

ANNUAL REPORT
of the
CODE COMMITTEE
on
MILITARY JUSTICE



INCLUDING SEPARATE REPORTS
of the
U.S. COURT OF APPEALS FOR THE ARMED FORCES,
THE JUDGE ADVOCATES GENERAL
OF THE U.S. ARMED FORCES

For the Period
October 1, 2005 to September 30, 2006

ANNUAL REPORT

SUBMITTED TO THE

COMMITTEES ON ARMED SERVICES

of the

United States Senate

and the

United States House of Representatives

and to the

SECRETARY OF DEFENSE,

SECRETARY OF HOMELAND SECURITY,

and

SECRETARIES OF THE

ARMY, NAVY, AND AIR FORCE

**PURSUANT TO THE
UNIFORM CODE OF MILITARY JUSTICE
For the Period
October 1, 2005 to September 30, 2006**

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SECTION 1

JOINT ANNUAL REPORT OF THE CODE COMMITTEE

**JOINT ANNUAL REPORT OF THE
CODE COMMITTEE PURSUANT TO THE
UNIFORM CODE OF MILITARY JUSTICE**

October 1, 2005 to September 30, 2006

The Judges of the United States Court of Appeals for the Armed Forces, the Judge Advocates General of the Army, Navy, Air Force, and Coast Guard, the Staff Judge Advocate to the Commandant of the Marine Corps, and Professor Edward J. Imwinkelried and Professor Gregory E. Maggs, Public Members appointed by the Secretary of Defense, submit their annual report on the operation of the Uniform Code of Military Justice pursuant to Article 146 of the Uniform Code of Military Justice, Title 10, United States Code, § 946.

The Code Committee met on May 16, 2006, to consider matters pertaining to the administration of military justice. The meeting was open to the public. Colonel Flora Darpino, JA, U.S. Army, the Chair of the Joint Service Committee, informed the Committee that the recommendations in the 2002 and 2003 annual reviews of the Joint Service Committee had been signed by the President in an Executive Order in October, 2005. The 2004 recommendations were pending review at the Department of Justice. These recommendations deal with permitting remote testimony at courts-martial, and adding provisions in the Manual for Courts-Martial under Article 119a, UCMJ, involving the death of or injury to an unborn child, and under Article 120a, stalking. Colonel Darpino added that the 2005 review contains provisions involving the offense of child endangerment, sentence enhancers in cases with child victims, increasing the punishment for maiming, giving the military judge the authority to overturn guilty findings prior to authentication of the record of trial, and adding a provision for a post-trial recommendation from the Secretary of Defense in capital cases. The review also addresses evidentiary issues governing "de facto" children and the status of the clergy privilege as it pertains to clergy assistants. Colonel Darpino concluded her briefing by stating that current considerations include finalizing the Manual for Courts-Martial provisions for the revised Article 120, UCMJ, and the authority of the military judge during post-trial processing.

Judge Erdmann then reported to the Committee on the work of a sub-committee appointed to review suggested changes to the UCMJ by Senior Judge Robinson Everett. Senior Judge Everett's suggestions were: to allow the accused to elect sentencing by the military judge after findings have been made by court members; to amend Articles 18 and 21 of the UCMJ by using the words "law of nations" instead of "law of war"; to authorize the U.S. Court of Appeals for the Armed Forces to conduct discretionary review of cases tried by military tribunals; to broaden the authority of the U.S. Court of Appeals for the Armed Forces under the All Writs Act; to re-examine the issue of affording

life tenure to the judges of the U.S. Court of Appeals for the Armed Forces; and to develop a more effective manner for the review of administrative discharges, specifically other than honorable discharges.

Judge Erdmann summarized that the sub-committee recommended further discussion on two of the suggestions: sentencing by the military judge after findings by court members, and amending Articles 18 and 21, UCMJ. The Code Committee agreed to seek the positions of the Judge Advocates General before proceeding further on the first issue. On the second, Judge Erdmann noted that this matter had been previously referred to the International Law Division for review. The Code Committee agreed to request the General Counsel to expand on the request to analyze the matter.

Judge Erdmann also stated that there had been consideration of recommending a change to the membership of the Code Committee involving the judges of the court and that the matter was still under discussion.

Separate reports of the United States Court of Appeals for the Armed Forces and the individual Armed Forces address further items of special interest to the Committees on Armed Services of the United States Senate and the United States House of Representatives, as well as the Secretaries of Defense, Homeland Security, Army, Navy, and Air Force.

Andrew S. Effron
Chief Judge

James E. Baker
Associate Judge

Charles E. "Chip" Erdmann
Associate Judge

Scott W. Stucky
Associate Judge

Margaret A. Ryan
Associate Judge

Major General Scott C. Black, USA
The Judge Advocate General of the Army

Rear Admiral Bruce E. MacDonald, JAGC, USN
The Judge Advocate General of the Navy

Major General Jack L. Rives, USAF
The Judge Advocate General of the Air Force

Rear Admiral William D. Baumgartner, USCG
The Judge Advocate General of the Coast Guard

Brigadier General James C. Walker, USMC
Staff Judge Advocate to the Commandant of the Marine Corps

Professor Edward J. Imwinkelried
Public Member

Professor Gregory E. Maggs
Public Member

* NOTE: During the reporting period, the U.S. Court of Appeals for the Armed Forces was composed of the following Judges: Chief Judge H.F. "Sparky" Gierke, Judge Susan J. Crawford, Judge Andrew S. Effron, Judge James E. Baker, Judge Charles E. "Chip" Erdmann. Chief Judge Gierke and Judge Crawford retired on September 30, 2006. Judge Effron became Chief Judge on October 1, 2006. Judge Stucky and Judge Ryan joined the Court on December 20, 2006.

SECTION 2

REPORT OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

**REPORT OF THE
UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

October 1, 2005 to September 30, 2006

The Judges of the United States Court of Appeals for the Armed Forces submit their annual report on the administration of the Court and military justice during the 2006 Term of the Court to the Committees on Armed Services of the United States Senate and the United States House of Representatives, and to the Secretaries of Defense, Homeland Security, Army, Navy, and Air Force in accordance with Article 146, Uniform Code of Military Justice, Title 10, United States Code, § 946.

THE BUSINESS OF THE COURT

The filing and disposition of cases are set forth in the attached statistical report and graphs. Additional information pertaining to specific opinions is available from the Court's published opinions and Daily Journal. Other dispositions may be found in the Court's official reports, West's Military Justice Reporter, and on the Court's web site.

During the 2006 Term of the Court, the Court admitted 276 attorneys to practice before its Bar, bringing the cumulative total of admissions before the Bar of the Court to 33,784.

**PUBLIC AWARENESS PROJECT
(PROJECT OUTREACH)**

In furtherance of a practice established in 1987, the Court scheduled several special sessions and heard oral arguments outside its permanent courthouse in Washington, D.C., during the 2006 Term of Court. This practice, known as "Project Outreach," was developed as part of a public awareness program to demonstrate the operation of a Federal Court of Appeals, and the military's criminal justice system. The Court conducted hearings during this period, without objection of the parties, at Barry University School of Law, Orlando, Florida; Florida A & M University School of Law, Orlando, Florida; Columbus School of Law, Catholic University of America, Washington, D.C.; the United States Air Force Academy, Colorado Springs, Colorado; Denver University School of Law, Denver, Colorado; and the Washington College of Law, American University, Washington, D.C.

JUDICIAL VISITATIONS

During the 2006 Term of Court, the Judges of the Court participated in professional training programs for military and civilian lawyers, spoke to professional groups of judges and lawyers,

and visited with judge advocates, military judges, commanders, and other military personnel at various military installations.

JUDICIAL CONFERENCE

On May 17 and 18, 2006, the Court held its annual Judicial Conference at the Catholic University of America, Columbus School of Law, Washington, D.C. The program for this Judicial Conference was certified for credit to meet the continuing legal education requirements of State Bars throughout the United States. The conference opened with welcoming remarks from Dean Vera V. Miles of the Columbus School of Law, and the Honorable H. F. "Sparky" Gierke, Chief Judge, United States Court of Appeals for the Armed Forces. They were followed by speakers for this year's conference, including Supreme Court Justice Ruth Bader Ginsburg; Judge John J. Farley, III, U.S. Court of Appeals for Veterans Claims; Professor David A. Koplow, Georgetown University Law Center; Professor Peter B. Rutledge, Columbus School of Law, Catholic University of America; Professor Stephen A. Salzburg, George Washington University School of Law; Professor Edward J. Imwinkelried, University of California, Davis School of Law; Mr. Karl F. Schneider, Deputy Assistant Secretary of the Army; Mr. Brian F. Spector, Kenny Nachwalter, P.A.; Colonel Dwight H. Sullivan, USMCR, Chief Defense Counsel, Office of Military Commissions; Captain Kurt A. Johnson, JAGC, USN, Staff Judge Advocate, NORAD/Northern Command; and Lieutenant Colonel Mark L. Johnson and Major Christopher W. Behan, Judge Advocate General's School, Charlottesville, Virginia.

Andrew S. Effron
Chief Judge

James E. Baker
Associate Judge

Charles E. "Chip" Erdmann
Associate Judge

Scott W. Stucky
Associate Judge

Margaret A. Ryan
Associate Judge

USCAAF STATISTICAL REPORT

2006 TERM OF COURT

CUMULATIVE SUMMARY

CUMULATIVE PENDING OCTOBER 1, 2005

Master Docket	87
Petition Docket	252
Miscellaneous Docket.	<u>6</u>
TOTAL	345

CUMULATIVE FILINGS

Master Docket	116
Petition Docket	1,006
Miscellaneous Docket.	<u>23</u>
TOTAL	1,145

CUMULATIVE TERMINATIONS

Master Docket	165
Petition Docket	1,018
Miscellaneous Docket.	<u>29</u>
TOTAL	1,212

CUMULATIVE PENDING OCTOBER 1, 2006

Master Docket	38
Petition Docket	240
Miscellaneous Docket.	<u>0</u>
TOTAL	278

OPINION SUMMARY

<u>CATEGORY</u>	<u>SIGNED</u>	<u>PER CURIAM</u>	<u>MEM/ORDER</u>	<u>TOTAL</u>
Master Docket	69	4	92	165
Petition Docket	0	1	1,017	1,018
Miscellaneous Docket.	<u>2</u>	<u>0</u>	<u>27</u>	<u>29</u>
TOTAL	71	5	1,136	1,212

FILINGS (MASTER DOCKET)

Remanded from Supreme Court	0
Returned from Court of Criminal Appeals	1
Mandatory appeal filed	0

Certificates filed	5
Reconsideration granted	0
Petitions granted from Petition Docket.	<u>110</u>
TOTAL	<u>116</u>

TERMINATIONS (MASTER DOCKET)

Findings and sentence affirmed	113		
Reversed in whole or in part	52	Signed . . .	71
Granted petitions vacated	0	Per Curiam .	5
Other disposition directed	<u>0</u>	Mem/Order .	<u>92</u>
TOTAL	<u>165</u>	TOTAL	<u>165</u>

PENDING (MASTER DOCKET)

Awaiting briefs	18
Awaiting oral argument	15
Awaiting lead case decision (trailer cases)	1
Awaiting final action	<u>4</u>
TOTAL	<u>38</u>

FILINGS (PETITION DOCKET)

Petitions for grant of review filed	1,003
Petitions for new trial filed	1
Petitions for reconsideration granted	1
Returned from Court of Criminal Appeals	<u>1</u>
TOTAL	<u>1,006</u>

TERMINATIONS (PETITION DOCKET)

Petitions for grant denied	826		
Petitions for grant granted	181	Signed . . .	0
Petitions for grant dismissed	1	Per Curiam .	1
Petitions for grant withdrawn	<u>10</u>	Mem/Order .	<u>1,017</u>
TOTAL	<u>1,018</u>	TOTAL	<u>1,018</u>

PENDING (PETITION DOCKET)

Awaiting briefs	98
Awaiting Central Legal Staff review	134
Awaiting final action	<u>8</u>
TOTAL	<u>240</u>

FILINGS MISCELLANEOUS DOCKET

Remanded from Supreme Court	0
Writs of error coram nobis sought	0
Writs of habeas corpus sought	2

Other extraordinary relief sought	15
Writ appeals sought	<u>6</u>
TOTAL	23

MISCELLANEOUS DOCKET TERMINATIONS

Petitions denied	27
Petitions granted	0
Petitions dismissed	0
Petitions withdrawn	0
Petitions remanded	1
Other	<u>1</u>
TOTAL	29

Signed	2
Per curiam	0
Mem/order	<u>27</u>
TOTAL	29

PENDING ON MISCELLANEOUS DOCKET

Awaiting briefs	0
Awaiting staff review	0
Awaiting final action	<u>0</u>
TOTAL	0

RECONSIDERATIONS

ALL CASES

DISPOSITIONS

Begin pending	0	Granted	1
Filings	<u>27</u>	Denied	<u>20</u>
TOTAL	27	TOTAL	21

Ending pending 6

MOTIONS

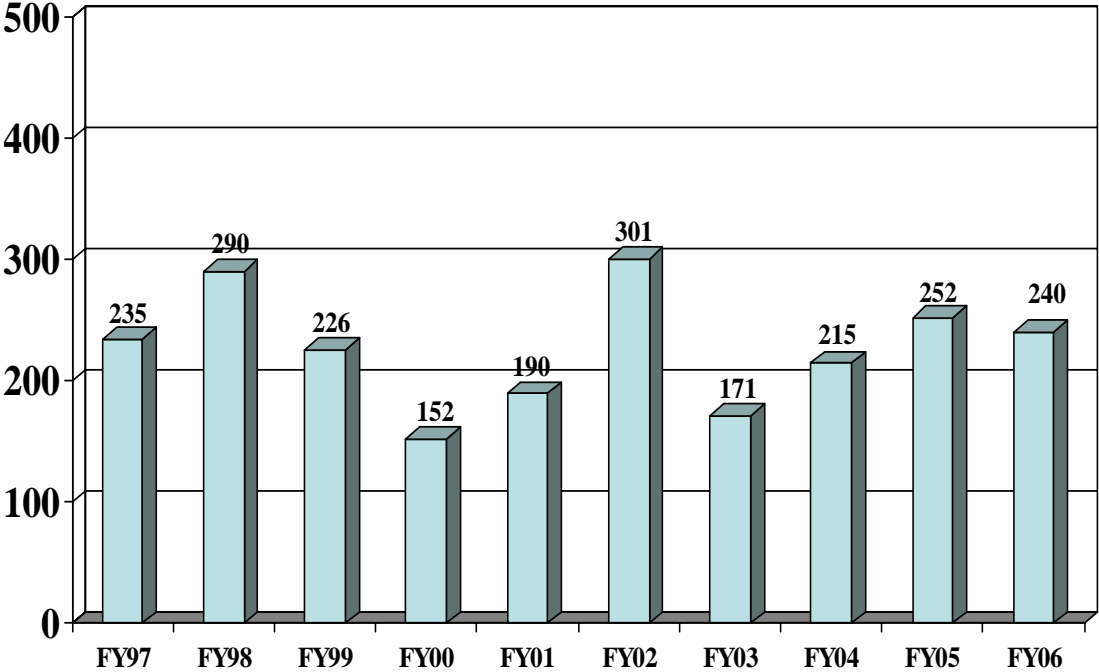
ALL MOTIONS

DISPOSITIONS

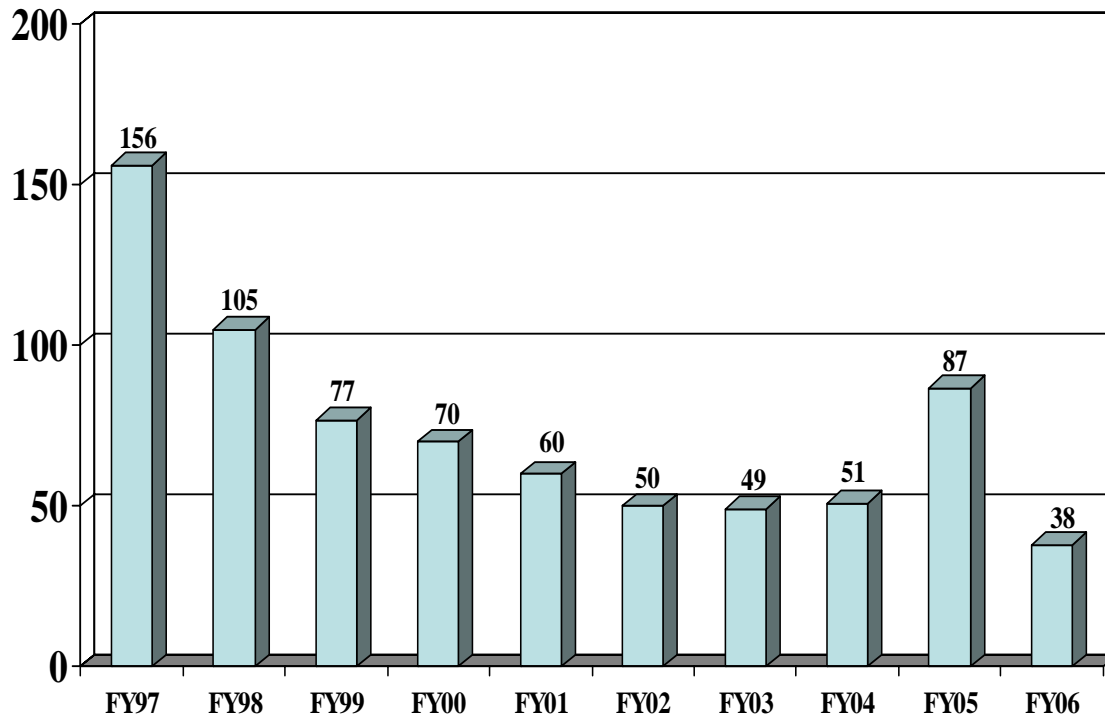
Begin pending	30	Granted	499
Filings	<u>518</u>	Denied	41
TOTAL	548	Other	<u>0</u>
		TOTAL	540

End pending 8

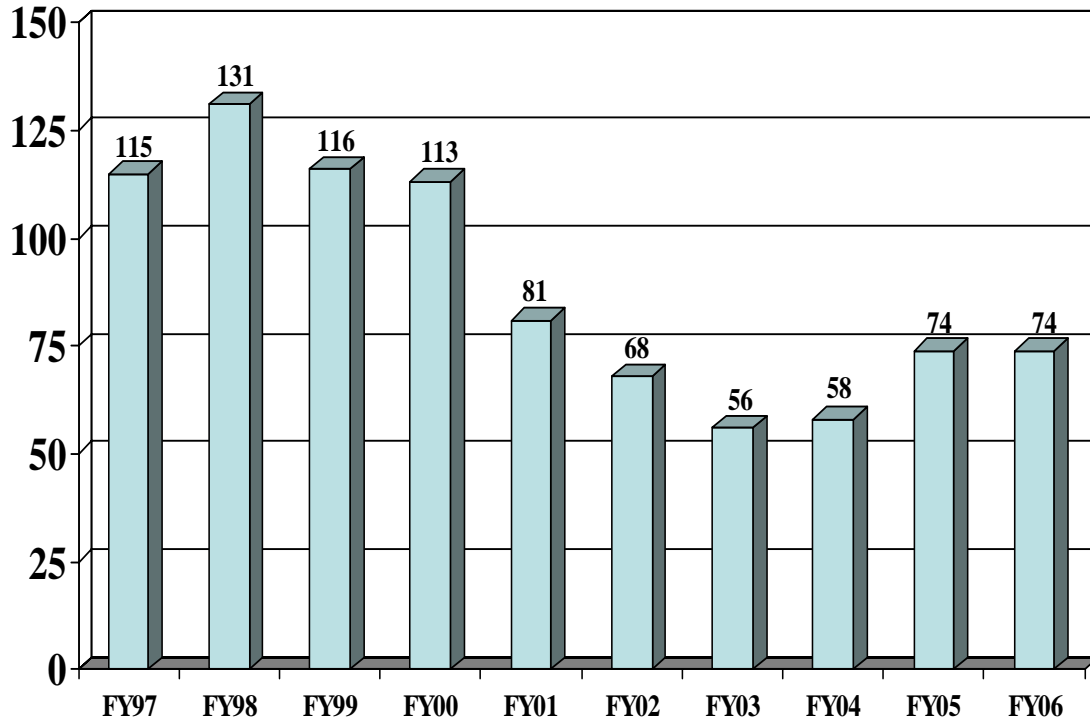
Petition Docket Year End Pending



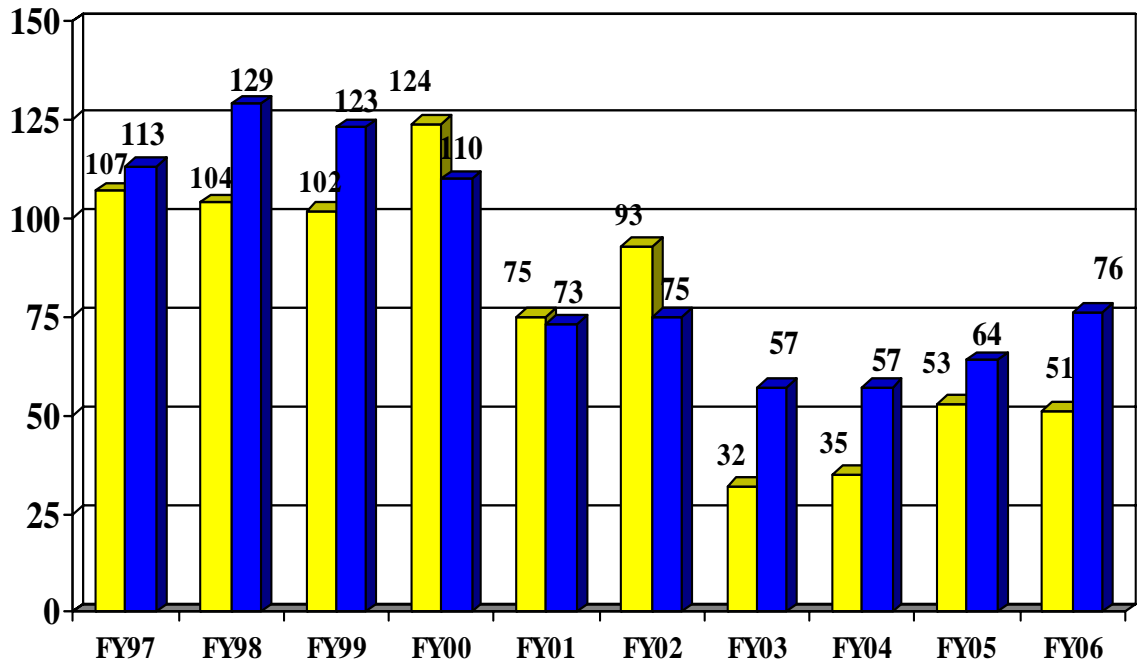
Master Docket Year End Pending



Oral Arguments Per Year



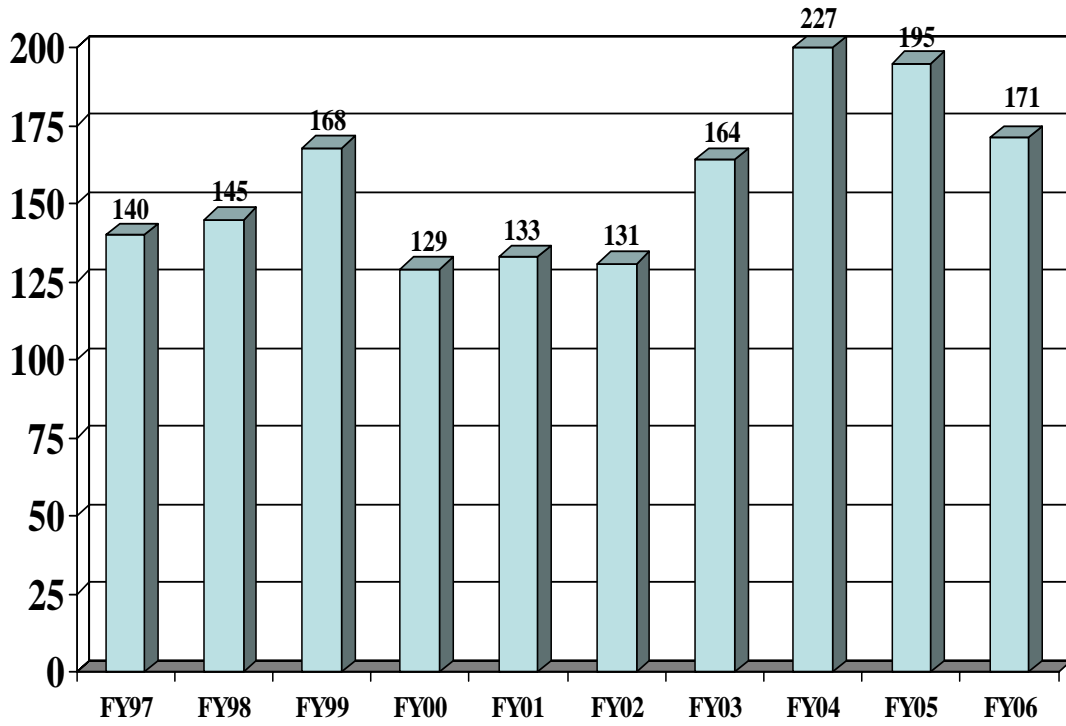
Total Opinions Per Year



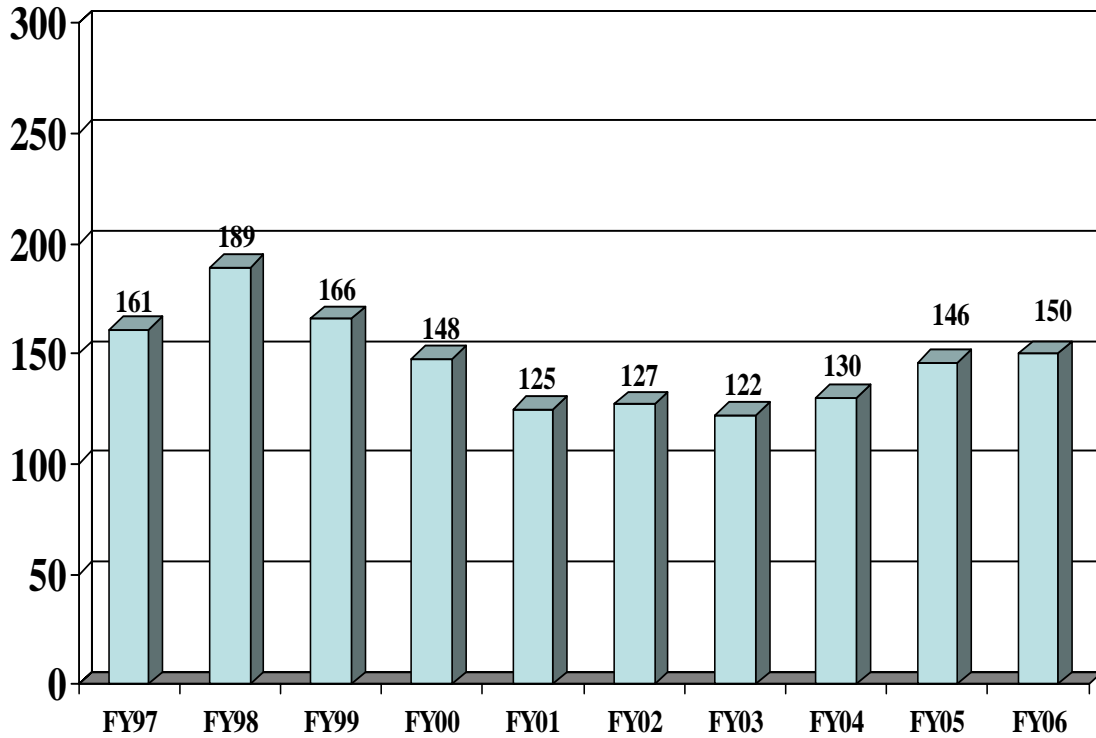
■ TOTAL SEPARATE OPINIONS (CONCUR, CONCUR IN THE RESULT, AND DISSENT)

■ TOTAL COURT OPINIONS

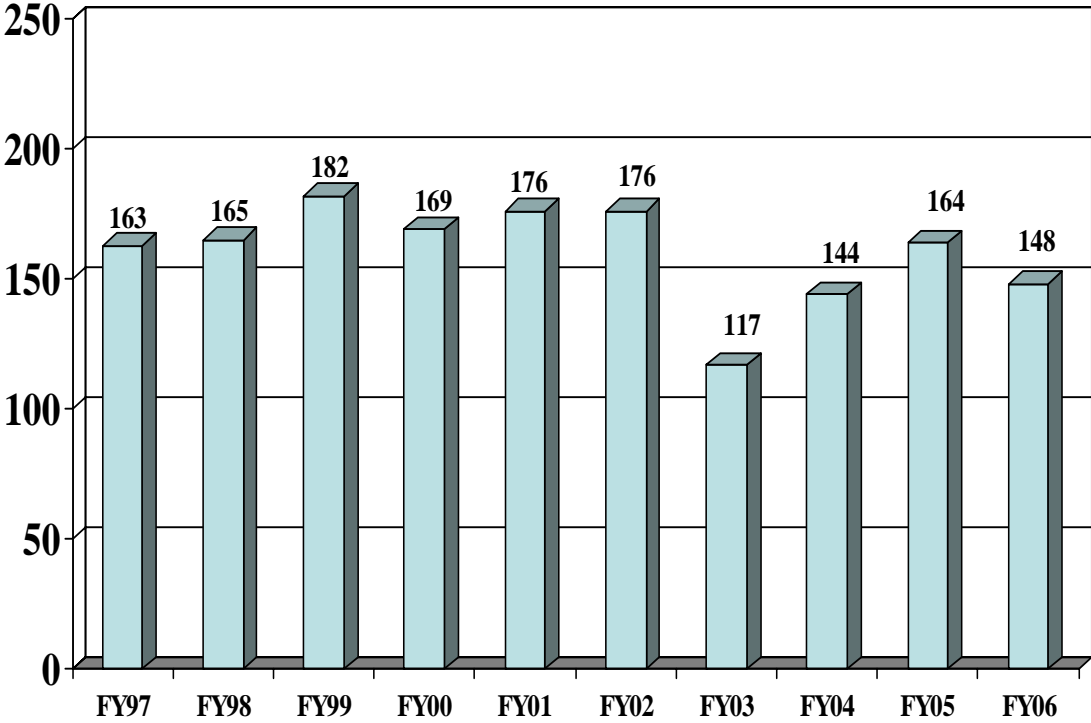
Days from Petition Filing to Grant



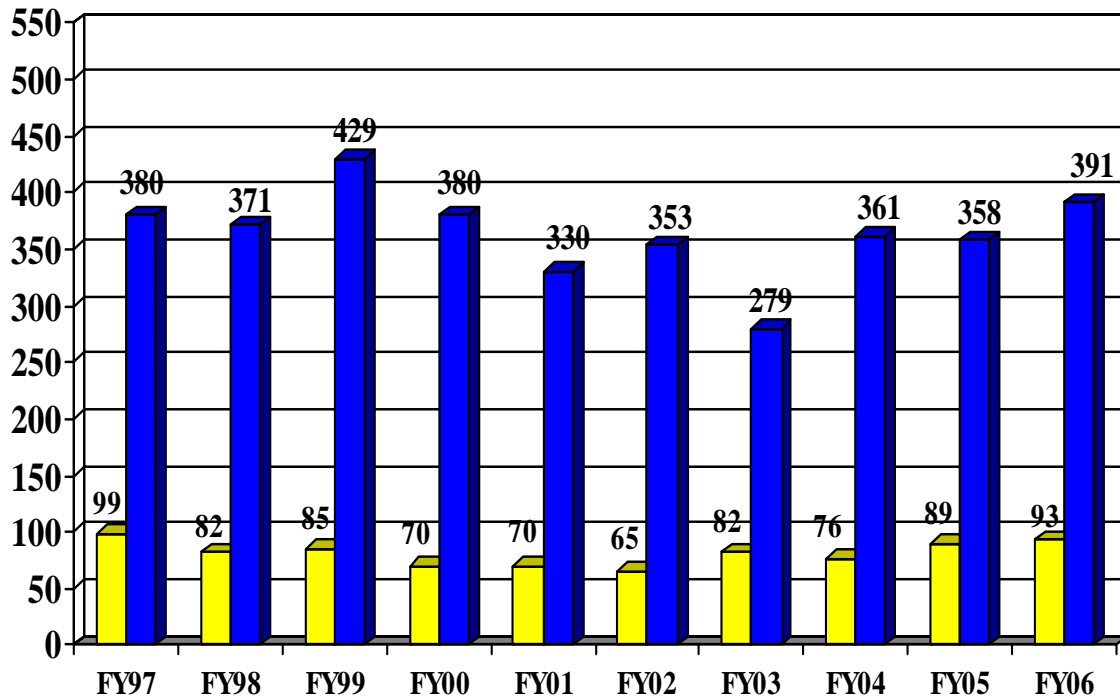
Days from Petition Grant to Oral Argument



Days from Oral Argument to Final Decision



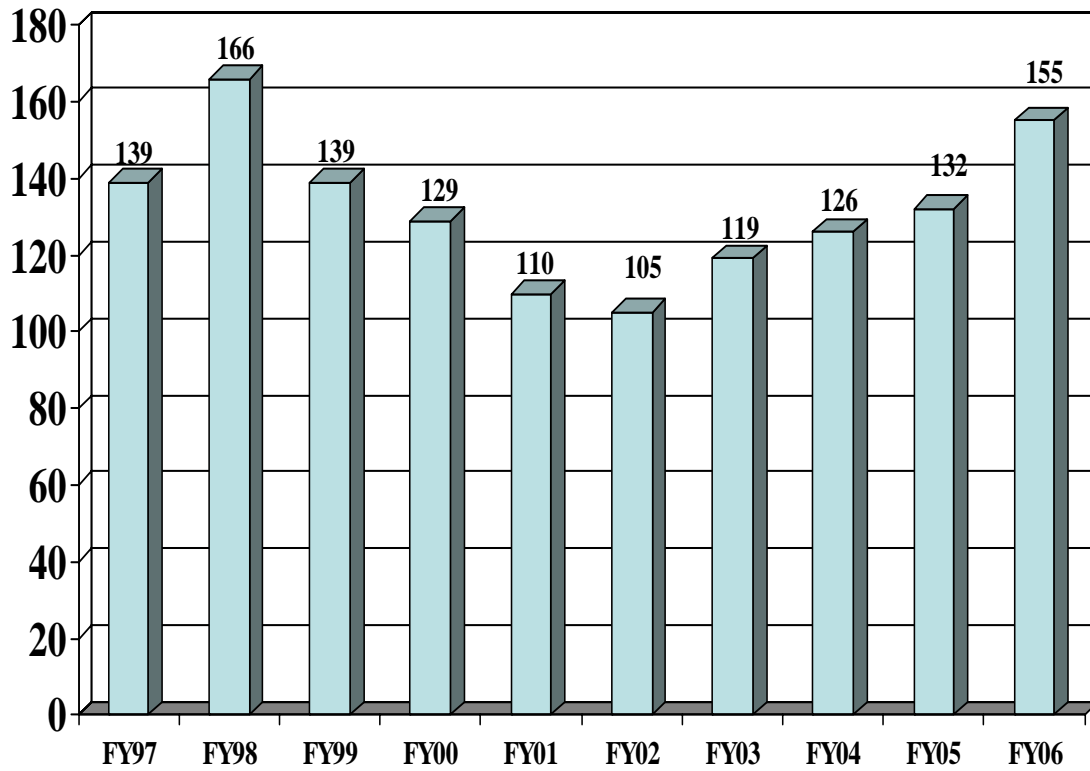
Days from Petition Filing to Final Decision



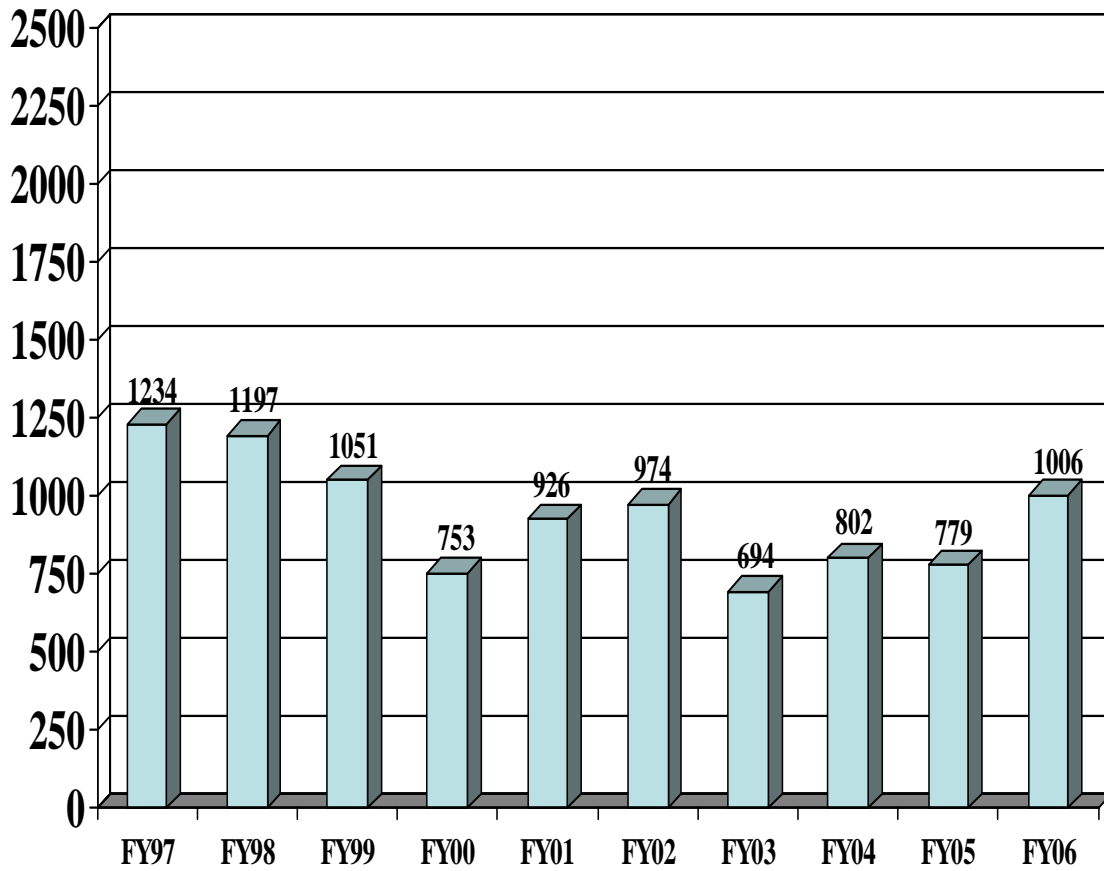
■ PETITION DOCKET (DENIAL/DISMISSAL/WITHDRAWAL)

■ MASTER DOCKET (GRANTED/CERTIFIED/DEATH CASES)

Days from Filing to Final Decision in All Cases



Total Petitions Filed Per Year



SECTION 3

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY

**REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY
OCTOBER 1, 2005, TO SEPTEMBER 30, 2006**

During this time frame, fiscal year 2006 (FY 06), and in compliance with Article 6(a), Uniform Code of Military Justice (UCMJ), The Judge Advocate General and senior members of his staff visited 28 installations and commands in the United States and overseas. With the U.S. Army's continued deployments in Iraq and Afghanistan and their effects on legal operations world-wide, the Office of The Judge Advocate General (OTJAG) continued to monitor courts-martial world-wide, review and prepare military publications and regulations, and develop and draft changes to the MCM and the UCMJ. Through its Field Operating Agencies, OTJAG provided judicial and appellate services, advice, assistance, and professional education to ensure the efficient administration of military justice.

THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER AND SCHOOL (LCS)

In the fall of FY 06, several significant policy changes affected training for newly commissioned Judge Advocate officers. First, instead of a nonresident course, all newly commissioned Reserve Component (RC) Judge Advocates now attend the resident Officer Basic Course at the LCS in Charlottesville, Virginia with their Active Component (AC) counterparts. In limited circumstances, the Chief, Personnel, Plans, and Training Office (PP&TO) may approve an exception and permit a RC Judge Advocate to complete the Basic Course through the nonresident program. Second, all newly commissioned Judge Advocates, including those from the RC, attend the 4-week Direct Commissioned Officer Course (DCO) immediately following the completion of the Officer Basic Course in Charlottesville, unless they receive a waiver from the Chief, PP&TO. This policy, enacted to provide all newly commissioned Judge Advocates the opportunity to receive leadership training designed to instill the Warrior Ethos, is applicable to the 171st Officer Basic Course (September 2006 through December 2006) and all courses after that. The same policy provides for the follow-on attendance of the AC Judge Advocates at the Basic Officer Leadership Course (BOLC) II, a six-week, branch-immaterial course in which the majority of training is conducted in a tactical or field environment. Beginning in October 2008, all RC Judge Advocates will attend BOLC II, as well. The Chief, PP&TO may waive the requirement for BOLC II attendance for both AC and RC Judge Advocates.

In FY 06, the LCS upgraded several of its core classrooms. Upgrades included the installation of new desks and chairs in the Graduate Course classroom, activation of wireless capability for Graduate Course students within their classroom, and insulation in the Basic Course and Graduate Course classrooms. The insulation is designed to permit the provision of classified training.

The LCS library continued to digitize materials from its collections and add them to its Web site with the Federal Research Division of the Library of Congress (<http://www.loc.gov/rr/frd>). Originally developed to digitize documents dealing with the legislative history of the UCMJ, the site expanded in FY 06 to include historical Manuals for Courts-Martial, the 1920 GPO reprint of Winthrop's *Military Law and Precedents*, Army Field Manual 34-52 that addresses Intelligence Interrogation, and the legislative history of the Military Commissions Act of 2006.

The LCS continues to refine instruction to better support operational missions of the Army, but also retains a major focus on developing, improving, and sustaining excellence in the practice of military criminal law through the efforts of the Criminal Law Department. Instruction touches a wide range of subjects from substantive criminal law to technical litigation skills, while at the same time providing critical reach-back capability in support of Operations Iraqi and Enduring Freedom.

Advocacy training continues to be one of the Criminal Law Department's top priorities. The Department devotes significant effort to training each Basic Course student on trial advocacy skills. In order to improve preparation of our new Judge Advocates in military justice, the Criminal Law Department instituted major changes to its Basic Course Curriculum in the summer of 2005, with continuing changes in 2006. The theme of the instruction is "The Anatomy of a Court-Martial." The faculty employs a fact scenario based on an actual criminal case to walk the students through the substance and process of a criminal case in the military justice system from the initial report of the offense to trial and conviction or acquittal of the alleged offender. Every student completes a series of twelve clinical events tied to the fact pattern over the course of approximately two and one-half weeks of instruction, including a neutral trial memorandum that addresses numerous potential issues in the case. The clinical events involve the students acting as both trial and defense counsel, and culminate with a negotiated guilty plea and contested court-martial exercise. The fact scenario also incorporates mandatory training in the Department of Defense (DoD) and Department of the Army Sexual Assault Response Program, including changes to victim-witness initiatives. The Criminal Law Department continues honing this curriculum to ensure relevant, operationally focused training.

This past spring, the Criminal Law Department welcomed the Army Court of Criminal Appeals (ACCA) to present an oral argument in a pending case. The 169th Basic Course, the 54th Graduate Course, and the 25th Criminal Law Advocacy Course observed the superb oral arguments of both sides, and asked general questions of the military appellate judges following the argument.

All attendees also reviewed the appellate briefs for both parties and received the written opinion in the case issued by the Court.

The Criminal Law Department also continued instruction to military justice managers with a heavy emphasis on pre and post-trial processing. The forty-five students of the 12th Military Justice Managers Course received significant instruction on the practical "how to" of court-martial pre and post-trial processing as well as substantive law instruction. As in the past three courses, justice managers received a number of resources on CD-ROM for use in the field, including examples of case tracking systems, as well as *The Advocacy Trainer*, to assist them in their mission and to effectively continue teaching advocacy to their subordinate counsel. Guest speakers included the Chief, Trial Defense Service, the Chief Trial Judge of the Army, the Deputy Clerk of ACCA, and the Senior Legal Advisor to the Army Review Boards Agency.

The Criminal Law Department continued to offer advanced advocacy training in the 25th and 26th Criminal Law Advocacy Courses in addition to advanced advocacy training electives for the Graduate Course. The two-week Criminal Law Advocacy Courses (CLAC) afforded more than 100 trial advocates more individualized and specialized trial advocacy training. In fact, due to high demand for the course, including personnel from the RC and counsel slated to deploy to Iraq and Afghanistan, the Department increased the size of the 25th Criminal Law Advocacy Course from fifty-six (seven groups of eight) to sixty-four (eight groups of eight). For each course, the students performed rigorous small-group practical exercises on essential litigation skills from opening statement through closing argument. Reserve component officers from around the country assisted the Department with both the 25th and 26th CLAC courses, providing invaluable knowledge and insight from both their prior military experience and their current civilian practice. Many of the Department's Drilling Individual Mobilization Augmentee (DIMA) Professors serve as Assistant United States Attorneys or Federal Public Defenders in their civilian capacity. Due to the recently inaugurated Drilling IMA program, many officers were able to return for the basic course advocacy training exercises as well, and to assist with continual updating of the Department's Crimes and Defenses Handbook, an invaluable publication for the field.

In addition to the Military Justice Managers Course and the Criminal Law Advocacy Courses, the Criminal Law Department hosted a variety of continuing legal education courses, including the 49th Military Judge Course. The Course is a joint effort by all the services, including the Coast Guard, to provide preparatory and refresher trainer for the newest members of the trial judiciary.

The Department also managed the Thirtieth Criminal Law New Developments Course attended by nearly 300 judge advocates from all services, including substantial representation from the trial and appellate bench. In addition to hosting courses, Department professors taught classes to RC judge advocates at numerous Reserve On-Site Conferences, other venues including regional Trial Defense Service training, and the U.S. Army Europe Criminal Law Conference. Professors presented instruction at the Court of Appeals for the Armed Forces (CAAF) Conference and Interservice Military Judges Course in the spring, as well as providing case updates to appellate counsel and judges at the Judge Advocate Association Appellate Conference in the fall. One of the Department's professors also provided instruction on the 4th Amendment implications for computer crime at a regional conference hosted by the Naval Justice School in San Diego.

Finally, the Criminal Law Department was extremely pleased to host The Honorable Paul D. Clement, Solicitor General of the United States, who presented the 34th Hodson Lecture on Criminal Law. The Solicitor General delivered a thought-provoking presentation concerning Supreme Court treatment of cases involving unlawful enemy combatants.

The LCS provided at least two hours of professional responsibility instruction to attorneys attending every course hosted by the LCS in Charlottesville, as well as at remote and on-site locations, in satisfaction of TJAG's and state bar professional responsibility continuing legal education requirements. The LCS faculty worked diligently to identify areas of emergent professional responsibility challenges in military practice and incorporate into the instruction how attorneys can handle these situations and stay within the bounds of the Rules of Professional Responsibility.

SIGNIFICANT MILITARY JUSTICE ACTIONS

The Criminal Law Division, OTJAG, advises The Judge Advocate General on military justice policy, legislation, opinions, and related criminal law actions. Specific responsibilities include the following: promulgating military justice regulations, reviewing Army regulations for legal sufficiency, military corrections, the Army's drug testing program, federal felony and magistrate court prosecutions, producing legal opinions for the Army Staff relating to military justice matters, statistical analysis and evaluation of trends in judicial and nonjudicial punishment, and responding to congressional inquiries.

Criminal Law Division individual case data and actions for the last three fiscal years, a small but important part of the overall mission, are displayed below:

	<u>FY 04</u>	<u>FY 05</u>	<u>FY 06</u>
White House inquiries	237	33	20
Congressional and other inquiries	234	214	130
Clemency petitions (Article 74, UCMJ)	3	1	0
Officer Dismissals	18	19	28
Article 69 review	88	96	115
Freedom of Information Act/Privacy Act	6	22	15

This year, a key focus for the Criminal Law Division has been Army courtroom designs. The Criminal Law Division is consulting with a variety of experts to create specifications and architectural plans to standardize new and modified Army courtrooms. This standardized design will meet the requirements of all participants in the court-martial process, to include the military judge, counsel, court members, support personnel, witnesses, spectators and others, by insuring adequate facilities, security, and appropriate layout. It will lower the cost of new construction and modification by eliminating the need for each installation to develop its own design. The design will also take into account new technologies appropriate for military courts, such as video-teleconferencing capabilities and evidence presentation systems. The Criminal Law Division is assisting installations as they work for funding to complete plans and assist with new construction and modification at installations. This project will continue into FY 07.

In FY 06, the Criminal Law Division reviewed proposed legislation for military commissions. Upon passage of the Military Commission Act of 2006 (MCA), the Criminal Law Division continued, as a member of the DoD working group, drafting and reviewing implementing regulations for the MCA. The result of this work will be the procedural and evidentiary rules for Military Commissions to try detainees suspected of committing acts of terrorism or war crimes. In accordance with the MCA, where practical and consistent with military or intelligence activities, the principles of law and rules of evidence used in general courts-martial for service members will be used in Military Commissions.

Throughout FY 06, the Criminal Law Division continued to track approximately 800 detainee related investigations and other high-profile cases. Detainee related cases include: physical abuse, whether resulting in injury or death; other crimes against detainees, including larceny and sex crimes; and failures of leadership or other duties involving detainee operations, including disobeying orders and dereliction of duty. Since military justice is an inherently decentralized process, the efforts include frequent communication with Staff Judge Advocates and Chiefs of Military Justice sections in the field. This information allows the Criminal Law Division to report trends to The Judge Advocate General and to respond to Congressional and other inquiries with the most current information.

A new Criminal Law Case Tracking System (CLCS), instituted during FY 06, allows the Criminal Law Division to electronically file opinions and answers to queries sent from field units. This system allows a search of all open actions, those recently closed and older completed actions. Those within the Division can search these actions by subject matter or by using a key-word search.

The JAG Corps enhanced its Victim Witness Program by conducting their victim witness liaison training on 22 - 25 May 2006, in Orlando, Florida with 56 total DoD attendees, including 36 Army victim witness liaisons.

JOINT SERVICE COMMITTEE ON MILITARY JUSTICE

The Joint Service Committee on Military Justice (JSC) was originally established by the Judge Advocates General and the Secretary of Transportation (Coast Guard) on 17 August 1972. It conducts an annual review of the MCM as required by Executive Order 12473 and DOD Directive 5500.17. The JSC proposes and evaluates amendments to the UCMJ, MCM, and serves as a forum for exchanging military justice information among the services.

Through the end of calendar year 2006, the Army has continued in its role of Executive Chair of the JSC, due to rotate to the Air Force at the beginning of 2007. This year the JSC completed its twenty first review of the MCM. At the beginning of 2006, the JSC voted to consider numerous proposals for change to the UCMJ and the MCM including, but not limited to, making most punishment imposed effective at the time of sentencing, allowing for digital records of trial, and revising post-trial processing procedures.

Highlights of this review's proposed changes include: amendments to Rules for Court-Martial (R.C.M.) that authorize the Military Judge *sua sponte* to overturn a finding of guilty at any time prior to authentication of the Record of Trial under R.C.M. 917 and 1102 and allow the Secretary of Defense, at his discretion, to make a recommendation on capital charges under R.C.M. 1204(c) (2); amendments to the Military Rules of Evidence (M.R.E.) that exclude crimes against "de facto" children from the spousal privilege, M.R.E. 504, and define "clergyman's assistant" under the clergy privilege, M.R.E. 503; sentence enhancers for child victims of aggravated assault under Article 128 (Assault); an increase in maximum punishment of confinement from 7 years to 20 years under Article 124 (Maiming); the addition of specific offenses for stalking and child endangerment under Article 134; and the addition and implementation of the significant, statutory change to Article 120 (Rape), of the MCM, including the elements of offenses under the new Article 120, lesser included offenses, and sample specifications. The new Article 120 will go into effect in October 2007.

On 10 August 2006, the JSC published a notice in the Federal Register containing a proposed Executive Order implementing these changes. On 18 September 2006, the JSC held a meeting open to the public seeking oral comments on the proposed changes. Written comments from the public were accepted through 13 October 2006. In December 2006, the JSC published a summary in the Federal Register of all comments received from the public, and the final version of the proposed Executive Order. The proposed Executive Order was subsequently forwarded to the DoD Office of the General Counsel for staffing to the President.

U.S. ARMY JUDICIARY

The U.S. Army Judiciary consists of ACCA, Office of the Clerk of Court and the Trial Judiciary.

ACCA/Office of the Clerk of Court

The Clerk of Court receives records of trial for review by ACCA under Article 66, UCMJ; appeals under Article 62, UCMJ, and Petitions for Extraordinary Relief. More than 1,200 records of trial and over 4,400 motions and briefs were referred to one of the three judicial panels of ACCA for appellate review. The Office of the Clerk of Court served ACCA decisions upon all personnel not in confinement and closed over 950 Courts-Martial cases during the past year.

ACCA maintains a website at <https://www.jagcnet.army.mil/acca>. ACCA opinions and memorandum opinions are published and can be downloaded at the website. Applications for admission to the bar for ACCA and rules of the court are also published and can be downloaded.

The Office of the Clerk of Court provided instruction to legal NCOs, Court Reporters and those individuals attending the Judge Advocate General graduate course and military justice courses at the LCS.

The Clerk of Court is the custodian of the Army's permanent court-martial records dating from 1939. Inquiries about courts-martial are received from federal and state investigative agencies, law enforcement offices, military historians, media, veterans, and the accused. Because the Brady Bill requires the processing of handgun applications within three workdays, many expedited requests are received from the Federal Bureau of Investigation's National Instant Background Check System. Also, state sexual offender registries submit many requests. The number and types of records requests are noted below:

	<u>FY04</u>	<u>FY05</u>	<u>FY06</u>
Freedom of Information Act	132	180	255
Privacy Act	66	110	96
Certified Copies of Convictions	<u>354</u>	<u>213</u>	<u>199</u>
Total Number of Requests	<u>552</u>	<u>503</u>	<u>550</u>

The Office of the Clerk of Court also provides assistance to overseas trial jurisdictions in processing requests for non-DOD civilians to travel to overseas trials. This includes making travel arrangements, assisting with requests for expedited passport processing, and issuing ITOs.

Trial Judiciary

FY 06 saw twenty-one AC military judges, one mobilized US Army Reserve military judge, and thirteen RC military judges not on active duty preside over nearly 1350 general and special courts-martial worldwide, a number which includes all post-arraignment proceedings which do not necessarily result in completed trials, all government appeals/extraordinary writs, and all post-arraignment proceedings in which a court-martial case report has previously been submitted to ACCA. This figure represents a slight decrease from FY 05.

A United States Marine Corps military judge presided over two Army courts-martial arising out of the Abu Ghraib prisoner abuse scandal, the first use of the recently promulgated cross-service detailing agreement between the military services. Trials in Iraq, Afghanistan, and Kuwait numbered 144 for the FY, bringing the total number of cases tried in hostile fire combat pay zones to over 475 since May 2003. Army judges continued to preside over high profile cases, including those arising out of detainee operations in Afghanistan and Iraq. Reserve military judges were detailed as investigating officers in a number of complex Article 32 hearings, including cases involving capital referrals. Military judges continued playing an active role in their military and civilian communities, speaking to grade and high school audiences, local bar associations and civic organizations and state bar continuing legal education courses.

TRIAL DEFENSE SERVICE

The U.S. Army Trial Defense Service (USATDS) has approximately 130 AC and 187 RC attorneys. USATDS provides high quality, professional defense services to Soldiers throughout the Army from 63 active duty installations worldwide and 54 reserve locations. USATDS counsel defended Soldiers facing the entire range of allegations under the UCMJ. At the end of FY 06, trial defense counsel were defending 14 Soldiers charged with murder.

USATDS detailed one or more counsel to every Army special and general courts-martial referred in FY06. USATDS counsel also carry a large workload, assisting Soldiers in a myriad of other military justice related actions. The numbers for FY 06 are as follows:

Courts-Martial - 1,328
Administrative Boards - 690
Nonjudicial Punishment - 42,814
Consultations - 34,955

USATDS provided defense services to deployed forces around the world, including Iraq, Kuwait, Kosovo, and Afghanistan. USATDS Region IX encompasses Iraq, Afghanistan, Kuwait, and the CENTCOM AOR. Currently there is 1 Regional Defense Counsel, 18 Trial Defense Counsel, and 10 paralegals deployed throughout USATDS Region IX. This region was established in July 2003. USATDS Offices in Iraq are located in Tallil, Camp Victory (Baghdad), Camp Liberty (Baghdad), Balad, Ramadi, COB Speicher, Mosul, and Kirkuk. In Kuwait, the USATDS Office is located at Camp Arifjan, which is outside of Kuwait City. In Afghanistan, the USATDS Office is located at Bagram, a former Soviet air base.

Despite the hazardous duty and austere environment in Region IX, USATDS counsel are providing tremendous representation at courts-martial and assistance in other military justice actions throughout the region. Region IX counsel tried nearly 150 courts-martial while approximately 110 other preferred cases were resolved under Chapter 10. There is one counsel and one paralegal deployed to Kosovo. These Soldiers fall under USATDS Europe.

USATDS counsel continue to foster a close working relationship with RC defense counsel assigned to the 154th and the 22d Trial Defense Service Legal Support Organizations (USATDS LSOs). The 154th USATDS LSO provides defense services to soldiers assigned to units in the eastern half of the United States and in Europe. The 22d USATDS LSO provides defense services to soldiers assigned to units in the western half of the United States and Asia. The Chief, USATDS, exercises technical supervision over the reserve USATDS LSOs. He is responsible for the provision of defense counsel services and provides oversight for the units' training and readiness. Some individual USATDS offices have established joint training programs with local RC USATDS personnel and have conducted highly successful joint training conferences. Reserve support to active duty USATDS offices continues to be outstanding, with reserve officers providing critical support at many AC installations in addition to locations such as Camp Shelby, Mississippi, Fort Dix, New Jersey, and Fort McCoy, Wisconsin. Reserve judge advocates have also deployed overseas to Germany as backfills for active duty forward deployed defense counsel. Several RC judge advocates are serving in Iraq, Afghanistan, and Kosovo as defense counsel. During any given month, USATDS has anywhere from 30 to 40 mobilized RC counsel and paralegals throughout the Army.

In some recent courts-martial cases, AC counsel in USATDS Region V (Fort Lewis) have been partnered with RC counsel who are experienced litigators. This initiative has promoted the professional development of AC defense counsel through training and mentoring and other USATDS regions plan to implement similar programs for their defense counsel.

In FY 06, Headquarters, USATDS, created the Defense Counsel Assistance Program (DCAP), which is similar to the Trial Counsel Assistance Program (TCAP). DCAP is designed to assist with the training and education of defense counsel, while also supporting Headquarters, USATDS, with policy initiatives and military justice related issues.

Continuing Legal Education (CLE) Training for USATDS counsel was conducted in week-long, consolidated regional workshops, attended by AC and RC USATDS counsel, as well as counsel from other services.

The multi-region/multi-service approach to CLEs resulted in more productive and informative CLEs, benefiting all attendees. CLEs are designed to assist USATDS counsel in improving their advocacy skills. All training sessions included extensive practical exercises and individual critiques by experienced attorneys. In Korea, USATDS continued to cross-train with the Marines and Air Force in Okinawa and Japan. The training focused USATDS counsel on refining their courtroom skills and expanding their knowledge of military justice with particular emphasis on evidentiary objections and arguments. USATDS counsel in Europe conducted semi-annual joint regional workshops. Throughout the year, individual USATDS counsel are also given numerous opportunities to attend CLE's sponsored by the LCS, sister service schools, as well as civilian sponsored CLE's.

GOVERNMENT APPELLATE DIVISION

The U.S. Army Government Appellate Division (GAD) represents the United States before ACCA, CAAF, and the U.S. Supreme Court in appeals by Soldiers convicted at courts-martial with an adjudged sentence of either a punitive discharge or confinement for one year or more.

In FY 06, GAD consisted of the Chief, the Deputy Chief, three branch chiefs, ten appellate attorneys, and three civilian paralegals. Additionally, during the year, six RC soldiers were activated to assist with brief writing and other duties. The GAD filed 1,138 briefs with the ACCA and 17 briefs with the CAAF. FY 06 is notable for a continued commitment to reducing the backlog of cases pending before the ACCA. By increasing focus, maintaining RC support, using subject matter experts, and refining case tracking methods, the backlog was significantly reduced from 372 cases to 198 cases at year's end.

During FY 06, GAD also presented oral argument in 17 cases before the ACCA and 16 cases before the CAAF. One of the oral arguments before the ACCA was an Outreach Argument at the LCS. One of the oral arguments before the CAAF was an Outreach Argument presented at the American University Washington College of Law.

TRIAL COUNSEL ASSISTANCE PROGRAM

The U.S. Army Trial Counsel Assistance Program (TCAP) continued its mission of providing information, advice, training, and assistance to trial counsel worldwide. TCAP's team of four officers and one civilian assistant was augmented with two additional counsel to assist with TCAP's expanded mission of serving as lead prosecutors in several high-profile detainee abuse cases. Serving also as a GAD branch, TCAP links trial counsel and appellate counsel together to resolve issues of common concern in the successful prosecution of courts-martial.

In light of this, TCAP serves as the prosecutor's appellate advocate for extraordinary writs and Government appeals on issues arising before final disposition. In addition, TCAP represents the Government during *habeas corpus* litigation of cases that have completed the ordinary course of appellate review.

TCAP provided five basic categories of services: (1) telephone/e-mail/website assistance; (2) advocacy training courses and other training events; (3) dissemination of information; (4) trial assistance; and (5) appellate assistance. In providing these services, TCAP has accomplished the following in FY 06: (1) responded to an average of more than 200 telephonic and e-mail requests for assistance per month; (2) created and maintained the TCAP website, which was accessed more than 14,000 times during 2006; (3) conducted five regional advocacy training conferences, attended by 276 judge advocates, 38 of whom were from other services; (4) developed a practical course for judge advocates titled "TC 101: How to Be a Trial Counsel" and provided this instruction on twelve occasions to approximately 160 judge advocates across several military installations; (5) worked with the LCS to integrate this practical instruction into the Officer Basic curriculum; (6) created a new introductory course on "Forensic Evidence" to teach judge advocates about the services available at the U.S. Crime Lab at Fort Gordon, Georgia, and to foster communication between judge advocates and lab personnel; (7) provided forensic evidence training to thirty judge advocates in two sessions; (8) worked with The National Center for Missing and Exploited Children (NCMEC) to develop a course for judge advocates on "Protecting Children from On Line Crime"; (9) drafted a memorandum of understanding with NCMEC, whereby NCMEC provided ten fully funded slots to TCAP for each of its six courses; (10) collaborated with NCMEC by providing TCAP personnel as instructors during course break-out sessions; (11) TCAP personnel also served as instructors at various American Prosecutors Research Institute courses, which enhanced the reputation of the Judge Advocate General's Corp among the target audience of district attorneys throughout the country; (12) published a monthly newsletter containing updates on legal decisions and practical tips for trial counsel to use in prosecuting cases and handling recurring issues; (13) created and distributed compact discs to judge advocates in the field, which included "TC 101," samples of every document a trial counsel needs, "How to Handle a Classified Case," "Capital Litigation" and "Basics of DNA"; (14) actively assisted in the prosecution of several high-profile cases including United States v. Martinez, United States v. Lewis, United States v. Kruetzer, as well as the detainee abuse cases from Abu Ghraib and Bagram;

(15) responded to ten *habeas corpus* petitions; and (16) completed more than twenty GAD appellate briefs and two government appeals.

During FY 06, TCAP continued to be actively engaged with Army RC, sister service, and civilian counterparts. Approximately one-third of the requests for TCAP's assistance continued to come from the RC.

Recognizing the RC's desire for assistance relating to military criminal justice matters, TCAP strives to include the RC in everything it does, such as when it provides copies of materials to the field.

Another example of TCAP's RC support is the instruction that it provided at the training on-sites for the 75th and 8th Legal Support Organizations. To further enhance the quality of legal work across the services, TCAP has invited the Army's sister services to its conferences. TCAP has also strengthened its relationships with the National District Attorney Association (NDAA) and the American Prosecutors Research Institute by serving as instructors for their courses. In turn, these organizations have given scholarships to TCAP to attend their courses. The information gained at these conferences has proven invaluable to counsel in the field. Additionally, if a trial counsel in the field has a question, the NDAA will solicit responses from district attorneys around the country, thus expanding the pool of information.

DEFENSE APPELLATE DIVISION

The Defense Appellate Division provides appellant representation to qualifying Soldiers before ACCA, CAAF, and the Supreme Court of the United States. Qualifying Soldiers include Soldiers convicted at courts-martial and the approved sentence includes either a punitive discharge or at least one year of confinement. The Division also assists Trial Defense Counsel in various trial issues, including the preparation and filing of writs in the courts mentioned above.

During FY 06, the Division received 972 new cases. Appellate defense attorneys filed briefs in 1000 cases before ACCA, 400 supplements to petitions for review with CAAF, and 15 final briefs with the CAAF. Appellate defense counsel also filed 238 miscellaneous pleadings before the Army Court and 84 miscellaneous pleadings before the CAAF. Appellate defense counsel argued 14 cases before the Army Court and 12 cases before the CAAF.

FOREIGN CRIMINAL JURISDICTION

As the DoD Executive Agent for the exercise of foreign criminal jurisdiction, the Army, through the International Law and Operations Division, OTJAG, compiles information concerning the exercise of foreign criminal jurisdiction over U.S. personnel.

The data below, while not drawn from precisely the same reporting period used in other parts of this Report, provides an accurate picture of the exercise of foreign criminal jurisdiction during this reporting period:

	1 Dec 2003 to 30 Nov 2004	1 Dec 2004 to 30 Nov 2005
Foreign Offense Citations	4,593	4,178
Total Civilian	1,265	903
Total Military	3,328	3,275
Exclusive Foreign Jurisdiction	110	119
Concurrent Jurisdiction	3,218	3,156
Traffic Offenses	372	230
Foreign Jurisdiction Recalls	477	306

During this reporting period, foreign authorities released to U.S. authorities 6 of the 119 exclusive foreign jurisdiction cases involving military personnel. In concurrent jurisdiction cases in which the foreign countries had the authority to assert primary jurisdiction, U.S. military authorities were able to obtain waivers of the exercise of this jurisdiction in 2,963 of the 3,156 cases. Overall, the U.S. obtained waivers in 93.9% of all exclusive and concurrent jurisdiction cases. This figure reflects an increase of 5.6% in obtaining waivers compared to the previous reporting period.

During the last reporting period, civilian employees and dependents were involved in 1,265 offenses. Foreign authorities released 437 of these cases (34.5% of the total of that reporting period) to U.S. military authorities for administrative actions or some other form of disposition. In this reporting period, civilian employees and dependents were involved in 903 offenses. The foreign authorities released 211 of these cases (23.3% of the current total of this reporting period). This figure represents a decrease of 11.2% in obtaining releases of foreign criminal jurisdiction over civilian employees and dependents.

During this reporting period, foreign authorities tried a total of 499 cases involving U.S. personnel. Three trials, or 0.6%, resulted in acquittals. Those convicted were sentenced as follows: 12 cases resulted in executed confinement, 52 cases resulted in suspended confinement, and 432 cases (86.6% of the total trials) resulted in only fines or reprimands.

PROFESSIONAL RESPONSIBILITY

The Army Standards of Conduct Office (SOCO) manages TJAG's professional responsibility program, which is comprised of the following: (1) administratively reviewing alleged violations of the Army Rules of Professional Conduct for Lawyers and allegations of mismanagement by supervisors for credibility; (2) tasking supervisory attorneys to conduct field inquiries; (3) reviewing reports of inquiry; (4) advising TAJAG on appropriate disposition of cases; and (5) overseeing the operation of TJAG's Professional Responsibility Committee.

SOCO also manages information to: (1) track inquiries; (2) release information when warranted under the Freedom of Information Act and Privacy Act; and (3) maintain a professional responsibility website on JAGCNET.

Complaints during FY 06

SOCO is responsible for ensuring complaints against attorneys are properly processed and that the supervisor or The Assistant Judge Advocate General takes appropriate action. The inquiry process involves two steps - a credibility determination, and when appropriate, a follow on preliminary screening inquiry. The credibility determination is the initial screening process whereby the supervisor assesses whether there is credible evidence of misconduct by the subordinate attorney. If the supervisory judge advocate determines the evidence is credible, SOCO will transition the investigation to a preliminary screening inquiry to investigate the questioned conduct to determine whether it violated the Army Rules of Professional Conduct for Lawyers.

In FY 06, SOCO closed 40 cases compared to 56 in FY 05 and 72 in FY 04. Of the 40 cases closed this year, 31 were closed unfounded following the credibility determination and the remaining 9 were founded and closed following completion of the preliminary screening inquiry and action by The Assistant Judge Advocate General. The 9 founded cases are consistent with the 11 founded cases in both FY 04 and FY 05. SOCO carried over from FY 06 into FY 07 105 cases compared to 39 cases carried over from FY 05 into FY 06.

LITIGATION

Civil lawsuits requiring federal courts to interpret the UCMJ are relatively few in number, but remain an important part of the Army Litigation Division's practice.

Most suits are brought by former Soldiers seeking collateral review of military court-martial proceedings, usually via petitions for writs of habeas corpus filed in federal district courts, or in back-pay actions filed in the Court of Federal Claims. The following cases highlight the types of cases handled by the Army Litigation Division.

The Army successfully defended the historical practice of allowing line officers to defend Soldiers at special courts-martial. In Payne v. Secretary of the Army, the plaintiff filed suit in the U.S. District Court for the District of Columbia challenging the qualifications of his non-attorney defense counsel. Mr. Payne, a former Army enlisted Soldier, was convicted of a negligent homicide at a special court-martial in November 1960. He was represented by a military defense counsel, who was not an attorney. This practice is consistent with Article 19, UCMJ, which provides that military defense counsel at a special court-martial need not be attorneys as long as the sentence does not exceed six months confinement or forfeiture of more than two-thirds pay per month for six months.

Plaintiff petitioned the Army Board for Correction of Military Records ("ABCMR") in 1992, and again in 2004, challenging the qualifications of his defense counsel, but he was denied relief. He filed suit claiming that he was denied his Sixth Amendment right to counsel and challenged the ABCMR's denial of relief. On March 24, 2006, the court granted the government's motion to dismiss, finding plaintiff's wrongful discharge claim and collateral attack on his court-martial conviction were both barred by the statute of limitations, and the ABCMR's denial of relief was proper. The appointment of defense counsel who are not licensed attorneys is not a practice followed in courts-martial cases today.

The Army successfully defended a challenge by a former prisoner to a sentence of contingent confinement in Dickson v. Probation Office. The petitioner was tried by general court-martial in the Military District of Washington for drug distribution. He received a \$20,000 fine, with two years of contingent confinement if the fine was not paid. He did not pay the fine, claiming that he was indigent. An indigency hearing was held at Ft. Knox, Kentucky, and his claim was rejected. He was sentenced to the two years of contingent confinement; however, that only led to his parole being extended two years. Mr. Dickson challenged the application of the contingent confinement before both ACCA and the Court of Appeals of the Armed Forces, but his claims were rejected. Mr. Dickson filed a habeas petition in the U.S. District Court for the Southern District of Florida. The case was transferred to the Western District of Kentucky and then transferred back to the Southern District of Florida.

While these transfers occurred, Mr. Dickson's parole expired. The government filed a brief arguing that because Mr. Dickson was no longer in custody, and that he was only challenging his sentence and not the underlying conviction, he did not suffer any consequences separate and apart from his underlying conviction and the court lacked jurisdiction to hear his petition. Additionally, the government argued that the military courts fully addressed Mr. Dickson's claims. The court agreed and dismissed Mr. Dickson's petition.

In Howard-Pinson v. Secretary of the Army, the Army defended against allegations of constitutional deficiencies in a court-martial. Mr. Howard-Pinson, a former Soldier, was convicted of drug distribution by a general court-martial at Fort Campbell, KY. He alleged that his confession was obtained in violation of the Fifth Amendment and Miranda. He raised this issue to the trial court and before ACCA and the Court of Appeals of the Armed Forces; however, his claim was rejected by the military courts. He then filed a petition for writ of habeas corpus in the U.S. District Court for the Eastern District of Virginia. The government moved to dismiss the petition on the grounds that the military courts had fully and fairly considered his claims and no constitutional violation had occurred. On July 10, 2006, the district court agreed and dismissed the petition. The case is currently on appeal to the U.S. Court of Appeals for the Fourth Circuit.

In the highly publicized case of New v. Secretary of Defense, Mr. Michael New continues to challenge his 1996 court-martial conviction for refusing to wear the United Nations insignia on his uniform during the preparation for deployment to Macedonia. In May 2006, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the United States District Court for the District of Columbia's dismissal of Mr. New's complaint. The District of Columbia Circuit found that the district court had correctly ruled that the central issues in the case had been fully litigated in the military courts and were thus non-reviewable in the absence of a fundamental error. The U.S. Court of Appeals for the District of Columbia Circuit further held that the remaining issues were meritless or barred by the political question doctrine. In August 2006, the U.S. Court of Appeals for the District of Columbia Circuit denied Mr. New's request for a rehearing en banc. In November 2006, Mr. New filed a petition for a writ of certiorari.

The Army successfully defended recent revisions to Army Regulation ("AR") 27-10 (*Military Justice*) in Pope v. Sivious. The petitioner, former Sergeant Patrick Pope, was convicted at a general court-martial at Fort Drum, NY, in September 2005. He improperly charged several thousand dollars of personal expenses to a government credit card issued to him as the NCOIC of a funeral detail and was sentenced to three years confinement and a fine of \$34,500.

The petitioner argued that he was out of the Army one day before his court martial because he received his final accounting of pay, cleared post, and received his discharge certificate (DD 214); therefore, the Army did not have jurisdiction over him at the time of his court-martial. However, in 2002 the Army revised AR 27-10 in response to a decision from the Court of Appeal for the Armed Forces (Smith v. Vanderbush). The revision to the regulation makes any discharge issued after the preferral of charges void until the charge is dismissed or the convening authority takes action on the case. On October 18, 2006, the U.S. District Court for the Western District of Oklahoma dismissed the habeas petition after reviewing the magistrate judge's report and recommendation and the revisions to the regulation. The court opined that the petitioner was in the Army at the time of his court-martial and dismissed the habeas petition on the basis that the petitioner had not exhausted his military appellate remedies.

In MacLean v. Department of the Army, the Army is defending its ability to neither confirm nor deny the existence of records, known as a "Glomar denial," in response to a Freedom of Information Act ("FOIA") request for professional conduct investigations of Army Judge Advocates. In response to a FOIA request for the records of investigations completed on, and/or any disciplinary action taken against, Army judge advocates who issued allegedly "illegal" military subpoenas to civilians, SOCO declined to confirm or deny the existence of any records. Plaintiff filed suit in the U.S. District Court for the Southern District of California to compel the production of the records, if any.

Plaintiff also seeks to enjoin the Secretary of the Army from the policy and practice of issuing a Glomar denial in response to a FOIA request. In a motion for summary judgment, the Army argued that such a response was proper because the public interest in disclosure of the professional conduct files requested does not outweigh the privacy interests of the individual attorneys who are the subjects of the files, if any files exist. Plaintiff's response to the Army's motion was due in December 2006 with oral argument scheduled for early 2007.

PERSONNEL, PLANS, AND POLICIES

On 30 September 2006, the Army's end strength was 574,456 Army personnel on active duty, including Active Guard and Reserve (AGR) and mobilized Soldiers, compared to 567,152 at the end of fiscal year 2005.

The attorney strength of the AC Judge Advocate General's Corps at the end of FY 06 was 1,638 (including general officers).

This total does not include 63 officers attending law school while participating in the Funded Legal Education Program. The attorney strength of the RC Judge Advocate General's Corps at the end of FY 06 was 2,785 and the strength of the Army National Guard at the end of FY 06 was 569. The diverse composition of our AC attorney population included 121 African-Americans, 51 Hispanics, 93 Asians and Native Americans, and 415 women. The FY 06 AC end strength of 1,638 compares with an end strength of 1,603 in FY 05, 1,547 in FY 04, 1,506 in FY 03, 1,474 in FY 02, 1,462 in FY 01, 1,427 in FY 00, 1,426 in FY 99, 1,499 in FY 98, 1,523 in FY 97, and 1,541 in FY 96. The grade distribution of the Corps' AC attorneys was 4 general officers, 128 colonels, 228 lieutenant colonels, 361 majors and 917 captains. An additional 90 warrant officers, 500 civilian attorneys, and 1,416 enlisted paralegals supported legal operations worldwide. As of the end of FY 06, over 780 Army JAG personnel (officer and enlisted, AC and RC) had deployed in operations in Iraq, Egypt, Kuwait, Afghanistan, Djibouti, Qatar, Bosnia, Kosovo, Cuba, the Horn of Africa (afloat) and Honduras. At the end of FY 06, 390 Army JAG personnel were deployed.

SCOTT C. BLACK
Major General, USA
The Judge Advocate General

APPENDIX - U.S. ARMY MILITARY JUSTICE STATISTICS

Report Period: FISCAL YEAR 2006

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	749	723	26	-9.2%
BCD SPECIAL [A]	573	556	17	-18.1%
NON-BCD SPECIAL	6	6	0	N/A (none last year)
SUMMARY	1,140	1,074	66	-9.0%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-12.9%

PART 2 - DISCHARGES APPROVED [B]

GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)	142 (+28)
NUMBER OF BAD-CONDUCT DISCHARGES	455
SPECIAL COURTS-MARTIAL NUMBER OF BAD-CONDUCT DISCHARGES	335

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	636
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	332
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	182

PART 4 - WORKLOAD OF THE U.S. ARMY COURT OF CRIMINAL APPEALS

TOTAL ON HAND BEGINNING OF PERIOD	194 [C]
GENERAL COURTS-MARTIAL	[D]
BCD SPECIAL COURTS-MARTIAL	[D]
REFERRED FOR REVIEW	1228 [C]
GENERAL COURTS-MARTIAL	
BCD SPECIAL COURTS-MARTIAL	
TOTAL CASES REVIEWED	1323[E]
GENERAL COURTS-MARTIAL	
BCD SPECIAL COURTS-MARTIAL	
TOTAL PENDING AT CLOSE OF PERIOD	99 [C]
GENERAL COURTS-MARTIAL	
BCD SPECIAL COURTS-MARTIAL	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+21.1%

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE U.S. ARMY COURT OF CRIMINAL APPEALS (CCA)

NUMBER	1001
PERCENTAGE	81.52%

PART 6 - ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES (CAAF)

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF	435 of 1323	32.88 %
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+34.67%
PERCENTAGE OF TOTAL PETITIONS GRANTED	45 of 457	9.85 %
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+9.76%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY USACCA		3.40%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-14.36%

APPENDIX - U.S. ARMY MILITARY JUSTICE STATISTICS - CONT'D

PART 7 - APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ			
TOTAL PENDING BEGINNING OF PERIOD		9	
RECEIVED		8	
DISPOSED OF		15	
GRANTED	0		
DENIED	15		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		2	
PART 8 - ORGANIZATION OF COURTS			
TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		606	
SPECIAL COURTS-MARTIAL		508	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		143	
SPECIAL COURTS-MARTIAL		71	
PART 9 - COMPLAINTS UNDER ARTICLE 138, UCMJ			
NUMBER OF COMPLAINTS		21	
PART 10 - STRENGTH			
AVERAGE ACTIVE DUTY STRENGTH		574,456	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		42,814	
RATE PER 1,000		74.53	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-18.94%	

EXPLANATORY NOTES

- [A] Cases convened by GCM convening authority.
- [B] Based on records of trial received during FY for appellate review.
- [C] Includes only cases briefed and at issue.
- [D] No reason for distinguishing; GCM and BCD SPCM are not tracked separately.
- [E] Includes Article 62 appeals, All Writs Act cases, and appeals withdrawn.

SECTION 4

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

ANNUAL REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

OCTOBER 1, 2005 TO SEPTEMBER 30, 2006

**SUPERVISION OF THE ADMINISTRATION OF
MILITARY JUSTICE**

In compliance with the requirement of Article 6(a), Uniform Code of Military Justice (UCMJ), the Judge Advocate General (JAG) and the Commander, Naval Legal Service Command made frequent inspections of legal offices in the United States, Europe, and the Far East in order to supervise the administration of military justice. These inspections, conducted by subject matter experts, examined the full range of military justice processes at those offices inspected.

CRIMINAL LAW DIVISION (CODE 20)

Organization. Captain Christian L. Reismeier, JAGC, USN relieved Captain Jennifer Herold as the Division Director, and Lieutenant David A. Norkin, JAGC, USN relieved Lieutenant Commander Christopher Connor as the Deputy Director. The Criminal Law Division was staffed with five active duty judge advocates, three civilian support personnel, and two reserve units. NAVJAG 113 conducted Article 69(a), Article 69(b), and Article 73 reviews and NAVJAG 108 provided research and Action Officer support.

Mission. Administers military justice policy within the Department of the Navy; drafts legal and policy advice for JAG on a wide variety of military justice matters; reviews all legislative and regulatory proposals affecting military justice; represents the Navy in regular meetings of the Joint Service Committee (JSC) on Military Justice, which is the principal vehicle for staffing amendments to the UCMJ and the Manual for Courts-Martial (MCM); staffs all amendments to Secretarial and JAG regulations implementing the UCMJ, including Chapter 1, Manual of the Judge Advocate General (JAGMAN); reviews all decisions of military appellate courts; staffs JAG certification of cases decided by the Navy-Marine Corps Court of Criminal Appeals (NMCCA) for review by the Court of Appeals for the Armed Forces (CAAF); staffs requests for Secretarial designation as general and special court-martial convening authority and for Secretarial substitution of administrative for punitive discharge; staffs requests for JAG authorization to refer charges for trial by court-martial after adjudication of similar charges by state or foreign courts; provides JAG representative to Naval Clemency and Parole Board; coordinates court orders and warrants of attachment; provides written opinions to Board for Correction of Naval Records (BCNR); reviews records of trial forwarded to JAG for review under Article 69(a) and (b), UCMJ; reviews requests forwarded to JAG for consideration under Article 73, UCMJ; and publishes timely guidance to all military justice practitioners in the Department of the Navy.

In addition, the Code 20 Division Director serves as Special Assistant for Military Justice, Naval Legal Service Command (NAVLEGSVCCOM), and advises Commander, NAVLEGSVCCOM regarding policies, plans, resources and procedures affecting the military justice mission of NAVLEGSVCCOM. In that capacity, the Division Director assists Commander, NAVLEGSVCCOM, in Article 6, UCMJ, inspections of NAVLEGSVCCOM commands and detachments. In fiscal year 2006, the Division Director participated in the Article 6, UCMJ, inspections of NAVLEGSVCCOM commands in Europe and the Pacific Northwest.

The JSC 2006 Annual Review was forwarded to the Department of Defense (DoD), Office of General Counsel in accordance with the JSC's ongoing review of the Manual for Courts-Martial. Among the items forwarded in the Annual Review were amendments to the rape statute, UCMJ, Article 120, to include sexual offenses currently charged under UCMJ, Article 134 and amendments to the Military Rules of Evidence relating to cases involving alleged sexual misconduct.

During the past year, the Military Justice Division reviewed 20 records of trial under Article 69a, UCMJ and 6 records under Article 69b, UCMJ. Additionally, 29 petitions under Article 73, UCMJ were reviewed. One case was forwarded to NMCCA for review.

U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS (NMCCA) (JAG 07)

Legal issues addressed included: the applicability of R.C.M. 707 speedy trial rule to rehearings on sentence; speedy post-trial review under both the Due Process Clause of the Constitution and Article 66, UCMJ; the severance of an attorney-client relationship without the consent of the accused; application of waiver of speedy trial issue under Article 10, UCMJ, when the matter is first raised on appeal; an individual's right to privacy in temporarily abandoned property; the impact of unlawful command influence during the post-trial processing of a case; waiver in a pretrial agreement of the right to assert an unreasonable multiplication of charges; the admissibility of personnel records supporting the allegation of unauthorized absence under the Sixth Amendment; the applicability of the marital privilege when testifying regarding allegations of adultery; and the defense of truth when communicating a threat to harm another's reputation.

The court continued to post all published and authored decisions on the JAG web page and on the Navy Knowledge Online intranet.

APPELLATE DEFENSE DIVISION (Code 45)

Organization. Captain Robert B. Blazewick, JAGC, USN, and Lieutenant Colonel Richard R. Posey, USMC, reported in the summer of 2006, and serve as the Division Director and Deputy Director.

The Appellate Defense Division was staffed with 17 active duty Navy and Marine Corps judge advocates and 4 civilian support personnel.

The Appellate Defense Division was supported by 37 Navy and Marine Corps Reserve judge advocates. Reserve attorneys filed 1427 cases, representing 89% of the total initial pleadings for the year. The Division's supporting Reserve units are: NR NAVJAG 109, Columbus, Ohio; NR NAMARA (Defense) 111, Oklahoma City, Oklahoma; NAVJAG 519, Los Angeles, California; and NAVJAG 211, Fort Worth, Texas. Additionally, the Division received volunteer support from four Naval Reserve judge advocates from Voluntary Training Unit 614. The Marine Corps Reserve contingent consisted of five independently assigned Reserve judge advocates. In addition, four Marine Corps Reserve and two Navy Reserve Judge Advocates, not attached to Appellate Defense Division units were activated for periods ranging from two to eight weeks to assist in caseload management.

Mission. The Appellate Defense Division represents Navy and Marine Corps appellants before the NMCCA, CAAF, and the U.S. Supreme Court. It also represents some appellants before the Naval Clemency & Parole Board. The Division provides assistance to trial defense counsel in the field by helping to file extraordinary writs before NMCCA and CAAF, providing a death penalty assistance team to advise field defense counsel facing potential capital cases, providing training to trial defense counsel, and providing advice on specific cases in litigation at trial.

A total of 1610 new cases were docketed at NMCCA and received in the Appellate Defense Division. At the end of fiscal year 2006, the total number of cases pending initial review was 318. This represents a 36-case reduction from the number of cases pending initial review at the end of fiscal year 2005. The Division also achieved significant reduction in the number of cases pending initial pleadings in excess of one year. On October 1, 2003, there were 234 cases in a 7th or higher enlargement. A year later, that number was reduced to 82. By September 30, 2005, it was 16, and on September 30, 2006, the number was 2.

As depicted below, in fiscal year 2006, the Appellate Defense Division filed 1610 initial pleadings with the NMCCA. This number was comprised of 1097 merit submissions, 42 summary assignments, and 471 briefs. A total of 188 cases were petitioned to CAAF, with 56 grants of review issued.

NMCCA	FY 03	FY 04	FY 05	FY 06
Briefs Filed	433	520	543	471
Total Cases Filed	2094	1966	2127	1610
USCAAF				
Petitions Filed	240	201	226	188
Supplements Filed	174	161	207	173
Briefs Filed	12	19	26	76
U.S. Supreme Court Petitions	3	1	2	9*

*Seven petitions for certiorari, one Amicus brief, and one correction.

Capital Litigation. The Appellate Defense Division continued to represent three enlisted Marines convicted of capital offenses with sentences that included the death penalty.

Assistance to Trial Defense Counsel. The Appellate Defense Division provided advice and support to Navy and Marine Corps trial defense counsel around the world. The Division maintained a rotating Field Call watch comprised of experienced appellate attorneys who replied to short-fused questions from trial defense counsel and assisted in preparing and filing extraordinary writs.

The Division also conducts a Trial Defense Counsel Outreach Training Program in order to provide training on recent appellate developments and important trial issues.

APPELLATE GOVERNMENT DIVISION (CODE 46)

Organization. The Division was staffed with 12 active duty judge advocates and 2 civilian employees. Colonel Ralph F. Miller, USMC, continued to serve as the Division Director. Commander Paul LeBlanc, JAGC, USN relieved Commander Charles Purnell, JAGC, USN, as the Deputy Director in July 2006.

Reserve support continued to be critical to the accomplishment of the Division's mission. The Division was supported by 13 Navy Reservists from 2 Navy Reserve Detachments: NAVJAG 116, Detroit, Michigan; and NAMARA 116, Minneapolis, Minnesota, and 3 Marine Corps Officers as Individual Mobilization Augmentees.

Reserve units contributed an average of 17 briefs per month and periodically served on Active Training (AT) orders for 1 to 2 weeks per year. Lieutenant Commander Paul Bunge, JAGC, USNR, joined the Division for a period of 6 months on Active Duty for Special Work (ADSW) orders in February 2006. During the summer of 2006, three law student interns supported the Division.

Mission. In accordance with Article 70, UCMJ, the primary mission of the Appellate Government Division is to represent the United States before the NMCCA and CAAF. In addition, the Division provides support to staff judge advocates and trial counsel throughout the Navy and Marine Corps on issues related to pretrial, court-martial and post-trial proceedings.

The case tracking system migrated this fiscal year from Nautilus to the Case Management Tracking Information System (CMTIS). CMTIS calculations for "Briefs Filed" included Government briefs, answers to supplements, and supplemental briefs, all of which involved significant research and writing. CMTIS calculations for "Other Pleadings" included responses to extraordinary writs, motion responses, responses to Court Orders, and Petitions for Reconsideration. The number of full briefs filed by the Government at the CAAF increased by more than 100%. The Division participated in more oral arguments this fiscal year than in any previous year. The following chart sets forth the Division's filings and oral arguments for the last six fiscal years.

	FY 01	FY 02	FY 03	FY 04	FY 05	FY 06
NMCCA						
Briefs Filed	395	798	761	542	700	621
Other Pleadings	277	456	475	222	425	333
Oral Arguments	12	8	6	8	16	10
CAAF						
Briefs Filed	41	45	12	22	38	86
Other Pleadings	82	91	152	73	128	115
Oral Arguments	19	12	7	21	23	31

The Division maintained an active Trial Counsel Assistance Program, providing advice to trial counsel and staff judge advocates by telephone and E-mail concerning active trial cases on hundreds of occasions. Division judge advocates conducted training at all major Navy and Marine Corps installations on post trial processing. Division personnel also represented the Government in a number of Government appeals and extraordinary writs. Issues in these cases included jurisdictional and speedy trial rulings by military judges.

The Division continued its representation of the United States in three capital cases: *United States v. Quintanilla*, and the companion cases of *United States v. Walker* and *United States v. Parker*. Following oral argument at CAAF, the case of *United States v. Quintanilla* was returned to the Convening Authority for a rehearing on sentencing.

During fiscal year 2006, the Division's judge advocates participated in four oral argument outreach programs sponsored by CAAF. Oral argument outreach programs were held at the University of Denver Sturm College of Law, Denver, Colorado; the Catholic University of America Columbus School of Law, Washington, D.C.; Barry University Law School, Orlando, Florida; and Florida A & M University College of Law, Orlando, Florida. Participation in these programs served to educate and inform students and military members alike about the fairness and professionalism of the military justice system.

NAVY-MARINE CORPS TRIAL JUDICIARY

The Navy-Marine Corps Trial Judiciary (NMCTJ) is a joint Navy-Marine Corps activity led by Chief Judge Steven F. Day, Colonel, USMC. Its mission is to provide certified military judges for Navy and Marine Corps general and special courts-martial. The Judiciary is organized into six judicial circuits and is supported by Naval Reserve and Marine Corps Reserve Individual Mobilization Augmentees.

The NMCTJ consists of 31 active duty and 15 reserve judges serving in 6 judicial circuits. During fiscal year 2006, the NMCTJ provided judicial services in 278 general courts-marital and 1,299 special courts-martial. These numbers show there were fewer general and special courts-martial tried in fiscal year 2006 than in the previous fiscal year.

The NMCTJ provided judicial services to Fleet and Shore activities, and to Marine Forces in the United States and around the world.

Members of the trial judiciary participated in continuing education at the Army Judge Advocate General's Legal Center and School, the Interservice Military Judges Seminar at Maxwell Air Force Base, and various courses at the National Judicial College in Reno, Nevada.

The NMCTJ also provided training at various levels, including Navy-Marine Corps Senior Officers Courses, Legal Officer Courses, Naval Justice School, Basic Courses, and other in-service courses. The NMCTJ performed an active role in mentoring judge advocates through both formal and informal training sessions.

NAVAL LEGAL SERVICE COMMAND

Naval Legal Service Command (NAVLEGSVCCOM) is commanded by RADM James W. Houck, JAGC, USN who also serves as the Deputy Judge Advocate General of the Navy. NAVLEGSVCCOM includes 438 judge advocates, 1 Civil Engineer Corps Officer, 18 Limited Duty (Law) Officers, 288 Legalmen, and 230 civilians. NAVLEGSVCCOM provides a wide range of legal services to afloat and ashore commands, active duty naval personnel, family members, and retirees from 99 offices world-wide. In April of this year, a realignment of JAG Corps community assets from Commander Naval Installations Command and the Navy Regions to OJAG/NLSC provided a framework for the development of Region Legal Service Offices (RLSOs), which stood-up on 1 July.

This realignment builds RLSOs that will provide the Navy, Fleet and shore-based commands alike, with improved legal service support while at the same time finding efficiencies and savings. After this realignment, NAVLEGSVCCOM consists of eight Naval Legal Service Offices (NLSOs), nine Region Legal Service Offices (RLSOs), and the Naval Justice School. NAVLEGSVCCOM provides counsel for courts-martial, administrative boards, physical evaluation boards, legal assistance, and local commanders. NAVLEGSVCCOM also provides training for Navy, Marine Corps and Coast Guard judge advocates, legalmen, and other DoD personnel. During fiscal year 2006, NAVLEGSVCCOM provided counsel for 158 general courts-martial, 368 special courts-martial, 195 Article 32s, 1,032 administrative separation boards, provided over 249,921 legal assistance services, and command assistance services for over 3,900 commands.

NAVAL JUSTICE SCHOOL

Organization. Naval Justice School (NJS) reports to Commander, NAVLEGSVCCOM for administrative and operational control. Commander, Naval Education and Training Command (CNETC) is NJS' major resource sponsor. Commander, NAVLEGSVCCOM consults with CNETC on matters relating to the effectiveness of instruction and administration of training at NJS. Additionally, Commanding Officer, NJS consults with Commanding Officer, Center for Service Support on these same matters.

The main NJS facility is located in Newport, Rhode Island. Teaching detachments are based in San Diego, California, and Norfolk, Virginia (areas of Fleet concentration). A one-person Branch Office is co-located with the U.S. Army Judge Advocate General's Legal Center and School in Charlottesville, Virginia.

Mission. To oversee formal training of naval judge advocates, limited duty officers (LAW), and legalmen to ensure their career-long professional development and readiness; to provide comprehensive formal training to all Sea Service judge advocates and other legal personnel in order to promote justice and ensure the delivery of quality legal advice and other services to the commander; and to train commanders and senior officers in the practical aspects of military law to enable them to perform their command and staff duties, and train other personnel to assist in the sound administration of military justice.

In fiscal year 2006, NJS provided instruction to more than 9,696 students worldwide (including 2,526 in resident courses ranging in length from 2 days to more than 10 weeks).

Academic Programs. NJS has eight "core" courses. These courses are:

- Basic Lawyer Course (BLC). This 9-week course, offered 4 times annually, provides accession training for all judge advocates in the Navy, Marine Corps, and Coast Guard. The course includes extensive training in military justice and court-martial advocacy, as well as training in legal assistance and administrative law. Upon graduation, judge advocates are certified per Article 27(b), UCMJ. Fiscal year 2006 graduates: 132.
- Basic Operational Law Training (BOLT). This 1-week course is offered to all Navy accession judge advocates either right before or right after the BLC. This course runs parallel with the USMC BOLT course, which is coordinated by USMC Headquarters for all Marine Corps Basic Lawyer Course students. Instruction includes classroom lectures and group seminar exercises in topics that include the law of armed conflict, law of the sea, rules of engagement/rules for the use of force, command and control, operational environmental law, information operations, and handling classified information. Fiscal year 2006 graduates: 106.
- Accession Legalman Training. This 11-week course trains Navy enlisted personnel selected for conversion to the Legalman rating. There were no Legalman accession students in fiscal year 2006, due to the potential rating merger with Yeomen, Religious Program Specialist, and Cryptologic Technician-Administration.

Since the Legalman rating has been reopened, NJS will offer the Accession Legalman Course again in fiscal year 2007. However, the course has been substantially revised to provide ABA certified credits towards a paralegal degree.

- Basic Legal Services Specialist Course. This 9 1/2-week course, offered 4 times annually, provides accession level training to junior enlisted Marines seeking the Military Occupational Specialty of Marine Corps Legal Services Specialist. Curriculum consists of training in military justice, post trial review, and legal administration. Fiscal year 2006 graduates: 74.
- Senior Officer Course in Military Justice and Civil Law. This 1-week course trains senior officers in the execution of the legal responsibilities of command with instruction in nonjudicial punishment, court-martial procedures, administrative law, and operational law topics including rules of engagement/rules for use of force, law of armed conflict, and law of the sea. Fiscal year 2006 graduates: 663.

- Legal Officer Course. This 3-week course prepares non-lawyer "legal officers" to perform a host of military law functions in commands not large enough to warrant assignment of a judge advocate. Fiscal year 2006 graduates: 453.
- Legal Clerk Course. Legal Clerks are typically assigned to assist non-lawyer legal officers within a command as a collateral duty. This 2-week course provides training in the preparation of legal forms and reports, service record entries, nonjudicial punishment, and court-martial procedures. Fiscal year 2006 graduates: 279.
- Senior Enlisted Leadership Course (SELC) in Military Justice and Civil Law. This 3-day course provides senior enlisted leaders of all services training in a wide range of military law with primary focus on military justice matters. In Newport, the SELC is incorporated into the core curriculum at the Navy's Senior Enlisted Academy. Fiscal year 2006 graduates: 314.

Continuing Legal Education. In addition to the "core" courses, NJS provided 31 continuing legal education (CLE) courses, many of which are pre-approved for CLE credit from state bar associations. Most of these courses focus upon military justice (e.g., intermediate and advanced trial advocacy skills; computer crimes; legal research and writing; national security cases; prosecuting and defending complex cases; reserve updates; and a number of paralegal courses).

Training was provided to active duty and reserve judge advocates and enlisted legal professionals from the Sea Services, Army, Air Force, and foreign countries in military justice, as well as other topics, including operational law, administrative law, legal assistance, and estate planning. In fiscal year 2006, these resident courses reached 1,523 active duty and 389 reserve legal professionals.

Coordination. Through the Interservice Legal Education Review Committee, Commanding Officer, NJS, the Dean of Students, The Judge Advocate General's Legal Center and School, and the Commandant, Air Force Judge Advocate General's School, meet bi-annually to discuss new initiatives and opportunities for cross-training and to increase cooperation and efficiency in the training of legal personnel within the Department of Defense.

Publications. NJS is responsible for publication of the *Naval Law Review*, study guides, materials in support of academic programs, reference manuals designed to assist Sea Service commanders with implementation of the UCMJ, and any additional materials directed by higher authority.

Additional Training. In conjunction with the Defense Institute of International Legal Studies, NJS participated in the Expanded International Military Education and Training Program, a security assistance program provided for by Congress. The primary focus of this instruction is on military justice and procedure. In fiscal year 2006, NJS instructors provided this type of training in Afghanistan, Argentina, Columbia, El Salvador, Zambia, and the Congo during training visits that usually lasted 1 to 2 weeks.

Deployments. In fiscal year 2006, four NJS instructors deployed to Iraq for 6 months in support of Task Force 134 and Operation Iraqi Freedom.

MARINE CORPS ACTIVITIES

There are approximately 446 active duty Marine judge advocates and 415 Reserve Marine judge advocates. Additionally, there are 16 warrant officers, 460 legal specialists, and 38 court reporters working in the legal offices. These offices support the Fleet Marine Forces in the continental United States, overseas, and on deployment throughout the world. Our drilling Reserve judge advocate community provides substantial support to each of our offices in all functional areas.

Marine Corps judge advocates perform a variety of missions. They work in the military criminal justice system as prosecutors, defense counsel, military judges, appellate defense counsel, or appellate government counsel in cases of all descriptions.

Legal assistance judge advocates assist Marines, Sailors, military retirees, and family members in estate planning, domestic relations law, consumer law, tax law, property law, landlord and tenant law, debtor and creditor law, adoptions, and citizenship cases. Marine judge advocates also advise commanders during military operations, review military operational plans and provide advice on the Law of War, rules of engagement, and domestic law relating to the employment of force and support of our allies. Other proactive areas include pre-mobilization legal assistance, environmental law, civil law, contract law, international law, claims and tort law, and labor law.

Since Marine Corps judge advocates are unrestricted line officers, many also serve in non-legal billets. For example, this year, Marine judge advocates served as Commanding Officer, Support Battalion, Marine Corps Recruit Depot, Parris Island, South Carolina; Commanding Officer, 1st Recruit Training Battalion, Marine Corps Recruit Depot, Parris Island, South Carolina; Commanding Officer, 2d Recruit Training Battalion, Marine Corps Recruit Depot, Parris Island, South Carolina; Commanding Officer, 4th Recruit Training Battalion, Marine Corps Recruit Depot, Parris Island, South Carolina; Commanding Officer, 2d Recruit Training Battalion, Marine Corps Recruit Depot, San Diego, California; Commanding Officer, Marine Security Guard Battalion, Company I, Ft Lauderdale, Florida; Commanding Officer, Marine Security Guard Battalion, Company C, Bangkok, Thailand; Commanding Officer, Headquarters and Service Battalion, Marine Forces Reserve, New Orleans, Louisiana, and Commanding Officer, Headquarters and Service Battalion, Kaneohe Bay, Hawaii.

The Marine Corps accesses 35 judge advocates a year from civilian law schools and private practice. Approximately 10 judge advocates per year are lateral transfers from other Marine Corps occupational fields via the Law Education Program. The Marine Corps continues to have more applicants than openings and are able to use a board process to screen all applicants to ensure the highest quality are accepted. Applicants come from diverse backgrounds and all have law degrees from ABA accredited law schools. They have higher than average LSAT scores and have successfully completed the rigorous Marine Corps Officer Candidate Course training program.

The process of becoming a Marine Corps judge advocate is four-fold. First, eligible applicants must attend Officer Candidate School (OCS) in Quantico, Virginia. This strenuous ten-week course is designed to test a candidate's leadership and physical abilities. Successful completion leads to a commission as a Second Lieutenant. Second, all Marine Corps officers attend the Basic School (TBS). The Basic School is a rigorous, 6-month program that provides each lieutenant the foundation to be an infantry platoon commander. The phrase "every Marine a rifleman" applies even to judge advocates. Third, each judge advocate must complete the Basic Lawyer Course at the Naval Justice School in Newport, Rhode Island.

Finally, each judge advocate must successfully complete the newly implemented Basic Operational Law Training (BOLT) course. Successful completion of OCS, TBS, the Basic Lawyer Course, and BOLT culminates in designation as a Marine judge advocate.

Upon reporting to their commands, various continuing legal education training opportunities are available to include command and Headquarters, U.S. Marine Corps sponsored programs.

Currently, training opportunities are available at each of the services judge advocate schools. Additionally, various civilian continuing legal education opportunities are provided for judge advocates. Approximately 12 judge advocates each year are selected for advanced (L.L.M.) training at civilian law schools and the Army's Judge Advocate General's Legal Center and School. Additionally, each year, five to six judge advocates attend a military specific training course such as the Expeditionary Warfare School, Command and Staff College, or the Naval War College.

The Marine Corps warrant officer and enlisted members also undergo a significant training regime. On average, 9 enlisted Marines are enrolled in a stenography/scopist course and each year 18 enlisted Marines attend the Legal Service Specialist Mid-Career Course at Naval Justice School. The Marine Corps also had 6 enlisted Marines attend the Law Office management course at Maxwell Air Force Base, Alabama, and the Senior Noncommissioned management course at Charlottesville, Virginia. In addition, the Marine Corps has 38 legal specialists and 1 court reporter filling non-legal billets as Drill Instructors, Recruiters, and Marine Security Guards at U.S. embassies and consulates. Currently, enlisted Marines are enrolled in paralegal programs and have the opportunity to attend legal education courses offered by the Marine Corps, Army, Navy, and Air Force, including the Legalman/Legal Services Specialist Mid-Career Course and Legal Research and Writing at the Naval Justice School.

The average debt for new Marine Corps judge advocates is \$68,841. Following the other services, the Law School Education Debt Subsidy (LSEDS) has now been approved and is undergoing implementation in the Marine Corps. Captains who have completed their initial active duty obligation and intend to augment into the regular Marine Corps are eligible. Selection to Major is the upper parameter for eligibility. Thirty thousand dollars is the authorized payment to be made in yearly installments of \$10,000. Officers accepting LSEDS incur a further 3-year commitment.

The following chart contains military justice statistical information for the Marine Corps in fiscal years 2005 and 2006.

Fiscal Year	End strength	GCM	SPCM	SCM	Total Courts	NJP	Total Adseps
FY06	180,416	120	962	1,262	2,346	13,217	5,010
FY05	180,029	187	1,137	1,022	2,346	13,386	4,734

BRUCE E. MacDONALD
Rear Admiral, JAGC, U.S. Navy
The Judge Advocate General of the Navy

APPENDIX - U.S. NAVY/MARINE CORPS MILITARY JUSTICE STATISTICS

Report Period: FY 2006

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	278	250	28	-23%
BCD SPECIAL	1299	1240	59	-19.3%
NON-BCD SPECIAL	0	0	0	0%
SUMMARY	1789	1774	15	-10%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-15.1%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES	104
NUMBER OF BAD-CONDUCT DISCHARGES	99
SPECIAL COURTS-MARTIAL (CA LEVEL) NUMBER OF BAD-CONDUCT DISCHARGES	884

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	318
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	1218
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	49

PART 4 - WORKLOAD OF THE U.S. NAVY-MARINE CORPS CRT OF CRIMINAL APPEALS

TOTAL ON HAND BEGINNING OF PERIOD	991
GENERAL COURTS-MARTIAL	375
BCD SPECIAL COURTS-MARTIAL	616
REFERRED FOR REVIEW	1610
GENERAL COURTS-MARTIAL	362
BCD SPECIAL COURTS-MARTIAL	1248
TOTAL CASES REVIEWED	1787
GENERAL COURTS-MARTIAL	416
BCD SPECIAL COURTS-MARTIAL	1191
TOTAL PENDING AT CLOSE OF PERIOD	814
GENERAL COURTS-MARTIAL	231
BCD SPECIAL COURTS-MARTIAL	583
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-14%

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS (CCA)

NUMBER	1582
PERCENTAGE	00%

PART 6 - ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES (CAAF)

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF	188	12%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-1.2%
PERCENTAGE OF TOTAL PETITIONS GRANTED	56	30%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+8%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA		3.4%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+16%

APPENDIX - U.S. NAVY/MARINE CORPS MILITARY JUSTICE STATISTICS - CONT'D

PART 7 - APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ

TOTAL PENDING BEGINNING OF PERIOD		12	
RECEIVED		11	
DISPOSED OF		6	
GRANTED	0		
DENIED	6		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		17	

PART 8 - ORGANIZATION OF COURTS

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		229	
SPECIAL COURTS-MARTIAL		1226	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		49	
SPECIAL COURTS-MARTIAL		75	

PART 9 - COMPLAINTS UNDER ARTICLE 138, UCMJ

NUMBER OF COMPLAINTS		107	
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PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH		530,613	
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PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		26,080	
RATE PER 1,000		4.9%	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-17.7%	

SECTION 5

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

**REPORT OF THE JUDGE ADVOCATE GENERAL
OF THE UNITED STATES AIR FORCE**

OCTOBER 1, 2005 TO SEPTEMBER 30, 2006

THE AIR FORCE COURT OF CRIMINAL APPEALS (AFFCA)

AFFCA rendered 782 decisions in fiscal year 2006. The Court continued its "Project Outreach" program, hearing oral arguments at locations around the country as a means of familiarizing Air Force members and the public with the appellate process of the military justice system. The Court heard argument at Lackland Air Force Base, Texas, Travis Air Force Base, California, Maxwell Air Force Base, Alabama, and in the National Capital Region before the Phi Alpha Delta International Law Fraternity. The issues involved in those cases included whether unlawful command influence deprived an appellant of due process of law, whether a general court-martial convening authority's (GCMCA) participation in administering a referral officer promotion report and promotion non-recommendation to an appellant prior to his court-martial disqualified the GCMCA from acting in the case, whether it was error for a military judge to admit evidence of uncharged misconduct, over defense objection, pursuant to Military Rule of Evidence 413, and whether a military judge abused his discretion when he overruled a defense objection to an expert witness' opinion testimony.

During the fiscal year, the Court lost one Senior Judge to retirement as well as one Senior Judge, four Associate Judges, the Chief Commissioner, one Honors Law Clerk, the Chief Court Administrator and the Clerk of Court as a result of permanent change of station (PCS) moves. Subsequently, the Court welcomed four new Associate Judges - Colonel Dawn E.B. Scholz, Colonel David R. Francis, Colonel Laurence M. Soybel and Colonel Steven B. Thompson, two new Honors Law Clerks and a new Chief Court Administrator.

TRIAL JUDICIARY

The Air Force Trial Judiciary had 21 active duty trial judges, 12 reserve trial judges, and 6 noncommissioned officers assigned worldwide. The military judges' duties include: presiding over all general and special courts-martial tried in the United States Air Force; serving as investigating officers IAW Article 32, Uniform Code of Military Justice (UCMJ); serving as legal advisors for officer discharge boards and other administrative boards; conducting parole violation hearings; and presiding at public hearings held to consider draft environmental impact statements. In fiscal year 2006, the judges presided over 796 general and special courts-martial, a 19% decrease from FY05.

At the division headquarters, Colonel Dawn R. Eflein is serving as the Chief Trial Judge, following the retirement of Colonel David

Brash. In August, Lieutenant Colonel John E. Hartsell assumed duties as the Deputy Chief Trial Judge.

The Trial Judiciary conducted the 32nd Interservice Military Judges Seminar at Maxwell AFB, AL 28-31 March. The seminar provided extensive continuing legal education and cross-feed among military trial judges. Over 110 military active duty and reserve judges from all services attended.

Our judges participated in or conducted several other training sessions during this period. In May, Colonels Brash and Eflein instructed new military judges at the Military Judges' Course at the Army Judge Advocate General School, University of Virginia, Charlottesville, VA. In August, Colonel Morrow and Major Kratz instructed at the Advanced Trial and Defense Advocacy Course, Air Force Judge Advocate General's School (AFJAGS), Air University, Maxwell AFB, AL. In September, Colonel Eflein instructed at the Judge Advocate Staff Officers' Course, AFJAGS. Colonel Brash and Eflein also made annual supervisory visits and trained trial and defense counsel at several regional workshops.

In March 2006, the judiciary began to reorganize in accordance with the Air Force Chief of Staff's Directive to centralize judiciary circuit management, eliminate regional circuits, and relocate judiciary and circuit personnel as appropriate. The Directive was part of The Judge Advocate General's Corps (TJAGC) 21 initiative to re-examine ways to deliver legal services to the Air Force. The effort has allowed the Trial Judiciary to move two judges from Travis AFB, California to Nellis AFB, Nevada in July 2006. Several additional moves are planned to relocate judges closer to busy military justice bases and to major airport hubs. TJAGC 21 also centralized all Air Force docketing in the United States to a single office located at Bolling AFB, Washington DC. Centralized docketing allows greater visibility on the availability of judges and secures quicker trial dates for the parties.

Three military trial judges attended courses at the National Judicial College. Colonels Eflein, Mike Burd, and Ron Gregory attended "Handling Capital Cases" in Seattle, Washington, in June.

GOVERNMENT TRIAL & APPELLATE COUNSEL DIVISION

APPELLATE GOVERNMENT COUNSEL

At the division headquarters, Colonel Gary F. Spencer served as the Chief, Government Trial and Appellate Counsel Division, until July 2006 when Colonel Gerald R. Bruce replaced him; Lieutenant Colonel Robert V. Combs served as the Chief Appellate Government Counsel.

In October 2005, division counsel attended the United States Court of Appeals for the Armed Forces (USCAAF) Symposium at The Catholic University of America, Columbus School of Law, sponsored by The Judge Advocate's Association.

In November 2005, division personnel attended the Criminal Law New Developments Course at the Army Judge Advocate General School. This course covered the previous year's military cases. In addition to providing new counsel an update in criminal law developments, it was an opportunity for appellate counsel and trial counsel to discuss ways to better serve base legal offices and each other; it also provided an opportunity for our counsel to establish contacts with counterparts in their sister services. In May 2006, appellate counsel, including reservists, attended the USCAAF Judicial Conference, also held at Catholic University's School of Law. All these gatherings provided current information on appellate issues and guidance on appellate practice.

During this time, the division continued to fulfill its obligation to support war-fighting commanders by deploying its senior appellate counsel, Major Matthew Ward, to Iraq from March to September 2006.

Appellate government counsel have contributed to "Project Outreach," sponsored by USCAAF and AFCCA, by conducting oral arguments before audiences at various locations. These arguments helped educate attendees on the fairness and professionalism of the military justice system.

The division produces a number of important publications, including the *Appellate Update*, *Pocket Parts*, the *Advocacy Continuing Education (ACE) Newsletters*, and a monthly newsletter for staff judge advocates and trial counsel. These documents are on the Division's website, providing practitioners easy and immediate access to the latest in military justice case law.

There are seven reserve judge advocates assigned as appellate government counsel. They continue to provide superb support, greatly assisting the division in carrying out its mission. In addition to preparing written briefs, a number of reserve counsel presented oral arguments before USCAAF and AFCCA during the fiscal year. Of note, the division's reserve paralegal is a law student at Widener University School of Law in Delaware; this summer she performed a special tour, during which she researched and drafted several Answers to Assignments of Error, which were submitted to AFCCA under her signature under the supervision of division counsel.

A summary of Air Force Appellate (Government) practice follows:

AFCCA	<u>FY02</u>	<u>FY03</u>	<u>FY04</u>	<u>FY05</u>	<u>FY06</u>
Briefs Filed	181	230	226	159	207
Cases Argued	12	13	14	11	15
USCAAF	<u>FY02</u>	<u>FY03</u>	<u>FY04</u>	<u>FY05</u>	<u>FY06</u>
Briefs Filed	99	51	69	73	47
Cases Argued	28	31	15	29	25
SUPREME COURT	<u>FY02</u>	<u>FY03</u>	<u>FY04</u>	<u>FY05</u>	<u>FY06</u>
Petition/Waivers Filed	0	0	0	5	0
Briefs Filed	0	0	0	0	0

CIRCUIT TRIAL COUNSEL

Personnel authorizations for the fiscal year included 17 Circuit Trial Counsel (CTC) at 3 continental United States (CONUS) circuit offices and 2 CTCs each at the Pacific and European circuit offices. However, the end of the fiscal year saw the standing down of the geographically-based judiciary circuits. Although there are still prosecutors currently assigned at the locations formerly known as circuit offices, they are in the process of being reorganized and relocated. The new circuit trial counsel program will be a little leaner, with 19 counsel assigned at 12 locations worldwide: three counsel at Bolling AFB, Washington DC and three "instructor-litigators" at The Judge Advocate General's School at Maxwell AFB, Alabama; two counsel at Yokota AB, Japan, Ramstein AB, Germany, and Randolph AFB, Texas; and one counsel at Travis AFB, California; Nellis AFB, Nevada; Davis-Monthan AFB, Arizona; Peterson AFB, Colorado; Offutt AFB, Nebraska; Barksdale AFB, Louisiana; and Langley AFB, Virginia. All circuit trial counsel will be detailed to prosecute cases by the division headquarters at Bolling AFB, and their primary responsibility will be to represent the government in the most complex, litigated general courts-martial. They are also available for special courts-martial, discharge boards and other proceedings, as resources allow.

In the past year, circuit trial counsel represented the government in 324 courts-martial and 109 other proceedings. In one notable case, circuit trial counsel prosecuted a capital murder case and secured the first death penalty sentence in the Air Force in many years. Currently, there are three murder cases being prosecuted in Air Force courts-martial around the world, and six circuit trial counsel are assigned as lead prosecutors.

APPELLATE DEFENSE DIVISION

Training for our appellate defense counsel remains one of the division's critical priorities. Frequent turnover in counsel make this an especially invaluable area of interest. Training included the Criminal Law New Developments Course, the Judicial Conference sponsored by USCAAF, and a Military Appellate Advocacy Symposium sponsored by the Judge Advocates Association.

Appellate defense counsel served as adjunct faculty members at the Trial and Defense Advocacy Course and the Advanced Trial Advocacy Course at AFJAGS. Appellate defense counsels routinely serve as instructors at the Area Defense Counsel Orientation Courses.

Appellate defense counsel continued to support trial defense counsel in the field by actively participating in defense counsel workshops in the Pacific, European, Eastern, Western, and Central circuits and always being available for telephone consults in appropriate instances. Appellate defense counsel also kept trial defense counsel in the field updated on new appellate developments in military criminal law via appellate updates throughout the year.

Appellate defense counsel have contributed to "Project Outreach," sponsored by USCAAF and AFCCA, by conducting oral arguments before audiences at the United States Air Force Academy, AFJAGS, Lackland AFB, TX, and Grand Forks AFB, ND. These arguments helped educate attendees on the fairness and professionalism of the military justice system.

Appellate defense division began FY06 with approximately 547 cases pending initial briefing to the AFCCA. The division reduced the number of cases pending initial briefing to the AFCCA to 345 cases by the end of the FY. During that same time period the number of enlargements were reduced significantly. The total AFCCA, CAAF Supp and CAAF Grant briefs filed by the appellant defense division were 1,027, a 52% increase over the previous fiscal year.

The following figures reflect the division's workload over the past five fiscal years:

AFCCA

	<u>FY 02</u>	<u>FY 03</u>	<u>FY 04</u>	<u>FY05</u>	<u>FY 06</u>
Briefs Filed	525	512	502	376	638
Cases Argued	12	12	14	11	16

USCAAF

	<u>FY 02</u>	<u>FY 03</u>	<u>FY 04</u>	<u>FY05</u>	<u>FY06</u>
Supplements to Petitions	412	219	274	268	371
Grant Briefs Cases Argued	33	22	19	32	18
	28	26	14	29	25

SUPREME COURT

	<u>FY 01</u>	<u>FY 02</u>	<u>FY 03</u>	<u>FY04</u>	<u>FY05</u>
Petitions	3	3	1	0	0
Briefs in Opposition	0	0	0	0	0
Briefs on the Merits	0	0	0	0	0

TRIAL DEFENSE DIVISION

The Trial Defense Division was responsible for providing all trial defense services within the Air Force through Area Defense Counsel (ADC), Defense Paralegals (DP), Circuit Defense Counsel (CDC), and Chief Circuit Defense Counsel (CCDC). These personnel reported to the Chief, Trial Defense Division (JAJD), who reports to the Director, United States Air Force Judiciary (JAJ). The Chief, Trial Defense Division is assisted by the Deputy Chief and Office Manager.

The Division was staffed with 84 ADCs stationed at 71 bases worldwide. They were assisted by 72 DPs. The Division had 21 CDCs and 5 CCDCs. The CCDCs, along with most of the CDCs, were stationed at circuit offices located at Bolling AFB, DC, Randolph AFB, TX, Travis AFB, CA, Ramstein AB, Germany, and Yokota AB, Japan. There was also a CDC located at Davis-Monthan AFB, AZ, Nellis AFB, NV, Maxwell AFB, AL, Hurlburt Field, FL, and Kadena AB, Japan. A single defense paralegal manager was assigned to each of the circuits. In 2006, the Air Force's newest ADC office was established at Al Udeid AB, Qatar, to serve clients in Southwest Asia.

The continuing success of the Air Force's ADC Program is largely attributable to its independence and its energized personnel.

To ensure the best representation for Air Force clients, training remains the division's top priority.

On a continuing basis, each CCDC and CDC provided on-the-job training and mentoring to ADCs. Newly appointed defense counsel received formal training at the ADC Orientation held at Bolling AFB in May and August and at annual workshops conducted by each circuit. Each circuit also conducted DP training at the annual workshops. In addition, the division ensured each ADC had attended the Trial and Defense Advocacy Course and that all CDCs had attended the Advanced Trial Advocacy Course. The Division provided adjunct faculty members for these two courses held at AFJAGS. Selected defense counsel also attended Air Force in-residence force development education.

MILITARY JUSTICE DIVISION

The Military Justice Division prepares opinions and policy positions for The Judge Advocate General. The division also assembles reports on military justice issues requested by the White House, Congress, DoD and the Air Staff. The division represents the Air Force on the DoD Joint Service Committee (JSC) on Military Justice. The division also provides representatives to all interservice activities involving military justice and support for the Article 146, UCMJ, Code Committee. Lastly, the division serves as the action agency for the review of military justice issues on applications submitted to the Air Force Board for Correction of Military Records (AFBCMR).

During the past year, the Military Justice Division: provided 44 formal opinions concerning AFBCMR applications; received 120 inquiries in specific cases requiring formal written replies to senior officials, including the President and members of Congress; and reviewed 67 records of trial for review under Article 69a, UCMJ, and 4 records under Article 69b, UCMJ. The division presented the tenth annual Military Justice Administration Workshop at the AFJAG School, a "back to basics" one-week workshop attended by both judge advocates and paralegals. The division also instructed base legal office chiefs of military justice at an 18th Air Force workshop held at Scott Air Force Base, IL.

The division continued its direct involvement in the development and implementation of DoD and Air Force sexual assault prevention and response policies and procedures and a division representative served as a principal trainer for judge advocates, sexual assault response coordinators, victim advocates, Air Force Office of Special Investigations (OSI) agents and medical personnel for both DoD and the AF.

Finally, division representatives played a pivotal role in drafting Manual for Courts-Martial (MCM) implementing provisions and preparing a draft Executive Order for presidential signature for legislative changes to sexual assault offenses under Article 120 of the UCMJ.

CLEMENCY, CORRECTIONS AND OFFICER REVIEW DIVISION

At the end of fiscal year 2006, 505 Air Force personnel were in confinement. Of those, 87 inmates were in long-term confinement at the United States Disciplinary Barracks (USDB), Fort Leavenworth, Kansas, and 85 were serving time in the Federal Bureau of Prisons (BOP) system. A total of 3 inmates were enrolled in the Air Force Return-to-Duty Rehabilitation (RTDR) Program during this period, with 3 graduating and being returned to duty. The number of Air Force inmates on parole at the end of fiscal year 2006 was 178, a 9 percent increase from last fiscal year. The President pardoned one former Air Force member tried by court-martial in 1978.

The officer dismissal case workload remained consistent over the previous fiscal year, with 17 cases acted upon by the Secretary. The division briefed each of the five Circuit Workshops on its area of practice, and division representatives received professional education themselves at the American Correctional Association annual convention.

AIR FORCE JUDGE ADVOCATE GENERAL'S SCHOOL

AFJAGS is the educational arm of the Judge Advocate General's Corps. It is located at Maxwell Air Force Base, Alabama, and provides education and training in all aspects of the military justice system to attorneys and paralegals from all military Services, other federal agencies, and many foreign countries. Specifically, instruction is given in advocacy, procedure and administration. AFJAGS faculty also provides military justice instruction at several schools and colleges throughout Air University—the Air Force's center for education. Additionally, AFJAGS routinely publishes military and criminal justice items in *The Reporter* (a quarterly journal), *The Air Force Law Review* (published biannually) and *The Military Commander and the Law* (updated annually).

Of the 42 classes held at AFJAGS in Fiscal Year 2006 for 2,657 students, the following courses had military justice related materials associated with them:

- Advanced Trial Advocacy
- Annual Survey of the Law (Reserve and Air National Guard)
- Judge Advocate Staff Officer
- Law Office Manager
- Legal Aspects of Sexual Assault

Military Judges
Military Justice Administration
Paralegal Apprentice
Paralegal Craftsman
Reserve Forces Judge Advocate
Reserve Forces Paralegal
Staff Judge Advocate
Trial and Defense Advocacy

LEGAL INFORMATION SERVICES

During fiscal year 2006, the Legal Information Services (JAS) Directorate continued to develop new tools and programs to further the use of information technology (IT) in the practice of military justice throughout the Air Force JAG Corps.

JAS continued to enhance the Automated Military Justice Analysis and Management System (AMJAMS) throughout the year. The most significant obstacle overcome during the year was compliance with the Air Force Standard Desktop Configuration.

A tremendous amount of effort was expended to ensure that military justice practitioners were able to continue to use the program. Additional changes included increased security, new special identifiers for sexual assault and alcohol involvement, better on-line query capability and improved web reports. Also an Executive Summary Report was developed to provide leadership with a more succinct overview of their military justice program.

The directorate developed and beta-tested the first-ever software application intended to assist ADC offices in documenting and tracking cases as well as to enable Defense Counsel leadership to oversee workload. The Area Defense Electronic Reporting (ADER) application will furnish ADCs a web-based application providing cradle-to-grave case management. Additionally, ADER will provide statistical reports not previously available and, through an interface with AMJAMS, will ensure consistency of such reports.

In order to enhance the effectiveness of the new Central Docketing Office (CDO), the directorate also acquired and fielded the Judicial Docketing System (JDS). JDS is a modified commercial application that provides the CDO with web access to the calendars of the military judges. This allows docketing decisions to be made quickly and efficiently and replaces an outdated grease board process.

PERSONNEL

As of 30 September 2006, the Air Force Judge Advocate General's Corps had 1254 judge advocates on active duty.

Company grade officers (lieutenants and captains) made up approximately 49% of that number (611). Slightly more than 26% were majors (327) and 15% were lieutenant colonels (194). Almost 10% of the Corps were colonels and above (122), including two major generals and four brigadier generals. The Air Force Judge Advocate General's Corps Reserve included 926 Air Force Reserve IMA, Air Force Reserve unit-assigned, and Air National Guard judge advocates, of whom 12% (111) were company grade officers and 73% (677) were field grade officers (majors and lieutenant colonels). The remaining 15% consisted of 134 colonels, three brigadier generals, and one major general.

JACK L. RIVES
Major General, USAF
The Judge Advocate General

APPENDIX - U.S. AIR FORCE MILITARY JUSTICE STATISTICS

Period: Fiscal Year 2006				
PART 1 - BASIC COURTS-MARTIAL STATUS (Persons)				
TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE(+)/ DECREASE (-) OVER LAST REPORT
GENERAL	341	297	44	-19.19%
BCD SPECIAL	455	200	29	-11.99%
NON-BCD SPECIAL [A]		226		
SUMMARY	140	139	1	- 0.03%
OVERALL RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT				-13.25%
PART 2 - DISCHARGE APPROVED				
GENERAL COURTS-MARTIAL (CA LEVEL)				
NUMBER OF DISHONORABLE DISCHARGES [B]			67	
NUMBER OF BAD CONDUCT DISCHARGES			221	
SPECIAL COURT-MARTIAL (CA LEVEL)				
NUMBER OF BAD CONDUCT DISCHARGES			195	
PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG				
FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL			271	
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL			197	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL			75	
PART 4 - WORK LOAD OF THE AIR FORCE COURT OF CRIMINAL APPEALS				
TOTAL ON HAND BEGINNING OF PERIOD			721	
GENERAL COURTS-MARTIAL		[C]		
BCD SPECIAL COURTS-MARTIAL		[C]		
REFERRED FOR REVIEW			472	
GENERAL COURTS-MARTIAL		[C]		
BCD SPECIAL COURTS-MARTIAL		[C]		
TOTAL CASES REVIEWED			735	
GENERAL COURTS-MARTIAL				
BCD SPECIAL COURTS-MARTIAL				
TOTAL PENDING AT CLOSE OF PERIOD			458	
GENERAL COURTS-MARTIAL				
BCD SPECIAL COURTS-MARTIAL				
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD (735/476)				+54.41%
PART 5 - APPELLATE COUNSEL REQUESTS BEFORE THE AIR FORCE COURT OF CRIMINAL APPEALS				
NUMBER	472/497			
PERCENTAGE	94.87%			

APPENDIX - U.S. AIR FORCE MILITARY JUSTICE STATISTICS - CONT'D

PART 6 - U.S. COURT OF APPEALS FOR THE ARMED FORCES			
PERCENTAGE OF AFCCA REVIEWED CASES FORWARDED TO USCAAF (381/564)		(376/735)	51.16%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD			+ 3.67%
PERCENTAGE OF TOTAL PETITIONS GRANTED (68/376)			18.09%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD			- 2.69%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY AFCCA (60/404)		(68/735)	9.25%
RATE OF INCREASE (+) / DECREASE (-)OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD			- 0.75%
PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69			
PENDING AT BEGINNING OF PERIOD		0	
RECEIVED		4	
DISPOSED OF		1	
GRANTED	0		
DENIED	1		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		3	
PART 8 - ORGANIZATION OF COURT			
TRIALS BY MILITARY JUDGE ALONE		528	
GENERAL COURTS-MARTIAL		193	
SPECIAL COURTS-MARTIAL		335	
TRIALS BY MILITARY JUDGE WITH MEMBERS		268	
GENERAL COURTS-MARTIAL		148	
SPECIAL COURTS-MARTIAL		120	
PART 9 - COMPLAINTS UNDER ARTICLE 138			
NUMBER OF COMPLAINTS	17		
PART 10 - STRENGTH			
AVERAGE ACTIVE DUTY STRENGTH	349,732		
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		7,616	
RATE PER 1,000		21.78%	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-1.35%	

EXPLANATORY NOTES

[A] The Air Force does not convene non-BCD SPCMs. Of the 455 SPCMs tried, there were 200 convictions with a BCD adjudged, 226 convictions without a BCD adjudged and 29 acquittals.

[B] Includes 20 officer dismissals.

[C] GCM and SPCM were not tracked separately.

SECTION 6

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE COAST GUARD

**REPORT OF THE JUDGE ADVOCATE GENERAL OF THE
U. S. COAST GUARD**

October 1, 2005 to September 30, 2006

PERSONNEL AND TRAINING

The Coast Guard has 196 officers designated as judge advocates serving on active duty, of which 146 are serving in legal billets and 50 are serving in general duty billets. Among the 50 military attorneys serving in "out-of-specialty" billets are the Commander of the Ninth Coast Guard District in Cleveland; Commander of the Seventeenth Coast Guard District in Juneau; Director, Global Maritime Intelligence Integration; Deputy Assistant Commandant for Intelligence and Criminal Investigations; Special Assistant to the Vice President of the United States; and other commanding and executive officers of Coast Guard cutters, sectors, marine safety offices, training centers, and support commands. The Coast Guard also employs 78 civilian attorneys ranging from GS-12 to SES.

The Coast Guard sent attorneys to 38 different courses of instruction during this fiscal year, primarily at the various service JAG schools. 76% of Coast Guard attorneys attended one or more courses of continuing legal education. Twenty-one Coast Guard officers are currently undergoing postgraduate studies in law and will be certified as judge advocates at the successful completion of their studies. Additionally, one judge advocate is attending the graduate course at the United States Army Judge Advocate General's Legal Center and School and will graduate in 2007 with a Masters of Law (LLM) degree in military law and another is a Fellow in the Center for Law and Military Operations. Twenty Coast Guard officers (including seven funded postgraduate program studies, ten direct-commissioned lawyers, and three civilian attorneys) completed the Navy Basic Lawyer Course in Newport, Rhode Island. All have been or are in the process of being certified under Article 27(b), UCMJ.

U. S. COAST GUARD COURT OF CRIMINAL APPEALS

The judges on the U.S. Coast Guard Court of Criminal Appeals during fiscal year 2006 were:

Chief Judge Joseph H. Baum
Judge David J. Kantor
Judge Lane I. McClelland
Judge Gilbert E. Teal
Judge Gary E. Felicetti
Judge Frederick W. Tucher (Assigned on 28 July 2006 and sworn in on 3 August 2006).

In addition to the decisional work of the Court, as reflected in the Appendix, the judges of the Court have been involved in various

professional conferences, committees and seminars during the past fiscal year.

On 17 and 18 May 2006, Judges McClelland and Teal attended the Judicial Conference of the United States Court of Appeals for the Armed Forces (USCAAF) at the Columbus School of Law at Catholic University. On 12 September 2006, Judge McClelland participated on a panel of judges at the Judge Advocates Association (JAA) Appellate Advocacy Seminar. On 14 September 2006, Judges McClelland and Kantor participated in the William S. Fulton, Jr., Appellate Military Judges Conference and Training Seminar at the Thurgood Marshall Federal Judiciary Building in Washington, D.C. Judge McClelland has also attended most of the JAA Inn of Court monthly meetings in the past year. During the year, Chief Judge Baum continued as a member of the USCAAF's Rules Advisory Committee.

On 13 July 2006, Chief Judge Baum was presented the Justice Tom C. Clark Outstanding Government Lawyer Award by the District of Columbia Chapter of the Federal Bar Association for his exceptional record of public service over the past 53 years.

MILITARY JUSTICE ORGANIZATION

Thirteen staff judge advocates advise 15 officers exercising general court-martial jurisdiction and approximately 350 officers exercising special court-martial jurisdiction. Responsibility for detailing trial and defense counsel to general and special courts-martial rests with the staff judge advocate of the cognizant Maintenance and Logistics Command; Atlantic for eastcoast cases and Pacific for west-coast cases. Pursuant to an inter-service memorandum of understanding, the U.S. Navy provides trial defense counsel for all Coast Guard courts-martial. In return, at least four Coast Guard attorneys are assigned to full time duty at one or more Navy Legal Service Offices or Regional Legal Service Offices.

The Coast Guard has one general courts-martial judge and 13 collateral-duty special courts-martial judges. The Chief Trial Judge details all military judges to Coast Guard courts-martial. When the Chief Trial Judge was unavailable, courts-martial judges from other military services were detailed to general courts-martial.

The Office of Military Justice at Coast Guard Headquarters is responsible for representing the United States in all courts-martial appeals and providing support to staff judge advocates and trial counsel throughout the Coast Guard.

The office is also responsible for developing military justice policy for the Coast Guard, including participation on the Joint Service committee (JSC) on Military Justice. Within the office, three officers are assigned primary duty as appellate government counsel.

TRAINING OPPORTUNITIES WITH OTHER SERVICES

To improve the trial advocacy skills and experience levels of Coast Guard Judge Advocates, the Judge Advocate General has arranged for Coast Guard Trial Counsel to be assigned for limited periods of time (usually three months), to certain installations which have a robust military justice practice. Coast Guard Judge Advocates have thus far been assigned to Marine Corps Base Quantico, Marine Corps Base Camp Lejeune, Navy Trial Service Office East in Norfolk, Virginia, and the Army's Trial Counsel Assistance Program in Arlington, Virginia. This is in addition to the existing Memorandum of Understanding with the Navy that provides for four Coast Guard Judge Advocates to be assigned full-time as trial counsel or defense counsel at Navy installations.

MILITARY JUSTICE STATISTICS

NOTE: All statistics are based on the number of courts-martial records received and filed at Coast Guard Headquarters during fiscal year **2006** and, where indicated, records received during each of the four preceding fiscal years. The number of courts-martial vary widely from year to year, but this is not a reliable indicator of the administration of military justice given the relatively small number of courts-martial overall.

Fiscal	Year	06	05	04	03	02
General	Courts-Martial	16	07	12	08	04
Special	Courts-Martial	32	45	27	18	23
Summary	Courts-Martial	31	21	12	20	11
Total		79	73	51	46	38

ADDITIONAL MILITARY JUSTICE STATISTICS

Appendix A contains the Coast Guard, Fiscal Year **2006** military justice statistics.

William D. Baugartner
Rear Admiral, U. S. Coast Guard
The Judge Advocate General of the Coast Guard

APPENDIX - U.S. COAST GUARD MILITARY JUSTICE STATISTICS

Report Period: 1 OCTOBER 2005 - 30 SEPTEMBER 2006

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT
GENERAL	16	16	0	+42%
BCD SPECIAL	32	31	01	+31%
NON-BCD SPECIAL	0	0	0	UNCHANGED
SUMMARY	31	31	0	+17%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+72%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL				
NUMBER OF DISHONORABLE DISCHARGES			03	
NUMBER OF BAD-CONDUCT DISCHARGES			08	
SPECIAL COURTS-MARTIAL				
NUMBER OF BAD-CONDUCT DISCHARGES			12	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL			11	
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL			12	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL			05	

PART 4 - WORKLOAD OF THE COAST GUARD COURT OF CRIMINAL APPEALS

TOTAL ON HAND BEGINNING OF PERIOD			28	
GENERAL COURTS-MARTIAL		06		
BCD SPECIAL COURTS-MARTIAL		22		
REFERRED FOR REVIEW			24*	
GENERAL COURTS-MARTIAL		11		
BCD SPECIAL COURTS-MARTIAL		12		
TOTAL CASES REVIEWED			23	
GENERAL COURTS-MARTIAL		05		
BCD SPECIAL COURTS-MARTIAL		18		
TOTAL PENDING AT CLOSE OF PERIOD			28	
GENERAL COURTS-MARTIAL		12		
BCD SPECIAL COURTS-MARTIAL		16		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD				-4.17%

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE U.S. COAST GUARD COURT OF CRIMINAL APPEALS (CCA)

NUMBER	23	
PERCENTAGE	100%	

PART 6 - ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES (CAAF)

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF	7/23	30%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+16%
PERCENTAGE OF TOTAL PETITIONS GRANTED		29%
2/4		
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-21%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CGCCA		9%
2/29		
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+2%

* One extraordinary writ not a court-martial.

APPENDIX - U.S. COAST GUARD MILITARY JUSTICE STATISTICS - CONT'D

PART 7 - APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ			
TOTAL PENDING BEGINNING OF PERIOD		0	
RECEIVED		0	
DISPOSED OF		0	
GRANTED	0		
DENIED	0		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		0	
PART 8 - ORGANIZATION OF COURTS			
TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		13	
SPECIAL COURTS-MARTIAL		30	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		3	
SPECIAL COURTS-MARTIAL		2	
PART 9 - COMPLAINTS UNDER ARTICLE 138, UCMJ			
NUMBER OF COMPLAINTS		1	
PART 10 - STRENGTH			
AVERAGE ACTIVE DUTY STRENGTH		40,867	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		1,432	
RATE PER 1,000		35%	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		+.50%	