

ANNUAL REPORT  
SUBMITTED TO THE  
COMMITTEES ON ARMED SERVICES  
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, 2009 to September 30, 2010

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**SECTION 1**

**JOINT ANNUAL REPORT OF THE CODE COMMITTEE**

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

**October 1, 2009 to September 30, 2010**

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 9, 2010, 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 2009 Code Committee meeting, Chief Judge Efron called upon Commander David M. Harrison, 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 Harrison informed the Code Committee of the following matters that had been addressed by the Joint Service Committee: (1) preparation of a legislative proposal to amend Article 47, UCMJ, to authorize trial counsel and Article 32 investigating officers to issue subpoenas duces tecum to allow review of documentary evidence prior to trial; (2) preparation of a legislative proposal to amend Article 48, UCMJ, to give military judges contempt power to punish "indirect" or "constructive" contempt such as non-compliance with court orders, and to increase the authorized fine to \$1,000; (3) continued drafting and review of an enumerated Article 134, UCMJ, offense for child pornography; (4) preparation of a revision to Military Rule of Evidence 504 (spousal privilege) to cover situations where both spouses are jointly involved in illegal activity; (5) preparation of a change to Military Rule of Evidence 609 to bring it into conformance with Federal Rule of Evidence 609 regarding the admission of evidence of a previous conviction to impeach a

witness's character for truthfulness; and (6) added clarifying language in the explanation section of Article 89, UCMJ (disrespect) that the article applies to uniformed officers of the Public Health Service and National Oceanic and Atmospheric Administration when they are assigned to or serving with the armed forces.

Commander Harrison concluded by informing the Code Committee that the 2008 Annual Review had not been signed and was pending in the Office of Management and Budget. The 2009 Annual Review was published in the Federal Register for comment. He added that ongoing projects included efforts to amend Article 120, to repeal Article 125 and create an enumerated offense under Article 134 for wrongful sexual activity, and to create an offense for animal abuse, abandonment and neglect.

Professor Schlueter raised two issues. The first was the issue of amending or deleting Military Rule of Evidence 1102 concerning the conformance of the Military Rules of Evidence with the Federal Rules of Evidence. The Code Committee referred the issue to the Joint Service Committee for consideration. The second was the issue of amending Military Rule of Evidence 509 regarding the admissibility of a military judge's deliberative process in view of United States v. Matthews, 68 M.J. 29 (C.A.A.F. 2009). This issue was also referred to the Joint Service Committee for consideration.

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 Dana K. Chipman, USA  
Judge Advocate General of the Army

Vice Admiral James W. Houck, JAGC, USN  
The Judge Advocate General of the Navy

Lieutenant General Richard C. Harding, USAF  
The Judge Advocate General of the Air Force

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

Major General Vaughn Ary, 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, 2009 to August 31, 2010**

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 2009 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, 2009 to August 31, 2010. 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 2009 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 adopted new rules for the electronic filing of pleadings and new Rule 21A, and amended Rules 21(b), 21(b)(5)(G), and 30A(a) of the Rules of Practice and Procedure. Prior to adoption and amendment, the proposed changes were published for public comment in the Federal Register in Volume 75, No. 37 at pages 8682-83, No. 90 at page 26202, and No. 105 at pages 30793-94.

These new rules and amendments were also published following adoption in Volumes 68 and 69 of the Military Justice Reporter. They allow the electronic filing of nearly all pleadings filed with the Court, establish new procedures for filing matters raised pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982), reduce the maximum size of supplements to petitions for grant of review, and provide guidance on submitting requests for the Court to consider factual material not contained in the record.

During the September 2009 Term, the Court admitted 353 attorneys to practice before its Bar, bringing the cumulative total of admissions before the Bar of the Court to 35,096.

#### **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 2009 Term of Court. This practice, known as "Project Outreach," was developed as part of a public awareness program to demonstrate the operation of a Federal Court of Appeals, and the military's criminal justice system. The Court conducted hearings during this period, with the consent of the parties, at Vanderbilt University School of Law, Nashville, Tennessee, and Fort Campbell, Kentucky. 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 10 and 11, 2010, 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 the Honorable Jeh Charles Johnson, General Counsel, Department of Defense; the Honorable Togo D. West, Jr. of the TLI Leadership Group and former Secretary of Veterans Affairs and former Secretary of the Army; Captain James W. Crawford, Judge Advocate General's Corps, U.S. Navy, Legal Counsel to the Chairman, Joint Chiefs of Staff; the Honorable Steven J. McAuliffe, Chief Judge, U.S. District Court, District of New Hampshire; Mr. John Abele, Founding Chairman of Boston Scientific Corporation; Mr. Robert Poole, Author and Historian; Professor Laura Donohue of the Georgetown University Law Center; Mr. James McPherson, Executive Director of the National Association of Attorneys General; Mr. James Tierney, Director of the National State Attorneys General Program, Columbia University School of Law; Mr. Kim Taipale, Founder and Executive Director, Stilwell Center for Advanced Studies, Senior Fellow, World Policy Institute, and Adjunct Professor of Law, New York Law School; Mr. David F. Brash, Litigation Attorney, Air Force Legal Operations Agency; and Mr. Kenneth Feinberg, Feinberg Rozen, LLP.

#### **CEREMONY IN MEMORY OF ROBINSON O. EVERETT**

The passing of former Chief Judge Robinson O. Everett was noted in last year's Annual Report. A Memorial Session of the Court in his honor was held on December 7, 2009. The proceedings are published in 69 M.J. LIX-XCIX.

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 2009 TERM OF COURT**

**CUMULATIVE SUMMARY**

CUMULATIVE PENDING SEPTEMBER 1, 2009

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

CUMULATIVE FILINGS

Master Docket . . . . .	94
Petition Docket . . . . .	721
Miscellaneous Docket. . . . .	<u>29</u>
TOTAL . . . . .	844

CUMULATIVE DISPOSITIONS

Master Docket . . . . .	94
Petition Docket . . . . .	843
Miscellaneous Docket. . . . .	<u>30</u>
TOTAL . . . . .	967

CUMULATIVE PENDING SEPTEMBER 1, 2010

Master Docket . . . . .	30
Petition Docket . . . . .	91
Miscellaneous Docket. . . . .	<u>4</u>
TOTAL . . . . .	125

**OPINION SUMMARY**

<u>CATEGORY</u>	<u>SIGNED</u>	<u>PER CURIAM</u>	<u>MEM/ORDER</u>	<u>TOTAL</u>
Master Docket . . . . .	41	2	51	94
Petition Docket . . . . .	0	0	843	843
Miscellaneous Docket	<u>0</u>	<u>0</u>	<u>30</u>	<u>30</u>
TOTAL	41	2	924	967

**MASTER DOCKET SUMMARY**

FILINGS

Petitions granted from the Petition Docket . . . . .	88
Certificates filed . . . . .	6
Mandatory appeals filed. . . . .	0
Remanded/Returned cases. . . . .	0
Reconsideration granted. . . . .	0
TOTAL . . . . .	<u>94</u>

DISPOSITIONS

Decisions affirmed . . . . .	61
Reversed in whole or in part . . . . .	33
Granted petitions vacated . . . . .	0
Certificate Withdrawn . . . . .	0
TOTAL . . . . .	<u>94</u>

PENDING

Awaiting briefs . . . . .	10
Awaiting oral argument . . . . .	17
Awaiting lead case decision (trailer cases) . . . . .	3
Awaiting final action . . . . .	0
TOTAL . . . . .	<u>30</u>

**PETITION DOCKET SUMMARY**

FILINGS

Petitions for grant of review filed . . . . .	720
Petitions for new trial filed . . . . .	1
Petitions for reconsideration granted . . . . .	0
Returned cases . . . . .	0
TOTAL . . . . .	<u>721</u>

DISPOSITIONS

Petitions for grant of review denied . . . . .	753
Petitions for grant of review granted . . . . .	88
Petitions for grant of review withdrawn . . . . .	0
Petitions for grant of review dismissed . . . . .	2
TOTAL . . . . .	<u>843</u>

PENDING

Awaiting pleadings . . . . .	9
Awaiting Central Legal Staff review . . . . .	37
Awaiting final action . . . . .	<u>45</u>
TOTAL . . . . .	91

MISCELLANEOUS DOCKET SUMMARY

FILINGS

Writ appeals sought . . . . .	11
Writs of habeas corpus sought . . . . .	2
Writs of error coram nobis sought . . . . .	2
Other extraordinary relief sought . . . . .	<u>14</u>
TOTAL . . . . .	29

DISPOSITIONS

Petitions or appeals denied . . . . .	25
Petitions or appeals granted . . . . .	0
Petitions or appeals dismissed . . . . .	5
Petitions or appeals withdrawn . . . . .	0
Petitions or appeals remanded . . . . .	<u>0</u>
TOTAL . . . . .	30

PENDING

Awaiting briefs . . . . .	0
Awaiting staff review . . . . .	2
Awaiting final action . . . . .	<u>2</u>
TOTAL . . . . .	4

PETITIONS FOR RECONSIDERATION

ALL CASES

Begin Pending	1
Filed	<u>13</u>
TOTAL	14
End Pending	0

DISPOSITIONS

Denied	14
Granted	0
Withdrawn	<u>0</u>
TOTAL	14

**MOTIONS**

ALL MOTIONS

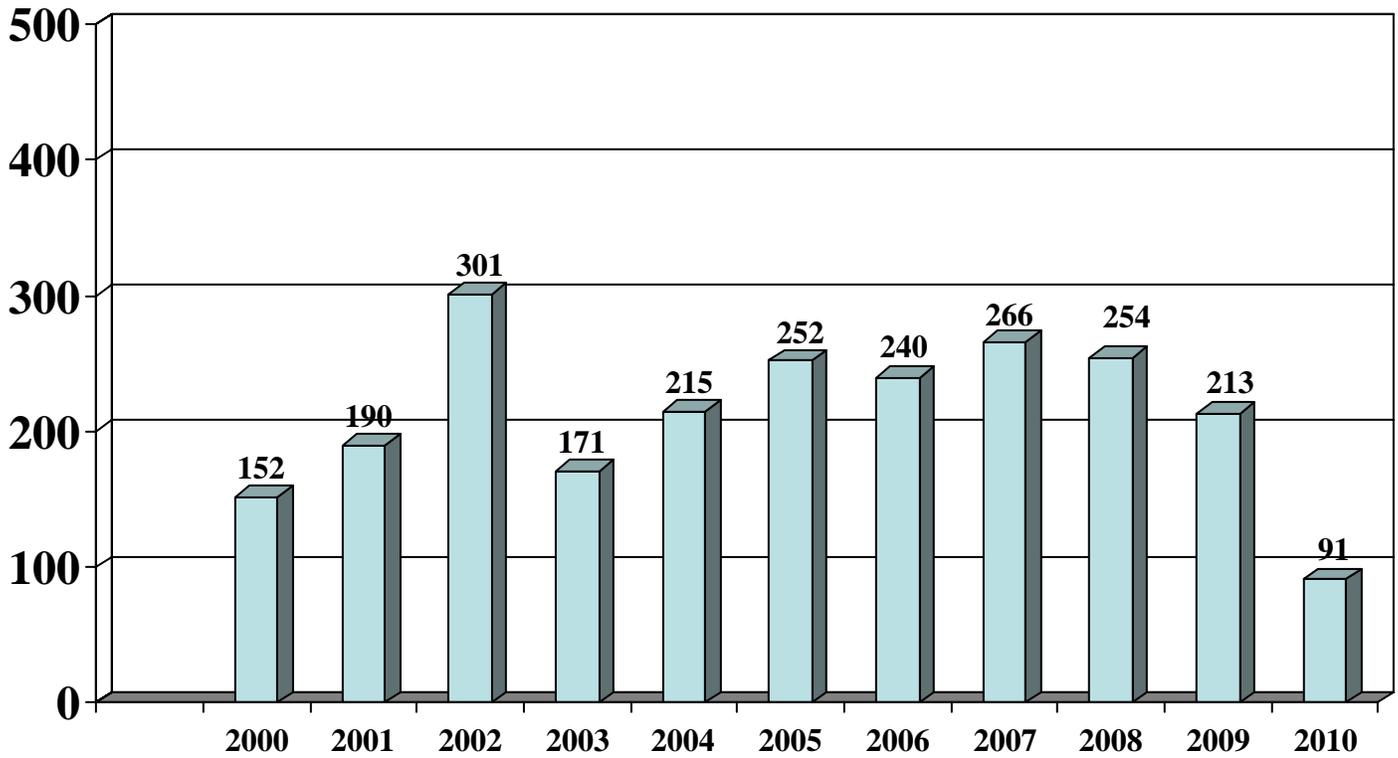
Begin Pending	23
Filed	<u>372</u>
TOTAL	395

End Pending	10
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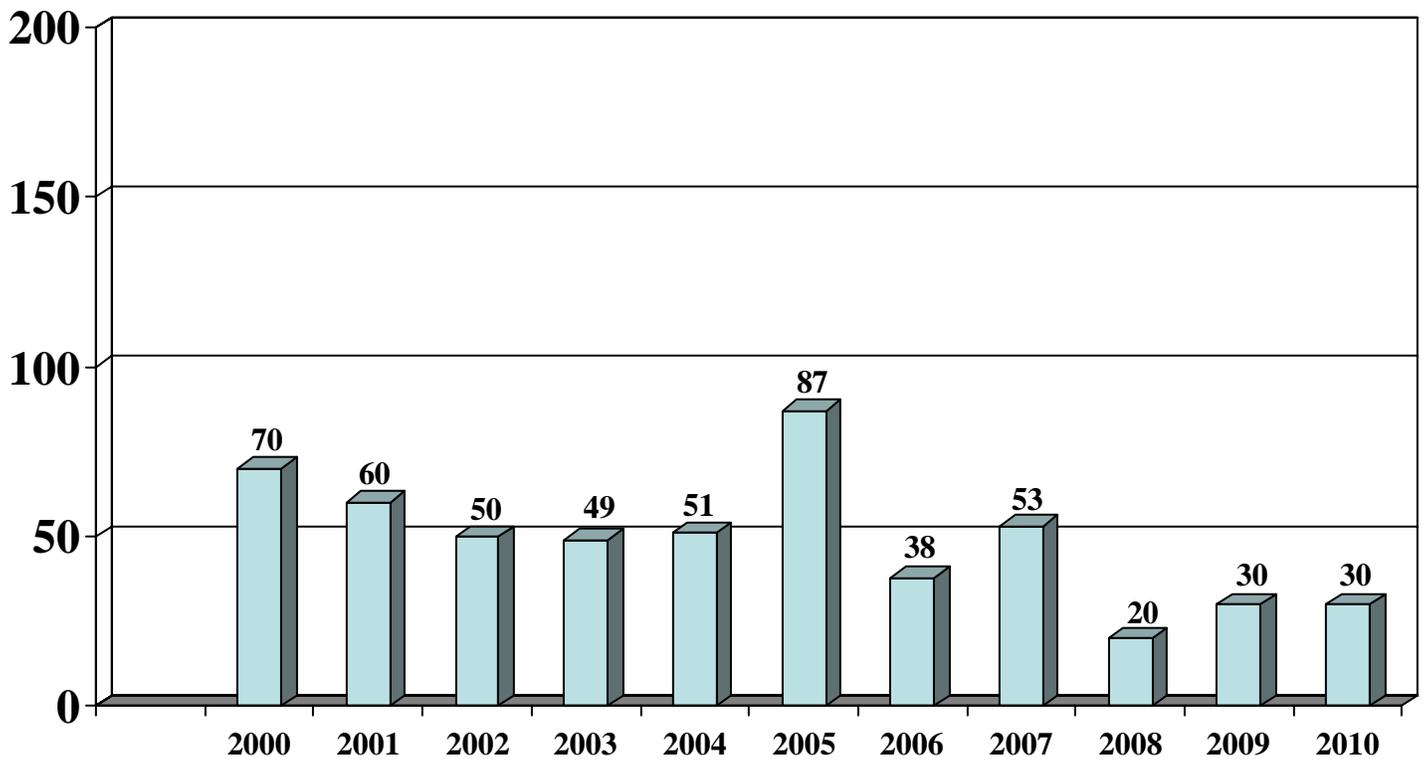
DISPOSITIONS

Granted	314
Denied	<u>71</u>
TOTAL	385

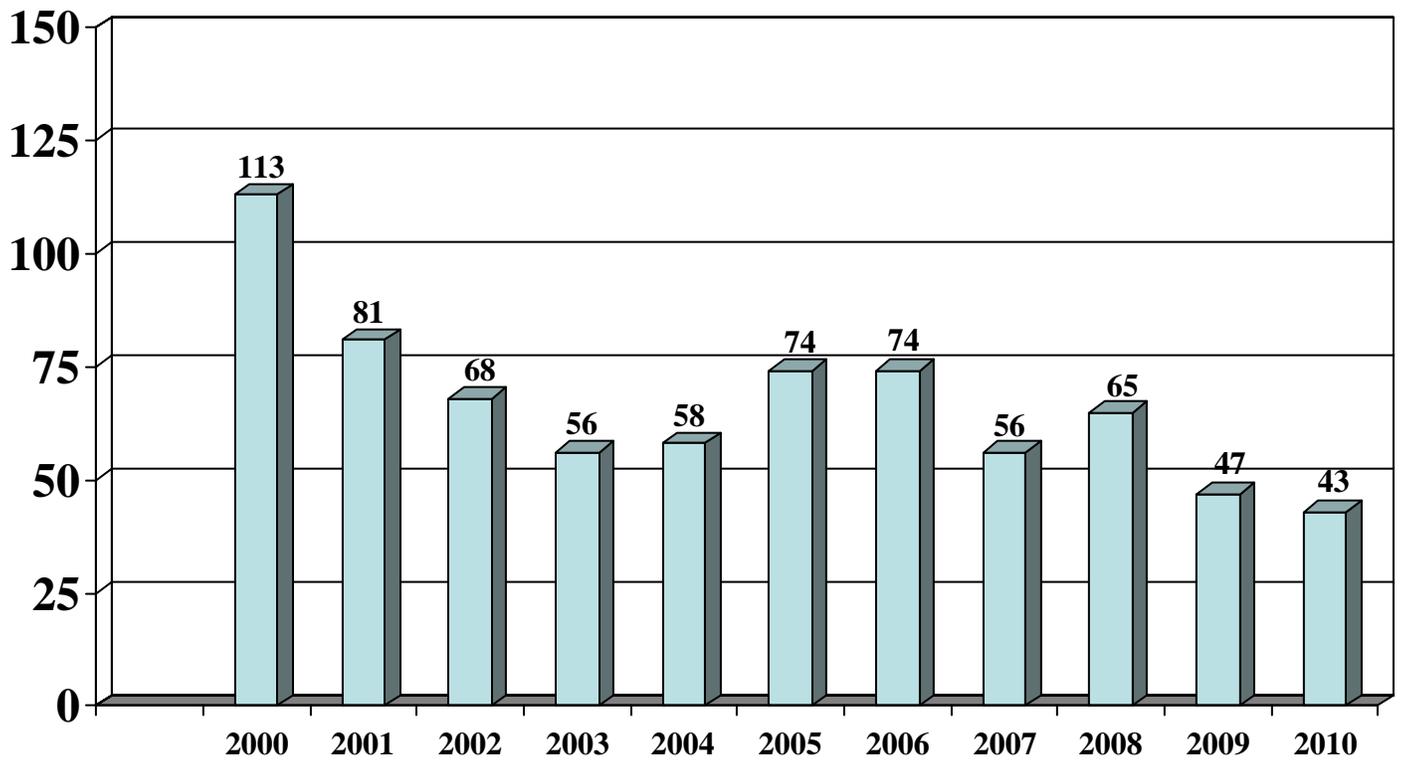
# Petition Docket Term End



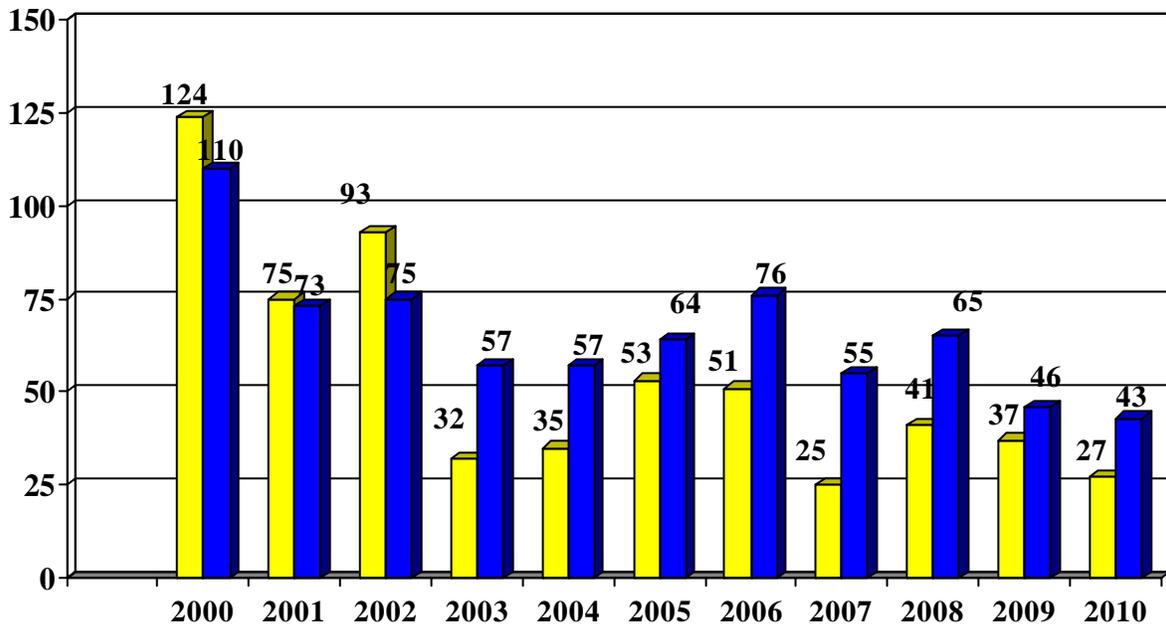
## Master Docket Term End Pending



## Oral Arguments Per Year



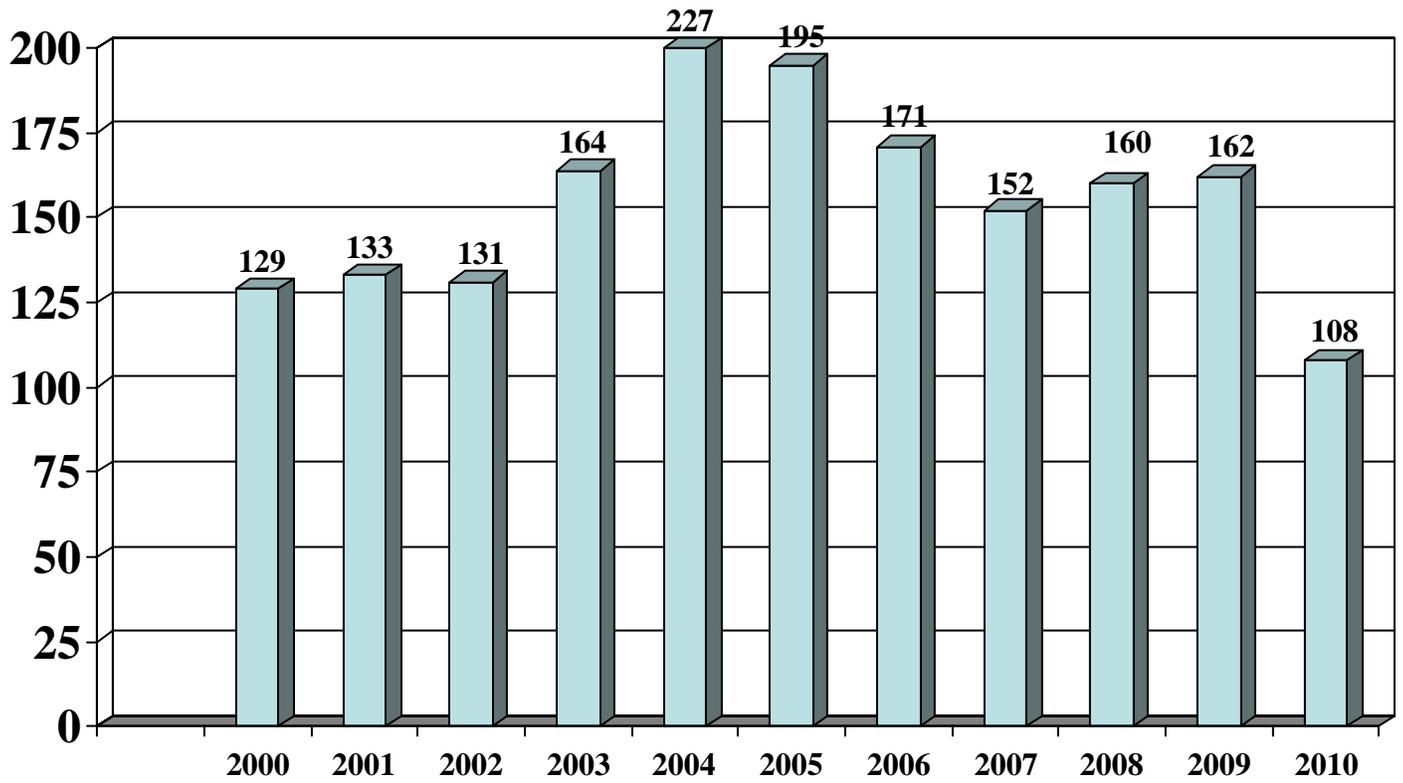
## Total Opinions Per Year



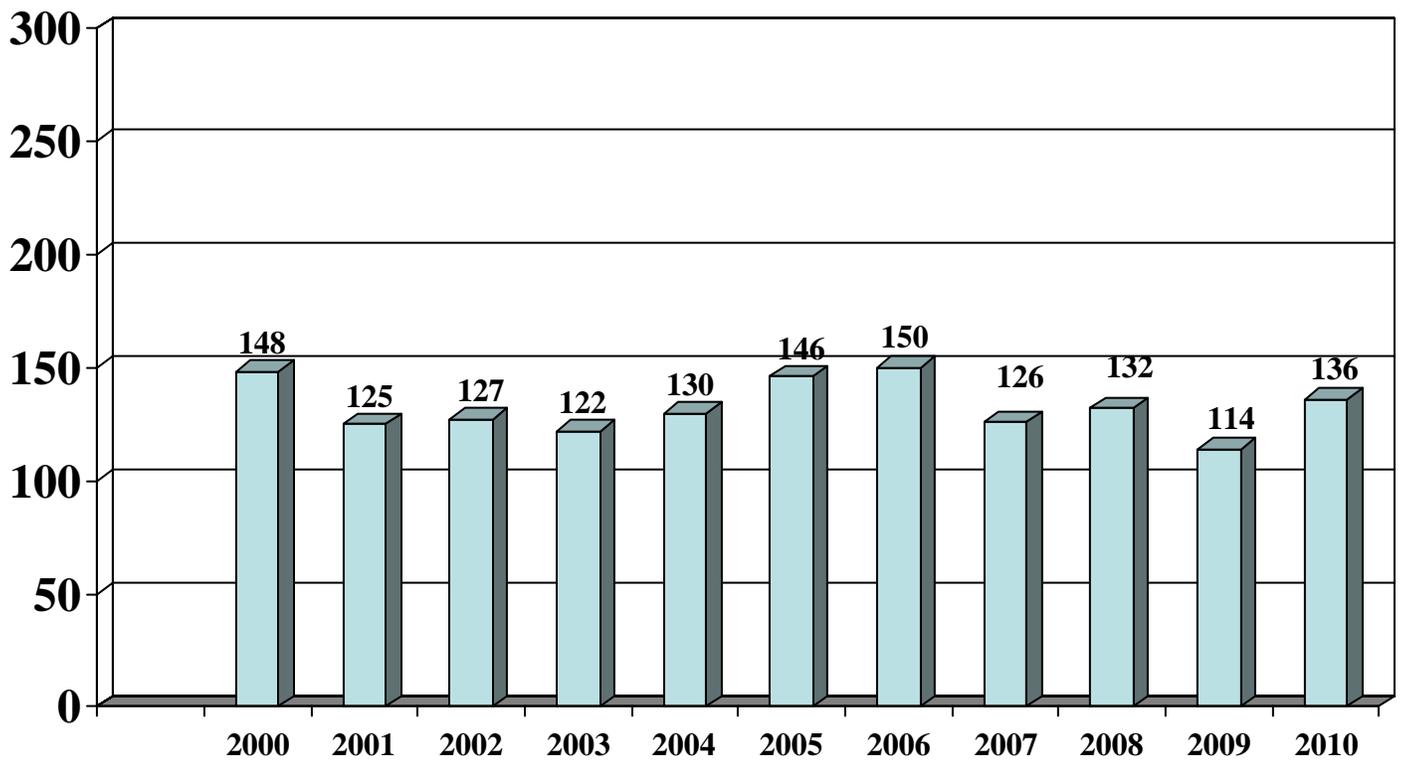
■ TOTAL SEPARATE OPINIONS (CONCUR, CONCUR IN THE RESULT, AND DISSENT)

■ TOTAL COURT OPINIONS

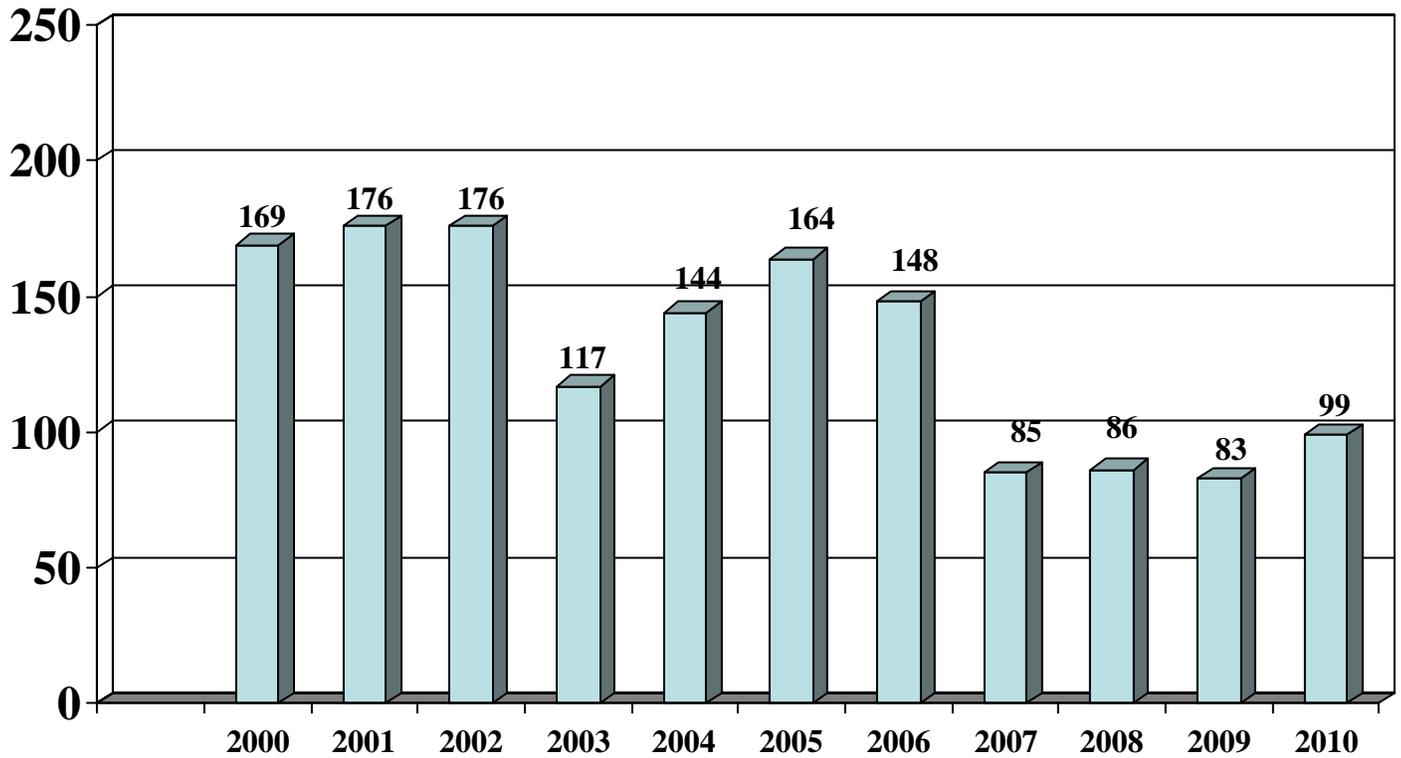
# Days from Petition Filing to Grant



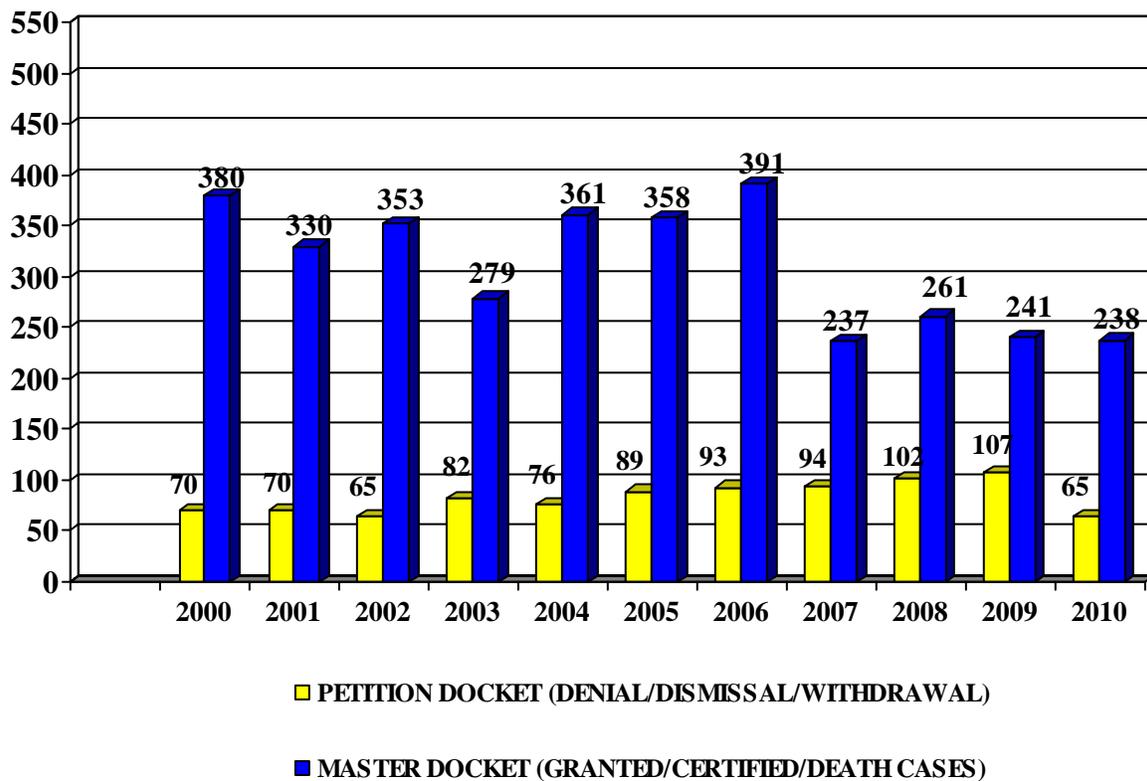
## Days from Petition Grant to Oral Argument



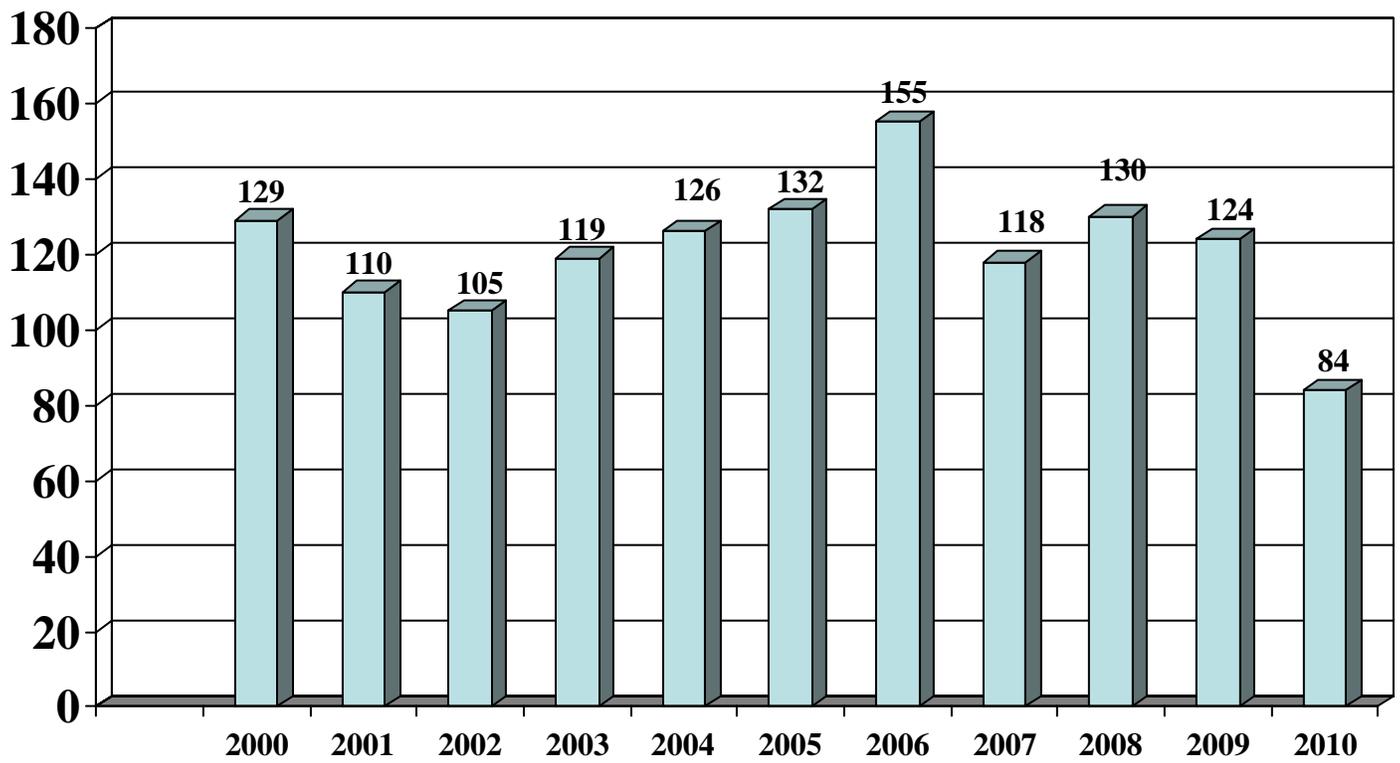
## Days from Oral Argument to Final Decision



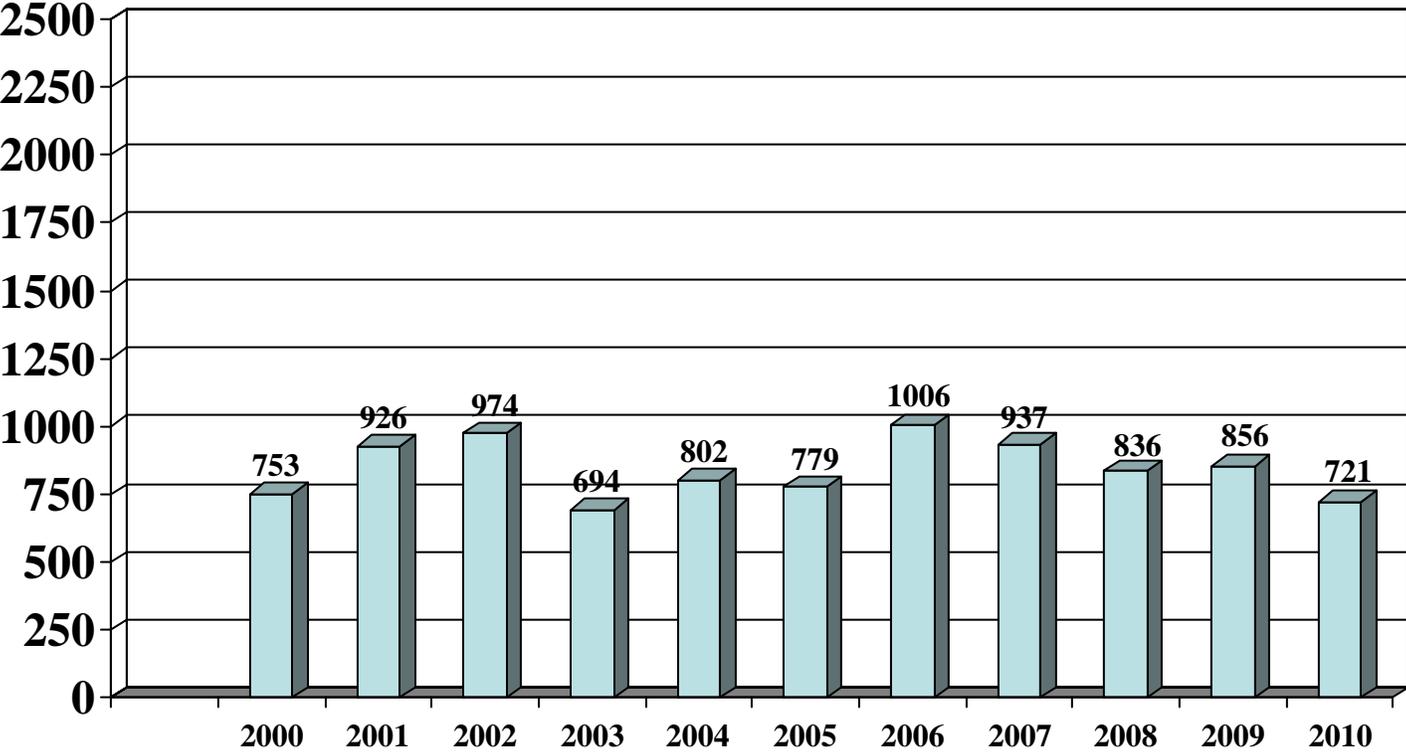
## Days from Petition Filing to Final Decision



## 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, 2009 TO SEPTEMBER 30, 2010**

During fiscal year 2010 (FY 10), The Judge Advocate General (TJAG) and senior members of his staff advised Army leadership on significant issues pertaining to military justice, to include high visibility cases and investigations. The Office of The Judge Advocate General (OTJAG) continued to implement programs improving both the administration of military justice and advocacy skills of military justice practitioners. In furtherance of TJAG's duties under Article 6(a), Uniform Code of Military Justice (UCMJ), TJAG and senior leaders in the Corps visited more than 30 installations and commands in the United States and overseas, to include forward areas, discussing military justice issues with commanders and their respective Staff Judge Advocates. The JAG Corps remains committed to sustaining excellence in the practice of military justice through a variety of initiatives and programs.

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

The cornerstone mission of the Criminal Law Department of The Judge Advocate General's Legal Center and School (TJAGLCS) in Charlottesville, Virginia is to develop, improve, and sustain excellence in the practice of military criminal law. The need to hone these skills in the context of a joint, expeditionary force at war is paramount and occupies center stage in all curriculum review. Instruction touches a wide range of subjects from substantive criminal law to technical litigation skills, while at the same time providing critical reach-back capability for military justice practitioners of all services.

Advocacy training continues to be one of the Criminal Law Department's top priorities. The Department devotes significant effort to training each Basic Course student on trial advocacy skills.

In addition to plenary instruction sessions and seminar classes, Basic Course students continue to complete a series of twelve clinical events tied to a notional criminal case over the course of approximately two and one-half weeks. Using this notional case, the faculty walks the students through the substance and process of a criminal case in the military justice system from the initial report of the offense, to trial and conviction, or acquittal of the alleged offender. For the first time this year the course of instruction included a number of self-paced exercises e-mailed to the students at various junctures during the Criminal Law course of instruction. The exercises are designed to replicate e-mails trial or defense counsel receive in the field from commanders and supervisors, requiring the students to identify and quickly solve a legal problem.

The Criminal Law Department also continued instruction to military justice managers and senior paralegals with a heavy emphasis on pre- and post-trial processing. The fifty-five students of the 16th Military Justice Managers Course received significant instruction on the practical "how to" of court-martial pre- and post-trial processing, as well as substantive law instruction. As in past courses, justice managers received a number of useful resources on CD-Rom, including examples of case tracking systems, to assist them in their mission and to help them effectively continue teaching advocacy to their subordinate counsel. Guest speakers at the course included: a senior trial judge; the Chief, Army Trial Defense Service; the Deputy Clerk of the Army Court of Criminal Appeals; a representative from the Criminal Law Division of OTJAG; the Chief of Forensic Toxicology at the Office of the Armed Forces Medical Examiner; and the Senior Legal Advisor to the Army Review Boards Agency.

The Department expanded the availability of advocacy training by creating a more intensive one-week long Criminal Law Advocacy Course (CLAC) and offering the course four times per year. The four CLACs provided intense, highly focused advocacy training targeted at novice counsel. The CLAC refreshes and builds on the advocacy skills developed during the Basic Course.

The vast majority of the course time is spent conducting practical oral advocacy exercises in groups of eight students, with a two-person instructor team leading the instruction for each group.

In addition to the Military Justice Managers Course and the Criminal Law Advocacy Courses, the Criminal Law Department hosted the 53rd Military Judge Course, which continues to serve as the certification course for all judges in the DoD. The Course is a joint effort by all the services, including the Coast Guard, to provide preparatory and refresher training for the newest members of the trial judiciary. The Department also presented the 33rd Criminal Law New Developments Course, attended by nearly 300 judge advocates from all services, including substantial representation from the trial and appellate bench. In addition to hosting courses, Department professors provided instruction to the Graduate Course, the World Wide Continuing Legal Education (CLE) course, the Staff Judge Advocate's Course, and the Judge Advocate Officer Advanced Course. The faculty also provided instruction to hundreds of Judge Advocates of all services at a variety of remote venues.

The Criminal Law Department welcomed the first civilian to serve as a member of the Department faculty. Mr. James Clark, an attorney with almost three decades of experience as a criminal litigator, joined the faculty in the summer of 2010 as an expert in the field of sexual assault litigation. Mr. Clark's teaching focus areas are sexual crimes and trial advocacy. His tremendous expertise, vast experience, and top-notch teaching ability make him an invaluable member of the Department.

The Department integrated the latest developments in criminal law in all of its instruction, and continues to improve on its effort to provide resources for practitioners. The Department's new web site is part of this effort. The content on the web site includes Department publications, military justice resources (including trial checklists), and a Department blog where instructors post their thoughts on recent legal developments.

## OTJAG CRIMINAL LAW DIVISION

The Criminal Law Division (CLD), OTJAG has two primary missions. First, CLD advises The Judge Advocate General on military justice policy, legislation, opinions, and related criminal law actions. Specific responsibilities include promulgating military justice regulations, 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. Second, CLD provides comprehensive policy guidance and resources to military justice practitioners in the field, which includes a special emphasis on training (including sexual assault) and programs designed to guarantee long term military justice proficiency across all grades.

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

	<u>FY 08</u>	<u>FY 09</u>	<u>FY 10</u>
White House inquiries	13	7	5
Congressional and other inquiries	132	152	127
Officer Dismissals	31	28	24
Article 69 and other reviews	73	99	136
Freedom of Information Act/Privacy Act	18	18	31

During FY 10, OTJAG successfully filled all of the 22 additional attorney positions approved at the end of FY 2008 as part of the Army's ongoing effort to better address sexual assault.

This involved filling the remaining seven of the fifteen new Special Victim Prosecutor (SVP) positions and the final two of the seven positions for experts in the field of sexual assault litigation. There are now three experts with the Trial Counsel Assistance Program (TCAP), two with the Defense Counsel Assistance Program (DCAP), one at The Judge Advocate General's Legal Center and School, and one who serves as Army Chief of Trial Advocacy at OTJAG Criminal Law Division. The 15 SVPs each work very closely with the sexual assault litigation experts from TCAP, and have developed habitual geographical relationships to enhance their effectiveness. The DCAP and TCAP sexual assault litigation experts produce publications and guidance for counsel in the field, and travel regularly to conduct training and to provide case-specific advice. In response to the 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. These courses will become part of the advocacy training structure for the foreseeable future. In another effort to improve the level of advocacy in military justice, three judge advocates continue their part-time studies in a pilot program for an LL.M in prosecutorial science.

In FY 2010, the Criminal Law Division began an initiative to better synchronize and integrate military justice training across our Corps. This began with a Training Synchronization Meeting in July 2010 and resulted in the creation of the Consolidated Criminal Law Calendar. Maintained by CLD with input from other JAGC criminal law stakeholders such as The Judge Advocate General's School's Criminal Law Department, the Trial Counsel Assistance Program, and the Defense Counsel Assistance Program, this calendar provides situational awareness on criminal law training in multiple venues - civilian and military - across the Corps. CLD also provided practitioners in the field additional advocacy opportunities from organizations such as 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).

CLD assisted 24 judge advocates in receiving training from these organizations. In many instances CLD was able to assist practitioners in obtaining alternative civilian training when key military justice courses, such as the TJAGSA's Criminal Law Advocacy Course (CLAC), were not available.

During 2010, there was great interest in the Military Justice Skill Identifier program as applications increased. By the end of FY 10, 495 Judge Advocates had received Military Justice Skill Identifiers, a 123% increase from FY 09. TJAG initiated the Military Justice Skill Identifier (SI) program to encourage the practice of military justice, sustain expertise, and assist in the selection of personnel for military justice-related positions. 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 the judge advocate's level of skill and experience. Of those presently designated, 265 are SI 1 (Basic), 69 are SI 2 (Advanced), 94 are SI 3 (Expert), and 67 are SI 4 (Master).

Through its membership on the Joint Services Committee (JSC), the Army contributed to a DOD-sponsored amendment to Article 48, UCMJ, enacted on 22 December 2010, expanding the contempt authority of military trial and appellate judges. Prior to the amendment, military courts could only punish "direct" contempt, meaning disruptive or threatening conduct in the court's presence. Under the modified Article 48, military judges have authority to impose punishment of up to 60 days confinement and/or \$1000 fine for violation of the court's orders. The JSC prepared, but Congress did not enact, a proposed amendment to Article 120, which would revise and restructure sex offenses under the UCMJ as well as subpoena *duces tecum* authority prior to referral.

On 31 August 2010, the President signed Executive Order 13552, enacting a JSC proposal clarifying the definition of military property and amending the Rule for Courts-Martial related to staff judge advocates' post-trial recommendations.

The JSC continued coordination of a proposed Executive Order to create a victim-advocate privilege and to enumerate child pornography offenses under Article 134, clarifying the availability of a clause 1 or clause 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 10, the Criminal Law Division, in cooperation with OTJAG's Information Technology Division (ITD), continued to advance the JAGC's Military Justice web-based programs. The Military Justice Online (MJO) program is a web-based application that allows end-users down to the Special Court-Martial Convening Authority level to generate military justice actions for non-judicial punishments, administrative separations, administrative reprimands, and investigations. During FY 10, end users continued to generate thousands of actions using MJO, and CLD began to collect and refine over 150 document templates needed for the Court-Martial Module of MJO. This module is currently in development and expected to be implemented in early FY 12.

Additionally, the Criminal Law Division, in concert with the Information Technology Division, developed and deployed the Trial Advocates Tracking System (TATS). TATS is a web-based database that tracks the number of active trial advocates at an installation, government and defense, and provides key data on the experience and levels of military justice training of trial advocates. TATS is a key tool in determining military justice assignments, personnel management, and levels of training by military justice practitioners. Currently, 561 Judge Advocates in 82 organizations are assigned to military justice billets and registered in TATS.

To assist new trial and defense counsel in becoming proficient as trial advocates, the Criminal Law Division provided 132 incoming trial and defense counsel with the Trial Advocate Resource Library (TARL).

The TARL is a four-publication set of military justice reference books that are fundamental to the practice of military justice. Judge advocates in their first trial advocacy billet are eligible to receive the TARL. The TARL represents the JAG Corps' commitment to providing new trial advocates with the necessary resources to best represent their clients.

The Criminal Law Division continued to coordinate with field offices on high profile cases, including cases involving allegations of wrongful death or injuries to detainees, or other cases of potential interest. Maintaining information on these cases facilitated the CLD's role in supporting The Judge Advocate General's responses to Congressional and public inquiries with the most current information.

The Criminal Law Division also worked with the Army Corps of Engineers and several installations to accomplish courtroom renovations that meet the new Army Standard Design. Currently, Fort Carson, Fort Benning and Fort Bliss have started the process of courtroom renovation, using the Army's Standard Design. Fort Belvoir, Fort Lee and Fort Leavenworth have also started the process for renovations, using other models. Additionally, Fort Wainwright has completed its renovation under the new Army Standardization Design. Fort Detrick is currently funded as a new construction project for FY 13. OTJAG Criminal Law Division will continue to assist installations that request or require help in meeting the Army Standard Design for Judicial Centers.

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

The U.S. Army Judiciary consists of the U.S. Army Court of Criminal Appeals, 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 850 records of trial and over 1400 motions and briefs were referred to one of the three judicial panels of ACCA for appellate review. The Office of the Clerk of Court served ACCA decisions upon all personnel not in confinement and closed over 900 Courts-Martial cases during the past year.

ACCA maintains a website at <https://www.jagcnet.army.mil/acca>. ACCA's 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 JAGs 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.

Traditionally reported U.S. Army Judiciary actions for the last three fiscal years:

	<u>FY08</u>	<u>FY09</u>	<u>FY10</u>
Freedom of Information Act	212	83	559
Privacy Act	88	121	100
Certified Copies of Convictions	<u>272</u>	<u>570</u>	<u>185</u>
Total Number of Requests	572	774	884

The increase in Freedom of Information Act requests from FY 09 to FY 10 is due to internal accounting procedures only.

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 approximately 1070 courts-martial tried during this fiscal year reflect a nearly 10 percent decline from FY 09. However, Army trial judges continue to preside over cases in deployed environments, with 58 general and special courts-martial tried in Iraq, Kuwait and Afghanistan during this period, now constituting a total of over 850 since May 2003. COL Patrick J. Parrish presided over the Military Commission case of *United States v. Omar Khadr*, convened in Guantanamo Bay, Cuba.

After a nearly 8-year effort, the Trial Judiciary republished DA Pam 27-9, Military Judges' Benchbook, which includes the new sexual assault offenses set forth in Article 120, UCMJ. The Benchbook, along with links to the electronic version of the Judges' Benchbook, court dockets and other judiciary related documents and resource materials, can be found on the Trial Judiciary homepage at [www.jagcnet.army.mil/usatj](http://www.jagcnet.army.mil/usatj).

Other notable achievements by individual members of the Trial Judiciary include:

\*The 150<sup>th</sup> Legal Services Organization (Trial Judiciary) welcomed COL Robert R. Rigsby as its new Commander and Chief Reserve Trial Judge.

\*The 53rd Military Judge Course graduated 43 Army, Navy, Marine Corps, Air Force and Coast Guard students in May and invested them as new military judges. Also attending the course was MAJ Menachem Lieberman of the Israeli Defense Forces.

\*COL Michael J. Hargis deployed to Kuwait for a twelve-month tour of duty presiding as a military judge over courts-martial convened throughout Iraq and Afghanistan.

\*COL James L. Pohl was selected to serve as the Chief Trial Judge, Office of Military Commission's Trial Judiciary.

\*Colonel Patrick J. Reinert, a former commander of the 150<sup>th</sup> LSO and Chief Reserve Trial Judge, was selected for promotion to General Officer and assignment as the Chief Judge (IMA), Army Court of Criminal Appeals.

\*For superb performance in the area of immigration surety bonds, Colonel John J. Siemietkowski received the U.S. Immigration & Customs Enforcement Interagency Award.

\*COL Gregg A. Marchessault was selected to serve as a DOJ Resident Legal Advisor and assignment to the U.S. Embassy in Sarajevo focusing on assisting the Bosnians and Herzegovinians on terrorism prosecutions in their local courts.

\*In recognition of her outstanding judicial qualifications, Colonel Tara A. Osborn received a Certificate in General Jurisdiction Trial Court Skills from the National Judicial College.

Military Judges continued playing an active role in their military and civilian communities, speaking to grade 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 90 Army National Guard attorneys. USATDS provides high quality, professional defense services to Soldiers throughout the Army. USATDS counsel are stationed at 57 active duty installations worldwide and 51 reserve locations.

USATDS detailed one or more counsel to every Army special and general court-martial referred in FY 10, defending Soldiers facing the entire range of allegations under the Uniform Code of Military Justice. In addition, USATDS counsel assisted Soldiers facing other military justice-related adverse administrative actions. In FY10, TDS caseloads were as follows:

- General and Special Courts-Martial - 788
- Administrative Boards - 949
- Nonjudicial Punishment - 31,789
- Military Justice Consultations - 19,389

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 eight field offices throughout Iraq, Kuwait and Afghanistan. There are four field offices in Iraq: Camp Victory (Baghdad); Camp Liberty (Baghdad); Camp Speicher (Tikrit); and Joint Base Balad. There is also one branch office located in Basra, Iraq. Kuwait has one field office at Camp Arifjan. TDS support in Afghanistan has expanded to accommodate the shift in numbers of Soldiers from Iraq to Afghanistan. Currently there are two field offices, which is one more than last year. The two offices are located at Bagram Air Base and at Kandahar. The Regional Defense Counsel is an active duty lieutenant colonel who serves as the senior supervisory TDS attorney in CENTCOM. He has eighteen trial defense attorneys and nine paralegals working under him in support of the TDS mission in CENTCOM. Collectively this team of attorneys and paralegals provides the full range of TDS representation to approximately 150,000 Soldiers deployed throughout CENTCOM's expansive AOR.

The Defense Counsel Assistance Program (DCAP) continued to grow and expand its ability to support TDS worldwide. DCAP added an expert in the field of sexual assault litigation to its staff, raising its total of experts to two. The two sexual assault litigation experts assist DCAP's Chief, Deputy Chief, and four Training Officers to support the field and manage DCAP's internal endeavors. In a new era of declining resources, DCAP provided training through creativity and flexibility, seeking opportunities for joint training with government counsel. There were two new critical joint training opportunities designed to enhance trial advocacy skills, both of which focused on sexual assault cases as the mechanism to improve abilities. The Sexual Assault Trial Advocacy Course (SATAC), a two-week advanced advocacy training course, was hailed as a huge success by attendees of the course. The Expert Witness Symposium provided a group of trial and defense counsel exposure to ten expert witnesses who regularly testify in courts-martial.

DCAP continued to support the field in traditional matters by timely and effectively answering questions submitted from counsel. DCAP proactively ensured that practitioners in the field kept abreast of all major developments by publishing a series of updates called "DCAP Alerts" and "DCAP Sends." Towards the end of FY 10, DCAP launched a new SharePoint website designed to provide instant and comprehensive, around the clock support to counsel in the field. DCAP's other ongoing initiatives include uploading training materials, including a motions bank and an expert witness database, and beginning several ongoing chat rooms to maintain discussion among counsel on such critical issues as post-trial processing and new developments.

The 22<sup>nd</sup> TDS Legal Support Organization (LSO) consists of 86 commissioned officers, one warrant officer, and 26 enlisted paralegals. The AOR for the 22<sup>nd</sup> LSO encompasses East Asia and the United States west of the Mississippi River. In FY 10, the 22<sup>nd</sup> LSO mobilized eight attorneys and five paralegals for service in CONUS, Europe, and CENTCOM. In addition, the 22<sup>nd</sup> TDS LSO represented over 2,000 reserve component Soldiers facing military justice and adverse administrative actions.

The 154<sup>th</sup> TDS LSO consists of 143 commissioned officers, one warrant officer, and 19 enlisted paralegals. The AOR for the 154<sup>th</sup> LSO encompasses Europe and the United States east of the Mississippi River. In FY 10, the 154<sup>th</sup> TDS LSO mobilized 18 attorneys and two paralegals for service in CONUS, Europe and CENTCOM. Additionally, the 154<sup>th</sup> LSO also represented over 2,000 reserve component Soldiers facing military justice and adverse administrative actions.

The Army National Guard (ARNG) component of TDS continued its development on pace to meet its effective date of 1 September 2011. ARNG TDS now has 90 counsel in 40 states and territories. All seven regions have assigned RDCs. With the addition of one more sustainment brigade in the ARNG, authorized end strength grew slightly to 130 Judge Advocates, one warrant officer, and 49 paralegals. ARNG TDS also received full funding for FY 11 that accommodates the travel of regional leaders, the training of all counsel, and the equipping of every office. The focus of effort for FY 11 is the delivery of services, the development of a full-time headquarters, and the approval of a non-programmed budget for FY 12. In FY 10 the ARNG mobilized one defense attorney and one warrant officer, both of whom supported the TDS mission in Europe.

#### **GOVERNMENT APPELLATE DIVISION**

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

During FY 10, GAD filed 636 briefs at ACCA and 361 responses to petitions for grant of review and 8 briefs at CAAF. GAD appellate attorneys argued 28 cases before ACCA and 10 cases before CAAF.

As part of ACCA's Project Outreach, GAD argued two cases in the civilian community-one at George Washington University Law School in Washington, D.C., and the other at South Texas College of Law in Houston, Texas. These outreach arguments are important in displaying military justice to largely civilian audiences. Both arguments were tremendously successful.

TCAP continued its efforts to train and equip Army prosecutors on the investigation and successful disposition and prosecution of criminal cases, with a continued focus and emphasis on the handling and disposition of sexual assault, domestic violence, and special victim cases. In FY 10, TCAP conducted 38 highly successful and focused training events: 22 Outreaches on 22 installations in both the continental United States and outside the continental United States; five Regional Conferences (Europe, Korea, CENTCOM, East Coast, West Coast); five advocacy training courses; two National Center for Missing and Exploited Children military courses; two Military Institutes for the Prosecution of Sexual Violence; one United States Army Criminal Investigations Laboratory (USACIL) course; and one sexual assault experts symposium.

TCAP continued to publish its highly informative Quarterly Newsletter and provide timely telephonic, e-mail, and on-site assistance to prosecutors throughout the world.

In addition, TCAP maintains technical supervision over the JAGC's Special Victim Prosecutors (SVPs). In FY 10, seven of the eight remaining SVP positions were filled at the Fort Bliss, Fort Drum, Fort Leavenworth, Fort Hood, Military District of Washington, Fort Stewart, and 7th Joint Multinational Training Command (Grafenwoehr, Germany). The 15<sup>th</sup> SVP position will be filled in January 2011. More importantly, in January 2011, all prosecutors throughout the Army will have a designated and assigned SVP and an expert in the field of sexual assault litigation to assist them.

These litigation experts are civilian prosecutors hired by the Army to help train and support trial counsel in the investigation and prosecution of sexual assault, domestic violence, and special victim cases.

#### **DEFENSE APPELLATE DIVISION**

The Defense Appellate Division (DAD) provides appellate representation to eligible Soldiers before the Army Court of Criminal Appeals (ACCA), the Court of Appeals for the Armed Forces (CAAF), and the Supreme Court of the United States. Eligible Soldiers include those convicted at courts-martial where the approved sentence consists of a punitive discharge or confinement for one year or more. DAD attorneys also assist military and civilian Trial Defense Counsel in the preparation and filing of extraordinary writs before the aforementioned courts.

In FY 10, the DAD staff consisted of seventeen active component Judge Advocates, four civilian paralegals, and one Noncommissioned officer. The Division was led by the Branch Chief, a Colonel, and a Deputy Branch Chief, a Lieutenant Colonel. The Division was divided into two Branches, each led by a Major. As in past years, reserve component Judge Advocates continued to provide critical support. One mobilized reservist and nine Drilling Individual Mobilization Augmentee (DIMA) Judge Advocates also supported DAD. The mobilized reservist, a Lieutenant Colonel, is an experienced appellate advocate and filled the role of Senior Appellate Attorney.

In FY 10, DAD received 703 new cases and filed 706 cases with ACCA. Of those 706 ACCA filings, 237 raised substantive assignments of error. DAD attorneys also filed 482 cases with CAAF, more than sixty of which raised substantive assignments of error. Appellate Defense Counsel presented oral arguments in more than thirty cases. The Division filed four Petitions for Certiorari and an amicus pleading before the Supreme Court. The Division also filed an extensive brief raising fifty-seven assignments of error in *United States v. Akbar*, a capital case.

The Defense Appellate Division made significant contributions on numerous substantive appellate issues. The most significant development of the year was the continuing shift in the law away from the "closely related offense doctrine" and toward the strict elements test for lesser included offenses. Significant cases from fiscal year 2010 include *United States v. Morton*, 69 M.J. 12 (C.A.A.F. 2010) (holding that the "closely related offense doctrine" is no longer viable in the context of a guilty plea); *United States v. Lubasky*, 68 M.J. 260 (C.A.A.F. 2010)("[T]here is no authority for the proposition that larceny from one entity is an LIO of larceny from another entity."); *United States v. Honeycutt*, Army 20080589 (Army Ct. Crim. App. 1 Sep. 2010) ("Appellant was not properly on notice that he needed to defend against the offense of wrongful sexual contact and its elements that are distinct from rape by force.")

DAD counsel represented clients at several outreach arguments hosted by ACCA and CAAF and thereby contributed to the public understanding of and support for the Military Justice System. In one notable case argued at George Washington University Law School, Defense Appellate Counsel successfully employed technology in the courtroom to demonstrate the suggestive nature of a photo array lineup.

#### **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 2007 to 30 Nov 2008	1 Dec 2008 to 30 Nov 2009
Foreign Offense Citations	2,982	3,361
Total Civilian	864	858
Total Military	2,118	2,249
Exclusive Foreign Jurisdiction	74	100
Concurrent Jurisdiction	1,906	2,403
Traffic Offenses	75	73
Foreign Jurisdiction Recalls	208	254

During this reporting period, foreign authorities did not release to the U.S. any of the 94 exclusive foreign jurisdiction cases involving military personnel. In concurrent jurisdiction cases in which the foreign countries had the authority to assert primary jurisdiction, U.S. military authorities were able to obtain waivers of the exercise of this jurisdiction in 2,249 of the 2,403 cases. Overall, the U.S. obtained waivers in 93.6% of all exclusive and concurrent jurisdiction cases. This figure reflects an increase of 5.9% in obtaining waivers compared to the previous reporting period.

During the last reporting period, civilian employees and dependents were involved in 864 offenses. Foreign authorities released 26 of these cases (3.0% 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 858 offenses. The foreign authorities released 45 of these cases (5.2% of the current total of this reporting period). This figure represents a decrease of 2.2% in obtaining releases of foreign criminal jurisdiction over civilian employees and dependents.

During this reporting period, foreign authorities prosecuted a total of 441 cases involving U.S. personnel. Four trials, 0.9% of cases prosecuted, resulted in acquittals.

Those convicted were sentenced as follows: 6 cases resulted in executed confinement; 22 cases resulted in suspended confinement; and 409 cases (92.7% of the total prosecutions) resulted in fines or reprimands.

## LITIGATION DIVISION

Civil lawsuits involving military justice matters are relatively few in number but remain an important part of the 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's Litigation Division.

In *Gray v. Gray*, 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. This litigation arose out of Gray's 1988 conviction of, among other charges, three specifications of premeditated murder, one specification of attempted murder, three specifications of rape and two specifications of forcible sodomy, resulting in a sentence of death, a dishonorable discharge, total forfeiture of all pay and allowances, and reduction to Private E-1. On 30 September 2010, the court ruled that Gray could amend his petition to present additional claims.

In *Thomas v. USDB*, the government successfully defended against a challenge to a court-martial conviction which was considered in an extraordinary writ before the military courts while pending federal habeas review. This litigation arose out of Rochester Thomas' conviction *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. Thomas was later arrested in Germany in April 1997 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. On 29 September 2009, the U.S. District Court for the District of Kansas denied Thomas' petition claiming ineffective assistance of counsel. On 16 November 2010, the Tenth Circuit Court of Appeals affirmed the district court.

In *Hennis v. Helmick, et al.*, the government continues to defend a challenge by a retiree recalled to active duty to face capital murder charges. On 28 December 2009, after ACCA and CAAF denied his extraordinary writs challenging the military's jurisdiction to prosecute him, MSG (Ret.) Timothy Hennis filed a petition for writ of habeas corpus in the United States District Court for the Eastern District of North Carolina seeking an emergency stay of his pending court-martial. After the U.S. Court of Appeals for the Fourth Circuit denied MSG (Ret.) Hennis' request for a preliminary injunction to stop the court-martial proceedings, a court-martial convicted MSG (Ret.) Hennis of three murder specifications and sentenced him to death. MSG Hennis' appeal at the Fourth Circuit challenging the military's jurisdiction remains pending.

In *U.S. v. Joshua*, a military prisoner successfully challenged his impending civil commitment as a "sexually dangerous person" pursuant to the Adam Walsh Child Protection and Safety Act of 2006, 18 U.S.C. § 4248. This litigation arises out of the 13 December 1994 court-martial conviction of First Lieutenant Andrew G. Aull, now known as Benjamin Bernard Joshua, for numerous sexual offenses against multiple child victims. Joshua was sentenced to 40 years confinement, which was reduced to 25 years pursuant to a pretrial agreement. Prior to Joshua's release from prison in March 2009, the Department of Justice filed a petition in the U.S. District Court for the Eastern District of North Carolina to civilly commit Joshua pursuant to 18 U.S.C. § 4248. On 1 July 2009, Joshua filed a motion to dismiss, arguing that his status as a military prisoner made the Act's civil commitment provisions inapplicable.

On 13 January 2010, the district court dismissed the petition, finding that Joshua was not "in the custody of the Bureau of Prisons" within the meaning of the Adam Walsh Child Protection and Safety Act of 2006, so as to subject him to that Act's civil commitment procedures. On 14 June 2010, the United States Court of Appeals for the Fourth Circuit affirmed the district court's decision.

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

On 30 September 2010, the Army's end-strength was 661,360 Army Soldiers on active duty, including Active Guard and Reserve (AGR) and mobilized Soldiers, compared to 584,685 at the end of fiscal year 2009. The attorney strength of the Active Army (AA) Judge Advocate General's Corps at the end of FY10 was 1,858 (including general officers). This total does not include 71 officers attending law school while participating in the Funded Legal Education Program. The FY10 end-strength of 1,858 compares with an end-strength of 1,730 in FY09, 1,647 in FY08, 1,643 in FY07, 1,638 in FY06, 1,603 in FY05, 1,547 in FY04, 1,506 in FY03, 1,474 in FY02, 1,462 in FY01, 1,427 in FY00, 1,426 in FY99, 1,499 in FY98, and 1,523 in FY97. The diverse composition of our FY10 AA attorney population included 123 African-Americans, 57 Hispanics, 85 Asians and Native Americans, and 445 women. The grade distribution of the Corps' AA attorneys for FY10 was 5 general officers, 135 colonels, 246 lieutenant colonels, 401 majors, and 1071 captains. An additional 96 warrant officers, 570 civilian attorneys, and 1,801 enlisted paralegals supported legal operations worldwide. The attorney strength of the RC Judge Advocate General's Corps at the end of FY10 was 1,522 and the attorney strength of the Army National Guard at the end of FY10 was 750. At the end of FY10, over 591 Army JAGC 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 2010

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT
GENERAL	610	572	38	-4.4%
BCD SPECIAL [A]	446	425	21	-13.9%
NON-BCD SPECIAL	8	8	0	-20.0%
SUMMARY	819	[F]	[F]	-13.4%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-8.4%

**PART 2 - DISCHARGES APPROVED [B]**

GENERAL COURTS-MARTIAL ( CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)	65 (+17)	
NUMBER OF BAD-CONDUCT DISCHARGES	256	
SPECIAL COURTS-MARTIAL NUMBER OF BAD-CONDUCT DISCHARGES	235	

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	346	
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	234	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	246	

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

TOTAL ON HAND BEGINNING OF PERIOD	60 [C]	
GENERAL COURTS-MARTIAL	[D]	
BCD SPECIAL COURTS-MARTIAL	[D]	
REFERRED FOR REVIEW	681 [C]	
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
TOTAL CASES REVIEWED	627 [E]	
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
TOTAL PENDING AT CLOSE OF PERIOD	114 [C]	
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+1.5%	

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

NUMBER	647	
PERCENTAGE	95.01%	

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

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF	447 of 627	71.29%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		22.72%
PERCENTAGE OF TOTAL PETITIONS GRANTED	29 of 483	6.00%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-41.52%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY USACCA		4.63%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-30.17%

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

**PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ**

TOTAL PENDING BEGINNING OF PERIOD		0	
RECEIVED		16	
DISPOSED OF		14	
GRANTED	1		
DENIED	13		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		2	

**PART 8 – ORGANIZATION OF COURTS**

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		452	
SPECIAL COURTS-MARTIAL		390	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		158	
SPECIAL COURTS-MARTIAL		64	

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

NUMBER OF COMPLAINTS	23	
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**PART 10 – STRENGTH**

AVERAGE ACTIVE DUTY STRENGTH	566045[G]	
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**PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)**

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	36624	
RATE PER 1,000	64.70	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	+7.44%	

## **EXPLANATORY NOTES**

[A] Cases convened by GCM convening authority.

[B] Based on records of trial received during FY for appellate review.

[C] Includes only cases briefed and at issue.

[D] No reason for distinguishing; GCM and BCD SPCM are not tracked separately.

[E] Includes Article 62 appeals, All Writs Act cases, and appeals withdrawn.

[F] Data is not available

[G] This number includes only Active Component Soldiers and does not include USAR, National Guard or AGR personnel.

**SECTION 4**

**REPORT OF THE JUDGE ADVOCATE GENERAL OF THE  
NAVY**

**ANNUAL REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY**

**OCTOBER 1, 2009 TO SEPTEMBER 30, 2010**

**SUPERVISION OF THE ADMINISTRATION OF  
MILITARY JUSTICE**

**JUDGE ADVOCATE GENERAL**

The Judge Advocate General (JAG) chairs the Military Justice Oversight Council (MJOC). This council also consists of the Commander, Naval Legal Service Command (COMNAVLEGSVCCOM), the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC), and three Assistant Judge Advocates General (02, 05, 06). The MJOC was established by the JAG in November 2009 to become a regularized flag and general officer forum for the review of military justice in the Navy and Marine Corps. The MJOC meets monthly to review structural, resource, and other matters that affect the timely and effective delivery of military justice services.

The JAG and the COMNAVLEGSVCCOM made frequent inspections of U.S. Navy 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. In fiscal year 2010 (FY 10), the Navy's Article 6(a), UCMJ, inspections were enhanced to include a more critical, in-depth study of military justice litigation processes and procedures, resulting in a more substantive and useful analysis of the quality of military justice litigation in the Navy.

On July 1, 2010, the JAG established the Defense Counsel Assistance Program (DCAP), whose mission is to support and enhance the proficiency of the Navy defense bar and provide experienced reach-back and technical expertise. DCAP provides a full spectrum of privileged and confidential advice and is a resource for defense counsel in the field through every phase of court-martial litigation. DCAP is directed by a Navy O-6 Military Justice Litigation Career Track (MJLCT) Expert who is assisted by an O-4 with substantial military justice defense experience.

The JAG also discontinued the Trial Counsel Assistance Program (TCAP) previously operated from the Appellate Government Division which was considered redundant given the creation of TCAP programs within Naval Legal Service Command and the Office of the Staff Judge Advocate to the Commandant of the Marine Corps.

The JAG and CNLSC devoted significant focus in FY 10 to revitalizing and enhancing the implementation of the Navy's Victim Witness Assistance Program (VWAP) within the JAG Corps. Initiatives included a curriculum review of all Naval Justice School courses and publications to ensure that VWAP training is thoroughly covered in training at all levels, the revision of the JAG portal on Navy Knowledge Online (NKO), to include dedicated links and resources that provide VWAP training and practice advisories, and the promulgation of a revised JAG/COMNAVLEGSVCCOMINST 5800.4.

Also in FY 10, as directed by Senate Report 111-35, accompanying the National Defense Authorization Act for Fiscal Year 2010, the Department of Defense Assistant Inspector General (Investigative Policy and Oversight) (DoD IG) initiated an evaluation of the systems, policies and procedures used for the post-trial review of courts-martial in the Department of the Navy. The evaluation began in November of 2009. The DoD IG provided a draft report to the Secretary of the Navy in October of 2010. The Secretary provided extensive comments on the draft on November 5, 2010, including those of the JAG and the SJA to CMC.

The final DoD IG report was issued on December 10, 2010. The report notes instances of failure and the significant improvements in post-trial processing of courts-martial within the Department of the Navy. As part of the process improvements in FY 10, the JAG directed a revision of the Navy's military justice post-trial processes, to include a complete revision of the JAG/COMNAVLEGSVCCOMINST 5814.1, the Navy JAG Corps primary post-trial processing instruction, which is currently underway.

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

AJAG-MJ advises the JAG in the performance of his statutory duties relating to military justice matters. Additionally, he serves as a member of the Office of the Judge Advocate General's (OJAG) Ethics Committee, the Judicial Screening Board, and the Military Justice Oversight Council, and oversees OJAG's Military Justice Division (Code 20). The AJAG-MJ is dual-hatted as the Officer in Charge of Navy-Marine Corps Appellate Review Activity (NAMARA) (Code 04). In this capacity, he oversees the National Security Litigation Division (Code 17); Administrative Support Division (Code 40), Appellate Defense Division (Code 45), and Appellate Government Division (Code 46). AJAG-MJ has ultimate responsibility for disposition of all records of trial received for review or other dispositions pursuant to statute, regulation, or appropriate appellate court rules of practice and procedure.

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

Organization. The Criminal Law Division was staffed with five active duty judge advocates, two civilian attorneys, two to three civilian support personnel, and two reserve units. Reserve unit NAVJAG 113 conducted Article 69(a) and 69(b), UCMJ, reviews and unit NAVJAG 108 provided research and Action Officer support.

Mission. Coordinates military justice policy within the Department of the Navy.

The Code 20 Division Director continued to serve as Chairman of the JSC. The 2010 Annual Review was completed in accordance with the President's requirement that the MCM be reviewed annually. Submission of recommended revisions remains on hold pending the resolution of previously proposed legislative changes to the UCMJ.

During the past year, the Military Justice Division reviewed 22 records of trial under Article 69a, UCMJ, and 14 records under Article 69b, UCMJ. One petition was reviewed under Article 73, UCMJ.

#### **ADMINISTRATIVE SUPPORT DIVISION (CODE 40)**

Organization. The Administrative Support Division was staffed with one officer, one civilian and ten enlisted Marine Corps staff members.

Mission. Provides administrative and logistical support services to personnel assigned to NAMARA and NMCCA; reviews for completeness all records of trial forwarded to NMCCA for appellate review pursuant to Article 66, UCMJ; promulgates decisions of NMCCA in accordance with the JAG Manual and Manual for Courts-Martial; manages the OJAG court-martial central filing system, including original records of trial maintained at NAMARA; manages and retrieves archived records of trial stored at the Washington National Records Center; and administers all NMCCA and CAAF mandates/judgments on remand back to field commands for corrective action. During FY 10, NAMARA Code 40 reviewed and examined over 754 records of trial for completeness prior to forwarding those records to the appropriate level for appellate review pursuant to Articles 66 and 69(a), UCMJ.

**APPELLATE DEFENSE DIVISION (Code 45)**

Organization. The Appellate Defense Division was staffed with ten active duty Navy and Marine Corps judge advocates and four civilian support personnel. Twenty-six Navy and Marine Corps Reserve judge advocates supported the Appellate Defense Division.

Mission. The Appellate Defense Division represents Navy and Marine Corps appellants before NMCCA, CAAF, and the U.S. Supreme Court. It also represents some appellants before the Navy Clemency and 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 the trial level.

In FY 10, a total of 678 new cases were docketed at NMCCA and received in the Appellate Defense Division. The Appellate Defense Division filed 682 initial pleadings with 15 oral arguments at NMCCA. The initial pleadings include 159 briefs, 510 merit submissions, and 13 summary assignments. A total of 69 supplemental briefs to petitions were filed at CAAF, resulting in 21 full briefs and 8 oral arguments.

<b>NMCCA</b>	<b>FY 06</b>	<b>FY 07</b>	<b>FY 08</b>	<b>FY 09</b>	<b>FY 10</b>
Briefs Filed	471	415	230	173	159
Total Cases Filed	1610	1165	1008	1004	903
<b>USCAAF</b>					
Petitions with Supplemental Briefs Filed	173	206	151	96	69
Briefs Filed	76	29	27	31	21
<b>U.S. Supreme Court Petitions</b>	9	6	6	5	6

Capital Litigation. The sole remaining death penalty case has been remanded.

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.

During FY 10, the Division's judge advocates participated in one oral argument as part of United States Court of Appeals for the Armed Forces' legal outreach program at Brooklyn Law School, Brooklyn, New York.

#### **APPELLATE GOVERNMENT DIVISION (CODE 46)**

Organization. The Division was staffed with nine active duty judge advocates, one civilian attorney, and two civilian administrative employees. Code 46 is currently supported by NAVJAG 116 (Minneapolis, Minnesota). Reserve judge advocates contributed an average of four 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, court-martial, and post-trial proceedings.

This year's appellate activity is set forth in the following chart. 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. Case briefing has remained highly complex, dominated by issues such as military courts' statutory duties, the limits of the Uniform Code's grant of a right to military counsel, Congress' revisions to Article 120, and the President's ability to inform substantive military law regarding lesser-included offenses. Article 62 appeals taken from trial court decisions have again fallen from nine in FY 09 to three in FY 10.

	<b>FY 06</b>	<b>FY 07</b>	<b>FY 08</b>	<b>FY 09</b>	<b>FY 10</b>
<b>NMCCA</b>					
Briefs Filed	621	486	232	154	163
Other Pleadings	333	528	340	313	373
Oral Arguments	10	8	6	14	15
<b>CAAF</b>					
Briefs Filed	86	45	37	28	24
Other Pleadings	115	158	146	60	102
Oral Arguments	31	21	32	23	8

The Division augmented its delivery of legal advice to trial counsel through its Trial Counsel Assistance Program (TCAP). The Division provided legal services to Marine and Navy judge advocates across the globe, responding to hundreds of questions from the field relating to trial issues and appeals, and helped ensure the uniformity and consonance of legal positions taken by the United States both before trial and appellate courts. As noted on page 2, this program has been replaced by TCAP programs within COMNAVLEGSVCCOM and the Office of the SJA to CMC.

Three Article 62, UCMJ, appeals were filed at NMCCA, one stemming from the recent Hamdaniya *Hutchins* decision regarding the Uniform Code's statutory right to counsel.

The Division's practice at CAAF included certification of significant matters of military justice in *United States v. Hutchins*, 68 M.J. 623 (N.M.Ct.Crim.App. 2010) and *United States v. Serianne*, 68 M.J. 580 (N.M.Ct.Crim.App. 2009). Additionally the Division filed an "amicus" brief in the Air Force *Melendez-Diaz/Crawford* case, *United States v. Blazier*, No. 09-041, 2010 CAAF LEXIS 1053 (C.A.A.F. Dec. 1, 2010).

The Division continued its representation of the United States in one capital case: *United States v. Parker*, 65 M.J. 264 (C.A.A.F 2007).

During FY 10, the Division's judge advocates participated in one oral argument as part of United States Court of Appeals for the Armed Forces' legal outreach program at Brooklyn Law School, Brooklyn, New York.

Appellate Government Counsel have benefitted from an intensive and leveled appellate advocacy training program that includes attendance at the American Bar Association's (ABA) Appellate Judges' Education Institute and Appellate Lawyers Annual Practice Institute, the Association of Government Attorneys in Capital Litigation Conference, Bryan Garner's Legal Research and Writing Seminar, the District of Columbia Bar Association's Appellate Advocacy Seminar, the CAAF Annual Conference, and the Judge Advocate Association's Appellate Advocacy Symposium.

The Division implemented the U.S. military's first "electronic records of trial" program, designating Camp Pendleton, California, to test the electronic processing of trial records that culminates in the docketing of a PDF record of trial at the Court of Criminal Appeals. As the field activities and the Division, in coordination with the NMCCA, expand their technological capabilities, the intent is to covert larger installations to processing a majority of their courts-martial electronically.

Finally, the Division has transitioned internally to a fully paperless and "virtual" office, including taskings and work product, the TCAP discussion board, a new Military Justice Wikipedia, and a routinely updated Military Justice Blog. All of this is made instantly available to all trial counsel and appellate government from the sister services who are then able to participate and contribute to the blog, TCAP board, and Military Justice Wikipedia. Since the start of this project in 2009, the Reserve unit supporting the Division has been able to participate in taskings and produce work product through this virtual office. Likewise, the new Joint Government website has vastly increased collaboration and uniformity by attorneys who represent the United States in front of military courts, and has made the United States' position, pleadings, and resources broadly available to counsel in the field.

**ASSISTANT JUDGE ADVOCATE GENERAL, CHIEF JUDGE, DEPARTMENT  
OF THE NAVY**

The Chief Judge of the Department of the Navy (CJDON) is the senior supervisory jurist in the Department of the Navy and as such serves as the reporting senior for all judges of the NMCCA, active and reserve components, as well as the Chief Judge of the Navy-Marine Corps Trial Judiciary (NMCTJ). The CJDON supervises the deployment of active and Reserve judicial resources to best serve the interests of justice within the Department of the Navy. The CJDON also reports to the Judge Advocate General regarding any 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. The CJDON serves as 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. Additionally, the CJDON has been designated Rules Counsel for all inquiries into judicial misconduct or unfitness. Finally, the CJDON is the capstone billet for the Navy's Military Justice Litigation Career Track, for which the CJDON serves as community sponsor and strategic planner. Upon successful completion of three years of service in this billet, including 12 months as AJAG, the incumbent qualifies to retire in the grade of Rear Admiral (lower half), at the discretion of the Secretary of the Navy.

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

The United States Navy-Marine Corps Court of Criminal Appeals is responsible for all cases referred under Article 66, UCMJ. The Court is comprised of six Navy and three Marine Corps appellate judges. NMCCA is also supported by seven Navy reserve and two Marine Corps reserve appellate judges. FY 10 legal holdings included: that possession of child pornography absent legal justification is per se service discrediting conduct; applying *United States v. Miller*, 67 M.J. 385 (C.A.A.F. 2009) and *United States v. Jones*, 68 M.J. 465 (C.A.A.F. 2010), that negligent homicide does not satisfy the statutory elements test as a lesser-included-offense (LIO) of the charged offense of involuntary manslaughter; that life without the possibility of parole is not an authorized punishment for an offense committed in 1996.

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

The Navy and Marine Corps have a unified trial judiciary entitled the Navy-Marine Corps Trial Judiciary. 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. During FY 10, the NMCTJ consisted of 24 active duty and 18 reserve judges.

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 forward-deployed combat zones such as Iraq and Afghanistan. In addition to presiding over regularly referred courts-martial, naval service military judges presided over numerous high-profile cases, including a capital retrial case, and were appointed as Article 32 investigating officers in high visibility cases. Captain Bruce W. MacKenzie, JAGC, USN, and Captain Moira Modzelewski, JAGC, USN, continued to serve as military judges of the Military Commissions.

Judges also performed duties as Environmental Impact Statement Hearing officers for several proceedings throughout the United States conducted pursuant to the National Environmental Policy Act.

In August 2010, a military judge was reassigned to Naples, Italy to preside over and administer judicial services required within the geographical area of Europe, Africa and Southwest Asia. In conjunction with this personnel assignment, the geographical boundaries of the Northern Circuit and Central Circuit were re-aligned.

Most members of the trial judiciary participated in the annual Interservice Military Judges Seminar (IMJS). Hosted this year by Navy-Marine Corps Trial Judiciary, IMJS was held at the National Judicial College (NJC) in Reno, Nevada, and included courses on Advanced Evidence and Judicial Philosophy. NMCTJ judges also attended various other courses throughout the year at the NJC and the Judge Advocate General of the Army School in Charlottesville, Virginia. Successful completion of NJC courses may lead to receipt of a professional certificate, or potentially, a master's or doctorate degree. Many NMCTJ judges have received the professional Certificate in Judicial Development, General Jurisdiction Trial Skills from the NJC. Several NMCTJ judges serve as adjunct faculty members at NJC, most notably the Chief Judge.

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 the Deputy Judge Advocate General of the Navy. NAVLEGSVCCOM includes 371 judge advocates, one Civil Engineer Corps Officer, ten Limited Duty (Legal) Officers, 227 Legalmen, and 251 civilians. NAVLEGSVCCOM provides a wide range of legal services to afloat and ashore 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's Corps annual Individual Augmentation (IA) requirement 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.

## **NAVAL JUSTICE SCHOOL**

Organization. Naval Justice School (NJS) reports to Commander, Naval Legal Service Command (COMNAVLEGSVCCOM) for administrative and operational control. Additionally, Commanding Officer, NJS consults with Commanding Officer, Center for Service Support on matters relating to the effectiveness of instruction and administration of training at NJS. 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 The Judge Advocate General's Legal Center and School in Charlottesville, Virginia.

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

In FY 10, NJS provided instruction to more than 25,756 students worldwide (including 2,981 in resident courses ranging in length from three days to eleven weeks). In addition to teaching at NJS courses, NJS instructors provide out-of-house teaching in military justice, administrative law, and operational law to other commands, including the Naval War College, Command Leadership School, Officer Training Command, Senior Enlisted Academy, Surface Warfare Officers School Command, and to submariner officers at the Submariners Officer Advanced Course.

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

1. Basic Lawyer Course (BLC). This 10-week course, offered three times in FY 10, 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, standards of conduct, and operational law. Teaching methods include lecture, seminar, and practical exercises in both legal assistance skills and trial advocacy skills. Upon graduation, judge advocates are certified per Article 27(b), UCMJ. FY 10 graduates: 136.

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 program includes four college-level courses taught by NJS officer instructors: Ethics, Legal Research and Writing I, Introduction to Law, and Emerging Legal Technologies. FY 10 graduates: 73.

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 the Military Occupational Specialty of Marine Corps Legal Services Specialist. Curriculum consists of training in military justice, post-trial review, and legal administration. FY 10 graduates: 87.

4. Legal Services Court Reporter Course. This 11-week course, offered twice annually, provides court reporter training to Legal Services Specialists, 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 10 graduates: 36.

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 10 graduates: 694.

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 10 graduates: 478.

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 10 graduates: 316.

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 10 graduates: 332.

Continuing Legal Education. In addition to the "core" courses, NJS provided 25 continuing legal education (CLE) courses, many of which are pre-approved for CLE credit from state bar associations. Most of these courses focus upon military justice (e.g., intermediate and advanced trial advocacy skills; computer crimes; national security cases; prosecuting and defending complex cases; reserve updates; and a number of paralegal courses). Training was provided to active duty and reserve judge advocates and enlisted legal professionals from the Sea Services, Army, Air Force, and foreign countries in military justice, operational law, administrative law, legal assistance, and estate planning. In FY 10, these resident courses reached 678 active duty and 80 reserve legal professionals.

Legalman Paralegal Education Program (LPEP). In FY 10, NJS launched LPEP, a government-funded full-time education program leading to an Associate's Degree in Paralegal Studies. The program is mandatory for all Legalmen in order to meet minimum occupational standards for the LN-paralegal rating. Following LN Accession, students participate in either the resident option, during which they study in-residence with Roger Williams University (RWU) for one semester, or the distance learning option, during which they study either online or with ABA-accredited schools local to their permanent duty stations. Fleet Legalmen are eligible to return to Newport for the in-resident semester with RWU, and also to participate in the distance learning option.

In FY 10, 20 students were registered in the resident option, and an additional 86 students were registered in the distance learning option.

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

Publications. NJS 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.

#### **MARINE CORPS ACTIVITIES**

An analysis of the Departmental trends over the last several years reveals a declining number of courts-martial and indicates that the Marine Corps continues to try an increasing percentage of the courts-martial within the Department of the Navy. In FY 10, the Marine Corps litigated three-quarters of the courts-martial in the Department of the Navy. Although overall court-martial numbers and particularly special court-martial numbers had declined, there appeared to be no corresponding reduction in the demand for military justice resources and expertise.

The Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) conducted the first comprehensive internal review of the delivery of legal services in the Marine Corps since 1990.

Having determined that the Marine Corps' legal organization was structurally sound and that the Marine Corps was acting to address manpower deficiencies, the Marine legal community implemented new initiatives designed to elevate the practice of law. Initial indications from FY 10 suggest that these initiatives will ensure lasting, consistent success in accomplishing the military justice mission, notwithstanding variations in the court-martial caseload or available resources.

I. Initiatives. The Marine Corps Legal Services Strategic Action Plan 2010-2015 set forth five strategic goals which established the blueprint for improving the delivery of legal services in the Marine Corps:

- 1) Standardize functional areas, procedures, and technology to foster a common operating scheme throughout the community of practice;
- 2) Develop and maintain critical capabilities necessary to execute core competencies and improve the professional training, education, and performance of the legal services community;
- 3) Create and implement a formalized and Commander-based inspection program to facilitate transparent oversight of the readiness of all Marine legal offices;
- 4) Evaluate and, as appropriate, adapt organizational structure to right-size the legal community and achieve maximum efficiency with limited resources; and
- 5) Capture, memorialize, and promulgate legal services doctrine to exploit lessons learned and improve the delivery of legal services.

To achieve these strategic goals, the Marine Corps legal community focused its efforts on certain key initiatives, many of which targeted military justice practice.

- A. Goal: Standardize Functional Areas, Procedures, and Technology.

1. Case Management System (CMS). Of the many initiatives implemented in FY 10, CMS has had the most important and immediate impact. In the summer of 2009, recognizing the need for a comprehensive, integrated courts-martial tracking system, the SJA to CMC began identifying the requirements for an effective case tracking and management system.

CMS, a Lotus Notes based, web-enabled software application, was selected. CMS tracks court-martial cases from a command's request for legal services through trial and until the case is received at NAMARA (i.e. throughout the service-level lifespan of a court-martial). After successfully testing CMS at various Marine legal offices, the SJA to CMC mandated its use in MARADMIN 062/10 of 1 February 2010. The implementation of a common, integrated, real-time case tracking database produced immediate results by providing complete visibility over every case at every stage of the service-level process and eliminating gaps caused by a variety of incompatible systems throughout the Marine Corps. CMS is currently being expanded to provide a standardized database for administrative separations and investigations.

2. Standardized Forms. In FY 10, the Judge Advocate Division, Headquarters Marine Corps (JAD) began the process of capturing and consolidating forms, document templates, checklists, and standard operating procedures (SOP) with a view toward standardization where appropriate. This initiative included a pilot program on two important military justice post-trial documents: the Staff Judge Advocate's Recommendation (SJAR) and the Convening Authority's Action (CAA). These documents have been tested and, pending comments from the field, are scheduled to be implemented throughout the Marine Corps as a step toward promoting uniformity where it will expedite post-trial processing. JAD's adoption of SharePoint as our primary knowledge management portal facilitates our efforts to capture best-practices by providing a "Community of Practice" forum accessible by judge advocates across the enterprise as a means of generating ideas and collaborating on their evaluation and development.

3. Digital Records of Trial. In FY 10, in an effort to modernize our practice, the Marine Corps began to use digital records of trial with certain cases subject to appellate review. Instead of shipping the original record and two paper copies that are required for cases pending mandatory review before the Navy-Marine Corps Court of Criminal Appeals (NMCCA), the original record is scanned onto compact disks (CD) in a PDF format and the appropriate number of CDs is sent with the original paper record. Because the record is now a PDF file, it is formatted and bookmarked to a uniform standard and has all the corresponding benefits of an electronic record, including a search capability. Based on early success, the LSSS at Camp Pendleton now forwards all guilty plea cases subject to mandatory review in this manner. Promising savings in time and resources, the program has expanded to Marine Corps Base, Hawaii and Marine Corps Air-Ground Combat Center, 29 Palms, California, as the Marine Corps seeks to convert all major installations to digital records.

4. Victim Witness Assistance Program (VWAP). From late 2009 through early 2010, the Military Justice Branch of the Judge Advocate Division (JAM) undertook a review of the VWAPs at Marine Corps installations and identified weaknesses in the support system for victims and witnesses. Based on this review, JAM took a series of actions to revitalize the VWAP throughout the Marine Corps, including capturing VWAP data requirements in CMS and sponsoring the first Marine Corps-wide VWAP Training Conference. The conference provided baseline training to VWAP personnel from nationally recognized civilian experts, conducted specialized training on handling victims of sexual assault, and developed a series of objectives for each VWAP office to meet within certain set timelines.

5. Marine Corps Manual for Legal Administration. JAD is currently revising the primary service-level regulation for legal administration<sup>1</sup> to account for changes in law and regulation and to assist in implementing standardized procedures. Draft revisions include chapters covering military justice generally, defense counsel services, and the VWAP.

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<sup>1</sup> U.S. MARINE CORPS, ORDER P5800.16A, MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION (31 Aug 99) [hereinafter LEGADMINMAN].

B. Goal: Develop and Maintain Critical Capabilities.

1. Building Communities of Practice. Since 1985, the Marine Corps has maintained an independent defense organization headed by the Chief Defense Counsel of the Marine Corps (CDC). This model has proven effective at providing defense counsel with mentorship, supervision and resources to professionally represent an accused service member. To provide trial counsel with a similar resource, the Marine Corps implemented a Trial Counsel Assistance Program (TCAP). Both the Director of TCAP and the CDC have leveraged technology to better support counsel through the use of SharePoint websites. These initiatives have already improved our capability for real-time collaboration and information sharing.

a. Trial Counsel Assistance Program. The increasing complexity of courts-martial requires today's judge advocates to have a greater breadth and depth of knowledge while still being proficient in the basics. In response to this need, the Marine Corps stood up the TCAP in May 2010 within JAM. The TCAP consists of one field grade and one company grade officer. The TCAP provides training and resources to assist Marine prosecutors using a number of tools, including on-site training, video teleconferencing, and the TCAP SharePoint litigation support website that contains practice advisories, a military justice blog, a motions bank, and other useful documents and links.

b. The Marine Defense Counsel Community. Leveraging advances in knowledge management programs, the CDC in close coordination with the Headquarters, U.S. Marine Corps' Administrative, Resources, and Information Branch (ARI), developed a global online SharePoint site for collaboration and sharing information, creating a worldwide "virtual law firm" comprised of all defense counsel and enlisted support personnel around the globe to include deployed Marines. The CDC introduced this SharePoint site at the first ever Marine Corps-wide Defense Training Conference. This conference, centrally funded by Headquarters Marine Corps, brought all defense counsel and their legal support specialists together for a week for an introduction to SharePoint, to receive litigation training, and to share best-practices within the various defense offices.

2. Training and Readiness (T/R) Manual. On 13 May 2010, the Marine Corps published a revised Legal Services T/R Manual, NAVMC 3500.82, with significant changes to the training of Marine legal personnel. The T/R Manual establishes Core Capability Mission Essential Tasks for readiness reporting and required events for standardized training of Marines assigned to Marine Corps legal services units. It provides tasking for formal schools and establishes standards to evaluate the proficiency of legal Marines in accomplishing required tasks.

In August 2010, Naval Justice School personnel and subject matter experts from the Marine legal community conducted a Course Content Review Board (CCRB) to recommend improvements to the introductory legal services specialist course based on the revised T/R Manual. In addition, the Marine legal community began development of proposed educational courses in the areas of military justice and post-trial processing for Marine legal service specialist noncommissioned and staff noncommissioned officers. The proposals were forwarded to the Ground Training Branch on 8 September 2010 for review and approval. Each program of instruction will build upon core legal competencies in military justice and improve the professional development of all Marine legal services specialists.

3. Military Justice Manager Billet Re-coding. In June 2010, JAD requested and Marine Corps Manpower approved the re-coding of an additional 22 structured 4402 billets to the Military Justice Manager MOS (4409).<sup>2</sup> This MOS requires an advanced law degree (LL.M) or proven experience in the practice of military justice. This initiative should assist in responding to the need for more experienced judge advocates in supervisory military justice billets.

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<sup>2</sup> The Marine Corps MOS Manual refers to MOSs that require education, training or experience in addition to that required of the basic MOS as "necessary" MOSs. U.S. MARINE CORPS, ORDER 1200.17, MILITARY OCCUPATIONAL SPECIALTIES (MOS) MARINE CORPS MANUAL (23 May 2008).

C. Goal: Oversight Inspections.

1. Commanding General's Inspection Program and Automated Inspection Reporting System (AIRS) Checklist. JAD developed and the Inspector General of the Marine Corps implemented AIRS Checklist 091 - SJA Office, Law Center, Legal Service Support Section - in May 2010. This initiative established for the first time, a checklist that includes standards for all SJA-level legal services functional areas, including military justice, and is institutionalized as a formal part of the Commanding General's Inspection Program (CGIP). The checklist provides Marine Commanders and their SJAs a gauge by which to measure the performance of their legal organizations. Since implementation, the Marine Corps has conducted 091 inspections at Marine Corps Base Quantico Law Center and at the SJA offices at Marine Corps Base Camp Lejeune and II Marine Expeditionary Force.

2. SJA to CMC Inspections. The SJA to CMC has historically visited Marine Corps installations to assess the provision of legal services. While these annual visits have typically included an assessment of the health of the provision of legal services at each office, there has not been a standardized inspection process within the Marine Corps consistent with the requirement under Article 6, UCMJ, "to make frequent inspection in the field in supervision of the administration of military justice." To strengthen these inspections, JAD developed uniform information requirements, which, in conjunction with CGIP inspections, provide Commanders and their SJAs an additional opportunity to thoroughly assess legal readiness and provide a more effective tool for the supervision of the administration of military justice.

D. Goal: Evaluating and Adapting Structure to Right-Size the Legal Community.

1. Manpower Initiatives Affecting Military Justice. By the beginning of FY 10, the Marine Corps manpower process had already validated the requirement for an increased number of judge advocates and had begun taking steps to right-size the legal community (i.e., to build inventory to produce a sufficient number of judge advocates in appropriate grades to fill both operational and military justice requirements).

For company grade judge advocates, the Marine Corps increased accessions by 71% from FY 08 to FY 10. In FY 10, the judge advocate recruiting mission stood at 60, up 15 from the previous year alone. In addition, to build experience in the company grade ranks, the Marine Corps instituted a precept for the career designation board and offered all judge advocates an opportunity to remain on active duty. Finally, in September 2010, MARADMIN 515/10 announced an increase in the Law School Education Debt Subsidy (LSEDS) from \$30,000 to \$45,000. By increasing accessions and reducing the cost for company grade judge advocates to stay on active duty, these initiatives expanded the number and experience of our active duty litigators.

Two manpower initiatives specifically addressed identified shortfalls in the grades of major and colonel. First, the Marine Corps conducted two Return-to-Active-Duty (RAD) boards and selected a total of twelve majors, many of whom will be assigned immediately as mid-level military justice managers. Second, a promotion precept was added to the FY12 colonel's selection board (convened in September 2010) and eleven judge advocates were selected to colonel.<sup>3</sup> Increasing the number of experienced military justice supervisors will inevitably raise the quality of our military justice practice.

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<sup>3</sup> The percentage of eligible judge advocates promoted to colonel exceeded that of the previous years. Sixty-four percent (9 of 14) of eligible in-zone judge advocates were selected and 13% (2 of 15) of eligible above-zone officers were selected. The average selection rates for all other MOSs were 52% in-zone, 1.9% above-zone.

At the beginning of FY 10, there were 411 judge advocates across the Marine Corps. By the beginning of FY 11, there were 473.<sup>4</sup> Additionally, due to the billet re-coding initiative, there are now 22 coded military justice supervisor billets. Currently, 46 judge advocates are serving in trial counsel billets; 48 judge advocates are serving in defense counsel billets; eleven judge advocates are serving in appellate counsel billets; seven judge advocates are serving as military judges; and eleven judge advocates are serving as review officers. Although not an exact science, finding the right caseload per counsel requires a balance. Counsel must carry enough cases to gain a level of proficiency and establish an experience base, but not so many as to deteriorate their ability to provide competent representation in each individual case.

2. Creating New Court Reporters: Voice Recognition Training. Over the past three years, the Marine Corps has transitioned from court stenographers to voice recognition court reporters. This change was accomplished by training legal service specialists to do voice recognition reporting as a secondary MOS. It also reduced the training pipeline for court reporters from two years for new stenographers to 11 weeks for voice recognition training and certification. In coordination with the Naval Justice School and Marine Corps Training and Education Command, JAD increased the total number of funded training seats from 20 in FY 09 to 30 in FY 10. These additional court reporters will ensure that the Marine Corps can respond to changing needs in the military justice mission as they occur.

3. Transfer of Reserve LSSS. In August 2010, the Marine Corps transferred the Marine Forces Reserve LSSS (R-LSSS), formerly part of Mobilization Command, to JAD. This move enhanced the ability of the SJA to CMC to effectively coordinate the employment of over 340 Marine reserve judge advocates, including those whose focus is military justice.

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<sup>4</sup> The number at the beginning of FY 10 includes 16 judge advocates who graduated from NJS on 9 October 2009. The number at the beginning of FY 10 includes 38 Marine judge advocates that graduated from NJS on 8 October 2010.

Three of the six R-LSSS branches - the Regional Defense Activity Support Branch, the Regional Government Activity Support Branch, and the Navy-Marine Corps Trial Judiciary Branch - perform functions specifically related to military justice. They are staffed by seasoned attorneys capable of responding to the requirements of the trial and defense communities to serve as detailed counsel and to assist with case preparation and training, as well as to serve as judges to support the judiciary.

4. Court Reporter and Post-trial Review Office Regionalization Study. A proposal to consolidate offices responsible for post-trial processing to gain economies of scale and concentrate expertise is currently being evaluated. This proposal would require an effective system of electronic records before implementation.

## II. Military Justice Mission Accomplishment

A. General and Special Courts-Martial Litigated. In FY 10, the Marine Corps litigated to completion 197 general courts-martial and 649 special courts-martial, representing three-quarters of all courts-martial in the Department of the Navy in FY 10.<sup>5</sup> With 46 trial counsel and 48 defense counsel, the Marine Corps caseload for FY 10 amounts to an average of approximately 17 cases (4 general and 13 special courts-martial) per counsel. Although the evaluative usefulness of this average caseload is limited due to variations in individual counsel caseload, there are no indications from military justice supervisors or military judge assessments that the caseload is so high as to jeopardize competent representation on either side of the aisle. Historical data and local assessments indicate that the court-martial caseload is sufficient to provide Marine judge advocates and support personnel the opportunity to gain proficiency and build an experience base for the development of a professional military justice practice.

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<sup>5</sup> Because the Marine Corps-wide CMS was not mandated until February 2010, USMC court-martial data was derived from the Criminal Activity, Disciplinary Infractions and Courts-Martial Report. JAGINST 5800.9.

B. Other Military Justice Tasks: Trial and Defense Counsel and Military Justice Support Personnel. In addition to tasks associated with litigation, including post-trial tasks, military justice personnel perform a variety of other functions including administrative board hearings and Boards of Inquiry;<sup>6</sup> command advice to convening authorities (trial counsel), and non-court-martial advice to individual Marines and Sailors (defense counsel), such as nonjudicial punishment counseling and Article 138 complaints.

C. Post-Trial Case Processing. In FY 10, 2,481 general, special, and summary courts-martial entered the post-trial process. For those special and general courts-martial required to be forwarded to NAMARA, Marine legal offices improved processing times by an average of 36 days since the implementation of CMS in February 2010. The average processing time for Marine Corps cases since the implementation of CMS is 86 days from date of trial to receipt of the record of trial by NAMARA.

In addition, on 24 February 2010, one week after the effective date of implementation of CMS, 41 of the 121 total cases in the post-trial process exceeded 120 days from the date of trial (sentencing) to convening authority's action or receipt at NAMARA. As of 28 September 2010, after seven months of mandatory CMS use, three of 138 total cases fell in this category.

D. Caseload. The Marine Corps currently maintains a special and general courts-martial docket of approximately 500 cases. Although many of these cases will be adjudicated at special and general courts-martial, a large percentage will be disposed of at alternative forums such as administrative discharge boards or summary courts-martial, or by nonjudicial punishment (NJP).

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<sup>6</sup> In FY 10, there were 540 enlisted administrative separation boards and 42 Boards of Inquiry held in the Marine Corps.

These alternative dispositions still require judge advocate support as suggested by the 540 administrative separation boards conducted by the Marine Corps in FY 10, each board requiring a defense counsel to represent the respondent. Boards of inquiry (officer administrative separations) also contribute to the workload of trial and defense counsel, as does NJP counseling, Article 138, UCMJ, complaints, and Request Mast petitions by Marines and Sailors.

<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 10 <sup>7</sup>	202,729	197	649	1,695	2,541	11,774
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

As illustrated in the table above, the number of general courts-martial litigated has remained relatively steady over the past eight years, with an increase from 140 in 2009 to 197 in 2010. Over the same period, the number of special courts-martial litigated has decreased while summary courts-martial have slightly increased. Additionally, administrative separation boards increased from 307 in 2006 to 338 in 2008 to 540 in 2010.

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

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<sup>7</sup> USMC court-martial data derived from the Criminal Activity, Disciplinary Infractions and Courts-Martial Report. JAGINST 5800.9.

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

Report Period: FY 2010

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

TYPE COURT	TRIED		CONVICTED		ACQUITTALS		RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
	USN <sup>1</sup>	USMC <sub>2</sub>	USN <sup>1</sup>	USMC <sub>2</sub>	USN <sub>1</sub>	USMC <sup>2</sup>	
GENERAL	124	197	108	178	13	19	+37%
BCD SPECIAL	155	649	133	623	14	26	-8%
NON-BCD SPECIAL	0	0	0	0	0		0
SUMMARY <sup>3</sup>	155	1695	152	1680	3	15	-1%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT							

### PART 2 – DISCHARGES APPROVED

GENERAL COURTS-MARTIAL ( CA LEVEL )		
NUMBER OF DISHONORABLE DISCHARGES	94	
NUMBER OF BAD-CONDUCT DISCHARGES	111	
SPECIAL COURTS-MARTIAL ( CA LEVEL )		
NUMBER OF BAD-CONDUCT DISCHARGES	402	

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

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	206
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	385
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	47

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

#### APPEALS

TOTAL ON HAND BEGINNING OF PERIOD		206
GENERAL COURTS-MARTIAL	84	
BCD SPECIAL COURTS-MARTIAL	122	
REFERRED FOR REVIEW		678
GENERAL COURTS-MARTIAL	242	
BCD SPECIAL COURTS-MARTIAL	436	
TOTAL CASES REVIEWED		688
GENERAL COURTS-MARTIAL	229	
BCD SPECIAL COURTS-MARTIAL	459	
TOTAL PENDING AT CLOSE OF PERIOD		196
GENERAL COURTS-MARTIAL	99	
BCD SPECIAL COURTS-MARTIAL	97	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-13%

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

NUMBER	688	
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 (64)	9%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-4%
PERCENTAGE OF TOTAL PETITIONS GRANTED (22)	34%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	13%
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	-3%

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

<b>PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ</b>			
TOTAL PENDING BEGINNING OF PERIOD		14	
RECEIVED		47	
DISPOSED OF		36	
GRANTED	2		
DENIED	33		
NO JURISDICTION	1		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		25	
<b>PART 8 – ORGANIZATION OF COURTS<sup>4</sup></b>			
		USN	USMC
TRIALS BY MILITARY JUDGE ALONE		196	Note 4
GENERAL COURTS-MARTIAL		78	Note 4
SPECIAL COURTS-MARTIAL		118	Note 4
TRIALS BY MILITARY JUDGE WITH MEMBERS		77	Note 4
GENERAL COURTS-MARTIAL		44	Note 4
SPECIAL COURTS-MARTIAL		33	Note 4
TRIALS – COURT COMPOSITION DATA NOT AVAILABLE		6	Note 4
GENERAL COURTS-MARTIAL		2	Note 4
SPECIAL COURTS-MARTIAL		4	Note 4
<b>PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ</b>			
NUMBER OF COMPLAINTS		47	
<b>PART 10 – STRENGTH</b>			
AVERAGE ACTIVE DUTY STRENGTH		532,135	
<b>PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)</b>			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		21,840	
RATE PER 1,000		41	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-5%	

### Explanatory Notes

1 – USN court-martial data is derived from the Navy’s Case Management Tracking Information System (CMTIS).

2 – USMC court-martial data is derived from the Criminal Activity, Disciplinary Infractions and Courts-Martial

Report. JAGINST 5800.9.

3 – DON Summary court-martial data is derived from the Criminal Activity, Disciplinary Infractions and Courts-Martial

Report. JAGINST 5800.9.

4 – USMC court-martial composition data is not reported under the Criminal Activity, Disciplinary Infractions and Courts-

Martial Report. JAGINST 5800.9.

\*\*The courts-martial data contained in the Report on the State of Military Justice in the Department of the Navy for Fiscal Year 2010 and the Marine Corps Legal Services Military Justice Report 2010 is inaccurate due to administrative error. This report contains the corrected data.

**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, 2009 TO SEPTEMBER 30, 2010**

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

The Air Force Court of Criminal Appeals continued to reduce the number of cases pending before it by reviewing 265 cases in fiscal year 2010. The Court saw a significant increase in appeals under Article 62, UCMJ, reviewing 13 such appeals in fiscal year 2010 which was more than triple the number reviewed in the previous fiscal year. In addition, the Court again heard several oral arguments through "Project Outreach" at civilian law schools and Air Force bases. The Court heard five oral arguments at University of Mississippi School of Law, Suffolk University Law School, Hamline University School of Law, University of Colorado Law School, and Charleston Air Force Base.

The size of the Court remained at five active-duty judges, but again experienced changes in its personnel in 2010. The Court welcomed a new Senior Judge, two new Associate Judges, and a new Chief Commissioner after the departure of previous personnel in those positions due to permanent changes 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. Two of the appellate military judges served on the United States Court of Military Commission Review (USCMCR). In accordance with the Military Commissions Act of 2009, the USCMCR has automatic appellate jurisdiction over any convictions under the Act and also hears appeals of issues taken prior to and during trial. Additionally, members of the Court continued to conduct Environmental Impact Hearings in accordance with the National Environmental Policy Act.

The appellate military judges presided over hearings in Arizona, South Dakota, North Dakota, Montana, and Wyoming, allowing for federal receipt of public comment on any potential change in base mission which could impact the environment. Additionally, the judges and Court staff participated in a number of educational programs for judge advocates in all branches of the armed forces. Finally, the Court continued to develop and implement the use of technology to make its operations more accessible to the public. This year, the Court began posting its orders as well as the audio files from oral arguments heard before the Court on the Court's website and also established an electronic docket which reflects cases currently docketed.

### **TRIAL JUDICIARY**

The Air Force Trial Judiciary Directorate (JAT) is responsible for trying and docketing all Air Force general and special courts-martial and presiding over an array of Federal hearings. The Directorate is staffed by 18 active-duty trial judges, 5 reserve trial judges, 1 noncommissioned officer, and 1 civilian employee. The office of the Chief Trial Judge is co-located with the Central Docketing Office at Bolling AFB, District of Columbia, and includes the Deputy Chief Trial Judge, a 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; the United States Air Force Academy in Colorado Springs, Colorado; Offutt AFB, Nebraska; Randolph AFB, Texas; Sheppard AFB, Texas; Eglin AFB, Florida; Charleston AFB, South Carolina; Ramstein AB, Germany; and RAF Lakenheath, United Kingdom.

In fiscal year 2010, Air Force judges presided over 593 general and special courts-martial. Judges have also served as investigating officers in numerous complex and high-profile Article 32 investigations, as legal advisors for officer discharge 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 Air Force military judge deployed to Iraq where he served a six-month tour. Another military judge presided over three courts-martial at Balad AB, Iraq; one case at Bagram AB, Afghanistan; and one case at Ali Al Salem AB, Kuwait. A military judge presided over five courts-martial at Al Udeid AB, Qatar and two courts-martial at Balad AB, Iraq. 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 instructed at various trial advocacy courses and programs throughout the country and overseas to enhance practitioners' litigation skills. A division judge published an article entitled, "Criminal Law and Litigation in the JAG Corps" in the American Bar Association's book, *Careers in Criminal Law*.

Members of the Trial Judiciary have continued to receive recognition from a variety of professional organizations. One of our judges was awarded the Judge Advocates Association William K. Suter Distinguished Judicial Service Award for her dedicated and exceptional service as a military judge. Another military judge was recognized as the distinguished graduate of the 53<sup>rd</sup> Military Judge Course at the Army Judge Advocate General Legal Center and School in Charlottesville, Virginia.

The Air Force, along with a total of over 120 judges from all the services, attended the Annual Interservice Military Judges Seminar. The Seminar was held at the National Judicial College in Reno, Nevada. The weeklong Seminar consisted of continuing legal education lectures, seminars on emerging issues, and a variety of collegium opportunities.

### **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.

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

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

#### **APPELLATE GOVERNMENT COUNSEL**

During this past year, appellate counsel vigorously represented the government in Article 66 and Article 67 appeals of Air Force courts-martial convictions. The division also sought and obtained certification from The Judge Advocate General in two cases for USCAAF review, and filed government appeals in six 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 across the United States. These arguments helped educate attendees on the fairness and professionalism of the military justice system and provided excellent recruiting opportunities.

Counsel provided intense advocacy training and field support. Division counsel educated judge advocates and paralegals at Air Force training events such Trial Advocacy Conferences, the Military Justice Administration Course, the Trial and Defense Advocacy Course, Numbered Air Force conferences, and the KEYSTONE Leadership Summit. The division also created and posted comprehensive trial and appellate materials on the JAJG Learning Center hosted on AFJAGS CAPSIL online resource. Appellate counsel also published the Trial Counsel Deskbook and an electronic newsletter containing 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 through the deployment of personnel. One of our experienced appellate government counsel completed a six-month deployment to the Law and Order Task Force bringing legal stability and progress to Iraq.

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 counsel participated in events hosted by USCAAF, including the Court'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 filed an amicus brief in a Navy-Marine Corps USCAAF case involving the release of trial defense counsel upon their separation from active-duty service. The division also hosted one summer intern, a law student who had completed her second year of law school and expressed an interest in service as a judge advocate. This bright young professional significantly supported the division mission by conducting legal research and writing appellate briefs and motions, and was positively influenced by her experience in the internship program. JAJG's intern was recently accepted for accession as a new Air Force judge advocate upon completion of law school and her bar examination, continuing a long-standing tradition of JAJG interns advancing to service as Air Force judge advocates.

The division obtains crucial appellate counsel support from eleven assigned reserve judge advocates. They continue to provide superb support, greatly assisting the division in carrying out its mission. In addition to preparing written briefs, two reserve counsel presented oral arguments before USCAAF during the fiscal year.

A summary of Air Force Appellate Government practice follows:

<b>AFCCA</b>	<b><u>FY06</u></b>	<b><u>FY07</u></b>	<b><u>FY08</u></b>	<b><u>FY09</u></b>	<b><u>FY10</u></b>
Briefs Filed	207	267	188	156	123
Cases Argued	16	20	19	16	9
<b>USCAAF</b>	<b><u>FY06</u></b>	<b><u>FY07</u></b>	<b><u>FY08</u></b>	<b><u>FY09</u></b>	<b><u>FY10</u></b>
Briefs Filed	47	41	41	23	28
Cases Argued	25	24	15	13	12
<b>SUPREME COURT</b>	<b><u>FY06</u></b>	<b><u>FY07</u></b>	<b><u>FY08</u></b>	<b><u>FY09</u></b>	<b><u>FY10</u></b>
Petition/Waivers Filed	0	10	4	3	2
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, District of Columbia, three Instructor-Litigators 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. STC 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, STC spent more than 2,000 days on temporary duty away from their home station, and represented the government in over 250 courts-martial and over 150 other proceedings. STCs embody the notion of "one world, one circuit." STCs crossed all geographical boundaries to try cases, including one STC traveling to the AOR to prosecute three courts-martial in six days.

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 May the fourth annual Senior Trial Counsel Conference was held at Bolling AFB, bringing together the assigned STCs as well as those projected to join the program during the summer assignment season. The attorneys met for a week of training and networking with trial and appellate counsel. STCs also attended training courses across the country including the Advanced Trial Advocacy Course at AFJAGS, Prosecuting Complex Cases Course at the Naval Justice School, the Computer Crimes Course at the Naval Justice School, and the Protecting Children Online for Prosecutors in Arlington, Virginia, which was produced by the National Center for Missing and Exploited Children.

#### **APPELLATE DEFENSE DIVISION**

Training for our appellate defense counsel remains one of the division's highest priorities. Frequent turnover in counsel make this an especially critical area of focus. Training in 2010 included the Criminal Law New Developments Course, Air Force Board for Correction of Military Records (AFBCMR) training, Clemency and Parole Board training and a Military Appellate Advocacy Symposium sponsored by the Judge Advocates Association.

Appellate defense counsel continued to support trial defense counsel in the field by always being available for telephone consults in time-critical situations. Appellate defense counsel also kept counsel in the field updated on new developments in military criminal law via appellate updates throughout the year.

Appellate defense counsel have contributed to Project Outreach, sponsored by USCAAF and AFCCA, by conducting oral arguments before audiences at Suffolk University Law School, Boston, Massachusetts; University of Colorado, Boulder, Colorado; Loyola University, New Orleans, Louisiana; and Hofstra University School of Law, Long Island, New York. These arguments helped educate attendees on the fairness and professionalism of the military justice system.

The Appellate Defense division began FY10 with approximately 199 cases pending initial briefing to the AFCCA. The number of cases pending initial briefing to the AFCCA decreased by one to 198 cases by the end of the fiscal year.

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

<b>AFCCA</b>		<b><u>FY 06</u></b>	<b><u>FY07</u></b>	<b><u>FY08</u></b>	<b><u>FY09</u></b>	<b><u>FY10</u></b>
	Briefs Filed	638	541	352	285	290
	Cases Argued	16	20	14	16	4
<b>USCAAF</b>		<b><u>FY06</u></b>	<b><u>FY07</u></b>	<b><u>FY08</u></b>	<b><u>FY09</u></b>	<b><u>FY10</u></b>
	Supplements to Petitions	371	261	293	336	204
	Grant Briefs	18	24	15	12	18
	Cases Argued	25	24	15	13	17
<b>SUPREME COURT</b>		<b><u>FY06</u></b>	<b><u>FY07</u></b>	<b><u>FY08</u></b>	<b><u>FY09</u></b>	<b><u>FY10</u></b>
	Petitions	0	9	4	3	2
	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) was responsible for providing all trial defense services within the Air Force through Area Defense Counsel (ADC), Defense Paralegals (DP), Senior Defense Counsel (SDC), Chief Senior Defense Counsel (CSDC), Defense Paralegal Managers (DPM), and Instructor Litigators (I/Ls). These personnel reported to the Chief, JAJD, who reported to the Director, United States Air Force Judiciary (JAJ). The Chief, JAJD, was assisted by the Deputy Chief, Policy and Training, and an Office Superintendent.

The Division was staffed with 82 ADCs stationed at 69 bases worldwide; they were assisted by 72 DPs. The Division had 18 SDCs and 3 CSDCs. Each CSDC supervised 6 SDCs. A DPM was assigned to each of the 3 CSDCs. The SDCs were 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 location. The division also had three I/Ls assigned to AFJAGS. The I/Ls split their time between duties as instructors at AFJAGS and serving as defense counsel in top-priority cases, as directed by the Chief, JAJD.

The continuing success of the Air Force's ADC Program is largely attributable to its independence and its energized personnel. To ensure the best representation for Air Force clients, training remains the division's top priority. On a continuing basis, each 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. Defense personnel also attended an annual Trial Advocacy Course (TAC) conducted by AFJAGS.

In addition, the division ensured each ADC attended the Trial and Defense Advocacy Course and that all SDCs attended the Advanced Trial Advocacy Course.

Upgrading of ADC facilities is an important JAJD priority. The Dover, Minot, and Edwards offices moved into new facilities.

This year JAJD conducted a Division-wide suicide prevention training event led by the Air Force Chief of Suicide prevention to educate attorneys and paralegals on guidance and intervention strategies for dealing with high risk clients. JAJD also developed a standardized policy memorandum to inform all clients on local support services available during times of crisis.

#### **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 (DoD) 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 113 formal opinions concerning AFBCMR applications; received 76 inquires in specific cases requiring formal written replies to senior officials, including the President and Members of Congress; and reviewed 30 records of trial for review under Article 69a, UCMJ, and 2 records under Article 69b, UCMJ. The division presented the 13th 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 and the newly created Gateway Course, an intermediate judge advocate course for majors, at Maxwell AFB, Alabama. Division personnel briefed Air Force JAG Corps leaders on the status of their military justice programs and new initiatives in the military justice arena during the annual KEYSTONE Leadership Summit.

In FY10, our JAG Corps implemented an important change to the way we track the processing of military justice actions. The new standards put even greater emphasis on command's sight picture—from discovery to disposition of the offense. The new standards will give us enhanced visibility into the entire process and should lead to increased accountability and shorter total timelines. These new standards will depend upon an integrated teaming approach among commanders, investigators and JAGs to rapidly investigate and act upon incidents of misconduct, ensuring swift and fair justice.

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 funding from DoD and the Department of Justice (DoJ) to train 32 Air Force personnel in the Victim and Witness Assistance Program at the National Center for the Victims of Crimes (NCVC) 2010 National Conference. JAJM co-sponsored, with the U.S. Army, the Military Institute on the Prosecution of Sexual Violence. This is an interactive course with both civilian and military facilitators designed to shape how military prosecutors view and analyze crimes of sexual violence, providing all with useful tools and varied approaches to the prosecution of these oftentimes difficult cases. In addition, a division representative served as a principal trainer for judge advocates, sexual assault response coordinators, and victim advocates for both DoD and the Air Force.

JAJM supported the war effort during FY10 by deploying a judge advocate and a paralegal to Iraq and a judge advocate to Afghanistan.

JAJM continued to coordinate military justice actions with high-level agencies, such as working closely with the DoJ 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. Finally, division representatives played a role in drafting the legislation provision in the FY 2011 National Defense Authorization Act granting military and appellate judges increased contempt powers under Article 48, UCMJ.

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

At the end of fiscal year 2010, 358 Air Force personnel were in confinement. Of those, 81 inmates were in long-term confinement at the United States Disciplinary Barracks, Fort Leavenworth, Kansas, and 50 were serving their sentences in the Federal Bureau of Prisons system. Eleven inmates were enrolled in the Air Force Return-to-Duty Rehabilitation Program during fiscal year 2010; 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 2010 was 69.

During the reporting period, the division completed 20 Article 71, UCMJ, reviews of officer dismissal cases. As was recommended, the Secretary approved the dismissals in all cases. The division also prepared four cases for Secretarial clemency under Article 74, UCMJ.

#### **THE JUDGE ADVOCATE GENERAL'S SCHOOL (AFJAGS)**

AFJAGS is the educational arm of the JAG Corps. Located at Maxwell AFB, Alabama, AFJAGS 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. Military justice instruction is provided in advocacy, administration, the rules of evidence, and the rules of procedure.

AFJAGS faculty members also provide instruction on military justice for several schools and colleges throughout Air University, the Air Force's center for education. During fiscal year 2010, AFJAGS instructed approximately 19,000 students at these military institutions.

Additionally, AFJAGS routinely publishes articles 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 allow subject-matter experts to brief timely military justice topics to all base legal offices. Recorded webcasts are available on CAPSIL, a web-based collaborative learning and management system administered by AFJAGS and accessible to all members of the JAG Corps. AFJAGS has 31 web-based training modules on military justice topics.

Nearly 2,200 students attended 41 courses held at AFJAGS in fiscal year 2010. Of those 41 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)
- Judge Advocate Staff Officer's Course
- Law Office Manager Course
- Military Justice Administration Course
- Paralegal Apprentice Course
- Paralegal Craftsman 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; Yokota AB, Japan; and Kapaun AS, Germany. The conferences for fiscal year 2010 focused on proper use of experts in courts-martial.

## LEGAL INFORMATION SERVICES

During fiscal year 2010, the Legal Information Services Directorate (JAS) continued to develop new information technology (IT) tools and improve existing ones to better support military justice practices throughout the Air Force.

JAS continued work on the web version of the Automated Military Justice Analysis and Management System (AMJAMS), designing enhancements in-house and with contractor support. Significant performance issues were addressed through speed testing and coordination with 42 CS (Maxwell AFB) and I-NOSC East/West. Resulting improvements in how the system transfers data reduced user wait time by nearly 75%. In addition to design enhancements, the All Courts Processing Times and Article 15 Processing Times reports were modified to accurately reflect the new focus of military justice metrics. The reports now give a more accurate picture of the entire lifecycle of military justice cases. Finally, it should be noted that the client version will be retired for all TJAGC users at the end March 2011, at which time all users will be exclusively on the web version.

The Directorate also continues to develop the Automated Defense Electronic Reporting (ADER) application, the primary IT tool used by TJAGC's defense community to store and track case information. This latest version of ADER includes new reports, 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 fields and reporting features are well under way for FY 2011.

The court reporters are transitioning to a new system hosted on SharePoint which allows bases to input requests for assistance, the assignment of a court reporter to a case, and permits collaborative work on and storage of transcripts.

Based on the benefits seen in the court reporters' SharePoint site, JAS is developing a similar site for TJAGC judges. This site will provide a user-friendly interface for requesting and assigning judges to cases. This site is intended to replace the Judicial Docket System as the primary means for tracking judge assignments and sharing information.

#### **PERSONNEL**

As of 30 September 2010, the Air Force Judge Advocate General's Corps had 1,237 judge advocates on active duty. Company grade officers (lieutenants and captains) made up just over 50% of that number (626). Just over 24% were majors (302) and 15% were lieutenant colonels (191). Colonels (112) and above, including one lieutenant general, one major general, and four brigadier generals, comprised 10% of the Corps. The Air Force Judge Advocate General's Corps Reserve included 843 Air Force Reserve IMA, Air Force Reserve unit-assigned, and Air National Guard judge advocates, of which 13% (109) were company grade officers and 75% (629) were field grade officers (majors and lieutenant colonels). The remaining 12% consisted of 99 colonels, four brigadier generals, and two major generals.

RICHARD C. HARDING  
Lieutenant General, USAF  
The Judge Advocate General

Period: Fiscal Year 2010 **APPENDIX -- U.S. AIR FORCE MILITARY JUSTICE STATISTICS**

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE(+)/ DECREASE (-) OVER LAST REPORT
GENERAL	215	180	35	-3.15%
BCD SPECIAL	380	139	32	-9.31%
NON-BCD SPECIAL [A]		209		
SUMMARY	164	162	2	+43.86%
OVERALL RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT				

**PART 2 - DISCHARGE APPROVED**

GENERAL COURTS-MARTIAL (CA LEVEL)				
NUMBER OF DISHONORABLE DISCHARGES [B]			31	
NUMBER OF BAD CONDUCT DISCHARGES			103	
SPECIAL COURT-MARTIAL (CA LEVEL)				
NUMBER OF BAD CONDUCT DISCHARGES			152	

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL			136	
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL			141	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL			33	

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

TOTAL ON HAND BEGINNING OF PERIOD			246	
GENERAL COURTS-MARTIAL		129		
BCD SPECIAL COURTS-MARTIAL		117		
REFERRED FOR REVIEW			277	
GENERAL COURTS-MARTIAL		136		
BCD SPECIAL COURTS-MARTIAL		141		
TOTAL CASES REVIEWED			265	
GENERAL COURTS-MARTIAL		96		

BCD SPECIAL COURTS-MARTIAL		169		
TOTAL PENDING AT CLOSE OF PERIOD			258	
GENERAL COURTS-MARTIAL		169		
BCD SPECIAL COURTS-MARTIAL		89		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD (265/345)				-23.19%
<b>PART 5 - APPELLATE COUNSEL REQUESTS BEFORE THE AIR FORCE COURT OF CRIMINAL APPEALS</b>				
NUMBER	231/265			
PERCENTAGE	87.17%			
<b>PART 6 - U.S. COURT OF APPEALS FOR THE ARMED FORCES</b>				
PERCENTAGE OF AFCCA REVIEWED CASES FORWARDED TO USCAAF (223/265) [C]				84.15%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD				-2.80%
PERCENTAGE OF TOTAL PETITIONS GRANTED (26/223)				8.58%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD				+2.25%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY AFCCA (26/265)				9.81%
RATE OF INCREASE ( + ) / DECREASE ( - )OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD				+5.00%
<b>PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69</b>				
PENDING AT BEGINNING OF PERIOD			0	
RECEIVED			2	
DISPOSED OF			2	
GRANTED		0		
DENIED		2		
NO JURISDICTION		0		
WITHDRAWN		0		
TOTAL PENDING AT END OF PERIOD			0	
<b>PART 8 - ORGANIZATION OF COURT</b>				
TRIALS BY MILITARY JUDGE ALONE			313	
GENERAL COURTS-MARTIAL		105		
SPECIAL COURTS-MARTIAL		208		
TRIALS BY MILITARY JUDGE WITH MEMBERS			282	
GENERAL COURTS-MARTIAL		110		

SPECIAL COURTS-MARTIAL		172		
<b>PART 9 - COMPLAINTS UNDER ARTICLE 138</b>				
NUMBER OF COMPLAINTS		28		
<b>PART 10 - STRENGTH</b>				
AVERAGE ACTIVE DUTY STRENGTH		333,494		
<b>PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)</b>				
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED			6,756	
RATE PER 1,000			20.26%	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD			-2.20%	
<b>EXPLANATORY NOTES</b>				
<p>[A] The Air Force does not convene non-BCD SPCMs. Of the 380 SPCMs tried, there were 139 convictions with a BCD adjudged, 209 convictions without a BCD adjudged, and 32 acquittals.</p> <p>[B] Includes 8 officer dismissals.</p>				

**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, 2009 to September 30, 2010**

**PERSONNEL AND TRAINING**

The Coast Guard has 182 officers designated as judge advocates serving on active duty, of which 148 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, part of Multi-National Forces, Iraq and ISAF. Among the 36 military attorneys serving in "out-of-specialty" billets are the Seventh District Commander, 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 35 different courses of instruction during this fiscal year, primarily at the various service JAG schools. 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, LT Ben Gullo, is attending the graduate course at the United States Army Judge Advocate General's Legal Center and School and will graduate in 2011 with a Masters of Law (LLM) degree in military law. LCDR Brian Robinson is a Fellow in the Center for Law and Military Operations. 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 2010 were:

**Chief Judge Lane I. McClelland**

Judge Michael J. Lodge

Judge Frederick J. Kenney

Judge Michael E. Tousley

Judge Patrick J. McGuire

Judge Brian T. McTague

Judge William L. Chaney (terminated on 21 June 2010)

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. 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.

Fiscal Year	10	09	08	07	06
General Courts-Martial	12	12	13	16	16
Special Courts-Martial	20	19	19	24	32
Summary Courts-Martial	09	14	28	31	31
Total	41	45	60	71	79

**ADDITIONAL MILITARY JUSTICE STATISTICS**

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

FREDERICK J. KENNEY  
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, 2009 to September 30, 2010 (FY 2010)

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

Report Period: 1 OCTOBER 2009 - 30 SEPTEMBER 2010

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

TYPE COURT	TRIED	CONVICTE D	ACQUITTAL S	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	12	10	2	UNCHANGED
BCD SPECIAL	20	20	00	5%
NON-BCD SPECIAL	00	00	00	UNCHANGED
SUMMARY	09	09	00	-64%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-7%

**PART 2 – DISCHARGES APPROVED**

GENERAL COURTS-MARTIAL				
NUMBER OF DISHONORABLE DISCHARGES			3	
NUMBER OF BAD-CONDUCT DISCHARGES			5	
SPECIAL COURTS-MARTIAL			8	
NUMBER OF BAD-CONDUCT DISCHARGES				

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

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL		9	
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL		8	
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL		3*	

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

TOTAL ON HAND BEGINNING OF PERIOD		19	
GENERAL COURTS-MARTIAL	7		
BCD SPECIAL COURTS-MARTIAL	12		
REFERRED FOR REVIEW		18	
GENERAL COURTS-MARTIAL	9^		
BCD SPECIAL COURTS-MARTIAL	9^^		
TOTAL CASES REVIEWED		15	
GENERAL COURTS-MARTIAL	6^		
BCD SPECIAL COURTS-MARTIAL	9^^		
TOTAL PENDING AT CLOSE OF PERIOD		11	
GENERAL COURTS-MARTIAL	5		
BCD SPECIAL COURTS-MARTIAL	6^^		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-58%	

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

NUMBER	15	
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 6/15	40%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-17%
PERCENTAGE OF TOTAL PETITIONS GRANTED 0/6	0%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-16%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CGCCA 0/15	0%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-4%

- \* Includes one Dismissal (Taylor)
- ^ Includes one Reconsideration (Bond)
- ^^ Includes one Reconsideration (Sanchez)
- ^^^ Includes one Reconsideration (Hester)

**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		24	
GENERAL COURTS-MARTIAL		8*	
SPECIAL COURTS-MARTIAL		16**	
TRIALS BY MILITARY JUDGE WITH MEMBERS		7	
GENERAL COURTS-MARTIAL		3	
SPECIAL COURTS-MARTIAL		4@	
<b>PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ</b>			
NUMBER OF COMPLAINTS		1	
<b>PART 10 – STRENGTH</b>			
AVERAGE ACTIVE DUTY STRENGTH		43, 288	
<b>PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)</b>			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		1200	
RATE PER 1,000		27.72	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-6.24%	

\* Includes one Dismissal (Taylor)

\*\* Includes one adjudged (Mack)

@ Includes 2 Dismissal (Kinser- Findings and sentence disapproved by Convening Authority. Daly- Charges dismissed by ruling of Military Judge)