilian precedents and the recent adoption of the Military Rules of Evidence, the Court held in *United States v. Morrison*, 12 M.J. 272 (C.M.A. 1982), that the mere presence of American officials during a search conducted by foreign officials in a foreign country did not constitute participation by the American officials in the foreign search. The Court emphasized that there was no longer any need for the contrary prophylactic rule which had been set forth in *United States v. Jordan*, 1 M.J. 334 (C.M.A. 1976), and that since there were valid reasons for the presence of American officials during such searches, other than their participation therein, each case must be examined to determine whether or not the presence of American officials was part of a scheme to evade the Fourth Amendment.

The question of whether the Court would adopt the inevitable-

discovery rule was answered in *United States v. Kozak*, 12 M.J. 389 (C.M.A. 1982), when the Court held that since this doctrine, which is an exception to the exclusionary rule, had been accepted by a large number of federal and state courts, the inevitable-discovery rule would be adopted within the military justice system and that, to the extent such holding conflicted with the Court's prior ruling in *United States v. Peurifoy*, 22 U.S.C.M.A. 549, 48 C.M.R. 34 (1973), the latter was overruled.

Although the Court had previously approved the use of health and welfare inspections, in *United States v. Brown*, 12 M.J. 420 (C.M.A. 1982), it stressed that such inspections must be consistent with both the area and the purpose of such inspections. Therefore, the Court held that the search and seizure of some stolen bonds which were wrapped in a piece of paper located in the accused's jacket hanging in his wall locker were inconsistent with an inspection for the purpose of ensuring that no members of the military unit had any type of ammunition or other dangerous articles. Holding the seizure was illegal, the Court noted that an inspection for this purpose would not lead the person conducting the inspection into a folded piece of paper.

Pretrial Confinement

In *United States v. Burrell*, 13 M.J. 437 (C.M.A. 1982), the accused was "restricted" to a hospital, except when escorted, after he was injured in the incident which led to charges being preferred against him. When his condition improved sufficiently to permit release from the hospital, he was promptly incarcerated pending trial. The Court held that, for speedy trial purposes, the conditions of restriction to the hospital were not such as to constitute the equivalent of arrest or confinement.

Treaties, International Agreements and Individual Rights

In *United States v. Stokes*, 12 M.J. 229 (C.M.A. 1981), the Court examined the Treaty of Friendship and Cooperation between Spain and the United States and held that the double-jeopardy guarantees set forth therein were binding in the court-martial trial of an American serviceman. However, the Court further held that this treaty did not bar the accused's court-martial on charges of wrongful sale and conspiracy to sell hashish even though he had previously been convicted and fined by the Spanish Contraband Court for a customs offense as a result of the possession of the hashish. The Court ruled in this regard that a proceeding in the Spanish Contraband Court was not a criminal trial within the meaning of the treaty provision which prohibited criminal trials

by both Spanish and American authorities for the same offense.

The Court subsequently rejected an argument that all obligations imposed upon American authorities by international agreements created individual rights which could be asserted by an accused during trial by court-martial. In *United States v. Bunkley*, 12 M.J. 240 (C.M.A. 1982), and *United States v. Whiting*, 12 M.J. 253 (C.M.A. 1982), the Court had occasion to examine various provisions of the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces. Noting that Article VII of that agreement adverted to investigations and seizures, the Court found nothing therein which purported to confer an individual right. Thus, the Court rejected a defense argument that any evidence obtained in a manner contrary to the provisions of the agreement could not be introduced as evidence in a court-martial. Similar arguments were rejected in *United States v. Morris*, 12 M.J. 262 (C.M.A. 1982), and *United States v. Alleyne*, 13 M.J. 331 (C.M.A. 1982), as to the applicability of a regulation of the United States Army implementing the same agreement.

Documentary Evidence and Military Records

Citing its earlier decision in *United States v. Vietor*, 10 M.J. 69 (C.M.A. 1980), the Court held in *United States v. Porter*, 12 M.J. 129 (C.M.A. 1981), that a laboratory report identifying a substance as marijuana could be properly admitted into evidence without the testimony of a person who worked at the laboratory on the basis that judicial notice could be taken of the normal business of a crime laboratory.

Noting the requirements of paragraph 75b(2), Manual for Courts-Martial, 1969 (Revised edition), the Court held in *United States v. Krewson*, 12 M.J. 157 (C.M.A. 1981), that a record of a civilian conviction was inadmissible as evidence because it was not final and because the civilian offense postdated the offense being tried by court-martial. The Court also held in *United States v. Kline*, 14 M.J. 64 (C.M.A. 1982), that military personnel records are not admissible during the sentencing hearing unless they are maintained in accordance with applicable service regulations.

Extraordinary Relief

In denying a petition for extraordinary relief in *Trotman v. Haebel*, 12 M.J. 27 (C.M.A. 1981), the Court observed that the accused had failed to show a clear abuse of discretion by the convening authority when the latter rejected the petitioner's request for deferment of his sentence to confinement. Noting that the Government had the right to file an original petition for

extraordinary relief with the Court and that the appropriate Judge Advocate General had the right to certify a case denied by a Court of Military Review on a petition for extraordinary relief, the Court held in *United States v. Caprio*, 12 M.J. 30 (C.M.A. 1981), that the Government may also petition the Court for review of an adverse ruling by the Court of Military Review. In *Cooke v. Orser*, 12 M.J. 335 (C.M.A. 1982), the Court ordered the military judge to dismiss the charges on the grounds that the staff judge advocate to the convening authority had created a reasonable expectation by the accused that there would be no prosecution by court-martial; that the staff judge advocate failed to clarify the situation after he became aware of the accused's misunderstanding of the agreement; and that the Government accepted the benefit of the accused's performance of the agreement.

Military Practice and Procedure

The question as to appellate defense counsel's responsibilities regarding issues raised by an accused was answered in *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), wherein the Court held that unless the accused consented to a withdrawal or an abandonment of such issues, the appellate counsel must identify them or invite the appellate court's attention to them. Recognizing that issues raised by an accused may be frivolous, the Court observed that a counsel should not be criticized for complying with such a procedure.

Noting the distinction between the enforcement jurisdiction and the prescriptive jurisdiction of the United States, the Court held in *United States v. Bennett*, 12 M.J. 463 (C.M.A. 1982), that a United States citizen located in the United States could not be subpoenaed to testify before a general court-martial conducted in a foreign country.

In *United States v. Warren*, 13 M.J. 278 (C.M.A. 1982), the Court held that an accused's false testimony during his court-martial may be considered by the sentencing authority as to the accused's potential for rehabilitation. However, the Court emphasized in *United States v. Cabebe*, 13 M.J. 303 (C.M.A. 1982), that such testimony could not be used as a basis for additional punishment, since any punishing for perjury should be determined by a separate prosecution for that offense.

The issue of whether the defense of insanity should be something other than a full defense to the charged offense was addressed by the Court in *United States v. Cortes-Crespo*, 13 M.J. 420 (C.M.A. 1982). The Court held that because the defense was authorized by the Uniform Code of Military Justice and the Manual for Courts-Martial, any modification must be made by the Congress.

Although the Court recognized that the question of an accused's request for trial by judge alone was a matter within the discretion of the trial judge, it was held in *United States v. Butler*, 14 M.J. 72 (C.M.A. 1982), that the judge's discretionary ruling was subject to review for an abuse of that discretion. In so ruling, the Court further held that the basis for a denial of such a request must be made a matter of record.

Guilty Pleas and Pretrial Agreements

In *United States v. Bedania*, 12 M.J. 373 (C.M.A. 1982), and *United States v. Miles*, 12 M.J. 377 (C.M.A. 1982), the Court refused to expand the required providency inquiry to obligate a trial judge to ascertain and explain, on his own motion, the collateral consequences of a conviction by a court-martial. In *United States v. Cook*, 12 M.J. 448 (C.M.A. 1982), the Court found nothing unfair to an accused where charges which had been previously withdrawn from a court-martial pursuant to a pretrial agreement were subsequently reinstated after the accused's plea of guilty had been set aside as improvident upon appellate review. However, the Court noted that such a subsequent prosecution may be barred if it would be basically unfair to an accused because of the loss of witnesses or a finding of prosecutorial vindictiveness.

In *United States v. Bethke*, 13 M.J. 71 (C.M.A. 1982), the Court held that a trial judge erred by implying that an accused who entered a pretrial agreement for a limitation of any imposed sentence was risking the loss of the bargained-for limitation on the sentence by persisting in pre-plea motions to suppress evidence. In *United States v. Pretlow*, 13 M.J. 85 (C.M.A. 1982), the Court agreed with the intermediate appellate court that the accused's plea of guilty to conspiracy to commit robbery was improvident where the military judge failed to explain to the accused any of the elements of robbery.

ROBINSON O. EVERETT
Chief Judge
WILLIAM H. COOK
Judge
ALBERT B. FLETCHER, JR.
Judge

USCMA STATISTICAL REPORT

Fiscal Year 1982

CUMULATIVE SUMMARY

CUMULATIVE BEGINNING PENDING

Master Docket	196
Petition Docket	427
Miscellaneous Docket	<u>7</u>
TOTAL	630

CUMULATIVE FILINGS

Master Docket	
Appeals filed	1
Certificates filed	16
Reconsiderations granted	2
Petition Docket	
Petitions for grant filed	2,702
Cross-petitions for grant filed	6
Petitions for new trial filed	3
Miscellaneous Docket	<u>52</u>
TOTAL	2,782

CUMULATIVE TERMINATIONS

Master Docket	250
Petition Docket	2,568
Miscellaneous Docket	<u>49</u>
TOTAL	2,867

CUMULATIVE END PENDING

Master Docket	145
Petition Docket	570
Miscellaneous Docket	<u>10</u>
TOTAL	725

OPINION SUMMARY

CATEGORY	SIGNED	PER CURIAM	MEM/ORDER	TOTAL
Master Docket	100	11	139	250
Petition Docket	0	0	2,568	2,568
Miscellaneous Docket	<u>5</u>	<u>0</u>	<u>44</u>	<u>49</u>
TOTAL	105	11	2,751	2,867

FILINGS (MASTER DOCKET)

Appeals filed	1
Certificates filed	16
Reconsideration granted	2
Petitions granted (from Petition Docket)*	<u>180</u>
TOTAL	199

TERMINATIONS (MASTER DOCKET)

Findings & sentence affirmed	170	Signed	100
Reversed in whole or in part	43	Per curiam	11
Granted petitions vacated	1	Mem/order	<u>139</u>
Other disposition directed	<u>36</u>	TOTAL	250
TOTAL	250		

PENDING (MASTER DOCKET)

Assigned Opinions pending	49
Judges' conference pending	2
Oral argument pending	38
Preargument conference pending	16
Calendar committee pending	19
Final briefs pending	<u>21</u>
TOTAL	145

FILINGS (PETITION DOCKET)

Petitions for grant of review filed	2,702
Petitions for grant/new trial filed	3
Cross-petitions for grant filed	<u>6</u>
TOTAL	2,711

TERMINATIONS (PETITION DOCKET)

Petitions for grant dismissed	34	Signed	0
Petitions for grant denied	2,321	Per curiam	0
Petitions for grant granted	180	Mem/order	<u>2,568</u>
Petitions for grant remanded	20	TOTAL	2,568
Petitions for grant withdrawn	<u>13</u>		
TOTAL	2,568		

PENDING (PETITION DOCKET)

Petition briefs pending	366
Staff attorney action pending	139
Court action pending	<u>65</u>
TOTAL	570

*In 34 percent of these cases, the Court specified issues which were not raised by the appellant.

FILINGS (MISCELLANEOUS DOCKET)

Writs of error coram nobis sought	13
Writs of habeas corpus sought	22
Writs of mandamus/prohibition sought .	14
Other extraordinary relief sought	0
Writ appeals sought	<u>3</u>
TOTAL	52

TERMINATIONS (MISCELLANEOUS DOCKET)

Petitions withdrawn	1		
Petitions remanded	1		
Petitions granted	2	Signed	5
Petitions denied	28	Per curiam	0
Petitions dismissed	<u>17</u>	Mem/order	<u>44</u>
TOTAL	49	TOTAL	49

PENDING (MISCELLANEOUS DOCKET)

Briefs pending	0
Action by Writs Counsel pending	0
Show cause action by Court pending	0
Show cause response pending	0
Other final action pending	<u>10</u>
TOTAL	10

RECONSIDERATIONS & REHEARINGS

CATEGORY	FILINGS PENDING		DISPOSITIONS		
			Granted	Rejected	TOTAL
Master Docket	2	0	0	3	3
Petition Docket	15	6	4	7	11
Miscellaneous Docket	2	0	0	2	2
TOTAL	19	6	4	12	16

MOTIONS ACTIVITY

CATEGORY	BEGIN PENDING	FILINGS	END PENDING	DISPOSITIONS		
				Granted	Rejected	TOTAL
All motions	69	873	100	679	163	842

**REPORT OF
THE JUDGE ADVOCATE GENERAL OF THE ARMY
October 1, 1981 to September 30, 1982**

In fiscal year 1982 Brigadier General Donald W. Hansen assumed the duties of Commander, U.S. Army Legal Services Agency and Chief Judge, U.S. Army Court of Military Review.

During fiscal year 1982 the Office of The Judge Advocate General continued to monitor the proceedings of courts-martial, to review and prepare military justice publications and regulations, and to develop draft legislative changes for the UCMJ.

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

During fiscal year 1982, the court-martial rates show an Army-wide decrease in the number of courts-martial. The total number of persons tried by all types of courts-martial in fiscal year 1982 is 5.6% lower than the year before. This overall decrease reflects primarily a 41.2% decrease in special courts-martial not empowered to adjudge a bad conduct discharge and a 6% decrease in summary courts-martial. As in previous years, there were increases in the number of general courts-martial and the number of special courts-martial empowered to adjudge a bad conduct discharge. The overall conviction rate for fiscal year 1982 was 92.3% which is a slight rise from the 91% conviction rate for the two previous fiscal years.

STATISTICAL SUMMARY, FISCAL YEAR 1982

(see table insert attached)

THE U.S. ARMY JUDICIARY

The U.S. Army Judiciary is an element of the U.S. Army Legal Services Agency. It consists of the U.S. Army Court of Military Review, the Clerk of Court, the Examinations and New Trials Division, and the Trial Judiciary.

The U.S. Army Legal Services Agency also includes the Government Appellate Division, the Defense Appellate Division, the Trial

Defense Service, Contract Appeals Division, the Regulatory Law Office, and the Professional Recruiting Office. The latter three sections have no function related to the U.S. Army Judiciary and its courts-martial mission. The Contract Appeals Division and the Regulatory Law Office represent the Army and the Department of Defense in certain contractual disputes before regulatory commissions and boards. The Professional Recruiting Office coordinates the recruitment of lawyers for the Army.

U.S. ARMY TRIAL DEFENSE SERVICE

During fiscal year 1982 the United States Army Trial Defense Service continued to develop its deployment capability and integration of the reserve components into mission performance. Trial Defense Service counsel deployed to the Sinai in support of the Multi-National Force and Observers, to USAREUR in support of REFORGER, and to Korea. Twenty-seven reserve defense counsel teams trained with active Army defense counsel advising on administrative law and nonjudicial matters and serving as counsel before courts-martial.

SIGNIFICANT MILITARY JUSTICE ACTIONS

Actions involving military justice handled by the Criminal Law Division, OTJAG, included evaluating and drafting legislation, Executive Orders, pamphlets, and regulations impacting on the operation of the Army and the Department of Defense; monitoring the administration of military justice, including evaluation of ongoing major projects; rendering opinions for the Army staff; and reviewing various aspects of criminal cases for action by the Army Secretariat and staff.

REVISION OF MILITARY JUSTICE REGULATION

A revision of Army Regulation 27-10, Military Justice, was published September 1, 1982, with an effective date of November 1, 1982. The revision incorporates some 21 permanent changes and numerous interim changes to the 1968 edition. Included in the revision are major changes in the administration of nonjudicial punishment and the filing of these records in the servicemember's personnel files.

JOINT SERVICE COMMITTEE ON MILITARY JUSTICE

The Joint Service Committee on Military Justice was established by the Judge Advocates General and the General Counsel of

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

The Joint Service Committee prepared several proposals to amend the Uniform Code of Military Justice. These included: amending Articles 25, 26, 27, and 29 to modify current requirements that the convening authority personally excuse detailed court members and personally detail the military judge and counsel, and amending Article 62 to provide for appeals by the Government of certain rulings by the military judge. These proposals were approved by the Code Committee, and included with legislation previously prepared by the Department of Defense. This legislation was the subject of hearings before the Subcommittee on Manpower and Personnel of the Senate Armed Services Committee on September 9 and 16, 1982.

Following the enactment of the Military Justice Amendments of 1981 in November 1981, the Joint Service Committee prepared implementing changes to the *Manual for Courts-Martial*. These concerned the standards and procedures for acting on requests for individual military counsel, treatment of post-trial prisoners, service of decisions of the Courts of Military Review, and petitions to the Judge Advocates General under Article 69. These changes were signed by the President on January 20, 1982.

The Joint Service Committee also prepared an amendment of paragraphs 127c, 213, and Appendix 6c of the *Manual for Courts-Martial* concerning pleadings, proof, and punishment of contraband drug offenses. A draft of this proposal was made available for comment by the public before submission to the President, pursuant to a policy adopted by the Department of Defense. See 47 Fed Reg. 3401 (Jan 25, 1982). The amendment was signed by the President on September 23, 1982, and became effective on October 1, 1982.

The Joint Service Committee continued its work on a comprehensive revision of the *Manual for Courts-Martial*. Drafting was substantially completed by the end of the fiscal year.

FOREIGN CRIMINAL JURISDICTION

As executive agent for DOD and DA, OTJAG maintains and

collates information concerning the exercise of foreign criminal jurisdiction over U.S. personnel. During the reporting period December 1, 1980 through November 30, 1981, a total of 70,583 U.S. personnel, military and civilian, were charged with offenses subject to the primary or exclusive jurisdiction of foreign tribunals. A total of 64,101 of these offenses were charged against military personnel. Of this number, 29,106 of the charges against military personnel were subject to exclusive foreign jurisdiction. Nonetheless, foreign authorities released 994 of the exclusive foreign jurisdiction offenses to U.S. military authorities for administrative or other appropriate disposition.

The rest of the military offenses subject to foreign jurisdiction, totaling 24,995 offenses, were concurrent jurisdiction offenses involving alleged violations of both U.S. military law and foreign law, over which the foreign country had the primary right to exercise jurisdiction. U.S. military authorities obtained a waiver of primary foreign jurisdiction in 21,521 of these incidents, for a world-wide waiver rate of 86.1 percent.

Thus, during the current reporting period, foreign authorities reserved for their disposition a total of 41,586 offenses allegedly committed by military personnel. A total of 39,787 of these offenses were relatively minor charges which were not punishable under U.S. military law, and were therefore subject to the exclusive jurisdiction of foreign authorities. It is significant to note that 38,564 of the military offenses reserved for disposition by foreign authorities, or 92.7 percent of the total offenses so reserved, involved traffic violations.

A total of 6,752 civilian employees and dependents were charged with offenses subject to foreign jurisdiction. As civilians are not subject to trial by court-martial in peacetime, the U.S. had no effective jurisdiction over these offenses. Nonetheless, foreign authorities released 331 of these offenses, or 4.9 percent of the total, to U.S. military authorities for administrative or other appropriate disposition.

During the current reporting period, there were 43,991 final results of trial (i.e., final acquittals and final convictions). Of this number, 382, or about .9 percent of the final results, were acquittals. The vast majority of U.S. personnel who were convicted—43,187 or 98.2 percent—received only a sentence to fine or reprimand. The remainder of the final results of trial consisted of 251 suspended sentences to confinement and 171 unsuspended sentences to confinement.

LITIGATION

The following litigation involving the Army during fiscal year 1982 had impact upon military justice matters: In *Wickham v.*

Hall, No. SA82CA3 (W.D. Tex., Feb. 82, 1982), *appeal pending*, No. 82-1084 (5th Cir., filed Feb. 17, 1982), the district court sustained the constitutionality of Article 3(b), Uniform Code of Military Justice, 10 U.S.C. section 802(b) (1976). Article 3(b) confers courts-martial jurisdiction over servicemembers who fraudulently procure discharges from the military. The case is pending decision in the Court of Appeals, Fifth Circuit.

EDUCATION AND TRAINING

During fiscal year 1982, The Judge Advocate General's School (TJAGSA), located in Charlottesville, Virginia, provided legal education to lawyers of the military services and other federal agencies. Thirty-seven resident courses were conducted with 3,120 students in attendance. Courses were attended by 2,138 Army, 96 Navy, 86 Marine, 150 Air Force, 34 Coast Guard, 33 Army National Guard, 435 civilian, and 18 foreign students.

During fiscal year 1982, two Basic Classes, the 97th and 98th, were conducted. A total of 186 Army officers graduated.

The 30th Graduate Course, with an enrollment of 69 students, graduated on May 21, 1982. In addition to 60 Army judge advocates, the class had five Marines, one Navy, and three foreign officers in attendance. The 31st Graduate Course began on August 16, 1982. This class, larger than previous classes, contains 78 Army, five Marines, one Navy, and three foreign officers. The first major revision of the Graduate Course curriculum since 1974 was accomplished during fiscal year 1982. This new curriculum was implemented with the 31st Graduate Course. The class will take all of its core subjects during the first two quarters and elective subjects during the last two quarters.

During fiscal year 1982, TJAGSA continued to provide senior officers with a legal orientation prior to their assumption of command. Sixteen general officers attended General Officer Legal Orientation (GOLO) Courses, and 208 battalion and brigade command designees attended five resident Senior Officer Legal Orientation (SOLO) Courses. Additionally, 49 Army War College students attended a special SOLO Course conducted at Carlisle Barracks, Pennsylvania, on April 19-22, 1982, and instructors from TJAGSA participated in 10 Pre-Command Courses conducted at Fort Leavenworth, Kansas, for battalion and brigade command designees.

The Administrative and Civil Law Division expanded its assistance to the field in several areas. Seven continuing legal education courses presented by the division included the Federal Labor Relations Course, two presentations of the Legal Assistance Course, the Claims Course, the Law Office Management Course, and two

presentations of the two-week Administrative Law for Military Installations Course. In addition, several instructors made presentations to attorneys in Europe at the USAREUR Administrative Law Conference and the USAREUR Legal Assistance Course. An instructor also presented a week of instruction to the NCO Advanced Course at Fort Benjamin Harrison, Indiana.

The new Legal Assistance Branch of the Administrative and Civil Law Division, assisted by Reserve Component attorneys throughout the United States published three *All States Guides* (Marriages and Divorce, Wills, and Garnishment), which have been distributed to all Army legal assistance offices. The enthusiastic response from the field has led to the preparation of several additional *All States Guides*. The branch has also prepared videotapes on powers of attorney, wills, and the Soldiers' and Sailors' Civil Relief Act for use in legal assistance waiting rooms to prepare clients for the interview with an attorney. To further improve the Army's legal assistance program, the governing regulation has been rewritten to maximize the program's value to our clients, the soldier and his or her family.

The Criminal Law Division sponsored six resident continuing legal education courses in fiscal year 1982. New Developments in Criminal Law was taught once, the three-week Military Judges Course was presented twice and the Trial Advocacy Course was presented three times. The advocacy courses combine instruction on new developments in criminal trial practice, seminars, and videotaped workshops to improve and polish the experienced trial attorney's advocacy skills. The major portion of these offerings is devoted to student-participation workshops and exercise to refine the attorney's courtroom skills and their techniques of persuasion. Additionally, the division presented three nonresident courses in Germany for counsel assigned in that theater. These included two general criminal law seminars and one professional responsibility seminar.

The Contract Law Division sponsored seven continuing legal education courses covering areas from fiscal law to the government's "contracting out" policies. The 1982 Government Contract Law Symposium, January 11-15, 1982, featured recent and proposed changes affecting government contract law, particularly in the area of disputes, debarment and suspension of contractors, and labor standards. In addition to this instruction, the division also provided extensive resident training in government contract law to Reserve Component judge advocates and units. The division presented the Fiscal Law Course away from TJAGSA, traveling to Fort Benjamin Harrison, Indiana; Fort Benning, Georgia; and Fort Monroe, Virginia.

The International Law Division sponsored three one-week

courses on the Law of Armed Conflict and one 2-½ day course on the Legal Aspects of Terrorism. Additionally, the division provided instructor support for a one-week course on the Law of Armed Conflict sponsored by USAREUR. All courses were designed for and attended by both judge advocates and operational staff officers. In keeping with the "operationalization of international law," the major focus of the courses was on practical, hands-on training, rather than didactic instruction. Utilizing practical exercises, seminars, and war gaming techniques, the students were presented with realistic situations that they had to resolve using the materials which are available in the field. Also, the Reserve Component judge advocates with international law responsibilities were present at TJAGSA for their triennial training. Similar materials and exercises were presented helping insure that both active and reserve forces are prepared to provide timely, accurate legal advice on military operations.

During the period June 21-July 2, 1982, The Judge Advocate General's School presented Phase VI of the Judge Advocate Officer Advanced Course to Reserve Component personnel. Phase VI involved instruction in contract law, claims, and international law. Concurrently, training was conducted for Judge Advocate General's Service Organization units specializing in international law and contract law. Approximately 210 judge advocates participated in this instruction. The 115th USAR School of Edison, New Jersey, acted as the host unit for administration and processing.

The Reserve Components Technical (On-Site) Training Program was conducted at 42 different locations throughout the United States, including Hawaii and Puerto Rico, during academic year 1981-1982. More than 1,700 personnel attended those training sessions, including 357 from the active and Reserve Components of the other services and 86 civilian attorneys.

MAJOR PROJECTS

On March 26, 1982, the eleventh Kenneth J. Hodson Lecture in Criminal Law was presented by Professor Peter Westen of the University of Michigan Law School. His topic was "Paradox of Plea Bargaining."

Professor Richard C. Wydick of the University of California at Davis School of Law delivered the sixth Charles L. Decker Lecture in Administrative and Civil Law on April 30, 1982. His topic was "Lawyers: Let Thy Words Be Few."

The Edward H. Young Lecture in Military Legal Education was presented by LTG Richard G. Trefry, The Inspector General of the Army, on September 2, 1982.

The School hosted the 1981 Worldwide JAG Conference, October

13-16, 1981. Over 100 senior judge advocates from posts throughout the world conferred on areas of interest and discussed recent developments in all areas of military law.

New editions of two publications for which TJAGSA is responsible were issued during FY 1982. These were AR 10-73, The Judge Advocate General's School, U.S. Army, and DA Pam 27-7, Military Handbook: Guide for Summary Court-Martial Procedure. Revision of several other publications is ongoing. Rescission action was completed on DA Pam 27-200, The Law of Land Warfare: A Self Instructional Text. Eight TJAGSA instructional deskbooks were made available to attorneys in the field through the Defense Technical Information Center. Articles of military legal interest continued 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*.

The Combat Development Office provided JAGC planning for the entire range of Army 86 studies with emphasis on the role of JAGC personnel in the next generation of the Army. Army 86 includes Heavy Division 86, Air Assault/Airborne Division 86, High Technology Light Division, Corps Operations, and Operations in Echelons Above Corps. Studies continued on the concept of Air/Land Battle 2000. The revision of the JAGC Manpower Authorization Criteria (MACRIT), found in AR-570-2, continued. The following publications were reviewed and revised: TC 12-6, Wartime Strength Accounting; AR 310-25, Dictionary of US Army Terms (partial review); FM 5-100, Engineer Combat Operations, US Army Operational Concept for Civil Affairs.

The Army Law Library Service (ALLS), operating with a budget of \$1.2 million, provided legal publications to over 250 libraries. One library was closed and two new libraries were established. Special emphasis was placed on expanding the legal resources available to several existing libraries and providing additional resource material dealing with procurement law.

The strength of the Reserve Components of the Judge Advocate General's Corps remained constant at approximately 2,350 throughout FY 1982. The Individual Mobilization Augmentee Program (formerly called Mobilization Designee or MOB DES) continued to be administered by the TJAGSA Reserve Affairs Department. The number of positions available in this program increased from 614 to 719 during 1982, and positions continued to be filled by judge advocates released from active duty, new accessions to the Corps, and officers transferring from Troop Program Units.

PERSONNEL, PLANS, AND POLICIES

With the inclusion of law students participating in the Funded

Legal Education Program, the strength of the Judge Advocate General's Corps at the end of fiscal year 1982 was 1815. Representing minority groups were 83 Blacks, 30 Hispanics, 21 Asian and Native Americans, and 150 women. The fiscal year 1982 end strength compares with an end strength of 1781 in fiscal year 1981, 1501 in fiscal year 1980, and 1430 in fiscal year 1979. The grade distribution of the Corps at the end of fiscal year was: 6 general officers, 88 colonels, 135 lieutenant colonels, 367 majors, 1190 captains, and 35 first lieutenants. There were 70 officers (56 captains and 14 first lieutenants) participating in the Funded Legal Education Program. There were also 63 warrant officers.

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

Eighty judge advocate officers completed the following schools:

U.S. Army War College	3
Industrial College of the Armed Forces	1
U.S. Army Command and General Staff College ...	10
Armed Forces Staff College	5
The Judge Advocate Officer Graduate Course	60

As a result of the Defense Officer Personnel Management Act (DOPMA), which became effective on September 15, 1981, newly-appointed JAG officers accessed for the October 1982 Basic Course were commissioned as first lieutenants. The JAGC, now a separate competitive category, selects and promotes its officers based on JAGC grade vacancies as they occur.

HUGH J. CLAUSEN
Major General, USA
The Judge Advocate General.

STATISTICAL SUMMARY: FISCAL YEAR 1982

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+) OR DECREASE (-) OVER LAST REPORT (Tried)
GENERAL	1500	1387	113	+ 5.2%
BCD SPECIAL	2556	2411		+42.6%
NON-BCD SPECIAL	1649	1480	169	-41.2%
SUMMARY	4151	3822	329	- 6.0%
OVERALL DECREASE IN PERSONS TRIED OVER FY 81				- 5.6%

PART 2 - DISCHARGES APPROVED (BY GCY Convening authority)

GENERAL COURTS-MARTIAL		
NUMBER OF DISHONORABLE DISCHARGES		463
NUMBER OF BAD CONDUCT DISCHARGES		1054
SPECIAL COURTS-MARTIAL		
NUMBER OF BAD CONDUCT DISCHARGES		1500

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	1255	} 2854 } 3186
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	1599	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	332	

PART 4 - WORKLOAD OF THE ARMY COURT OF MILITARY REVIEW

TOTAL CASES ON HAND BEGINNING OF PERIOD		791
GENERAL COURTS-MARTIAL		
	422	
BCD SPECIAL COURTS-MARTIAL		
	369	
CASES RECEIVED FOR REVIEW		
GENERAL COURTS-MARTIAL		
	1135	2661
BCD SPECIAL COURTS-MARTIAL		
	1526	
TOTAL CASES REVIEWED		
GENERAL COURTS-MARTIAL		
	1131	
BCD SPECIAL COURTS-MARTIAL		
	1481	
TOTAL CASES PENDING AT CLOSE OF FY		840
GENERAL COURTS-MARTIAL		
	426	
BCD SPECIAL COURTS-MARTIAL		
	414	
PERCENT INCREASE OVER NUMBER OF CASES REVIEWED DURING FY 81		2344
		11.4%

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

NUMBER	2437
PERCENTAGE	93.3%

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

PERCENTAGE OF ACMR REVIEWED CASES FORWARDED TO USCMA	58.2%
PERCENTAGE OF DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-0.8%
PERCENTAGE OF TOTAL PETITIONS GRANTED	5.7%
PERCENTAGE OF INCREASE OVER PREVIOUS REPORTING PERIOD	+0.1%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	3.3%
RATE OF DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	No change

STATISTICAL SUMMARY: FISCAL YEAR 1982—Continued

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		20
RECEIVED DURING FY		198
DISPOSED OF		179
GRANTED	12	
DENIED	165	
NO JURISDICTION	0	
WITHDRAWN	2	
TOTAL PENDING AT END OF PERIOD		39

PART 8 - ORGANIZATION OF COURT (Based on cases rec'd by ACMR during reporting period)		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL	884	} 3287
SPECIAL COURTS-MARTIAL (BCD)	1696	
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL	320	
SPECIAL COURTS-MARTIAL (BCD)	387	

PART 9 - COMPLAINTS UNDER ARTICLE 138	
NUMBER OF COMPLAINTS REC'D BY OTJAGI	

PART 10 - STRENGTH	
AVERAGE ACTIVE DUTY STRENGTH	790,849

PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)	
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	140,191
RATE PER 1,000	177.3
DECREASE(-) IN RATE PER 1,000 OVER PREVIOUS PERIOD	-23.5

ANNUAL REPORT
of
THE JUDGE ADVOCATE GENERAL OF THE NAVY
pursuant to
THE UNIFORM CODE OF MILITARY JUSTICE
for
FISCAL YEAR 1982

Supervision of the Administration of Military Justice.

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

Courts-Martial Workload.

a. There has been a slight decrease in the total number of courts-martial during fiscal year 1982. (See Exhibit A, attached to this report.) It should be noted, however, that this decrease is entirely within the area of non-BCD special courts-martial and summary courts-martial and that there has been a 4 percent increase in the number of BCD special courts-martial and a 25 percent increase in the number of general courts-martial.

b. During fiscal year 1982, the U. S. Navy-Marine Corps Court of Military Review received for review 5,169 new courts-martial cases, consisting of 552 general courts-martial and 4,617 special courts-martial, as compared with 3,467 courts-martial, consisting of 328 general courts-martial and 3,139 special courts-martial during fiscal year 1981. Of the 5,169 new cases received by the U. S. Navy-Marine Corps Court of Military Review in fiscal year 1982, 5,052 accused requested counsel (98 percent).

Navy-Marine Corps Trial Judiciary.

The Navy-Marine Corps Trial Judiciary provided military judges for 546 general courts-martial during fiscal year 1982, an increase

of 108 cases from the 1981 level of 438 general courts-martial. In 1982, 62 percent of the general courts-martial were tried by courts constituted with military judge alone. This represents a five percent increase of general courts-martial constituted without members during fiscal year 1982.

The Navy-Marine Corps Trial Judiciary supplied military judges for 8,999 special courts-martial during fiscal year 1982, a decrease of 219 cases from the fiscal year 1981 level. In fiscal year 1982, 90 percent of the special courts-martial were tried by courts constituted with military judge alone. This represents a one percent increase of special courts-martial constituted without members during fiscal year 1982.

During fiscal year 1982, military judges attended the following courses/seminars:

Three military judges attended the Criminal Evidence Course at the National Judicial College, Reno, Nevada, during the period 11-16 October 1981. One military judge attended the Law of War workshop at the Naval Justice School during the period 4-8 January 1982. Ten military judges attended the Eighth Interservice Military Trial Judges' Seminar at Maxwell Air Force Base during the period 5-9 April 1982. Five military judges attended the General Jurisdiction Course at the National Judicial College in Reno during the period 25 April-17 May 1982. Two military judges attended the Criminal Evidence Course at Reno during the period 9-14 May 1982. Six military judges attended the Military Judges Course at the Army Judge Advocate General's School at Charlottesville, Virginia, during the period 17 May-4 June 1982, and another nine military judges attended the course during the period 19 July-6 August 1982. One military judge attended the Criminal Evidence Course at Reno during the period 1-5 August 1982. One military judge in the TRANSATLANTIC Judicial Circuit gave the Senior Officer's Course in Military Justice at the Naval Air Station, Sigonella, Italy, on 3 and 4 March 1982.

The Chief Judge, Navy-Marine Corps Trial Judiciary, presented the administrative briefings at the Army Judge Advocate General's School, Charlottesville, Virginia, on 3 and 4 June 1982 and again on 4 and 5 August 1982. The Chief Judge accompanied several civilian judges as part of an official 1982 WESTPAC Trial Advocacy Team during the period 14 March-9 April 1982. The tour took them to the circuits located at Pearl Harbor, Hawaii; Subic Bay, Philippines; Okinawa, Japan, as well as Seoul, Korea, and Seattle, Washington. The Chief Judge also paid a working visit to the TIDEWATER, PIEDMONT, MIDSOUTH and SOUTHEAST Circuits during the period 10-19 August 1982. This was a valuable get-acquainted trip that proved beneficial to the judiciary as well as the convening authorities in the areas visited. On the trip the

Chief Judge discussed the Navy-Marine Corps Trial Judiciary and other military justice topics with flag and general officers in each location visited. Many favorable comments were received.

Due to the increase in personnel and consequent increase in courts-martial in the Corpus Christi area, one special courts-martial military judge has been assigned to Corpus Christi, Texas, to supplement the judges already assigned to the SOUTHEAST Judicial Circuit. A special courts-martial military judge has been assigned to the WESTPAC SOUTH Judicial Circuit at Subic Bay, Philippines, specifically to handle the increased caseload at Diego Garcia and the battle groups in the Indian Ocean. Additional military judges have been assigned to the TIDEWATER, SOUTH-WEST, ISLAND and TRANSATLANTIC Circuits due to the increased caseloads.

During this past fiscal year, the trial judiciary judges were in court over 18,000 hours, almost 2,000 more hours than the previous high of 16,215 in fiscal year 1981.

The use of trial teams which include a military judge has occurred with greater frequency during this period. Teams from Norfolk ride ships across the Atlantic and return on the relieved men of war. The same procedure is being utilized in Subic Bay, Philippines-Indian Ocean on a trial basis. The trial teams in the Indian Ocean deploy for three months at a time and have met with praise from the line commanders.

Naval Legal Service Command.

The Naval Legal Service Command at present consists of 21 Naval Legal Service Offices and 18 Naval Legal Service Office Detachments, which are located in areas of naval concentration throughout the world. The total manpower strength authorization for the Naval Legal Service Command includes 458 judge advocates, 8 warrant officers, 182 legalmen, 18 yeomen, and, for fiscal year 1982, 233 civilian employees (including 33 direct hire foreign nationals and seven indirect hire foreign nationals). Naval judge advocates in the Naval Legal Service Command comprise approximately 44 percent of the Navy's total judge advocate strength.

The Naval Legal Service Command has undergone the following changes during the past year:

a. The Naval Legal Service Office Detachments at Mayport, Florida, and New London, Connecticut, were disestablished on 1 October 1982, and immediately reestablished as Naval Legal Service Office, Mayport, Florida, and Naval Legal Service Office, Groton, Connecticut.

b. The Naval Legal Service Office Detachment Diego Garcia was established on 1 October 1982.

The Naval Legal Service Command under the direction of the

Judge Advocate General as Commander, Naval Legal Service Command, continues to provide timely responses to requests from activities requiring counsel and trial team services. The Naval Legal Service Command is providing an ever increasing amount of necessary legal services to local commands. Counsel are provided to convening authorities in a timely manner in support of the military justice process. The demand for support has increased since fiscal year 1978 when an average of 13 general courts-martial and 329 special courts-martial were processed each month by Naval Legal Service Offices and Detachments. The monthly average for fiscal year 1982 was 34 general courts-martial and 542 special courts-martial. Periodic command inspections into the operation of each of the various Naval Legal Service Offices and Detachments have shown that most line commanders who depend upon the Naval Legal Service Command for support continue to be satisfied with the quality and timeliness of services received.

Article 69, UCMJ, Petitions. a. The number of petitions filed pursuant to Article 69, Uniform Code of Military Justice, under which the Judge Advocate General may vacate or modify the findings or sentence of courts-martial which have become final in the sense of Article 76, but have not been reviewed by the U. S. Navy-Marine Corps Court of Military Review, decreased during fiscal year 1982.

b. In fiscal year 1982, 72 petitions were received by the Judge Advocate General. Ten petitions were pending from prior years. Of these 82 cases, 64 were reviewed during fiscal year 1982. Of those petitions reviewed, 52 petitions were denied, while relief was granted, in whole or in part, in 12 of the petitions. Fifteen cases were returned for compliance with JAGMAN 0144. Three cases were pending review at the close of fiscal year 1982.

c. In addition, in fiscal year 1982, 98 general courts-martial cases, which were not statutorily eligible for automatic review by the U. S. Navy-Marine Corps Court of Military Review, were reviewed by the Judge Advocate General.

Article 73, UCMJ, Petitions. In fiscal year 1982, two petitions for new trials were submitted and one petition was pending from fiscal year 1981 for review pursuant to Article 73, Uniform Code of Military Justice. All three petitions were denied.

Article 74(b), UCMJ, Petitions. Nine new petitions were submitted requesting the substitution of an administrative discharge for a punitive discharge awarded as part of a sentence by court-martial. One case was pending from the prior fiscal year. Of the ten petitions, one was granted and two were denied. Four petitions were returned for procedural compliance. Three cases were pending review.

Legal Conferences.

Due to budgetary restrictions, the annual Judge Advocate General's conference of judge advocates and legalmen from all major Navy and Marine Corps commands was not held during this fiscal year. During the period 28-30 October 1981, a senior judge advocates symposium was conducted. Panel discussions were conducted concerning the five-year plan for:

- The Naval Legal Service
- Mission and organization of the Office of the Judge Advocate General
- Community strength management
- Career patterns and professional development
- Reserve, enlisted and civilian personnel
- Naval Justice School
- Flag billets and procurement potpourri
- Technology and information management
- Claims processing
- Military justice problems
- Budget fiscal management problems
- Law office management and leadership
- Service to the fleet
- Personnel matters

Naval Justice School.

The Naval Justice School, in Newport, Rhode Island, with a teaching staff of fourteen officers and five enlisted personnel, presented the following courses of instruction in military law and related administrative and civil law matters to a total of 2,394 students during fiscal year 1982.

Lawyer Course. Five eight-week lawyer classes were presented during the year. This course, designed to provide basic training in military justice and military administrative and civil law matters to incoming Navy and Marine Corps lawyers, includes 191 hours of classroom instruction and 127 hours of practical exercises, including moot courts and various trial advocacy practical exercises. Training was provided to 139 Navy Lawyers and 42 Marine Corps lawyers.

Legal Officer Course. Seven five-week classes were presented during the year. This course is designed for nonlawyer junior officers about to assume duties as a legal officer for a ship, station or other military unit with no military lawyer assigned. Included in the course curriculum are 150 classroom hours and 44 hours of practical exercises and seminars. Training was provided to 274 Navy officers, 44 Marine Corps officers and three Coast Guard officers.

Naval-Marine Corps Reserve Officer Basic and Refresher

Courses. These two-week courses of instruction are offered once each summer for Naval Reserve and Marine Corps Reserve lawyers. The Basic Course serves as an introduction to military law for those lawyers without significant active duty legal experience. The Refresher Course is designed to provide an update in recent developments in military law for lawyers who have previously served on extended active duty as judge advocates, or who have previously attended the Reserve Officer Basic Course. Training was provided to 54 Naval Reserve lawyers and eleven Marine Corps Reserve lawyers.

Court Reporter Reserve Course. This two-week course of instruction is offered once each summer for enlisted personnel in the inactive reserve who are in an in-training status for the legalman rate. The course is broken down into two phases and offered in alternate years. Phase I is an introduction to legal clerk matters and a brief introduction to court reporting equipment. Phase II is advance training on such matters as legal assistance, claims, and use of court reporting equipment. Training was provided to 31 students in a specially constructed Phase II course this year.

Senior Officer Course. Thirty one-week classes were presented during the year, reaching a total of 1,410 students. This includes 143 students trained in the six classes which were presented in Newport. The others were presented in Jacksonville, Florida (2); Charleston, South Carolina (2); Norfolk, Virginia (2); Whidbey Island and Bremerton, Washington; San Francisco and San Diego, California (2); Camp Pendleton, California; Sigonella, Italy; Pearl Harbor, Hawaii (2); Subic Bay, Philippines; Yokosuka, Japan; Parris Island, South Carolina; Cherry Point, North Carolina; Amphibious Warfare School, and Command and Staff College, Quantico, Virginia; Naval Academy at Annapolis, Maryland; and New London, Connecticut. This course is designed primarily for commanding officers and executive officers, and is intended to prepare these officers to handle the legal problems normally faced by commanding and executive officers in the areas of military justice and administrative and civil law. Training was provided to officers as follows:

Navy—818
USMC—475
USCG— 87
USAF— 3
USA — 19
Others—8

Legal Clerk Course. Five three-and-one-half week classes were conducted during the year. This course is designed to train enlisted personnel to serve as legal yeomen or legal clerks at their respec-

tive commands. Graduation from this course, and from the following Court Reporter Course, is required for conversion to legalman in the Navy. Training was provided to 175 Naval personnel and eight Coast Guard personnel.

Court Reporter Course. Four five-and-one-half week classes were presented during fiscal year 1981. The purpose of this course is to train enlisted personnel in the field of closed-mask court reporting. Training was provided to 74 Navy personnel, 32 Army personnel, and nine Coast Guard personnel.

In addition to those formal courses of instruction listed above, the Naval Justice School also presented nearly 344 lecture hours of instruction in the areas of search and seizure, confessions and admissions, nonjudicial punishment, investigations, administrative discharges, and command relations with civil authorities, to 2,100 students at the Surface Warfare Officers School, Chaplains School, Officer Indoctrination School, Senior Enlisted Academy, Naval War College, and Naval Academy Preparatory School in Newport, Rhode Island, and at the Naval Submarine School in New London, Connecticut.

Ethics. Action was taken to maintain high ethical standards for counsel and judges who participate in courts-martial. Judge advocates, prior to commencing lawyer duties, received instruction at the Naval Justice School on the ABA Code of Professional Responsibility and Canons of Judicial Ethics, and the ABA Standards for the Administration of Criminal Justice. The JAG Ethics Committee was established by section 0141, *Manual of the Judge Advocate General*, to consider ethical questions and make appropriate recommendations to the Judge Advocate General. It is comprised of the Assistant Judge Advocate General (Civil Law); the Assistant Judge Advocate General (Military Law); the Assistant Judge Advocate General (Military Personnel and Management); a representative of the Commandant of the Marine Corps; and the Executive Assistant to the Judge Advocate General who acts as recorder. None of the matters considered by the JAG Ethics Committee during fiscal year 1982 were found to constitute unethical conduct or malpractice by any service judge advocate.

STATISTICAL SUMMARY: FISCAL YEAR 1982

Period: Fiscal Year 1982

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	546	512	34	+108 (+25%)
BCD SPECIAL	3733	3733		+148 (+ 4%)
NON-BCD SPECIAL	5266	4869	397	-367 (- 7%)
SUMMARY	7290	7073	217	-457 (- 6%)
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-568 (- 3%)

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES		96
NUMBER OF BAD CONDUCT DISCHARGES		350
SPECIAL COURTS-MARTIAL (SA LEVEL)		
NUMBER OF BAD CONDUCT DISCHARGES		3733

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	552
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	5337
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	63

PART 4 - WORKLOAD OF THE COURT OF MILITARY REVIEW

TOTAL ON HAND BEGINNING OF PERIOD		999
GENERAL COURTS-MARTIAL		
	174	
BCD SPECIAL COURTS-MARTIAL		
	825	
REFERRED FOR REVIEW		5297
GENERAL COURTS-MARTIAL		
	589	
BCD SPECIAL COURTS-MARTIAL		
	4708	
TOTAL CASES REVIEWED		5168
GENERAL COURTS-MARTIAL		
	544	
BCD SPECIAL COURTS-MARTIAL		
	4624	
TOTAL PENDING AT CLOSE OF PERIOD		1128
GENERAL COURTS-MARTIAL		
	219	
BCD SPECIAL COURTS-MARTIAL		
	909	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		1667 (+48%)

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE COURT OF MILITARY REVIEW

NUMBER	5052
PERCENTAGE	86%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	15%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+41%
PERCENTAGE OF TOTAL PETITIONS GRANTED	4%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+67%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	6%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+23%

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NOTE: *Manual figures for 4th Quarter FY 82 (1 Sep - 30 Oct 82)

STATISTICAL SUMMARY: FISCAL YEAR 1982—Continued

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		10
RECEIVED		57
DISPOSED OF		64
GRANTED	12	
DENIED	52	
NO JURISDICTION	0	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		3
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL		346
SPECIAL COURTS-MARTIAL		8214
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		200
SPECIAL COURTS-MARTIAL		784
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	110	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	740,217	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15) *		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		127912
RATE PER 1,000		127.80
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		- 2%

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REPORT OF
THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE
OCTOBER 1, 1981 TO SEPTEMBER 30, 1982

In compliance with the requirements of Article 6(a), Uniform Code of Military Justice (U.C.M.J), Major General Thomas B. Bruton, The Judge Advocate General, and Major General James Taylor, Jr., Deputy Judge Advocate General, made official staff visits to legal offices in the United States and overseas. They also attended and participated in various bar association meetings and addressed many civil, professional, and military organizations.

**MILITARY JUSTICE STATISTICS AND
US AIR FORCE JUDICIARY ACTIVITIES**

During fiscal year 1982, the Judiciary Directorate of the Office of The Judge Advocate General processed over 2769 actions involving military justice. The Directorate has the overall responsibility of supervising the administration of military justice throughout the United States Air Force, from the trial level through the appellate review process. In addition, the Directorate has the staff responsibility for the Office of The Judge Advocate General in all Air Force military justice matters which arise in connection with programs, special projects, studies and inquiries generated by the Air Staff; Headquarters USAF; the Secretaries, Departments of Defense, Army, Navy, and Air Force; members of Congress; and other interested federal, state and civil agencies. Some 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. There were 238 formal opinions provided the Secretary of the Air Force concerning those applications.

b. The Directorate received 876 inquiries in specific cases requiring either formal written replies or telephonic replies to senior executive officials, including the President, or to members of Congress.

AMJAMS

The Automated Military Justice Analysis and Management System (AMJAMS), which became operational in July 1974, is a fully automated data system which allows The Judge Advocate General's Department to collect and collate data concerning courts-martial and nonjudicial punishment. This information is used to provide current statistical reports and management tools for use by this headquarters, major commands, general court-martial jurisdictions and individual bases. It enables the Department to answer specific inquiries on cases in progress and to prepare studies of various aspects of military justice administration, as required by Congress and other governmental agencies, and for internal management purposes.

During fiscal year 1982, the system produced approximately 30 standard reports on a monthly basis and other 40 reports on a quarterly basis. The system was also used to answer many individual requests for particular statistical information. These special requests were received from such activities as the General Accounting Office, the Senate Armed Services Committee, Air Force Security Police and the Air Force Military Personnel Center.

Trial Judiciary

The Air Force Trial Judiciary had an average of 31 military trial judges assigned at 10 locations worldwide. These judges have handled the continuing upward trend in courts-martial with no increase in personnel except that, at year's end, a request for an additional judge for the Fifth Circuit at Travis Air Force Base, California, was pending.

Circuit Trial Counsel Program

The 20 circuit trial counsel stationed at nine locations within our seven judicial circuits worldwide continued a busy schedule of prosecuting general courts-martial and selected special courts-martial. In fiscal year 1979, circuit trial counsel tried 229 general courts (95% of the total) and 292 special courts (27% of the total). In fiscal year 1980, they tried 345 general courts (92% of the total) and 229 special courts (17% of the total). In fiscal year 1981, they tried 323 general courts (90% of the total) and 219 special courts (16% of the total). In fiscal year 1982, circuit trial counsel tried 378 general courts (88% of the total) and 119 special courts (9% of the total).

Area Defense Counsel Program

The worldwide Area Defense Counsel program separates 119

area defense counsel at 101 major Air Force installations from local command elements, bringing them under the direct supervision of a chief circuit defense counsel, assisted by a circuit defense counsel in each of the seven judicial circuits. Circuit counsel are under the direct supervision of the Chief, Defense Services Division in the Office of The Judge Advocate General, Washington, D.C. The area defense counsel is physically separated from staff judge advocate offices and provides legal representation in courts-martial; Article 32, U.C.M.J., investigations; custodial interrogations; administrative separations; Article 15; U.C.M.J., nonjudicial punishment actions; foreign criminal jurisdiction matters as military legal advisor; and other adverse actions in which counsel for an individual is required or authorized. Case assignments are made by the chief circuit defense counsel. Training and assistance for area defense counsel are provided by the chief circuit defense counsel and circuit defense counsel, who in all cases are experienced trial advocates. The program is designed to, and is actually perceived to, increase the overall stature of defense counsel and the quality of judicial functions throughout the Air Force.

Appellate Counsel

The appellate defense function of Defense Services Division has expanded the role of judge advocate reservists assigned to the division by assigning to them increasingly more difficult cases and issues for presentation to the Air Force Court of Military Review and the United States Court of Military Appeals. Four different reservists argued eight cases before the Court of Military Appeals on issues granted review by the court, and one reservist argued before the Air Force Court of Military Review. In addition, a reservist from the Government Trial and Appellate Counsel Division argued before the Air Force Court of Military Review a complex manslaughter case resulting from child abuse.

Confinement Facilities

Air Force prisoners with sentences of over 3 months confinement continue to be housed primarily at the United States Disciplinary Barracks, Fort Leavenworth, Kansas, and the confinement facilities at Fort Riley, Kansas, and Lowry Air Force Base, Colorado. The rehabilitation program at the 3320th Correction and Rehabilitation Squadron, Lowry Air Force Base, has been increased in capacity and now serves a population of approximately one hundred. This operation continues its long-time record of successfully restoring over fifty percent of those who enter the program to effective regular service. Plans call for use of Fort Riley to be

discontinued in 1983 and for Fort Lewis, Washington, to be substituted for prisoners now going to Fort Riley.

EDUCATION AND TRAINING

The Judge Advocate General's Department provided many general and continuing legal education opportunities to its personnel, as well as the other Armed Services, in fiscal year 1982.

The Air Force Judge Advocate General School Resident Courses

The Air Force Judge Advocate General School, Leadership and Management Development Center, Maxwell Air Force Base, Alabama, provided instruction in basic and continuing legal education (CLE) to active duty, Air Force Reserve and Air National Guard judge advocates, noncommissioned officers, and civilians during fiscal year 1982. The following courses were conducted at the school:

a. Judge Advocate Staff Officer Course—The course provides judge advocates with a foundation in the principles and concepts of military law while preparing them for certification as trial and defense counsel. Four 7-week classes were conducted in fiscal year 1982, with 134 judge advocates, six reservists, six Air National Guardsmen, and one foreign officer completing the course.

b. Staff Judge Advocate Course—This course was offered once in fiscal year 1982 for officers in rank of captain through colonel serving or selected to serve as staff judge advocates. Forty judge advocates and five reservists attended the course.

c. Reserve Forces Judge Advocate Course—Two 2-week classes were held during fiscal year 1982 to provide reservists and Air National Guard judge advocates with information on recent developments in military law. One hundred twenty-nine reservists and nineteen Air National Guardsmen completed the course.

d. Interservice Military Judges' Seminar—This 5-day seminar was conducted once during fiscal year 1982. Twenty-six Air Force judges and twenty-three military judges from the other Services attended.

e. Claims and Tort Litigation Course—This course held two sessions in fiscal year 1982. Fifty-five officers in the rank of captain through lieutenant colonel, and two civilians in grades GS-11 through GS-13 attended the lawyer course. The paralegal/examiners course had 43 NCOs and 17 civilian paralegal graduates.

f. Legal Service Advance Course—This course was conducted once during fiscal year 1982. A total of 47 NCOs attended the class—43 Air Force, two Army, and two Navy. Two reservists also attended the course. Air Force enlisted personnel receive basic paralegal training in the Legal Services Specialist Course at

Keesler Air Force Base, Mississippi. Twelve classes were held in fiscal year 1982, and 131 enlisted, eight reservists, and two civilians completed the course.

g. Federal Employee Labor Law Course—Two 1-week courses were conducted during fiscal year 1982 for 88 Air Force and two Army judge advocates, 17 civilian attorneys, and one reservist.

Professional Military Training

During fiscal year 1982, five judge advocates attended the Air Command and Staff College, and two attended the Air War College at Maxwell Air Force Base, Alabama. Two officers attended the Armed Forces Staff College, and one attended the National War College.

Short Courses at Civilian Universities

a. Prosecuting Attorney's Course at Northwestern University—Twenty-five judge advocates attended this 5-day course in fiscal year 1982.

b. Defense Attorney's Course at Northwestern University—Twenty-five judge advocates attended this 5-day course in fiscal year 1982.

c. National Judicial College at the University of Nevada—Thirteen judge advocates and one senior NCO attended courses at the college during fiscal year 1982.

Masters in Law Program

During fiscal year 1982, three judge advocates received their Master of Law in labor law, six in government procurement law, one in international law, and two in environmental law.

Procurement Law and Military Judge Courses: US Army JAG School

Sixty-eight judge advocates attended the basic procurement law course, and fifteen judge advocates attended the advanced procurement law course. Seven judge advocates attended the military judge course during fiscal year 1982.

CONTINUING LEGAL EDUCATION (CLE)

The administration of the continuing legal education program was transferred to the Air Force Judge Advocate General School during fiscal year 1982. The faculty began revising and updating five of the eleven courses. One new course, expert witness, was

added in fiscal year 1982. The videotape and seminar CLE programs provide nonresident judge advocates the opportunity to fulfill their mandatory state CLE requirements. Courses included in the program and maximum number of CLE credit available are as follows:

Law of Federal Labor/Management Relations	15 hours
Government Lawyer and Professional Responsibility	6 hours
Trial Techniques	9 hours
International Law—Conduct of Armed Conflict	6 hours
Federal Income Tax	4 hours
Supreme Court Trends in Criminal Law	3 hours
Appellate Commentary	5 hours
Environmental Law	6 hours
Government Contract Law	7 hours
Computer Assisted Legal Research	3 hours
Estate Planning	4 hours
Expert Witness	2.45 hours

PROFESSIONAL PUBLICATIONS

Interest in our professional publications, *The Air Force Law Review* and *The Reporter*, continues to grow. Many law schools are making them a part of their Federal documents depository program. Other subscribers include government agencies and both public and private libraries. Topics with special emphasis in 1982 included: Juvenile Misconduct, The Equal Access to Justice Act, International Agreements, Claims against Bankrupt Common Carriers and The Residual Hearsay Rule. They are praised by government lawyers, both military and civilian, as extremely valuable communications media that share streamlined procedures and lessons learned, promote crossfeed and a better informed and better prepared Department.

FEDERAL LEGAL INFORMATION THROUGH ELECTRONICS (FLITE)

The Office of The Judge Advocate General continued to operate and expand one of the world's largest automated legal research systems. Department of Defense users in fiscal year 1982 included the Joint Chiefs of Staff, every uniformed service, the Court of Military Appeals and the Armed Services Board of Contract Appeals. The many non-DOD users included the Office of the President, Congress, U.S. courts, the Department of Justice, and the International Trade Commission.

PERSONNEL

At the end of fiscal year 1982, the Department was authorized 5 generals, 114 colonels, 222 lieutenant colonels, 278 majors, 561 captains, and 52 first lieutenants. As of 30 September 1982, there were 1231 judge advocates on active duty (5 generals, 106 colonels, 199 lieutenant colonels, 244 majors, 637 captains, and 40 first lieutenants).

Appendix A: U.S. Coast Guard Courts-Martial/NJP Statistics for October 1, 1982 to September 30, 1982 (Fiscal Year 1982)

Period: 1 October 1981 - 30 September 1982

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	433	424	9	+20.6%
BCD SPECIAL	432	432		+39.4%
NON-BCD SPECIAL	1,137	1,045	92	+ 7.0%
SUMMARY	84	54	30	+61.5%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+16.9%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)	97
NUMBER OF DISHONORABLE DISCHARGES	
NUMBER OF BAD CONDUCT DISCHARGES	226
SPECIAL COURTS-MARTIAL (SA LEVEL)	419
NUMBER OF BAD CONDUCT DISCHARGES	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	353
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	400
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	62

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

TOTAL ON HAND BEGINNING OF PERIOD	106
GENERAL COURTS-MARTIAL	62
BCD SPECIAL COURTS-MARTIAL	44
REFERRED FOR REVIEW	753
GENERAL COURTS-MARTIAL	353
BCD SPECIAL COURTS-MARTIAL	400
TOTAL CASES REVIEWED	702
GENERAL COURTS-MARTIAL	316
BCD SPECIAL COURTS-MARTIAL	386
TOTAL PENDING AT CLOSE OF PERIOD	51
GENERAL COURTS-MARTIAL	37
BCD SPECIAL COURTS-MARTIAL	14
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+ 3.7%

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

NUMBER	731
PERCENTAGE	97%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	408/702	+58.1%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+ 1.1%
PERCENTAGE OF TOTAL PETITIONS GRANTED	55/408	+13.5%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		- .9%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	55/702	+ 7.8%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+41.9%

Air Force

**Appendix A: U.S. Coast Guard Courts-Martial/NJP Statistics for
October 1, 1981 to September 30, 1982 (Fiscal Year 1982)—Continued**

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		10
RECEIVED		51
DISPOSED OF		58
GRANTED	12	
DENIED	42	
NO JURISDICTION	4	
WITHDRAWN	-	
TOTAL PENDING AT END OF PERIOD		3
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		244
GENERAL COURTS-MARTIAL		
SPECIAL COURTS-MARTIAL		949
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		189
SPECIAL COURTS-MARTIAL		620
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	32	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	562,943	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		33,227
RATE PER 1,000		59.02
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		+3.9%

REPORT OF
THE GENERAL COUNSEL OF THE
DEPARTMENT OF TRANSPORTATION
(U.S. COAST GUARD)

October 1, 1981 to September 30, 1982

The table below shows the number of court-martial records received and filed at Coast Guard Headquarters during FY-82 and the five preceding years.

Fiscal Year	82	81	80	79	78	77
General Courts-Martial	9	2	3	2	3	5
Special Courts-Martial	79	58	67	47	58	84
Summary Courts-Martial	151	192	169	122	180	188
Total	239	252	239	171	241	277

COURTS-MARTIAL

Counsel and military judges are detailed to all special courts-martial. For most cases, the presiding judge was the full-time general courts-martial judge. When he was unavailable, military judges with other primary duties were utilized. Control of the detail of judges is centrally exercised, and all requirements have been met in a timely fashion.

General Courts-Martial

Charges referred to the nine general courts-martial convened this year included specifications alleging violations of Articles 80, 81, 92, 121, 126, 128, and 134 (eight of the nine cases involved marijuana or other controlled drugs). Six accused requested trial by military judge alone. Two of the six received a sentence which included a bad conduct discharge. Both cases involved marijuana

or other controlled drugs. Of the three tried by courts with members, two received sentences which included a bad conduct discharge, one of which involved controlled drugs. All bad conduct discharges awarded were approved by the convening authority.

Special Courts-Martial

Twenty-nine of the seventy-nine accused tried by special courts-martial this fiscal year were tried by the military judge alone. Two of the twenty-nine were acquitted of all charges and specifications. Three of the fifty accused, tried by members, were acquitted of all charges and specifications and one had all charges and specifications withdrawn by the convening authority prior to findings. Bad conduct discharges were awarded to four accused tried by military judge alone and five accused tried by courts with members. All of these punitive discharges were approved by the convening authority and when applicable the supervisory authority. One of the punitive discharges was suspended for a period of one year by the convening authority. Fifty of the accused whose charges were referred to special courts-martial were nonrated (pay grades E-1 thru E-3), twenty-six were petty officers (pay grades E-4 thru E-6), two were chief petty officers (pay grade E-7) and one was an officer (pay grade W-3). In the one special court-martial involving an officer, the Officer Exercising General Court-Martial Jurisdiction (supervisory authority) set aside the conviction because the court was not legally constituted and lacked jurisdiction over the offense and the accused.

The following table shows the distribution of the 404 specifications referred to special courts-martial.

Violation of the UCMJ, Article	No. of Spec's
80 (attempts)	15
85 and 86 (desertion and UA)	56
87 (missing movement)	9
89 (disrespect toward superior commissioned officer)	1
91 (willful disobedience or disrespect)	10
92 (violation of order or regulation)	63
107 (false official statement)	22
108 (offenses against USCG property)	16
121 (larceny and wrongful appropriation)	35
128 (assault)	6
134 (breaking restriction)	35
134 or 92 (marijuana offenses)	88
134 or 92 (other controlled drug offenses)	18
other offenses	30

The following is a breakdown of sentences awarded by the military judge alone in special courts-martial (27 convictions).

Sentence	Cases Imposed
bad conduct discharge	4
confinement at hard labor (two maximum)	20
hard labor without confinement	1
reduction in rate	13
restriction	1
forfeiture of pay (\$20,631 total)	21
fine (\$2,100 total)	1
others	1

In 10 of these 27 convictions, the accused pled guilty to all charges and specifications.

The following is a breakdown of sentences awarded in special courts-martial with members (47 convictions).

Sentence	Cases Imposed
bad conduct discharge	5
confinement at hard labor (3 maximum)	21
hard labor without confinement	3
reduction in rate	33
restriction	10
forfeiture of pay (\$31,571 total)	27
fine (\$3,629 total)	3
others	12

In 19 of these 47 convictions, the accused pled guilty to all charges and specifications.

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

FY	Number of Convictions	Forfeitures	Confinement	Reduction in grade
82	74	48 (65%)	41 (55%)	46 (62%)
81	55	41 (75%)	34 (62%)	38 (69%)
80	64	45 (70%)	37 (58%)	34 (53%)
average % for 3 yrs:		70%	58%	61%

Summation

Four of the nine general courts-martial, two with members and two with military judge alone, adjudged a sentence which included a bad conduct discharge. Thirty-seven percent of the accused tried by special court-martial were tried by military judge alone, and thirty-four percent of them pled guilty to all charges and specifica-

tions. Thirty-eight percent of the accused tried by special court-martial with members pled guilty to all charges and specifications. All nine of the bad conduct discharges adjudged this fiscal year were approved by the convening authority and, when applicable, by the supervisory authorities. One, however, was suspended by the convening authority for a period of one year. The five percent decrease in total courts-martial this fiscal year is attributed to the decrease in summary courts-martial. However, general and special courts-martial were up thirty-one percent 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 by accused under Article 69, UCMJ, a review is conducted under Article 69 of all courts-martial not requiring appellate review. Three Article 69 actions were taken as a result of these reviews, in addition to those reported in Part 7 of Appendix A, as follows:

Action of the Officer Exercising General Court-Martial

Jurisdiction set aside, record of trial forwarded to another officer exercising GCM jurisdiction for review pursuant to Article 65(c), UCMJ	1
Findings and sentence set aside and charges dismissed	2
Findings of guilty of one of the charges or specifications set aside, and sentence as reassessed found to be appropriate	2

PERSONNEL AND TRAINING

The Coast Guard has 153 law specialists serving on active duty. One hundred and twenty are serving in a legal capacity and thirty-three are serving in general duty billets. The junior law specialists serving at district office perform most trial and defense counsel services. Senior law specialists, most serving as district legal officers, are used as military judges when required.

The Seventh Coast Guard Basic Law Specialist Course was held at the Coast Guard Reserve Training Center, Yorktown, Virginia, from 20 September 1982 through 1 November 1982. The six week course normally introduces both the direct commissioned lawyers and the regular officers, just completing law school, to the many duties they would soon perform as Coast Guard law specialists. One-half of the course was devoted to military justice. Nonjudicial punishment, jurisdiction, professional responsibility and ethics, court procedures, trial/defense counsel duties, and the Articles of the Code most frequently litigated were some of the areas covered. Each student was given an opportunity to demonstrate recently

acquired knowledge and skills in moot courts. Twenty-seven Coast Guard officers are currently undergoing post-graduate studies in law and will be certified as law specialist at the completion of their studies.

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.

JOHN M. FOWLER
General Counsel
Department of Transportation.

Appendix A: U.S. Coast Guard Courts-Martial/NJP Statistics for October 1, 1981 to September 30, 1982 (Fiscal Year 1982)

Appendix A: U.S. Coast Guard Courts-Martial/NJP Statistics for October 1, 1981 to September 30, 1982 (Fiscal Year 1982)

Period: _____

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	09	09	00	+350%
BCD SPECIAL	79 ¹⁶²	73		+36%
NON-BCD SPECIAL	00	00	00	00
SUMMARY	151	138	13	-21%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-05%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)	00
NUMBER OF DISHONORABLE DISCHARGES	
NUMBER OF BAD CONDUCT DISCHARGES	04
SPECIAL COURTS-MARTIAL (SA LEVEL)	09 ³
NUMBER OF BAD CONDUCT DISCHARGES	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	04
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	09
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	05

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

TOTAL ON HAND BEGINNING OF PERIOD	02
GENERAL COURTS-MARTIAL	01
BCD SPECIAL COURTS-MARTIAL	01
REFERRED FOR REVIEW	10
GENERAL COURTS-MARTIAL	05
BCD SPECIAL COURTS-MARTIAL	05
TOTAL CASES REVIEWED	05
GENERAL COURTS-MARTIAL	02
BCD SPECIAL COURTS-MARTIAL	03
TOTAL PENDING AT CLOSE OF PERIOD	07
GENERAL COURTS-MARTIAL	04
BCD SPECIAL COURTS-MARTIAL	03
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-29%

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

NUMBER	08
PERCENTAGE	80%

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

PERCENTAGE OF COMR REVIEWED CASES FORWARDED TO USCMA	60%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-40%
PERCENTAGE OF TOTAL PETITIONS GRANTED	67%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	00
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY COMR	40%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	00%

**Appendix A: U.S. Coast Guard Courts-Martial/NJP Statistics for
October 1, 1981 to September 30, 1982 (Fiscal Year 1982)—Continued**

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		00
RECEIVED		04
DISPOSED OF		04
GRANTED	01	
DENIED	03	
NO JURISDICTION		
WITHDRAWN		
TOTAL PENDING AT END OF PERIOD		00
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		05
GENERAL COURTS-MARTIAL		
SPECIAL COURTS-MARTIAL		29
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		03
SPECIAL COURTS-MARTIAL		50
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	04	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	37,564	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		2478
RATE PER 1,000		91.51
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		+52%

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- ¹ Military judges are assigned to all cases referred to special courts-martial. The Coast Guard, therefore, considers all special courts-martial potential BCD cases.
- ² The convening authority withdrew all charges from one special court-martial prior to findings.
- ³ This figure includes one bad-conduct discharge that was approved by the convening authority but suspended by him for a period of one year.