

**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, 2008 to September 30, 2009

**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, 2008 to September 30, 2009**

# CONTENTS

Section 1: JOINT ANNUAL REPORT OF THE CODE COMMITTEE

Section 2: REPORT OF THE UNITED STATE COURT OF APPEALS FOR THE ARMED FORCES

Section 3: REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY

Section 4: REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

Section 5: REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

Section 6: REPORT OF THE JUDGE ADVOCATE GENERAL OF THE COAST GUARD

# **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, 2008 to September 30, 2009**

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 David A. Schlueter and Mr. Michael D. Wims, Public Members appointed by the Secretary of Defense, submit their annual report on the operation of the Uniform Code of Military Justice (UCMJ) pursuant to Article 146, UCMJ, Title 10, United States Code, § 946.

The Code Committee met on March 3, 2009, to consider matters pertaining to the administration of military justice. The meeting was open to the public and was previously announced by notices in the Federal Register and on the Court's website.

After approving the minutes of the 2008 Code Committee meeting, Chief Judge Effron called upon Commander J. Russell McFarlane, JAGC, U.S. Navy, Executive Secretary of the Joint Service Committee on Military Justice, to provide a report on the work of the Committee. Commander McFarlane informed the Code Committee of the following matters that had been addressed by the Joint Service Committee: (1) reviewing the Manual for Courts-Martial, United States (MCM), in light of amendments to Article 2(a)(10) of the UCMJ; (2) preparing of a draft of an enumerated Article 134, UCMJ, offense covering child pornography; (3) further studying the recent amendment to Article 120, UCMJ, involving the burden of proof; (4) improving the definition of "military property" in Articles 108 and 121, UCMJ; and (5) correcting errors in the 2007 Annual Review and updating the Discussion and Analysis sections of the MCM. Commander McFarlane concluded by informing the Code Committee that the 2008 Annual Review had been forwarded to the Office of Management and Budget on February 3, 2009.

At the request of Professor Schlueter, the JSC will look into monitoring the work in amending the Federal Rules of Evidence and keep in mind how such changes may affect the Military Rules of Evidence.

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

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

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

Lieutenant 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 David A. Schlueter  
Public Member

Mr. Michael D. Wims  
Public Member

## 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**

**September 1, 2008 to August 31, 2009**

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 September 2008 Term of 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 for the period from September 1, 2008 to August 31, 2009. 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, the Military Justice Reporter, and on the Court's web site. The Court's web site also contains a consolidated digest of past opinions of the Court, information on the Court's history and jurisdiction, the Rules of Practice and Procedure, previous Annual Reports, a schedule of upcoming hearings, audio recordings of past hearings, and information on clerkship opportunities, bar admission, electronic filing and the Court's library.

During the September 2008 Term of Court, the Court again met its goal of issuing opinions in all cases heard during the Term prior to the end of the Term.

Following the recommendations of the Rules Advisory Committee, the Court amended Rules 19(a)(5), 20(e), 21(c)(2), 37(a), 37(b)(2) and 40(b)(3) of the Rules of Practice and Procedure. Prior to amendment the proposed changes were published for public comment in the Federal Register at Vol. 74, No. 82 at pages 19947-48.



These amendments were also published following adoption in the Military Justice Reporter at 67 M.J. LXVII-LXIX (C.A.A.F. 2009). They amended the times for filing of supplements, answers and replies to answers and incorporated conforming changes to account for a new electronic filing program. Also changed was the normal time allotted for oral argument from 30 minutes per side to 20 minutes per side.

In addition to the changes to the Rules, the Court established a new electronic filing program for the filing of petitions for grant of review, supplements, answers, replies to answers, and motions filed prior to action on the petition for grant of review. The new program will take effect on September 1, 2009. The Court's Order on Electronic Filing and detailed Guidelines are published at 67 M.J. LXX-LXXII.

During the September 2008 Term, the Court admitted 344 attorneys to practice before its Bar, bringing the cumulative total of admissions before the Bar of the Court to 34,743.

#### **JUDICIAL OUTREACH**

In furtherance of a practice established in 1987, the Court scheduled special sessions and heard oral arguments outside its permanent courthouse in Washington, D.C., during the September 2008 Term of Court. This practice, known as "Project Outreach," was developed as a 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, with the consent of the parties, at Washburn University School of Law, Topeka, Kansas; Fort Riley, Kansas; Southern Methodist University School of Law, Dallas, Texas; and Texas Tech University School of Law, Lubbock, Texas. In addition, the Judges of the Court participated in a variety of professional training, speaking and educational endeavors on military installations, at law schools and before professional groups.

## **CONTINUING LEGAL EDUCATION CONFERENCE**

On March 4 and 5, 2009, the Court held its annual Continuing Legal Education Conference at the Columbus School of Law, Catholic University of America, Washington, D.C. The program for this Continuing Legal Education 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 the Honorable Andrew S. Efron, Chief Judge, United States Court of Appeals for the Armed Forces. He was followed by speakers for this year's conference, including Judge David S. Tatel of the U.S. Court of Appeals for the District of Columbia Circuit; Professor Henry T. Greely of the Stanford University School of Law; Professor David A. Harris of the University of Pittsburgh School of Law; Senior Judge John T. Downey of the Superior Court for Juvenile Matters, New Haven, Connecticut; Justice Daniel J. Crothers of the North Dakota Supreme Court; Brigadier General Ken Watkin, Judge Advocate General of the Canadian Forces; Mr. George L. Piro of the Federal Bureau of Investigation; Mr. Rick Atkinson, Pulitzer Prize Winning Author and Historian; Mr. Daniel J. Dell'Orto, Principal Deputy General Counsel, Department of Defense; Ms. Amy Jeffress, Counselor to the Attorney General of the United States; J. Alexander Thier of the U.S. Institute of Peace; Judge Thomas A. Wallitsch, Senior Judicial Advisor for USAID; and Lieutenant Colonel Allen K. Goshi, Judge Advocate General's Corps, U.S. Army.

## **PASSING OF ROBINSON O. EVERETT**

On June 12, 2009, former Chief Judge Robinson O. Everett passed away at his home in Durham, North Carolina. He served as Chief Judge of the Court from 1980 to 1990, and as a Senior Judge until his death. A Memorial Session of the Court in his honor is scheduled for December 7, 2009.

Andrew S. Efron  
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  
SEPTEMBER 2008 TERM OF COURT

CUMULATIVE SUMMARY

CUMULATIVE PENDING SEPTEMBER 1, 2008

Master Docket . . . . .	20
Petition Docket . . . . .	254
Miscellaneous Docket. . . . .	<u>6</u>
TOTAL . . . . .	280

CUMULATIVE FILINGS

Master Docket . . . . .	115
Petition Docket . . . . .	856
Miscellaneous Docket. . . . .	<u>31</u>
TOTAL . . . . .	1,002

CUMULATIVE DISPOSITIONS

Master Docket . . . . .	105
Petition Docket . . . . .	896
Miscellaneous Docket. . . . .	<u>32</u>
TOTAL . . . . .	1,033

CUMULATIVE PENDING SEPTEMBER 1, 2009

Master Docket . . . . .	30
Petition Docket . . . . .	213
Miscellaneous Docket. . . . .	<u>5</u>
TOTAL . . . . .	248

OPINION SUMMARY

<u>CATEGORY</u>	<u>SIGNED</u>	<u>PER CURIAM</u>	<u>MEM/ORDER</u>	<u>TOTAL</u>
Master Docket .	40	4	61	105
Petition Docket .	1	0	895	896
Miscellaneous Docket	<u>1</u>	<u>0</u>	<u>31</u>	<u>32</u>
TOTAL	42	4	987	1,033

**MASTER DOCKET SUMMARY**

FILINGS

Petitions granted from the Petition Docket . .	108
Certificates filed . . . . .	6
Mandatory appeals filed. . . . .	0
Remanded/Returned cases. . . . .	1
Reconsideration granted. . . . .	<u>0</u>
TOTAL . . . . .	115

DISPOSITIONS

Findings and sentence affirmed . . . . .	68
Reversed in whole or in part . . . . .	36
Granted petitions vacated . . . . .	0
Certificate Withdrawn . . . . .	<u>1</u>
TOTAL . . . . .	105

PENDING

Awaiting briefs . . . . .	7
Awaiting oral argument . . . . .	22
Awaiting lead case decision (trailer cases) .	1
Awaiting final action . . . . .	<u>0</u>
TOTAL . . . . .	30

**PETITION DOCKET SUMMARY**

FILINGS

Petitions for grant of review filed . . . . .	856
Petitions for new trial filed . . . . .	0
Petitions for reconsideration granted . . . .	0
Returned cases . . . . .	<u>0</u>
TOTAL . . . . .	856

DISPOSITIONS

Petitions for grant of review denied . . . .	762
Petitions for grant of review granted . . .	108
Petitions for grant of review withdrawn . .	12
Petitions for grant of review dismissed . .	<u>14</u>
TOTAL . . . . .	896

PENDING

Awaiting pleadings . . . . .	68
Awaiting Central Legal Staff review . . . . .	111
Awaiting final action . . . . .	<u>34</u>
TOTAL . . . . .	213

**MISCELLANEOUS DOCKET SUMMARY**

FILINGS

Writ appeals sought . . . . .	11
Writs of habeas corpus sought . . . . .	3
Writs of error coram nobis sought . . . . .	1
Other extraordinary relief sought . . . . .	<u>16</u>
TOTAL . . . . .	31

DISPOSITIONS

Petitions or appeals denied . . . . .	32
Petitions or appeals granted . . . . .	0
Petitions or appeals dismissed . . . . .	0
Petitions or appeals withdrawn . . . . .	0
Petitions or appeals remanded . . . . .	<u>0</u>
TOTAL . . . . .	32

PENDING

Awaiting briefs . . . . .	0
Awaiting staff review . . . . .	1
Awaiting final action . . . . .	<u>4</u>
TOTAL . . . . .	5

**PETITIONS FOR RECONSIDERATION**

ALL CASES

DISPOSITIONS

Begin Pending	1	Denied	12
Filed	<u>13</u>	Granted	0
TOTAL	14	Withdrawn	<u>1</u>
		TOTAL	13
End Pending	1		

**MOTIONS**

ALL MOTIONS

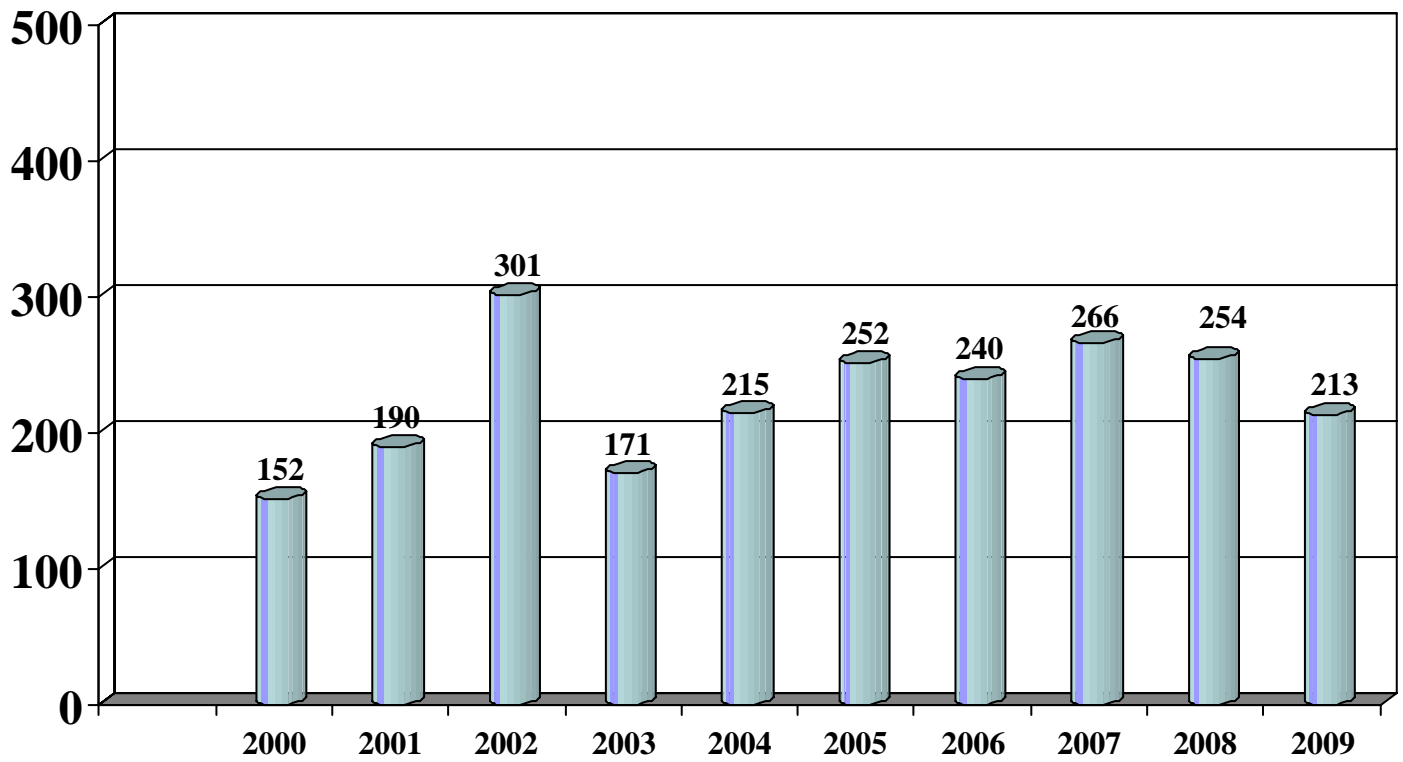
DISPOSITIONS

Begin Pending     31  
Filed                522  
TOTAL                553

Granted            471  
Denied               90  
TOTAL               561

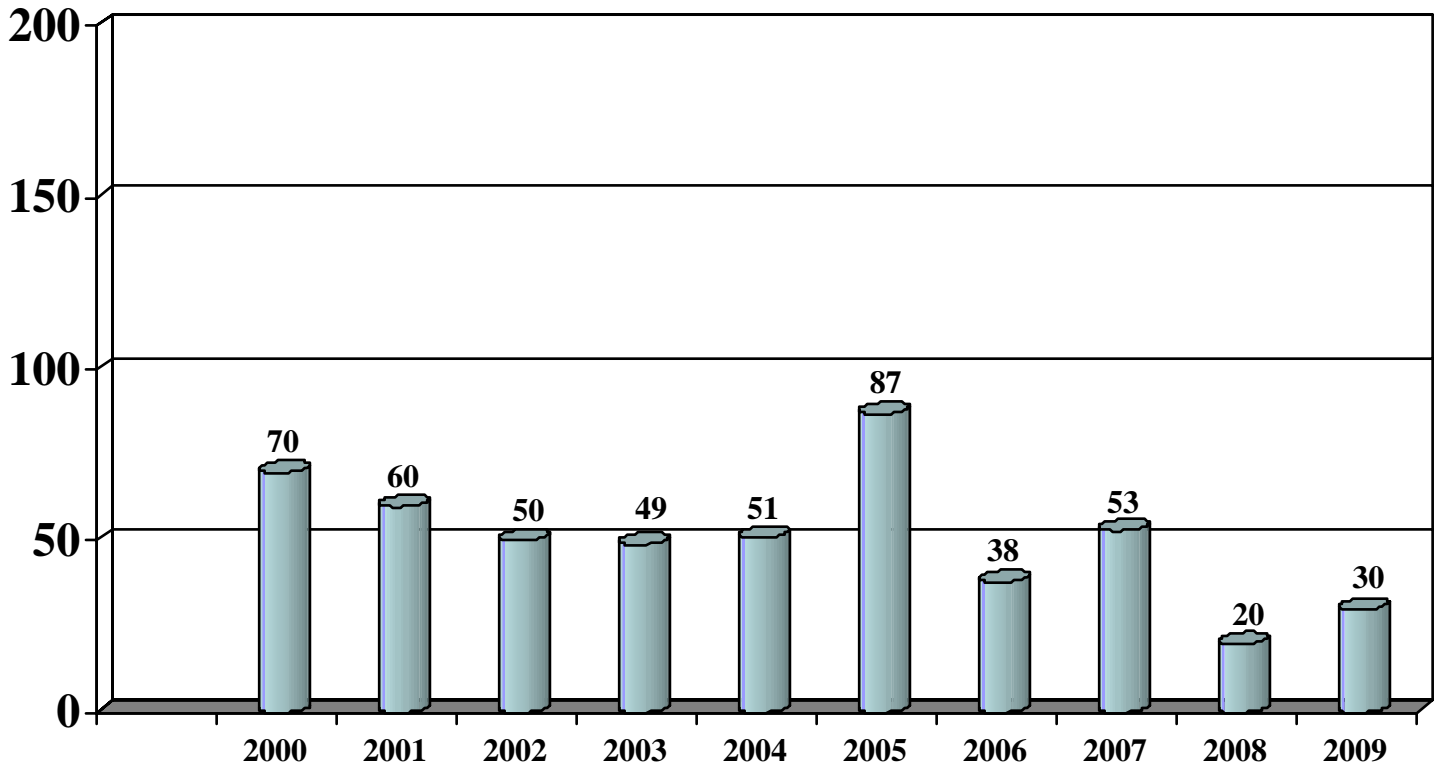
End Pending            23

## Petition Docket Term End Pending

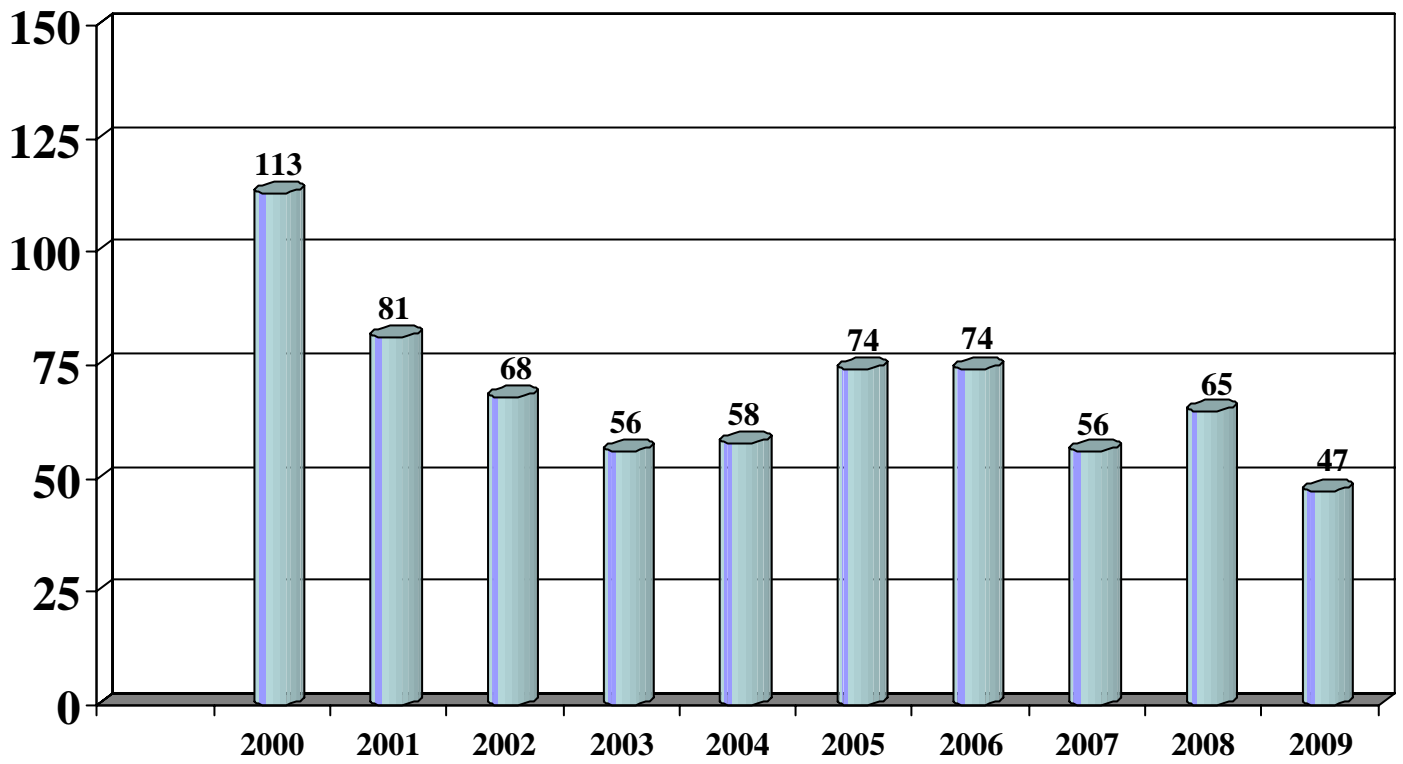




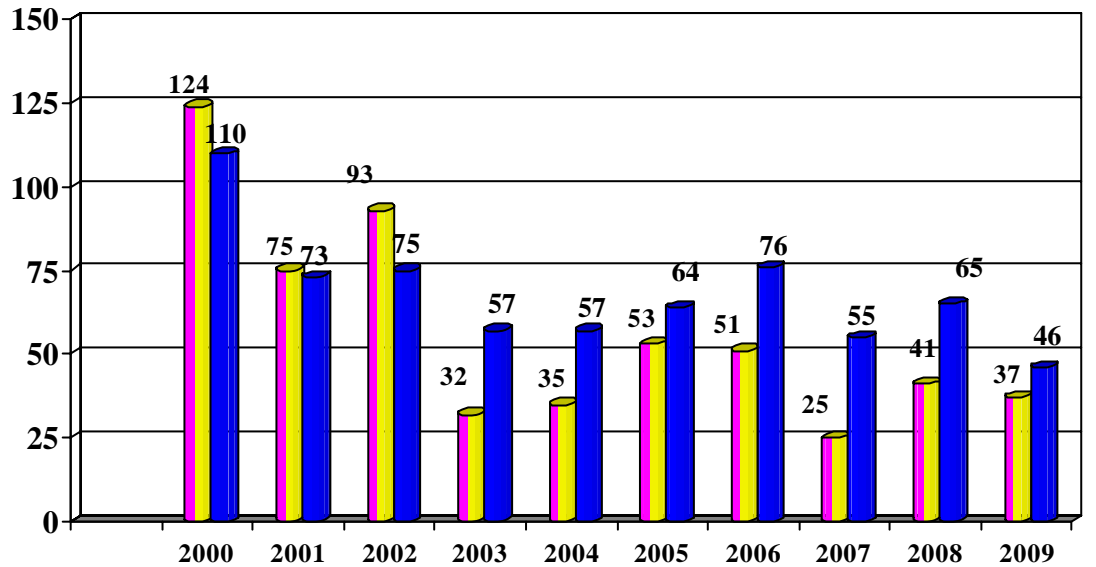
## Master Docket Term End Pending



## Oral Arguments Per Year



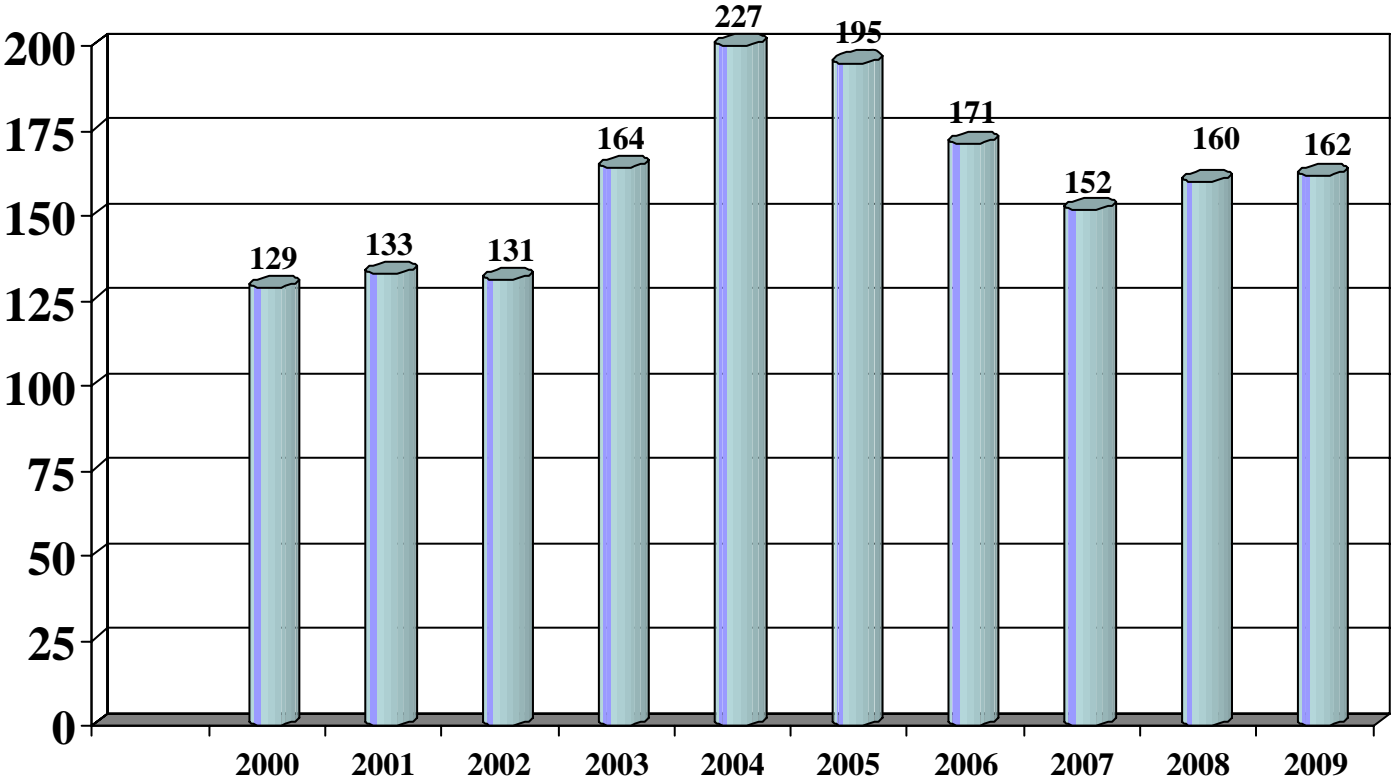
## Total Opinions Per Year



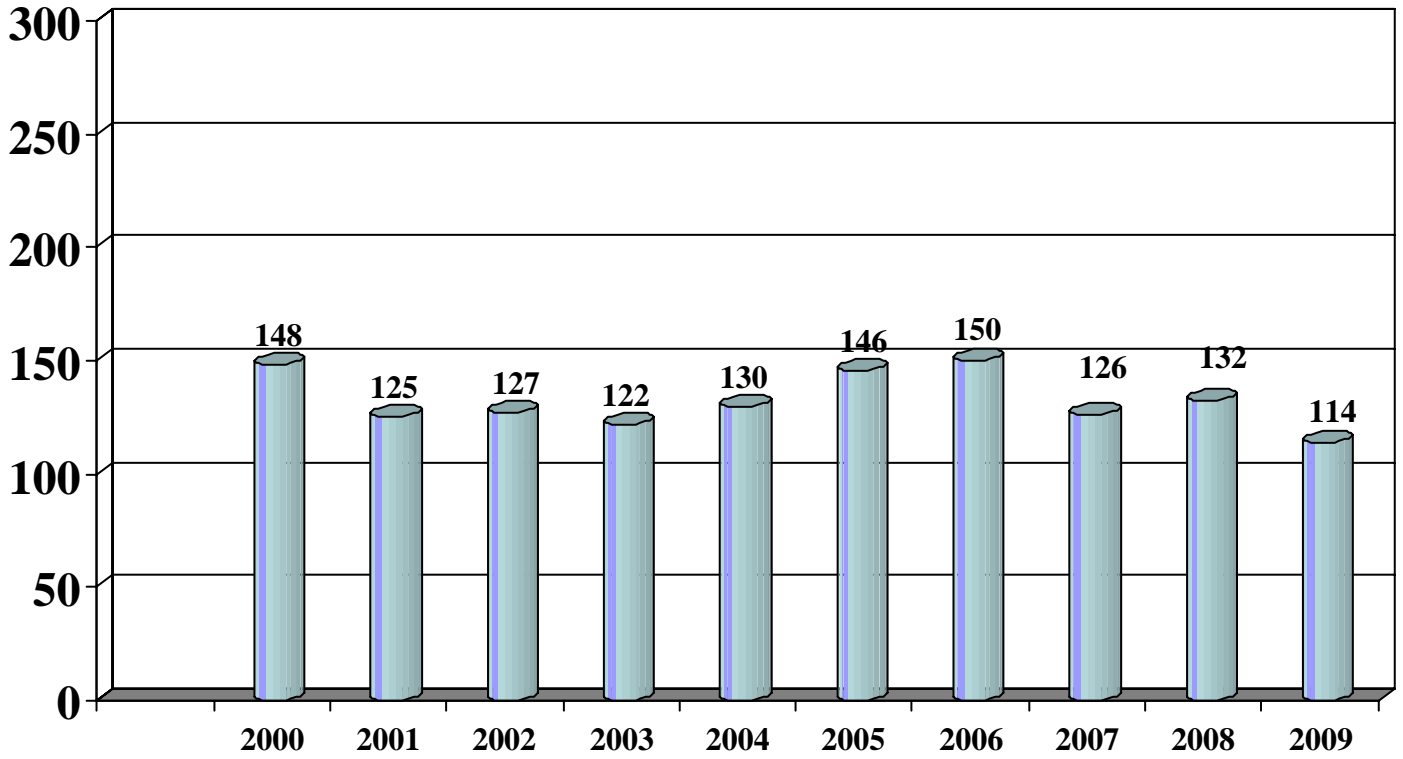
■ TOTAL SEPARATE OPINIONS (CONCUR, CONCUR IN THE RESULT, AND DISSENT)

■ TOTAL COURT OPINIONS

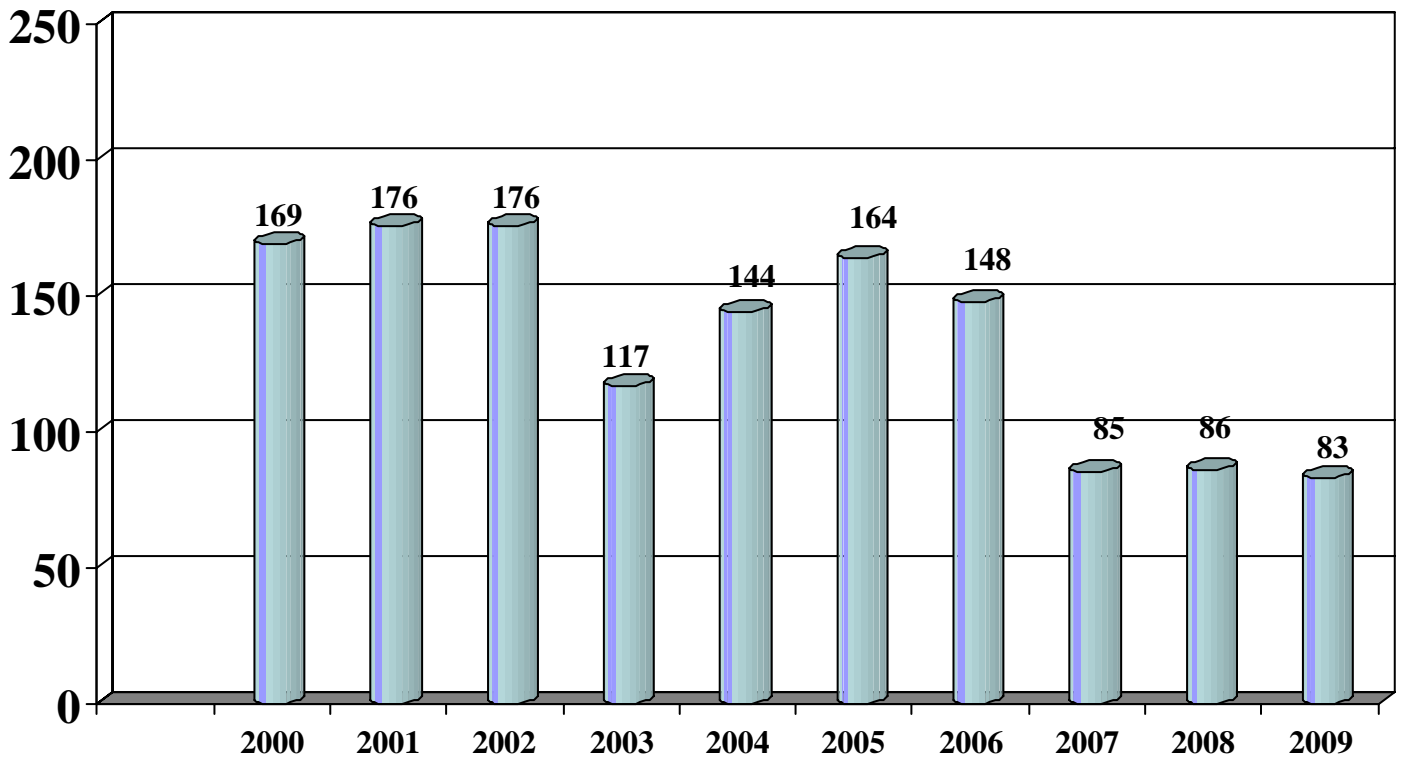
# Days from Petition Filing to Grant



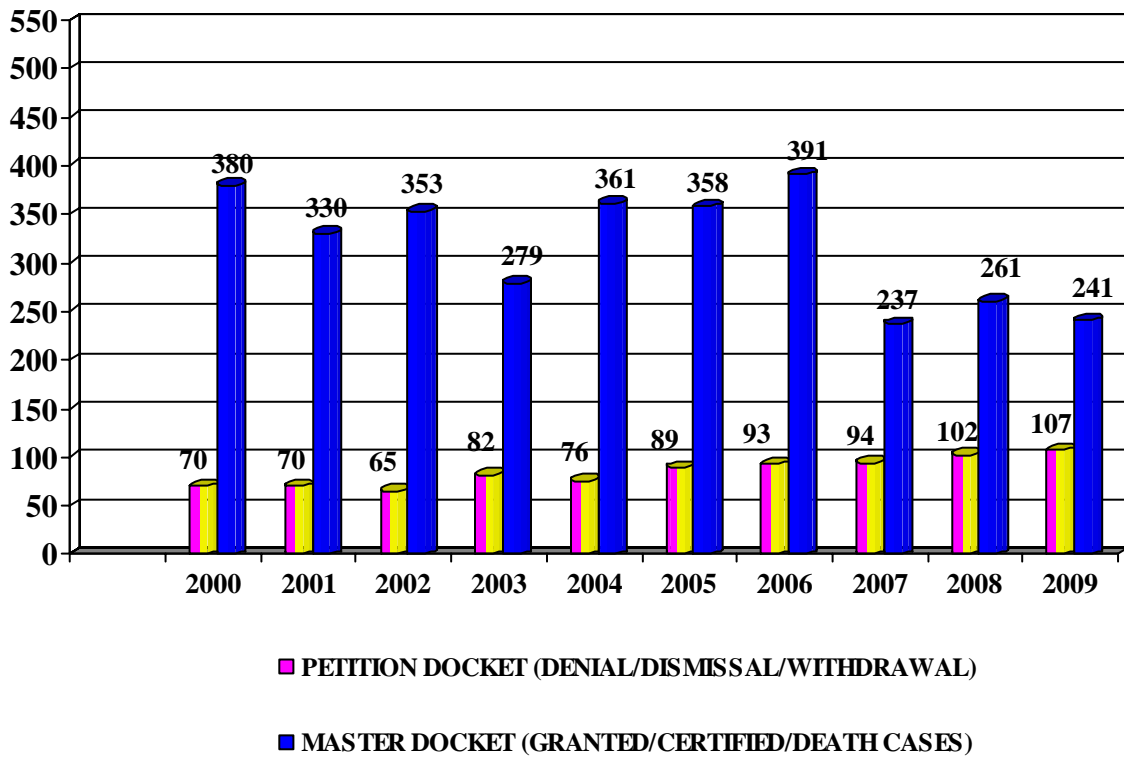
## Days from Petition Grant to Oral Argument



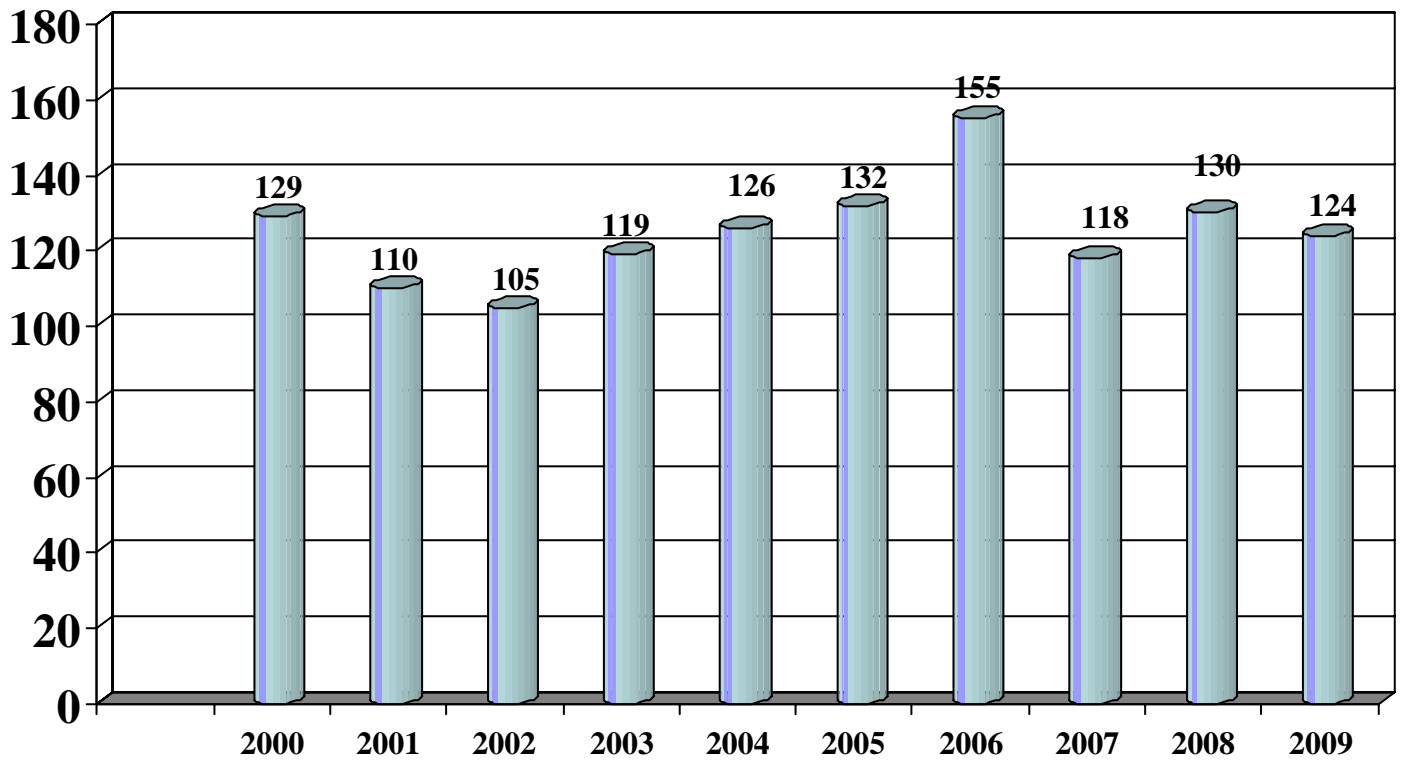
## Days from Oral Argument to Final Decision



## Days from Petition Filing to Final Decision

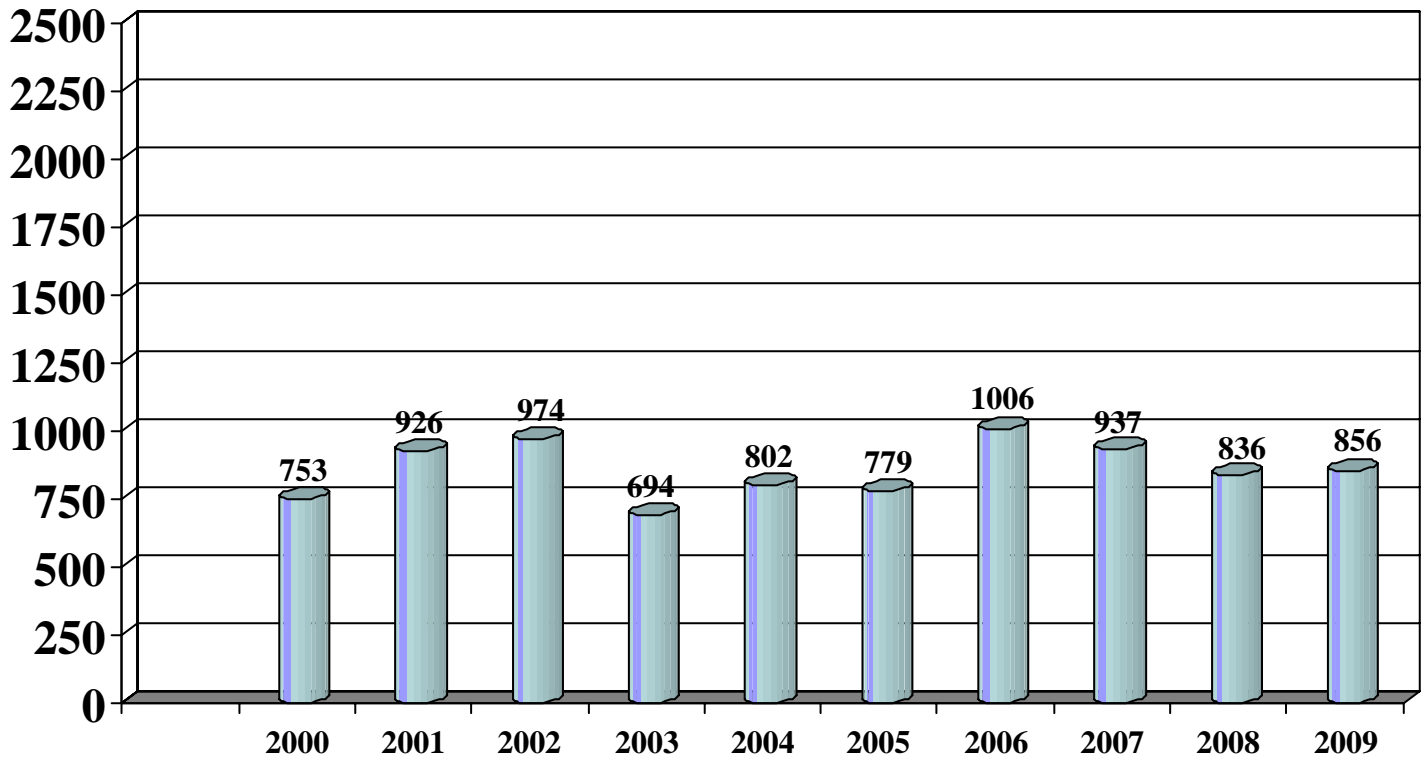


## Days from Filing to Final Decision in All Cases





## 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, 2008, TO SEPTEMBER 30, 2009**

During fiscal year 2009 (FY 09), The Judge Advocate General (TJAG) and senior members of his staff visited more than thirty installations and commands in the United States and overseas, in furtherance of TJAG's duties under Article 6(a), Uniform Code of Military Justice (UCMJ). The Office of The Judge Advocate General (OTJAG) continued to advise the Army leadership and to develop policies to improve the legal services provided to Commanders and Soldiers in the U.S. Army's worldwide, full-spectrum operations. Judge Advocates in forward areas enabled convening authorities to conduct more than eighty trials by court-martial in Iraq, Kuwait, and Afghanistan, while the JAG Corps continued to improve institutionally and maintain world class training at its Legal Center and School.

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

Policy changes pertaining to initial military training for new Judge Advocates were further refined in 2009 for implementation in 2010. All Judge Advocates of all components will continue to attend the Officer Basic Course (OBC) in residence in Charlottesville, Virginia. Upon graduation from OBC, all Judge Advocates (with the exception of Funded Legal Education Program officers), including Reserve Component officers, will then attend a six-week Direct Commissioned Officers Course (DCC) at Fort Benning, Georgia. This course will be an expansion of the previous four-week version and will include training tasks formerly taught at the Basic Officer Leadership Course II (BOLC II). In late 2009 and early 2010, the Army will phase out BOLC II for all officers, regardless of branch, to speed up the pace at which new officers arrive at their first assignment. The first JA Officer Basic Course to attend the expanded DCC will arrive in February 2010. The Chief of the Personnel, Plans, and Training Office may waive attendance at these courses in limited circumstances.

Newly commissioned officers now also complete the Judge Advocate Tactical Staff Officer's Course (JATSOC) within their first two years of service.

This twenty-hour online self-paced course introduces new Judge Advocates to key staff skills and processes that they need to succeed as a member of a staff, especially in a deployed environment. All officers are enrolled in this course when they depart Charlottesville and must complete the course within two years of arrival at their first duty station.

**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 promulgating military justice regulations and serving as their proponent, reviewing other Army Regulations for legal sufficiency, providing legal opinions to the Army Staff related to military justice matters, producing and updating military justice publications, conducting statistical analysis and evaluation of trends that affect military justice within the Army, providing advice on military corrections issues, the Army drug testing program, sexual assault and victim assistance policies and federal prosecutions, Army representation on the Joint Service Committee (JSC) on Military Justice, responding to congressional inquiries and requests under the Freedom of Information Act, and conducting reviews of court-martial cases under Article 69 of the UCMJ for legal sufficiency and sentence appropriateness and to identify issues that may require corrective action by The Judge Advocate General.

Traditionally-reported Criminal Law Division actions for the last three fiscal years are:

	FY 07	FY 08	FY 09
White House inquiries	3	13	7
Congressional and other inquiries	109	132	152
Officer Dismissals	38	31	28
Article 69 and other reviews	106	73	99
Freedom of Information Act/Privacy Act	19	18	18

During FY 09, OTJAG successfully filled thirteen of the twenty-two additional attorney positions approved at the end of FY 2008 as part of the Army's ongoing effort to better address sexual assault, and identified the remaining seven to fill the balance of fifteen new Special Victim Prosecutor positions by the end of FY 2010. In addition, OTJAG filled five of the seven approved Highly Qualified Expert positions, placing three with the Trial Counsel Assistance Program, one with the Defense Counsel Assistance program (DCAP) and one to serve as Army Chief of Advocacy at OTJAG Criminal Law Division. Efforts to fill the second position for DCAP and the position at The Judge Advocate General's Legal Center and School continue. In response to continued concern regarding sexual assault in the military, the Criminal Law Division coordinated for the creation and execution of four new sexual assault litigation courses conducted jointly by the Trial Counsel Assistance Program, the Defense Counsel Assistance Program, and civilian experts. In two other initiatives, three judge advocates enrolled in a pilot program for a LL.M in prosecutorial science, and additional legal reference materials were provided to 122 new military justice practitioners.

In FY 09, the Criminal Law Division supplemented the training provided Judge Advocates by coordinating and funding training in proven civilian venues, where a substantial network exists to support the training and development of both new and career prosecutors. Institutions providing regular training to Army judge advocates include the National District Attorney's Association (NDAA), the National Advocacy Center (NAC), the American Prosecutor's Research Institute (APRI), and the National Center for Missing and Exploited Children (NCMEC). These organizations provide outstanding training ranging from advocacy to specific criminal prosecution techniques used by successful prosecutors throughout the nation. This allows our Corps to improve both military justice proficiency and the administration of justice within the United States Army.

By the end of FY 2009, 222 Judge Advocates had received Military Justice Skill Identifiers. TJAG initiated the Military Justice Skill Identifier (SI) program to enhance institutional excellence in the practice of criminal law.

The SI certification provides Judge Advocates the opportunity to achieve four graduated levels of professional recognition (Basic, Advanced, Expert, and Master Military Justice Practitioner) based on their level of skill and experience as practicing military criminal lawyers. Of those presently designated, 124 are SI1 (Basic), 22 are SI2 (Advanced), 35 are SI3 (Expert), and 41 are SI4 (Master).

Through the JSC, the Army contributed to the study of several proposals for significant change to the UCMJ and the MCM, including proposed changes to articles 25, 56a, 66, 75, 120, and 125. The Army endorsed a proposed change to the Manual for Courts-Martial that would codify child pornography offenses under article 134 and make plain the availability of a clause 1 or 2 offense for prosecution in addition to or in lieu of prosecution of an assimilated Title 18 child pornography offense, and including acts not punishable in the civilian community that might nevertheless constitute violations of article 134.

During FY 09, the Criminal Law Division, in cooperation with OTJAG's Information Technology Division (ITD), continued to advance the JAGC's Military Justice web-based initiatives. The Military Justice Online (MJO) program is a web-based application which allows end-users down to the Special Court-Martial Convening Authority level to generate military justice actions for nonjudicial punishment actions, administrative separation actions, and investigations. In addition, the Military Justice Report (MJR) is an on-line reporting system which replaced the JAG-2 report during FY 09. Use of both the MJO and MJR became mandatory during July of 2009, and the response from the field has been positive, with end users generating thousands of actions using MJO. The next iteration of the military justice web-based initiatives will see both the integration of MJO and MJR, as well as MJO expanding to include preparation of courts-martial. Additionally, the Criminal Law Division, in concert with the Information Technology Division, developed the Trial Advocates Training Tracking System (TATTS), a web-based database designed to track the career progression of Trial Counsel and Defense Counsel. The system will be used to track training of individual counsel over the course of their careers and to identify counsel in need of further training.

The Criminal Law Division continued to track over 800 high profile cases, including detainee-related investigations. Maintaining information on these cases facilitated the Division's role in supporting The Judge Advocate General's responses to Congressional and public inquiries with the most current information.

Finally, the Criminal Law Division worked with the Army Corps of Engineers and the IMCOM leadership to develop a standard design and standard guide for the construction of Judicial Centers across the Army. The facility designs incorporate the most current technology for courtroom processes, as well as state-of-the-art physical attributes, and will replace dilapidated facilities on many installations. Just as importantly, the design allows for standardization that will empower trial advocates and paralegals, as they PCS from one duty post to another, enabling an instant ability to utilize the technology from one location to another. In light of this, the standardization guide also mandates particular minimal requirements where a renovation may be contemplated, rather than new construction.

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

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

#### **U.S. Army Court of Criminal Appeals/Office of the Clerk of Court**

The Clerk of Court receives records of trial for review by The U.S. Army Court of Criminal Appeals (ACCA) under Article 66, Uniform Code of Military Justice (UCMJ), appeals under Article 62, UCMJ, and Petitions for Extraordinary Relief. More than 640 records of trial and over 1,600 motions and briefs were referred to 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 1,100 Courts-Martial cases during the past year.

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

The Office of the Clerk of Court provided instruction to legal NCOs, court reporters, and those individuals attending the Judge Advocate General's Corps graduate course and military justice courses at TJAGLCS.

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 convicted soldiers. 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.

	FY07	FY08	FY09
Freedom of Information Act	227	212	83
Privacy Act	74	88	121
Certified Copies of Convictions	329	272	570
<b>Total Number of Requests</b>	<b>630</b>	<b>572</b>	<b>774</b>

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

### Trial Judiciary

The 1184 reported courts-martial tried in FY09 reflect a slight increase from FY08. Army trial judges continue to preside over cases in deployed environments, with 81 general and special courts-martial tried in Iraq, Kuwait, and Afghanistan during this period, bringing to a total of over 800 since May 2003.



Three Army trial judges presided over Military Commissions convened in Guantanamo Bay, Cuba, including the cases of Khalid Sheikh Mohammed, Omar Khadr, Ahmed Al-Darbi, and Mohammed Jawad. The Army Trial Judiciary added to its goal of improving public transparency by posting course deskbooks, SOPs and the Code of Judicial Conduct on its homepage as well as providing links to its court calendars so members of the general public can access docket information on all Army courts-martial convened worldwide. The web address can be found at: [www.jagcnet.army.mil/usatj](http://www.jagcnet.army.mil/usatj). The Trial Judiciary also published a new set of Rules of Practice before Army Courts-Martial in September.

Notable personnel developments in the Army Trial Judiciary included:

- The 150<sup>th</sup> Legal Services Organization (Trial Judiciary) welcomed COL Patrick Reinert in August as its new Commander and Chief Reserve Trial Judge.
- The 52nd Military Judge Course graduated 45 Army, Navy, Marine Corps, Air Force and Coast Guard students in May and invested them as new military judges. For the first time in 12 years, the honor graduate was an Army officer - LTC Mark A. Bridges, currently stationed at Fort Carson, Colorado.
- COL Robert Rigsby was the first sitting District of Columbia Superior Court Judge to mobilize in support of an armed conflict and deployed to Kuwait for a six-month tour in April presiding as a military judge over courts-martial convened throughout Iraq and Afghanistan.
- Mary Jenkins, the Court Administrator for the Army Trial Judiciary, mobilized for a one year tour of duty with the Office of Military Commissions Trial Judiciary.
- In recognition of their outstanding judicial qualifications, COL Ted Dixon and COL Donna Wright received Certificates in General Jurisdiction Skills from the National Judicial College.
- COL Tara Osborn was honored with the Distinguished Service Award from the National Society of Colonial Dames.

- COL Virginia Carlton, a National Guard judge from Mississippi, was appointed by the Chief Justice of the Mississippi Supreme Court to serve on a task force to republish the Mississippi Code of Judicial Conduct.

Military Judges continued playing an active role in their military and civilian communities, speaking to elementary school and high school audiences, local bar associations and civic organizations, law school classes, and state bar Continuing Legal Education courses.

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

The U.S. Army Trial Defense Service (USATDS) has approximately 140 active duty, 228 Army Reserve, and 50 Army National Guard attorneys. USATDS provides high quality, professional defense services to Soldiers. USATDS counsel are stationed at 57 active duty installations worldwide and 51 reserve locations.

The USATDS detailed one or more counsel to every Army special and general courts-martial referred in FY 09, defending soldiers facing the entire range of allegations under the Uniform Code of Military Justice. In addition, USATDS counsel assist Soldiers facing other military justice and administrative actions. In FY 09, the caseloads were as follows:

Courts-Martial - 1184  
Administrative Boards - 451  
Nonjudicial Punishment - 33,750  
Consultations - 14,050

The USATDS provided defense services to Soldiers deployed to Kosovo and the U.S. Central Command (CENTCOM) Area of Responsibility (AOR). The USATDS CENTCOM Region has six field offices in Kuwait, Iraq, and Afghanistan. There are four Field Offices in Iraq, at Camp Victory (Baghdad), Camp Liberty (Baghdad), Camp Speicher (Tikrit), and Joint Base Balad. There are also two branch offices in Iraq, one at Camp Taji and a new branch office in Basra. Kuwait has one field office, at Camp Arifjan, and Afghanistan has a field office at Bagram Air Base.

The Regional Defense Counsel, eighteen trial defense attorneys, and nine paralegals provide high-quality and mobile support to over 200,000 Soldiers deployed throughout CENTCOM's expansive AOR.

The Defense Counsel Assistance Program (DCAP) continued to mature in FY 2009 and grew significantly in both personnel and missions. DCAP, already staffed with a Chief and two training officers, added two mobilized reservists. The USATDS also hired its first Highly Qualified Expert, who joined the DCAP team. In 2009, DCAP created a new training program titled Defense Counsel 101 (DC 101), a three-day training program that teaches newly assigned attorneys the fundamentals of being a defense counsel. The first iteration of DC 101 was presented in August and will be presented again in December 2009 and throughout 2010. DCAP also developed training modules to train all defense counsel on the issues and challenges encountered in sexual assault cases. These classes were presented to counsel at training conferences and were well received. DCAP also coordinated training for counsel assigned to capital cases.

DCAP also continues to support the field in traditional ways, including helping defense counsel with analysis of substantive issues, tactical choices, and evidentiary issues in courts-martial. DCAP served as USATDS's clearing house for lessons learned, trends, and appellate developments. DCAP used communication vehicles like "DCAP Sends," "DCAP Alerts," and "Case Notes" to disseminate information throughout the organization. DCAP has created a well-organized and comprehensive website to assist counsel in the field offices. Even as it expanded its missions, DCAP continued to excel at its traditional functions of providing timely and accurate advice to USATDS attorneys.

The USATDS continued to work closely with reserve defense counsel assigned to the 22d and 154th Trial Defense Service Legal Support Organizations (TDS LSOs). The Chief, USATDS, exercises technical supervision over the reserve TDS LSOs. He is responsible for providing oversight for the units' training and readiness. Reserve defense counsel trained with active defense counsel at individual installations, and reserve defense counsel attended regional training conferences with their active duty counterparts.

Reserve support to active duty TDS field offices was outstanding, with reserve officers providing critical support at many active component installations in addition to reserve mobilization and training locations. Reserve Judge Advocates have also deployed overseas to Germany to backfill for deployed active duty defense counsel. Several reserve defense counsel have served, and continue to serve, in Iraq, Afghanistan and Kosovo. Additionally, reserve paralegals have mobilized and deployed to provide paralegal support in theater.

The 22d TDS LSO consists of 85 commissioned officers, 1 warrant officer, and 35 enlisted paralegals, and provides defense services to Soldiers assigned to units in East Asia and the Western half of the United States. In FY 2009, the 22d TDS LSO mobilized ten attorneys and four paralegals for service in CONUS, Europe, and Iraq. In addition, the 22d TDS LSO represented over two thousand reserve soldiers facing military justice and administrative actions. The 154th TDS LSO consists of 143 commissioned officers, 1 warrant officer, and 19 enlisted paralegals, and provides defense services to Soldiers assigned to units in Europe and the Eastern half of the United States. In FY 2009, the 154th TDS LSO mobilized 19 attorneys and 3 paralegals for service in CONUS, Europe, and Iraq. In addition, the 154th TDS LSO represented over nine hundred reserve soldiers facing military justice and administrative actions.

The Army National Guard (ARNG) component of TDS continued to grow and develop. LTC Patrick Barnett was appointed its new Chief, and ARNG TDS obtained special status to allow positions to be filled two years in advance of the unit's effective date. The response from the states has been exceptional. The authorized end strength is 126 Judge Advocates, 1 warrant officer, and 47 paralegals, assigned in seven regions. Currently, ARNG TDS has approximately 50 counsel in 24 states and territories. ARNG TDS also hired two full-time judge advocates to serve as plans officers in the headquarters. The focus of effort for ARNG TDS is the delivery of services in states with counsel, continued recruitment, and the development of systems, policies, training, and procedures. ARNG TDS developed close training and support relationships with USATDS and the TDS LSOs.

## GOVERNMENT APPELLATE DIVISION

The U.S. Army Government Appellate Division (GAD), with twenty-three active duty and seven Reserve Component military attorneys, represents the United States before the U.S. Army Court of Criminal Appeals (ACCA), the U.S. Court of Appeals for the Armed Forces (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, and also represents the United States before ACCA, CAAF, and the Supreme Court in government appeals from courts-martial trials and petitions for extraordinary relief. Additionally, GAD oversees the operations of the Trial Counsel Assistance Program (TCAP).

The U.S. Army Legal Services Agency added several key personnel at the headquarters and in the field to implement the Secretary of the Army's initiatives to improve the military justice system's ability to prosecute and defend allegations of sexual assault, harassment, and violence. Keys to the effort were hiring three Highly Qualified Experts (HQEs) and beginning to assign fifteen additional prosecutors to installations in the field.

The HQEs are civilian career prosecutors from various state jurisdictions, who bring a wealth of knowledge and experience in sexual assault prosecution. Their purpose is twofold: a) developing and conducting training for Army prosecutors in various aspects of sexual assault prosecutions, and b) providing case specific assistance in developing, evaluating and prosecuting sexual assault cases.

Additionally, the Secretary of the Army's initiative facilitated the creation of fifteen new positions for special victim prosecutors (SVPs) to be assigned across the US, Korea and Europe. Experienced judge advocates are assigned to these billets with a jurisdiction to ensure every installation is served by an SVP. The role of the SVP is to provide direct input to every sexual assault prosecution under the UCMJ, working with Staff Judge Advocates on investigation and disposition of these cases. By the end of FY09, eight SVP positions were filled, with the remainder scheduled to be filled by summer 2010.

In addition to the efforts to improve sexual assault prosecutions in accordance with Secretary of the Army guidance and in concert with other ongoing TCAP initiatives, GAD continued to perform its core functions of representing the Government in court-martial appellate litigation and provide training and assistance to trial counsel in the field. In FY09, GAD filed 538 briefs with the US Army Court of Criminal Appeals (ACCA), nine briefs with the Court of Appeals for the Armed Forces (CAAF), and answered 358 petitions at CAAF, and filed or answered another fifteen writs and government appeals. In addition, military appellate counsel conducted oral argument in thirty cases before ACCA and thirteen times in CAAF, ensuring in each case that the government interest in upholding findings and sentences from courts-martial met the ends of military justice.

Of note, as part of the ACCA's Project Outreach, GAD argued two cases in the civilian community, including one at Harvard University and one at the John Marshall School of Law in Chicago, Illinois. These outreach arguments are important in displaying the military justice process to largely civilian audiences.

In addition to the focused sexual assault prosecution efforts noted above, GAD, through the Trial Counsel Assistance Program (TCAP), provided routine support, assistance, expertise and review to military prosecutors throughout the world and in the combat zones. TCAP assistance came in the form of specific and often time-sensitive issues in on-going courts-martial, in case reviews and strategy discussions for pending investigations, in on-site assistance, and in installation and regional training, ranging from basic issues for new prosecutors to week long advocacy training. Included in such training are law enforcement investigators and civilian counterparts from various departments within the Department of Justice, the National District Attorneys Association and various medical and social services professionals.

## DEFENSE APPELLATE DIVISION

The Defense Appellate Division (DAD), with nineteen active duty Judge Advocates (including one mobilized Reservist) and nine Drilling Individual Mobilization Augmentee (DIMA) attorneys, provides appellate representation to eligible Soldiers before the ACCA, the CAAF, and the Supreme Court of the United States. Qualifying Soldiers include those convicted at courts-martial where the approved sentence included a punitive discharge, dismissal, or at least one year of confinement. The Division also assists Trial Defense Counsel in various trial matters, including preparation and filing of extraordinary writs before the aforementioned Courts, and oversees the Defense Counsel Assistance Program (DCAP).

DAD struck some hard blows in favor of Soldiers' Constitutional rights that will protect substantial Due Process rights for all our Soldiers. In *U.S. v. Miller*, 67 M.J. 385 (C.A.A.F. 2009), in setting aside the conviction, the Court ruled that henceforth an article 134 Simple Disorder was no longer an implied lesser included offense in all enumerated offenses under The Code. This overruled longstanding precedent that had operated to convict soldiers of a general article 134 disorder offense despite the government's inability to prove the elements of the charged offense.

In response to *U.S. v. Rodriguez*, 67 M.J. 110 (C.A.A.F. 2009) (reversing a longstanding practice of liberality and holding that an untimely petition from a Marine was jurisdictionally barred), DAD has implemented new web-based software equipped with case management controls to protect Army Soldiers from losing their appellate rights due to untimely filings.

Because of *Rodriguez*, BRAC constraints, and other factors, DAD has executed several initiatives intended to better use our resources and provide operational flexibility to maintain operability as conditions change. The DADCASE web-based case management application is online and 100% operational, enabling our attorneys and paralegals to access a central web database from anywhere to get real-time case management information. This application has been customized to provide deadline management reports to ensure DAD is timely in its filings.

Additionally, CITRIX computer applications now provide all DAD attorneys and paralegals the capacity to access government communications and information from anywhere they can get online. In short, DAD is prepared to execute its mission and meet future challenges today—despite the challenging circumstances that may lie ahead.

During FY 09, DAD received 776 new cases. Appellate Defenders filed 792 briefs, including 12 final briefs before the CAAF, and 497 miscellaneous pleadings, on behalf of their clients before the courts. Appellate Defenders argued 25 cases before ACCA and 10 cases before CAAF.

DAD continues to partner with Appellate Defenders from sister services. DAD maintains a continuing dialogue between the Service Division Chiefs. Army, Navy, and Air Force action attorneys have collaborated and corresponded on several cases of mutual interest, especially at professional seminars and gatherings. Also, DAD extends extensive support to USCG Appellate Defenders with respect to case and argument preparation as CG counsel have fully participated in our roundtable process and argument preparation program. DAD maintains a forward-thinking, joint posture which inures to the benefit of our Army Soldier clients and the benefit of the Service Members of our brothers and sisters in arms.

#### **FOREIGN CRIMINAL JURISDICTION**

As the Department of Defense 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 2006 to 30 Nov 2007	1 Dec 2007 to 30 Nov 2008
Foreign Offense Citations	3531	2982
Total Civilian	880	864
Total Military	2,651	2118
Exclusive Foreign Jurisdiction	74	74
Concurrent Jurisdiction	2577	1906
Traffic Offenses	167	75
Foreign Jurisdiction Recalls	351	208

During this reporting period, foreign authorities released to U.S. authorities four of the 72 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 1906 of the 2046 cases. Overall, the U.S. obtained waivers in 93.2% of all exclusive and concurrent jurisdiction cases. This figure reflects an increase of 5.5% in obtaining waivers compared to the previous reporting period.

During the last reporting period, civilian employees and dependents were involved in 880 offenses. Foreign authorities released 50 of these cases (5.7% 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 864 offenses. The foreign authorities released 26 of these cases (3.0% of the current total of this reporting period). This figure represents a decrease of 2.7% in obtaining releases of foreign criminal jurisdiction over civilian employees and dependents.

During this reporting period, foreign authorities tried a total of 451 cases involving U.S. personnel. Seven trials, or 1.6%, resulted in acquittals. Those convicted were sentenced as follow: 8 cases resulted in executed confinement, 36 cases resulted in suspended confinement, and 400 cases (88.7% of the total trials) resulted in only fines or reprimands.

## **PROFESSIONAL RESPONSIBILITY**

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

The Professional Responsibility Branch (PRB) is responsible for ensuring complaints against attorneys are properly processed and that the supervisor or The 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, PRB 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.

## **LITIGATION**

Civil lawsuits involving military justice matters are relatively few in number but remain an important part of Litigation Division's practice. Most suits are brought by former Soldiers seeking collateral review of military court-martial proceedings pursuant to a petition for writ of habeas corpus in federal district court. The following cases highlight the types of issues handled by the Army Litigation Division.

In *Gray v. Gray* [PV1 Ronald Gray v. COL Gray, the Commandant of the United States Disciplinary Barracks], the U.S. District Court for the District of Kansas granted Private Ronald Gray's motion to stay his execution and appointed counsel to assist him in pursuing habeas relief. In 1988, Private Gray was convicted of three specifications of premeditated murder, one specification of attempted murder, three specifications of rape, two specifications of forcible sodomy, and one specification of burglary. The court-martial unanimously sentenced Private Gray to death, a dishonorable discharge, total forfeitures of all pay and allowances, and reduction to Private E-1. The Army Court of Criminal Appeals and the Court of Appeals for the Armed Forces affirmed the conviction and sentence. In 2001, the Supreme Court denied Private Gray's petition for writ of certiorari and in 2008 the President ordered the sentence executed. On 1 April 2009, Private Gray filed a habeas petition challenging the panel composition and selection process, specific rulings by the military judge, the adequacy of his defense, the constitutionality of the Rules for Court-Martial governing death penalty cases, and the method of execution. On 1 May 2009, the government responded to the petition. On 18 December 2009, petitioner replied and raised additional claims including systemic racism within the military, denial of access to documentation the Army had provided to the President, mental incompetence at trial and on appeal, and lack of military jurisdiction over a peacetime murder in the United States. The government is currently preparing its response.

The Army is also defending against a court-martial collateral attack in *Hart v. Commandant, USDB, Fort Leavenworth, Kansas*. In 2004, Major Richard K. Hart pled guilty to assaulting his daughter, obstructing justice, disobeying a superior commissioned officer, and adultery. A court-martial, sitting judge alone, also found him guilty of assault and voluntary manslaughter of his wife. The court-martial sentenced him to 26 years confinement and a dismissal. On 19 March 2009, he filed a petition for writ of habeas corpus in the U.S. District Court for the District of Kansas.

Petitioner argued: (1) ACCA and CAAF did not provide full and fair review of his court-martial appellate issues; (2) the military judge committed numerous errors; (3) the sentence to confinement for 26 years was disproportionate and inappropriately severe; and (4) the facts and circumstances surrounding his pre-trial restraint constituted unlawful pre-trial punishment and violated his right to due process. On 17 August 2009, the government responded, denying the allegations and arguing the petition should be denied because petitioner's claims received full and fair consideration by the military courts. The case is pending in the district court.

The Army successfully defended a challenge to court-martial jurisdiction in *Willenbring v. United States*. The U.S. Court of Appeals for the Fourth Circuit unanimously affirmed the district court's dismissal of Mr. Willenbring's habeas petition challenging court-martial jurisdiction. The Army court-martialed Mr. Willenbring, while he was a member of the reserve component, for three rapes he had committed when he was a member of the regular component. Relying on *Murphy v. Dalton*, 81 F.3d 343 (3rd Cir. 1996), Mr. Willenbring argued Article 2(d), UCMJ only extends jurisdiction over offenses committed by members of the reserve component serving on active duty. Alternatively, Mr. Willenbring argued that the Army had lost jurisdiction to court-martial him when he was discharged from the regular component and subsequently reenlisted in the reserve component. The district court first noted that jurisdiction is a mixed question of law and fact, but the degree to which federal courts can review factual determinations with respect to a military habeas petition challenging jurisdiction is unclear. The court declined to resolve the issue because Mr. Willenbring did not challenge the essential facts found by the military courts. The court reviewed the legal conclusions concerning jurisdiction *de novo*. Contrary to the Third Circuit, the Fourth Circuit held that the term "active duty" in Article 2(d) applies to offenses committed on active duty in the reserve and regular components. The court reasoned that the statutory definition of "active duty" encompasses active duty service in both components.

It further reasoned that the context of Article 2(d) and Title 10 shows that Congress expressly uses the terms regular or reserve component when it wishes to limit a provision to either of those components, but did not confine the term "active duty" in Article 2(d) to either component. In rejecting Mr. Willenbring's alternative argument, the court found that he did not have a complete termination of military status because his discharge from the regular component had been conditioned upon his enlistment in the reserve component. On 5 October 2009, the Supreme Court denied Mr. Willenbring's petition for certiorari.

In *Adolph v. United States*, the U.S. District Court for the District of Columbia dismissed Mr. Adolph's habeas petition challenging his pretrial confinement. Mr. Adolph was a civilian contractor accompanying the military in Kuwait in support of Contingency Operations Enduring Freedom and Iraqi Freedom. The Army confined Mr. Adolph after he used a stolen credit card as identification to steal a soldier's military personnel file, fled apprehension, assaulted his pursuers, and subsequently confessed to participating in an extensive conspiracy to steal items sent through the U.S. mail to service members deployed in Kuwait, Afghanistan, and Iraq. While the Army was coordinating with the Department of Justice and U.S. Marshals to transport Mr. Adolph to the United States, Mr. Adolph filed suit challenging the Army's authority to confine him. He asserted that the 2006 amendment to Article 2(a)(10) extending UCMJ jurisdiction over civilians accompanying the force during a contingency operation was unconstitutional because Congress can only extend UCMJ jurisdiction over civilians in a time of declared war. The district court did not reach the merits of the issue because Mr. Adolph voluntarily dismissed his petition as moot when the Army transferred him to the custody of the U.S. Marshals. The Department of Justice prosecuted Mr. Adolph under the Military Extraterritorial Jurisdiction Act in the Western District of Oklahoma. Pursuant to his plea, Mr. Adolph was convicted of making a false, fictitious, or fraudulent statement or representation and sentenced to two years probation and 104 hours of community service.

In *Thomas v. USDB*, the Army continues to defend against a challenge to a court-martial conviction which was recently considered in an extraordinary writ before the military courts while pending federal habeas review. In late 1995, Rochester Thomas was convicted *in absentia* of attempted rapes of a minor, rape, two specifications of forcible sodomy with a minor, two specifications of assault consummated by a battery upon a child under sixteen years, adultery, and indecent acts upon a minor. In April 1997, he was arrested in Germany following an incident in which he assaulted his girlfriend and stabbed her roommate. He was returned to military custody and convicted of attempted voluntary manslaughter, wrongful appropriation, two specifications of assault consummated by a battery, and desertion. His convictions and sentences were affirmed on appeal with some relief granted. On 28 July 2004, Mr. Thomas filed a petition for a writ of habeas corpus. The U.S. District Court for the District of Kansas denied the petition finding that his ineffective assistance of counsel (IAC) claim was defaulted and, alternatively, that he did not suffer actual prejudice. During pendency of his appeal to the Tenth Circuit, he was granted an abatement to allow him to seek relief in the ACCA. On 1 August 2005, Mr. Thomas filed a writ of error *coram nobis*. The ACCA assigned counsel who filed a supplemental writ. In February 2006, following briefing by the government, the ACCA summarily denied the petition. In April 2006, the U.S. Court of Appeals for the Tenth Circuit remanded this matter for consideration of Mr. Thomas' newly exhausted IAC claim. The district court appointed counsel who filed a supplemental memorandum. On 29 September 2009, the district court denied his petition because the military courts gave full and fair consideration to his IAC claim during the *coram nobis* proceedings. The district court found the record demonstrated full and fair consideration, even though ACCA only gave a summary disposition, where the briefs at the military court contained a detailed procedural history, the relevant facts, and a statement of the applicable standard of review for IAC claims. On 2 October 2009, Mr. Thomas filed a notice of appeal.

The Army, likewise, continues to defend against a challenge to a court-martial conviction in *Piotrowski v. Commandant, USDB*.

On 8 August 2001, Captain Joseph Piotrowski was convicted at court-martial pursuant to his pleas of involuntary manslaughter of a pregnant woman, three counts of drunken driving, conduct unbecoming an officer, and reckless endangerment. He was sentenced to 13½ years imprisonment and dismissal from the service. In May 2003, while serving his military sentence at the USDB, Mr. Piotrowski was tried by the State of Florida on charges of vehicular homicide and DUI manslaughter for the same events. A jury found him guilty and sentenced him to consecutive 15-year prison terms on each charge, to run concurrent to his military sentence. His court-martial conviction and sentence were substantially affirmed by the military appellate courts. On 11 June 2008, Mr. Piotrowski filed a pro se petition for writ of habeas corpus in the U.S. District Court for the District of Kansas challenging his court-martial conviction and sentence. On 22 December 2009, following briefing, the district court dismissed with prejudice all claims that had previously been considered by the military courts. The district court dismissed without prejudice the claims that had not been raised before the military courts.

Working with the Air Force, the Army successfully defended a series of challenges to the DOD's Mandatory Supervised Release (MSR) Program, an involuntary program imposed on certain prisoners during the period between early release for accrual of good conduct time and the end of the sentence to confinement. In 2009, the U.S. District Court for the District of Kansas denied the nearly identical habeas petitions of an airman and several soldiers. In *Huschak v. Gray* and each subsequent case, the court found that the military's statutory authority to establish a system of parole under 10 U.S.C. § 952 "is broad and plain" and the "essence of MSR conforms to the definition of parole." Because MSR is not punishment, a court-martial is not required to announce MSR as part of the sentence, the court reasoned, the parole board procedures provide adequate due process, and the imposition of MSR does not affect the providence of a guilty plea. Moreover, the military prisoners waived their double jeopardy, due process, and guilty plea providence claims when they failed to raise them before the military courts.

The Army successfully defended a Freedom of Information Act (FOIA) suit filed by an Army death penalty litigant seeking documents containing the analysis and recommendations of The Judge Advocate General (TJAG) and civilian chain of command to the President in the case of *Loving v. United States*. Dwight Loving was convicted of murder in April 1989 while on active duty at Fort Hood, Texas, and sentenced to death. Following unsuccessful appeals, Loving's case was forwarded to the President of the United States for death sentence review. On 11 August 2005, Loving filed a FOIA request for documents related to death penalty procedures and a Privacy Act request for documents containing the opinions and recommendations regarding his death sentence. The government released 133 pages in response to the request, but withheld 104 pages under a variety of grounds, including FOIA Exemption 5. On 26 September 2006, Loving filed suit under the FOIA, Privacy Act and Administrative Procedures Act alleging the government failed to timely respond. After the suit was filed, the government released hundreds of additional documents. Loving narrowed his suit to a FOIA claim seeking the disclosure of four specific documents. These documents included the analysis and recommendations of the TJAG and the civilian chain of command to the President. The district court found that the documents were not "sentencing recommendations" under R.C.M. 1006(f) and that R.C.M. 1204(c)(2) does not contain a provision for the disclosure of recommendations to the President. The U.S. Court of Appeals for the District of Columbia Circuit affirmed the lower court's ruling on 23 December 2008. Loving filed a petition for rehearing, which was denied on 3 March 2009. On 28 May 2009, Loving filed a petition to the United States Supreme Court for a writ of certiorari. On 13 October 2009, the Supreme Court denied Loving's petition. The President has not signed the death warrant in Loving's case.

#### **PERSONNEL, PLANS, AND POLICIES**

On 30 September 2009, the Army's end-strength was 584,685 Army Soldiers on active duty, including Active Guard and Reserve (AGR) and mobilized Soldiers, compared to 655,378 at the end of fiscal year 2008. The attorney strength of the Active Army (AA) Judge Advocate General's Corps at the end of FY 09 was 1,730 (including general officers).



This total does not include 64 officers attending law school while participating in the Funded Legal Education Program. The FY 09 AA end-strength of 1,730 compares with an end-strength of 1,647 in FY08, 1,643 in FY07, 1,638 in FY06, 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 diverse composition of our FY09 AA attorney population included 123 African-Americans, 54 Hispanics, 88 Asians and Native Americans, and 445 women. The grade distribution of the Corps' AA attorneys for FY09 was 5 general officers, 124 colonels, 242 lieutenant colonels, 384 majors and 970 captains. An additional 88 warrant officers, 539 civilian attorneys, and 1,418 enlisted paralegals supported legal operations worldwide. The attorney strength of the RC Judge Advocate General's Corps at the end of FY 09 was 1988 and the attorney strength of the Army National Guard at the end of FY 09 was 696. At the end of FY 09, over 662 Army JAG personnel (officer and enlisted, AA and RC) were deployed in operations in Iraq, Egypt, Kuwait, Afghanistan, Djibouti, Qatar, Bosnia, Kosovo, Cuba, the Horn of Africa and Honduras.

DANA K. CHIPMAN  
Lieutenant General, USA  
The Judge Advocate General

**APPENDIX - U.S. ARMY MILITARY JUSTICE STATISTICS**

Report Period: FISCAL YEAR 2009

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	638	584	54	-5.3%
BCD SPECIAL [A]	518	491	27	+7.0%
NON-BCD SPECIAL	10	9	1	+150.0%
SUMMARY	946	[B]	[B]	-24.4%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-12.5%

**PART 2 – DISCHARGES APPROVED [C]**

GENERAL COURTS-MARTIAL ( CA LEVEL)				
NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)			63 (+24)	
NUMBER OF BAD-CONDUCT DISCHARGES			292	
SPECIAL COURTS-MARTIAL				
NUMBER OF BAD-CONDUCT DISCHARGES			203	

**PART 3 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG**

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL			386	
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL			204	
TOTAL ON HAND BEGINNING OF PERIOD			65 [D]	
GENERAL COURTS-MARTIAL		[E]		
BCD SPECIAL COURTS-MARTIAL		[E]		
REFERRED FOR REVIEW			613 [D]	
GENERAL COURTS-MARTIAL				
BCD SPECIAL COURTS-MARTIAL				
TOTAL CASES REVIEWED			618 [F]	
GENERAL COURTS-MARTIAL				
BCD SPECIAL COURTS-MARTIAL				
TOTAL PENDING AT CLOSE OF PERIOD			60 [D]	
GENERAL COURTS-MARTIAL				
BCD SPECIAL COURTS-MARTIAL				
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD			-47.0%	
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL			223	

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

**PART 5 – APPELLATE COUNSEL REQUESTS BEFORE**

**U.S. ARMY COURT OF CRIMINAL APPEALS (CCA)**

NUMBER	564	
PERCENTAGE	92.00%	

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

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF	359 of 618	58.09%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+47.06%
PERCENTAGE OF TOTAL PETITIONS GRANTED	41 of 399	10.26%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+8.92%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY USACCA		6.63%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+64.52%

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

<b>PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ</b>		
TOTAL PENDING BEGINNING OF PERIOD		
RECEIVED		
DISPOSED OF		
GRANTED		
DENIED		
NO JURISDICTION		
WITHDRAWN		
TOTAL PENDING AT END OF PERIOD		
<b>PART 8 – ORGANIZATION OF COURTS</b>		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL	462	
SPECIAL COURTS-MARTIAL	455	
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL	161	
SPECIAL COURTS-MARTIAL	103	
<b>PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ</b>		
NUMBER OF COMPLAINTS	26	
<b>PART 10 – STRENGTH</b>		
AVERAGE ACTIVE DUTY STRENGTH	584685	
<b>PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)</b>		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	35210	
RATE PER 1,000	60.22	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-11.09%	

**EXPLANATORY NOTES**

- [A] Cases convened by a GCM convening authority.
- [B] Data not available because of an omission in the reporting requirements when Army OTJAG transitioned to electronic reporting. The omission has been remedied and the data will be reported in future years.
- [C] Based on records of trial received during FY for appellate review.
- [D] Includes only cases briefed and at issue.
- [E] GCM and BCD SPCM are not tracked separately.
- [F] 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, 2008 TO SEPTEMBER 30, 2009

SUPERVISION OF THE ADMINISTRATION OF  
MILITARY JUSTICE

JUDGE ADVOCATE GENERAL

The Judge Advocate General (JAG) chairs, no less than quarterly, the Military Justice Oversight Committee (MJOC). This committee also consists of the Commander, Naval Legal Service Command, the Staff Judge Advocate to the Commandant of the Marine Corps, and the Assistant Judge Advocates General for Military Justice, Chief Judge of the Navy, and Operations and Management. The MJOC reviews the status of all military justice within the Department of the Navy, to include but not limited to status of compliance with standards set forth in *United States v. Moreno* (63 MJ 129 (C.A.A.F. 2006)).

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 in accordance with the requirement of Article 6(a), Uniform Code of Military Justice (UCMJ). These inspections, conducted by subject matter experts, examined the full range of military justice processes at those offices inspected.

This was an extraordinary year in military justice for the Navy and Marine Corps. Groundbreaking cases included the first constitutional challenges to the new Article 120 with three en banc published opinions from the Navy-Marine Corps Court of Criminal Appeals: *United States v. Neal*, 67 M.J. 675 (N-M. Ct. Crim. App. 2009) (en banc), further proceedings at *United States v. Neal*, \_\_ M.J. \_\_, No. 09-5004/N (C.A.A.F. Jan 22, 2010); *United States v. Crotchett*, 67 M.J. 713 (N-M. Ct. Crim. App. 2009) (en banc); and *United States v. Medina*, \_\_ M.J. \_\_, (N-M. Ct. Crim. App. Dec. 17, 2009) (en banc). Also in FY 09, *United States v. Denedo* was reviewed by the Supreme Court.

The case looked at CAAF's jurisdiction to grant post-finality relief and was argued before the Supreme Court on March 25, 2009. The case was decided on June 8, 2009, in a 5-4 split, affirming C.A.A.F.'s extraordinary writ authority beyond court-martial finality.

Another case with far-reaching implications for Navy and Marine Corps military justice practice was *United States v. Foster*, \_\_\_ M.J. \_\_\_, (N-M. Ct. Crim. App. Feb 17, 2009). This case identified a serious problem with post-trial delay in a case where initial appellate review took over 10 years to complete. Based on the concerns engendered by *Foster*, this year the Judge Advocate General commissioned a Report on the State of Military Justice within the Navy and Marine Corps to summarize improvements already made as well as recommendations for further process improvements. This report will be done on an annual basis. The Judge Advocate General is also participating in a review of departmental post-trial processes by the Inspector General for the Department of Defense. This review was mandated by the FY10 National Defense Authorization Act.

#### **ASSISTANT JUDGE ADVOCATE GENERAL, MILITARY JUSTICE**

Colonel Peter B. Collins, USMC, continued to serve as the Assistance Judge Advocate General, Military Justice (AJAG-MJ). After 3 years in the job, the AJAG-MJ will qualify for retirement at the rank of Brigadier General. His duties include the supervision of criminal law policy (Code 20), administrative support (Code 40), appellate defense (Code 45), and appellate government (Code 46). Additionally, he serves as a member of the Office of the Judge Advocate General Ethics Committee. He is responsible for coordinating administrative matters with the Navy-Marine Corps Court of Criminal Appeals.

#### **CRIMINAL LAW DIVISION (CODE 20)**

Organization. Commander David M. Harrison, JAGC, USN relieved Captain Christian L. Reismeier, JAGC, USN as the Division Director. Commander J. Russell McFarlane, JAGC, USN, continued to serve as the Deputy Director. Ms. Laura Rogers, Esq. was hired as the Director of Litigation Training and Ms. Teresa Scalzo, Esq. was hired as a Sexual Assault Litigation Specialist.

The Criminal Law Division was staffed with five active duty judge advocates, two civilian attorneys, two civilian support personnel, and two reserve units. Reserve unit NAVJAG 113 conducted Article

69(a), Article 69(b), and Article 73 reviews and unit 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 the JAG on a wide variety of military justice matters; reviews all legislative and regulatory proposals affecting military justice; and is the current Chair 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 impacting or 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 discharge for punitive discharge; provides a JAG representative to the Naval Clemency and Parole Board; coordinates court orders and warrants of attachment; provides written opinions to the 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; coordinates the development of the Military Justice Litigation Career Track community including policy and selection boards; coordinates all litigation training with the Naval Justice School; 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 COMNAVLEGSVCCOM regarding policies, plans, resources and procedures affecting the military justice mission of NAVLEGSVCCOM.

In that capacity, the Division Director assists COMNAVLEGSVCCOM, in Article 6, UCMJ, inspections of NAVLEGSVCCOM commands and detachments.

The JSC 2009 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 a new child pornography offense under Article 134, modification of M.R.E. 504 to create an exception to the marital privilege when spouses are jointly involved in illegal activity, modification of M.R.E. 609 to conform to F.R.E. 609 and modification to the Discussion of Article 89 to clarify that the uniformed officers of the Public Health Service and the National Oceanographic and Atmospheric Administration, when assigned to and serving with the armed forces, are included in the definition of a superior commissioned officer for purposes of a prosecution for disrespect toward a superior commissioned officer.

During the past year, the Military Justice Division reviewed 44 records of trial under Article 69a, UCMJ and 13 records under Article 69b, UCMJ. Two petitions were reviewed under Article 73, UCMJ.

#### **CRIMINAL LAW DIVISION (CODE 40)**

Organization. Mr. James Duncan continued to serve as the Head, Case Management. Staff Sergeant Willie Richardson, USMC, relieved Gunnery Sergeant James C. Hope, USMC as the Senior Noncommissioned Officer in Charge. Code 40 was staffed with nine active duty Marine judges and two civilians.

Mission. Code 40 provides administrative support for all records of trial in Navy and Marine Corps General and Special courts-martial. In 2009, Code 40 reviewed over 700 records of trial for completeness and forwarded those records on to the appropriate level of review, including the Navy-Marine Corps Court of Criminal Appeals for Article 66 review and Code 20 for Article 69 review.



## **APPELLATE DEFENSE DIVISION (Code 45)**

Organization. Captain Robert Taishoff, JAGC, USN, continued to serve as the Division Director. Ms. Rebecca Snyder, a Reserve Navy judge advocate, assumed the role of Deputy Director. The Appellate Defense Division was staffed with 9 active duty Navy and Marine Corps judge advocates and 4 civilian support personnel.

The Appellate Defense Division was supported by 26 Navy and Marine Corps Reserve judge advocates. The various Navy Reserve units, which previously supported the Division - NR NAVJAG 109, Columbus, Ohio; NR NAMARA (Defense) 110, Oklahoma City, Oklahoma; NAVJAG 519, Los Angeles, California; and NAVJAG 211, Fort Worth, Texas - were consolidated into the NAMARA 110 unit. The Unit's Commanding Officer is Captain Carol Lynch who will be relieved shortly by Captain Aaron Santa Anna. The Marine Corps Reserve contingent consisted of four independently assigned Reserve judge advocates.

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 Navy 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 general training, and providing advice on specific cases in litigation at trial.

As depicted below, in fiscal year 2009 (FY 09), a total of 694 new cases were docketed at NMCCA and received in the Appellate Defense Division. The Appellate Defense Division filed 689 initial pleadings with 14 oral arguments at NMCCA. The initial pleadings include 149 briefs, 529 merit submissions, and 11 summary assignments. A total of 120 supplemental briefs to petitions were filed at CAAF, resulting in 36 full briefs and 19 oral arguments.

<b>NMCCA</b>	<b>FY 05</b>	<b>FY 06</b>	<b>FY 07</b>	<b>FY 08</b>	<b>FY 09</b>
Briefs Filed	543	471	415	230	173
Total Cases Filed	2127	1610	1165	1008	1004
<b>CAAF</b>					
Petitions with Supplemental Briefs Filed	207	173	206	151	96
Briefs Filed	26	76	29	27	31
<b>U.S. Supreme Court Petitions</b>	2	9	6	6	5

Capital Litigation. All three Marine death penalty cases have been remanded to the convening authority or trial level courts. An extraordinary writ of mandamus is pending at NMCCA in United States v. Quintanilla.

Assistance to Trial Defense Counsel. The Appellate Defense Division provides advice and support to Navy and Marine Corps trial defense counsel around the world. The Division's experienced appellate attorneys reply to short-fused questions from trial defense counsel and assist 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 9 active duty judge advocates and 2 civilian administrative employees. Colonel Louis J. Puleo, USMC, served as Division Director. Mr. Brian K. Keller, former Marine judge advocate in the Division, continues to serve as the Deputy Director.

Reserve support continues to be critical to the accomplishment of the Code 46 mission. Code 46 is currently supported by NAVJAG 116 (Minneapolis, Minnesota). Reserve personnel contributed an average of 4-6 briefs per month.

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, trial, and post-trial proceedings.

This year's appellate activity is set forth in the following chart. CMTIS calculations for "Briefs Filed" include Government briefs, answers to supplements, and supplemental briefs. "Other Pleadings" include responses to extraordinary writs, motion responses, responses to Court Orders, and Petitions for Reconsideration. The number of NMCCA briefs filed by the Government has continued to decline to a new low of 154. There is a steady stream of Article 62 appeals taken from trial court decisions; the numbers are as follows: 0 in FY 06, to 8 in FY 07, 11 in FY 08, and 9 in FY 09.

	FY 04	FY 05	FY 06	FY 07	FY 08	FY 09
<b>NMCCA</b>						
Briefs Filed	542	700	621	486	232	154
Other Pleadings	22	425	333	528	340	313
Oral Arguments	8	16	10	8	6	14
<b>CAAF</b>						
Briefs Filed	22	38	86	45	37	28
Other Pleadings	73	128	115	158	146	60
Oral Arguments	21	23	31	21	32	23

The Division continues its support to the field staff judge advocates and trial counsel providing "Trial Counsel Assistance Program" services as required, and continues its outreach to command staff judge advocates stressing the importance of diligent post-trial processing.

Of the high Article 62 caseload, two cases stemmed from the Haditha war crimes prosecutions, including *Wuterich* and *Chessani*.

Several of the more interesting cases arose as challenges to the new Article 120, UCMJ, sexual crimes statute. C.A.A.F. has addressed several defense challenges to the statute in *United States v. Neal*, a Navy case that raised a constitutional challenge to the new Article 120, and specifically to a provision that shifted the burden of proof to the defense when raising consent as an affirmative defense. C.A.A.F. found Article 120 constitutional on January 22, 2010.

The Division worked closely in FY 09 with the Office of the DoD General Counsel as well as with the United States Solicitor General in preparing *United States v. Denedo* for Supreme Court review. The case looked at CAAF's jurisdiction to grant post-finality relief and was argued before the Supreme Court on March 25, 2009. The case was decided on June 8, 2009, in a 5-4 split, affirming C.A.A.F.'s extraordinary writ authority beyond court-martial finality.

During FY 09, the Division's judge advocates participated in two oral arguments as part of United States Court of Appeals for the Armed Forces' legal outreach program at Southern Methodist University Law School, Dallas Texas, and Texas Tech University Law School, Lubbock, Texas.

**Assistant Judge Advocate General, Chief Judge,  
Department of the Navy**

In December 2007 the Secretary of the Navy established the Assistant Judge Advocate General (AJAG), Chief Judge, Department of the Navy (CJ), whose principal duties include supervision and management of the trial and appellate judiciary within the Department of the Navy. In July 2009, the Secretary approved the report of the selection board that recommended Captain Daniel E. O'Toole, JAGC, USN, as the first AJAG-CJ. He assumed duties as CJ in September 2009, and upon being detailed as the AJAG in his third year of service, and completing 12 months in that position, the AJAG-CJ will qualify for retirement at the rank of Rear Admiral (Lower Half).

The AJAG-CJ oversees the Department of the Navy judicial enterprise, including the following duties and responsibilities:

Judicial Supervision. AJAG-CJ is the senior supervisory jurist in the Department of the Navy, and serves as the reporting senior for the Chief Judge of the Navy-Marine Corps Trial Judiciary (NMCTJ), the Chief Judge of the Navy-Marine Corps Court of Criminal Appeals (NMCCA), and all other judges of the NMCCA, active and reserve components. The AJAG-CJ reports to the Judge Advocate General regarding any administrative impediment to the judiciary, such as a lack of resources, which might cause a case to fail to be processed in a timely manner, consistent with due process.

Judicial Misconduct. The AJAG-CJ is Rules Counsel for all inquiries into judicial misconduct involving judges of the NMCCA and NMCTJ. All complaints of judicial misconduct or unfitness will be submitted to the AJAG-CJ.

Judicial Screening. The AJAG-CJ is the Chair of the Judicial Screening Board, presiding over periodic boards to select the best qualified judicial candidates for appointment to the trial and appellate benches.

Judicial Training. The AJAG-CJ is responsible for the initial training of all judicial candidates, as well as the continuing education of current NMCTJ and NMCCA judges.

Judicial Assignments. The AJAG-CJ supervises the deployment of active and Reserve judicial resources to best serve the interests of justice within the Department of the Navy. This includes recommendations to the Judge Advocate General and the Staff Judge Advocate to the Commandant of the Marine Corps on billet structure, including the number and geographic location of judiciary billets.

Community Sponsor. The AJAG-CJ serves in the capstone billet of the military justice litigation career track for judge advocates of the Navy, and is the principal strategic planner and community sponsor for that career track.

**U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS (NMCCA)  
(CODE 51)**

Legal issues addressed included: applied the holding of *Crawford v. Washington*, 541 U.S. 36 (2004) to extrajudicial statements made by a child concerning child abuse; held that it was an unreasonable multiplication of charges to convict an accused of the same possession and receipt of child pornography under clauses 1 and 2 of Article 134, UCMJ, and as violations of 18 U.S.C. 2252A(a)(5) and 2252A(a)(2)(B) under clause 3 of Article 134, UCMJ; held that failing to instruct members that self-defense was a defense to negligent homicide was error; held relevant subsections of Article 120, UCMJ, constitutional both facially and as applied; concluded that there is no reporter's privilege in military jurisprudence; applied the term indecent to a text message sent from one adult to another; ruled that the failure of the military judge to order the production of a suitable expert to assist the defense in a shaken baby death case was error; and held that computer file names suggestive of possession of child pornography constitute a qualifying offense under Military Rule of Evidence 414 and are therefore admissible as propensity evidence against an accused in a prosecution for alleged acts of child molestation. Additionally, the Court began to record its oral arguments and post the recordings on its public web site along with all of the Court's decisions.

**NAVY-MARINE CORPS TRIAL JUDICIARY (CODE 52)**

The U.S. Navy and U.S. Marine Corps have a unified trial judiciary entitled the Navy-Marine Corps Trial Judiciary (NMCTJ). Its core mission is to provide certified military judges for Navy and Marine Corps general and special courts-martial. The NMCTJ is organized into six judicial circuits world-wide and is supported by Naval Reserve and Marine Corps Reserve Individual Mobilization Augmentees. The Chief Judge is Captain Bruce W. MacKenzie, JAGC, USN, who was invested on 20 June 2008. Lieutenant Colonel Eugene H. Robinson, Jr., USMC, serves as Deputy Chief Judge.

The NMCTJ consists of 24 active duty and 16 Reserve judges. During FY 09, the judges of NMCTJ presided over 237 general courts-martial and 851 special courts-martial. The 2010 courts-martial operational tempo is consistent with the declining trend over the past several years of fewer courts-martial throughout the naval service.

The NMCTJ provided comprehensive and timely judicial services to fleet and shore activities, and to Marine forces in the United States and around the world, including combat zones such as Iraq and Afghanistan. Several judges also deployed as individual augmentees in non-judicial billets. Judges presided over numerous high-profile cases arising from incidents in Iraq. Several more judges were designated and appointed as trial judges for Military Commissions at Guantanamo Bay, Cuba. Judges again performed duties as environmental impact statement hearing officers for several proceedings throughout the United States conducted pursuant to the National Environmental Policy Act.

Members of the trial judiciary participated in continuing legal education at the Army Judge Advocate General's Legal Center and School, the annual Interservice Military Judges Seminar (IMJS) at Maxwell Air Force Base, and at the National Judicial college (NJC) in Reno, Nevada.

Members of the NMCTJ also provided training at various levels, including the Defense Institute of International Legal Studies, Navy-Marine Corps Senior Officers Courses, Legal Officer Courses, Naval Justice School Basic Lawyer Courses, the Army Judge Advocate General's Legal Center and School's Military Judges Course, and other in-service courses. Throughout all judicial circuits, the NMCTJ performed an active role in routinely mentoring judge advocates by means of both formal and informal training sessions.

#### **NAVAL LEGAL SERVICE COMMAND**

Naval Legal Service Command (NAVLEGSVCCOM) is commanded by Rear Admiral Nanette M. DeRenzi who also serves as the Deputy Judge Advocate General of the Navy. NAVLEGSVCCOM includes 386 judge advocates, 1 Civil Engineer Corps Officer, 10 Limited Duty (Legal) Officers, 213 legalmen, and 210 civilians.

NAVLEGSVCCOM provides a wide range of legal services to afloat and shore commands, active duty naval personnel, family members, retirees, and eligible beneficiaries from the other services at 99 offices world-wide and is the primary source of personnel to meet the Navy Judge Advocate General Corps annual Individual Augmentation (IA) requirements in support of the Overseas Contingency Operations (OCOs). 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 2009, NAVLEGSVCCOM provided counsel for 94 general courts-martial, 203 special courts-martial, 113 Article 32s, and 677 Administrative Boards. NAVLEGSVCCOM also provided 150,303 attorney legal assistance services, and 66,195 customer services.

15% of NAVLEGSVCCOM judge advocates deployed during FY 09 as IAs in direct support OCOs in Iraq, Afghanistan, Djibouti and Guantanamo Bay, Cuba.

#### **NAVAL JUSTICE SCHOOL**

Organization. Naval Justice School (NJS) reports to NAVLEGSVCCOM for administrative and operational control. Commander, Naval Education and Training Command (CNETC) is NJS's budget submitting office. 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 two-person Branch Office is co-located with the U.S. Army's 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 legal men 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 FY 09, NJS provided instruction to more than 25,756 students worldwide (including 3,851 in resident courses ranging in length from three days to eleven weeks). In addition to teaching at NJS, NJS instructors provide out-of-house teaching in military justice, administrative law, and operational law to other commands, including the Naval War College, Center for Naval Leadership, Officer Training Command, Senior Enlisted Academy, Surface Warfare Officers School Command, and the Defense Institute of International Legal Studies.

Academic Programs. NJS has eight "core" courses that include training in military justice. These courses are:

1. Basic Lawyer Course (BLC). This now 10-week course, offered four times in fiscal year 2009, 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, administrative law, and standards of conduct. Teaching methods include lecture, seminar, and practical exercises in both legal assistance skills and trial advocacy skills. In August 2009, the BLC was extended by one week to incorporate basic operational law training, a 1-week course, traditionally offered either before or after the BLC to the Navy and Marine Corps accession students.

Instruction includes classroom lectures and group seminar exercises on 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 of classified information. During this week of instruction, Coast Guard students attend their own course of instruction on basic operational law, facilitated by local Coast Guard experts. Upon graduation, judge advocates are certified per Article 27(b), UCMJ. FY 09 graduates: 150.

2. Accession Legalman Course. This 11-week course, offered three times annually, trains Navy enlisted personnel selected for conversion to the legalman rating. The course provides 10 ABA-certified credits towards a paralegal degree or certificate in partnership with Roger Williams University. In addition to military specific training in military justice, court reporting, administrative investigations, and administrative separations, the course includes four college-level courses taught by NJS officer instructors: Ethics, Legal Research and Writing I, Introduction to Law, and Emerging Legal Technologies. FY 09 graduates: 56.

3. Basic Legal Services Specialist Course. This 9 1/2-week course, offered three times annually, provides accession level training to junior enlisted Marines seeking to become Marine Corps Legal Services Specialists. The curriculum consists of training in military justice, post-trial review, and legal administration. FY 09 graduates: 108.

4. Legal Services Court Reporter Course. This 11-week course, offered twice annually, provides court reporter training to Legal Services Specialists, in grades E-3 to E-7, seeking the Necessary Military Occupational Specialty of Marine Corps Legal Services Court Reporter. The curriculum consists of court reporter training in closed-mask capture of legal proceedings at 225 wpm, court reporting grammar and punctuation, speech recognition technology, digital recording software, and the production of verbatim and summarized courts-martial proceedings. FY 09 graduates: 18.

5. 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, and administrative law. FY 09 graduates: 743.

6. 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. FY 09 graduates: 518.

7. 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. FY 09 graduates: 309.

8. 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, portions of the SELC are incorporated into the core curriculum at the Navy's Senior Enlisted Academy. FY 09 graduates: 397.

Continuing Legal Education. In addition to the "core" courses, NJS provided 29 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, including litigation of sexual assault cases; computer crimes; 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 militaries in military justice, operational law, administrative law, legal assistance, and estate planning. Litigation of sexual assault cases was a new course added in FY 09.

In FY 09, these resident courses reached 931 active duty and 514 Reserve legal professionals.

Coordination. Through the Interservice Legal Education Review Committee, the Commanding Officer of NJS, the Dean of Students of the Judge Advocate General's Legal Center and School, and the Commandant of the 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 publishes 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.

Deployments. In FY 09, seven NJS instructors deployed to Iraq and Afghanistan in support of OCOs.

#### **MARINE CORPS ACTIVITIES**

There are approximately 390 active-duty Marine judge advocates and 340 Reserve Marine judge advocates. Additionally, there are 17 Marine warrant officers, 478 legal specialists, and 41 speech-recognition court reporters. These personnel work in legal offices in support of the Fleet Marine Forces in the continental United States, overseas, and on deployment throughout the world. Additionally, our drilling Reserve judge advocate community provides substantial support to each of our offices in all functional areas.

Marine Corps judge advocates perform all manner of legal services, including military justice, legal assistance, operational law, government ethics and installation law. In the military justice arena, they serve as prosecutors, defense counsel, military judges, review officers and appellate counsel for both the government and service members. There are also currently 13 Marine judge advocates serving as counsel for the Office of the Military Commissions.

Marines must be confident that their personal and financial matters are in order. Judge advocates are an essential part of this process. Before deploying, Marine Corps judge advocates assist Marines with legal assistance issues involving estate planning, family law, consumer law, tax law, property law, landlord and tenant law, debtor and creditor law, adoptions, and citizenship. These services are provided not only to active duty services members, but also to family members and military retirees.

Marine Corps judge advocates also advise commanders during military operations and exercises, reviewing operational plans and providing advice on the law of war, rules of engagement, detention operations, and contingency contracting.

Other areas of practice include civil law, contract law, international law, claims, tort law, and labor law. In addition, because Marine Corps judge advocates are unrestricted officers, many serve in non-legal billets. Marine Corps judge advocates currently hold command billets at Marine Corps Recruit Depot San Diego, Miami, Florida, Frankfurt and West Africa. Marine judge advocates also serve in numerous non-legal staff billets throughout the Marine Corps, to include recruiting duty, recruit training, serving as Air Station Executive Officer, Iwakuni, Japan and serving as Naval attaché in Dakar, Senegal and Azerbaijan.

The Marine Corps legal community also includes legal administrative officers, legal services specialists, and speech recognition court reporters. Legal administrative officers, who come from our warrant officer ranks, provide review and guidance in administrative investigations, preliminary inquiries, and claims against the government. Additionally, legal administrative officers process involuntary administrative separation cases and serve as recorders for administrative discharge boards. An enlisted Legal Services Specialist's general duties include the legal operational, managerial, clerical, and administrative duties incident to a law center.

Enlisted speech recognition court reporters record general and special courts-martial proceedings, formal investigations, administrative boards, staff meetings, and any other similar bodies (hearings) in which typewritten, summarized, or verbatim transcripts are required. The legal administrative officers, legal services specialists, and court reporters are the administrative backbone of the Marine Corps legal community.

Stenography served the USMC well for many years, but in September 2007, Marine Corps court reporting transitioned to speech recognition. Training costs and the corresponding manpower costs have been dramatically cut by eliminating the two-year training pipeline required by stenography school and replacing it with a brand new 10-week course at the Naval Justice School. The speech recognition technology has been validated and proven successful in Navy/Marine Corps courtrooms. The Marine Corps has merged the job classification for stenographer with our legal services specialist (4421) and have identified the court reporter trained Marines with an additional skill designator. This has permitted flexible employment and assignment of all transitioning court reporters and is expected to significantly improve the historically slow promotion rates for court reporters. Ultimately, the transition will create a more well-rounded Marine Corps Legal Services Specialist community.

The Marine Corps is increasing its accession of judge advocates from 35 to 60 this year from civilian law schools and private practice through routine recruiting channels to provide enough judge advocates to meet anticipated growth in the Marine Corps. Additionally, up to 10 judge advocates are contracted yearly from the active duty officer corps through the Marine Corps Law Education Programs and this year through a return to active duty board. The Marine Corps continues to have many more applicants than can be contracted each year, and the Marine Corps Recruiting Command uses a highly competitive board process to screen and select only the most qualified applicants. Applicants come from diverse backgrounds but can generally be described as coming from first or second tier ABA accredited law schools and having an average LSAT score above the 80th percentile of all scores.

Once selected by the Marine Corps Recruiting Command, these personnel must undergo a three-step process to become a Marine Corps judge advocate. First, future judge advocates must attend Officer Candidate School (OCS) in Quantico, Virginia. This strenuous ten-week course is designated to test a candidate's leadership and physical abilities. Successful completion of OCS is required before receiving a commission as a Marine Corps second lieutenant. Second, upon completion of OCS and successfully passing the bar examination of any state, all Marine Corps officers attend The Basic School (TBS), also located in Quantico, Virginia. Marine Corps officers are unrestricted officers and are regularly called upon to perform duties outside of the law. TBS is a demanding six-month program that provides each second lieutenant the foundation to be an infantry platoon commander. Finally, each judge advocate must complete the ten-week Basic Lawyer Course at the Naval Justice School in Newport, Rhode Island. While attending this course, officers focus on legal assistance, criminal law and procedure, administrative law, military trial advocacy, and basic operational law training. Successful completion of OCS, TBS, and the Basic Lawyer Course culminates in the officer being designated a Marine Corps judge advocate.

Continuing Legal Education (CLE) and other training opportunities are available for Marine Corps judge advocates throughout their careers. In addition to a myriad of courses offered by each of the service legal schools, Headquarters, U.S. Marine Corps provides funds for judge advocates to attend various civilian CLE courses.

The Marine Corps also sends up to 13 judge advocates per year to postgraduate school to obtain a Master of Laws (LL.M.) degree. Students receive the LL.M degree from either the Army Judge Advocate General's Legal Center and School or from pre-approved civilian law schools. In the last several years, Marine Corps judge advocates have received advanced degrees from Georgetown University Law Center, George Washington University Law School, the University of San Diego School of Law, and Harvard Law School.

In addition to advanced legal courses, Marine Corps judge advocates also have the opportunity to be selected to attend advanced military studies courses every year, such as the Expeditionary Warfare School, the Command and Staff College, one of the four services' war colleges, and various military fellowships.

The Law School Education Debt Subsidy (LSEDS) program went into effect during 2003 and has been approved for its seventh year. The average debt for new judge advocates is approximately \$90,000.00, with an average loan payment of \$500.00 per month. Captains who have completed their initial active duty obligation are eligible. The total authorized amount of LSEDS is \$30,000.00 to be paid in yearly installments of \$10,000.00. Officers accepting LSEDS incur an additional three-year commitment on active duty. The utilization of LSEDS assists the Marine Corps in retaining experienced judge advocates.

The majority of Marine Corps judge advocates who are forward-deployed are serving in support of OCO. OCOs have created a tremendous challenge for the Marine Corps legal community, with judge advocates currently serving in Iraq, Afghanistan, and Djibouti. In addition to the judge advocates that are permanently assigned to deploying Marine Corps forces, there is a requirement for IAs to provide additional legal services to various units throughout the Department of Defense. Marine Corps judge advocates currently serve as IAs with the Multinational Force-Iraq (MNF-I), Combined Forces Command Afghanistan, U.S. Forces Afghanistan Combined Joint Task Force, Combined Joint Task Force-Horn of Africa, Criminal Investigation Task Force as well as Joint Task Force, Guantanamo Bay, Cuba. While there has been no shortage of active duty volunteers, IA billets are also being filled with volunteers from the Marine Corps Reserve.

Since October 2001, the Marine Corps has deployed over 380 judge advocates and legal specialists to places such as Iraq, Afghanistan, the Horn of Africa, Haiti, Guantanamo Bay, Bosnia, Colombia, Thailand, Sri Lanka and Indonesia. Training and other preparation continues for another 40 legal personnel who will soon deploy in support of Operation Enduring Freedom.



Currently 46 judge advocates, 11 percent of the total Marine Corps judge advocate community, are deployed in support of the OCO. During the last two years, judge advocates have deployed from the vast majority of Marine Corps installations, including Headquarters, U.S. Marine Corps.

Military Justice, although decreasing in numbers, continues to be one of the busiest areas in the practice of military law for Marine judge advocates. The following chart reflects cases tried in the Marine Corps over the last seven fiscal years.

<b>Fiscal Year</b>	<b>End Strength</b>	<b>GCM</b>	<b>SPCM</b>	<b>SCM</b>	<b>Total Courts</b>	<b>NJP</b>
FY 09	202,000	140	675	1,670	2,485	11,772
FY 08	198,505	163	692	1,373	2,228	10,425
FY 07	180,169	149	800	1,262	2,211	15,012
FY 06	180,416	120	964	1,262	2,346	13,217
FY 05	180,029	187	1,137	1,022	2,346	13,386
FY 04	177,480	150	1,261	928	2,339	8,985
FY 03	177,779	145	818	782	1,745	8,344

JAMES W. HOUCK  
 Vice Admiral, JAGC, U.S. Navy  
 Judge Advocate General of the Navy

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

Report Period: FY 2009

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	234	205	29	-13%
BCD SPECIAL	878	834	44	-11%
NON-BCD SPECIAL	0	0	0	0%
SUMMARY	1871	1851	20	9 %
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				1%

**PART 2 – DISCHARGES APPROVED**

GENERAL COURTS-MARTIAL ( CA LEVEL)				
NUMBER OF DISHONORABLE DISCHARGES			94	
NUMBER OF BAD-CONDUCT DISCHARGES			87	
SPECIAL COURTS-MARTIAL ( SA LEVEL)				
NUMBER OF BAD-CONDUCT DISCHARGES			446	

**PART 3 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG**

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	171	
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	410	
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	44	

**PART 4 – WORKLOAD OF THE U.S. NAVY-MARINE CORPS COURT OF  
CRIMINAL APPEALS**

TOTAL ON HAND BEGINNING OF PERIOD		348
GENERAL COURTS-MARTIAL	139	
BCD SPECIAL COURTS-MARTIAL	209	
REFERRED FOR REVIEW		650
GENERAL COURTS-MARTIAL	198	
BCD SPECIAL COURTS-MARTIAL	452	
TOTAL CASES REVIEWED		788
GENERAL COURTS-MARTIAL	249	
BCD SPECIAL COURTS-MARTIAL	539	
TOTAL PENDING AT CLOSE OF PERIOD		192
GENERAL COURTS-MARTIAL	82	
BCD SPECIAL COURTS-MARTIAL	110	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-16%

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

NUMBER	788	
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 (122)	15%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-16%
PERCENTAGE OF TOTAL PETITIONS GRANTED (26)	21%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-3 %
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA	3 %
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		41	
RECEIVED		10	
DISPOSED OF		47	
GRANTED	2		
DENIED	45		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		4	

**PART 8 – ORGANIZATION OF COURTS**

TRIALS BY MILITARY JUDGE ALONE		916	
GENERAL COURTS-MARTIAL		177	
SPECIAL COURTS-MARTIAL		739	
TRIALS BY MILITARY JUDGE WITH MEMBERS		158	
GENERAL COURTS-MARTIAL		59	
SPECIAL COURTS-MARTIAL		99	

**PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ**

NUMBER OF COMPLAINTS		57	
----------------------	--	----	--

**PART 10 – STRENGTH**

AVERAGE ACTIVE DUTY STRENGTH		532,621	
------------------------------	--	---------	--

**PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)**

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		22,917	
RATE PER 1,000		43	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		5%	

## **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, 2008 TO SEPTEMBER 30, 2009

**THE AIR FORCE COURT OF CRIMINAL APPEALS (AFCCA)**

The Air Force Court of Criminal Appeals reviewed 345 cases in Fiscal Year 2009, reducing the number of cases pending before it by seven percent. In addition, the Court increased the number of oral arguments it heard through Project Outreach at civilian law schools and Air Force bases. The Court heard five oral arguments at Texas Southern University Thurgood Marshall School of Law, North Carolina Central University School of Law, University of Connecticut School of Law, Creighton University School of Law, and Charleston AFB, South Carolina. The argument at Creighton University School of Law set a record with 170 students in attendance.

The Court saw significant changes in its composition in 2009. The size of the Court was reduced for the second straight year, this time from seven to five active-duty judges. After the departure of the Chief Judge due to permanent change of station, one Senior Judge was selected to become the new Chief Judge. The Court also welcomed one new Associate Judge and one new Honors Law Clerk after the retirement of two Senior Judges and the departure of one Honors Law Clerk due to permanent change of station.

In addition to performing their statutory responsibilities, members of the Court used their judicial experience to assist the Air Force and Department of Defense in areas beyond the Court itself. Four of the appellate military judges served on the United States Court of Military Commission Review (USCMCR). In accordance with the Military Commissions Acts of 2006 and 2009, the USCMCR has automatic appellate jurisdiction over any finding of guilty under the Act and also hears appeals of issues taken prior to and during trial.

In addition, judges on the Court with trial-level judicial experience provided backup support for the Trial Judiciary Directorate. During 2009, appellate judges served as trial judges at Fairchild AFB, Washington; F. E. Warren AFB, Wyoming; Keesler AFB, Mississippi; Lackland AFB, Texas; Luke AFB, Arizona; Mountain Home AFB, Idaho; Sheppard AFB, Texas; Tinker AFB, Oklahoma; Travis AFB, California; and Whiteman AFB, Missouri.

Members of the Court also continued to conduct Environmental Impact Hearings in accordance with the National Environmental Policy Act. The appellate military judges presided over the hearings, allowing for federal receipt of public comment on any potential change in base mission which could impact the environment. Finally, one of our judges, working with the Air Force Clemency and Parole Board, conducted a supervision violation hearing for an Air Force member on parole.

## **TRIAL JUDICIARY**

The Air Force Trial Judiciary Directorate (JAT) is responsible for docketing and presiding over all Air Force general and special courts-martial, as well as presiding over an array of Federal hearings. The Directorate is staffed by 17 active duty trial judges, seven reserve trial judges, one noncommissioned officer, and one civilian employee. The office of the Chief Trial Judge is co-located with the Central Docketing Office at Bolling AFB, Washington, District of Columbia, and includes the Deputy Chief Trial Judge, one noncommissioned officer, and a civilian Clerk of Courts. The remaining JAT personnel—all trial judges—are postured in a variety of geographically advantageous locations around the globe, including Kadena AB, Japan; Travis AFB, California; McChord AFB, Washington; Nellis AFB, Nevada; Offutt AFB, Nebraska; Randolph AFB, Texas; Sheppard AFB, Texas; Eglin AFB, Florida; Charleston AFB, South Carolina; and Ramstein AB, Germany. Efforts are underway to move two more judge billets in summer 2010 to RAF Lakenheath, United Kingdom, and the United States Air Force Academy in Colorado Springs, Colorado.

In Fiscal Year 2009, Air Force judges presided over 641 general and special courts-martial—an increase of 78 cases from FY 2008. Judges also served as investigating officers in numerous complex and high-profile Article 32 investigations, as legal advisors for officer Boards of Inquiry and other administrative boards, as hearing officers in parole violation hearings, and have presided at public hearings held to consider draft environmental impact statements.

One of the division's trial judges served with the Office of Military Commissions for a six-month tour. Judges presided over cases at Bagram AB, Afghanistan; Balad AB, Iraq; and Al Udeid AB, Qatar. Currently, four trial judges have been detailed to the military commissions in Guantanamo Bay, Cuba.

Air Force judges served as ambassadors for military justice in classrooms and through publication. Division personnel instructed new military judges at The Army Judge Advocate General's Legal Center and School in Charlottesville, Virginia. Division personnel also lectured at a number of Judge Advocate Staff Officer Courses at the Air Force Judge Advocate General's School (AFJAGS), Maxwell AFB, Alabama. Air Force judges also taught at various trial advocacy courses and programs throughout the country and overseas to enhance practitioners' litigation skills.

Air Force judges shared their specialized knowledge and expertise by publishing articles in various journals. Two division judges published articles in the Air Force Law Review, entitled *Depositions and a Case Called Savard* and *Military Criminal Investigations and the Stored Communications Act*, respectively. Another judge published an article in The Reporter entitled *The Trial Script: Everything You Didn't Even Know You Didn't Know*.

The Air Force hosted over 120 judges from all the uniformed services during the 35th Annual Interservice Military Judges' Seminar. The seminar was held at AFJAGS in January.

The week-long seminar consisted of continuing legal education lectures, seminars on emerging issues, a variety of collegium opportunities, and briefings by the members of the National Judicial Education Program and Prof. David Schlueter, St. Mary's University School of Law, San Antonio, Texas.

### **AIR FORCE JUDICIARY**

The Air Force Judiciary Directorate (JAJ) is responsible for the administration of military justice across the Air Force. JAJ advises The Judge Advocate General (TJAG), the Chief of Staff of the Air Force and the Secretary of the Air Force on military justice matters, works with the other uniformed services to propose legislation and modifications to executive orders pertaining to military justice, assists convening authorities and staff judge advocates in the field, and provides the highest quality defense services to Airmen worldwide. In addition, the directorate provides court reporter support for courts-martial, discharge boards, Accident Investigation Boards and other hearings through its Enlisted Court Reporter program. JAJ is led by a Director and Superintendent.

The directorate performs its mission through five divisions: The Appellate Defense Division; the Trial Defense Division; the Government Trial and Appellate Counsel Division; the Military Justice Division; and the Clemency, Corrections and Officer Review Division.

### **GOVERNMENT TRIAL & APPELLATE COUNSEL DIVISION**

#### **APPELLATE GOVERNMENT COUNSEL**

During the past fiscal year, appellate counsel vigorously represented the government in Article 66 and Article 67 appeals. The division also sought and obtained certification from TJAG in three cases for review by the U.S. Court of Appeals for the Armed Forces (USCAAF), and filed appeals in seven cases under Article 62, UCMJ.



Appellate government counsel zealously represented the government in oral arguments before USCAAF and AFCCA. Appellate government counsel contributed to Project Outreach, sponsored by USCAAF and AFCCA, by conducting oral arguments in six cases before audiences at various law schools and military installations. These arguments helped educate attendees on the fairness and professionalism of the military justice system and provided excellent recruiting opportunities.

Counsel took steps to become even more intensely involved in advocacy training and field support. Division counsel educated judge advocates and paralegals at Air Force training events such as Trial Advocacy Conferences, the Military Justice Administration Course, the Trial and Defense Advocacy Course, and several numbered air force conferences. The division also created an interactive scenario-based training module on investigating and charging sexual assault cases called Trauma to Trial, which division counsel have presented to more than 800 personnel throughout the Air Force. Appellate counsel and the division's enlisted Superintendent presented a variety of military justice presentations to nearly 700 attendees at the Air Force JAG Corps' KEYSTONE Leadership Summit. Appellate counsel also published the Trial Counsel Deskbook and an electronic newsletter, which contained appellate updates along with timely and relevant articles for military justice practitioners at all levels.

The division continued to fulfill its obligation to support war-fighting commanders by deploying multiple personnel to Iraq. A reservist administratively assigned to the Government Trial and Appellate Counsel Division completed a year-long tour as Deputy Legal Advisor, Task Force 134. Two other division personnel also deployed to Iraq during the past year. Additionally, the division deployed several Senior Trial Counsel to prosecute courts-martial in the AOR.

Along the way, division personnel continued to engage in a variety of activities designed to further the professionalism of military justice practice, particularly at the appellate level.

The division's Chief Counsel organized USCAAF's annual Appellate Advocacy Symposium, hosted in conjunction with the Judge Advocates Association. Appellate government counsel have actively built relationships with sister service counterparts through participation in quarterly meetings and regular consultation on matters of common interest, and by filing an amicus brief in a Navy-Marine Corps case before USCAAF involving the constitutionality of Article 120, UCMJ. The division also hosted three summer interns who had completed their second year of law school and expressed an interest in serving as judge advocates. These young professionals significantly supported the division mission by conducting legal research and writing appellate briefs and motions, and spoke positively about their experiences in the internship program, which included a visit to Guantanamo Bay to learn about detainee operations.

The division obtains crucial appellate counsel support from 11 assigned reserve judge advocates. They continue to greatly assist the division in carrying out its mission. In addition to preparing written briefs, one reserve counsel presented an oral argument before AFCCA during the fiscal year.

A summary of Air Force Appellate Government practice follows:

<b>AFCCA</b>	<b><u>FY05</u></b>	<b><u>FY06</u></b>	<b><u>FY07</u></b>	<b><u>FY08</u></b>	<b><u>FY09</u></b>
Briefs Filed	159	207	267	188	156
Cases Argued	11	16	20	19	16
<b>USCAAF</b>	<b><u>FY05</u></b>	<b><u>FY06</u></b>	<b><u>FY07</u></b>	<b><u>FY08</u></b>	<b><u>FY09</u></b>
Briefs Filed	73	47	41	41	23
Cases Argued	29	25	24	15	13
<b>SUPREME COURT</b>	<b><u>FY05</u></b>	<b><u>FY06</u></b>	<b><u>FY07</u></b>	<b><u>FY08</u></b>	<b><u>FY09</u></b>
Petition/Waivers Filed	5	0	10	4	3
Briefs Filed	0	0	0	0	0

## SENIOR TRIAL COUNSEL

Personnel authorizations for the fiscal year included 19 Senior Trial Counsel (STC) at 13 locations worldwide: three counsel at Bolling AFB, Washington, District of Columbia; three Instructor-Litigators (IL) at AFJAGS at Maxwell AFB, Alabama; two counsel each at Ramstein AB, Germany, and Randolph AFB, Texas; and one counsel each at Travis AFB, California; Nellis AFB, Nevada; Davis-Monthan AFB, Arizona; Peterson AFB, Colorado; Offutt AFB, Nebraska; Barksdale AFB, Louisiana; Langley AFB, Virginia; Osan AB, Korea; and Kadena AB, Japan. This marks a dramatic change from the former geographically-based judiciary circuits. STCs are detailed to prosecute cases by the division headquarters at Bolling AFB, and their primary responsibility is 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, STCs spent more than 2,100 days on temporary duty away from their home station, and represented the government in 205 courts-martial and 177 other proceedings, including three homicide cases. STCs embody the notion of "one world, one circuit." STCs cross any and all geographical boundaries to try cases.

The past year saw a continued emphasis on providing our STCs with the training and tools required for them to thrive. STCs attended many hours of training designed to improve their advocacy skills. In August, the third annual Senior Trial Counsel conference was held at Bolling AFB, bringing together all 19 STCs for a week of training and networking with trial and appellate counsel. Additionally, STCs attended Sexual Assault Prosecution Training in Battle Creek, Michigan, produced by the Michigan Domestic Violence Prevention and Treatment Board; the Advanced Trial Advocacy Course at the Air Force Judge Advocate General's School; the National Institute of Crime Prevention's Advanced Domestic Violence and Sexual Assault

Course in Orlando, Florida; the Offender-Based Prosecution Training Course in Orlando, Florida, produced by the Army JAG Corps; the Prosecuting Sexual Assaults Course in Plano, Texas, produced by the Army JAG Corps; the Prosecuting Complex Cases Course at the Naval Justice School; the Computer Crimes Course at the Naval Justice School; the Sexual Assault Prosecution Training Course in Denver, Colorado, produced by the National Institute for Trial Advocacy; and the Sexual Assault and Major Crimes Prosecutions Course in Washington, District of Columbia, produced by the National District Attorneys Association.

### **APPELLATE DEFENSE DIVISION**

During Fiscal Year 2009, defense appellate counsel continued to zealously represent clients before the AFCCA and USCAAF, and through petitions filed in the U.S. Supreme Court. Defense appellate counsel ensure their clients' Constitutional rights were protected throughout the pretrial, trial, and post-trial processes, and strive to obtain relief in the event that the Government committed any errors.

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 this past fiscal year included attendance at the Criminal Law New Developments Course, the Judicial Conference sponsored by USCAAF, and a Military Appellate Advocacy Symposium sponsored by the Judge Advocates Association. Division personnel also provided appellate updates to several hundred JAGC members at two Trial Advocacy Conferences, the Senior Defense Counsel Orientation, and the KEYSTONE Leadership Summit.

Appellate defense counsel continued to support trial defense counsel in the field by always being available for telephone consults in appropriate instances. Throughout the year, appellate defense counsel kept counsel in the field abreast of new appellate developments in military criminal law. Appellate defense counsel also contributed to Project Outreach, sponsored by USCAAF and AFCCA, by conducting oral arguments before audiences at various law schools and military installations.

These arguments helped educate attendees on the fairness and professionalism of the military justice system.

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

<b>AFCCA</b>	<b><u>FY05</u></b>	<b><u>FY 06</u></b>	<b><u>FY07</u></b>	<b><u>FY08</u></b>	<b><u>FY09</u></b>
Briefs Filed	376		541	352	285
Cases Argued	11	638 16	20	14	16

<b>USCAAF</b>	<b><u>FY05</u></b>	<b><u>FY06</u></b>	<b><u>FY07</u></b>	<b><u>FY08</u></b>	<b><u>FY09</u></b>
Supplements to Petitions	268	371	261	293	336
Grant Briefs	32	18	24	15	12
Cases Argued	29	25	24	15	13

<b>SUPREME COURT</b>	<b><u>FY05</u></b>	<b><u>FY06</u></b>	<b><u>FY07</u></b>	<b><u>FY08</u></b>	<b><u>FY09</u></b>
Petitions	0	0	9	4	3
Briefs in Opposition	0	0	0	0	0
Briefs on the Merits	0	0	0	0	0

## TRIAL DEFENSE DIVISION

The Trial Defense Division (JAJD) is responsible for providing trial defense services within the Air Force through the Area Defense Counsel (ADC) program. The division was staffed with 83 ADCs stationed at 69 bases worldwide. They were assisted by 70 Defense Paralegals (DP) at installations worldwide. ADCs and DPs are separate from the normal Air Force chain of command, allowing them to offer their clients independent legal advice. Rather than report to installation Staff Judge Advocates and wing commanders, ADCs and DPs are supervised by Senior Defense Counsel (SDC), who in turn report to Chief Senior Defense Counsel (CSDC) and the Chief, Trial Defense Division.

The Division had 18 regional SDCs stationed at Andrews AFB, Maryland; Langley AFB, Virginia; Charleston AFB, South Carolina; Hurlburt Field, Florida; Barksdale AFB, Louisiana; Randolph AFB, Texas; Sheppard AFB, Texas; Tinker AFB, Oklahoma; Peterson AFB, Colorado; Offutt AFB, Nebraska; McChord AFB, Washington; Travis AFB, California; Nellis AFB, Nevada; Davis-Monthan AFB, Arizona; Yokota AB, Japan; Kadena AB, Japan; RAF Lakenheath, United Kingdom; and Ramstein AB, Germany. Each SDC was co-located with the ADC office at their respective locations. New this year, a technical sergeant DP is assigned to each ADC office at which an SDC is assigned. The division also had three Instructor-Litigators (IL) assigned to AFJAGS. The ILs split their time between duties as instructors at AFJAGS and serve as defense counsel in top-priority cases, as directed by any of the three CSDCs.

To ensure the best representation for Air Force clients, training remains the division's top priority. On a continuing basis, each SDC provided on-the-job training and mentoring to the ADCs in their charge. Each CSDC, in turn, mentored the SDCs in their charge. Newly appointed ADCs and DPs received formal training at the combined ADC/DP Orientation Course held at AFJAGS. SDCs attended a JAJD-run Leadership Conference at Bolling AFB, Washington, District of Columbia. Defense personnel also attended one of three annual Trial Advocacy Courses conducted by AFJAGS.

In addition, the division ensured each ADC has attended the Trial and Defense Advocacy Course and that each SDC has attended the Advanced Trial Advocacy Course. Several SDCs were able to attend a week-long course at the U.S. Army Criminal Investigation Laboratory, gaining significant insight into forensic testing.

Upgrading ADC facilities is an additional JAJD priority. The ADC offices at Lackland AFB, Texas; Goodfellow AFB, Texas; F.E. Warren AFB, Wyoming; and Hurlburt Field, Florida, moved into new facilities during the fiscal year. The Chief, JAJD, attended the ribbon-cutting ceremony to mark the opening of the new Hurlburt ADC office. The Chief, JAJD, hailed the new building as the prototype for new ADC offices. At 2,400 square feet, the building is nearly double the size of the previous office. Additionally, the new building has a conference room and SIPR connections.

#### **MILITARY JUSTICE DIVISION**

The Military Justice Division (JAJM) 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, Department of Defense and the Air Staff. JAJM represents the Air Force on the DoD Joint Services Committee on Military Justice (JSC). The division also provides representatives to all interservice activities involving military justice and support for the Article 146, UCMJ, Code Committee. Lastly, JAJM 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 fiscal year, JAJM provided 88 formal opinions concerning AFBCMR applications; received 86 inquires in specific cases requiring formal written replies to senior officials, including the President and Members of Congress; and reviewed 41 records of trial for review under Article 69a, UCMJ, and 3 records under Article 69b, UCMJ.

The division presented the 12th annual Military Justice Administration Workshop at AFJAGS, a "back to basics" one-week workshop attended by both judge advocates and paralegals. Division personnel also taught at the Staff Judge Advocates Course at Maxwell AFB, Alabama.

JAJM continued its direct involvement in the development and implementation of DoD and Air Force sexual assault prevention and response policies and procedures. The division secured over \$72,000 from DoD's Sexual Assault Prevention and Response Office to train 30 Air Force personnel in the Victim and Witness Assistance Program, with a special emphasis on responding to sexual assaults. JAJM also obtained funding for Air Force prosecutors to attend advocacy training focused on sexual assault trials. In addition, a division representative served as a principal trainer for judge advocates, sexual assault response coordinators, victim advocates, Air Force Office of Special Investigations (AFOSI) agents, and medical personnel for both DoD and the AF.

JAJM continued to coordinate military justice actions with high-level agencies, such as working closely with the Department of Justice on testimonial immunity requests for non-military witnesses and with the Office of the Secretary of the Air Force on officer requests to resign rather than face trial by court-martial. JAJM personnel also developed a publicly accessible online docket—allowing the public to learn basic details of upcoming courts-martial—and refined the process by which the Air Force JAG Corps works with the Air Force Office of Special Investigations. Finally, division representatives played a pivotal role in drafting an enumerated child pornography offense under Article 134, UCMJ and revising the Manual for Military Commissions to ensure compliance with the Military Commissions Act of 2009.

#### **CLEMENCY, CORRECTIONS AND OFFICER REVIEW DIVISION**

At the end of Fiscal Year 2009, 354 Air Force personnel were in confinement. Of those, 84 inmates were in long-term confinement at the United States Disciplinary Barracks, Fort Leavenworth, Kansas, and 50 were serving their sentence in the Federal Bureau of Prisons system.



Twelve inmates were enrolled in the Air Force Return-to-Duty Rehabilitation Program during Fiscal Year 2009, and four successfully completed the program and were returned to duty. The number of Air Force members and former members on parole or Mandatory Supervised Release at the end of Fiscal Year 2009 was 87.

During the reporting period, the division completed 19 Article 71, UCMJ, reviews of officer dismissal cases. As was recommended, the Secretary approved the dismissals in all cases. The division also prepared six cases for Secretarial clemency under Article 74, UCMJ. The Secretary granted clemency in one case.

#### **THE JUDGE ADVOCATE GENERAL'S SCHOOL**

AFJAGS is the educational arm of the JAG Corps. It is located at Maxwell AFB, Alabama, and provides education and training in all aspects of the military legal practice to attorneys and paralegals from all military services, other federal agencies, and many foreign countries. Specifically regarding the military justice system, instruction is provided in advocacy, administration, the rules of evidence, and the rules of procedure. AFJAGS faculty also provides instruction on military justice issues at several schools and colleges throughout Air University—the Air Force's center for education.

Additionally, AFJAGS routinely publishes items concerning military justice and other criminal justice issues in *The Reporter*, *The Air Force Law Review*, and *The Military Commander and the Law*. AFJAGS webcasts introduce subject-matter experts and timely military justice topics to all base legal offices at one time. Webcasts are recorded and are made available at all times on a web-based collaborative learning and management system administered by AFJAGS and accessible to all members of the JAG Corps. The school has 31 web-based training modules on military justice topics.

Nearly 2,300 students attended the 44 courses held at AFJAGS in Fiscal Year 2009. Of those 44 courses, the following devoted substantial resources to military justice-related topics:

- Advanced Trial Advocacy Course
- Annual Survey of the Law (Reserve and Air National Guard)
- Defense Orientation Course (for new ADCs and DPs)
- Interservice Military Judges Conference
- Judge Advocate Staff Officer Course
- Law Office Manager Course
- Military Justice Administration Course
- Paralegal Apprentice Course
- Paralegal Craftsman Course
- Reserve Forces Judge Advocate Course
- Reserve Forces Paralegal Course
- Staff Judge Advocate Course
- Trial and Defense Advocacy Course

In addition to the above courses, AFJAGS hosted trial advocacy conferences in Charleston, South Carolina; Osan AB, Republic of Korea; and Ramstein AB, Germany. The conferences for Fiscal Year 2009 focused on sentencing proceedings, cross-examinations, and the use of technology in the courtroom.

#### **LEGAL INFORMATION SERVICES**

During Fiscal Year 2009, the Legal Information Services directorate (JAS) continued to develop new information technology (IT) tools and improve existing ones to better support military justice practice throughout the Air Force.

JAS continued work on the Automated Military Justice Analysis and Management System (AMJAMS) throughout the year and prepared to launch Web AMJAMS, an entirely web-based application that was released in December 2009. Moving to the web ensures that AMJAMS complies with Standards Desktop Configuration requirements and is compatible with Microsoft Vista. During the past fiscal year, the directorate worked on an interface between AMJAMS and the AFOSI tracking system, which is scheduled to be released in the first quarter of Fiscal Year 2010.

The directorate also released a new version of Automated Defense Electronic Reporting (ADER), the primary IT tool used by the Air Force defense community to store and track case information. This latest version of ADER includes new reports and an administrator's interface, and allows individual defense counsel and paralegals to track cases. These changes improve the application as a caseload management system. Planning and programming for additional features are well under way for Fiscal Year 2010.

Finally, all Air Force courtrooms have been equipped with video teleconferencing (VTC) systems, which allow the Air Force to hold pretrial hearings and witness interviews without the necessity of travel. The directorate hired a full-time employee to manage maintenance and conference scheduling for the systems.

#### **PERSONNEL**

As of 30 September 2009, the Air Force Judge Advocate General's Corps had 1,203 judge advocates on active duty. Company grade officers (lieutenants and captains) made up just over 50% of that number (602). Almost 24% were majors (283) and 16% were lieutenant colonels (196). Just over 10% of the Corps were colonels and above (122), including one lieutenant general, one major general, and four brigadier generals. The Air Force Judge Advocate General's Corps Reserve included 853 Air Force Reserve IMA, Air Force Reserve unit-assigned, and Air National Guard judge advocates, of whom 11% (95) were company grade officers and 77% (653) were field grade officers (majors and lieutenant colonels). The remaining 12% consisted of 101 colonels, two brigadier generals, and two major generals.

**JACK L. RIVES**  
**Lieutenant General, USAF**  
**The Judge Advocate General**

Period: Fiscal Year 2009 APPENDIX -- U.S. AIR FORCE MILITARY JUSTICE STATISTICS

**PART 1 - BASIC COURTS-MARTIAL STATUS (Person**

	TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT
s)					
GENERAL	222	187	35		+9.35%
BCD SPECIAL	419	169	33		+11.9%
NON-BCD SPECIAL [A]		217			
SUMMARY	114	114	0		+8.57%
OVERALL RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT					+12.72%

**PART 2 - DISCHARGE APPROVED**

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES [B]		34
NUMBER OF BAD CONDUCT DISCHARGES		109
SPECIAL COURT-MARTIAL (CA LEVEL)		
NUMBER OF BAD CONDUCT DISCHARGES		167

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	102
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	272
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	41

**PART 4 - WORK LOAD OF THE AIR FORCE COURT OF CRIMINAL APPEALS**

TOTAL ON HAND BEGINNING OF PERIOD		263
GENERAL COURTS-MARTIAL	157	
BCD SPECIAL COURTS-MARTIAL	106	
REFERRED FOR REVIEW		328
GENERAL COURTS-MARTIAL	142	
BCD SPECIAL COURTS-MARTIAL	186	
TOTAL CASES REVIEWED		345
GENERAL COURTS-MARTIAL	170	
BCD SPECIAL COURTS-MARTIAL	175	
TOTAL PENDING AT CLOSE OF PERIOD		246
GENERAL COURTS-MARTIAL	129	
BCD SPECIAL COURTS-MARTIAL	117	
REVIEWED DURING LAST REPORTING PERIOD (345/390)		-11.54%

**PART 5 - APPELLATE COUNSEL REQUESTS BEFORE THE AIR FORCE COURT OF CRIMINAL APPEALS**

NUMBER	328/345
PERCENTAGE	95.07%

<b>PART 6 - U.S. COURT OF APPEALS FOR THE ARMED FORCES</b>		
PERCENTAGE OF AFCCA REVIEWED CASES FORWARDED TO USCAAF (300/345) [C]		86.95%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+20.03%
PERCENTAGE OF TOTAL PETITIONS GRANTED (19/300)		6.33%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-5.16%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY AFCCA (19/345)		4.81%
RATE OF INCREASE ( + ) / DECREASE ( - )OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-2.88%
<b>PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69</b>		
PENDING AT BEGINNING OF PERIOD		0
RECEIVED		3
DISPOSED OF		3
GRANTED	0	
DENIED	3	
NO JURISDICTION	0	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		0
<b>PART 8 - ORGANIZATION OF COURT</b>		
TRIALS BY MILITARY JUDGE ALONE		343
GENERAL COURTS-MARTIAL	105	
SPECIAL COURTS-MARTIAL	238	
TRIALS BY MILITARY JUDGE WITH MEMBERS		298
GENERAL COURTS-MARTIAL	117	
SPECIAL COURTS-MARTIAL	181	
<b>PART 9 - COMPLAINTS UNDER ARTICLE 138</b>		
NUMBER OF COMPLAINTS	25	
<b>PART 10 - STRENGTH</b>		
AVERAGE ACTIVE DUTY STRENGTH	328,164	
<b>PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)</b>		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	6,908	
RATE PER 1,000	21.05%	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-1.567%	

## **EXPLANATORY NOTES**

[A] The Air Force does not convene non-BCD SPCMs. Of the 419 SPCMs tried, there were 169 convictions with a BCD adjudged, 217 convictions without a BCD adjudged, and 33 acquittals.

[B] Includes 17 officer dismissals.

[C] Includes 36 cases which were reviewed by AFCCA during FY09 but were not forwarded to USCAAF until after the start of FY10. AFCCA decided these 36 cases within 60 days of the end of FY09 and, pursuant to R.C.M. 1203(d)(2)(A), the accused has 60 days from the time he or she was notified of AFCCA's decision to petition USCAAF for review.

## **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, 2008 to September 30, 2009**

**PERSONNEL AND TRAINING**

The Coast Guard has 186 officers designated as judge advocates serving on active duty, of which 152 are serving in legal billets and 34 are serving in general duty billets. Those Coast Guard lawyers currently practicing law include officers assigned to NORTHCOM, AFRICOM, JIATF South, and as part of Multi-National Forces, Iraq. Among the 34 military attorneys serving in "out-of-specialty" billets are the Deputy Commander of Coast Guard Atlantic Area, the Military Aide to the Secretary of Homeland Security, and other commanding and executive officers of Coast Guard cutters, sectors, training centers, and support commands. The Coast Guard also employs 92 civilian attorneys ranging from GS-13 to SES.

The Coast Guard sent attorneys to 43 different courses of instruction during this fiscal year, primarily at the various service JAG schools. 50% of Coast Guard attorneys attended one or more courses of continuing legal education. Twenty-three 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 2010 with a Masters of Law (LLM) degree in military law and another is a Fellow in the Center for Law and Military Operations. Another judge advocate is attending the Marine Corps War College and will graduate in the spring of 2010. Nineteen Coast Guard officers (including seven funded postgraduate program studies and twelve direct-commissioned lawyers) 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 2009 were:

### **Chief Judge Lane I. McClelland**

Judge David J. Kantor (assignment terminated 14 May 2009)

Judge Elizabeth A. Pepper (assignment terminated 19 May 2009)

Judge Michael J. Lodge

Judge Frederick J. Kenney

Judge Michael E. Tousley

Judge Patrick J. McGuire

Judge Brian T. McTague (assigned and sworn in on 19 May 2009)

Judge William L. Chaney (assigned and sworn in on 19 May 2009)

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.

## **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 Chief, Office of Legal and Defense Services, a staff office reporting to the Judge Advocate General charged with providing defense and personal legal services to Coast Guard members. This is a change over previous years reflecting significant changes within the Coast Guard structure and that of the Coast Guard legal program over the last year. 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 six 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, Marine Corps Base Camp Pendleton, Navy Region Legal Service Office Mid-Atlantic in Norfolk, Virginia, the Army's Trial Counsel Assistance Program in Arlington, Virginia, and the Staff Judge Advocate for the Military District of Washington. 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 2009 and, where indicated, records received during each of the four preceding fiscal years. The number of courts-martial varies widely from year to year; consequently, this is not a reliable indicator of the administration of military justice given the relatively small number of courts-martial overall.

<b>Fiscal Year</b>	<b>09</b>	<b>08</b>	<b>07</b>	<b>06</b>	<b>05</b>
General Courts-Martial	12	13	16	16	07
Special Courts-Martial	19	19	24	32	45
Summary Courts-Martial	14	28	31	31	21
Total	45	60	71	79	73

**ADDITIONAL MILITARY JUSTICE STATISTICS**

Appendix A contains the Coast Guard, Fiscal Year 2009 military justice statistics.

WILLIAM D. BAUMGARTNER  
Rear Admiral, U. S. Coast Guard  
Judge Advocate General of the Coast Guard

*Appendix A: U. S. Coast Guard Courts-Martial/NJP Statistics  
for  
October 1, 2008 to September 30, 2009 (FY 2009)*

**APPENDIX: U.S. COAST GUARD MILITARY JUSTICE STATISTICS**

Report Period: 1 OCTOBER 2008- 30 SEPTEMBER 2009

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	^12	09	03	-8%
BCD SPECIAL	19	19	00	UNCHANGED
NON-BCD SPECIAL	00	00	00	UNCHANGED
SUMMARY	14	14	00	-50%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-25%

**PART 2 – DISCHARGES APPROVED**

GENERAL COURTS-MARTIAL NUMBER OF DISHONORABLE DISCHARGES	*05	
NUMBER OF BAD-CONDUCT DISCHARGES	02	
SPECIAL COURTS-MARTIAL NUMBER OF BAD-CONDUCT DISCHARGES	07	

**PART 3 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG**

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	05	
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	07	
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	03	

**PART 4 – WORKLOAD OF THE COAST GUARD COURT OF CRIMINAL  
APPEALS**

TOTAL ON HAND BEGINNING OF PERIOD		31
GENERAL COURTS-MARTIAL	14	
BCD SPECIAL COURTS-MARTIAL	17	
REFERRED FOR REVIEW		14
GENERAL COURTS-MARTIAL	*7	
BCD SPECIAL COURTS-MARTIAL	7	
TOTAL CASES REVIEWED		26
GENERAL COURTS-MARTIAL	14	
BCD SPECIAL COURTS-MARTIAL	12	
TOTAL PENDING AT CLOSE OF PERIOD		19
GENERAL COURTS-MARTIAL	7	
BCD SPECIAL COURTS-MARTIAL	12	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+4.0%

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

NUMBER	14	
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	6/26	23%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-21%
PERCENTAGE OF TOTAL PETITIONS GRANTED		16%
1/6		
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-21%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CGCCA	1/26	4%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-12%

^Two cases remanded to Coast Guard Court of Criminal Appeals, Two 69(a) reviews

\*Two cases remanded to Coast Guard Court of Criminal Appeals

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

<b>PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ</b>		
TOTAL PENDING BEGINNING OF PERIOD		00
RECEIVED		00
DISPOSED OF		00
GRANTED	00	
DENIED	00	
NO JURISDICTION	00	
WITHDRAWN	00	
TOTAL PENDING AT END OF PERIOD		00
<b>PART 8 – ORGANIZATION OF COURTS</b>		
TRIALS BY MILITARY JUDGE ALONE		25
GENERAL COURTS-MARTIAL		^^08
SPECIAL COURTS-MARTIAL		19
TRIALS BY MILITARY JUDGE WITH MEMBERS		06
GENERAL COURTS-MARTIAL		^^^05
SPECIAL COURTS-MARTIAL		01
<b>PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ</b>		
NUMBER OF COMPLAINTS		01
<b>PART 10 – STRENGTH</b>		
AVERAGE ACTIVE DUTY STRENGTH		43,042
<b>PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)</b>		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		1462
RATE PER 1,000		33.96
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		+1.22%

^^ Includes Two cases remanded, Two 69(a) cases

^^^Includes three acquittals