SUPREME COURT OF THE UNITED STATES

No. 92–1482

ERIC J. WEISS, PETITIONER *v.* UNITED STATES

ERNESTO HERNANDEZ, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF MILITARY APPEALS

[January 19, 1994]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

We must decide in these cases whether the current method of appointing military judges violates the Appointments Clause of the Constitution, and whether the lack of a fixed term of office for military judges violates the Fifth Amendment's Due Process Clause. We conclude that neither constitutional provision is violated.

Petitioner Weiss, a United States Marine, pleaded guilty at a special court-martial to one count of larceny, in violation of Article 121 of the Uniform Code of Military Justice (UCMJ or Code), 10 U. S. C. §921. He was sentenced to three months of confinement, partial forfeiture of pay, and a bad-conduct discharge. Petitioner Hernandez, also a Marine, pleaded guilty to the possession, importation, and distribution of cocaine, in violation of Article 112a, UCMJ, 10 U. S. C. §912a, and conspiracy, in violation of Article 81, UCMJ, 10 U. S. C. §881. He was sentenced to 25 years of confinement, forfeiture of all pay, a reduction in rank, and a dishonorable discharge. The convening officer reduced Hernan-dez's sentence to 20 years of confinement.

The Navy-Marine Corps Court of Military Review, in separate appeals, affirmed petitioners' convictions. The Court of Military Appeals granted plenary review in petitioner Weiss' case to address his contention that the judges in his case had no authority to convict him because their appointments violated the Appointments Clause, and their lack of a fixed term of office violated the Due Process Clause. Relying on its recent decision in *United States* v. *Graf*, 35 M. J. 450 (1992), cert. pending, No. 92–1102, in which the Court unanimously held that due process does not require military judges to have a fixed term of office, the Court rejected Weiss' due process argument. 36 M. J. 224, 235, n. 1 (1992). In a splintered decision, the Court also rejected petitioner's Appointments Clause challenge.

Two of the five judges concluded that the initial appointment of military trial and appellate judges as commissioned officers is sufficient to satisfy the Appointments Clause. *Id.*, at 225–234 (plurality opinion). A separate appointment before taking on the duties of a military judge is unnecessary, according to the plurality, in part because the duties of a judge in the military justice system are germane to the duties that military officers already discharge. *Ibid.* One judge concurred in the result only, concluding that the Appointments Clause does not apply to the military. *Id.*, at 234–240 (opinion of Crawford, J.). The other two judges dissented separately. Both stressed the significant changes brought about by the Military Justice Act of 1968, particularly the duties added to the newly created office of military judge, and both concluded that the duties of a military judge are sufficiently distinct from the other duties performed by military officers to require a second appointment. See *id.*, at 240–256, (Sullivan, C. J., dissenting) and *id.*, at 256–263 (Wiss, J., dissenting).

The Court of Military Appeals accordingly affirmed petitioner Weiss' conviction. Based on its decision in *Weiss*, the Court, in an unpublished opinion, also affirmed petitioner Hernandez's conviction. Weiss and Hernandez then jointly petitioned for our review, and we granted certiorari. 508 U. S. ___ (1993).

It will help in understanding the issues involved to review briefly the contours of the military justice system and the role of military judges within that system. Pursuant to Article I of the Constitution, Congress has established three tiers of military courts. See U. S. Const., Art. I, §8, cl. 14. At the trial level are the courts-martial, of which there are three types: summary, special, and general. The summary court-martial adjudicates only minor offenses, has jurisdiction only over servicemembers, and can be conducted only with their consent. It is presided over

by a single commissioned officer who can impose up to one month of confinement and other relatively modest punishments. Arts. 16(3), 20, UCMJ, 10 U. S. C. §§816(3), 820.

The special court-martial usually consists of a military judge and three court-martial members,[1] although the Code allows the members to sit without a judge, or the accused to elect to be tried by the judge alone. Art. 16(2), UCMJ, 10 U. S. C. §816(2). A special court-martial has jurisdiction over most offenses under the UCMJ, but it may impose punishment no greater than six months of confinement, three months of hard labor without confinement, a bad conduct discharge, partial and temporary forfeiture of pay, and a reduction in rank. Art. 19, UCMJ, 10 U. S. C. §819. The general court-martial consists of either a military judge and at least five members, or the judge alone if the defendant so requests. Art. 16(1), UCMJ, 10 U. S. C. §816(1). A general court-martial has jurisdiction over all offenses under the UCMJ and may impose any lawful sentence, including death. Art. 18, UCMJ, 10 U. S. C. §818.

The military judge, a position that has officially existed only since passage of the Military Justice Act of 1968, acts as presiding officer at a special or general court-martial. Art. 26, UCMJ, 10 U. S. C. §826. The judge rules on all legal questions, and instructs court-martial members regarding the law and procedures to be followed. Art. 51, UCMJ, 10 U. S. C. §851. The members decide guilt or innocence and impose sentence unless, of course, the trial is before the judge alone. *Ibid.* No sentence imposed becomes final until it is approved by the officer who

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[1]Court-martial members may be officers or enlisted personnel, depending on the military status of the defendant; the members' responsibilities are analogous to, but somewhat greater than, those of civilian jurors. See Art. 25, UCMJ, 10 U. S. C. §825.

convened the court-martial. Art. 60, UCMJ, 10 U. S. C. §860.

Military trial judges must be commissioned officers of the armed forces[2] and members of the bar of a federal court or a State's highest court. Art. 26, UCMJ, 10 U. S. C. §826. The judges are selected and certified as qualified by the Judge Advocate General of their branch of the armed forces.[3] They do not serve for fixed terms and may perform judicial duties only when assigned to do so by the appropriate Judge Advocate General. While serving as judges, officers may also, with the approval of the Judge Advocate General, perform other tasks unrelated to their judicial duties. *Ibid.* There are approximately 74 judges currently certified to preside at general and special courts-martial. An additional 25 are certified to preside only over special courts-martial.

At the next tier are the four Courts of Military Review, one each for the Army, Air Force, Coast Guard, and Navy-Marine Corps. These courts, which usually sit in three-judge panels, review all cases in which the sentence imposed exceeds one year of confinement, involves the dismissal of a commissioned officer, or involves the punitive discharge of an enlisted servicemember. Art. 66, UCMJ, 10 U. S. C. §866. The courts may review *de novo* both factual and legal findings, and they may overturn convictions and sentences. *Ibid.*

Appellate judges may be commissioned officers or civilians, but each must be a member of a bar of a Federal court or of a State's highest court. *Ibid.* The

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[2]All commissioned officers are appointed by the President, with the advice and consent of the Senate. 10 U. S. C. §531.

[3]The Judge Advocate General for each service is the principal legal officer for that service. See 10 U. S. C. §3037 (Army), §5148 (Navy-Marine Corps), §8037 (Air Force); Art 1(1), UCMJ, 10 U. S. C. §801(1) (Coast Guard).

judges are selected and assigned to serve by the appropriate Judge Advocate General. *Ibid.* Like military trial judges, appellate judges do not serve for a fixed term. There are presently 31 appellate military judges.

Atop the system is the Court of Military Appeals, which consists of five civilian judges who are appointed by the President, with the advice and consent of the Senate, for fixed terms of 15 years. Arts. 67, 142, UCMJ, 10 U. S. C. §§ 867, 942 (1988 ed., Supp. IV). The appointment and tenure of these judges are not at issue here.

The Appointments Clause of Article II of the Constitution reads as follows:

> "[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Minsters and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." U. S. Const., Art. II, §2, cl. 2.

We begin our analysis on common ground. The parties do not dispute that military judges, because of the authority and responsibilities they possess, act as "officers" of the United States. See *Freytag* v. *Commissioner*, 501 U. S. ___, (1991) (concluding special trial judges of Tax Court are officers); *Buckley* v. *Valeo*, 424 U. S. 1, 126 (1976) ("[A]ny appointee exercising significant authority pursuant to the laws of the United States is an `Officer of the United States,' and must, therefore, be appointed in the manner prescribed by [the Appointments Clause]").

The parties are also in agreement, and rightly so, that the Appointments Clause applies to military officers. As we said in *Buckley*, "*all* officers of the United States are to be appointed in accordance with the Clause. . . . No class or type of officer is excluded because of its special functions." *Id.*, at 132 (emphasis in original).

It follows that those serving as military judges must be appointed pursuant to the Appointments Clause. All of the military judges involved in these cases, however, were already commissioned officers when they were assigned to serve as judges,[4] and thus they had already been appointed by the President with the advice and consent of the Senate.[5] The question we must answer, therefore, is whether these officers needed another appointment pursuant to the Appointments Clause before assuming their judicial duties. Petitioners contend that the position of military judge is so different from other positions to which an officer may be assigned that either Congress has, by implication, required a second appointment, or the Appointments Clause, by constitutional command, requires one. We reject

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[4]The constitutionality of the provision allowing civilians to be assigned to Courts of Military Review, without being appointed pursuant to the Appointments Clause, obviously presents a quite different question. See Art. 66(a), UCMJ, 10 U. S. C. §866(a). It is not at issue here.

[5]Although the record before us does not contain complete information regarding the military careers of the judges involved in these cases, it is quite possible that they had been appointed more than once before being detailed or assigned to serve as military judges. This is because 10 U. S. C. §624 requires a new appointment by the President, with the advice and consent of the Senate, each time a commissioned officer is promoted to a higher grade — *e.g.*, if a captain is promoted to major, he must receive another appointment.

both of these arguments.

Petitioners' argument that Congress by implication has required a separate appointment is based in part on the fact that military judges must possess certain qualifications, including membership in a state or federal bar. But such special qualifications in themselves do not, we believe, indicate a congressional intent to create a separate office. Special qualifications are needed to perform a host of military duties; yet no one could seriously contend that the positions of military lawyer or pilot, for example, are distinct offices because officers performing those duties must possess additional qualifications.

Petitioners' argument also ignores the fact that Congress has not hesitated to expressly require the separate appointment of military officers to certain positions. An additional appointment by the President and confirmation by the Senate is required for a number of top-level positions in the military hierarchy, including: the Chairman and Vice Chairman of the Joint Chiefs of Staff, 10 U. S. C. §§152, 154; the Chief and Vice Chief of Naval Operations, §§5033, 5035; the Commandant and Assistant Commandant of the Marine Corps, §§5043, 5044; the Surgeons General of the Army, Navy, and Air Force, §§3036, 5137, 8036; the Chief of Naval Personnel, 10 U. S. C. §5141; the Chief of Chaplains, §5142; and the Judge Advocates General of the Army, Navy, and Air Force, §§3037, 5148, 8037.

With respect to other positions, however, Congress has spoken quite differently. The Deputy and Assistant Chiefs of Staff for the Army, for example, are "general officers *detailed* to these positions." §3035 (emphasis supplied). The Chief of Staff of the Marine Corps and his assistants are "detailed" to those positions by the Secretary of the Navy. §5045. Commissioned officers "may be detailed for duty" with the American Red Cross by the appropriate

military Secretary. §711a. Secretaries of military departments "may assign or detail members of the armed forces" to be inspectors of buildings owned or occupied abroad by the United States. §713. The Secretary of the Navy "may assign" enlisted members of the Navy to serve as custodians of foreign embassies and consulates. §5983. And the President may "detail" officers of the Navy to serve as superintendents or instructors at Nautical Schools. This contrasting treatment indicates rather clearly that Congress repeatedly and consistently distinguished between an office which would require a separate appointment, and a position or duty to which one could be "assigned" or "detailed" by a superior officer.

The sections of the UCMJ relating to military judges speak explicitly and exclusively in terms of "detail" or "assign"; nowhere in these sections is mention made of a separate appointment. Title 10 U. S. C. §826(a) provides that a military judge shall be "detail[ed]" to each general court-martial, and may be "detail[ed]" to any special court-martial. The military judge of a general court martial must be designated by the Judge Advocate General, or his designee, §826(c), but the appropriate Service Secretary prescribes by regulation the manner in which military judges are detailed for special courts-martial, and what persons are authorized to so detail them. §866, in turn, provides that military appellate judges shall be "assigned to a Court of Military Review." The appropriate Judge Advocate General designates a chief judge for each Court of Military Review, and he also determines "on which panels of the court the appellate judges *assigned* to the court will serve and which military judge *assigned* to the court will act as the senior judge on each panel." *Ibid.* (emphasis supplied).

Congress' treatment of military judges is thus quite different from its treatment of those offices, such as Chairman of the Joint Chiefs of Staff, for which it

wished to require a second appointment before already-commissioned officers could occupy them. This difference negates any permissible inference that Congress intended that military judges should receive a second appointment, but in a fit of absentmindedness forgot to say so.

Petitioners' alternative contention is that even if Congress did not intend to require a separate appointment for a military judge, the Appointments Clause requires such an appointment by its own force. They urge upon us in support of this contention our decisions in *Buckley*, *supra*, *Freytag*, *supra*, and *Morrison* v. *Olson*, 487 U. S. 654 (1988). These decisions undoubtedly establish the analytical framework upon which to base the conclusion that a military judge is an "officer of the United States" —a proposition to which both parties agree. But the decisions simply do not speak to the issue of whether, and when, the Appointments Clause may require a second appointment.

The lead and dissenting opinions in the Court of Military Appeals devoted considerable attention to, and the parties before us have extensively briefed, the significance of our opinion in *Shoemaker* v. *United States*, 147 U. S. 282 (1893). There Congress had enacted a statute establishing a commission to supervise the development of Rock Creek Park in the District of Columbia. Three of the members were appointed by the President with the advice and consent of the Senate, but the remaining two members were the Chief of Engineers of the Army and the Engineer Commissioner of the District of Columbia. Both of the latter were already commissioned as military officers, but it was contended that the Appointments Clause required that they again be appointed to their new positions. The Court rejected the argument, saying:

> "[T]he argument is, that while Congress may create an office, it cannot appoint the officer; that

> the officer can only be appointed by the President with the approval of the Senate. . . . As, however, the two persons whose eligibility is questioned were at the time of the passage of the act . . . officers of the United States who had been theretofore appointed by the President and confirmed by the Senate, we do not think that, because additional duties, germane to the offices already held by them, were devolved upon them by the act, it was necessary that they should be again appointed by the President and confirmed by the Senate. It cannot be doubted, and it has frequently been the case, that Congress may increase the power and duties of an existing office without thereby rendering it necessary that the incumbent should be again nominated and appointed." *Id.,* at 300–301.

The present case before us differs from *Shoemaker* in several respects, at least one of which is significant for purposes of Appointments Clause analysis. In *Shoemaker*, Congress assigned new duties to two existing offices, each of which was held by a single officer. This no doubt prompted the Court's description of the argument as being that "while Congress may create an office, it cannot appoint the officer." By looking to whether the additional duties assigned to the offices were "germane," the Court sought to ensure that Congress was not circumventing the Appointments Clause by unilaterally appointing an incumbent to a new and distinct office. But here the statute authorized an indefinite number of military judges, who could be designated from among hundreds or perhaps thousands of qualified commissioned officers. In short, there is no ground for suspicion here that Congress was trying to both create an office and also select a particular individual to fill the office. Nor has Congress effected a "diffusion of the appointment power," about which this Court expressed concern in

Freytag, 501 U.S., at ___.

Even if we assume, *arguendo*, that the principle of "germaneness" applies to the present situation, we think that principle is satisfied here. By enacting the Uniform Code of Military Justice in 1950, and through subsequent statutory changes, Congress has gradually changed the system of military justice so that it has come to more closely resemble the civilian system. But the military in important respects remains a "specialized society separate from civilian society," *Parker* v. *Levy*, 417 U. S. 733, 743 (1974). Although military judges obviously perform certain unique and important functions, all military officers, consistent with a long tradition, play a role in the operation of the military justice system.

Commissioned officers, for example, have the power and duty to "quell quarrels, frays, and disorders among persons subject to [the UCMJ] and to apprehend persons subject to [the UCMJ] who take part therein." Art. 7(c), UCMJ, 10 U. S. C. §807(c). Commanding officers are authorized to impose "non-judicial punishment" which includes restricting a servicemember's movement for up to 30 days, suspending the member from duty, forfeiting a week's pay, and imposing extra duties for up to two consecutive weeks. Art. 15, UCMJ, 10 U. S. C. §815. A commissioned officer also may serve as a court-martial member. When the court-martial is held without a judge, as it can be in both summary and special courts-martial, the members conducting the proceeding resolve all issues that would otherwise be handled by the military trial judge. Art. 51, UCMJ, 10 U. S. C. §851. Convening officers, finally, have the authority to review and modify the sentence imposed by courts-martial. Art. 60, UCMJ, 10 U. S. C. §860. Thus, by contrast to civilian society, non-judicial military officers play a significant part in the administration of military justice.

By the same token, the position of military judge is

less distinct from other military positions than the office of full-time civilian judge is from other offices in civilian society. As the lead opinion in the Court of Military Appeals noted, military judges do not have any "inherent judicial authority separate from a court-martial to which they have been detailed. When they act, they do so as a court-martial, not as a military judge. Until detailed to a specific court-martial, they have no more authority than any other military officer of the same grade and rank." 36 M.J., at 228. Military appellate judges similarly exercise judicial functions only when they are "assigned" to a Court of Military Review. Neither military trial nor appellate judges, moreover, have a fixed term of office. Commissioned officers are assigned or detailed to the position of military judge by a Judge Advocate General for a period of time he deems necessary or appropriate, and then they may be reassigned to perform other duties. Even while serving as military trial judges, officers may perform, with the permission of the Judge Advocate General, duties unrelated to their judicial responsibilities. Art. 26(c), UCMJ, 10 U. S. C. §826(c). Whatever might be the case in civilian society, we think that the role of military judge is "germane" to that of military officer.

In sum, we believe that the current scheme satisfies the Appointments Clause. It is quite clear that Congress has not required a separate appointment to the position of military judge, and we believe it equally clear that the Appointments Clause by its own force does not require a second appointment before military officers may discharge the duties of such a judge.

Petitioners next contend that the Due Process Clause requires that military judges must have a fixed term of office. Petitioners recognize, as they must, that the Constitution does not require life tenure for

Article I judges, including military judges. See *United States ex rel. Toth* v. *Quarles*, 350 U. S. 11, 17 (1955). Nor does the trial by an Article I judge lacking life tenure violate a defendant's due process rights. See *Palmore* v. *United States*, 411 U. S. 389, 410 (1973). Petitioners thus confine their argument to the assertion that due process requires military judges to serve for some fixed length of time—however short.

Congress, of course, is subject to the requirements of the Due Process Clause when legislating in the area of military affairs, and that Clause provides some measure of protection to defendants in military proceedings. See *Rostker* v. *Goldberg*, 453 U. S. 57, 67 (1981); *Middendorf* v. *Henry*, 425 U. S. 25, 43 (1976). But in determining what process is due, courts "must give particular deference to the determination of Congress, made under its authority to regulate the land and naval forces, U. S. Const., Art. I, §8," *Middendorf* v. *Henry*, 425 U. S. 25, 43 (1976). Petitioners urge that we apply the due process analysis established in *Mathews* v. *Eldridge*, 424 U. S. 319, 334–335 (1976). The Government contends that *Medina* v. *California*, 505 U. S. ___ (1992), supplies the appropriate analytical framework.

Neither *Mathews* nor *Medina*, however, arose in the military context, and we have recognized in past cases that "the tests and limitations [of due process] may differ because of the military context." *Rostker*, *supra*, at 67. The difference arises from the fact that the Constitution contemplates that Congress has "plenary control over rights, duties, and responsibilities in the framework of the Military Establishment, including regulations, procedures, and remedies related to military discipline." *Chappell* v. *Wallace*, 462 U. S. 296, 301 (1983). Judicial deference thus "is at its apogee" when reviewing congressional decisionmaking in this area. *Rostker*, *supra*, at 70. Our deference extends to rules relating

to the rights of servicemembers: "Congress has primary responsibility for the delicate task of balancing the rights of servicemen against the needs of the military. . . . [W]e have adhered to this principle of deference in a variety of contexts where, as here, the constitutional rights of servicemen were implicated." *Solorio* v. *United States*, 483 U. S. 435, 447–448 (1987).

We therefore believe that the appropriate standard to apply in these cases is found in *Middendorf*, *supra*, where we also faced a due process challenge to a facet of the military justice system. In determining whether the Due Process Clause requires that servicemembers appearing before a summary court-martial be assisted by counsel, we asked "whether the factors militating in favor of counsel at summary courts-martial are so extraordinarily weighty as to overcome the balance struck by Congress." *Middendorf*, 425 U. S., at 44. We ask the same question here with respect to fixed terms of office for military judges.

It is elementary that "a fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison*, 349 U. S. 133, 136 (1955). A necessary component of a fair trial is an impartial judge. See *ibid.; Tumey* v. *Ohio*, 273 U. S. 510, 532 (1927). Petitioners, however, do not allege that the judges in their cases were or appeared to be biased. Instead, they ask us to assume that a military judge who does not have a fixed term of office lacks the independence necessary to ensure impartiality. Neither history nor current practice, however, supports such an assumption.

Although a fixed term of office is a traditional component of the Anglo-American civilian judicial system, it has never been a part of the military justice tradition. The early English military tribunals,

which served as the model for our own military justice system, were historically convened and presided over by a military general. No tenured military judge presided. See Schlueter, The Court-Martial: An Historical Survey, 87 Mil. L. Rev. 129, 135, 136–144 (1980).

In the United States, although Congress has on numerous occasions during our history revised the procedures governing courts-martial, it has never required tenured judges to preside over courts-martial or to hear immediate appeals therefrom.[6] See W. Winthrop, Military Law and Precedents, 21–24, 953–1000 (2d ed. 1920) (describing and reprinting the Articles of War, which governed court-martial proceedings during the 17th and 18th centuries); F. Gilligan & F. Lederer, 1 Court-Martial Procedure 11–24 (1991) (describing 20th century revisions to Articles of War, and enactment of and amendments to UCMJ). Indeed, as already mentioned, Congress did not even create the position of military judge until 1968. Courts-martial thus have been conducted in this country for over 200 years without the presence of a tenured judge, and for over 150 years without the presence of any judge at all.

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[6]Congress did create a nine-member commission in 1983 to examine, *inter alia*, the possibility of providing tenure for military judges. Military Justice Act of 1983, Pub. L. 98–209, §9(b), 97 Stat. 1393, 1404–1405 (1983). The commission published its report a year later, in which it recommended against providing a guaranteed term of office for military trial and appellate judges. See D. Schlueter, Military Criminal Justice: Practice and Procedure 33–34, and nn. 86, 87 (3d ed. 1992) (listing members of commission and describing report). Congress has taken no further action on the subject.

As the Court of Military Appeals observed in *Graf*, 35 M. J., at 462, the historical maintenance of the military justice system without tenured judges "suggests the absence of a fundamental fairness problem." Petitioners in effect urge us to disregard this history, but we are unwilling to do so. We do not mean to say that any practice in military courts which might have been accepted at some time in history automatically satisfies due process of law today. But as Congress has taken affirmative steps to make the system of military justice more like the American system of civilian justice, it has nonetheless chosen not to give tenure to military judges. The question under the Due Process Clause is whether the existence of such tenure is such an extraordinarily weighty factor as to overcome the balance struck by Congress. And the historical fact that military judges have never had tenure is a factor that must be weighed in this calculation.

A fixed term of office, as petitioners recognize, is not an end in itself. It is a means of promoting judicial independence, which in turn helps to ensure judicial impartiality. We believe the applicable provisions of the UCMJ, and corresponding regulations, by insulating military judges from the effects of command influence, sufficiently preserve judicial impartiality so as to satisfy the Due Process Clause.

Article 26 places military judges under the authority of the appropriate Judge Advocate General rather than under the authority of the convening officer. 10 U. S. C. §826. Rather than exacerbating the alleged problems relating to judicial independence, as petitioners suggest, we believe this structure helps protect that independence. Like all military officers, Congress made military judges accountable to a superior officer for the performance of their duties. By placing judges under the control of Judge Advocates General, who have no interest in the

outcome of a particular court-martial, we believe Congress has achieved an acceptable balance between independence and accountability.

Article 26 also protects against command influence by precluding a convening officer or any commanding officer from preparing or reviewing any report concerning the effectiveness, fitness, or efficiency of a military judge relating to his judicial duties. *Ibid.* Article 37 prohibits convening officers from censuring, reprimanding, or admonishing a military judge "with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding." 10 U. S. C. §837. Any officer who "knowingly and intentionally fails to enforce or comply" with Article 37 "shall be punished as a court-martial may direct." Art. 98, UCMJ, 10 U. S. C. §898. The Code also provides that a military judge, either trial or appellate, must refrain from adjudicating a case in which he has previously participated, Arts. 26(c), 66(h), UCMJ, 10 U. S. C. §§826(c), 866(h), and the Code allows a defendant to challenge both a court-martial member and a court-martial judge for cause, Art. 41, UCMJ, 10 U. S. C. §841. The Code also allows a defendant to learn the identity of the military judge before choosing whether to be tried by the judge alone, or by the judge and court-martial members. Art. 16, UCMJ, 10 U. S. C. §816.

The entire system, finally, is overseen by the Court of Military Appeals, which is composed entirely of civilian judges who serve for fixed terms of 15 years. That Court has demonstrated its vigilance in checking any attempts to exert improper influence over military judges. In *United States* v. *Mabe*, 33 M. J. 200 (1991), for example, the Court considered whether the Judge Advocate General of the Navy, or his designee, could rate a military judge based on the appropriateness of the judge's sentences at courts-martial. As the Court later described: "We held [in

Mabe] that the existence of such a power in these military officers was inconsistent with Congress' establishment of the military `judge' in Article 26 and its exercise violated Article 37 of the Code." *Graf*, 35 M. J., at 465. And in *Graf*, the Court held that it would also violate Articles 26 and 37 if a Judge Advocate General decertified or transferred a military judge based on the General's opinion of the appropriateness of the judge's findings and sentences. *Ibid.*[7]

The absence of tenure as a historical matter in the system of military justice, and the number of safeguards in place to ensure impartiality, lead us to reject petitioners' due process challenge. Petitioners have fallen far short of demonstrating that the factors favoring fixed terms of office are so extraordinarily weighty as to overcome the balance achieved by Congress. See *Middendorf*, 425 U. S., at 44.

For the reasons stated, we reject the petitioners' Appointments Clause and Due Process Clause attacks on the judges who convicted them and those who heard their appeals. The judgments of the Court of Military Appeals are accordingly

Affirmed.

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[7]This added limitation on the power of the Judge Advocates General to remove military judges refutes petitioners' contention that Judge Advocates General have unfettered discretion both to appoint and remove military judges.